

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
Surfline/Wavetrak, Inc.		10/09/2001	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	Surfline\Wavetrak, Inc.		
Street Address:	300 Pacific Coast Highway		
Internal Address:	Suite 310		
City:	Huntington Beach		
State/Country:	CALIFORNIA		
Postal Code:	92648		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	2370561	SURFLINE	
CORRESPONDENCE DATA			
Fax Number:	(214)981-3400		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	214-981-3300		
Email:	jchester@sidley.com		
Correspondent Name:	Julia M. Chester, Sidley Austin LLP		
Address Line 1:	717 N. Harwood		
Address Line 2:	Suite 3400		
Address Line 4:	Dallas, TEXAS 75201		
ATTORNEY DOCKET NUMBER:	32046-01801		
NAME OF SUBMITTER:	Julia M. Chester		
Signature:	/Julia M. Chester/		

CH \$40.00 2370561

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**TRADEMARK
 REEL: 004084 FRAME: 0349**

Date:

10/25/2009

Total Attachments: 14

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State of Delaware
Office of the Secretary of State PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "SURFLINE/WAVETRAK, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF OCTOBER, A.D. 2001, AT 7 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

3434814 8100

AUTHENTICATION: 1382012

010502489

DATE: 10-09-01

TRADEMARK
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AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
SURFLINE\WAVETRAK, INC.

Surflin\Wavetrak, Inc., a Delaware corporation (the "Corporation"), hereby certifies that:

1. The name of the Corporation is Surflin\Wavetrak, Inc. The original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on the 10th day of September, 2001.

2. The Corporation's Amended and Restated Certificate of Incorporation, in the form attached hereto as Exhibit A, has been duly adopted in accordance with the provisions of Sections 245 and 242 of the Delaware General Corporation Law by the directors and stockholders of the Corporation.

3. The Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is incorporated herein by reference.

IN WITNESS WHEREOF, Surflin\Wavetrak, Inc. has caused this certificate to be executed by its President as of the 9th day of October, 2001.

Surflin\Wavetrak, Inc.,
a Delaware corporation

/s/ Sean Collins
Sean Collins
President

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 07:00 PM 10/09/2001
010502689 - 3434814

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
SURFLINE\WAVETRAK, INC.

ARTICLE I
NAME OF CORPORATION

The name of the Corporation is Surflin\Wavetrak, Inc.

ARTICLE II
REGISTERED OFFICE

The address of the registered office of the Corporation in the State of Delaware is 9 East Loockerman Street in the City of Dover 19901, County of Kent. The name of its registered agent at such address is National Registered Agents, Inc.

ARTICLE III
CORPORATE PURPOSE

The nature of the business of the Corporation and the objects or purposes to be transacted, promoted or carried on by it are as follows: Any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

ARTICLE IV
AUTHORIZED CAPITAL STOCK

A. **Authorization and Designation.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares of all classes of stock that the Corporation is authorized to issue is Nineteen Million Five Hundred Seventy-Two Thousand Forty-Eight (19,572,048) shares, consisting of Twelve Million (12,000,000) shares of Common Stock, par value \$0.001 per share, and Seven Million Five Hundred Seventy-Two Thousand Forty-Eight (7,572,048) shares of Preferred Stock, par value \$0.001 per share. All of the Seven Million Five Hundred Seventy-Two Thousand Forty-Eight (7,572,048) shares of Preferred Stock authorized are designated as a series known as "Series A Preferred Stock." The voting powers, designations, preferences, privileges and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions of the Preferred Stock, are as provided in this Article IV.

B. Dividends and Distributions. No dividends shall be paid on any share of Common Stock unless a dividend is paid with respect to all outstanding shares of Preferred Stock in an amount for each such share of Preferred Stock equal to or greater than the aggregate amount of such dividends for all shares of Common Stock into which each such share of Preferred Stock could then be converted. No right shall accrue to holders of shares of Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior year, nor shall any undeclared or unpaid dividend bear or accrue any interest.

C. Liquidation Preference.

1. Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (a "Liquidation Event"), the holders of the Preferred Stock will 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 the Common Stock by reason of their ownership thereof, a preference amount per share, in cash, consisting of an amount (the "Liquidation Preference") equal to the sum of (a) three (3) times the Original Issue Price (as defined below) for each outstanding share of Preferred Stock, as adjusted for any stock splits, stock dividends and recapitalizations, to the extent they change the number of outstanding shares of Preferred Stock and (b) an amount equal to declared but unpaid dividends on such share, if any. If upon the occurrence of such Liquidation Event, the assets and funds thus distributed among the holders of the Preferred Stock are insufficient to permit the payment to all holders of the full aforesaid Liquidation Preference, then the entire assets and funds of the Corporation legally available for distribution will be distributed among such holders in proportion to the full Liquidation Preference each such holder is otherwise entitled to receive. "Original Issue Price" means, with respect to the Series A Preferred Stock, \$0.70 per share.

2. Participation. Upon the occurrence of any Liquidation Event, after the payment or provision of all debts and liabilities of the Corporation and all preferential amounts to which the holders of Preferred Stock are entitled under this Article IV.C., the remaining assets of the Corporation will be distributed among the holders of Preferred Stock and Common Stock in proportion to the shares of Common Stock then held by them and the shares of Common Stock which they then have the right to acquire upon conversion of the shares of Preferred Stock then held by them.

3. Liquidation Event. For purposes of this Article IV.C., a "Liquidation Event" will be deemed to be occasioned by, or to include (a) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation but, excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation), or (b) a sale, lease, assignment or conveyance of all or substantially all of the assets of the Corporation; or (c) a sale of authorized and unissued shares of capital stock of the Corporation, unless in any of the cases described in the foregoing clauses (a), (b) or (c), the Corporation's stockholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity.

D. Voting Rights; Directors.

1. Voting Rights. Except as otherwise expressly provided in this Certificate of Incorporation, or by the Bylaws of the Corporation or as required by law, the holder of each share of Preferred Stock will be entitled to the number of votes equal to the number of full shares of Common Stock into which such shares of Preferred Stock could be converted and (except as otherwise expressly provided herein or required by law, voting together with the Common Stock as a single class) will have voting rights and powers equal to the voting rights and powers of the Common Stock and will be entitled to notice of any stockholders' meeting, which will be given in accordance with the Bylaws of the Corporation. Fractional votes will not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) will be rounded to the nearest whole number (with one-half being rounded downward). The holders of shares of Common Stock will be entitled to one (1) vote for each share held.

2. Board of Directors. The Board of Directors of the Corporation shall consist of five (5) members. The holders of Series A Preferred Stock, voting together as a single class, shall be entitled to elect three (3) members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of the Common Stock and Preferred Stock, voting together as a single class, shall be entitled to elect two (2) members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors.

3. Vacancies. In the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Series A Preferred Stock pursuant to the second sentence of Article IV, D.2. hereof, the remaining director or directors so elected by the holders of the Series A Preferred Stock may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one, or if there is no such director remaining, by the affirmative vote of the holders of a majority of the shares of that class) elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of the Series A Preferred Stock or any director so elected as provided in the preceding sentence hereof, may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a majority of the Series A Preferred Stock.

E. Conversion.

1. Right to Convert. Each share of Preferred Stock will be convertible, at the option of the holder thereof (the "Conversion Right"), at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price by the then applicable Conversion Price, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion (hereinafter sometimes the "Conversion Rate"). The initial Conversion Price per share of any series of Preferred Stock (as from time to time in effect, the "Conversion Price") will be the applicable Original Issue Price. Each such initial Conversion Price will be adjusted as hereinafter provided.

2. Automatic Conversion. Each share of any series of Preferred Stock will be automatically converted into shares of Common Stock at the then effective Conversion Price as provided in Article IV.E.1. above, after adjustment as provided elsewhere in this Article IV.E.:

(a) immediately prior to the closing of an underwritten public offering of the Corporation's Common Stock (other than a registration relating solely to a transaction under Rule 145 under the Securities Act of 1933, as amended, or to an employee plan of the Corporation) at a public offering price of at least \$10.00 per share and gross proceeds to the Corporation in excess of \$25,000,000; or

(b) at the election of the holders of at least a majority of the outstanding shares of such series of Preferred Stock to convert all of the outstanding shares of such series of Preferred Stock.

3. Mechanics of Conversion. Before any holder of Preferred Stock will be entitled to convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates thereof, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that it elects to convert the same and shall state therein the name or names in which it wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which it will be entitled as aforesaid. Such conversion will be deemed to have been made immediately prior to the close of business on the date of 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 will be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

4. Adjustments to Conversion Price for Dilutive Issuances.

(a) Certain Definitions. For purposes of this Article IV.E.4., the following definitions will apply:

(i) "Options" means rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(ii) "Issue Date" means the date that shares of Series A Preferred Stock are first issued by the Corporation.

(iii) "Convertible Securities" means any evidences of indebtedness, shares (other than Common Stock) or other securities convertible into or exchangeable for Common Stock.

(iv) "Additional Shares of Common Stock" means all shares of Common Stock issued (or, pursuant to Article IV.E.4.(c), deemed to be issued) by the Corporation upon or after the Issue Date, other than shares of Common Stock issued or issuable at any time:

(A) upon conversion of the shares of Preferred Stock authorized herein;

(B) to directors, officers, employees, consultants, lenders or vendors of the Corporation pursuant to awards granted under employee benefit plans, stock option plans, financing or service arrangements or similar agreements approved by the Board of Directors of the Corporation, which amount includes options or warrants outstanding as of the Issue Date;

(C) as a dividend or distribution on Preferred Stock or any event for which adjustment is made pursuant to Article IV.E.4.(f) hereof;

(D) upon exercise or conversion of outstanding options or warrants;

(E) by way of a subdivision, combination or consolidation of shares of Common Stock described in Article IV.E.4.(f) below; and

(F) pursuant to a distribution described in Article IV.E.4.(g) below or pursuant to a reorganization, reclassification, exchange or substitution described in Article IV.E.4.(h) below.

(b) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular share of Preferred Stock will be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to such issue, for such share of Preferred Stock.

(c) Adjustment of Conversion Price Upon Deemed Issuance of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Issue Date issues any Options or Convertible Securities or fixes a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and options therefor, the conversion or exchange of such Convertible Securities, will be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(i) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(ii) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to

the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; provided, however, that no such adjustment of the Conversion Price will affect Common Stock previously issued upon conversion of Preferred Stock;

(iii) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(A) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(iv) no readjustment pursuant to Article IV.E.4.(c)(ii) or (iii) above will have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(v) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in Article IV.E.4.(c)(iii) above.

(d) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation issues Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to

Article IV.E.4.(c) without consideration or on a consideration per share less than the Conversion Price for any series of Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price for such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For purposes of the above calculation, the number of shares of Common Stock outstanding immediately prior to the such issue will be calculated on a fully diluted basis, as if all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance and any Options had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date.

(e) Determination of Consideration. For purposes of this Article IV.E.4., the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(i) (A) Insofar as the consideration consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest, accrued dividends, expenses, discounts or commissions.

(B) Insofar as the consideration consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation.

(C) In the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in Article IV.E.4.(e)(i)(A) and (B) above, as determined in good faith by the Board of Directors of the Corporation.

(ii) The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Article IV.E.4.(c), relating to Options and Convertible Securities, will be determined by dividing:

(A) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(f) Adjustments for Subdivisions, Combinations or Consolidations of Common Stock. In the event the outstanding shares of Common Stock are subdivided (by stock split or otherwise), into a greater number of shares of Common Stock, the Conversion Price then in effect will, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Price then in effect will, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(g) Adjustments for Other Distributions. In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive any distribution payable in securities of the Corporation, then and in each such event provision will be made so that the holders of Preferred Stock will 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 Article IV.E. with respect to the rights of the holders of Preferred Stock.

(h) Adjustments for Reorganization, Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of Preferred Stock is changed into the same or a different number of shares of any other class or classes of stock or other securities or property, whether by reorganization (unless such reorganization is deemed a liquidation under Article IV.C.3. hereof), reclassification or otherwise (other than a subdivision or combination of shares provided for above), the Conversion Price then in effect will, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Preferred Stock is 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 or other securities or property equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Preferred Stock immediately before such event; and, in any such case, appropriate adjustment will be made in the application of the provisions herein set forth with respect to the rights and interest thereafter of the holders of Preferred Stock, to the end that the provisions set forth herein (including provisions with respect to changes in and other adjustments of the Conversion Price) will thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of Preferred Stock.

5. No Impairment. The Corporation shall not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid

or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in the carrying out of all the provisions of this Article IV.E. 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.

6. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Article IV.E., the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and cause independent public accountants selected by the Corporation to verify such computation and prepare and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock furnish or cause to be furnished to such holder a like certificate setting forth (a) such adjustments and readjustments, (b) the Conversion Price at the time in effect, and (c) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

7. Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any security or right convertible into or entitling the holder thereof to receive or 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 deliver to each holder of Preferred Stock at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution, security or right, and the amount and character of such dividend, distribution, security or right. The failure to provide such notice itself will not impair the validity or effectiveness of such action.

8. Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Preferred Stock pursuant hereto.

9. Reservation of Common Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Preferred Stock, such number of its shares of Common Stock as will from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock will not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as will be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to its Certificate of Incorporation.

10. Fractional Shares. No fractional share will be issued upon the conversion of any share or shares of Preferred Stock. All shares of Common Stock (including fractions

thereof) issuable upon conversion of more than one share of Preferred Stock by a holder thereof will be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors of the Corporation).

11. Notices. Any notice required by the provisions of this Article IV.E. to be given to the holders of shares of Preferred Stock will be deemed given (i) immediately upon delivery to the holder in person; (ii) one day after deposit with a national overnight delivery service; or (iii) upon receipt by the holder if deposited with the United States mail, postage prepaid. All notices must be addressed to the holder of record at the appropriate address appearing on the books of the Corporation.

F. Amendments. Any term relating to any series of Preferred Stock may be amended and the observance of any term relating to any series of Preferred Stock may be waived (either generally or in a particular instance) only with the vote or written consent of holders of at least a majority of the outstanding shares of that series of Preferred Stock. Any amendment so effected will be binding upon the Corporation and any holder of the Preferred Stock.

G. Protective Provisions. In addition to any other rights provided by law, including Section 242(b) of the Delaware General Corporation Law, so long as any shares of any series of Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent by the holders of at least a majority of the outstanding shares of all series of Preferred Stock, voting together as a single class:

1. Effect (by way of any merger, consolidation, reorganization, reclassification, recapitalization or other change with respect to any outstanding shares of stock which results in) the issuance of shares of stock or any other equity security, including options, rights to purchase securities and convertible or exchangeable debt securities, senior to or on a parity with the Preferred Stock as to dividend rights, liquidation preferences, or conversion rights, or senior to the Preferred Stock as to voting rights; or

2. Effect (a) the liquidation, dissolution or winding up of the Corporation; (b) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation but, excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation); (c) the sale, lease, assignment or conveyance of all or substantially all of the assets of the Corporation; (d) the sale of authorized but unissued shares of capital stock of the Corporation, unless in any of the cases described in the foregoing clauses (b), (c) or (d), the Corporation's stockholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity; or

3. Change (by merger, reclassification, amendment or otherwise) the rights, preferences, privileges or limitations of the Preferred Stock so as to affect them adversely.

H. **No Reissuances of Preferred Stock.** No share or shares of any series of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise may be reissued, and all such shares must be returned to the status of undesignated shares of Preferred Stock.

ARTICLE V

AMENDMENT OF CORPORATION DOCUMENTS

A. **Certificate of Incorporation.** The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

B. **Bylaws.** In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind the Bylaws of the Corporation.

ARTICLE VI

ELECTION OF DIRECTORS

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

ARTICLE VII

LIMITATION OF DIRECTOR LIABILITY

To the fullest extent permitted by the Delaware General Corporation Law as the same exists or may hereafter be amended, a director of the Corporation will not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the Delaware General Corporation Law is amended after the date of the filing of this Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation will be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended from time to time. No repeal or modification of this Article VII by the stockholders will adversely affect any right or protection of a director of the Corporation existing by virtue of this Article VII at the time of such repeal or modification.

ARTICLE VIII

INDEMNIFICATION OF DIRECTORS

To the fullest extent permitted by applicable law, the Corporation is also authorized to provide indemnification of (and advancement of expenses to) such agents (and any other persons to which Delaware law permits the Corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement of expenses otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits imposed by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders or others. No repeal or modification of this Article VIII by the stockholders will adversely affect any right or protection of a director of the Corporation existing by virtue of this Article VIII at the time of such repeal or modification.

ARTICLE IX

CREDITOR COMPROMISE OR ARRANGEMENT

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

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