

F08000000873

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(City/State/Zip/Phone #)

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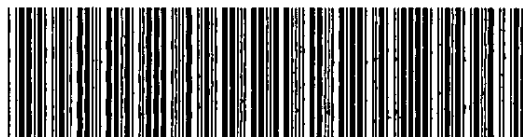
(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

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FILED  
08 JUL -2 AM 9:32  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

*Panel Change*  
*7/3/08*  
*DC*

## COVER LETTER

**TO:** Amendment Section  
Division of Corporations

**SUBJECT:** Tacora, Inc.

(Name of Corporation)

**DOCUMENT NUMBER:** F08000000873

The enclosed Amendment and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Erick H. Rock

(Name of Contact Person)

Xiocom Wireless, Inc.

(Firm/Company)

3530 Koger Blvd., Suite 400

(Address)

Dultuh, GA 30096

(City/State and Zip Code)

For further information concerning this matter, please call:

Erick H. Rock

(Name of Contact Person)

at ( 678 ) 218-5023

(Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount:



\$35.00 Filing Fee



\$43.75 Filing Fee &  
Certificate of Status



\$43.75 Filing Fee &  
Certified Copy  
(Additional copy is  
enclosed)



\$52.50 Filing Fee,  
Certificate of Status &  
Certified Copy  
(Additional copy is  
enclosed)

**Mailing Address:**

Amendment Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**Street Address:**

Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**PROFIT CORPORATION**  
**APPLICATION BY FOREIGN PROFIT CORPORATION TO FILE AMENDMENT TO**  
**APPLICATION FOR AUTHORIZATION TO TRANSACT BUSINESS IN FLORIDA**  
(Pursuant to s. 607.1504, F.S.)

**SECTION I**  
**(1-3 MUST BE COMPLETED)**

F08000000873

(Document number of corporation (if known))

**FILED**  
**08 JUL -2 AM 9:32**  
**SECRETARY OF STATE**  
**TALLAHASSEE, FLORIDA**

1. Tacora, Inc.

(Name of corporation as it appears on the records of the Department of State)

2. Delaware

(Incorporated under laws of)

3. February 28, 2008

(Date authorized to do business in Florida)

**SECTION II**  
**(4-7 COMPLETE ONLY THE APPLICABLE CHANGES)**

4. If the amendment changes the name of the corporation, when was the change effected under the laws of its jurisdiction of incorporation? March 6, 2008

5. Xiocom Wireless, Inc.

(Name of corporation after the amendment, adding suffix "corporation," "company," or "incorporated," or appropriate abbreviation, if not contained in new name of the corporation)

(If new name is unavailable in Florida, enter alternate corporate name adopted for the purpose of transacting business in Florida)

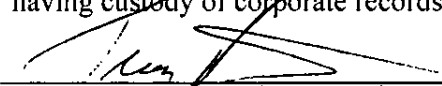
6. If the amendment changes the period of duration, indicate new period of duration.

\_\_\_\_\_  
(New duration)

7. If the amendment changes the jurisdiction of incorporation, indicate new jurisdiction.

\_\_\_\_\_  
(New jurisdiction)

8. Attached is a certificate or document of similar import, evidencing the amendment, authenticated not more than 90 days prior to delivery of the application to the Department of State, by the Secretary of State or other official having custody of corporate records in the jurisdiction under the laws of which it is incorporated.

  
(Signature of a director, president or other officer - if in the hands of a receiver or other court appointed fiduciary, by that fiduciary)

Ray Richardson  
(Typed or printed name of person signing)

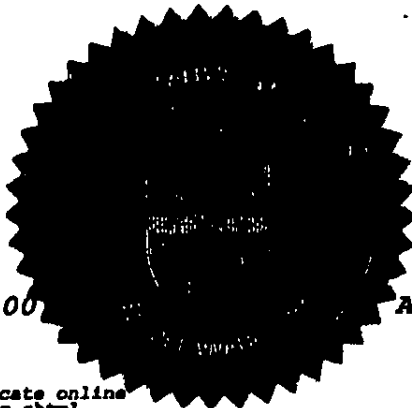
President  
(Title of person signing)

# Delaware

PAGE 1

*The First State*

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 "TACORA, INC.", CHANGING ITS NAME FROM "TACORA, INC." TO "XIOCOM WIRELESS, INC.", FILED IN THIS OFFICE ON THE SIXTH DAY OF MARCH, A.D. 2008, AT 1:03 O'CLOCK P.M.



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

4381754 8100

AUTHENTICATION: 6667376

080700555

DATE: 06-17-08

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
TACORA, INC.**

(Pursuant to Sections 242 and 245 of the  
General Corporation Law of the State of Delaware)

Tacora, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

**DOES HEREBY CERTIFY:**

1. That the name of this corporation is Tacora, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on June 29, 2007 under the name Tacora, Inc.
2. That this corporation filed an Amended and Restated Certificate of Incorporation on November 16, 2007.
3. That the Board of Directors duly adopted resolutions proposing to (a) change the name of this corporation and (b) amend and restate the Certificate of Incorporation of this corporation (as amended, the "Certificate of Incorporation"), declaring said name change and amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed name change and amendment and restatement is as follows:

**RESOLVED**, that the Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

**FIRST:** The name of the corporation is **XIOCOM WIRELESS, INC.**, (the "Corporation").

**SECOND:** The address of its registered office in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation

Law of the State of Delaware as the same exists or may hereafter be amended ("Delaware Law").

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is 85,000,000 shares comprised of 50,000,000 shares of Common Stock with a par value of \$0.0001 per share (the "Common Stock"), and 35,000,000 shares of preferred stock with a par value of \$0.0001 per share (the "Preferred Stock"). Of the Preferred Stock, 20,000,000 shares have been designated Series A Preferred Stock (the "Series A Preferred Stock") and 15,000,000 shares have been designated Series B Preferred Stock (the "Series B Preferred Stock").

The Corporation shall not issue, repurchase, redeem, reclassify, reorganize, split, reverse split or take any action resulting in an increase or decrease in the number of shares of its Common Stock or Preferred Stock outstanding (a "Change Event"), unless simultaneously with such Change Event, or immediately prior to or immediately following such Change Event, the same Change Event shall occur with respect to the same percentage of the ordinary shares or the cumulative preference shares, as applicable, of CNW Holdings B.V., a private limited liability company organized under the laws of the Netherlands, or any successor thereto ("CNW"), such that shares of each class of the capital stock of the Corporation shall only be held by direct or indirect stockholders of CNW, which stockholders shall hold the same percentage of shares of each such class of the capital stock of the Corporation as such stockholders directly or indirectly hold in the shares of such class of the capital stock of CNW.

Subject to the provisions of the preceding paragraph and the rights of the holders of the Preferred Stock as set out below, the Board of Directors is hereby vested with the authority to designate and provide for the issuance of additional Preferred Stock, at any time and from time to time, in one or more series, each of such series to have such voting powers, designations, preferences and relative participation, optional or mandatory conversion and other rights, and such qualifications, limitations or restrictions thereon as expressly provided in the resolution or resolutions duly adopted by the Board of Directors providing for the designation and/or issuance of such shares or series thereof.

The Series A Preferred Stock and the Series B Preferred Stock shall have the following powers, preferences, rights, privileges, qualifications, limitations and restrictions:

1. *Rank.* All rights to receive dividends and all rights upon liquidation, dissolution and winding-up of the Corporation shall be *pari passu* between the Series A Preferred Stock and the Series B Preferred Stock, provided that such rights shall rank prior to all other classes or series of equity securities of the Corporation, including the Common Stock and any rights or options exercisable for or convertible into Common Stock.

2. *Dividends.* (a) Holders of Series A Preferred Stock and holders of Series B Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, if applicable out of funds legally available for the payment of dividends, (i) dividends payable in additional shares of the series of Preferred Stock owned by such holder ("Additional Shares") at an annual rate of 10% of the applicable Original Issue Price (as defined below) of such series of Preferred Stock per share and (ii) dividends on an as if converted to Common Stock basis contemporaneously with dividends as declared by the Board of Directors with respect to shares of Common Stock, in each case in preference to dividends on the Common Stock. Dividends pursuant to clause (i) of the preceding sentence shall be payable quarterly in arrears in equal amounts on January 15, April 15, July 15 and October 15 of each year (unless such day is not a business day, in which event on the next succeeding business day) (each of such dates being a "Dividend Payment Date" and each such quarterly period being a "Dividend Period"). Dividends payable with respect to Series A Preferred Stock shall be cumulative from July 25, 2007 and dividends payable with respect to Series B Preferred Stock shall be cumulative from March 6, 2008. Dividends on Additional Shares shall accrue from the date such Additional Shares are issued. Accrued but unpaid dividends shall compound quarterly. Each such dividend shall be payable to the holders of record of shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, as they appear on the Corporation's stock register at the close of business on a record date or dates, which record dates shall be not more than 60 days or less than 10 days prior to the respective Dividend Payment Date, as shall be fixed by the Board of Directors. Accrued and unpaid dividends for any past Dividend Periods may be declared and paid at any time, without reference to any Dividend Payment Date, to holders of record on such date, not more than 45 days preceding the payment date thereof, as may be fixed by the Board of Directors. If the Corporation shall at any time after the date of issuance of the Series B Preferred Stock pay any dividend on Common Stock payable in shares of Common Stock or effect a subdivision or combination of the outstanding shares of Common Stock (by reclassification or otherwise) into a greater or lesser number of shares of Common Stock, then in each such case the dividend amount to which holders of Series A Preferred Stock and Series B Preferred Stock were entitled immediately prior to such event under clause (i) above shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) The amount of dividends payable for each full Dividend Period for the Series A Preferred Stock and the Series B Preferred Stock shall be computed by dividing the annual dividend rate by four. The amount of dividends payable for the initial Dividend Period, or any other period shorter or longer than a full Dividend Period, on the Series A Preferred Stock or the Series B Preferred Stock shall be computed on the basis of 30-day months and a 12-month year. Except as provided in Section 2(a), no interest or sum of money in lieu of interest shall be

payable in respect of any dividend payment on the Series A Preferred Stock or the Series B Preferred Stock that may be in arrears.

(c) So long as any shares of the Series A Preferred Stock or the Series B Preferred Stock are outstanding, the Corporation shall not, and shall cause its subsidiaries not to, directly or indirectly, declare, pay or set apart for payment any dividends or other distributions on Common Stock (other than dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, Common Stock) or redeem or otherwise acquire any Common Stock (other than a redemption or acquisition of shares of Common Stock made for purposes of an employee incentive or benefit plan of the Corporation or any subsidiary of the Corporation) (all such dividends, distributions, redemptions or acquisitions being a "Common Stock Distribution") for any consideration (including any moneys to be paid to or made available for a sinking fund for the redemption of any shares of any such stock), except by conversion into or exchange for Common Stock, unless in each case the full cumulative dividends on all outstanding shares of the Series A Preferred Stock and the Series B Preferred Stock have been paid or set apart for payment for all past and current Dividend Periods with respect to the Series A Preferred Stock and the Series B Preferred Stock.

3. *Liquidation Preference.* In the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the Corporation's assets (whether capital or surplus) shall be made to or set apart for the holders of Common Stock, holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive two times their respective Original Issue Price per share, plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to the date of final distribution to such holders. The "Series A Original Issue Price" is equal to \$1.00 per share of Series A Preferred Stock (as adjusted for any recapitalization, stock combination, stock dividend, stock split or the like with respect to such shares of Series A Preferred Stock). The "Series B Original Issue Price" is equal to \$1.00 per share of Series B Preferred Stock (as adjusted for any recapitalization, stock combination, stock dividend, stock split or the like with respect to such shares of Series B Preferred Stock) (the Series A Original Issue Price and the Series B Original Issue Price each sometimes referred to herein as an "Original Issue Price"). In addition, the holders of Series A Preferred Stock and Series B Preferred Stock then outstanding shall be entitled to participate with the holders of Common Stock in the distribution of any remaining assets of the Corporation available for distribution to the stockholders on an as if converted to Common Stock basis. Notwithstanding anything else in the Corporation's Certificate of Incorporation, a liquidation, dissolution or winding-up, voluntary or involuntary, of the Corporation shall be deemed to have occurred upon (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, conversion, merger or consolidation, whether of the Corporation with or into any other corporation or of any other corporation with or into the



Corporation, but excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation); or (ii) a sale of all or substantially all of the assets of the Corporation; *provided* that a consolidation or merger as a result of which the holders of capital stock of the Corporation immediately before such merger or consolidation possess (by reason of such holdings) 50% or more of the voting power of the corporation surviving such merger or consolidation (or other corporation which is the issuer of the capital stock into which the capital stock of the Corporation is converted or exchanged in such merger or consolidation) shall not be treated as a liquidation, dissolution or winding-up, voluntary or involuntary, of the Corporation within the meaning of this Section 3.

4. *Redemption.* Neither the Series A Preferred Stock nor the Series B Preferred Stock is redeemable.

5. *Conversion.*

(a) Subject to the provisions of this Section 5, each holder of Series A Preferred Stock and each holder of Series B Preferred Stock has the right, at any time and from time to time, at such holder's option, to convert any or all outstanding shares (and fractional shares) of such holder's Series A Preferred Stock and/or Series B Preferred Stock, as applicable, in whole or in part, into fully paid and non-assessable shares of Common Stock. The number of shares of Common Stock deliverable upon conversion of a share of Series A Preferred Stock, adjusted as provided herein, is the "Series A Conversion Ratio." The number of shares of Common Stock deliverable upon conversion of a share of Series B Preferred Stock, adjusted as provided herein, is the "Series B Conversion Ratio" (the Series A Conversion Ratio and the Series B Conversion Ratio each sometimes referred to herein as a "Conversion Ratio"). The Series A Conversion Ratio shall be a number equal to the Series A Original Issue Price divided by the then applicable Series A Conversion Price Per Common Share. The "Series A Conversion Price Per Common Share" is initially \$1.00, subject to adjustment from time to time pursuant to Section 5(g). Accordingly, the initial Series A Conversion Ratio is 1.0, subject to adjustment of the Series A Conversion Price Per Common Share pursuant to Section 5(g). The Series B Conversion Ratio shall be a number equal to the Series B Original Issue Price divided by the then applicable Series B Conversion Price Per Common Share. The "Series B Conversion Price Per Common Share" is \$1.00, subject to adjustment from time to time pursuant to Section 5(g). Accordingly, the current Series B Conversion Ratio is 1.0, subject to adjustment of the Series B Conversion Price Per Common Share pursuant to Section 5(g) (the Series A Conversion Price Per Common Share and the Series B Conversion Price Per Common Share each sometimes referred to herein as a "Conversion Price Per Common Share").

(b) (i) In order to exercise the conversion right, the holder of the shares of Series A Preferred Stock and/or Series B Preferred Stock to be converted shall surrender the certificate(s) representing such shares at the office

of the Corporation, with a written notice of election to convert completed and signed, specifying the number of shares to be converted. Unless the shares issuable on conversion are to be issued in the same name as the name in which such shares of Series A Preferred Stock and/or Series B Preferred Stock, as applicable, are registered, each share surrendered for conversion shall be accompanied by instruments of transfer, in form satisfactory to the Corporation, duly executed by the holder or the holder's duly authorized attorney and an amount sufficient to pay any transfer or similar tax.

(ii) As promptly as practicable after the surrender by the holder of the certificates for shares of Series A Preferred Stock and/or Series B Preferred Stock for conversion pursuant to this Section 5, the Corporation shall issue and deliver to such holder or on the holder's written order to the holder's transferee a certificate or certificates for the whole number of shares of Common Stock issuable upon conversion.

(iii) Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the certificates for shares of Series A Preferred Stock and/or Series B Preferred Stock, as applicable, were surrendered and notice of conversion was received by the Corporation. The Person in whose name or names any certificate or certificates for shares of Common Stock are issuable upon such conversion shall be deemed to have become the holder of record of the shares of Common Stock represented thereby at such time on such date, and such conversion shall be into a number of shares of Common Stock equal to the product of the number of shares of Series A Preferred Stock and/or Series B Preferred Stock surrendered times the applicable Conversion Ratio in effect at such time on such date. All shares of Common Stock delivered upon conversion of the Series A Preferred Stock and Series B Preferred Stock will upon delivery be duly and validly issued, fully paid and non-assessable, free of all liens and charges and not subject to any preemptive rights. Upon the surrender of certificates representing shares of Series A Preferred Stock or Series B Preferred Stock, such shares shall no longer be deemed to be outstanding and all rights of a holder with respect to such shares surrendered for conversion shall immediately terminate except the right to receive Common Stock and other amounts payable pursuant to this Section 5.

(c) (i) From the date of delivery by a holder of Series A Preferred Stock and/or Series B Preferred Stock of a notice of election to convert, in lieu of dividends on such Series A Preferred Stock and/or Series B Preferred Stock, as applicable, pursuant to Section 2, the holders of such Series A Preferred Stock and/or Series B Preferred Stock shall participate equally and ratably with the holders of Common Stock in all dividends paid on Common Stock as if such shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, had been converted to shares of Common Stock at the time of the delivery of such notice.

(ii) Except as provided above and in Section 5(g), the Corporation shall make no payment or adjustment for accrued and unpaid dividends on shares of Series A Preferred Stock or Series B Preferred Stock, whether or not in arrears, on conversion of such shares or for dividends in cash on the shares of Common Stock issued upon such conversion.

(d) (i) The Corporation shall at all times reserve and keep available, free from preemptive rights, such number of its authorized but unissued shares of Common Stock as may be required to effect conversions of all outstanding Series A Preferred Stock and Series B Preferred Stock.

(ii) Prior to the delivery of any securities that the Corporation is obligated to deliver upon conversion of the Series A Preferred Stock and/or Series B Preferred Stock, the Corporation shall comply with all applicable federal and state laws and regulations which require action by the Corporation.

(e) The Corporation shall pay any and all issuance, delivery and transfer taxes in respect of the issuance or delivery of shares of Common Stock on conversion of any Series A Preferred Stock or Series B Preferred Stock pursuant hereto. The Corporation shall not, however, be required to pay any tax in respect of any transfer involved in the issuance or delivery of shares of Common Stock in a name other than that of the holder of the Series A Preferred Stock and/or Series B Preferred Stock so converted, and no such issuance or delivery shall be made unless and until the Person requesting such issuance or delivery has paid to the Corporation the amount of any such tax or has established to the Corporation's satisfaction that such tax has been paid.

(f) In connection with the conversion of any shares of Series A Preferred Stock and/or Series B Preferred Stock, no fractional shares of Common Stock shall be issued. In lieu thereof the Corporation shall pay cash in respect of such fractional shares in an amount equal to such fractional shares multiplied by the Daily Price Per Common Share on the day on which such shares of Series A Preferred Stock and/or Series B Preferred Stock, as applicable, are deemed to have been converted. The "Daily Price Per Common Share" shall be (i) the closing price per share of Common Stock on such day as reported by the principal national securities exchange on which the shares are listed and traded at the close of the regular session of trading for such exchange; or (ii) if the shares of such class of Common Stock are not listed and traded on any such securities exchange, the price per share of Common Stock determined in good faith by the Board of Directors.

(g) (i) If the Corporation at any time after the date hereof (A) subdivides or splits the outstanding Common Stock, (B) combines or reclassifies the outstanding Common Stock into a smaller number of shares, (C) issues any shares of its capital stock in a reclassification of Common Stock (including any such reclassification in connection with a consolidation or merger in which the Corporation is the continuing corporation), or (D) consolidates with, merges with

or into or is converted into any other Person, each Conversion Price Per Common Share in effect at the time of the record date for such dividend or distribution or of the effective date of such subdivision, split, combination, consolidation, conversion, merger or reclassification shall be adjusted so that the conversion of the Series A Preferred Stock and the Series B Preferred Stock after such time shall entitle the holders thereof to receive the aggregate number of shares of Common Stock or other securities of the Corporation (or shares of any security into which such shares of Common Stock have been combined, consolidated, converted, merged or reclassified pursuant to Sections 5(g)(i)(B), 5(g)(i)(C) or 5(g)(i)(D)) which, if the Series A Preferred Stock and the Series B Preferred Stock had been converted immediately prior to such time, such holders would have owned upon such conversion and been entitled to receive by virtue of such dividend, distribution, subdivision, split, combination, consolidation, conversion, merger or reclassification, assuming such holder of Common Stock (x) is not a Person with which the Corporation consolidated or into which the Corporation merged or which merged into the Corporation or to which such recapitalization, sale or transfer was made, as the case may be ("constituent Person"), or an affiliate of a constituent Person and (y) failed to exercise any rights of election as to the kind or amount of securities, cash and other property receivable upon such reclassification, change, consolidation, conversion, merger, recapitalization, sale or transfer (provided, that if the kind or amount of securities, cash and other property receivable upon such reclassification, change, consolidation, conversion, merger, recapitalization, sale or transfer is not the same for each share of Common Stock held immediately prior to such reclassification, change, consolidation, conversion, merger, recapitalization, sale or transfer by other than a constituent Person or an affiliate thereof and in respect of which such rights of election shall not have been exercised ("non-electing share"), then for the purpose of this Section 5(g) the kind and amount of securities, cash and other property receivable upon such reclassification, change, consolidation, conversion, merger, recapitalization, sale or transfer by each non-electing share shall be deemed to be the kind and amount so receivable per share by a plurality of the non-electing shares). Such adjustment shall be made successively whenever any event listed above shall occur.

(ii) If the Corporation issues or sells any Common Stock (other than Common Stock issued (A) upon conversion of the Series A Preferred Stock or Series B Preferred Stock, (B) pursuant to the Corporation's stock option plans or pursuant to any other Common Stock related employee compensation plan of the Corporation approved by the Corporation's Board of Directors, (C) in connection with the Corporation's sale of Series B Preferred Stock or (D) upon exercise or conversion of any security the issuance of which caused an adjustment under Sections 5(g)(iii) or 5(g)(iv)) for a consideration per share (the "Issue Price Per Common Share") less than the Series A Conversion Price Per Common Share and/or the Series B Conversion Price Per Common Share then in effect, the Conversion Price(s) Per Common Share that is (are) greater than the Issue Price Per Common Share to be in effect after such issuance or sale shall be reduced to the Issue Price Per Common Share or to \$0.01 if the Issue Price Per Common

Share is zero. If any portion of the Issue Price Per Common Share is in a form other than cash, the fair market value of such noncash consideration shall be utilized in the foregoing computation. Such fair market value shall be determined by the Board of Directors of the Corporation; provided that if the holders of 25% of the Series A Preferred Stock and Series B Preferred Stock, voting together as a single class on an as converted to Common Stock basis, object to any such determination, the Board of Directors shall retain an independent appraiser reasonably satisfactory to such holders to determine such fair market value. The holders shall be notified promptly of any consideration other than cash to be received by the Corporation and furnished with a description of the consideration and the fair market value thereof, as determined by the Board of Directors.

(iii) If the Corporation fixes a record date for the issuance of, or issues or sells, rights, options (other than options issued pursuant to a plan described in Section 5(g)(ii)(B)) or warrants entitling the holders thereof to subscribe for or purchase shares of Common Stock (or securities convertible into shares of Common Stock) or convertible securities at a price per share of Common Stock (including, in the case of rights, options or warrants, the price at which they may be exercised, or in the case of convertible securities, the conversion price per share of Common Stock) (such price per share being the "New Option Price Per Common Share") less than the Series A Conversion Price Per Common Share and/or the Series B Conversion Price Per Common Share on such record date or date of issuance or sale, the Conversion Price(s) Per Common Share that is (are) greater than the New Option Price Per Common Share shall be reduced to the New Option Price Per Common Share or to \$0.01 if the New Option Price Per Common Share is zero. If any portion of the New Option Price Per Common Share is in a form other than cash, the fair market value of such noncash consideration shall be determined as set forth in Section 5(g)(ii). Such adjustment shall be made successively whenever such record date is fixed or whenever such rights, options, warrants or convertible securities are issued or sold; and if such rights, options, warrants or convertible securities are not so issued or expire unexercised, or if there is a change in the number of shares of Common Stock to which the holders of such rights, options, warrants or convertible securities are entitled (other than pursuant to adjustment provisions therein comparable to those contained in this Section 5(g)), any Conversion Price Per Common Share that had previously been adjusted in connection with such New Option Price Per Common Share shall again be adjusted to be the Conversion Price Per Common Share which would then be in effect if such record date had not been fixed, in the former event, or the Conversion Price Per Common Share which would then be in effect if such holder had initially been entitled to such changed number of shares of Common Stock, in the latter event. No adjustment of any Conversion Price Per Common Share shall be made pursuant to this Section 5(g)(iii) upon the issuance or sale of any rights, options, warrants or convertible securities to the extent that such Conversion Price Per Common Share has already been adjusted upon the setting of any record date relating to such rights, options, warrants or convertible securities and such adjustment fully reflects the number of shares of Common

Stock to which the holders of such rights, options, warrants or convertible securities are entitled and the price payable therefor.

(iv) If the Corporation fixes a record date for a distribution to holders of Common Stock (including any such distribution made in connection with a consolidation or merger in which the Corporation is the continuing corporation) of evidences of indebtedness, assets or other property (other than dividends payable in Common Stock or rights, options or warrants referred to in, and for which an adjustment is made pursuant to, Section 5(g)(iii)), each Conversion Price Per Common Share to be in effect after such record date shall be reduced by the fair market value (determined as set forth in Section 5(g)(ii)) of the portion of the assets, other property or evidence of indebtedness so to be distributed which is applicable to one share of Common Stock. Such adjustments shall be made successively whenever such a record date is fixed; and if such distribution is not so made, each Conversion Price Per Common Share shall again be adjusted to be the Conversion Price Per Common Share which would then be in effect if such record date had not been fixed.

(v) No adjustment to any Conversion Price Per Common Share pursuant to Sections 5(g)(ii), 5(g)(iii) and 5(g)(iv) shall be required unless such adjustment would require an adjustment of at least 1% in such Conversion Price Per Common Share; provided that any adjustments which by reason of this Section 5(g)(v) are not required to be made shall be carried forward and taken into account in any subsequent adjustment or conversion of either the Series A Preferred Stock or Series B Preferred Stock, as applicable. All calculations under this Section 5(g) shall be made to the nearest four decimal points.

(vi) If, at any time as a result of the provisions of this Section 5(g), holders of Series A Preferred Stock or Series B Preferred Stock upon subsequent conversion shall become entitled to receive any shares of capital stock of the Corporation other than Common Stock, the number of such other shares so receivable upon conversion of such Series A Preferred Stock or Series B Preferred Stock, as applicable, shall thereafter be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions contained herein.

(h) Each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into Common Stock at the then-applicable Conversion Ratio immediately prior to the closing of an initial public offering in which the Corporation receives net offering proceeds (after underwriter commissions and offering expenses) of not less than \$200,000,000. In the event of the automatic conversion of the Series A Preferred Stock and Series B Preferred Stock upon a public offering as described above, the person(s) entitled to receive the Common Stock issuable upon such conversion of Series A Preferred Stock or Series B Preferred Stock shall not be deemed to have converted such Series A Preferred Stock or Series B Preferred Stock until immediately prior to the closing of the initial public offering.

(i) The Corporation shall provide written notice to the holders of the Series A Preferred Stock and/or Series B Preferred Stock, as applicable, of any adjustment made pursuant to this Section 5, and such notice shall be accompanied by a schedule setting forth the calculation of such adjustment.

6. *Voting Rights.* (a) Holders of record of shares of Series A Preferred Stock or Series B Preferred Stock are not entitled to any voting rights except as provided in this Section 6 or otherwise by law.

(b) Except as provided in this Subsection or as otherwise required by applicable law, each share of Series A Preferred Stock and Series B Preferred Stock shall entitle the holder thereof to vote on all matters voted on by holders of Common Stock, in the same manner as the holders of the Common Stock, voting together as a single class with the holders of the Common Stock and with the holders of all other shares entitled to vote thereon. With respect to any such vote, each share of Series A Preferred Stock and each share of Series B Preferred Stock shall entitle the holder thereof to cast that number of votes that such holder would be entitled to cast assuming that such share of Series A Preferred Stock or Series B Preferred Stock, as applicable, had been converted, on the record date for determining the stockholders of the Corporation eligible to vote on any such matters or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, into the number of shares of Common Stock into which such share of Series A Preferred Stock or Series B Preferred Stock, as applicable, is then convertible as provided in Section 5 hereof.

(c) Notwithstanding any other paragraph or provision hereof, none of the following actions may be taken, directly or indirectly, by the Corporation or any of its subsidiaries, without the approval of (x) the holders of two-thirds of all issued and outstanding shares of Series A Preferred Stock and Series B Preferred Stock voting together as a separate class on an as-converted to Common Stock basis, in person or by proxy, at a special or annual meeting called for the purpose or by written consent and (y) the holders of a majority of all issued and outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Common Stock, voting together as a single class on an as-converted to Common Stock basis, in person or by proxy, at a special or annual meeting called for the purpose or by written consent:

(i) amending the rights, preferences or privileges of the Series A Preferred Stock, or amending any of the Corporation's Certificate of Incorporation or bylaws in a way that adversely effects the rights of the Series A Preferred Stock; provided, however, that any such amendment shall also have received the approval of the holders of two-thirds of all issued and outstanding shares of Series A Preferred Stock;

(ii) amending the rights, preferences or privileges of the Series B Preferred Stock, or amending any of the Corporation's Certificate of Incorporation or bylaws in a way that adversely effects the rights of the Series B

Preferred Stock; provided, however, that any such amendment shall also have received the approval of the holders of two-thirds of all issued and outstanding shares of Series B Preferred Stock;

(iii) the issuance of any additional Common Shares, Series A Preferred Stock, Series B Preferred Stock or other securities of the Corporation ranking senior to or in parity with the Series A Preferred Stock or the Series B Preferred Stock or the reclassification of any outstanding stock into stock ranking senior to or in parity with the Series A Preferred Stock or the Series B Preferred Stock;

(iv) substantially changing the Corporation's line of business;

(v) the merger or sale of the Corporation or the sale, lease, license or transfer of all or substantially all the Corporation's assets;

(vi) effecting any dissolution, liquidation or other winding up of the Corporation or any of its subsidiaries or the cessation of all or a substantial part of the business activities of the Corporation or any of its subsidiaries;

(vii) change the size of the Corporation's board of directors to more or less than eleven directors;

(viii) creation of any mortgage, pledge or other security interest over all or a substantial portion of the assets of the Corporation or any of its subsidiaries;

(ix) declaration or payment of any dividend or other distribution of cash, shares, or other assets, except with respect to dividends in the form of Additional Shares as provided in clause 2(a)(i) of the designation of the Preferred Stock in this ARTICLE FOURTH;

(x) effecting any transaction of the Corporation which is not in the Corporation's ordinary course of business, including but not limited to any such transactions between the Corporation and any of Jeffrey D. Spence, David McGirt, Clif Parker, Graeme van der Velde or their affiliates (as defined in Rule 405 of the Rules and Regulations of the Securities Act of 1933);

(xi) appointment or removal of the CEO or other management and determine the terms of their employment;

(xii) approval of the Corporation's annual plan and budget and any material deviation therefrom;

(xiii) determining or changing the signature rights which may bind the Corporation or any of its subsidiaries;

(xiv) entering into any transaction with any director, officer, 10% or greater stockholder or other affiliate or relative thereof;



- (xv) determining or changing the Corporation's auditors; and
- (xvi) listing the shares of the Corporation on a stock exchange.

7. *General Provisions.* (a) The term "Person" as used herein means any corporation, limited liability company, partnership, trust, organization, association, other entity or individual.

(b) The term "outstanding", when used with reference to shares of stock, shall mean issued shares, excluding shares held by the Corporation or a subsidiary of the Corporation.

(c) The headings of the sections of this Certificate of Incorporation are for convenience of reference only and shall not define, limit or affect any of the provisions hereof.

(d) Each holder of Series A Preferred Stock or Series B Preferred Stock, by acceptance thereof, acknowledges and agrees that payments of dividends, interest, premium and principal on, and exchange, redemption and repurchase of, such securities by the Corporation are subject to restrictions on the Corporation contained in certain credit and financing agreements.

FIFTH: The Board of Directors shall have the power to adopt, amend or repeal the bylaws of the Corporation.

SIXTH: Election of directors need not be by written ballot unless the bylaws of the Corporation so provide.

SEVENTH: The Corporation expressly elects not to be governed by Section 203 of Delaware Law.

EIGHTH: (1) A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by Delaware Law.

(2)(a) Each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware Law. The right to indemnification conferred in this ARTICLE EIGHTH shall also include the right to be paid by the Corporation the expenses incurred in connection with any such proceeding in advance of its final disposition to the fullest extent authorized by Delaware Law. The right to indemnification conferred in this ARTICLE EIGHTH shall be a contract right.

(b) The Corporation may, by action of its Board of Directors, provide indemnification to such of the employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by Delaware Law.

(3) The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under Delaware Law.

(4) The rights and authority conferred in this ARTICLE EIGHTH shall not be exclusive of any other right which any person may otherwise have or hereafter acquire.

(5) Neither the amendment nor repeal of this ARTICLE EIGHTH, nor the adoption of any provision of this Certificate of Incorporation or the bylaws of the Corporation, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall eliminate or reduce the effect of this ARTICLE EIGHTH in respect of any acts or omissions occurring prior to such amendment, repeal, adoption or modification.

NINTH: The Corporation reserves the right to amend this Certificate of Incorporation in any manner permitted by Delaware Law and, with the sole exception of those rights and powers conferred under the above ARTICLE EIGHTH, all rights and powers conferred herein on stockholders, directors and officers, if any, are subject to this reserved power.

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4. That the foregoing name change and amendment and restatement was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the General Corporation Law.

5. That this Second Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Second Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 6<sup>th</sup> day of March, 2008.

By:   
Name: Jeffrey Spence  
Title: Chief Executive Officer