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LATITUDE 360, INC.

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C. LEWIS
MAY 20 2014
EXAMINER

SECRETARY OF STATE
DIVISION OF CORPORATIONS
T-740 002/000
14 MAY 19 AM 8:46

**SECOND ARTICLES OF AMENDMENT TO THE
AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
LATITUDE 360, INC.**

Pursuant to Section 607.1006 of the Florida Business Corporation Act, the undersigned, being the Chairman and Chief Executive Officer of LATITUDE 360, INC., a Florida corporation (the "Corporation"), bearing Document Number P10000051906, does hereby submit these Second Articles of Amendment for the purpose of amending the Corporation's Amended and Restated Articles of Incorporation ("Articles of Incorporation") as follows:

FIRST: The Articles of Incorporation of the Corporation authorize the issuance of One Hundred Million (100,000,000) shares of common stock, par value \$.001 per share (the "Common Stock") and Ten Million (10,000,000) shares of preferred stock, par value \$.001 per share (the "Preferred Stock"), and further, authorizes the Board of Directors of the Corporation, by resolution or resolutions, at any time and from time to time, to divide and establish any or all of the shares of Preferred Stock into one or more series and, without limiting the generality of the foregoing, to fix and determine the designation of each such share, and its preferences, conversion rights, cumulative, relative, participating, optional, or other rights, including voting rights, qualifications, limitations, or restrictions thereof.

SECOND: On May 19, 2014, a majority of the shareholders and all of the members of the Board of Directors approved the increase of the authorized shares of stock that the Corporation shall have the authority to issue to 210,000,000 shares of which 200,000,000 shares shall be common stock, \$.001 par value and 10,000,000 shares shall be preferred stock, \$.001 par value and the designation of Twenty-Five Thousand (25,000) shares of the Preferred Stock as Series AA Preferred Stock and authorized the issuance of the Series AA Preferred Stock at a stated value of \$1,000 per share. The designations, powers, preferences and rights, and the qualifications, limitations or restrictions hereof, in respect of the Series AA Preferred Stock shall be as hereinafter described.

Accordingly, Article IV of the Articles of Incorporation is hereby amended by deleting the first sentence of Article IV in its entirety and replacing it with the following:

The Corporation shall have authority to issue a total of 210,000,000 shares, consisting of:

- (i) 200,000,000 shares of common stock, \$.001 par value per share (the "Common Stock");
- (ii) 10,000,000 shares of preferred stock, \$.001 par value per share (the "Preferred Stock").

Article IV is also further amended to include, after the Series A Preferred Stock designation, the following:

**CERTIFICATE OF DESIGNATION, PREFERENCES, RIGHTS AND LIMITATIONS
OF SERIES AA PREFERRED STOCK**

Series AA Preferred Stock

A. **Designation.** The designation of the series of preferred stock created hereby shall be "Series AA Preferred Stock" (the "Series AA Preferred Stock") and the number of shares constituting the Series AA Preferred Stock shall be Twenty Five Thousand (25,000) shares, with a stated value of One Thousand Dollars (\$1,000.00) per share ("Stated Value").

B. **Dividends.** The holders of the Series AA Preferred shall be entitled to receive, dividends per share of Series AA Preferred Stock at a rate of ten percent (10%) of the Stated Value per share per annum, calculated on a 360 day year for the actual number of days elapsed. Dividends will begin to accrue on the date of issuance of the Series AA Preferred Stock, except as otherwise agreed to in writing between the Corporation and the shareholder. The dividends shall be payable on the Voluntary Conversion Date or the Mandatory Conversion Date (both terms defined below), as the case may be, in cash or Common Stock, at the option of the Corporation. The number of shares of Common Stock to be received shall be determined by dividing the amount of accrued dividends by the Conversion Price (defined below).

C. **Liquidation Preference.** In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or otherwise, after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of the Series AA Preferred Stock shall be entitled to receive, before the holders of any of the Common Stock or other classes of Preferred Stock of the Corporation ranking junior thereto, out of the remaining net assets of the Corporation, the Stated Value of the Series AA Preferred Stock plus any accrued but unpaid dividends. After such payment shall have been made in full to the holders of the outstanding Series AA Preferred Stock, or funds or assets necessary for such payment shall have been set aside in trust for the account of the holders of the outstanding Series AA Preferred Stock, so as to be and continue to be available therefor, the holders of the outstanding Series AA Preferred Stock shall be entitled to no further participation in such distribution of the assets of the Corporation.

In the event that, after payment or provision for payment of the debts and other liabilities of the Corporation and preferences or other rights granted to the holders of any senior Preferred Stock, the remaining net assets of the Corporation are not sufficient to pay the liquidation preference of the holders of the Series AA Preferred Stock, then no such distribution shall be made on account of any shares of any other class or series of capital stock of the Corporation ranking on a parity with the shares of the Series AA Preferred Stock upon such liquidation, unless proportionate distributive amounts shall be paid on account of each share of the Series AA Preferred Stock, ratably, in proportion to the full distributable amounts for which holders of all such parity shares, including other shares of Series AA Preferred Stock, are respectively entitled upon such liquidation.

D. **Conversion of Series AA Preferred Stock.** The Series AA Preferred Stock, in aggregate, shall be convertible into shares of the Corporation's Common Stock as set forth below.

(1) Voluntary Conversion. The holder of the Series AA Preferred Stock shall have the right to convert any such share(s) into shares of Common Stock at anytime at the Conversion Price (defined below), as the same may be adjusted from time to time. In order to convert the shares of Series AA Preferred Stock into Common Stock, the holder shall surrender at the office of any transfer agent for the Corporation, a certificate(s) therefore, duly endorsed to the Corporation or in blank, and give written notice to the Corporation at said office that holder elects to convert such shares in the form provided by the Corporation. Shares of the Series AA Preferred Stock shall be deemed to have been converted immediately prior to the close of business on the date of surrender of such shares for conversion (the "Voluntary Conversion Date"), and the person(s) entitled to receive shares of Common Stock issuable upon such conversion shall be treated, for all purposes, as the record holder(s) of such shares of Common Stock at such time.

(2) Mandatory Conversion. Subject to any other provision of this paragraph D, each share of Series AA Preferred Stock outstanding is mandatorily convertible into Common Stock, at the then-applicable Conversion Price, on the date that is the earlier of: (i) ten (10) calendar days following the closing of a private or public offering of the Common Stock by the Corporation which yields gross proceeds to the Corporation (before any expenses) of not less than \$5 million, in the aggregate, in either one transaction or a series of transactions; (ii) at any time, at the option of the Corporation, provided that the Common Stock is listed or quoted on a trading market, such as an exchange or other quotation medium, and the average of the daily volume weighted average price of the Common Stock exceeds \$2.00 per share of Common Stock for ten (10) consecutive trading days; or (iii) immediately prior to the effective date of any consolidation or merger with or conveyance of all or substantially all of the Corporation's property and assets to any other entity or entities. The date of any such mandatory conversion is referred to herein as the "Mandatory Conversion Date."

(3) Conversion Price. The "Conversion Price" shall equal \$1.40 per share of Common Stock, subject to adjustment as set forth below in paragraph D(4). The number of shares of Common Stock into which one share of Series AA Preferred Stock shall be convertible shall be determined by dividing the Stated Value by the then-applicable Conversion Price.

(4) Additional Provisions Applicable to All Conversions. Any conversion of Series AA Preferred Stock into Common Stock pursuant to this paragraph D shall be subject following additional terms and provisions:

(i) The Corporation shall not be required to issue any fractions of shares of Common Stock upon conversions of any shares of Series AA Preferred Stock. If more than one share of Series AA Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock which shall be issuable upon conversion of such Series AA Preferred Stock shall be computed on the basis of the aggregate number of shares of the Series AA Preferred Stock so surrendered. If any interest in a fractional share would otherwise be deliverable upon the conversion of any shares of Series AA Preferred

Stock, the Corporation shall not be required to issue any such fractional share interest or make a cash payment for any such fractional interest.

(ii) In the event that the Corporation shall at any time subdivide or combine in a greater or lesser number of shares the outstanding shares of Common Stock, the number of shares of Common Stock issuable upon conversion of any shares of Series AA Preferred Stock prior to the occurrence of such event shall be proportionately increased or decreased as the case may be, effective on and after the close of business on the record date for determination of the Common Stock entitled to such subdivision or combination.

(iii) In the event that the Corporation shall be consolidated with or merged into any other corporation, provision shall be made as part of the terms of such consolidation or merger so that any holder of Series AA Preferred Stock may thereafter receive in lieu of Common Stock otherwise issuable him upon conversion of such holder's Series AA Preferred Stock, but only in accordance with the conversion ratio stated in this paragraph D, the same kind and amount of securities as may be distributable upon such consolidation or merger with respect to the Common Stock.

(iv) In the event that the Corporation shall at any time pay to the holders of Common Stock a dividend in Common Stock or otherwise makes a distribution on the Common Stock, the number of shares of Common Stock of the Corporation issuable upon any conversion of the Series AA Preferred Stock shall be proportionately increased, effective on and after the close of business on the record date for determination of the holders of Common Stock entitled to such dividend.

(v) Such adjustments shall be made successively if more than one event listed in paragraphs D(4)(ii), (iii), or (iv) shall occur; provided, however, that no adjustment need be made by the Corporation until such adjustments cumulatively aggregate at least five percent (5%) of the then current Conversion Price.

(vi) No adjustment of the Conversion Price shall be made by any event or occurrence other than those enumerated in this paragraph D(4).

(vii) As promptly as practicable after any conversion, the Corporation shall issue and deliver at said offices a certificate(s) for the number of full shares of the Common Stock issuable upon any such conversion, to the person(s) entitled to receive the same. The Corporation shall issue the certificate(s) for Common Stock in the name(s) so designated with such legends affixed or restrictions imposed as required by federal, state or jurisdictional securities laws as determined by legal counsel for the Corporation; provided that the Corporation is not advised

by its counsel that the issuance of such certificate(s) would be in violation of federal, state or jurisdictional securities law.

(ix) The issuance of certificates for shares of Common Stock upon conversion of any shares of the Series AA Preferred Stock shall be made without charge for any tax in respect of such issuance. However, if any certificate is to be issued in a name other than that of the holder of record as the Series AA Preferred Stock so converted, the person or persons requesting the issuance thereof shall pay to the Corporation the amount of any tax which may be payable in respect of any transfer involved in such issuance, or shall establish to the satisfaction of the Corporation that such tax has been paid or is not due and payable.

E. ***Redemption of Series AA Preferred Stock.*** The Series AA Preferred Stock of any holder shall be redeemable, in whole or in part, at the option of the Corporation by resolution of its Board of Directors, from time to time and at any time. The Corporation may redeem any individual holder's shares of Series AA Preferred Stock and such redemption shall not be required to be pro rata with any other holders of the Series AA Preferred Stock. The redemption price shall equal the Stated Value of each share of Series AA Preferred Stock so redeemed, plus any accrued and unpaid dividends on such share(s) being redeemed.

(1) ***Notice of Redemption.*** The Corporation shall give notice of redemption ("Redemption Notice") not less than fifteen (15) calendar days prior to the date fixed for redemption of the Series AA Preferred Stock or any part thereof. Such Redemption Notice shall specify the time and place thereof and shall be given by mail to each holder of record of shares of Series AA Preferred Stock chosen for redemption at the address last shown on the records of the Corporation for such holder or given by such holder to the Corporation for the purpose of notice or, if no such address appears or is given, at the place where the principal executive office of the Corporation is located. Any Redemption Notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the holder received the Redemption Notice.

(2) ***Conversion in Lieu of Redemption.*** Within ten (10) calendar days of the Corporation's first mailing of the Redemption Notice, the holder shall have the option of converting the shares being redeemed into Common Stock at the then-applicable Conversion Price. The holder shall send written notice to the Corporation of such holder's intent to exercise this option by mail post-marked no later than the tenth (10th) calendar day after the Corporation first mailed the Redemption Notice.

(3) ***Termination of Rights.*** Upon such redemption date, or upon such earlier date as the Board of Directors shall designate for payment of the redemption price (unless the Corporation shall default in the payment of the redemption price as set forth in such notice), the holders of shares of Series AA Preferred Stock selected for redemption to whom notice has been duly given and that have not converted as provided in paragraph E(2) herein, shall cease to be shareholders with respect to such shares and shall have no interest in or claim against the Corporation by virtue thereof and shall have no other

rights with respect to such shares except the right to receive the moneys payable upon such redemption from, the Corporation or otherwise, without interest thereon, upon surrender (and endorsement, if required by the Corporation) of the certificates, and the shares represented thereby shall no longer be deemed to be outstanding.

F. *Voting Rights.* The holders of Series AA Preferred Stock will not have any voting rights unless and until the Series AA Preferred Stock is converted into Common Stock, except as otherwise required by law.

G. *Amendments.* This Certificate of Designation may be amended only upon both (i) the affirmative vote of not less than a majority of the holders of Series AA Preferred Shares outstanding at the time such amendment is proposed, and (ii) the affirmative vote of not less than a majority of the directors of the Corporation then holding office and entitled to vote on such amendment.

THIRD: The foregoing Amendment was adopted by a majority of common shareholders and all of the members the Board of Directors of the Corporation pursuant to the Florida Business Corporation Act. Therefore, the number of votes cast for the Amendment to the Corporation's Articles of Incorporation was sufficient for approval.

IN WITNESS WHEREOF, the Corporation has caused this Amendment to be executed by its duly authorized officer this 19th day of May, 2014.



Brent W. Brown,
Chairman and Chief Executive Officer