



THE UNITED STATES
CORPORATION
COMPANY

P98000050628

ACCOUNT NO. : 072100000032

REFERENCE : 583852 7119882

AUTHORIZATION :

COST LIMIT : \$ 35.00

FILED
00 FEB 10 PM 3:54
SECRETARY OF STATE
TALLAHASSEE, FLORIDA
Patricia P. [signature]

ORDER DATE : February 10, 2000

ORDER TIME : 1:24 PM

ORDER NO. : 583852-005

000003131950--2

CUSTOMER NO: 7119882

CUSTOMER: Ms. Ella Marcum
Dreier & Baritz
Suite 401
150 East Palmetto Park Road
Boca Raton, FL 33432

DOMESTIC AMENDMENT FILING

NAME: U.S. POOL, CORP.

EFFECTIVE DATE:

RECEIVED
00 FEB 10 PM 3:54
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

XX ARTICLES OF AMENDMENT
 RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

 CERTIFIED COPY
XX PLAIN STAMPED COPY
 CERTIFICATE OF GOOD STANDING

Q. COULLETTE FEB 17 2000

CONTACT PERSON: Janna Wilson

EXAMINER'S INITIALS: _____



FLORIDA DEPARTMENT OF STATE

Katherine Harris
Secretary of State

February 11, 2000

CSC

TALLAHASSEE, FL

SUBJECT: U.S. POOL CORP.
Ref. Number: P98000050628

We have received your document for U.S. POOL CORP. and the authorization to debit your account in the amount of \$35.00. However, the document has not been filed and is being returned for the following:

The date of adoption/authorization of this document must be a date on or prior to submitting the document to this office, and this date must be specifically stated in the document. If you wish to have a future effective date, you must include the date of adoption/authorization and the effective date. The date of adoption/authorization is the date the document was approved.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6903.

Cheryl Coulliette
Document Specialist

Letter Number: 300A00007231

RESUBMIT
Please give original
submission date as file date
00 FEB 16 PM 4:42
TALLAHASSEE, FLORIDA
DIVISION OF CORPORATIONS
DEPARTMENT OF STATE
RECEIVED

CERTIFICATE OF THE DESIGNATIONS, POWERS
PREFERENCES AND RIGHTS
OF THE
SERIES A CONVERTIBLE PREFERRED STOCK
(\$0.01 PAR VALUE PER SHARE)

OF

U.S. POOL, CORP.
A FLORIDA CORPORATION

FILED
00 FEB 10 PM 3:56
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

PURSUANT TO SECTION 607 OF THE
GENERAL CORPORATION LAW OF THE STATE OF FLORIDA¹

U.S. POOL, CORP., a corporation organized and existing under the General Corporation Law of the State of Florida (the "Company"),

DOES HEREBY CERTIFY that, pursuant to authority conferred upon the Board of Directors of the Company (the "Board") by the Certificate of Incorporation of, and pursuant to the provisions of Section 607.0602 of the Florida General Corporation Law, there hereby is created out of the 1,000 shares of Preferred Stock authorized in Article 5 of the Certificate of Incorporation (the "Preferred Stock"), a series of the Preferred Stock consisting of 100 shares, \$0.01 par value per share, to be designated "Series A Preferred Stock", and to that end the Board adopted a resolution providing for the designation, powers, preferences and rights, and the qualifications, limitations and restrictions, of the Series A Convertible Preferred Stock, which resolution is as follows:

RESOLVED, that the Certificate of the Designations, Powers, Preferences and Rights of the Series A Convertible Preferred Stock ("Certificate of Designations") be and is hereby authorized and approved, which Certificate of Designations shall be filed with the Florida Secretary of State in the form as follows:

1. Designations and Amount. One Hundred (100) shares of the Preferred Stock of the Company, \$0.01 par value per share, shall constitute a class of Preferred Stock designated as "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"). After the initial issuance of shares of Series A Preferred Stock, no additional shares of Series A Preferred Stock may be issued by the

¹Confirm that the incorporation of the Note Purchase Agreement herein by reference is permitted under Florida law.

Company except as provided in Section 5(c) hereof.

2. Rank. Except as specifically provided below, the Series A Preferred Stock shall, with respect to dividend rights, rights on redemption and rights on liquidation, winding up and dissolution, rank senior to all classes of Common Stock, \$.01 par value per share, of the Company (the "Common Stock") and rank senior to all other classes of Preferred Stock of the Company.

3. Liquidation Preference. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of shares of Series A Preferred Stock shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders an amount in cash equal to \$.01 per share.

4. Dividends. Holders of the Series A Preferred Stock shall not be entitled to receive dividends.

5. Voting Rights.

(a) The shares of Series A Preferred Stock shall entitle the holders thereof to such number of votes (pro rated among such holders in proportion to their holdings of Series A Preferred Stock) as shall equal the number of whole and fractional shares of Common Stock into which the Notes (as defined in the Note Purchase Agreement between the Company and MHR Institutional Partners LP, MHR Capital Partners LP and MHRM Partners LP dated as of February 4, 2000 (the "Note Purchase Agreement")) then outstanding are convertible. Except as otherwise required by law or as provided herein, the holders of Series A Preferred Stock shall be entitled to vote on all matters as to which holders of Common Stock of any class shall be entitled to vote, in the same manner and with the same effect as such holders of Common Stock, voting together with the holders of the Common Stock (or such other class thereof) as one class.

(b) So long as the initial holders of record are the beneficial owners of a majority of the outstanding shares of the Series A Preferred Stock, then the holders of a majority of the outstanding shares of Series A Preferred Stock shall have, in addition to the voting rights set forth above, the exclusive right, voting separately as a single class, to: (i) elect one (1) director of the Company; and (ii) upon an Event of Default (as defined in the Note Purchase Agreement), elect up to that number of directors that would equal one-half ($\frac{1}{2}$) of the number of directors that then constitute the whole board of directors plus one (1) member of the Board (including the director previously appointed by such holders pursuant to this subsection (b)) (for which purpose, immediately upon the occurrence and continuation of an Event of Default, the number of directors constituting the Board shall, automatically and without any further action on the part of the Board or the stockholders of the Company, be increased to such number as shall permit the majority of the holders of the Series A Preferred Stock to so elect one-half ($\frac{1}{2}$) of the number of directors that then constitute the whole board of directors plus one (1) member of the Board). Any vacancy in the office of any director elected or otherwise entitled to be filled by the holders of Series A Preferred Stock pursuant to this subsection (b) (including, without limitation, vacancies created upon the increase in the size of the Board as provided by clause (ii) above) shall be filled only by the holders of a majority of the outstanding shares of Series A Preferred Stock voting as a single class. Pending

any such action by the holders of Series A Preferred Stock, any vacancy in the office of any such director shall not be filled by the vote of the remaining directors. At least one director elected by the holders of Series A Preferred Stock pursuant to this Section 5 shall have the right (but not the obligation) to be appointed to each of the committees of the Board, including, without limitation, any executive committee of the Board as required by law.

(c) The Company shall not take any of the following actions without the approval by the affirmative vote of the holders of 75% of the then outstanding shares of Series A Preferred Stock, voting separately as a single class:

(i) amend, alter or repeal any provision of the Certificate of Incorporation or the Bylaws;

(ii) increase the authorized number of shares of, or issue, Series A Preferred Stock;

(iii) effect any reclassification of the Series A Preferred Stock;

(iv) increase the number of directors to more than five (5), except as provided by Section 5(b)(ii) above;

(v) designate any additional class of capital stock which grants to the holders thereof the right to elect a separate class of directors of the Company;

(vi) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of the Company or any of its property;

(vii) dissolve, liquidate or file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations filed against it in any proceeding under any such law or take any corporate action for the purpose of effecting the foregoing;

(viii) borrow any money or issue any debt securities or otherwise incur any Indebtedness other than as permitted under the Note Purchase Agreement;

(ix) sell assets of the Company outside the ordinary course of business other than as permitted in Section 7.10(i) of the Note Purchase Agreement; or

(x) undergo a Change of Control (as defined in the Note Purchase Agreement).

(d) Each director elected by the holders of Series A Preferred Stock pursuant to this Section 5 shall have one vote on all matters decided by the Board.

6. No Impairment The Company will 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 Company, but will at all times in good faith assist in the carrying out of all the provisions of this Certificate of Designations and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Series A Preferred Stock against impairment.

7. Repurchase of Series A Preferred Stock At such time as the indebtedness represented by the Notes and PIK Notes is no longer outstanding, the Company shall have the right to purchase from the holders thereof, all outstanding Series A Preferred Stock for the aggregate purchase price of \$.01 per share.

The date of adoption was 2/4/00. The amendment was adopted by the board of directors without shareholder action and shareholder action was not required.

IN WITNESS WHEREOF, U.S. Pool, Corp. has caused this Certificate of Designations to be executed as of this 4th day of February, 2000.

U.S. POOL, CORP.

By: 

Name: Leland Morris

Title: President

By: 

Name: Alan Kane

Title: Secretary