

P98000075955
KIRKPATRICK & LOCKHART LLP

MIAMI CENTER-20TH FLOOR
201 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131-2399

TELEPHONE (305) 539-3300
FACSIMILE (305) 358-7095

JAN E. BLANCK
(305) 539-3364
BLANCKJE@KL.COM

September 1, 1998

Ms. Lynn Shoffstall
Bureau Chief Division of Corporations
409 East Gaines Street
Tallahassee, Florida 32399

Re: Sea & Ski Holdings, Inc.


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Dear Ms. Shoffstall:

In accordance with our telephone conversation, enclosed for filing with the Secretary of State of Florida are duplicate copies of Articles of Amendment for Sea & Ski Holdings, Inc. Also enclosed is our check in the amount of \$87.50 in payment of filing fees and a certified copy, as well as a return Federal Express envelope for your convenience in forwarding the copy to us. Would you please telephone us to advise us that this Amendment has been filed? The information is necessary to a Closing scheduled for tomorrow, September 2, 1998.

Thank you very much for your cooperation with this matter.

Sincerely,


Jan E. Blanck,
Lawyer's Assistant to Troy J. Rillo

cc: Troy J. Rillo, Esq.

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Amend

MI-66252.01

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TALLAHASSEE, FLORIDA

**ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION
OF SEA & SKI HOLDINGS, INC., A FLORIDA CORPORATION**

In accordance with the terms of Section 607.1006 of the Florida Business Corporation Act, **SEA & SKI HOLDINGS, INC.**, a Florida corporation (the "Corporation"), hereby adopts the following amendment to its Articles of Incorporation:

Article V is hereby amended to read as follows:

CAPITAL STOCK

(c) The Corporation may issue 380,000 shares of Series A Convertible Preferred Stock with powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions as set forth in Exhibit "A" hereto.

The foregoing amendment to the Articles of Incorporation of the Corporation was adopted by means of a Unanimous Written Consent of the Sole Director and Sole Shareholder of the Corporation dated August 31, 1998, in accordance with the terms of Section 607.1003 of the Florida Business Corporation Act, and consequently, the number of shares cast in favor of the amendment was sufficient for its approval.

Date: 8-31, 1998

SEA & SKI HOLDINGS, INC.

By: 
Robert Bell, President

STATEMENT OF RIGHTS AND PREFERENCES OF COMMON STOCK AND PREFERRED STOCK

A statement of the powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions of the Common Stock and of the Series A Preferred Stock is as follows:

(A) Dividends. No dividends may be declared or paid on any shares of Common Stock (other than in shares of Common Stock) and no shares of Common Stock may be redeemed by the Corporation so long as any shares of Series A Preferred Stock remain issued and outstanding, except for redemptions permitted pursuant to the Shareholders' Agreement dated September 3, 1998 by and among the Company and certain of its shareholders, as such agreement is from time to time amended.

(B) Voting.

(1) General. Except as otherwise expressly provided herein or required by law, the Series A Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single voting group on all actions to be taken by the shareholders of the Corporation. In such cases that the Series A Preferred Stock does not vote together with all other classes and series of stock of the Corporation as set forth in the foregoing sentence, the Series A Preferred Stock and the Common Stock shall each vote separately as a voting group. Each share of Series A Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of shares of the Common Stock (including fractions of a share) into which each share of Series A Preferred Stock is then convertible. Except as otherwise required by applicable law, the holders of shares of the Common Stock shall be entitled to one vote for each share so held with respect to all matters voted on by the shareholders of the Corporation.

(2) Vote Requirement. The affirmative consent or vote of the holders holding at least a majority of the aggregate outstanding shares of Series A Preferred Stock (the "Required Holders") shall be required with respect to any action not specifically provided for herein (a) which would alter the powers, preferences and special rights expressly provided herein of the holders of shares of Series A Preferred Stock materially and adversely; (b) which would create, by reclassification or otherwise, any new class or series of any stock of the Corporation having preference equivalent to or senior to the Series A Preferred Stock; (c) which would increase the authorized number of shares of Series A Preferred Stock; (d) which would result in the redemption of any shares of Common Stock or Preferred Stock (other than pursuant to employment agreements and shareholders' agreements to which the Required Holders have consented); or (e) which would result in the issuance or sale of any share of any class or series of the Corporation's capital stock having preference equivalent to or senior to the Series A Preferred Stock or

the granting, issuance or sale of any options, warrants or other obligations or securities which are directly or indirectly convertible into or exchangeable for shares of any class or series of the Corporation's capital stock having preferences equivalent to or senior to the Series A Preferred Stock, or the issuance or sale of any rights to subscribe for or options to purchase such obligations or securities.

(C) Liquidation.

(1) Distribution Preference. Subject to the provisions of applicable law, in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (collectively, a "Liquidating Event"), the holders of Series A Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to its shareholders, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Common Stock and series of Preferred Stock ranking junior to the Series A Preferred Stock as to distribution of assets in the event of the occurrence of a Liquidating Event by reason of their ownership thereof, an amount equal to \$10.526 per share (as appropriately adjusted in the event of stock splits, stock dividends or similar capital adjustments or recapitalizations) (the "Liquidation Preference") as of the date of such Liquidating Event. Written notice of any such Liquidation Event, stating a payment date, the place where such payment shall be made and the amount of each liquidating payment shall be given by first class mail, postage paid, not less than fifteen (15) days prior to the payment date stated therein, to each holder of record of Series A Preferred Stock at such holder's address as shown on the records of the Corporation. If upon the occurrence of such Liquidating Event, the assets and funds to be thus distributed among the holders of Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full amount due hereunder, then the holders of Series A Preferred Stock shall share ratably in any distribution of assets of the Corporation in proportion to the respective amounts which would otherwise be payable with respect to the shares held by them upon such distribution if all amounts payable on or with respect to the shares were paid in full.

(2) Merger, Reorganization, Sale of Assets. In the event of any acquisition of the Corporation by means of merger or other form of corporate reorganization in which outstanding shares of the Corporation are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary (other than a mere reincorporation transaction or one in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least a majority of the voting power of the surviving corporation) or a sale of all or substantially all the assets of the Corporation, then such merger, consolidation or asset sale shall be deemed to be a liquidation of the Corporation, and all consideration payable to the shareholders of the Corporation (in the case of a merger or consolidation), or all consideration payable to the Corporation together with all other available assets of the Corporation (in the case of an asset sale), shall be distributed to the holders of capital

stock of the Corporation in accordance with subparagraph (C) (1) above, unless in the case of a merger or consolidation, the Required Holders shall request otherwise.

(3) Distribution of Property. For purposes of this paragraph (C), if any assets distributed to shareholders consist of property other than cash, the amount of such distribution shall be deemed to be the fair market value thereof at the time of such distribution, as determined in good faith by the Board of Directors of the Corporation.

(D) Conversion. The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(1) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, 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 \$10.526 by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of the Series A Preferred Stock (the "Series A Conversion Price") shall initially be \$10.526 per share of Common Stock. Such initial Series A Conversion Price shall be adjusted as hereinafter provided.

(2) Mandatory Conversion into Common Stock

(a) Contemporaneously with the closing of an underwritten initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of shares of Voting Common Stock of the Corporation to the public resulting in gross proceeds to the Corporation of not less than \$15,000,000 and a price per share to the public of not less than four times the then-current Liquidation Preference (the "Initial Public Offering"), each share of Series A Preferred Stock shall automatically be converted without any further action by the holder thereof into the number of shares of Common Stock then applicable to such share in accordance with the adjustment provisions of this paragraph (D).

(b) All holders of record of shares of Series A Preferred Stock will be given at least twenty (20) days' prior written notice of the date fixed and place designated for mandatory conversion of the Series A Preferred Stock, and the event which resulted in the mandatory conversion of the Series A Preferred Stock into Common Stock. Such notice shall be sent by first class mail, postage prepaid, to each holder of record of the Series A Preferred Stock at such holder's address as shown in the records of the Corporation. On or before the date so fixed for conversion, each holder of shares of the Series A Preferred Stock shall surrender its certificate or certificates for all such shares to the Corporation at the place designated in such notice and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled.

The procedures for conversion set forth in this paragraph (D) and other provisions relating to conversion of Series A Preferred Stock into Common Stock set forth elsewhere herein shall apply to the mandatory conversion of the Series A Preferred Stock provided in this subparagraph (D)(2) except that for purposes of this subparagraph (D)(2), the conversion shall be deemed to have been affected on the date of the occurrence of the events specified in subparagraph (D)(2)(a) above.

(3) Mechanics of Conversion

(a) Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, 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 he elects to convert the same and shall state therein the name or names in which he 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 of Series A Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(b) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(4) Adjustments to Series A Conversion Price for Certain Diluting Issues

(a) Special Definitions. For purposes of this subparagraph (D)(4), the following definitions apply:

(i) "Options" shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire Common Stock, Series A Preferred Stock, or Convertible Securities (defined below).

(ii) "Original Issue Date" shall mean the date on which a share of Series A Preferred Stock was first issued.

(iii) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock and Series A Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(iv) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to subparagraph (D)(4)(c), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

- (A) upon conversion of shares of Series A Preferred Stock;
- (B) as a dividend or distribution on Series A Preferred Stock; or
- (C) for which adjustment of the Series A Conversion Price is made pursuant to subparagraph (D)(5).

(b) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price for a series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to subparagraph (D)(4)(e) hereof for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price for Series A Preferred Stock in effect on the date of, and immediately prior to, such issue.

(c) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then 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 designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options for Convertible Securities or for Series A Preferred Stock, the conversion or exchange of such Convertible Securities or Series A Preferred Stock, shall 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 adjustments in the Series A Conversion Price shall be made upon the subsequent issue of such Convertible Securities, or Series A Preferred Stock or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities or Series A Preferred Stock;

(ii) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A 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 Series A Conversion Price shall affect Common Stock previously issued upon conversion of the Series A 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 Series A 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 the 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 or Series A Preferred Stock only the Convertible Securities or Series A Preferred Stock, 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 (determined pursuant to subparagraph (D)(4)) upon the issue of the Convertible Securities or Series A Preferred Stock with respect to which such Options were actually exercised;

(iv) no readjustment pursuant to clause (ii) or (iii) above shall have the effect of increasing the Series A Conversion Price to an amount which

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exceeds the lower of (a) the Series A Conversion Price on the original adjustment date, or (b) the Series A Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date;

(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 Series A 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 clause (iii) above.

(d) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation, at any time after the Original Issue Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to subparagraph (D)(4)(c)) without consideration or for a consideration per share less than the Conversion Price with respect to the Series A Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price for Series A 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 in effect immediately prior to such issuance, 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 the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all shares of Series A Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance and any outstanding warrants, options or other rights for the purchase of shares of stock or convertible securities 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, but not including in such calculation any additional shares of Common Stock issuable with respect to shares of Series A Preferred Stock, Convertible Securities, or outstanding options, warrants or other rights for the purchase of shares of stock or convertible securities, solely as a result of the adjustment of the respective Conversion Prices (or other conversion ratios) resulting from the issuance of the Additional Shares of Common Stock causing the adjustment in question.

This provision is designed to protect the holders of the Preferred Stock in the event of sales of Common Stock below the Conversion Price in effect. The formula for the conversion price clause is:

$$NCP = OCP \times \frac{OB + X}{OA}$$

where

- NCP = the New Conversion Price
- OCP = the existing Conversion Price immediately before the new issue ("Old Conversion Price")
- OB = the total outstanding shares of Common Stock immediately before the new issue plus the total shares of Common Stock issuable upon conversion of convertible securities and exercise of outstanding options and warrants
- X = number of shares issuable at the Old Conversion Price (applicable to the series of Preferred Stock as to which the calculation is made) for the total consideration to be received for the new issue
- OA = the total outstanding shares of Common Stock immediately after the new issue plus the total shares of Common Stock issuable on conversion of convertible securities and exercise of outstanding options and warrants

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

(i) Cash and Property. Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it 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; and

(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 clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(ii) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to subparagraph (D)(4)(c), relating to Options and Convertible Securities shall 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 designed to protect against dilution) 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 or Series A Preferred Stock, the exercise of such Options for Convertible Securities or Series A Preferred Stock and the conversion or exchange of such Convertible Securities or Series A Preferred Stock 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 designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(5) Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that the Corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price for Series A Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(6) Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Series A Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in subparagraph (D)(5) above), the Series A Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Series A Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have

been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred Stock immediately before that change.

(7) Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock (other than a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this paragraph (D)) as a part of such capital reorganization, provision shall be made so that the holders of the Series A Preferred shall thereafter be entitled to receive upon conversion of the Series A Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this paragraph (D) with respect to the rights of the holders of Series A Preferred Stock after the capital reorganization to the end that the provisions of this paragraph (D) (including adjustment of the Series A Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(8) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this paragraph (D), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate executed by the Corporation's President or Chief Financial Officer 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 Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price for Series A Preferred Stock at the time in effect, and (iii) 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 the Series A Preferred Stock.

(9) Issue 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 Series A Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(10) Reservation of Stock Issuable Upon Conversion. 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 the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be

sufficient to effect the conversion of all Outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation will 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 shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate.

(11) Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of Series A Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred Stock by a holder thereof shall 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).

(12) No Adjustment. Upon any voluntary conversion of the Series A Preferred Stock, no adjustment to the conversion rights shall be made for declared and unpaid dividends on such stock surrendered for conversion; provided, however, that this subparagraph (D) (12) shall not limit the right of the former holders of Series A Preferred Stock so converted to collect such declared and unpaid dividends.

(E) Optional Redemptions.

(1) Six-year Optional Redemption. On or after September 3, 2004, and provided that no Initial Public Offering of the Corporation's securities shall have occurred the Required Holders shall have the right to require the Corporation to redeem the Series A Preferred Stock on the following terms. For purposes of this subparagraph (1), the redemption price (the "Redemption Price") for each share of Series A Preferred Stock shall be the Liquidation Preference plus an amount equal to \$0.043859 (as appropriately adjusted for changes in the Liquidation Preference that may occur from time to time) for each full month that such share shall have been outstanding.

(2) Eight-year Optional Redemption. On or after September 3, 2006, and provided that no Initial Public Offering of the Corporation's securities shall have occurred the Required Holders shall have the right to require the Corporation to redeem the Series A Preferred Stock on the following terms, unless either of the two conditions listed below has occurred and continues to exist. For the purposes of this subparagraph (2), the redemption price (the "Redemption Price") for each share of Series A Preferred Stock shall be the "Fair Market Value" (as defined below) divided by the total number of shares

of Common Stock outstanding (on an as-if converted basis). The Company shall not be required to redeem the Series A Preferred Stock under this Section (E)(2) if, at the time of the request for redemption, either of the two following conditions have occurred and continue to exist:

(a) the Corporation is a party to a valid, executed commitment by a nationally or regionally recognized underwriter reasonably acceptable to the Required Holders to underwrite an initial public offering, the terms of which shall provide for the sale of as many shares of Common Stock owned by the Required Holders (on an as-converted basis) as shall be satisfactory to the Required Holders (but not more than five percent (5%) of the total number of shares of Common Stock of the Corporation on an as-converted basis then outstanding); or

(b) the Corporation has a signed binding letter of intent for the sale of either all or substantially all of the assets of the Company or securities of the Company including at least the shares of stock owned by the Required Holders.

For the purposes of this paragraph, the Fair Market Value shall be the fair market value of all of the Corporation's Common Stock (on an as-converted basis) as determined by a nationally or regionally recognized investment banking firm (a "Qualified Firm") selected by the Corporation. The fees and expenses of such Qualified Firm chosen by the Corporation shall be borne by the Corporation. If the Required Holders disagree with the valuation of the first Qualified Firm, the Required Holders may, at the Required Holders' expense, select a second Qualified Firm of similar qualifications to determine the fair market value of the Corporation's Common Stock. If the two appraisals are within ten percent (10%) of each other, then the Fair Market Value shall be the average of the two appraisals. If the two appraisals are not within ten (10%) of each other, the two Qualified Firms so chosen shall select a third Qualified Firm of similar qualifications to the first two chosen, and such third Qualified Firm shall determine the Fair Market Value. If a third Qualified Firm is selected, the Corporation and the Required Holders shall share equally the cost of such third appraisal. For purposes of determining the Fair Market Value hereunder, each Qualified Firm shall include appropriate adjustments for non-recurring and discretionary expenses and exclude discounts for illiquidity, non-control and minority interest.

(3) Terms of the Optional Redemptions.

(a) Notice of the redemption shall be in writing, executed by the Required Holders and delivered to the Corporation.

(b) The Corporation shall deliver to each holder of Series A Preferred Stock ("Holder") a notice stating that the Corporation has been required to redeem such of the Series A Preferred Stock as the holders thereof shall desire to be redeemed. Within thirty (30) days following the delivery of such notice, each

holder of Series A Preferred Stock who shall desire the Corporation to redeem such shares shall surrender the stock certificates representing its ownership of all such shares, together with its written demand for redemption.

(c) Upon receipt of each such stock certificate and demand for redemption, the Corporation shall deliver to each such Holder the Redemption Price in immediately available funds; provided, however, to the extent the Corporation is unable to pay such amount to the Holder because (i) the payment would render the Corporation insolvent or unable to pay its debts or obligations in the usual course of business pursuant to applicable laws, or (ii) the payment would cause the Corporation to be in violation of any applicable provision of corporate law or any other applicable law, or any contract, instrument or agreement to which the Corporation is a party and which was executed in connection with or evidences any debt of the Corporation, then the Corporation shall pay (pro rata to the Holders, according to the aggregate Redemption Price to be paid to each Holder) the maximum amount that it is permitted to pay at the time and place specified in the Corporation's notice to the Holder, and the balance shall be payable pursuant to the terms of a promissory note delivered by the Corporation to each Holder (collectively, the "Redemption Notes"). The Redemption Notes shall provide for the payment of the aggregate Redemption Price in eight equal quarterly installments, together with interest at the rate of 10%. The Corporation's obligation to make payments under the Redemption Notes shall be subject to restrictions of applicable law. The Redemption Notes may be prepaid without penalty.

(F) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action (other than actions taken in good faith), avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in carrying out all the provisions of paragraphs (D) and (E) hereof and in taking all such action as may be necessary or appropriate in order to protect the conversion and redemption rights of the holders of the Series A Preferred Stock against impairment.

(G) Notices. Any notice required by the provisions of paragraphs (D) and (E) to be given to the Holders shall be deemed given five (5) days following deposit in the United States mail, postage prepaid, or upon delivery by hand or nationally recognized courier and addressed to each Holder of record at such Holder's address or facsimile number appearing in the records of the Corporation.