

**CERTIFICATE OF DESIGNATION**  
of  
**SERIES A CONVERTIBLE PREFERRED STOCK**  
of

**Establishing its Voting Powers, Designations, Preferences, Limitations,  
Restrictions, and Relative Rights**

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**Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware**

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a corporation organized and existing under the General Corporation Law of the State of Delaware (the "*Corporation*"), certifies that the following resolution was adopted by the board of directors of the Corporation as required by Section 151 of the General Corporation Law of the State of Delaware pursuant to a unanimous written consent of the board of directors.

**RESOLVED**, that, pursuant to the authority granted to and vested in the board of directors of the Corporation (the "*Board*") in accordance with the provisions of the certificate of incorporation of the Corporation, as amended and currently in effect (the "*Certificate*"), the issuance of a series of Preferred Stock, par value \$0.001 per share (the "*Preferred Stock*"), which shall consist of up to 10,000,000 shares of Preferred Stock which the Corporation now has the authority to issue, be, and the same hereby is, authorized, and the Board states the designation and number of shares, and fixes the relative rights, preferences, and limitations (in addition to any set forth in the Certificate) thereof as follows:

Section 1. **DESIGNATION AND AMOUNT.** The Preferred Stock authorized by this resolution is the Series A Convertible Preferred Stock (the "*Series A Preferred*"). The total number of shares of the Series A Preferred is 3,642,276.

Section 2. **DIVIDEND.** The holders of Series A Preferred are entitled to receive dividends on a *pari passu* basis with the holders of Common Stock when, as and if declared by the Board. The Corporation shall distribute dividends to all holders of Common Stock and Series A Preferred in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Series A Preferred were converted to Common Stock.

Section 3. **LIQUIDATION RIGHTS.**

(a) **Series A Preference.** In the event of any Liquidation Event (as defined below), either voluntary or involuntary, the holders of the Series A Preferred shall be entitled to receive prior and in preference to any distribution of the proceeds of such Liquidation Event (the "**Proceeds**") to the holders of Common Stock an amount per share equal to the Original Issue Price (as defined below) for each share of Series A Preferred (the "**Series A Liquidation Preference**"). If, upon the occurrence of a Liquidation Event, the Proceeds thus distributed among the holders of the Series A Preferred are insufficient to permit the payment to such holders of the full preferential amounts, then the entire Proceeds legally available for distribution shall be distributed ratably among the holders of the Series A Preferred in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this subsection 3(a).

(b) **Residual.** Upon any Liquidation Event, after the holders of Series A Preferred have been paid in full pursuant to clause (a) above, all of the remaining Proceeds or assets of the Corporation, as

applicable, shall be distributed among the holders of Common Stock pro rata based on the number of shares of Common Stock held by each.

(c) Original Issue Price. The “*Original Issue Price*” means \$0.27455 per share for each share of Series A Preferred (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like).

(d) Liquidation Event.

(i) A “**Liquidation Event**” shall include (A) the closing of the sale, transfer or other disposition of all or substantially all of the Corporation’s assets, (B) the consummation of the merger or consolidation of the Corporation with or into another entity (except a merger or consolidation 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 capital stock of the Corporation or the surviving or acquiring entity), (C) the closing of the transfer (whether by merger, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter of the Corporation’s securities), of the Corporation’s securities if, after such closing, such person or group of affiliated persons would hold a majority of the outstanding voting stock of the Corporation (or the surviving or acquiring entity), or (D) a liquidation, dissolution or winding up of the Corporation; provided, however, that a transaction does not constitute a Liquidation Event if its sole purpose is to change the state of the Corporation’s incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Corporation’s securities immediately prior to such transaction. The treatment of any particular transaction or series of related transactions as a Liquidation Event may be waived by the vote or written consent of the holders of a majority of the outstanding Series A Preferred (voting as a single class on an as-converted basis).

(ii) In any Liquidation Event, if Proceeds received by the Corporation or its stockholders is other than cash, its value will be deemed its fair market value as determined in good faith by the Board. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange, the value is the average of the closing prices of the securities on such exchange over the 20 trading-day period ending three trading days prior to the closing of the Liquidation Event;

(2) If actively traded over-the-counter, the value is the average of the closing bid or sale prices (whichever is applicable) over the 20 trading-day period ending three trading days prior to the closing of the Liquidation Event; and

(3) If there is no active public market, the value is the fair market value thereof, as determined in good faith by the Board.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder’s status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board.

(C) The foregoing methods for valuing non-cash consideration to be distributed in connection with a Liquidation Event shall, with the appropriate approval of the definitive agreements governing such Liquidation Event by the stockholders under the DGCL, be superseded by the determination of such value set forth in the definitive agreements governing such Liquidation Event.

(iii) Notwithstanding the foregoing subsection (ii) or any other provision of this Certificate, in the case of a Liquidation Event where the non-cash Proceeds to be distributed to the holders of Series A Preferred are assets other than securities of a class that is traded on a securities exchange that is registered as a "national securities exchange" under Section 6 of the Securities Exchange Act of 1934, then the holders of Series A Preferred shall at their option be entitled to receive cash in an amount equal to the Series A Liquidation Preference in lieu of such assets.

(iv) In the event the requirements of this Section 3 are not complied with, the Corporation shall forthwith either:

(A) cause the closing of such Liquidation Event to be postponed until such time as the requirements of this Section 3 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 3(d)(v) hereof.

(v) The Corporation shall give each holder of record of Series A Preferred written notice of such impending Liquidation Event not later than 15 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 3, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than 20 days after the Corporation has given the first notice provided for herein or sooner than 10 days after the Corporation has given notice of any material changes provided for herein; provided, however, that subject to compliance with the DGCL such periods may be shortened or waived upon the written consent of the holders of Series A Preferred (voting as a single class on an as-converted basis) that represent a majority of the voting power of all then outstanding shares of Series A Preferred.

Section 4. CONVERSION. The holders of the Series A Preferred have conversion rights as follows (the "**Conversion Rights**"):

(a) Right to Convert. Each share of Series A Preferred is 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 one fully paid and nonassessable share of Common Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like). Any conversion to be made by a holder of Series A Preferred in connection with an event set forth in clauses (A) through (C) of the definition of Liquidation Event may be conditioned upon the consummation of such event.

(b) Automatic Conversion. Each share of Series A Preferred shall automatically be converted into one share of Common Stock immediately upon the earlier of (i) the closing of the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 or Form SB-2 under the Securities Act of 1933, as amended, the public offering price of which is not less than the Original Issue Price and \$25,000,000 in the aggregate or

(ii) the date, or the occurrence of an event, specified by vote or written consent or agreement of the holders of a majority of the then-outstanding shares of Series A Preferred.

(c) Mechanics of Conversion. Before any holder of Series A Preferred is entitled to voluntarily convert the same into shares of Common Stock, he or she shall surrender the certificate or certificates therefore, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. Subject to the remainder of this paragraph (c), the Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder is entitled. Such conversion will be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred 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 as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, then the conversion may, at the option of any holder tendering Series A Preferred for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Series A Preferred will not be deemed to have converted such Series A Preferred until immediately prior to the closing of such sale of securities. If the conversion is in connection with the Automatic Conversion provisions of subsection 4(b)(ii) above, such conversion will be deemed to have been made on the conversion date described in the stockholder consent or other agreement approving such conversion, and the persons entitled to receive shares of Common Stock issuable upon such conversion will be treated for all purposes as the record holders of such shares of Common Stock as of such date. If the conversion is in connection with an event set forth in clauses (A) through (C) of the definition of Liquidation Event and such holder's conversion is conditioned upon the consummation of such event, such conversion will be deemed to have been made on the date of such consummation.

(d) Recapitalizations. If at any time or from time to time there is a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 3 or in Section 2) 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 Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 3 with respect to the rights of the holders of the Series A Preferred after the recapitalization to the end that the provisions of this Section 3 shall be applicable after that event as nearly equivalently as may be practicable.

(e) No Fractional Shares. No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred and the aggregate number of shares of Common Stock to be issued to particular stockholders, shall be rounded down to the nearest whole share and the Corporation shall pay in cash the fair market value of any fractional shares as of the time when entitlement to receive such fractions is determined. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such conversion.

(f) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, the Corporation shall mail to each holder of Series A Preferred, at least 10 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution, and the amount and character of such dividend or distribution.

(g) 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, 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; 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, in addition to such other remedies as shall be available to the holder of such Series A Preferred, 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate.

#### Section 5. VOTING.

(a) General Voting. Except for the election of directors pursuant to Section 5(b) hereof, the holder of each share of Series A Preferred (i) has the right to one vote for each share of Common Stock into which such Series A Preferred could then be converted, (ii) has full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, (iii) is entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and (iv) except as provided by law, is entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes are not permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred held by each holder could be converted) will be rounded to the nearest whole number (with one-half being rounded downward).

(b) Election of Directors. The holders of Series A Preferred, voting as a separate class, are entitled to elect one member of the Board (a "*Series A Preferred Director*") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors. The holders of Series A Preferred are not entitled to elect any other member of the Board.

(c) Board Vacancies. Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the DGCL, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of the Certificate, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; *provided, however,* that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board's action to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of the Corporation's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders. Any director may be removed during his or her term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders

duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent.

Section 6 Other Rights. Without the written consent of the holders of the majority of the outstanding shares of Series A Preferred, the Corporation shall not amend, alter or repeal any provision of the Corporation's Certificate of Incorporation so as to adversely affect the rights or preferences of the Series A Preferred or increase the authorized amount of shares of Series A Preferred.

Section 7 Status of Converted Stock. In the event any shares of Series A Preferred are converted pursuant to Section 4 hereof, then the shares so converted shall be cancelled and shall not be issuable by the Corporation. The Certificate shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

*[The remainder of this page intentionally left blank; signature is on the following page]*

**IN WITNESS WHEREOF**, the Corporation has caused this Certificate of Designation of Series A Convertible Preferred Stock to be duly executed by its President and Chief Executive Officer this

Corporation:

By:

President and Chief Executive Officer