

STATEMENT OF DESIGNATION, PREFERENCES, AND RIGHTS

OF SERIES _____ PARTICIPATING PREFERRED STOCK OF _____

Pursuant to the General Corporation Law of the State of _____, the undersigned corporation organized and existing under the laws thereof (the "Corporation"), hereby certifies that the following resolution was adopted by the Board of Directors of the Corporation on _____:

RESOLVED, that pursuant to the authority expressly granted to and vested in the Board of Directors of the Corporation by the Certificate of Incorporation of the Corporation, a series of Preferred Stock, par value \$ _____ per share, of the Corporation be, and hereby is, established, and that the designation and number of shares thereof, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, are as follows:

1. DESIGNATION AND AMOUNT

The shares of such series shall be designated as "Series _____ Participating Preferred Stock" (the "Series Preferred Stock") and the number of shares constituting such series shall be _____.

2. DIVIDEND RIGHTS

- a. The holders of shares of Series Preferred Stock shall be entitled to receive, when, as, and if declared by the Board of Directors, out of funds legally available for the payment of dividends, an annual dividend at the rate of _____% of the Original Issue Price (as defined below) per share, prior and in preference to any declaration or payment of any dividend on the Common Stock of the Corporation.
- b. After the payment in full of the preferential dividends set forth in Section 2(a), the holders of the Series Preferred Stock shall participate pro rata in any dividends paid on the Common Stock, on an as-converted to Common Stock basis.

3. LIQUIDATION PREFERENCE

- a. In the event of any voluntary or involuntary liquidation, dissolution, or winding up of the Corporation, the holders of shares of Series Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, before any payment shall be made to the holders of Common Stock, an amount per share equal to \$ _____ (the "Original Issue Price"), plus any declared but unpaid dividends.
- b. **Participation Rights:** After the payment has been made to the holders of the Series Preferred Stock of the full preferential amounts specified in Section 3(a) above, the remaining assets of the Corporation available for distribution to stockholders shall be distributed pro rata among the holders of the Common Stock and the Series Preferred Stock, with the holders of the Series Preferred Stock participating on an as-converted to Common Stock basis.

4. VOTING RIGHTS

Each holder of outstanding shares of Series Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series Preferred Stock held by such holder are convertible at the time of the vote. Except as otherwise required by law or by the Certificate of Incorporation, the holders of Series Preferred Stock and the holders of Common Stock shall vote together as a single class on all matters submitted to a vote of stockholders.

5. CONVERSION RIGHTS

The holders of the Series Preferred Stock shall have conversion rights as follows:

- a. **Right to Convert:** Each share of Series Preferred Stock shall be convertible, at the option of the holder thereof, at any time, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Original Issue

Price by the Conversion Price (defined below) in effect at the time of conversion. The initial Conversion Price shall be \$ _____ per share.

b. **Automatic Conversion:** Each share of Series Preferred Stock shall automatically be converted into shares of Common Stock upon the occurrence of _____.

6. REDEMPTION RIGHTS

Subject to the terms and conditions set forth herein, the Corporation _____ redeem the Series Preferred Stock under the following conditions:

IN WITNESS WHEREOF, the Corporation has caused this Statement of Designation to be signed by its authorized officer this _____ day of _____, 20 ____.

CORPORATION:

ATTEST:

By:

By:

Name:

Name:

Title:

Title:
