

POS000083533

Florida Department of State
Division of Corporations
Public Access System

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H05000192807 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:
Division of Corporations
Fax Number : (850) 205-0380

From:
Account Name : CORPORATION SERVICE COMPANY
Account Number : I20000000195
Phone : (850) 521-1000
Fax Number : (850) 558-1575

05 AUG 11 AM 10:22
CLERK OF STATE
TALLAHASSEE, FLORIDA

FILED

RECEIVED

05 AUG 11 AM 8:00

DIVISION OF CORPORATIONS

BASIC AMENDMENT

SPINEMEDICA CORP.

| | |
|-----------------------|---------|
| Certificate of Status | 0 |
| Certified Copy | 1 |
| Page Count | 82 11 |
| Estimated Charge | \$43.75 |

Electronic Filing Menu

Corporate Filing

Public Access Help

gk Ame

H 0500 0192807 3

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

05 AUG 11 AM 10:22

FILED

**ARTICLES OF AMENDMENT
TO THE
ARTICLES OF INCORPORATION
OF SPINEMEDICA CORP.**

Pursuant to Section 607.0602 of the Florida Business Corporation Act, the Articles of Incorporation of **SPINEMEDICA CORP.**, originally filed with the Secretary of State, State of Florida on June 9, 2005, are hereby amended as follows:

I.

The Amendment adopted by the Corporation is as follows:

Article 3 of the Articles of Incorporation is hereby amended by including the Certificate of Designation Establishing the Designations, Powers, Preferences, Limitations, Restrictions and Relative Rights of Series A Convertible Preferred Stock of SpineMedica Corp. attached hereto as Exhibit "A" and made a part hereof.

II.

The aforesaid Amendment was adopted by the Board of Directors without Shareholder action, and Shareholder action was not required, on June 15, 2005.

III.

The remainder of the Articles of Incorporation shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment of **SPINEMEDICA CORP.** this 11th day of August, 2005.

SPINEMEDICA CORP.

BY: 
STEVE GORLIN, Chief Executive Officer

Womble Carlyle Sandridge & Rice, PLLC
Suite 3500
1201 W. Peachtree St.
Atlanta, GA 30309-3460
404-872-7000

54399.1.8-ATLANTA 460495v1

H 0500 0192807 3

H 0500 0192807 3

EXHIBIT "A"

**CERTIFICATE OF DESIGNATION
ESTABLISHING THE DESIGNATIONS, POWERS, PREFERENCES,
LIMITATIONS, RESTRICTIONS AND RELATIVE RIGHTS OF
SERIES A CONVERTIBLE PREFERRED STOCK OF
SPINEMEDICA CORP. ("CORPORATION")
(a corporation under the laws of the State of Florida)**

1. **Designation and Number of Shares.** The series will be known as the "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"), and will be a series consisting of Five Million (5,000,000) shares of the authorized but unissued convertible preferred stock of the Corporation, having a par value of \$.001 per share. As provided in the Articles of Incorporation of the Corporation, the number of shares of Series A Preferred Stock may be increased or decreased by the Board of Directors of the Corporation from time to time, provided that the number of shares shall not be decreased below the number of shares then issued.

2. **Dividends.** The holders of the Series A Preferred Stock shall be entitled to participate with the holders of Common Stock in any dividends paid or set aside for payment (other than dividends payable solely in shares of Common Stock) so that holders of the Series A Preferred Stock shall receive with respect to each share of Series A Preferred Stock an amount equal to (x) the dividend payable with respect to each share of Common Stock multiplied by (y) the number of shares (and fraction of a share, if any) of Common Stock into which such share of Series A Preferred Stock is convertible as of the record date for such dividend.

3. **Liquidation Preference.**

(a) **Preference.**

(i) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntarily or involuntarily, the holders of the Series A Preferred Stock shall be entitled to receive prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock of the Corporation, an amount equal to (A) \$1.80 per share plus (B) a further amount equal to any dividends declared or accrued but unpaid on such shares. If, upon such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to the stockholders of the Corporation are insufficient to provide for the payment of the full aforesaid preferential amount, such assets as are so available shall be distributed among the holders of the Series A Preferred Stock in proportion to the relative aggregate liquidation preferences of the preferred stock so held.

(ii) After the payment or the setting apart for payment to the holders of the preferred stock of the preferential amounts so payable to them, if assets remain in the Corporation the holders of the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation pro rata in accordance with the number of shares of Common Stock held by them.

(iii) All amounts per share set forth in this subparagraph 3(a) shall be appropriately adjusted for any stock splits, stock combinations, stock dividends or similar recapitalizations.

(b) **Noncash Distributions.** If any of the assets of the Corporation are to be distributed other than in cash under this paragraph 3 or for any purpose, then the Board of Directors of the Corporation shall promptly engage independent competent appraisers to

H05000192807 3

determine the value of the assets to be distributed to the holders of preferred stock or Common Stock. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice to each holder of shares of preferred stock or Common Stock of the appraiser's valuation.

(c) Consolidation or Merger. Except as provided in 5(b) herein a consolidation or merger of the Corporation with or into any other corporation or corporations, or a sale of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution or winding up within the meaning of this paragraph 3. The provisions of this subparagraph 3(c) shall not apply to any consolidation or merger following which the holders of 51% or more of the capital stock of the resulting or surviving entity, based on voting power in the election of directors, are persons or entities who were stockholders of the Corporation immediately prior to such consolidation or merger.

4. Voting Rights. The holder of each share of Series A Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which each share of Series A Preferred Stock could be converted on the record date for the vote or written consent of stockholders and, except as otherwise required by law, shall have voting rights and powers equal to the voting rights and powers of the Common Stock. The holder of each share of Series A Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation and shall vote with holders of the Common Stock upon all other matters submitted to a vote of stockholders, except those matters required to be submitted to a class or series vote pursuant to paragraph 7 or by law. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares of Common Stock into which shares of preferred stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half rounded upward to one).

5. Conversion. The Series A Preferred Stock shall be convertible into Common Stock, as follows:

(a) 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. Each share of Series A Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing the Conversion Price per share in effect at the time of conversion into the "Conversion Value" per share. The number of shares of Common Stock into which a share of Series A Preferred Stock is convertible is hereinafter referred to as the "Conversion Rate." Both the Conversion Price per share of Series A Preferred Stock (the "Conversion Price") and the Conversion Value per share of Series A Preferred Stock initially in effect shall be \$1.80 per share. The initial Conversion Price of Series A Preferred Stock shall be subject to adjustment as hereinafter provided.

(b) Automatic Conversion. Each share of Series A Preferred Stock shall automatically convert into shares of Common Stock at its then effective Conversion Rate immediately prior to the closing of: (i) any public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering any of the Corporation's securities (as that term is defined under the Securities Act of 1933, as then in effect); (ii) a consolidation or merger of the Corporation with or into any other corporation, a result of which is that the Corporation's securities are publicly traded on any national or regional exchange or on the Nasdaq National Market or SmallCap Market, or quoted on the Over The Counter Bulletin Board; or (iii) a consolidation or merger of the Corporation with or into any other corporation or a sale of substantially all of the assets of the Corporation, to the extent that the holders of shares

H05000192807 3

W0500 0192807 3

of Common Stock of the Corporation will receive per share, cash, securities or other property having a value at such time at least equal to the applicable Conversion Value of the Series A Preferred Stock.

(c) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock as provided in paragraph 5(a), he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation and shall give written notice to the Corporation at such office that he elects to convert the same. 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 such 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.

In the event of an automatic conversion pursuant to paragraph 5(b), the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Series A Preferred Stock are either delivered to the Corporation as provided above, or the holder notifies the Corporation that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, 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 and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to and shall be contingent upon the closing of the Qualified Offering, 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.

(d) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the Conversion Price.

(e) Adjustment of Conversion Price. The Conversion Price of the Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(i) If the Corporation shall issue any Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock (other than "Excluded Stock," as defined below, or stock dividends, subdivisions, split-ups, combinations or dividends, which such events are covered by subparagraphs 5(e)(iii), (iv), and (v)), for a consideration per share less than the Conversion Price for the Series A Preferred Stock as in effect immediately prior to the issuance of such Common Stock (or other securities convertible into or exchangeable for Common Stock), then the Conversion Price for such series shall

H 0500 0192807 3

H 0500 0192807 3

forthwith be decreased immediately after such issuance to a price equal to the quotient obtained by dividing:

(A) an amount equal to the sum of: (x) the total number of shares of Common Stock outstanding (including any shares of Common Stock deemed to have been issued pursuant to subdivision (3) of this subparagraph (i)) immediately prior to such issuance multiplied by the Conversion Price in effect immediately prior to such issuance plus (y) the consideration received by the Corporation upon such issuance, by

(B) the total number of shares of Common Stock outstanding (including any shares of Common Stock deemed to have been issued pursuant to subdivision (3) of this subparagraph (i)) immediately after the issuance of such Common Stock (or other securities convertible into or exchangeable for Common Stock).

For purposes of making any such calculation pursuant to this subparagraph (i), the shares of Common Stock issuable upon conversion of the outstanding shares of Series A Preferred Stock, together with any other shares of Common Stock deemed issued and outstanding pursuant to subdivision (3) of this subparagraph (i), shall be deemed issued and outstanding at all times. For the purposes of this subparagraph (i), the following provisions shall also be applicable:

(1) In the case of the issuance of Common Stock for cash, the consideration received therefor shall be deemed to be the amount of cash paid therefor without deducting any discounts or commissions paid or incurred by the Corporation in connection with the issuance and sale thereof.

(2) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors of the Corporation.

(3) In the case of the issuance of (i) options to purchase or rights to subscribe for Common Stock (other than Excluded Stock), (ii) securities by their terms convertible or exchangeable for Common Stock (other than Excluded Stock), or (iii) options to purchase or rights to subscribe for such convertible or exchangeable securities:

(aa) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to be issuable for a consideration equal to the consideration (determined in the manner provided in subdivisions (1) and (2) above), if any, received by the Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby;

(bb) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities, or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof, shall be deemed to be issuable for a consideration equal to the consideration received by

H 0500 0192807 3

H 0500 0192807

the Corporation for any such securities and related options or rights, plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subdivisions (1) and (2) above);

(cc) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such options or rights or securities were issued, provided that the consideration for which such Common Stock is deemed to be issuable does not exceed the issuance price of securities issued in the latest bona fide round of financing by the Corporation;

(dd) on any change in the number of shares of Common Stock deliverable upon exercise of any such options or rights or conversion of or exchange for such convertible or exchangeable securities, or on any change in the minimum purchase price of such options, rights or securities, other than a change resulting from any antidilution provisions of such options, rights or securities, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment (and any subsequent adjustments) made upon (x) the issuance of such options, rights or securities not exercised, converted or exchanged prior to such change, as the case may be, been made upon the basis of such change or (y) the options or rights related to such securities not converted or exchanged prior to such change, as the case may be, been made upon the basis of such change; and

(ee) on the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment (and any subsequent adjustments) made upon the issuance of such options, rights, convertible or exchangeable securities or options or rights related to such convertible or exchangeable securities, as the case may be, been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such convertible or exchangeable securities or upon the exercise of the options or rights related to such convertible or exchangeable securities, as the case may be.

(ii) "Excluded Stock" shall mean:

(A) all shares of Common Stock issued and outstanding on the date this document is filed with the Florida Secretary of State, and up to 1,000,000 shares of

H 0500 0192807 3

H 0500 0192807 3

common stock which may be issued at any time after this document is filed with the Florida Secretary of State;

(B) all shares of Common Stock into which shares of the Series A Preferred Stock are convertible;

(C) all shares of Common Stock issued or issuable upon exercise of options or other purchase rights granted under the Corporation's Stock Incentive Plan to employees, officers, directors, or consultants of the Corporation and approved by the Board of Directors of the Corporation or a committee of the Board; and

(D) all shares of Common Stock or other securities (including options, warrants and other purchase rights) issued or to be issued to employees, officers, directors, consultants, affiliates or lenders of the Corporation after receipt of written consent to such issuance from the holders of more than 50% of the then outstanding Series A Preferred Stock and approval of such issuance by the Board of Directors of the Corporation.

Shares of Excluded Stock described in (C) of this subparagraph 5(e)(ii) shall not be deemed to be outstanding for purposes of the computations of subparagraph 5(e)(i) above until actually issued.

(iii) If the number of shares of Common Stock outstanding at any time after the date hereof is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, on the date such payment is made or such change is effective, the Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of the Series A Preferred Stock shall be increased in proportion to such increase of outstanding shares.

(iv) If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common Stock, then, on the effective date of such combination, the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of the Series A Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(v) In case the Corporation shall declare a cash dividend upon its Common Stock payable otherwise than out of retained earnings or shall distribute to holders of its Common Stock shares of its capital stock (other than Common Stock), stock or other securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock), then, in such case, the holders of shares of Series A Preferred Stock shall, concurrent with the distribution to holders of Common Stock, receive a like distribution based upon the number of shares of Common Stock into which such Series A Preferred Stock is then convertible.

(vi) in case, at any time after the date hereof, of any capital reorganization, or any reclassification of the stock of the Corporation (other than a change in par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger in which the Corporation is the continuing entity and which does not result in any change in the Common Stock), or of the sale or other disposition of all or

H 0500 0192807 3

W 0500 0192807 3

substantially all the properties and assets of the Corporation as an entirety to any other person, the shares of Series A Preferred Stock shall, if such event is not deemed a liquidation for purposes of subparagraph 3(a), after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares of stock or other securities or property of the Corporation or of the entity resulting from such consolidation or surviving such merger or to which such properties and assets shall have been sold or otherwise disposed to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation, merger, sale or other disposition he had converted his shares of Series A Preferred Stock into Common Stock. The provisions of this subparagraph (vi) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions.

(vii) All calculations under this paragraph 5 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(f) Minimal Adjustments. No adjustment in a Conversion Price need be made if such adjustment would result in a change in a Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in a Conversion Price.

(g) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of a Conversion Price pursuant to this paragraph 5, 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 setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon 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 and Rate at the time in effect for the Series A Preferred Stock held, 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.

(h) 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 Stock at least twenty (20) days prior to the date specified herein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

(i) 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.

W 0500 0192807 3

H 0500 0192807 3

(i) Notices. Any notice required by the provisions of this paragraph 5 to be given to the holder of shares of the Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his latest address appearing on the books of the Corporation.

6. Redemption.

(a) At any time after the seventh anniversary of the issuance of a share of Series A Preferred Stock, and until the termination of this Section 6 pursuant to Section 6(d), upon the receipt of written demand from a holder of Series A Preferred Stock (a "Redemption Demand"), the Corporation shall redeem such holder's shares of Series A Preferred Stock. The Redemption Demand shall specify a date not less than thirty (30) days nor more than sixty (60) days from the date of such notice on which the Series A Preferred Stock shall be redeemed (the "Optional Redemption Date"). Upon receipt of the Redemption Demand, the Corporation shall promptly notify the remaining holders of the Series A Preferred Stock of the Redemption Demand and the Optional Redemption Date. The remaining holders of Series A Preferred Stock have the right to participate in such redemption if they so elect by giving the Corporation written notice to such effect within fifteen (15) days of having received such notice. On or before the Optional Redemption Date, each holder of shares of Series A Preferred Stock participating in such redemption shall surrender certificates representing such shares to the Corporation. On the Optional Redemption Date, the Corporation shall redeem each share of Series A Preferred Stock being redeemed out of immediately available funds at a redemption price per share (the "Redemption Price") equal to the greater of: (a) the liquidation preference that would be payable with respect to such share pursuant to Section 3 hereof had such liquidation preference been payable on the date the Corporation received the Redemption Demand, and (b) the fair market value per share, as determined by a qualified, independent appraiser acceptable to the Corporation and holders of a majority of the outstanding shares of Series A Preferred Stock being redeemed (without discounts for minority stake or lack of marketability).

(b) If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock on an Optional Redemption Date are sufficient to redeem the total number of outstanding shares of Preferred Stock entitled to redemption, then the Corporation shall redeem such shares by payment of immediately available funds. If the assets of the Corporation legally available for such redemption shall be insufficient to pay the holders of Series A Preferred Stock the full Redemption Price for the shares to be redeemed on the Optional Redemption Date, such holders shall share ratably in any funds legally available for redemption of such shares according to the respective amounts that would be payable with respect to the full number of shares of Series A Preferred Stock to be redeemed. Additionally, unless prohibited by applicable state law, such holders shall be issued promissory notes equal to the difference between the amount paid in cash on the Optional Redemption Date and the Redemption Price for such shares. Such promissory notes shall be due and payable on the second anniversary of the Optional Redemption Date and shall bear interest equal to the Prime Rate (as defined below). The term "Prime Rate" means the rate of interest, per annum, listed in the Wall Street Journal on the Optional Redemption Date as the "prime rate". At any time thereafter when additional funds of the Corporation become legally available for the redemption of Series A Preferred Stock, such funds shall immediately be used to redeem the balance of the shares of Series A Preferred Stock, or such portion thereof for which funds are then legally available, that the Corporation has become obligated to redeem pursuant to this Section 6(b), but which it has not redeemed. If less

H 0500 0192807 3

H 0500 0192807 3

than all the shares of Series A Preferred Stock then outstanding are to be redeemed, such holders shall share ratably in any such redemption based upon the aggregate number of shares of Series A Preferred Stock still to be redeemed. All payments to such holders of additional funds shall reduce the principal of the promissory notes. On and after the date on which the Corporation receives a Redemption Demand, all rights in respect of the shares of Series A Preferred Stock to be redeemed, except the right to receive the Redemption Price as herein provided, shall cease and terminate; and such shares shall no longer be deemed to be outstanding, whether or not the certificates representing such shares have been received by the Corporation.

(c) No holder of shares of Series A Preferred Stock shall be entitled to the benefit of a sinking fund or purchase fund.

(d) The provisions of this Section 6 shall terminate and be of no further force and effect on and after the earlier of: (i) the effective date of the initial public offering of the Corporation's common stock; (ii) the effective date of any sale of all or substantially all of the Corporation's assets, in a single transaction or a series of related transactions; or (iii) the effective date of any merger in which the Corporation is a constituent corporation if the shareholders of the Corporation immediately prior to such merger hold less than 50% of the voting power of the surviving entity.

7. **Protective Provisions.** In addition to any other rights provided by law, without first obtaining the affirmative vote or written consent of the holders of a majority of the then-outstanding shares of Series A Preferred Stock, the Corporation shall not:

(a) amend or repeal any provision of, or add any provision to, this Certificate of Designation, if such action would adversely alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of, the Series A Preferred Stock; or

(b) authorize or effect the declaration or payment of any dividend payable in cash on any shares of capital stock.

H 0500 0192807 3