

Mar. 20, 2015 12:44 PM

GERALD WEINBERG

No. 6752

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ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
ZAPPY, INC.  
DESIGNATING  
SERIES A CONVERTIBLE PREFERRED STOCK  
PURSUANT TO SECTION 607.0602 OF THE  
FLORIDA BUSINESS CORPORATION ACT

Zappy, Inc., a corporation organized and existing under Florida Business Corporation Act (hereinafter called the "Company"), in accordance with the provisions of Section 607.0602 thereof, DOES HEREBY CERTIFY:

**FIRST:** These Articles of Amendment were adopted by the Board of Directors on March 4, 2015 in the manner prescribed by Section 607.1002 of the Florida Business Corporation Act. Shareholder action was not required.

**SECOND:** That pursuant to the authority vested in the Board of Directors of the Company in accordance with the provisions of the Articles of Incorporation, as amended, of the Company (the "Articles of Incorporation"), the Board of Directors adopted the following resolution on March 4, 2015 designating 2,000,000 shares of the Company's authorized preferred stock as Series A Convertible Preferred Stock:

**RESOLVED,** that pursuant to the authority vested in the Board of Directors of this Company in accordance with the provisions of the Articles of Incorporation, a series of Preferred Stock, having a par value of \$0.001 per share, of the Company be and hereby is created, and that the designation and number of shares thereof, and the voting and other powers, preferences and relative, participating, optional or other rights of the shares of such series, and the qualifications, limitations and restrictions thereof, are as follows:

I. A PREFERRED

A. Authorized Number and Stated Value. Two Million (2,000,000) of the authorized shares of Preferred Stock are hereby designated "Series A Convertible Preferred Stock" par value \$0.001 per share ("A Preferred") with a stated value of \$0.86775 per share ("Stated Value").

B. Designation. The rights, preferences, privileges, restrictions and other matters relating to A Preferred are as follows:

(1) Distribution of Assets Upon Liquidation. In the event the Company shall be liquidated, dissolved or wound up (each, a "Liquidation Event"), whether voluntarily or involuntarily, each holder of A Preferred ("Holder") shall be entitled to receive and to be paid out of the assets of the Company legally available for distribution to its

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shareholders, before any payment or distribution shall be made on the Common Stock or on any other class of stock ranking junior to the A Preferred upon a Liquidation Event, an amount equal to the Stated Value per share and, thereafter, to share ratably in the proceeds available along with the holders of shares of Common Stock and any other share of stock entitled to payment upon a Liquidation Event.

(2) Voting Rights. Each Holder of outstanding shares of A Preferred shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of A Preferred held by such Holder would then be convertible (as adjusted from time to time pursuant to Section 1B(3) hereof), at each meeting of the shareholders of the Company (and written actions of shareholders in lieu of meetings) with respect to any and all matters presented to the shareholders of the Company for their action or consideration (including without limitation, any matter voted on together with the holders of Common Stock).

(3) Conversion of A Preferred.

(a) At the option of the Holder, at any time after issuance, each share of A Preferred may be converted into fully paid and non-assessable shares of Common Stock, subject to adjustment below in Section 3(c), at the rate of 100 shares of Common Stock for each share of A Preferred (the "Conversion Rate").

(b) No Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of shares of A Preferred; instead, the Company shall round such fraction of a share of Common Stock up to the nearest whole number.

(c) Adjustments of Conversion Rate for Stock Dividends, Subdivisions, Combinations or Consolidation of Common Stock, Consolidations and Mergers, and upon Issuance of Common Stock.

(i) 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 Rate of the A Preferred shall be increased so that the number of shares of Common Stock issuable on conversion of any shares of the A Preferred shall be increased in proportion to such increase of outstanding shares.

(ii) 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 Rate for each share of A Preferred shall be decreased so that the number of shares of Common Stock issuable on conversion of shares of the A Preferred shall be decreased in proportion to such decrease in outstanding shares.

(iii) In the case of the consolidation or merger of the Company with or into another person (other than a consolidation or merger pursuant to which the holders of the outstanding voting securities of the Company immediately prior to such consolidation or merger hold equity securities representing a majority of the voting power of the Company or surviving entity immediately following such consolidation or merger), on the effective date of such consolidation or merger (the "Effective Date"), the Conversion Rate and/or the securities to be received upon conversion of each share of A Preferred shall be adjusted so the number of shares of stock and other securities and property (including cash) to which such Holder of A Preferred would have been entitled upon the Effective Date as if the Holder had converted the A Preferred immediately prior thereto.

(iv) If at any time, the Company issues or sells, or in accordance with this Section LB(3)(c)(iv) is deemed to have issued or sold, any shares of Common Stock, with the exception of Excluded Stock (as defined below), for a consideration per share (the "New Securities Issuance Price") less than the Conversion Rate in effect immediately prior to such time (each such sale or issuance, a "Dilutive Issuance"), then concurrent with such Dilutive Issuance, the Conversion Rate then in effect shall be reduced to an amount equal to the New Securities Issuance Price. "Excluded Stock" means the issuance of Common Stock (a) upon issuance or conversion of A Preferred or Warrants to purchase A Preferred issued or issuable pursuant to the proposed securities offerings set forth in the March 4, 2015 term sheet, a copy of which is available from the Company, (b) the issuance of Common Stock or grant of options to employees, officers or directors of the Company pursuant to a stock option plan or other stock plan duly approved by the Company's shareholders and adopted by the Company's Board of Directors including the A Preferred Directors (as defined below), (c) the issuance of Common Stock or grant of options in exchange for the fair value of services provided to the Company by sales or marketing consultants pursuant to written agreements duly approved by the Company's Board of Directors including the A Preferred Directors, (d) pursuant to a Strategic Financing (as defined below), or (e) the issuance of any A Preferred (or the issuance of shares of Common Stock upon conversion thereof or dividends thereon). A "Strategic Financing" means the issuance of Common Stock or any right to acquire Common Stock in connection with any acquisition by the Company, by whatever means, of any business, assets or technologies, or, with regard to the Company, to any vendor, customer, lease or similar arrangement, the primary purpose of which is not to raise funds, provided that such Strategic Financing is approved by the A Preferred Directors. For purposes of determining the adjusted Conversion Rate under this Section LB(3), the following shall be applicable:

(x) the Company in any manner issues or sells any securities or instruments of debt or equity convertible into or exercisable for shares of Common Stock or any combination thereof other than Excluded Stock ("Convertible Securities") and the lowest price per share for which one share of Common Stock is issuable upon such conversion, exchange or exercise thereof is less than the Conversion Rate in effect immediately prior to such Dilutive Issuance, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance of sale of such Convertible Securities for such price per share. For the purposes of this

Section I.B(3)(c)(iv), the "lowest price per share for which one share of Common Stock is issuable upon such conversion, exchange or exercise" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the issuance or sale of the Convertible Securities and upon the conversion, exchange or exercise of such Convertible Securities. No further adjustment of the Conversion Rate shall be made upon the actual issuance of such Common Stock or upon conversion, exchange or exercise of such Convertible Securities.

(y) If any Common Stock or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the gross amount received by the Company therefor. If any Common Stock or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Company will be the fair value of such consideration, except where such consideration consists of marketable securities, in which case the amount of consideration received by the Company will be the arithmetic average of the closing price of such securities during the ten (10) consecutive Trading Days ending on the date of receipt of such securities. The fair value of any consideration other than cash or securities will be determined by the Company in good faith.

(d) In the event any shares of A Preferred shall be converted pursuant to this Section I.B(3) or otherwise reacquired by the Company, the shares so converted or reacquired shall, absent a determination to the contrary by the Board, be canceled, may not be reissued as A Preferred and shall revert to the status of authorized but unissued and undesignated shares of Preferred Stock and may be redesignated and reissued.

(4) Right to Appoint Directors. Until such time as all A Preferred is converted or a "Qualified Public Offering" has been completed, holders of a majority of the issued and outstanding shares of A Preferred shall have the right to designate a majority of the members of the Company's Board of Directors. By way of example, if the Board consists of three directors, the A Preferred Holders can designate two members and if the Board consists of four directors, the A Preferred Holders can designate three members. A "Qualified Public Offering" occurs when the SEC declares effective a registration statement for the Company's first firm commitment underwritten public offering of Common Stock under the Securities Act of 1933, as amended, resulting in gross proceeds of at least \$10 million.

(5) Reservation of Shares. The Company shall, so long as any of shares of A Preferred are outstanding, reserve and keep available out of its authorized but unissued shares of Common Stock, a sufficient number of shares for the purpose of effecting conversion of such shares of A Preferred.

(6) Lost or Stolen Certificates. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of any certificate representing the shares of A Preferred and, in the case of loss, theft or

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destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of the certificate, the Company shall execute and deliver a new preferred stock certificate of like tenor and date.

**RESOLVED, FURTHER**, that any executive officer of the Company be and they hereby is authorized and directed to prepare and file a Certificate of Designation of Preferences, Rights and Limitations in accordance with the foregoing resolution and the provisions of Florida law.

**IN WITNESS WHEREOF**, the undersigned have executed these Articles of Amendment this 6<sup>th</sup> day of March, 2015.

  
Michael Capella, Sole Director

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