

P15000057722

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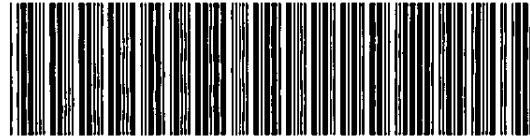
(Business Entity Name)

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TALLAHASSEE, FLORIDA

JAN 07 2016

A RAMSEY

**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**NAME OF CORPORATION:** Physicians Trust, Inc.

**DOCUMENT NUMBER:** P15000057722

The enclosed *Articles of Amendment* and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Amber C. Banks

Name of Contact Person

Smith, Gambrell & Russell

Firm/ Company

50 N. Laura Street, Suite 2600

Address

Jacksonville, FL 32202

City/ State and Zip Code

abanks@sgrlaw.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Amber Banks

Name of Contact Person

at ( 904 ) 598-6100 xt. 86403

Area Code & Daytime Telephone Number

Enclosed is a check for the following amount made payable to the Florida Department of State:

☐ \$35 Filing Fee

☐ \$43.75 Filing Fee &  
Certificate of Status

☒ \$43.75 Filing Fee &  
Certified Copy  
(Additional copy is  
enclosed)

☐ \$52.50 Filing Fee  
Certificate of Status  
Certified Copy  
(Additional Copy  
is enclosed)

**Mailing Address**

Amendment Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**Street Address**

Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
PHYSICIANS TRUST, INC.

FILED  
16 JAN -4 PM 2:01  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Physicians Trust, Inc., a corporation organized and existing under the laws of the State of Florida (the "**Issuer**"), in accordance with the provisions of Section 607.0602 of the Florida Business Corporation Act thereof, does hereby certify:

The Board of Directors of the Issuer (the "**Board of Directors**"), in accordance with the Articles of Incorporation and the Bylaws of the Issuer and applicable law, adopted the following resolution on December 22, 2015 creating a series of 1,800 shares of preferred stock of the Issuer designated as "Series A Cumulative Preferred Stock".

**RESOLVED**, that pursuant to the provisions of the Articles of Incorporation and the Bylaws of the Issuer and applicable law, a series of preferred stock, no par value, of the Issuer be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

1. **Designation and Number of Shares.** There is hereby created out of the authorized and unissued shares of preferred stock of the Issuer a series of preferred stock designated as the "Series A Cumulative Preferred Stock" (the "**Designated Preferred Stock**"). The authorized number of shares of Designated Preferred Stock shall be 1,800.

2. **Standard Provisions.** The Standard Provisions contained in Schedule A attached hereto are incorporated herein by reference in their entirety and shall be deemed to be a part of this Certificate of Designations to the same extent as if such provisions had been set forth in full herein.

3. **Definitions.** The following terms are used in this Certificate of Designations (including the Standard Provisions in Schedule A hereto) as defined below:

- (a) "**Common Stock**" means the common stock, \$0.01 par value, of the Issuer.
- (b) "**Dividend Payment Date**" means March 31, June 30, September 30 and December 31 of each year.
- (c) "**Junior Stock**" means the Common Stock and any other class or series of stock of the Issuer the terms of which expressly provide that it ranks junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Issuer.
- (d) "**Liquidation Amount**" means \$10,000 per share of Designated Preferred Stock.
- (e) "**Parity Stock**" means any class or series of stock of the Issuer (other than Designated Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Issuer (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).
- (f) "**Signing Date**" means the Original Issue Date.

4. **Certain Voting Matters.** Holders of shares of Designated Preferred Stock will be entitled to one vote for each such share on any matter on which holders of Designated Preferred Stock are entitled to vote, including any action by written consent.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, Physicians Trust, Inc. has caused this Certificate of Designations to be signed by P. Butler Ball, its Chief Executive Officer, this 22<sup>nd</sup> day of December, 2015.

**PHYSICIANS TRUST, INC.**

A handwritten signature in black ink, appearing to read 'P. Butler Ball', is written over a horizontal line.

Name: P. Butler Ball

Title: Chief Executive Officer

**STANDARD PROVISIONS**

1. **General Matters.** Each share of Designated Preferred Stock shall be identical in all respects to every other share of Designated Preferred Stock. The Designated Preferred Stock shall be perpetual, subject to the provisions of Section 5 of these Standard Provisions that form a part of the Certificate of Designations. The Designated Preferred Stock shall rank equally with Parity Stock and shall rank senior to Junior Stock with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Issuer.

2. **Standard Definitions.** As used herein with respect to Designated Preferred Stock:

(a) ***"Applicable Dividend Rate"*** means (i) 5.0% per annum, during the period from the Original Issue Date to, but excluding, the first day of the first Dividend Period commencing on or after the sixth (6<sup>th</sup>) anniversary of the Original Issue Date, (ii) the greater of 7.0% per annum, or the prime rate then in effect, during the period from the first Dividend Period commencing on or after the sixth (6<sup>th</sup>) anniversary of the Original Issue Date to, but excluding, the first day of the first Dividend Period commencing on or after the eighth (8<sup>th</sup>) anniversary of the Original Issue Date, and (iii) the greater of 9.0% per annum, or the prime rate then in effect plus two (2.0) percentage points, from and after the first day of the first Dividend Period commencing on or after the eighth (8<sup>th</sup>) anniversary of the Original Issue Date.

(b) ***"Business Combination"*** means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Issuer's stockholders.

(c) ***"Business Day"*** means any day except Saturday, Sunday and any day on which banking institutions in the State of Florida generally are authorized or required by law or other governmental actions to close.

(d) ***"Bylaws"*** means the bylaws of the Issuer, as they may be amended from time to time.

(e) ***"Certificate of Designations"*** means the Certificate of Designations or comparable instrument relating to the Designated Preferred Stock, of which these Standard Provisions form a part, as it may be amended from time to time.

(f) ***"Charter"*** means the Issuer's articles of incorporation or similar organizational document.

(g) ***"Dividend Period"*** has the meaning set forth in Section 3.1.

(h) ***"Dividend Record Date"*** has the meaning set forth in Section 3.1.

(i) ***"Liquidation Preference"*** has the meaning set forth in Section 4.1.

(j) ***"Original Issue Date"*** means the date on which shares of Designated Preferred Stock are first issued.

(k) ***"Preferred Stock"*** means any and all series of preferred stock of the Issuer, including the Designated Preferred Stock.

(m) ***"Standard Provisions"*** mean these Standard Provisions that form a part of the Certificate of Designations relating to the Designated Preferred Stock.

(n) “**Successor Preferred Stock**” has the meaning set forth in Section 5.1.

(o) “**Units Offering**” means the offering of the Company’s securities pursuant to “Units” consisting of: (i) Senior Secured Debentures (the “**Debentures**”); (ii) the Designated Preferred Stock; and (iii) Warrants (the “**Warrants**”), which offering was closed on December 31, 2015, pursuant to which the Designated Preferred Stock governed by this Certificate of Designations was issued.

(p) “**Voting Parity Stock**” means, with regard to any matter as to which the holders of Designated Preferred Stock are entitled to vote as specified in Section 7.2 of these Standard Provisions that form a part of the Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

### 3. **Dividends.**

**3.1 Rate.** Holders of Designated Preferred Stock shall be entitled to receive, on each share of Designated Preferred Stock if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cumulative cash dividends with respect to each Dividend Period (as defined below) at a per annum rate equal to the Applicable Dividend Rate on the Liquidation Amount per share of Designated Preferred Stock. Such dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each subsequent Dividend Payment Date (*i.e.*, no dividends shall accrue on other dividends unless and until the first Dividend Payment for such other dividends has passed without such other dividends having been paid on such date) and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least twenty (20) calendar days after the Original Issue Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day and no additional dividends will accrue as a result of that postponement. The period from and including any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “**Dividend Period**”, provided that the initial Dividend Period shall be the period from and including the Original Issue Date to, but excluding, the next Dividend Payment Date.

Dividends that are payable on Designated Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on Designated Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Designated Preferred Stock on any Dividend Payment Date will be payable to holders of record of Designated Preferred Stock as they appear on the stock register of the Issuer on the applicable record date, which shall be the fifteenth (15<sup>th</sup>) calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than sixty (60) nor less than ten (10) days prior to such Dividend Payment Date (each, a “**Dividend Record Date**”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Holders of Designated Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on Designated Preferred Stock as specified in this Section 3 (subject to the other provisions of the Certificate of Designations).

**3.2 Priority of Dividends.** So long as any share of Designated Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than dividends payable solely in shares of Common Stock) or Parity Stock, subject to the immediately following paragraph in the case of Parity Stock, and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Issuer or any of its subsidiaries *unless* all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3.1 above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Designated Preferred Stock on the applicable record date). The foregoing limitation shall not apply to (i) redemptions of Common Stock which do not, in the aggregate, exceed greater than five percent (5.0%) of the issued and outstanding shares of Common Stock in any twelve (12) month period; (ii) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice; (iii) the acquisition by the Issuer or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Issuer or any of its subsidiaries), including as trustees or custodians; or (iv) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date) in full upon Designated Preferred Stock and any shares of Parity Stock, all dividends declared on Designated Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared *pro rata* so that the respective amounts of such dividends declared shall bear the same ratio to each other as all accrued and unpaid dividends per share on the shares of Designated Preferred Stock (including, if applicable as provided in Section 3.1 above, dividends on such amount) and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other. If the Board of Directors or a duly authorized committee of the Board of Directors determines not to pay any dividend or a full dividend on a Dividend Payment Date, the Issuer will provide written notice to the holders of Designated Preferred Stock prior to such Dividend Payment Date.

Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of Designated Preferred Stock shall not be entitled to be participate in any such dividends.

**3.3 Initial Deferral and Accrual.** It is expressly contemplated that, for the first twenty four (24) months from the Original Issue Date, all dividends due and payable on the Designated Preferred Stock shall be accrued and cumulated, although the Company may, at its sole option, pay any or all such dividends



from funds legally available for payment thereof at any time at or after such dividends become due and payable.

#### **4. Liquidation Rights.**

**4.1 *Voluntary or Involuntary Liquidation.*** In the event of any liquidation, dissolution or winding up of the affairs of the Issuer, whether voluntary or involuntary, holders of Designated Preferred Stock shall be entitled to receive for each share of Designated Preferred Stock, out of the assets of the Issuer or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Issuer, subject to the rights of any creditors of the Issuer, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Issuer ranking junior to Designated Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (i) the Liquidation Amount per share and (ii) the amount of any accrued and unpaid dividends (including, if applicable provided in Section 3.1 above, dividends on such amount), whether or not declared, to the date of payment (such amounts collectively, the “*Liquidation Preference*”).

**4.2 *Partial Payment.*** If in any distribution described in Section 4.1 above the assets of the Issuer or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Issuer ranking equally with Designated Preferred Stock as to such distribution, holders of Designated Preferred Stock and the holders of such other stock shall share ratably in any such distribution in proportion to the full respective distributions to which they are entitled.

**4.3 *Merger, Consolidation and Sale of Assets Not Liquidation.*** For purposes of this Section 4, the merger or consolidation of the Issuer with any other corporation or other entity, including a merger or consolidation in which the holders of Designated Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Issuer, shall not constitute a liquidation, dissolution or winding up of the Issuer.

#### **5. Redemption.**

**5.1 *Generally.*** Except as provided below, the Designated Preferred Stock may not be redeemed prior to the first Dividend Payment Date falling on or after the third (3<sup>rd</sup>) anniversary of the Original Issue Date. On or after the first Dividend Payment Date falling on or after the sixth (6<sup>th</sup>) anniversary of the Original Issue Date, the Issuer, subject to Section 5.9 below, must redeem, at any time and from time to time, out of funds available therefor, the shares of Designated Preferred Stock on the redemption schedule (the “*Redemption Schedule*”) detailed in Section 5.2, at the time outstanding, upon notice given as provided in Section 5.5 below, at a redemption price equal to the applicable redemption price (the “*Applicable Redemption Price*”) detailed in Section 5.3.

**5.2 *Redemption Schedule.*** The Company, subject to Section 5.9 must redeem the Designated Preferred Stock beginning or after the first Dividend Payment Date falling on or after the sixth (6<sup>th</sup>) anniversary of the Original Issue Date. The Company will redeem the Designated Preferred Stock on the following Redemption Schedule:

- (i) At least twenty percent (20.0%) of the issued and outstanding Designated Preferred Stock will be redeemed by the Company on or before the sixth (6<sup>th</sup>) anniversary of the Original Issue Date (the “*First Redemption Period*”);
- (ii) An additional at least thirty percent (30.0%) of the issued and outstanding Designated

- Preferred Stock will be redeemed by the Company on or before the eighth (8<sup>th</sup>) anniversary of the Original Issue Date (the “**Second Redemption Period**”); and
- (iii) All remaining issued and outstanding Designated Preferred Stock will be redeemed by the Company on or before the tenth (10<sup>th</sup>) anniversary of the Original Issue Date (the “**Third Redemption Period**”). The purchase prices related to each such redemption period shall be as follows.

**5.3 Redemption Purchase Price.** The Applicable Redemption Price for each redemption of Designated Preferred Stock effected by the Company pursuant hereto shall be as follows:

**First Redemption Period:** The redemption price for the Designated Preferred Stock during the First Redemption Period shall be in an amount equal to: 1.0 x the Liquidation Amount, plus all accrued and unpaid dividends. At the option of the Company, this payment may be made by: (w) issuing additional Debentures of the Company (on the same terms as were issued in the Units Offering); (x) by issuing additional Common Stock at a value equal to the then fair market value; (y) by paying all cash, or (z) a combination of the foregoing payment methods; *provided, however*, that no more than fifty percent (50%) of the aggregate payment due shall be made with additional Debentures.

**Second Redemption Period:** The redemption price for the Designated Preferred Stock during the Second Redemption Period shall be in an amount equal to: 1.1 x the Liquidation Amount, plus all accrued and unpaid dividends. At the option of the Company, this payment may be made by: (w) issuing additional Debentures of the Company (on the same terms as were issued in the Units Offering); (x) by issuing additional Common Stock at a value equal to the then fair market value; (y) by paying all cash, or (z) a combination of the foregoing payment methods; *provided, however*, that no more than fifty percent (50%) of the aggregate payment due shall be made with additional Debentures.

**Third Redemption Period:** The redemption price for the Designated Preferred Stock during the Third Redemption Period shall be in an amount equal to: 1.4 x the Liquidation Amount, plus all accrued and unpaid dividends. At the option of the Company, this payment may be made by: (w) issuing additional debentures of the Company, which shall have an annual interest rate that is the greater of: prime + 2 or 12.0%, cumulative, payable quarterly, and having a maturity date which is twelve (12) years from the closing date; (x) by issuing additional Common Stock at a value equal to the then fair market value; (y) by paying all cash, or (z) a combination of the foregoing payment methods; *provided, however*, that no more than fifty percent (50%) of the aggregate payment due shall be made with additional debentures.

The Applicable Redemption Price for any shares of Designated Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Issuer or its agent. Any declared but unpaid dividends payable on the redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 3 above.

**5.4 Change in Control.** At all times when shares of the Designated Preferred Stock are outstanding, the following events will constitute a “**Change of Control Event**”:

- (i) A sale by the Company of substantially all of its assets,

- (ii) A transaction or series of transactions in which a person or a group of persons acquires beneficial ownership (as determined in accordance with the Federal securities laws) of more than 50.0% of the voting stock of the Company, or
- (iii) A consolidation, merger or similar transaction with or into any other corporation or other entity or person, or any other corporate organization in which the shareholders of the Company immediately prior to the transaction hold less than a 50.0% voting interest in the Company or survivor to the merger or other transaction after the transaction.

If a Change of Control Event occurs in which the Company is the surviving or resulting entity, then each share of Designated Preferred Stock outstanding immediately prior to such Change of Control Event shall remain outstanding. If a Change of Control Event in which the Company is not the survivor occurs, then each holder of Designated Preferred Stock will receive cash in the amount of the Liquidation Amount for each share of Designated Preferred Stock then outstanding plus declared and unpaid dividends. The Company may not enter into any agreement for a transaction constituting a Change of Control Event unless such agreement provides for or does not interfere with or prevent (as applicable) treatment of the Designated Preferred Stock in a manner that is consistent with and gives effect to the foregoing.

**5.5 Notice of Redemption.** Notice of every redemption of shares of Designated Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Issuer. Such mailing shall be at least thirty (30) days and not more than sixty (60) days before the date fixed for redemption. Any notice mailed as provided in this Section 5.5 shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Designated Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Designated Preferred Stock. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Designated Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Designated Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

**5.6 Partial Redemption.** In case of any redemption of part of the shares of Designated Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Board of Directors or a duly authorized committee thereof may determine to be fair and equitable. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Designated Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

**5.7 Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Issuer, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the State of Florida, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all

shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three (3) years from the redemption date shall, to the extent permitted by law, be released to the Issuer, after which time the holders of the shares so called for redemption shall look only to the Issuer for payment of the redemption price of such shares.

**5.8 Status of Redeemed Shares.** Shares of Designated Preferred Stock that are redeemed, repurchased or otherwise acquired by the Issuer shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Designated Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Designated Preferred Stock).

**5.9 Restrictions on Redemption.** Notwithstanding anything in this Section 5 to the contrary, shares of the Designated Preferred Stock shall be redeemed by the Company at the direction of the Board of Directors only out of funds of the Company legally available therefore. To the extent that the Board of Directors, in its sole discretion, determines that redemption of any shares of Designated Preferred Stock shall be in violation of applicable law, then it may delay such redemption until such shares may be redeemed in compliance with applicable law.

**5.10 No Sinking Fund.** The Designated Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Designated Preferred Stock will have no right to require redemption or repurchase of any shares of Designated Preferred Stock.

**6. Conversion.** Holders of Designated Preferred Stock shares shall have no right to exchange or convert such shares into any other securities.

**7. Voting Rights; Information Rights.**

**7.1 General.** The holders of Designated Preferred Stock shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

**7.2 Class Voting Rights as to Particular Matters.** So long as any shares of Designated Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by the Charter, the vote or consent of the holders of at least a majority of the shares of Designated Preferred Stock at the time outstanding, voting as a separate class, given in person or by proxy, either in writing without a meeting or by a vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) **Authorization of Senior Stock.** Any amendment or alteration of the Certificate of Designations for the Designated Preferred Stock or the Charter to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Issuer ranking senior to Designated Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Issuer;

(ii) **Amendment of Designated Preferred Stock.** Any amendment, alteration or repeal of any provision of the Certificate of Designations for the Designated Preferred Stock or the Charter (including, unless no vote on such merger or consolidation is required by Section 7.2(iii) below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) so as to

adversely affect the rights, preferences, privileges or voting powers of the Designated Preferred Stock; or

(iii) Shares Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Designated Preferred Stock, or of a merger or consolidation of the Issuer with another corporation or other entity, unless in each case (x) the shares of Designated Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Issuer is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Designated Preferred Stock immediately prior to such consummation, taken as a whole;

*provided, however*, that for all purposes of this Section 7.2, any increase in the amount of the authorized Preferred Stock, including any increase in the authorized amount of Designated Preferred Stock necessary to satisfy preemptive or similar rights granted by the Issuer to other persons prior to the Signing Date, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking equally with and/or junior to Designated Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Issuer will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Designated Preferred Stock.

**7.3 *Changes after Provision for Redemption.*** No vote or consent of the holders of Designated Preferred Stock shall be required pursuant to Section 7.2 above, if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section 7.2, all outstanding shares of the Designated Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 5 above.

**7.4 *Procedures for Voting and Consents.*** The rules and procedures for calling and conducting any meeting of the holders of Designated Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Charter, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which Designated Preferred Stock is listed or traded at the time.

**7.5 *Information Rights.*** For so long as any Designated Preferred Stock is outstanding, the Company will make available its corporate records to all holders of the Designated Preferred Stock upon request and will provide standard financial reports including quarterly and year-to-date income and balance sheets as well as annual audited financial statements including income statements, balance sheets and cash flow statements.

**8. Miscellaneous.**

**8.1 *Record Holders.*** To the fullest extent permitted by applicable law, the Issuer and the transfer agent for Designated Preferred Stock may deem and treat the record holder of any share of Designated Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Issuer nor such transfer agent shall be affected by any notice to the contrary.

**8.2 *Notices.*** All notices or communications in respect of Designated Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Charter or Bylaws or by applicable law. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of the Designated Preferred Stock in any manner permitted by such facility.

**8.3 *No Preemptive Rights.*** No share of Designated Preferred Stock shall have any rights of preemption whatsoever as to any securities of the Issuer, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.

**8.4 *Replacement Certificates.*** The Issuer shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Issuer. The Issuer shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Issuer of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with an indemnity that may be reasonably required by the Issuer.

**8.5 *Other Rights.*** The shares of Designated Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Charter or as provided by applicable law.

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