

CAPITAL CONNECTION, INC.

417 E. Virginia Street, Suite 1 • Tallahassee, Florida 32302  
(850) 224-8870 • 1-800-342-8062 • Fax (850) 222-1222

P98000047296

Therapeutic Botanicals, Inc

500002563735-1  
-06/18/98-01011-020  
\*\*\*\*\*87.50 \*\*\*\*\*87.50

Art of Inc. File

LTD Partnership File

Foreign Corp. File

L.C. File

Fictitious Name File

Trade/Service Mark

Merger File

Art. of Amend. File cert

RA Resignation

Dissolution / Withdrawal

Annual Report / Reinstatement

✓ Cert. Copy

Photo Copy

Certificate of Good Standing

Certificate of Status

Certificate of Fictitious Name

Corp Record Search

Officer Search

Fictitious Search

Fictitious Owner Search

Vehicle Search

Driving Record

UCC 1 or 3 File

UCC 11 Search

UCC 11 Retrieval

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FILED

98 JUN 19 PM 12:32

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5/20/18 11:25

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

DEPT. OF REVENUE  
TALLAHASSEE, FLORIDA

Signature

Requested by: ces

Name

6/18

Date

9:02

Time

Walk-In

Will Pick Up

16



FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham  
Secretary of State

RECEIVED  
JUN 19 9:27  
FLORIDA DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA

June 18, 1998

CAPITAL CONNECTION, INC.

TALLAHASSEE, FL

SUBJECT: THERAPEUTIC BOTANICALS, INC.  
Ref. Number: P98000047296

We have received your document for THERAPEUTIC BOTANICALS, INC. and your check(s) totaling \$87.50. However, the enclosed document has not been filed and is being returned for the following correction(s):

The name of the person signing the document must be typed or printed beneath or opposite the signature.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6957.

Joy Moon-French  
Corporate Specialist

Letter Number: 898A00033840

*Corrected*

**EXHIBIT A**

Amendment to Articles of Incorporation

THERAPEUTIC BOTANICALS, INC.

**FILED**

98 JUN 19 PM 12:32

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Therapeutic Botanicals, Inc. (the "Corporation"), a corporation organized and existing under the Florida General Corporation Act, does hereby certify that pursuant to the authority vested in the Board of Directors of the Corporation by its Articles of Incorporation, as amended, and pursuant to the provisions of Section 607.0602 of the Florida General Corporation Act, said Board of Directors, by unanimous written consent, adopted the following resolution which remains in full force and effect as of the date hereof:

RESOLVED, to amend the Corporation's Articles of Incorporation to replace Articles V, VI and VII in their entirety with the following amendment:

**ARTICLE V**

**Share Structure**

The corporation is authorized to issue Common Stock, \$.01 par value per share consisting of 4,500,000 shares (the "Common Stock") and Series A 10% Cumulative Convertible Preferred Stock, par value \$.01 per share, consisting of 500,000 shares (the "Series A Stock"), having the following designations, preferences and relative and other special rights, qualifications, limitations and restrictions:

1. Designation. The designation of such series is "Series A 10% Cumulative Convertible Preferred Stock" (hereinafter called the "Series A Stock") and the number of shares constituting such series shall be 500,000, which number may be decreased (but not increased) by the Board of Directors without a vote of stockholders; provided, however, that such number may not be decreased below the number of then currently outstanding shares of Series A Stock, plus shares issuable upon the exercise of any then outstanding options, warrants or rights to acquire Series A Stock. All capitalized terms used in this Certificate of Designation and not otherwise defined shall have the meaning given to such terms in Section 14 hereof.

2. Dividends. (a) The holders of shares of Series A Stock, in preference to the holders of all Junior Securities, shall be entitled to receive when, as and if declared by the Board of Directors out of funds legally available for the purpose, cumulative dividends as provided in this Section 2. Dividends on each share of Series A Stock shall be payable in cash and shall accrue at the Dividend Rate on the sum of (i) the Purchase Price and (ii) all accumulated and unpaid dividends accrued thereon pursuant to this Section 2(a) from the date of issuance thereof (the "Series A Dividends" and, the sum of the Purchase Price and the Series A Dividends is referred to herein as the "Series A Preference Amount"). Such dividends will be calculated and compounded annually in arrears on December 31 of each year (each a "Dividend Date") in respect of the prior twelve month period prorated on a daily basis for partial periods. Such dividends shall commence to

accrue on each share of Series A Stock from the date of issuance thereof whether or not declared by the Board of Directors, and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends, and shall continue to accrue thereon until the Series A Preference Amount is paid in full in cash.

(b) Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Series A Stock, such payment shall be distributed ratably among the holders of Series A Stock based upon the aggregate accrued but unpaid dividends on the Series A Stock held by each holder.

(c) Without the consent of the holders of the Requisite Percentage of Series A Stock and, except as otherwise may be provided in this Certificate of Designation or specifically permitted by the terms of the Stockholders' Agreement, so long as any shares of Series A Stock are outstanding, the Corporation shall not declare, pay or set apart for payment any dividends or make any other distribution except in accordance with Section 2(d) below at a time when all preferential dividends under Section 2(a) shall have been paid in full in cash on or redeem any Junior Securities (other than stock dividends and distributions in the nature of a stock split or the like) and will not permit any Subsidiary or other affiliate to redeem, purchase or otherwise acquire for value, or set apart for any sinking or other analogous fund for the redemption or purchase of, any Junior Securities.

(d) The holders of Series A Stock shall be entitled to participate in all dividends (other than stock dividends in the nature of a stock split or the like) in addition to the preferential amounts to which the holders of Series A Stock are entitled in accordance with Section 3 hereof that are declared and paid on Common Stock on the same basis as if all of the Series A Stock had been converted to Common Stock in accordance with Section 6 hereof.

3. Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, either voluntarily or involuntarily, each holder of Series A Stock shall be entitled, after provision for the payment of the Corporation's debts and other liabilities, to be paid in cash, before any distribution is made on any Junior Securities, the Series A Preference Amount of all shares of Series A Stock held by such holder. If, upon any such liquidation, dissolution or other winding up of the affairs of the Corporation, the net assets of the Corporation distributable among the holders of all outstanding Series A Stock shall be insufficient to permit the payment in full to such holders of the Series A Preference Amount, then the entire net assets of the Corporation remaining after the provision for the payment of the Corporation's debts and other liabilities shall be distributed among the holders of the Series A Stock ratably in proportion to the full preferential amounts to which they would otherwise be respectively entitled on account of their Series A Stock. Upon any such liquidation, dissolution or winding up of the Corporation, after the holders of Series A Stock shall have been paid in full the Series A Preference Amount, the remaining net assets of the Corporation shall be distributed ratably among the holders of Series A Stock and Common Stock (with each share of Series A Stock being deemed, for such purpose, to be equal to the number of shares of Common Stock, including fraction of a share, into which such share of Series A Stock is convertible in accordance with the terms of Section 5 hereof, immediately prior to the close of business on the business day fixed for such distribution).

The aggregate amount payable in respect of the Series A Stock under this Section 3(a) is referred to herein as the "Liquidation Amount".

4. Voting.

(a) Rights of Series A Stock. Except as otherwise required by law or as provided herein and subject to the rights of any class or series of capital stock of the Corporation that hereafter may be issued in compliance with the terms of this Certificate of Designation, the shares of the Series A Stock shall vote together with the shares of the Corporation's Common Stock at any annual or special meeting of stockholders of the Corporation, or may act by written consent in the same manner as the Corporation's Common Stock, upon the following basis: each holder of shares of Series A Stock shall be entitled to such number of votes for the Series A Stock held by such holder on the record date fixed for such meeting, or on the effective date of such written consent, as shall be equal to the whole number of shares of the Corporation's Common Stock into which such holder's shares of Series A Stock are convertible (in accordance with the terms of Section 5 hereof), immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

(b) Actions by Less than Unanimous Written Consent. Notwithstanding Section 607.094 of the Florida General Corporation Act, no action that is required by the Florida General Corporation Act to be taken by the holders of Common Stock at any annual or special meeting of stockholders of the Corporation or that may be taken by the holders of Common Stock at any annual or special meeting of stockholder of the Corporation may be taken without a meeting, without prior notice and without a vote unless a consent or consents in writing setting forth the action so taken shall be signed by the holders of the Requisite Percentage of Series A Stock.

5. Special Approval Rights.

(a) Restricted Actions. The affirmative vote of the holders of the Requisite Percentage of Series A Stock, acting by written consent or voting separately as a single class in person or by proxy, at a special or annual meeting of stockholders called for the purpose, shall be necessary to authorize the Corporation to take any of the following actions (herein, each a "Restricted Action"):

(A) authorize, or increase or permit any Subsidiary to authorize or increase, the authorized number of shares of, or issue additional shares of Series A Stock or any class or series of the Corporation's or any Subsidiary's capital stock or options, warrants or other rights to acquire any such capital stock ranking with respect to liquidation preference, dividends or voting rights, senior in right to, or on a parity with, the Series A Stock;

(B) amend, repeal or change, directly or indirectly, any of the provisions of the Articles of Incorporation of the Corporation, as amended, or the By-laws of the Corporation in any manner that would alter or change the powers, preferences or special rights of the shares of Series A Stock;

(C) authorize or effect, or permit any Subsidiary to authorize or effect, the sale, lease, license, abandonment or other disposition of all or any substantial portion of the assets of the Corporation or any Subsidiary;

(D) authorize or effect, or permit any Subsidiary to authorize or effect, the merger or consolidation of the Corporation or any Subsidiary with any other Person;

(E) authorize or effect, or permit any Subsidiary to authorize or effect, the liquidation (whether complete or partial), dissolution or winding up of the Corporation or any Subsidiary;

(F) authorize the Corporation to, or permit any Subsidiary to, incur, create, assume, become or be liable, directly, indirectly or contingently, in any manner with respect to, or permit to exist, any indebtedness or liability for borrowed money, including, without limitation, indebtedness under capital leases or the like, if the aggregate of all such indebtedness and liabilities of the Corporation or any Subsidiary exceeds the principal amount of \$200,000; provided, however, that no term of any such indebtedness shall be modified or amended in any material respect, nor shall payment thereof be extended, without the written consent of the holders of the Requisite Percentage of Series A Stock;

(G) authorize or effect, or permit any Subsidiary to authorize or effect, the acquisition in any manner, directly or indirectly, of a business unit or going concern of any Person by the Corporation or any Subsidiary;

(H) authorize or effect, or permit any Subsidiary to authorize or effect, the initiation of any new business activities by the Corporation or any Subsidiary outside of the natural products related industry;

(I) authorize the Corporation to enter into any transaction, including, without limitation, the purchase, sale or exchange of property or assets or the rendering or accepting of any service with or to any Affiliate of the Corporation, or to amend any agreement between the Corporation and such Affiliates, or waive any substantial right thereof, except in the ordinary course of business and pursuant to the reasonable requirements of its business and upon terms not less favorable to the Corporation than it could obtain in a comparable arm's length transaction with a third party other than such Affiliate;

(J) authorize or effect the declaration or payment of dividends or other distributions upon, or the redemption or repurchase of, any equity securities of the Corporation other than repurchase of Common Stock from departing employees pursuant to the terms of any stock option or ownership plan that has been approved by unanimously by the Board of Directors;

(K) engage any senior management employee, or increase the compensation or benefits of any senior management employee, except on terms approved unanimously by the Board of Directors;

(L) authorize or effect, or permit any Subsidiary to authorize or effect any of the following: (i) the organization of any new or indirect subsidiaries, joint ventures, partnerships or

similar arrangements or the material amendment or modification of any joint venture or partnership agreement to which the Corporation or any Subsidiary is a party; (ii) the Corporation or any subsidiary becoming a general partner of any partnership or serving on a surety with respect to the liabilities of any third party; and (iii) the restructuring of any current Subsidiary of the Corporation;

(M) the adoption or approval of its annual operating plan (the "Budget"), including capital expenditures and other project spending; and

(N) capital expenditures in a fiscal year materially in excess of those contained in the approved Budget for such fiscal year.

(b) Approval. The approval rights of the holders of shares of Series A Stock to authorize the Corporation to take any of the Restricted Actions as provided in this Section 5 may be exercised at any annual meeting of stockholders, at a special meeting of the holders of Series A Stock held for such purpose or by written consent. At each meeting of stockholders at which the holders of shares of Series A Stock shall have the right, voting separately as a single class, to authorize the Corporation to take any Restricted Action as provided in this Section 5, the presence in person or by proxy of the holders of the Requisite Percentage of Series A Stock entitled to vote on the matter shall be necessary and sufficient to constitute a quorum. At any such meeting or at any adjournment thereof, in the absence of a quorum of the holders of shares of Series A Stock, a majority of the holders of such shares present in person or by proxy shall have the power to adjourn the meeting as to the actions to be taken by the holders of shares of Series A Stock from time to time and place to place without notice other than announcement at the meeting until a quorum shall be present.

#### 6. Board of Directors:

(a) Ordinary Board Composition. Subject to the provisions of Section 6(b) so long as there are any shares of Series A Stock issued and outstanding, the Corporation's Board of Directors shall consist of four (4) individuals, unless the holders of the Requisite Percentage of outstanding Series A Stock (voting separately) and the holders of at least 66% of the issued and outstanding Common Stock (voting separately) shall otherwise consent. The holders of Series A Stock, voting separately for such purpose, shall be entitled to elect two (2) directors, and the holders of Common Stock, voting as a separate group for such purpose, shall be entitled to elect two (2) directors. If there are no shares of Series A Stock issued and outstanding, there shall be two (2) directors.

(b) Board Composition Upon Triggering Events. (i) Upon the occurrence and during the existence of a Triggering Event, then at the option of the holders of the Requisite Percentage of the Series A Stock, the holders of the Series A Stock, voting as a single class with each share entitled to one vote, shall be entitled to elect such additional number of directors which, when taken together with the director elected by the holders of Series A Stock pursuant to Section 6(a) shall constitute a supermajority of the Board of Directors. Any such persons so elected directors shall take office effective as of the date specified in a written notice signed by the holders of the

Requisite Percentage of the Series A Stock confirming the exercise of such rights by such holders and setting forth the names of such persons elected to the Board of Directors.

(ii) Notwithstanding any other provision in the Articles of Incorporation or By-laws of the Corporation, the number of persons constituting the Board of Directors shall be increased to the number necessary to include such persons elected by the holders of the Series A Stock.

(iii) Any director elected by the holders of the Series A Stock may be removed only by the vote or written consent of the holders of a majority of the Series A Stock, and any vacancy occurring by reason of such removal or by reason of the death, resignation or inability to serve of any such director, shall be filled by a vote or written consent of the holders of the Requisite Percentage of the Series A Stock. Any director so elected shall serve until his or her successor is duly elected and qualified, or his or her earlier death, resignation or removal by the holders of the Requisite Percentage of the Series A Stock.

(iv) Any director elected by the holders of the Common Stock may be removed only by the vote or written consent of the holders of at least 66% of the Common Stock, and any vacancy occurring by reason of such removal or by reason of the death, resignation or inability to serve of any such director, shall be filled by a vote or written consent of the holders of at least 66% of the Common Stock. Any director so elected shall serve until his or her successor is duly elected and qualified, or his or her earlier death, resignation or removal by the holders of at least 66% of the Common Stock.

(c) Voting Power Upon Triggering Events. Upon the occurrence and during the existence of a Triggering Event, then at the option of the holders of the Requisite Percentage of the then outstanding Series A Stock, the voting rights of each share of outstanding Series A Stock for purposes of the application of the provisions of Section 4(a) shall be adjusted such that the outstanding shares of Series A Stock shall have such number of votes per share as is necessary to cause the outstanding shares of Series A Stock to have 80% of the aggregate voting power of the Series A Stock and the Common Stock.

## 7. Conversion Rights.

### (a) Conversion Procedure.

(i) At any time and from time to time, any holder of Series A Stock shall have the right, at its option, to convert all or any portion of each share of Series A Stock (including any fraction of a share) held by such holder into a number of shares of fully paid and nonassessable Common Stock computed by dividing the Purchase Price by the Conversion Price in effect on the Conversion Date.

Notwithstanding any other provision hereof, if a conversion of Series A Stock is to be made in connection with a Public Offering or a Sale of the Corporation, such conversion may, at the election of any holder tendering Series A Stock for conversion, be conditioned upon the consummation of the Public Offering or Sale of the Corporation, in which case such conversion



shall not be deemed to be effective until the consummation of such Public Offering or Sale of the Corporation.

Notwithstanding any other provision hereof, if a conversion of Series A Stock is to be made in connection with a transaction for the sale or acquisition of securities, the consummation of which requires the termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or the consent of any other applicable governmental agencies or authorities (the "Required Consent(s)"), such conversion may, at the option of any holder tendering Series A Stock for conversion, be conditioned upon the receipt of the Required Consent(s), in which case such conversion shall not be deemed to be effective until the receipt of such Required Consent(s).

(ii) Subject to the provisions of Section 7(a)(i) Each conversion of Series A Stock shall be deemed to have been effected as of the close of business on the effective date of such conversion specified in a written notice (the "Conversion Date"); provided, however, that the Conversion Date shall not be a date earlier than the date such notice is so given, and if such notice does not specify a conversion date, the Conversion Date shall be deemed to be the date such notice is given to the Corporation. On the Conversion Date, the rights of the holder of such Series A Stock as such holder (including the right to receive dividends) shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(iii) As soon as practicable after the Conversion Date (but in any event within ten (10) business days after the holder has delivered the certificates or affidavits of loss in the case of subparagraph (x) below) evidencing the shares of Series A Stock converted into shares of Common Stock in accordance herewith, the Corporation shall deliver to the converting holder:

(x) a certificate or certificates representing, in the aggregate, the number of shares of Common Stock issued upon such conversion, in the same name or names as the certificates representing the converted shares and in such denomination or denominations as the converting holder shall specify and a check for cash with respect to any fractional interest in a share of Common Stock as provided in clause (ix) of this Section 5(a); and

(y) a certificate representing any shares that were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but that were not converted.

(iv) The issuance of certificates for shares of Common Stock upon conversion of Series A Stock shall be made without charge to the holders of such Series A Stock for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Common Stock. Upon conversion of any shares of Series A Stock, the Corporation shall take all such actions as are necessary in order to insure that the Common Stock so issued upon such conversion shall be validly issued, fully paid and nonassessable.

(v) The Corporation shall not close its books against the transfer of Series A Stock or of Common Stock issued or issuable upon conversion of Series A Stock in any manner that interferes with the timely conversion of Series A Stock. The Corporation shall assist and cooperate with any holder of shares of Series A Stock required to make any governmental filings or obtain any governmental approval prior to or in connection with any conversion of shares of Series A Stock hereunder (including, without limitation, making any filings required to be made by the Corporation).

(vi) 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 issuance upon the conversion of the Series A Stock, such number of shares of Common Stock as are issuable upon the conversion of all outstanding Series A Stock. All shares of Common Stock that are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges. The Corporation shall take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance).

(vii) No fractional shares of Common Stock or script shall be issued upon conversion of shares of the Series A Stock. If more than one share of Series A Stock shall be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series A Stock so surrendered. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of any shares of Series A Stock, the Corporation shall pay a cash adjustment in respect of such fractional interest equal to the fair market value of such fractional interest as determined by the Corporation's Board of Directors.

(b) Conversion Price. The initial conversion price shall be the Purchase Price, which may be adjusted from time to time hereafter pursuant to this Section 7 (as so adjusted, the "Conversion Price"). If and whenever on or after the original date of issuance of the Series A Stock the Corporation issues or sells, or in accordance with Section 7(c) is deemed to have issued or sold, any shares of its Common Stock or Convertible Securities for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then upon such issue or sale, the Conversion Price shall be reduced to an amount equal to the consideration per share applicable to the Common Stock or Convertible Securities so issued or sold or deemed issued or sold in accordance with Section 7(c).

(c) Effect on Conversion Price of Certain Events. For purposes of determining the adjusted Conversion Price under Section 7, the following shall be applicable:

(i) Issuance of Convertible Securities. If the Corporation in any manner issues or sells any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange is less than the Conversion Price in effect immediately

prior to the time of such issue or sale, then the maximum number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (a) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the cumulative minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise, conversion or exchange thereof and, if applicable, the exercise, conversion and exchange of any other Convertible Securities that such Convertible Securities may be converted into or exchanged for, by (b) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. No further adjustment of the Conversion Price shall be made when Common Stock and, if applicable, any other Convertible Securities, are actually issued upon the exercise, conversion or exchange of such Convertible Securities.

(ii) Change in Exercise, Price or Conversion Rate. If the additional consideration payable to the Corporation upon the exercise, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock change at any time, the Conversion Price in effect at the time of such change shall be readjusted to the Conversion Price that would have been in effect at such time had such Convertible Securities that are still outstanding provided for such changed additional consideration or changed conversion rate, as the case may be, at the time such Convertible Securities were initially granted, issued or sold; but only if as a result of such adjustment the Conversion Price then in effect hereunder is thereby reduced; and on the termination date of any right to exercise, convert or exchange such Convertible Securities without, the Conversion Price then in effect hereunder shall be increased to the Conversion Price that would have been in effect at the time of such termination had such Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

(d) Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately reduced, and conversely, in the event the outstanding shares of Commons Stock shall be combined (by reverse stock split or otherwise) into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased.

(e) Certain Events. If an event not specified in this Section 7 occurs that has substantially the same economic effect on the Series A Stock as those specifically enumerated, then this Section 7 shall be construed liberally, mutatis mutandis, in order to give the Series A Stock the intended benefit of the protections provided under this Section 7. In such event, the Corporation's Board of Directors shall make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of Series A Stock; provided that no such adjustment shall increase the Conversion Price as otherwise determined pursuant to this Section 7 or decrease the number of shares of Common Stock issuable upon conversion of each share of Series A Stock.

(f) Notices.

(i) Immediately upon any adjustment of the Conversion Price, the Corporation shall give written notice thereof to all holders of Series A Stock, setting forth in reasonable detail and certifying the calculation of such adjustment.

(ii) The Corporation shall give written notice to all holders of Series A Stock at least twenty (20) days prior to the date on which the Corporation closes its books or takes a record (a) with respect to any dividend or distribution upon Common Stock, (b) with respect to any pro rata subscription offer to holders of Common Stock or (c) for determining rights to vote with respect to any dissolution or liquidation.

8. Redemption.

(a) The Series A Stock may be redeemed (in whole or in part) at the option of the holders of the Requisite Percentage of Series A Stock on or after the earlier to occur of (i) June 30, 2003; (ii) the Sale of the Corporation or (iii) a Triggering Event (each an "Optional Redemption"). In any such case, the holders of the Requisite Percentage of Series A Stock shall notify the Corporation in writing of its or their intent to exercise the rights afforded by this Section 8(a) and specify a date not less than ten (10) nor more than sixty (60) days from the date of such notice on which the Series A Stock shall be redeemed (the "Optional Redemption Date"), subject to the receipt of the Required Consent(s). Upon receipt of such notice, the Corporation shall promptly notify the remaining holders of the Series A Stock of the Optional Redemption Date. The recipients of such notice shall be required to participate in the Optional Redemption. The remaining holders have the right to participate in such redemption if they so elect by giving the Corporation written notice to such effect within 15 days of having received such notice. The Corporation shall redeem on the Optional Redemption Date all shares of Series A Stock being redeemed in cash by wire transfer of immediately available funds in the Series A Preference Amount of such shares.

(b) If the funds of the Corporation legally available for redemption of shares of Series A Stock on an Optional Redemption Date are insufficient to redeem the total number of outstanding shares of Series A Stock entitled to redemption, the holders of shares of Series A Stock entitled to redemption 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 owned by them if all such outstanding shares were redeemed in full. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series A Stock, such funds will be used at the earliest permissible time, to redeem the balance of such shares, or such portion thereof for which funds are then legally available. The Corporation shall be obligated to use its best efforts to take such actions as may be necessary (including, without limitation, the issuance of additional equity securities, the revaluation or recapitalization of the Corporation or the consummation of a merger or sale of assets) in order to permit the full and timely redemption of the shares of Series A Stock entitled to redemption.

(c) If, for any reason, the Corporation fails to redeem all shares of Series A Stock entitled to redemption on an Optional Redemption Date (i) the unredeemed shares shall remain outstanding and shall continue to have all rights and preferences (including, without limitation, dividend and voting rights) provided for herein, (ii) interest shall accrue and be payable on demand on the amount owing and unpaid on the Optional Redemption Date until paid in full at a rate of 10% per annum, compounded annually, or such lower rate as equals the maximum rate permitted by law and (iii) the holders of such unredeemed shares shall have the ongoing right to be redeemed together with such rights and remedies as may be available under applicable law.

(d) The notices provided for in this Section 8 shall be sent, if by or on behalf of the Corporation, to the holders of the Series A Stock at their respective addresses as shall then appear on the records of the Corporation, or if by any holder of Series A Stock to the Corporation at its principal executive office as set forth in the Purchase Agreement, by first class mail, postage prepaid, (i) notifying such recipient of the redemption, the date of such redemption, the number of shares of Series A Stock to be redeemed, and the redemption price therefor and (ii) in the case of any notice by or on behalf of the Corporation, stating the place or places at which the shares called for redemption shall, upon presentation and surrender of such certificates representing such shares, be redeemed.

9. Status of Reacquired Shares. Any shares of Series A Stock redeemed pursuant to this Section 9 or otherwise acquired by the Corporation in any manner whatsoever shall be canceled and shall not under any circumstances be reissued; and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Series A Stock.

10. Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series A Stock shall not have any preferences or relative, participating, optional or other special rights, other than those specifically set forth in this Certificate of Designation.

11. Rank. The Series A Stock shall rank senior in right as to dividends and upon liquidation, dissolution or winding up to all Junior Securities, whenever issued.

12. Identical Rights. Each share of the Series A Stock shall have the same relative rights and preferences as, and shall be identical in all respects with, all other shares of the Series A Stock.

13. Certificates. So long as any shares of the Series A Stock are outstanding, there shall be set forth on the face or back of each stock certificate issued by the Corporation a statement that the Corporation shall furnish without charge to each shareholder who so requests, a full statement of the designation and relative rights, preferences and limitations of each class of stock or series thereof that the Corporation is authorized to issue and of the authority of the Board of Directors to designate and fix the relative rights, preferences and limitations of each series.

14. Amendments. Any provision of these terms of the Series A Stock may be amended, modified or waived if and only if the holder of the Requisite Percentage of Series A Stock has

consented in writing or by an affirmative vote to such amendment, modification or waiver of any such provision of this Certificate of Designation.

15. Definitions.

"Affiliate or Affiliates" shall mean with respect to any Person, any other Person that would be considered to be an affiliate of the Corporation under Rule 144(a) of the Rules of Regulations of the Securities and Exchange Commission, as in effect on the date hereof, if the Corporation were issuing securities.

"Articles of Incorporation" shall mean the Articles of Incorporation of the Company, as amended from time to time.

"Certificate of Designation" shall mean this Certificate of Designations of the Series A Stock.

"Common Stock" means the Corporation's Common Stock, \$.01 par value per share.

"Common Stock Deemed Outstanding" shall mean, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock issuable upon conversion of the Series A Stock, plus the number of shares of Common Stock issuable upon the exercise in full of all Options and Convertible Securities whether or not the Options or Convertible Securities are convertible into Common Stock at such time.

"Conversion Price" shall have the meaning set forth in Section 7(b) hereof.

"Convertible Securities" shall mean securities or obligations that are exercisable for, convertible into or exchangeable for shares of Common Stock. The term includes options, warrants or other rights to subscribe for or purchase Common Stock or to subscribe for or purchase other securities that are convertible into or exchanged for Common Stock.

"Dividend Date" shall have the meaning set forth in Section 2(a) hereof.

"Dividend Rate" shall mean the rate of 10% per annum.

"Junior Securities" shall mean any of the Corporation's Common Stock and all other equity securities of the Corporation other than the Series A Stock and any other shares of the Corporation's preferred stock (a) which by their terms, state that they are not Junior Securities or provide the holders thereof with rights pari passu with or senior to those of the holders of Series A Stock and, (b) are approved for issuance in accordance with Section 5(b) hereof.

"Person" shall mean an individual, partnership, corporation, association, trust, joint venture, unincorporated organization and any government, governmental department or agency or political subdivision thereof.

"Preferred Stock" shall mean the Series A Stock

"Public Offering" shall mean any underwritten offering by the Corporation of its equity securities to the public pursuant to an effective registration statement under the Securities Act of 1933 or any comparable statement under any similar federal statute then in force yielding the Corporation net proceeds of at least \$20,000,000, other than an offering of shares being issued as consideration in a business acquisition or combination or an offering in connection with an employee benefit plan.

"Purchase Price" of any share of Series A Stock shall be [\$2.375].

"Required Consent" shall have the meaning set forth in Section 5.

"Restricted Action" shall have the meaning set forth in Section 5.

"Requisite Percentage" shall mean 75%, except that, with respect to any amendment to this Certificate of Designation that reduces the Series A Preference Amount, reduces the dividend rate provided in Section 2(a), extends the date set forth in Section 8(a)(i), amends the provisions of Section 14 or amends this definition, Requisite Percentage means 100%.

"Sale of the Corporation" shall mean a single transaction or a series of transactions pursuant to which a Person or Persons acquire (i) capital stock of the Corporation possessing the voting power to elect a majority of the Corporation's board of directors (whether by merger, consolidation or sale or transfer of the Corporation's capital stock, provided, however, that a Public Offering that results in an acquisition of voting power shall not be a Sale of the Corporation); or (ii) all or substantially all of the Corporation's assets determined on a consolidated basis.

"Series A Preference Amount" shall have the meaning set forth in Section 2.

"Series A Stock" means the Series A 10% Cumulative Convertible Preferred Stock, \$.01 par value per share, of the Company.

"Stockholders' Agreement" shall mean that certain Stockholders' Agreement dated as of June \_\_, 1998 among the Corporation's shareholders and the Corporation, as it may be amended from time to time.

"Subsidiary" shall mean, with respect to any Person, any corporation, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a partnership, association or other business entity if such Person or Persons shall be allocated a

majority of partnership, association or other business entity gains or losses or shall be or control the managing general partner of such partnership, association or other business entity.

"Triggering Event" shall mean any one or more of the following events:


- (i) The Corporation fails for any reason to redeem the Series A Stock as and when required pursuant to the terms of Section 8 hereof;
- (ii) The Corporation takes any Restricted Action without the affirmative vote or approval of the holders of the Requisite Percentage of the Series A Stock; and
- (iii) Any breach of the provisions of this Certificate of Designation or the Stockholders' Agreement.

14. Severability of Provisions. If any right, preference or limitation of the Series A Stock set forth in this Resolution (as such Resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule, law or public policy, all other rights preferences and limitations set forth in this Resolution (as so amended) which can be given effect without implicating the invalid, unlawful or unenforceable right preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other right, preference or limitation unless so expressed herein.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by its President, and attested to by its Secretary, on June 17, 1998.

By   
Name: Marc Ketchel  
Title: President

Attest:

  
Name: Marc Ketchel  
Title: Secretary