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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): January 9, 2015 (January 5, 2015)**

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**HC2 HOLDINGS, INC.**  
(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-35210**  
(Commission  
File Number)

**54-1708481**  
(IRS. Employer  
Identification No.)

**460 Herndon Parkway, Suite 150  
Herndon, VA 20170**  
(Address of principal executive offices) (Zip Code)

**Registrant's telephone number, including area code: (703) 456-4100**

**Not Applicable**  
(Former name or former address, if changed since last report.)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Item 1.01. Entry into a Material Definitive Agreement.**

### *Securities Purchase Agreement*

On January 5, 2015, HC2 Holdings, Inc. (the “Company”) entered into a Securities Purchase Agreement (the “Securities Purchase Agreement”) with certain investors (collectively, the “Purchasers”), pursuant to which the Company agreed to sell an aggregate of 14,000 shares of Series A-2 Convertible Participating Preferred Stock of the Company (the “Series A-2 Preferred Stock”) to the Purchasers at a purchase price of \$1,000 per share, resulting in aggregate gross proceeds to the Company of \$14 million (the “Private Placement”). All conditions to closing that by their terms were to be satisfied prior to funding were satisfied and the funding of the transaction occurred on January 5, 2015. Pursuant to the Securities Purchase Agreement, the Company made certain customary representations and warranties concerning the Company and its subsidiaries and agreed to certain covenants for the benefit of the Purchasers. The net proceeds will be used for general corporate purposes.

Each share of Series A-2 Preferred Stock is initially convertible at a conversion price of \$8.25 (as it may be adjusted from time to time, the “Conversion Price”), which is subject to adjustment for dividends, certain distributions, stock splits, combinations, reclassifications, reorganizations, mergers, recapitalizations and similar events, as well as in connection with issuances of equity or equity-linked or other comparable securities by the Company at a price per share (or with a conversion or exercise price or effective issue price) that is below the Conversion Price (which adjustment shall be made on a weighted average basis). The \$8.25 initial Conversion Price represents an approximately 6% premium to the Company’s common stock’s (the “Common Stock”) thirty-day volume weighted average price (“VWAP”).

Subject to each Purchaser meeting (together with its affiliates) certain ownership thresholds and certain exceptions, the Securities Purchase Agreement provides that (i) each Purchaser will be entitled to participate, on a pro rata basis in accordance with its ownership percentage, in certain issuances of equity securities by the Company and (ii) the Purchasers will be entitled to purchase in the aggregate up to 8% of issuances of non-convertible and non-voting preferred equity securities of the Company.

Certain affiliated Purchasers will have the right to, for so long as such Purchasers together hold a certain amount of the Preferred Stock (or Common Stock issued upon conversion of such Preferred Stock) initially purchased, appoint one observer to attend all meetings of the board of directors, any committee of the board of directors, and the board of directors of any wholly owned subsidiary of the Company and any committee thereof.

This description of the Securities Purchase Agreement is qualified in its entirety by reference to the Securities Purchase Agreement, a copy of which is attached to this Current Report on Form 8-K as Exhibit 10.1 and is incorporated herein by reference.

The Securities Purchase Agreement contains a number of representations and warranties that the Company and the Purchasers have made to each other. The assertions embodied in those representations and warranties are qualified by information in confidential disclosure schedules

that the Company and the Purchasers have exchanged in connection with signing the Securities Purchase Agreement. These disclosure schedules contain information that has been included in the general prior public disclosures of the Company, as well as additional non-public information. While we do not believe that this non-public information is required to be publicly disclosed by the Company under the applicable securities laws, that information does modify, qualify and create exceptions to the representations and warranties set forth in the Securities Purchase Agreement. In addition, these representations and warranties were made as January 5, 2015 or such earlier date as indicated in the Securities Purchase Agreement. Information concerning the subject matter of the representations and warranties may have changed since January 5, 2015 or such earlier date, which subsequent information may or may not be fully reflected in the public disclosures of the Company. Moreover, representations and warranties are frequently utilized in Securities Purchase Agreements as a means of allocating risks, both known and unknown, rather than to make affirmative factual claims or statements. Accordingly, persons not party to the Securities Purchase Agreement should not rely on it for any current characterization of factual information about the Company or the Purchasers.

#### *Series A-2 Preferred Stock*

The following summary of the terms of the Series A-2 Preferred Stock is qualified in its entirety by reference to the Certificate of Designation of Series A-2 Convertible Participating Preferred Stock of HC2 Holdings, Inc., adopted on January 5, 2015 (the "Certificate of Designation"), a copy of which is attached to this Current Report on Form 8-K as Exhibit 4.1 and is incorporated herein by reference.

**Dividends.** The Series A-2 Preferred Stock will accrue a cumulative quarterly cash dividend at an annualized rate of 7.50%. The accrued value of the Series A-2 Preferred Stock will accrete quarterly at an annualized rate of 4.00% that will be reduced to 2.00% or 0.00% if the Company achieves specified rates of growth measured by increases in its net asset value; *provided*, that the accreting dividend rate will be 7.25% in the event that (A) the daily VWAP of the Common Stock is less than a certain threshold amount, (B) the Common Stock is not registered under Section 12(b) of the Securities Exchange Act of 1934, as amended, (C) following May 29, 2015, the Common Stock is not listed on certain national securities exchanges or the Company is delinquent in the payment of any cash dividends. The Series A-2 Preferred Stock is also entitled to participate in cash and in-kind distributions to holders of shares of Common Stock on an as-converted basis.

**Optional Conversion.** Each share of Series A-2 Preferred Stock may be converted by the holder into Common Stock at any time based on the then-applicable Conversion Price.

**Redemption by the Holders / Automatic Conversion.** On May 29, 2021, holders of the Series A-2 Preferred Stock shall be entitled to cause the Company to redeem the Series A-2 Preferred Stock at the accrued value per share plus accrued but unpaid dividends (to the extent not included in the accrued value of Series A-2 Preferred Stock). Each share of Series A-2 Preferred Stock that is not so redeemed will be automatically converted into shares of Common Stock at the Conversion Price then in effect.

Upon a change of control (as defined in the Certificate of Designation) holders of the Series A-2 Preferred Stock shall be entitled to cause the Company to redeem their Series A-2 Preferred Stock at a price per share of Series A-2 Preferred Stock equal to the greater of (i) the accrued value of the Series A-2 Preferred Stock, which amount would be multiplied by 150% in the event of a change of control occurring on or prior to May 29, 2017, plus any accrued and unpaid dividends (to the extent not included in the accrued value of Series A-2 Preferred Stock), and (ii) the value that would be received if the share of Series A-2 Preferred Stock were converted into Common Stock immediately prior to the change of control.

**Redemption by the Company.** At any time after May 29, 2017, the Company may redeem the Series A-2 Preferred Stock, in whole but not in part, at a price per share generally equal to 150% of the accrued value per share, plus accrued but unpaid dividends (to the extent not included in the accrued value of Series A-2 Preferred Stock), subject to the holder's right to convert prior to such redemption.

**Forced Conversion.** After May 29, 2017, the Company may force conversion of the Series A-2 Preferred Stock into Common Stock if the Common Stock's thirty-day VWAP exceeds 150% of the then-applicable Conversion Price and the Common Stock's daily VWAP exceeds 150% of the then-applicable Conversion Price for at least twenty trading days out of the thirty trading day period used to calculate the thirty-day VWAP. In the event of a forced conversion, the holders of Series A-2 Preferred Stock will have the ability to elect cash settlement in lieu of conversion if certain market liquidity thresholds for the Common Stock are not achieved.

**Liquidation Preference.** In the event of any liquidation, dissolution or winding up of the Company (any such event, a "Liquidation Event"), the holders of Series A-2 Preferred Stock will be entitled to receive per share the greater of (i) the accrued value of the Series A-2 Preferred Stock, which amount would be multiplied by 150% in the event of a Liquidation Event occurring on or prior to May 29, 2017, plus any accrued and unpaid dividends (to the extent not included in the accrued value of Series A-2 Preferred Stock), and (ii) the value that would be received if the share of Series A-2 Preferred Stock were converted into Common Stock immediately prior to such occurrence. The Series A-2 Preferred Stock will rank junior to any existing or future indebtedness but senior to the Common Stock and any future equity securities other than any future senior or *pari passu* preferred stock issued in compliance with the Certificate of Designation. The Company's outstanding Series A Convertible Participating Preferred Stock issued on May 29, 2014 ("Series A Preferred Stock") and the Company's outstanding Series A-1 Convertible Participating Preferred Stock issued on September 22, 2014 ("Series A-1 Preferred Stock", and together with the Series A Preferred Stock and the Series A-2 Preferred Stock, the "Preferred Stock") ranks at parity with the Series A-2 Preferred Stock.

**Voting Rights.** Except as required by applicable law, the holders of the shares of the Series A-2 Preferred Stock will be entitled to vote (i) on an as-converted basis with the holders of the Series A Preferred Stock and Series A-1 Preferred Stock (each on an as-converted basis) and holders of the Company's Common Stock on all matters submitted to a vote of the holders of Common Stock, (ii) with the holders of Series A Preferred Stock and Series A-1 Preferred Stock on certain matters and (iii) separately as a class on certain limited matters.

**Consent Rights.** For so long as any of the Series A-2 Preferred Stock is outstanding, consent of the holders of shares representing at least 75% of the Series A-2 Preferred Stock then outstanding is required for certain material actions.

## *Second Amended and Restated Registration Rights Agreement*

The holders of the Series A Preferred Stock, the Series A-1 Preferred Stock and the Series A-2 Preferred Stock will have certain registration rights with respect to the Common Stock underlying the Series A Preferred Stock, the Series A-1 Preferred Stock and the Series A-2 Preferred Stock pursuant to a Second Amended and Restated Registration Rights Agreement, dated as of January 5, 2015, by and among the Company, the initial holders of the Series A Preferred Stock, the initial holders of the Series A-1 Preferred Stock and the Purchasers (the “Registration Rights Agreement”).

Pursuant to the Registration Rights Agreement, the Company is obligated to, at any time upon request from a holder of registrable securities after January 5, 2015, file a registration statement on Form S-1 under the Securities Act within thirty days after the date of such request for the benefit of the holders of the registrable securities. Alternatively, the Company has also agreed to, within thirty days after receiving a request from a holder of registrable securities (provided, that the Company is, at the time of receipt of such request, eligible to use a registration statement on Form S-3 under the Securities Act for secondary offerings of the registrable securities) use reasonable best efforts to cause such a registration statement to be filed and to maintain the effectiveness of such shelf registration statement for the benefit of the holders of the registrable securities. In the event of a registered offering by the Company of its Common Stock, holders of the registrable securities have the right to require the Company to include registrable securities held by them in such offering, subject to certain limitations, including as determined by any underwriters for the transaction. Subject to certain limitations, the Company will bear the expenses incurred in connection with registrations under the Registration Rights Agreement and will indemnify the holders of registrable securities and any underwriters against certain liabilities, including liabilities under the Securities Act.

The Registration Rights Agreement amends and restates, in its entirety, the Amended and Restated Registration Rights Agreement entered into between the Company, the initial purchasers of the Series A Preferred Stock and the initial Purchasers of the Series A-1 Preferred Stock on September 22, 2014.

This summary of the Registration Rights Agreement is qualified in its entirety by reference to the Registration Rights Agreement, a copy of which is attached to this Current Report on Form 8-K as Exhibit 10.2 and is incorporated herein by reference.

### *Series A Preferred Stock*

On January 5, 2015, the Company amended the Certificate of Designation of Series A Convertible Participating Preferred Stock originally adopted on May 29, 2014 and amended on September 22, 2014 (the “Revised Series A Certificate”). The Revised Series A Certificate reflects the issuance of the Series A-2 Preferred Stock as a class of preferred stock which ranks at parity with the Series A Preferred Stock.

This summary of the terms of the Revised Series A Certificate is qualified in its entirety by reference to the Certificate of Amendment to the Certificate of Designation of Series A Convertible Participating Preferred Stock of HC2 Holdings, Inc., adopted on January 5, 2015, a copy of which is attached to this Current Report on Form 8-K as Exhibit 4.2 and is incorporated herein by reference.

#### *Series A-1 Preferred Stock*

On January 5, 2015, the Company amended the Certificate of Designation of Series A-1 Convertible Participating Preferred Stock originally adopted on September 22, 2014 (the "Revised Series A-1 Certificate"). The Revised Series A-1 Certificate reflects the issuance of the Series A-2 Preferred Stock as a class of preferred stock which ranks at parity with the Series A-1 Preferred Stock.

This summary of the terms of the Revised Series A-1 Certificate is qualified in its entirety by reference to the Certificate of Amendment to the Certificate of Designation of Series A-1 Convertible Participating Preferred Stock of HC2 Holdings, Inc., adopted on January 5, 2015, a copy of which is attached to this Current Report on Form 8-K as Exhibit 4.3 and is incorporated herein by reference.

#### **Item 1.02. Termination of a Material Definitive Agreement.**

The Registration Rights Agreement amends and restates, in its entirety, the Amended and Restated Registration Rights Agreement entered into between the Company, the initial purchasers of the Series A Preferred Stock and the initial Purchasers of the Series A-1 Preferred Stock on September 22, 2014.

#### **Item 3.02. Unregistered Sales of Equity Securities.**

##### *Preferred Stock Issuance*

The Series A-2 Preferred Stock described in Item 1.01 of this Current Report on Form 8-K is being issued and sold in the Private Placement without registration under the Securities Act, in reliance upon an exemption from the registration requirements of the Securities Act under Section 4(a)(2) of the Securities Act. The Company is basing such reliance upon representations made by each Purchaser, including, but not limited to, representations as to the Purchaser's status as an "accredited investor" and the Purchaser's investment intent. The Series A-2 Preferred Stock is not being offered or sold by any form of general solicitation or general advertising. The Series A-2 Preferred Stock may not be re-offered or sold in the United States absent an effective registration statement or an exemption from the registration requirements under applicable federal and state securities laws. The information in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

##### *Anti-Dilution Adjustment Option Issuance*

The information in Item 5.02 of this Current Report on Form 8-K is incorporated herein by reference.

**Item 3.03. Material Modification to Rights of Security holders.**

The filing of the Certificate of Designation, the Revised Series A Certificate and the Revised Series A-1 Certificate and the issuance of the Series A-2 Preferred Stock affect the holders of the Common Stock and the Series A Preferred Stock, Series A-1 Preferred Stock and Series A-3 Preferred Stock to the extent provided in the Certificate of Designation, the Revised Series A Certificate and the Revised Series A-1 Certificate. The information in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

(e)

*Anti-Dilution Adjustment Option Issuance*

The Company filed a Form 8-K filed with the Securities and Exchange Commission on May 23, 2014 that disclosed, among other things, the grant of an option (the "Option") to Philip Falcone, the President and Chief Executive Officer of the Company, to purchase 1,568,864 shares of Common Stock, at an exercise price of \$4.56 per share. The number of shares for which the Option is exercisable and the exercise price of the Option are subject to adjustment for certain events, with the effect that at all times the Option as so adjusted will enable Mr. Falcone to purchase the same percentage ownership interest in the Company that the Option represented on its grant date. The Option contemplated that the anti-dilution adjustments would be in the form of additional options to be granted as of the date of the event requiring adjustment.

On October 26, 2014, the Company and Mr. Falcone reformed and clarified the Option (the "Option Clarification") to clarify the operation of the anti-dilution provisions of the Option upon the issuance of rights, warrants, options, exchangeable securities or convertible securities entitling the holder thereof to subscribe for, purchase or otherwise acquire shares of the Company's capital stock (each referred to as "Rights") in light of the Company issuances discussed below. Specifically, pursuant to the terms of the Option Clarification, additional options granted to Mr. Falcone pursuant to the anti-dilution provisions upon the issuance of Rights (i) would have an exercise price equal to the greater of the fair market value of the Common Stock on the trading day immediately preceding the date of grant of the option or the price payable or deemed payable in respect of the applicable Common Stock upon the exercise or conversion of the Rights and (ii) would be exercisable as and to the extent the Rights are exercised or converted.

The Company's issuance of the Series A-2 Preferred Stock required the issuance of additional options pursuant to the anti-dilution provisions of the Option. On January 7, 2015, the Company issued an option to purchase 169,697 shares of Common Stock at an exercise price of \$8.25 per share ("Additional Options"). The Additional Options vest in three equal installments on the date of issuance and on each of the first and second anniversaries of the date of issuance, subject to Mr. Falcone's continued employment with the Company on each vesting date, and with accelerated vesting upon the occurrence of specified events. The Additional Options are exercisable as and to the extent that the Series A-2 Preferred Stock is converted into Common Stock. The Additional Options expire on May 20, 2024.

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**Item 5.03. Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

To create the Series A-2 Preferred Stock issuable under the Securities Purchase Agreement, the Company amended its amended and restated certificate of incorporation by filing the Certificate of Designation, the Revised Series A Certificate and the Revised Series A-1 Certificate on January 5, 2015, which are attached as Exhibits 4.1, Exhibit 4.2 and 4.3, respectively, hereto and incorporated herein by reference. The information in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.****(d) Exhibits**

- 4.1 Certificate of Designation of Series A-2 Convertible Participating Preferred Stock of HC2 Holdings, Inc.
- 4.2 Certificate of Amendment to the Certificate of Designation of Series A Convertible Participating Preferred Stock of HC2 Holdings, Inc.
- 4.3 Certificate of Amendment to the Certificate of Designation of Series A-1 Convertible Participating Preferred Stock of HC2 Holdings, Inc.
- 10.1 Securities Purchase Agreement, dated as of January 5, 2015, by and among HC2 Holdings, Inc. and the Purchasers.
- 10.2 Second Amended and Restated Registration Rights Agreement, dated as of January 5, 2015, by and among HC2 Holdings, Inc., the initial purchasers of the Series A Preferred Stock, the initial Purchasers of the Series A-1 Preferred Stock and the Purchasers.
- 99.1 Press Release of the Company, dated January 9, 2015



**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

HC2 Holdings, Inc.  
(Registrant)

Date: January 9, 2015

By: /s/ Andrea L. Mancuso  
Name: Andrea L. Mancuso  
Title: Acting General Counsel & Corporate Secretary

**CERTIFICATE OF DESIGNATION  
OF  
SERIES A-2 CONVERTIBLE PARTICIPATING PREFERRED STOCK  
OF  
HC2 HOLDINGS, INC.**

The undersigned, Keith M. Hladek, the Chief Operating Officer of HC2 Holdings, Inc. (including any successor in interest, the "Company"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), does hereby certify, in accordance with Sections 103 and 151 of the DGCL, that the following resolutions were duly adopted by its Board of Directors (the "Board") on January 5, 2015:

WHEREAS, the Company's Second Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"), authorizes 20,000,000 shares of preferred stock, par value \$0.001 per share (the "Preferred Stock"), issuable from time to time in one or more series;

WHEREAS, the Certificate of Incorporation authorizes the Board to provide by resolution for the issuance of the shares of Preferred Stock in one or more series, the number of shares in each series, the voting powers, if any, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof;

WHEREAS, the Board desires, pursuant to its authority as aforesaid, to designate a new series of Preferred Stock, set the number of shares constituting such series, and the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby designates a new series of Preferred Stock, consisting of the number of shares set forth herein, with the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions relating to such series as follows:

SECTION 1. Number; Designation; Rank.

(a) This series of convertible participating preferred stock is designated as the "Series A-2 Convertible Participating Preferred Stock" (the "Series A-2 Preferred Stock"). The number of shares constituting the Series A-2 Preferred Stock is 14,000 shares, par value \$0.001 per share.

(b) The Series A-2 Preferred Stock ranks, with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise:

(i) senior in preference and priority to the Common Stock and each other class or series of Capital Stock of the Company, except for (x) any class or series of Capital Stock hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior to or on parity, without preference or priority, with the Series A-2 Preferred Stock with respect to the payment of dividends, redemption payments, rights

(including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively with the Common Stock, the “Junior Securities”), (y) the shares of Series A Preferred Stock and (z) the shares of Series A-1 Preferred Stock;

(ii) on parity, without preference and priority, with the Series A Preferred Stock, the Series A-1 Preferred Stock and each other class or series of Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank on parity, without preference or priority, with the Series A-2 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively, the “Parity Securities”); and

(iii) junior in preference and priority to each other class or series of Preferred Stock or any other Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior in preference or priority to the Series A-2 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise (collectively, “Senior Securities”).

## SECTION 2. Dividends.

(a) Cash Dividends. Holders shall be entitled to receive, out of funds legally available for the payment of dividends to the Company’s stockholders under Delaware law, on each Preferred Share, cumulative cash dividends which accrue daily at a per annum rate of 7.50% on the Accrued Value of such Preferred Share (“Cash Dividends”). Such Cash Dividends shall begin to accrue and be cumulative from the Issue Date. Cash Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period. If and to the extent that the Company does not for any reason (including because there are insufficient funds legally available for the payment of dividends) pay the entire Cash Dividend payable for a particular Dividend Period in cash on the applicable Dividend Payment Date for such period (whether or not there are funds of the Company legally available for the payment of dividends to the Company’s stockholders under Delaware law or such dividends are declared by the Board), during the period in which such Cash Dividend remains unpaid, an additional accreting dividend (the “Cash Accretion Dividends”) shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Cash Dividend through the daily addition of such Cash Accretion Dividends to the Accrued Value (whether or not such Cash Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company’s stockholders under Delaware law).

(b) Accreting Dividends. In addition to the Cash Dividend, for each Dividend Period beginning on or after the Issue Date, the Holders shall be entitled to receive on each Preferred Share additional dividends at the per annum rates set forth in this SECTION 2(b) (the “Basic Accreting Dividends”) and, together with the Cash Accretion Dividends, the Participating Accretion Dividends and the In-Kind Participating Dividends, the “Accreting Dividends”; the Accreting Dividends, together with the Cash Dividend and

the Participating Dividends, the "Dividends"). Basic Accreting Dividends shall accrue and be cumulative from the Issue Date. Basic Accreting Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period by the addition of such amount to the Accrued Value, whether or not declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law. Such Basic Accreting Dividend for any Dividend Period shall be at a per annum rate (the "Accreting Dividend Rate") determined as follows:

(i) If Net Asset Value as of the last day of any Dividend Period is less than 120% of Original Issue Date NAV, a per annum rate of 4.00% of the Accrued Value for the next succeeding Dividend Period;

(ii) If Net Asset Value as of the last day of any Dividend Period is equal to or greater than 120% and less than or equal to 140% of Original Issue Date NAV, a per annum rate of 2.00% of the Accrued Value for the next succeeding Dividend Period; and

(iii) If Net Asset Value as of the last day of any Dividend Period is greater than 140% of Original Issue Date NAV, no additional per annum rate for the next succeeding Dividend Period;

*provided, however*, that notwithstanding anything to the contrary contained herein, the Accreting Dividend Rate shall be 7.25% of the Accrued Value during any portion of any Dividend Period during which any of the following is true: (w) the Daily VWAP for the immediately preceding trading day was less than \$1.00 (as adjusted for stock splits, stock dividends, stock combinations and similar events), (x) the Common Stock is not registered under Section 12(b) of the Exchange Act, (y) the Common Stock is not listed on an Exchange or (z) the Company is delinquent in the payment of any Cash Dividends; *provided*, that the Company's failure to comply with requirements (y) and (z) above will not trigger the increased Accreting Dividend Rate during the first year after the Original Issue Date.

(c) Participating Cash Dividends. If the Company declares, makes or pays any cash dividend or distribution in respect of the Common Stock (a "Common Dividend"), each Holder shall receive a dividend (in addition to the Dividends provided for by SECTION 2(a) and SECTION 2(b)) in respect of each Preferred Share held thereby, in an amount equal to the product of (x) the amount of such Common Dividend paid per share of Common Stock, multiplied by (y) the number of shares of Common Stock issuable if such Preferred Share had been converted into shares of Common Stock immediately prior to the record date for such Common Dividend (such amount per share of Preferred Stock, the "Participating Cash Dividend"). Participating Cash Dividends shall be payable to Holders on the record date for such Common Dividend at the same time and in the same manner as the Common Dividend triggering such Participating Cash Dividend is paid. If and to the extent that the Company does not for any reason pay the entire Participating Cash Dividend when the Common Dividend is paid to the holders of Common Stock, during the period in which such Participating Cash Dividend remains unpaid, an additional accreting dividend (the "Participating Accretion Dividends") shall accrue and be payable at an annual rate

equal to the Dividend Rate on the amount of the unpaid Participating Cash Dividend through the daily addition of such Participating Accretion Dividends to the Accrued Value (whether or not such Participating Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law).

(d) In-Kind Participating Dividends. If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets, securities or property, in respect of the Common Stock (an "In-Kind Common Dividend"), including without limitation any spin-off of one or more subsidiaries or businesses of the Company but excluding: (I) dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B); and (II) cash dividends with respect to which Holders are entitled to Participating Cash Dividends, then the Holders shall receive in such distribution or other transaction, at the same time and in the same manner as holders of Common Stock, the same type and amount of consideration (the "In-Kind Participating Dividend") and, collectively with the Participating Cash Dividend, the "Participating Dividends") as Holders would have received if, immediately prior to the record date of such In-Kind Common Dividend, they had held the number of shares of Common Stock issuable upon conversion of the Preferred Shares. To the extent that the Company establishes or adopts a stockholder rights plan or agreement (i.e., a "poison pill"), the Company shall ensure that the Holders will receive, as an In-Kind Participating Dividend, rights under the stockholder rights plan or agreement with respect to any shares of Common Stock that at the time of such distribution would be issuable upon conversion of the Preferred Shares. If and to the extent that the Company does not for any reason pay the entire In-Kind Participating Dividend when the In-Kind Common Dividend is paid to the holders of Common Stock, during the period in which such In-Kind Participating Dividend remains unpaid, an additional accreting dividend (the "In-Kind Accretion Dividends") shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid In-Kind Participating Dividend through the daily addition of such In-Kind Accretion Dividends to the Accrued Value (whether or not such In-Kind Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law).

(e) Dividends (other than Participating Dividends) payable on the Series A-2 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 (other than Participating Dividends) payable on the Series A-2 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.

(f) Cash Dividends and Accreting Dividends that are payable on Series A-2 Preferred Stock on any Dividend Payment Date will be payable to Holders of record on the applicable record date, which shall be the fifteenth (15<sup>th</sup>) calendar day before the applicable Dividend Payment Date, or, with respect to any Cash Dividends not paid on the scheduled Dividend Payment Date therefor, such record date fixed by the Board (or a duly authorized committee of the Board) that is not more than sixty (60) nor less than ten (10) days prior to such date on which such accrued and unpaid Cash Dividends are to be paid (each such record date, 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.

(g) The quarterly dividend periods with respect to Cash Dividends and Accreting Dividends shall commence on and include January 1, April 1, July 1 and October 1 (other than the initial Dividend Period, which shall commence on and include the Issue Date) and shall end on and include the last calendar day of the calendar quarter ending March 31, June 30, September 30 and December 31 preceding the next Dividend Payment Date (a “Dividend Period”).

SECTION 3. Liquidation Preference.

(a) Upon any Liquidation Event, each Preferred Share entitles the Holder thereof to receive and to be paid out of the assets of the Company legally available for distribution to the Company’s stockholders, before any distribution or payment may be made to a holder of any Junior Securities, an amount in cash per share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value (such sum, after the Specified Percentage multiplier and as adjusted, the “Regular Liquidation Preference”) and (ii) an amount equal to the amount the Holder of such share would have received upon such Liquidation Event had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the “Liquidation Preference”).

(b) If upon any such Liquidation Event, the assets of the Company legally available for distribution to the Company’s stockholders are insufficient to pay the Holders the full Liquidation Preference and the holders of all Parity Securities the full liquidation preferences to which they are entitled, the Holders and the holders of such Parity Securities will share ratably in any such distribution of the assets of the Company in proportion to the full respective amounts to which they are entitled.

(c) After payment to the Holders of the full Liquidation Preference to which they are entitled, the Holders as such will have no right or claim to any of the assets of the Company.

(d) The value of any property not consisting of cash that is distributed by the Company to the Holders will equal the Fair Market Value thereof on the date of distribution.

(e) No holder of Junior Securities shall receive any cash upon a Liquidation Event unless the entire Liquidation Preference in respect of the Preferred Shares has been paid in cash. To the extent that there is insufficient cash available to pay the entire Liquidation Preference in respect of the Preferred Shares and any liquidation preference in respect of Parity Securities in full in cash upon a Liquidation Event, the Holders and the holders of such Parity Securities will share ratably in any cash available for distribution in proportion to the full respective amounts to which they are entitled upon such Liquidation Event.

SECTION 4. As-Converted Voting Rights; Certain Consent Rights.

(a) The Holders are entitled to vote on all matters on which the holders of shares of Common Stock are entitled to vote and, except as otherwise provided herein or by law, the Holders shall vote together with the holders of shares of Common Stock as a single class. As of any record date or other determination date, each Holder shall be entitled to the number of votes such Holder would have had if all Preferred Shares held by such Holder on such date had been converted into shares of Common Stock immediately prior thereto, except that, in the event that any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the receipt of any Accreting Dividends by such Holder, the voting rights of such Holder pursuant to this Section 4(a) shall not be increased as a result of such Holder's receipt of such Accreting Dividends unless and until such Holder and the Company shall have made their respective filings under the HSR Act and the applicable waiting period shall have expired or been terminated in connection with such filings. The Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation.

(b) In addition to the voting rights provided for by SECTION 4(a) and any voting rights to which the Holders may be entitled to under law, for so long as any Preferred Shares, shares of Series A Preferred Stock or shares of Series A-1 Preferred Stock are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Requisite Holders:

(i) amend the Certificate of Incorporation (excluding for this purpose this Certificate of Designation) or the By-Laws of the Company (including by means of merger, consolidation, reorganization, recapitalization or otherwise), in each case, in a manner adverse to the Holders;

(ii) authorize, create or issue any (x) Senior Securities or any debt securities convertible into or exchangeable for Equity Securities;

(y) Parity Securities or (z) any voting securities providing the holders thereof voting or board designation or appointment rights that are disproportionate to such holders' fully diluted ownership of the Common Stock;

(iii) (a) authorize or effect the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (b) consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, or (c) consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors;

(iv) incur, or permit any Subsidiary to incur, any Indebtedness not otherwise permitted by the terms of SECTION 9(a);

(v) enter into, consummate, adopt, approve, establish or amend any Related Party Transaction (including any agreements or arrangements with HRG Affiliates relating to corporate opportunities and including all amendments, waivers and consents relating to any agreements and arrangements subject to this clause (vi)) (other than a Permitted Related Party Transaction, in either case, that has not been approved by a committee of the Board consisting solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director;

(vi) make, or permit any of its Subsidiaries to make, any Restricted Payments other than (A) the purchase of Equity Securities held by officers, directors, employees, consultants or independent contractors or former officers, directors, employees, consultants or independent contractors (or their estates or beneficiaries under their estates), upon death, disability, retirement, severance or other termination of employment provided that the aggregate cash consideration paid therefor in any twelve-month period after the Original Issue Date does not exceed an aggregate amount of (I) \$250,000 with respect to the Company and its Wholly Owned Subsidiaries, taken together, and (II) \$250,000 with respect to any Non-Wholly Owned Subsidiary of the Company, taken together with all Wholly Owned Subsidiaries of such Non-Wholly Owned Subsidiary, (B) dividends and distributions by Non-Wholly owned Subsidiaries made in accordance with the Organizational Documents of such Non-Wholly Owned Subsidiaries, (C) dividends and distributions to the Company or its Wholly Owned Subsidiaries and (D) Permitted Payments;

(vii) create a new Subsidiary of the Company not in existence on the Third Issue Date for the primary purpose of issuing Equity Securities of such Subsidiary or incurring Debt the proceeds of which will, directly or indirectly, be used to make dividends or other distributions or payments of cash to holders of the Company's Capital Stock other than the Holders; provided, that for the avoidance of doubt, the foregoing shall not prohibit dividends or other distributions to the Company;

(viii) effect any voluntary deregistration under the Exchange Act or voluntary delisting with any Exchange in respect to the Common Stock other than in connection with a Change of Control transaction pursuant to which the Company satisfies in full (in cash with respect to payment obligations) all of its obligations under SECTION 6(c); or

(ix) agree to do, directly or indirectly, any of the foregoing actions set forth in clauses (i) through (viii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Requisite Holders.



(c) In addition to the voting rights provided for by SECTION 4(a), SECTION 4(b) and any voting rights to which the Holders may be entitled to under law, for so long as any Preferred Shares are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Series A-2 Requisite Holders:

(i) amend, repeal, alter or add, delete or otherwise change the powers, preferences, rights or privileges of the Series A-2 Preferred Stock;

(ii) authorize or issue any shares of Series A-2 Preferred Stock other than to the January 2015 Purchasers pursuant to SECTION 2 of the January 2015 Securities Purchase Agreement, or effect any stock split or combination, reclassification or similar event with respect to the Series A-2 Preferred Stock; or

(iii) agree to do, directly or indirectly, any of the foregoing actions set forth in clauses (i) or (ii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Series A-2 Requisite Holders.

(d) Notwithstanding anything to the contrary contained in this SECTION 4, the Company may not, directly or indirectly, take any action otherwise approved pursuant to Section 4(b) if such action would have a materially adverse and disproportionate effect on the powers, preferences, rights, limitations, qualifications and restrictions or privileges of any Holder with respect to any shares of Series A-2 Preferred Stock held by any Holder, without the prior approval of such Holder.

(e) Written Consent. Any action as to which a class vote of the holders of Preferred Stock, or the holders of Preferred Stock and Common Stock voting together, is required pursuant to the terms of this Certificate of Designation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Company.

SECTION 5. Conversion. Each Preferred Share is convertible into shares of Common Stock (or Reference Property, to the extent applicable) as provided in this SECTION 5.

(a) Conversion at the Option of Holders of Series A-2 Preferred Stock. Subject to SECTION 5(b) hereof, each Holder is entitled to convert, at any time and from time to time, at the option and election of such Holder, any or all outstanding Preferred Shares held by such Holder and receive therefor the property described in SECTION 5(d) upon such conversion. In order to convert Preferred Shares into shares of Common Stock (or Reference Property, to the extent applicable), the Holder must surrender the certificates representing such Preferred Shares at the office of the Company's transfer agent for the Series A-2 Preferred Stock (or at the principal office of the Company, if the Company

serves as its own transfer agent), together with (x) written notice that such Holder elects to convert all or part of the Preferred Shares represented by such certificates as specified therein, (y) a written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the transfer agent or the Company, as applicable (if reasonably required by the transfer agent or the Company, as applicable), and (z) funds for any stock transfer, documentary, stamp or similar taxes, if payable by the Holder pursuant to SECTION 5(f)(i). Except as provided in SECTION 5(b) and in SECTION 5(c), the date the transfer agent or the Company, as applicable, receives such certificates, together with such notice and any other documents and amounts required to be paid by the Holder pursuant to this SECTION 5, will be the date of conversion (the "Conversion Date").

(b) Conversion at the Option of the Company. Beginning on the third (3rd) anniversary of the Original Issue Date, the Company shall have the right, at its option, to cause all shares of Series A-2 Preferred Stock to be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole but not in part, into the property described in SECTION 5(d) within five (5) Business Days of any day (the "Forced Conversion Trigger Date") on which all of the Company Conversion Conditions are satisfied from time to time. The Company may exercise its option under this SECTION 5(b) by providing the Holders with a written notice, which notice shall specify that the Company is exercising the option contemplated by this SECTION 5(b), the Forced Conversion Trigger Date and the Conversion Date on which the conversion shall occur (which Conversion Date shall be not less than ten (10) Business Days following the date such notice is provided to the Holders); *provided* that, once delivered, such notice shall be irrevocable, unless the Company obtains the written consent of the Series A-2 Requisite Holders. For the avoidance of doubt, (x) the Holders shall continue to have the right to convert their Preferred Shares pursuant to SECTION 5(a) until and through the Conversion Date contemplated in this SECTION 5(b) and (y) if any Preferred Shares are converted pursuant to SECTION 5(a), such Preferred Shares shall no longer be converted pursuant to this SECTION 5(b) and the Company's notice delivered to the Holders pursuant to this SECTION 5(b) shall automatically terminate with respect to such Preferred Shares. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 5(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(b). The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 5(b) announcing the Company's election to convert Preferred Shares pursuant to this SECTION 5(b).

(c) Automatic Conversion on Maturity Date. In the event that any Holder has not elected to have its Preferred Shares redeemed by the Company on the Maturity Date (as defined herein) pursuant to SECTION 6(a), then such Holder's Preferred

Shares shall be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole and not in part, into the property described in SECTION 5(d), effective as of the Maturity Date, which shall be deemed to be the “Conversion Date” for purposes of this SECTION 5(c). As promptly as practicable (but in no event more than five (5) Business Days) following the Maturity Date, the Company shall deliver a notice to any Holder whose Preferred Shares have been converted by the Company pursuant to this SECTION 5(c), informing such Holder of the number of shares of Common Stock into which such Preferred Shares have been converted, together with certificates evidencing such shares of Common Stock. Notwithstanding the foregoing, any notice delivered by the Company in compliance with this SECTION 5(c) shall be conclusively presumed to have been duly given, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(c). The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following the Maturity Date announcing the aggregate number of Preferred Shares being converted pursuant to this SECTION 5(c) and the number of shares of Common Stock issuable in connection therewith, as well as the aggregate number of Preferred Shares redeemed on the Maturity Date and the purchase price paid by the Company therefor.

(d) Amounts Received Upon Conversion. Upon a conversion of Preferred Shares pursuant to SECTION 5(a), (b) or (c), the Holder of such converted Preferred Shares shall receive in respect of each Preferred Share:

(i) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount (the “Conversion Amount”) determined by dividing (A) the Accrued Value for the Preferred Share to be converted by (B) the Conversion Price in effect at the time of conversion; *provided* that, notwithstanding the foregoing, if the Company has elected to convert all Preferred Shares pursuant to SECTION 5(b) and the Public Float Hurdle is not met on the Forced Conversion Trigger Date, then each Holder may elect, by delivery of a notice to the Company no later than the close of business on the Business Day immediately prior to the Conversion Date, to receive, in lieu of Common Stock (or Reference Property, to the extent applicable), cash equal to the Conversion Amount multiplied by the Thirty Day VWAP as of the close of business on the Business Day immediately preceding the Conversion Date, which cash amount shall be delivered to the electing Holders within forty-five (45) calendar days of the date that the last Holder electing to receive cash pursuant to this SECTION 5(d)(i) has provided the Company with notice thereof;

(ii) cash in an amount equal to the amount of any accrued but unpaid Cash Dividends and Participating Cash Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted; *provided* that, to the extent the Company is prohibited by law or by contract from paying such amount, then the Company shall provide written notice to the applicable Holder of such inability to pay, and at the written election of the Holder (which written election shall be delivered to the Company within five (5) Business Days

of receipt of such written notice from the Company), the Company shall either pay such amount as soon as payment is no longer so prohibited or issue Common Stock (or Reference Property, to the extent applicable) in the manner specified in SECTION 5(d)(i) as if the amount of such accrued but unpaid Cash Dividends and Participating Cash Dividends were added to the Accrued Value (it being understood that any such Cash Dividends that are not timely paid upon conversion as a result of this proviso will be deemed to be overdue and delinquent for purposes of calculating Cash Accretion Dividends pursuant to SECTION 2(a) hereunder until paid in full in cash);

(iii) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount determined by dividing (A) the amount of any accrued but unpaid Accreting Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted by (B) the Conversion Price in effect at the time of Conversion; and

(iv) any accrued and unpaid In-Kind Participating Dividends.

Notwithstanding the foregoing, in the event any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the conversion of any Preferred Shares into the property described above in this Section 5(d), at the option of such Holder upon written notice to the Company, the effectiveness of such conversion shall be delayed (only to the extent necessary to avoid a violation of the HSR Act), until such Holder shall have made such filing under the HSR Act and the applicable waiting period shall have expired or been terminated; provided, however, that in such circumstances such Holder shall use commercially reasonable efforts to make such filing and obtain the expiration or termination of such waiting period as promptly as reasonably practical and the Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation. Notwithstanding the foregoing, if the conversion of any Preferred Share is delayed pursuant to the preceding sentence at (x) a time when the Company desires to exercise its right to convert shares of Series A-2 Preferred Stock pursuant to SECTION 5(b) or (y) the Maturity Date in connection with the automatic conversion of the shares of Series A-2 Preferred Stock pursuant to SECTION 5(c), from and after the date of the conversions contemplated by SECTIONS 5(b) or 5(c), as applicable, such Preferred Share not then converted shall have no rights, powers, preferences or privileges other than the rights provided by this paragraph and the right to (i) convert into Common Stock if and when such Holder shall have made such filing under the HSR Act and the waiting period in connection with such filing under the HSR Act shall have expired or been terminated and (ii) receive dividends and distributions pursuant to SECTIONS 2(c) and 2(d).

(e) Fractional Shares. No fractional shares of Common Stock (or fractional shares in respect of Reference Property, to the extent applicable) will be issued upon conversion of the Series A-2 Preferred Stock. In lieu of fractional shares, the Company shall pay cash in respect of each fractional share equal to such fractional amount multiplied by the Thirty Day VWAP as of the closing of business on the Business Day immediately preceding the Conversion Date (or the Fair Market Value thereof in respect of

any Reference Property). If more than one Preferred Share is being converted at one time by the same Holder, then the number of full shares issuable upon conversion will be calculated on the basis of the aggregate number of Preferred Shares converted by such Holder at such time.

(f) Mechanics of Conversion.

(i) As soon as reasonably practicable after the Conversion Date (and in any event within four (4) Business Days after such date), the Company shall issue and deliver to the applicable Holder one or more certificates for the number of shares of Common Stock (or Reference Property, to the extent applicable) to which such Holder is entitled, together with, at the option of the Holder, a check or wire transfer of immediately available funds for payment of fractional shares and any payment required by SECTION 5(d)(ii) in exchange for the certificates representing the converted Preferred Shares. Such conversion will be deemed to have been made on the Conversion Date, and the Person entitled to receive the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock (or Reference Property, to the extent applicable) on such date. The delivery of the Common Stock upon conversion of Preferred Shares shall be made, at the option of the applicable Holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Company to the appropriate Holder on a book-entry basis or by mailing certificates evidencing the shares to such Holder at its address as set forth in the conversion notice. In cases where fewer than all the Preferred Shares represented by any such certificate are to be converted, a new certificate shall be issued representing the unconverted Preferred Shares. The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of Common Stock (or Reference Property, to the extent applicable) upon conversion or due upon the issuance of a new certificate for any Preferred Shares not converted to the converting Holder; provided that the Company shall not be required to pay any such amounts, and any such amounts shall be paid by the converting Holder, in the event that such Common Stock or Preferred Shares are issued in a name other than the name of the converting Holder.

(ii) For the purpose of effecting the conversion of Preferred Shares, the Company shall: (A) at all times reserve and keep available, free from any preemptive rights, out of its treasury or authorized but unissued shares of Common Stock (or Reference Property, to the extent applicable) the full number of shares of Common Stock (or Reference Property, to the extent applicable) deliverable upon the conversion of all outstanding Preferred Shares after taking into account any adjustments to the Conversion Price from time to time pursuant to the terms of this SECTION 5 and any increases to the Accrued Value from time to time and assuming for the purposes of this calculation that all outstanding Preferred Shares are held by one holder) and (B) without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, take all actions reasonably required to amend its Certificate of Incorporation, as expeditiously as reasonably practicable, to increase the authorized and available amount of Common Stock (or Reference Property, to the extent applicable) if at any time such amendment is necessary in order for the Company to be able to satisfy its obligations under this SECTION 5. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon conversion of the Series A-2 Preferred Stock,

the Company will take any corporate action which may be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock (or Reference Property, to the extent applicable) upon the conversion of all outstanding Preferred Shares at such adjusted Conversion Price.

(iii) From and after the Conversion Date, the Preferred Shares converted on such date, will no longer be deemed to be outstanding and all rights of the Holder thereof including the right to receive Dividends, but excluding the right to receive from the Company the Common Stock (or Reference Property, to the extent applicable) or any cash payment upon conversion, and except for any rights of Holders (including any voting rights) pursuant to this Certificate of Designation which by their express terms continue following conversion or, for the avoidance of doubt, rights which by their express terms continue following conversion pursuant to any of the other Transaction Agreements (as defined in the January 2015 Securities Purchase Agreement) shall immediately and automatically cease and terminate with respect to such Preferred Shares; *provided* that, in the event that a Preferred Share is not converted due to a default by the Company or because the Company is otherwise unable to issue the requisite shares of Common Stock (or Reference Property, to the extent applicable), such Preferred Share will, without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, remain outstanding and will continue be entitled to all of the rights attendant to such Preferred Share as provided herein.

(iv) The Company shall comply with all federal and state laws, rules and regulations and applicable rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed. If any shares of Common Stock (or Reference Property, to the extent applicable) to be reserved for the purpose of conversion of Preferred Shares require registration with or approval of any Person or group (as such term is defined in Section 13(d)(3) of the Exchange Act) under any federal or state law or the rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed before such shares may be validly issued or delivered upon conversion, then the Company will, as expeditiously as reasonably practicable, use commercially reasonable efforts to secure such registration or approval, as the case may be. So long as any Common Stock (or Reference Property, to the extent applicable) into which the Preferred Shares are then convertible is then listed on an Exchange, the Company will list and keep listed on any such Exchange, upon official notice of issuance, all shares of such Common Stock (or Reference Property, to the extent applicable) issuable upon conversion.

(v) All shares of Common Stock (or Reference Property, to the extent applicable) issued upon conversion of the Preferred Shares will, upon issuance by the Company, be duly and validly issued, fully paid and nonassessable, not issued in violation of any preemptive or similar rights arising under law or contract and free from all taxes, liens and charges with respect to the issuance thereof, and the Company shall take no action which will cause a contrary result.

(g) Adjustments to Conversion Price.

(i) The Conversion Price shall be subject to the following adjustments:

(A) *Common Stock Dividends or Distributions.* If the Company issues shares of Common Stock as a dividend or distribution on shares of Common Stock, or if the Company effects a share split or share combination with respect to shares of Common Stock, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0}{OS_1}$$

where,

$CP_0$  = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

$CP_1$  = the Conversion Price in effect immediately after the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be; and

$OS_1$  = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this SECTION 5(g)(i)(A) shall become effective immediately after the open of business on the Ex-Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination. If any dividend or distribution of the type described in this SECTION 5(g)(i)(A) is declared but not so paid or made, or any share split or combination of the type described in this SECTION 5(g)(i)(A) is announced but the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to pay such dividend or distribution, or not to split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Price that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(B) *Rights, Options or Warrants on Common Stock.* If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them, for a period expiring not more than sixty (60) days immediately following the record date of such distribution, to purchase or subscribe for shares of Common Stock at a price per share less than the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CP<sub>0</sub> = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such distribution;

CP<sub>1</sub> = the Conversion Price in effect immediately after the open of business on the Ex-Date for such distribution;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such distribution;

X = the number of shares of Common Stock equal to the aggregate price payable to exercise all such rights, options or warrants divided by the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution; and

Y = the total number of shares of Common Stock issuable pursuant to all such rights, options or warrants.

Any adjustment made under this SECTION 5(g)(i)(B) will be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the open of business on the Ex-Date for such distribution. To the extent that shares of Common Stock are not delivered prior to the expiration of such rights, options or warrants, the Conversion Price shall be readjusted following the expiration of such rights to the Conversion Price that would then be in effect had the decrease in the Conversion Price with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to make such distribution, to the Conversion Price that would then be in effect if such distribution had not occurred.

In determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Daily VWAP for the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the fair market value of such consideration, if other than cash, to be reasonably determined by the Board in good faith.

(C) *Tender Offer or Exchange Offer Payments.* If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for Common Stock, if the aggregate value of all cash and any other consideration included in the payment per share of Common Stock (as reasonably determined in good faith by the



Board) exceeds the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date on which such tender offer or exchange offer expires, the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 \times SP_1}{AC + (SP_1 \times OS_1)}$$

where,

$CP_1$  = the Conversion Price in effect immediately after the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

$CP_0$  = the Conversion Price in effect immediately prior to the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires;

$SP_1$  = the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

$AC$  = the aggregate value of all cash and any other consideration (as reasonably determined in good faith by the Board) paid or payable for shares purchased in such tender or exchange offer; and

$OS_1$  = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer and excluding fractional shares).

The adjustment to the Conversion Price under this SECTION 5(g)(i)(C) will occur at the close of business on the tenth (10<sup>th</sup>) Trading Day immediately following, but excluding, the date such tender or exchange offer expires; *provided* that, for purposes of determining the Conversion Price, in respect of any conversion during the ten (10) Trading Days immediately following, but excluding, the date that any such tender or exchange offer expires, references within this SECTION 5(g)(i)(C) to ten (10) consecutive Trading Days shall be deemed replaced with such lesser number of consecutive Trading Days as have elapsed between the date such tender or exchange offer expires and the relevant conversion date.

(D) *Common Stock Issued at Less than Conversion Price.* If, after the Third Issue Date, the Company issues or sells any Common Stock (or Option Securities or Convertible Securities, to the extent set forth in this SECTION 5(g)(i)(D)), other than Excluded Stock, for no consideration or for consideration per share less than the Conversion Price in effect as of the date of such issuance or sale, the Conversion Price in effect immediately prior to each such issuance or sale will (except as provided below) be adjusted at the time of such issuance or sale based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

$CP_1$  = the Conversion Price in effect immediately following such issuance or sale;

$CP_0$  = the Conversion Price in effect immediately prior to such issuance or sale;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to such issuance or sale (treating for this purpose as outstanding all shares of Common Stock issuable upon the conversion or exchange of (x) all Preferred Shares issued on the Third Issue Date, all shares of Series A Preferred Stock issued on the Original Issue Date and all shares of Series A-1 Preferred Stock issued on the Second Issue Date and (y) all convertible, exchangeable or exercisable Equity Securities of the Company not listed in (x) if the conversion price, exercise price or exchange price applicable to such Equity Securities of the Company is below Market Value on the determination date);

X = the number of shares of Common Stock that the aggregate consideration received by the Company for the number of shares of Common Stock so issued or sold would purchase at a price per share equal to  $CP_0$ ; and

Y = the number of additional shares of Common Stock so issued.

For the purposes of any adjustment of the Conversion Price pursuant to this SECTION 5(g)(i)(D), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock for cash, the amount of the consideration received by the Company shall be deemed to be the amount of the cash proceeds received by the Company for such Common Stock after deducting therefrom any discounts or commissions allowed, paid or incurred by the Company for any underwriting or otherwise in connection with the issuance and sale thereof

(2) In the case of the issuance of Common Stock (otherwise than upon the conversion of shares of Capital Stock or other securities of the Company) for a consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair market value thereof as reasonably determined by the Board in good faith.

(3) In the case of (A) the issuance of Option Securities (whether or not at the time exercisable) or (B) the issuance of Convertible Securities (whether or not at the time so convertible or exchangeable):

i) the issuance of Option Securities shall be deemed the issuance of all shares of Common Stock deliverable upon the exercise of such Option Securities;

ii) such Option Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2)), if any, received by the Company for such Option Securities, plus the exercise price, strike price or purchase price provided in such Option Securities for the Common Stock covered thereby;

iii) the issuance of Convertible Securities shall be deemed the issuance of all shares of Common Stock deliverable upon conversion of, or in exchange for, such Convertible Securities;

iv) such Convertible Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2) and excluding any cash received on account of accrued interest or accrued dividends), if any, received by the Company for such Convertible Securities, plus the value of the additional consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2)) to be received by the Company upon the conversion or exchange of such Convertible Securities, if any;

v) upon any change in the number of shares of Common Stock deliverable upon exercise of any Option Securities or Convertible Securities or upon any change in the consideration to be received by the Company upon the exercise, conversion or exchange of such securities, the Conversion Price then in effect shall be readjusted to such Conversion Price as would have been in effect had such change been in effect, with respect to any Option Securities or Convertible Securities outstanding at the time of the change, at the time such Option Securities or Convertible Securities originally were issued;

vi) upon the expiration or cancellation of Option Securities (without exercise), or the termination of the conversion or exchange rights of Convertible Securities (without conversion or exchange), if the Conversion Price shall have been adjusted upon the issuance of such expiring, canceled or terminated securities, the Conversion Price shall be readjusted to such Conversion Price as would have been obtained if, at the time of the original issuance of such Option Securities or Convertible Securities, the expired, canceled or terminated Option Securities or Convertible Securities, as applicable, had not been issued;

vii) if the Conversion Price shall have been fully adjusted upon the issuance of any such options, warrants, rights or convertible or exchangeable securities, no further adjustment of the Conversion Price shall be made for the actual issuance of Common Stock upon the exercise, conversion or exchange thereof; and

viii) if any issuance of Common Stock, Option Securities or Convertible Securities would also require an adjustment pursuant to any other adjustment provision of this SECTION 5(g)(i), then only the adjustment most favorable to the Holders shall be made.

(ii) If the Company issues rights, options or warrants that are only exercisable upon the occurrence of certain triggering events (each, a “Trigger Event”), then the Conversion Price will not be adjusted pursuant to SECTION 5(g)(i)(B) until the earliest Trigger Event occurs, and the Conversion Price shall be readjusted to the extent any of these rights, options or warrants are not exercised before they expire (provided, however, that, for the avoidance of doubt, if such Trigger Event would require an adjustment pursuant to SECTION 5(g)(i)(D), such adjustment pursuant to SECTION 5(g)(i)(D) shall be made at the time of issuance of such rights, options or warrants in accordance with such Section).

(iii) Notwithstanding anything in this SECTION 5(g) to the contrary, if a Conversion Price adjustment becomes effective pursuant to any of clauses (A), (B) or (C) of this SECTION 5(g)(i) on any Ex-Date as described above, and a Holder that converts its Preferred Shares on or after such Ex-Date and on or prior to the related record date would be treated as the record holder of shares of Common Stock as of the related Conversion Date based on an adjusted Conversion Price for such Ex-Date and participate on an adjusted basis in the related dividend, distribution or other event giving rise to such adjustment, then, notwithstanding the foregoing Conversion Price adjustment provisions, the Conversion Price adjustment relating to such Ex-Date will not be made for such converting Holder. Instead, such Holder will be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

Notwithstanding anything in this SECTION 5(g) to the contrary, no adjustment under SECTION 5(g)(i) need be made to the Conversion Price unless such adjustment would require a decrease of at least 1% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to a decrease of at least 1% of such Conversion Price; *provided* that, on the date of any conversion of the Preferred Shares pursuant to SECTION 5, adjustments to the Conversion Price will be made with respect to any such adjustment carried forward that has not been taken into account before such date. In addition, at the end of each year, beginning with the year ending December 31, 2014, the Conversion Price shall be adjusted to give effect to any adjustment or adjustments so carried forward, and such adjustments will no longer be carried forward and taken into account in any subsequent adjustment.

(iv) Adjustments Below Par Value. The Company shall not take any action that would require an adjustment to the Conversion Price such that the Conversion Price, as adjusted to give effect to such action, would be less than the then-applicable par value per share of the Common Stock, except that the Company may undertake a share split or similar event if such share split results in a corresponding reduction in the par value per share of the Common Stock such that the as-adjusted new Conversion Price per share would not be below the new as-adjusted par value per share of the Common Stock following such share split or similar transaction and the Conversion Price is adjusted as provided under SECTION 5(g)(i)(A) and any other applicable provision of SECTION 5(g).

(v) Reference Property. In the case of any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a

subdivision, combination or reclassification described in SECTION 5(g)(i)(A)), a consolidation, merger or combination involving the Company, a sale, lease or other transfer to a third party of all or substantially all of the assets of the Company (or the Company and its Subsidiaries on a consolidated basis), or any statutory share exchange, in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any of the foregoing, a "Transaction"), then, at the effective time of the Transaction, the right to convert each Preferred Share will be changed into a right to convert such Preferred Share into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) (the "Reference Property,") that a Holder would have received in respect of the Common Stock issuable upon conversion of such Preferred Shares immediately prior to such Transaction. In the event that holders of Common Stock have the opportunity to elect the form of consideration to be received in the Transaction, the Company shall make adequate provision whereby the Holders of the Preferred Shares shall have a reasonable opportunity to determine the form of consideration into which all of the Preferred Shares, treated as a single class, shall be convertible from and after the effective date of the Transaction. Any such election shall be made by the Series A-2 Requisite Holders. Any such determination by the Holders shall be subject to any limitations to which all holders of Common Stock are subject, such as pro rata reductions applicable to any portion of the consideration payable in the Transaction, and shall be conducted in such a manner as to be completed at approximately the same time as the time elections are made by holders of Common Stock. The provisions of this SECTION 5(g)(v) and any equivalent thereof in any such securities similarly shall apply to successive Transactions. The Company shall not become a party to any Transaction unless its terms are in compliance with the foregoing.

(vi) Rules of Calculation; Treasury Stock. All calculations will be made to the nearest one-hundredth of a cent or to the nearest one-ten thousandth of a share. Except as explicitly provided herein, the number of shares of Common Stock (or Reference Property, to the extent applicable) outstanding will be calculated on the basis of the number of issued and outstanding shares of Common Stock (or Reference Property, to the extent applicable), not including shares held in the treasury of the Company. The Company shall not pay any dividend on or make any distribution to shares of Common Stock (or Reference Property, to the extent applicable) held in treasury.

(vii) No Duplication. If any action would require adjustment of the Conversion Price pursuant to more than one of the provisions described in this SECTION 5 in a manner such that such adjustments are duplicative, only one adjustment (which shall be the adjustment most favorable to the Holders of Preferred Stock) shall be made.

(viii) Notice of Record Date. In the event of:

- (A) any event described in SECTION 5(f)(i)(A), (B), (C) or (D);
- (B) any Transaction to which SECTION 5(f)(v) applies;
- (C) the dissolution, liquidation or winding-up of the Company; or
- (D) any other event constituting a Change of Control;

then the Company shall mail to the Holders of Preferred Stock at their last addresses as shown on the records of the Company, at least twenty (20) days prior to the record date specified in (A) below or twenty (20) days prior to the date specified in (B) below, as applicable, a notice stating:

(A) the record date for the dividend, other distribution, stock split or combination or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, other distribution, stock split or combination; or

(B) the date on which such reclassification, change, dissolution, liquidation, winding-up or other event constituting a Transaction or Change of Control, or any transaction which would result in an adjustment pursuant to SECTION 5(g)(i)(D), is estimated to become effective or otherwise occur, and the date as of which it is expected that holders of Common Stock of record will be entitled to exchange their shares of Common Stock for Reference Property, other securities or other property deliverable upon such reclassification, change, liquidation, dissolution, winding-up, Transaction or Change of Control or that such issuance of Common Stock, Option Securities or Convertible Securities is anticipated to occur.

(ix) Certificate of Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this SECTION 5, the Company at its expense shall as promptly as reasonably practicable compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder of Preferred Stock a certificate, signed by an officer of the Company (in his or her capacity as such and not in an individual capacity), setting forth (A) the calculation of such adjustments and readjustments in reasonable detail, (B) the facts upon which such adjustment or readjustment is based, (C) the Conversion Price then in effect, and (D) the number of shares of Common Stock (or Reference Property, to the extent applicable) and the amount, if any, of Capital Stock, other securities or other property (including but not limited to cash and evidences of indebtedness) which then would be received upon the conversion of a Preferred Share.

(x) No Upward Revisions to Conversion Price. For the avoidance of doubt, except in the case of a reverse share split or share combination resulting in an adjustment under SECTION 5(g)(i)(A) effected with the approvals, if any, required pursuant to SECTION 4(b), in no event shall any adjustment be made pursuant to this SECTION 5 that results in an increase in the Conversion Price.

#### SECTION 6. Redemption.

(a) Redemption at Maturity. Each Holder shall have the right to require the Company to redeem such Holder's Preferred Shares, in whole or in part, on the seventh (7<sup>th</sup>) anniversary of the Original Issue Date (the "Maturity Date") at a price per share payable, subject to SECTION 6(e), in cash and equal to the Redemption Price. At any time during the period beginning on the thirtieth (30<sup>th</sup>) calendar day prior to the Maturity Date (the "Holder Redemption Notice Period"), each Holder may deliver written notice to the

Company notifying the Company of such Holder's election to require the Company to redeem all or a portion of such Holder's Preferred Shares on the Maturity Date (the "Election Notice"). No later than thirty (30) calendar days prior to the commencement of the Holder Redemption Notice Period, the Company shall deliver a notice to each Holder of Preferred Stock including the following information: (A) informing the Holder of the Maturity Date and such Holder's right to elect to have all or a portion of its Preferred Shares redeemed by Company on the Maturity Date, (B) the Redemption Price payable with respect to each share of Series A-2 Preferred Stock on the Maturity Date in connection with any such redemption (to the extent the Redemption Price is known or can be calculated, and to the extent not capable of being calculated, the manner in which such price will be determined); (C) that any certificates representing Preferred Shares which a Holder elects to have redeemed must be surrendered for payment of the Redemption Price at the office of the Company or any redemption agent located in New York City selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder's compliance with clause (C), payment of the Redemption Price with respect to any Preferred Shares to be made on the Maturity Date will be made to the Holder within five (5) Business Days of the Maturity Date to the account specified in such Holder's redemption election notice; (E) that any Holder may withdraw its Election Notice with respect to all or a portion of its Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Maturity Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder does not elect to have its Preferred Shares redeemed. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(a) disclosing the right of Holders to have the Company redeem Preferred Shares pursuant to this SECTION 6(a).

(b) Optional Redemption by the Company. On and after the third (3<sup>rd</sup>) anniversary of the Original Issue Date, the Company may, at its option, redeem all (but not less than all) of the outstanding Preferred Shares for cash equal to the Redemption Price. If the Company elects to redeem the Preferred Shares pursuant to this SECTION 6(b), the Company shall deliver a notice of redemption to the Holders of Preferred Stock not less than thirty (30) or more than sixty (60) calendar days prior to the date specified for redemption (the "Optional Redemption Date"), which notice shall include: (A) the Optional Redemption Date; (B) the Redemption Price; (C) that on the Optional Redemption Date, if the Holder has not previously elected to convert Preferred Shares into Common Stock, each Preferred

Share shall automatically and without further action by the Holder thereof (and whether or not the certificates representing such Preferred Shares are surrendered) be redeemed for the Redemption Price; (D) that payment of the Redemption Price will be made to the Holder within five (5) Business Days of the Redemption Date to the account specified by such Holder to the Company in writing; (E) that the Holder's right to elect to convert its Preferred Shares will end at 5:00 p.m. (New York City time) on the Business Day immediately preceding the Optional Redemption Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder elect to convert its Preferred Shares prior to the Optional Redemption Date. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 6(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the redemption of the Preferred Shares as set forth herein. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(b) announcing the Company's election to redeem Preferred Shares pursuant to this SECTION 6(b).

(c) Redemption at Option of the Holder upon a Change of Control.

(i) If a Change of Control occurs, each Holder shall have the right to require the Company to redeem its Preferred Shares pursuant to a Change of Control Offer, which Change of Control Offer shall be made by the Company in accordance with Section 6(c)(ii). In such Change of Control Offer, the Company will offer a payment (such payment, a "Change of Control Payment") in cash per Preferred Share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value and (ii) an amount equal to the amount the Holder of such Preferred Share would have received in connection with such Change of Control had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the "Change of Control Payment Amount").

(ii) Within thirty (30) days following any Change of Control, the Company will mail a notice (a "Change of Control Offer") to each Holder describing the transaction or transactions that constituted such Change of Control and offering to redeem the Preferred Shares on the date specified in such notice (the "Change of Control Payment Date"), which date shall be no earlier than thirty (30) days and no later than sixty-one (61) days from the date such notice is mailed. In addition, such Change of Control Offer shall further state: (A) the amount of the Change of Control Payment; (B) that the Holder may elect to have all or any portion of its Preferred Shares redeemed pursuant to the Change of Control Offer, (C) that any Preferred Shares to be redeemed must be surrendered for payment of the Change of Control Payment at the office of the Company or any redemption agent selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a



Holder's compliance with clause (C), payment of the Change of Control Payment will be made to the Holder on the Change of Control Payment Date to the account specified by such Holder to the Company in writing; (E) the date and time by which the Holder must make its election, (F) that any Holder may withdraw its election notice with respect to all or a portion of their Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Change of Control Payment Date; and (G) the amount and type of property that the Holder would receive in connection with such Change of Control if the Holder elects to convert its Preferred Shares in connection with the Change of Control. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(c) disclosing the right of Holders to have the Company redeem Preferred Shares pursuant to this SECTION 6(c).

(iii) On the Change of Control Payment Date, the Company will, to the extent lawful: (A) accept for payment all Preferred Shares validly tendered pursuant to the Change of Control Offer; and (B) make a Change of Control Payment to each Holder that validly tendered Preferred Shares pursuant to the Change of Control Offer.

(iv) If at any time prior to consummation of a transaction that would constitute a Change of Control, the Company has publicly announced (whether by press release, SEC filing or otherwise) such transaction or prospective transaction or the entry by the Company into any definitive agreement with respect thereto, the Company shall, within five (5) Business Days of the issuance of such public announcement, deliver a written notice to each Holder notifying them of the same and the anticipated date of consummation of such transaction.

(v) The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer and makes the Change of Control Payment in the manner, at the times and otherwise in compliance with the requirements set forth herein applicable to a Change of Control Offer made by the Company and purchases all Preferred Shares validly tendered under such Change of Control Offer.

(vi) A Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(d) Notwithstanding anything in this SECTION 6 to the contrary, each Holder shall retain the right to elect to convert any Preferred Shares to be redeemed at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding any Redemption Date. Any Preferred Shares that a Holder elects to convert prior to the Redemption Date shall not be redeemed pursuant to this SECTION 6.

(e) Insufficient Funds. Any redemption of the Preferred Shares pursuant to this SECTION 6 shall be payable out of any cash legally available therefor, provided, however, that, other than in respect of a redemption pursuant to SECTION 6(b) (which the Company may only effectuate to the extent it has sufficient cash legally available therefor),

if there is not a sufficient amount of cash legally available to pay the Redemption Price in full in cash, then the Company may pay that portion of the Redemption Price with respect to which it does not have cash legally available therefor out of the remaining assets of the Company legally available therefor (valued at the fair market value thereof on the date of payment, as reasonably determined in good faith by the Board). If the Company anticipates not having sufficient cash legally available for a redemption pursuant to SECTION 6(a) or SECTION 6(c), the redemption notice delivered to Holders shall so specify, and indicate the nature of the other assets expected to be distributed and the fair market value of the same as reasonably determined by the Board as aforesaid. At the time of any redemption pursuant to this SECTION 6, the Company shall take all actions required or permitted under Delaware law to permit the redemption of the Preferred Shares, including, without limitation, through the revaluation of its assets in accordance with Delaware law, to make cash funds (and to the extent cash funds are insufficient, other assets) legally available for such redemption. In connection with any redemption pursuant to SECTION 6(c), to the extent that Holders elect to have their Preferred Shares redeemed and the Company has insufficient funds to redeem such Preferred Shares (after taking into account the amount of any repurchase obligations the Company has or expects to have under any Indebtedness ranking senior to the Series A-2 Preferred Stock), Senior Securities or any Parity Securities resulting from the same facts and circumstances as the Change of Control hereunder), the Company shall use any available funds to redeem a portion of such Preferred Shares and Parity Securities (if any are being redeemed) ratably in proportion to the full respective amounts to which they are entitled.

(f) Mechanics of Redemption.

(i) The Company (or a redemption agent on behalf of the Company, as applicable) shall pay the applicable Redemption Price on the Redemption Date or the required payment date therefor upon surrender of the certificates representing the Preferred Shares to be redeemed and receipt of any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable, to the extent required by SECTIONS 6(a), 6(b) and 6(c); *provided* that, if such certificates are lost, stolen or destroyed, the Company may require an affidavit certifying to such effect and, if requested, an agreement indemnifying the Company from any losses incurred in connection therewith, in each case, in form and substance reasonably satisfactory to the Company, from such Holder prior to paying such amounts.

(ii) Following any redemption of Preferred Shares on any Redemption Date, the Preferred Shares so redeemed will no longer be deemed to be outstanding and all rights of the Holder thereof shall cease, including the right to receive Dividends; *provided, however*, that any rights of Holders pursuant to this Certificate of Designation that by their terms survive redemption of the Preferred Shares and, for the avoidance of doubt, any rights that survive pursuant to any of the other Transaction Agreements (as defined in the January 2015 Securities Purchase Agreement), shall survive in accordance with their terms. The foregoing notwithstanding, in the event that a Preferred Share is not redeemed by the Company when required, such Preferred Share will remain outstanding and will continue to be entitled to all of the powers, designations, preferences and other rights (including but not limited to the accrual and payment of dividends and the conversion rights) as provided herein.

SECTION 7. Intentionally Omitted.

SECTION 8. Intentionally Omitted.

SECTION 9. Covenants.

(a) Restriction on the Issuance of Additional Indebtedness. From and after the Original Issue Date, the Company has not, and has not permitted any Subsidiary to (without obtaining any requisite consent from the Holders of the Series A Preferred Stock or Series A-1 Preferred Stock, as applicable), and from and after the Third Issue Date, the Company shall not, and shall not permit any Subsidiary to, without the consent of the Requisite Holders, borrow or otherwise incur any Indebtedness if, after giving effect to such borrowing or other incurrence, (1) the sum of the total Indebtedness of the Company plus the sum of the total Indebtedness of each of the Company's Subsidiaries divided by (2) the Net Asset Value (the "Debt/NAV Ratio") would be greater than 0.75; *provided*, that (A) the Regular Liquidation Preference of the Preferred Shares (with the references to "150%" contained in such definition being changed to "100%") and the actual liquidation preference of any outstanding Senior Securities and Parity Securities shall count as Indebtedness for such purposes, (B) 100% of the Indebtedness of the Company's wholly-owned and, after taking into account the Company's ownership percentage therein, non-wholly owned subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company's investment in such entities) shall be taken into account for purposes of determining Indebtedness but not taken into account (*i.e.*, added back) for purposes of determining Net Asset Value, and (C) the provisions of this SECTION 9(a) shall not apply to a refinancing of any Indebtedness of the Company or any of its Subsidiaries (x) within six (6) months of the respective maturity date of such Indebtedness or (y) on economic terms more favorable to the Company or such Subsidiary, as applicable, in any such case so long as the amount of such Indebtedness does not result in an increase in the Company's total Indebtedness or the Debt/NAV Ratio (in each case, excluding the impact of the capitalization of customary and reasonable premiums, fees and expenses incurred in connection with such refinancing).

(b) Intentionally Omitted.

(c) Certificates. The Company shall promptly, and in no event later than 30 days after the last day of any calendar quarter, furnish to each Holder a certificate of an officer of the Company setting forth, as of the end of such calendar quarter the Debt/NAV Ratio and the calculation of the same (provided that the Company shall not be obligated to provide the information required by this sentence from and after such time as the covenant in SECTION 9(a) ceases to be applicable).

(i) The Company shall promptly, and in no event later than the 30th day after the first day of a Dividend Period for which the Accreting Dividend rate has been adjusted pursuant to SECTION 2(b), furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth, as of the end of the prior Dividend Period the Net Asset Value as of the end of such prior Dividend Period and the calculation of the same.

(ii) If the Company takes any action, which pursuant to this Certificate of Designation requires the Public Float Hurdle to be met, the Company shall promptly, and in no event later than five (5) days after the date of such action, furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth the date of such action and an analysis of the Public Float Hurdle as of the date of such action.

SECTION 10. Additional Definitions. For purposes of these resolutions, the following terms shall have the following meanings:

(a) "Accrued Value" means \$1,000 per share, as the same may be increased pursuant to SECTION 2.

(b) "Actively Traded Security" means, as of any date of determination, a Security of an entity with \$2,000,000 average daily trading volume during the preceding 60-day period.

(c) "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person.

(d) "Base Original Issue Date NAV" means the final amount thereof as agreed between the Company and the Series A Requisite Holders (as defined in the Series A Certificate of Designation) pursuant to Section 12.16 of the May 2014 Securities Purchase Agreement.

(e) "Beneficial Owner" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" shall be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms "Beneficially Owns" and "Beneficially Owned" shall have a corresponding meaning.

(f) "Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or obligated to close.

(g) "Capital Stock" means, with respect to any Person, any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person's equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

(h) "Cash Equivalents" means: (i) United States dollars, or money in other currencies received in the ordinary course of business; (ii) U.S. Government Obligations or certificates representing an ownership interest in U.S. Government

Obligations with maturities not exceeding one year from the date of acquisition; (iii) (A) demand deposits, (B) time deposits and certificates of deposit with maturities of one year or less from the date of acquisition, (C) banker's acceptances with maturities not exceeding one year from the date of acquisition, and (D) overnight bank deposits, in each case with any bank or trust company organized or licensed under the laws of the United States or any state thereof having capital, surplus and undivided profits in excess of \$500 million whose short-term debt is rated "A-2" or higher by S&P or "P-2" or higher by Moody's; (iv) repurchase obligations with a term of not more than seven (7) days for underlying securities of the type described in clauses (ii) and (iii) above entered into with any financial institution meeting the qualifications specified in clause (iii) above; (v) commercial paper rated at least P-1 by Moody's or A-1 by S&P and maturing within six (6) months after the date of acquisition; and (vi) money market funds at least 95% of the assets of which consist of investments of the type described in clauses (i) through (v) above.

(i) "Certificate of Designation" means this certificate of designation, as such shall be amended from time to time.

(j) "Change of Control" means (i) a sale of all or substantially all of the consolidated assets of the Company (including by way of any reorganization, merger, consolidation or other similar transaction or a sale of Equity Securities issued by Subsidiaries of the Company), (ii) a direct or indirect acquisition of Beneficial Ownership of Voting Power of the Company by any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) by means of any transaction or series of transactions (including any reorganization, merger, consolidation, joint venture, share transfer, share exchange, share issuance, reclassification or other similar transaction), pursuant to which the stockholders of the Company immediately preceding such transaction or transactions collectively own, following the consummation of such transaction or transactions, less than fifty percent (50%) of the Voting Power of the Company or other surviving entity (or parent thereof), as the case may be, (iii) the obtaining by any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of the power (whether or not exercised), other than pursuant to a revocable proxy in favor of the Company's proposed slate of directors in respect of an annual meeting or other meeting related to the election of directors, to elect a majority of the members of the Board or more than fifty percent (50%) of the Voting Power of the Company; provided, that this clause (iii) will not trigger a Change of Control as a result of the HRG Affiliates or any person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) in which the HRG Affiliates own a majority of the voting power (the "HRG Change of Control Group") obtaining Beneficial Ownership of more than fifty percent (50%) of the Voting Power of the Company if and only if the Public Float Hurdle is satisfied at all times during which the HRG Change of Control Group has the power to elect a majority of the Board or Beneficial Ownership of more than fifty percent (50%) of the Voting Power of the Company, or (iv) the first day on which a majority of the members of the Board are not Continuing Directors; *provided*, that, for the avoidance of doubt, change in the ownership of HRG (without the occurrence of the events listed in (i) through (iv) above) shall not constitute, in and of itself, a Change of Control.

(k) “Common Stock” means the shares of common stock, par value \$0.01 per share, of the Company or any other Capital Stock of the Company into which such Common Stock shall be reclassified or changed.

(l) “Company Conversion Conditions” means the following: (i) the Thirty Day VWAP exceeds 150% of the then applicable Conversion Price; and (ii) the Daily VWAP exceeded 150% of the then applicable Conversion Price for at least twenty (20) Trading Days out of the thirty (30) Trading Days used to calculate the Thirty Day VWAP in clause (i) of this definition.

(m) “Compensation Committee” means the compensation committee of the Board which shall consist solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director.

(n) “Continuing Directors” means, as of any date of determination, (x) any member of the Board who (1) was a member of such Board on the Third Issue Date or (2) was nominated for election or elected to the Board by any HRG Affiliates, or with the approval of either the Holders or a majority of those members of the Board that were both “Continuing Directors” and Independent Directors at the time of such nomination or election or (y) any Preferred Elected Director.

(o) “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”) with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

(p) “Conversion Price” means initially \$8.25, as adjusted from time to time as provided in SECTION 5.

(q) “Convertible Securities” means securities by their terms convertible into or exchangeable for Common Stock or options, warrants or rights to purchase such convertible or exchangeable securities.

(r) “Daily VWAP” means the volume-weighted average price per share of Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) as displayed under the heading “Bloomberg VWAP” on the Bloomberg page for the “<equity> AQR” page corresponding to the “ticker” for such Common Stock or unit (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of such Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) on such Trading Day. The “volume weighted average price” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

(s) “January 2015 Purchasers” means the several “Purchasers” named in and party to the January 2015 Securities Purchase Agreement.

(t) “January 2015 Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated January , 2015, by and among the Company and the January 2015 Purchasers, as amended, supplemented or modified in accordance with its terms.

(u) “Dividend Payment Date” means January 15, April 15, July 15 and October 15 of each year, commencing on July 15, 2014; *provided* that, if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be the immediately succeeding Business Day.

(v) “Dividend Rate” means for any Dividend Period, 7.50% plus the applicable Accreting Dividend Rate for such Dividend Period.

(w) “Equity Securities” means, with respect to any Person, (i) shares of Capital Stock of, or other equity or voting interest in, such Person, (ii) any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iii) options, warrants, rights or other commitments or agreements to acquire from such Person, or that obligates such Person to issue, any Capital Stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iv) obligations of such Person to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any Capital Stock of, or other equity or voting interest (including any voting debt) in, such Person and (v) the Capital Stock of such Person.

(x) “Exchange” means the NASDAQ Global Market, the NASDAQ Global Select Market, The New York Stock Exchange, the NYSE MKT LLC or any of their respective successors.

(y) “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(z) “Excluded Stock” means: (i) shares of Common Stock issued by the Company in an event subject to, and for which the Conversion Price is subject to adjustment pursuant to, SECTION 5(g)(i)(A); (ii) Option Securities or shares of Common Stock (including upon exercise of Option Securities) issued to Philip Falcone pursuant to the Option agreement (the “Falcone Option Agreement”) dated May 21, 2014, by and between Mr. Falcone and the Company (as in effect on the Original Issue Date) or otherwise to any director, officer or employee pursuant to compensation arrangements approved by the Compensation Committee of the Board in good faith and otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation; (iii) the issuance of shares of Common Stock upon conversion of the Preferred Shares or upon the exercise or conversion of Option Securities and Convertible Securities of the Company outstanding on the Original Issue Date or otherwise permitted to be issued, or not prohibited, by any other

provision of this Certificate of Designation (including, for the avoidance of doubt, pursuant to the Falcone Option Agreement (as in effect on the Original Issue Date)); (iv) Common Stock that becomes issuable in connection with, or as a result of, accretions to the face amount of, or payments in kind with respect to, Preferred Shares, Option Securities and Convertible Securities of the Company outstanding on the Third Issue Date or otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation (including, for the avoidance of doubt, pursuant to the Falcone Option Agreement (as in effect on the Original Issue Date)), (v) Common Stock that becomes issuable in connection with, or as a result of, accretions to the face amount of, or payments in kind with respect to, shares of Series A Preferred Stock issued on the Original Issue Date and shares of Series A-1 Preferred Stock issued on the Second Issue Date; (vi) Option Securities (or Shares of Common Stock upon exercise of such Option Securities) issued to Robert M. Pons or Keith Hladek as referenced in the Company's 8-K filed on May 23, 2014 and (vii) shares of Common Stock issued by the Company pursuant to the May 2014 Securities Purchase Agreement.

(aa) "Ex-Date" means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

(bb) "Fair Market Value" means: (i) in the case of any Security that is either (a) listed on an Exchange or (b) an Actively Traded Security in the over-the-counter-market that represents equity in a Person with a market capitalization of at least \$250,000,000 on each Trading Day in the preceding 60 day period prior to such date, the product of (a) (i) the sum of the Daily VWAP of a single unit of such Security for each of the 20 consecutive Trading Days immediately prior to such date, divided by (ii) 20, multiplied by (b) the number of units of such Security being valued, (ii) in the case of any Security that is not so listed or not an Actively Traded Security or any other property or asset (other than Cash Equivalents), the fair market value thereof (defined as the price that would be negotiated in an arms' length transaction for cash between a willing buyer and willing seller, neither of which is acting under compulsion), as determined by a written opinion of a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company in good faith (provided that the Requisite Holders may object in writing to any such determination of Fair Market Value by such valuation expert once every four (4) Testing Periods and if the Requisite Holders object in writing to any such determination of Fair Market Value by such valuation expert an alternative binding valuation shall be performed by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company and the Requisite Holders jointly, or if the Company and such Requisite Holders cannot jointly select such an alternative valuation expert within ten (10) Business Days of the Requisite Holders delivering to the Company a written notice objecting to the initial valuation, by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by one such valuation expert proposed by the Company and a



second such valuation expert proposed by the Requisite Holders (it being understood that the Company shall be solely responsible for the payment of all of the fees and expenses of such alternative valuation expert) and (iii) in the case of Cash Equivalents, the face value thereof; *provided* that with respect to any Security of the type referred to in clause (ii) above, in no event shall the Fair Market Value thereof exceed the Company's cost basis in such Security (taking into account adjustments made in respect of follow-on capital contributions and other similar investments) plus fifty percent (50%) of any appreciation as determined pursuant to the valuation provisions set forth above.

(cc) "Governmental Entity" shall mean any United States or non-United States federal, state or local government, or any agency, bureau, board, commission, department, tribunal or instrumentality thereof or any court, tribunal, or arbitral or judicial body.

(dd) "hereof"; "herein" and "hereunder" and words of similar import refer to this Certificate of Designation as a whole and not merely to any particular clause, provision, section or subsection.

(ee) "Holders" means the holders of outstanding Preferred Shares and, except where expressly otherwise indicated, shares of Series A Preferred Stock and Series A-1 Preferred Stock as they appear in the records of the Company.

(ff) "HRG Affiliates" means (a) Philip A. Falcone, (b) Harbinger Group, Inc. or any of its subsidiaries, (c) Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or any limited partnership, limited liability company, corporation or other entity that controls, is controlled by, or is under common control with Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or Philip A. Falcone.

(gg) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated thereunder.

(hh) "Indebtedness" shall have the meaning set forth in the Loan Agreement (as in effect on the Second Issue Date); *provided, however*, that Indebtedness shall not include:

(i) Hedging obligations entered into in the ordinary course of business and not for speculative purposes or taking a "market view";

(ii) Indebtedness in respect of bid, performance or surety bonds issued in the ordinary course of business, including guarantees or obligations with respect to letters of credit supporting such bid, performance or surety obligations (in each case other than for an obligation for money borrowed and only so long as such bonds or letters of credit remain undrawn);

(iii) Guarantees in respect of Indebtedness already taken into account for purposes hereof;

(iv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five Business Days of incurrence;

(v) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(vi) Indebtedness for advances of trade accounts payable received in the ordinary course of business on normal trade terms and not overdue by more than 60 days;

(vii) Indebtedness incurred from and after the Second Issue Date not in excess of \$750,000, in the aggregate;

(viii) Purchase Money Obligations (as defined in the Loan Agreement (as in effect on the Second Issue Date));

(ix) interest and other fees and expenses accrued in the ordinary course on Indebtedness that is issued and outstanding on the Third Issue Date and any interest and other fees accrued on any refinancing of such Indebtedness (including reasonable premiums, fees and expenses incurred in connection with such refinancing) in accordance with SECTION 9(a); or

(x) any Contingent Obligations (as defined in the Loan Agreement (as in effect on the Second Issue Date)) of the Company in respect of Indebtedness referred to in the foregoing clauses (i) through (ix).

(ii) "Independent Director" means any director on the Board that is "independent" as defined in the applicable rules of the Exchange on which the Common Stock is listed (or if the Common Stock is not listed on an Exchange, as defined in NASDAQ Marketplace Rule 4200(a)(15)), and in all cases, other than any director that is employed by or an officer, director or manager of a Harbinger Affiliate.

(jj) "Investment" means, with respect to any Person, (1) any direct or indirect advance, loan or other extension of credit to another Person, (2) any capital contribution to another Person, by means of any transfer of cash or other property or in any other form, (3) any purchase or acquisition of Equity Interests, bonds, notes or other Indebtedness, or other instruments or securities issued by another Person, including the receipt of any of the above as consideration for the disposition of assets or rendering of services, or (4) any Guarantee of any obligation of another Person.

(kk) "Issue Date" means, with respect to a Preferred Share, the date on which such share is first issued by the Company.

(ll) "Liquidation Event" means (i) the voluntary or involuntary liquidation, dissolution or winding-up of the Company, (ii) the commencement by the

Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (iii) the consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, and (iv) the consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors.

(mm) "Loan Agreement" means the Credit Agreement, dated as of September 22, 2014, among the Company, the Subsidiary Guarantors (as defined therein), the Lenders (as defined therein), and Jefferies Finance LLC, as arranger, as book manager and as documentation agent, syndication agent and administrative agent for the Lenders and as collateral agent for the Secured Parties.

(nn) "Market Disruption Event" means the occurrence or existence for more than one half hour period in the aggregate on any scheduled Trading Day for the Common Stock (or Reference Property, to the extent applicable) of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the applicable Exchange or otherwise) in the Common Stock (or Reference Property, to the extent applicable) or in any options, contracts or future contracts relating to the Common Stock (or Reference Property, to the extent applicable), and such suspension or limitation occurs or exists at any time before 4:00 p.m. (New York City time) on such day.

(oo) "May 2014 Purchasers" means the several "Purchasers" named in and party to the May 2014 Securities Purchase Agreement.

(pp) "May 2014 Securities Purchase Agreement" means that certain Securities Purchase Agreement, dated May 29, 2014, by and among the Company and the May 2014 Purchasers, as amended, supplemented or modified in accordance with its terms.

(qq) "NAV Escrow Adjustment" means the total amount of any escrow proceeds actually received by the Company with respect to the existing escrow amounts of: BID \$19,500,000, NAT tax liability \$4,800,000, NAT PTI Sale \$3,000,000 and NAT indemnification \$6,450,000.

(rr) "Net Asset Value" means, without duplication, the amount, valued twice per annum at June 30 and December 31 of each fiscal year (each a "Testing Period") beginning December 31, 2014, equal to (A) the sum of (1) the cash and Cash Equivalents of the Company plus (2) the Fair Market Value of all Securities (other than Cash Equivalents) owned by the Company, including Securities issued by Subsidiaries of the Company (after taking into account the Company's ownership percentage therein, the impact on such Fair Market Value of the cash, Cash Equivalents, preferred liquidation preferences, liabilities and indebtedness of such entities and the relative rights, preferences and privileges of the Company's Securities and the other outstanding securities issued by such entities), less (B) all Indebtedness and other liabilities of the Company determined in accordance with GAAP, including those related to the Company's investments to the extent not taken into account in the calculation of the Fair Market Value of such investments under clause (A)(2) above;

provided that for such purposes, (i) the derivative attributable to the conversion feature in any series of preferred stock will not be considered a liability and (ii) the Accrued Value (as well as any accrued Dividends not yet added to the Accrued Value) of the Preferred Shares and the preference amount (including the accrued value and all accrued but unpaid dividends thereon not included in the accrued value) of any other Senior Securities or Parity Securities will be considered a liability of the Company; *provided, further* that, solely for purposes of determining the Debt/NAV Ratio, the Indebtedness of the Company's wholly-owned and, after taking into account the Company's ownership percentage therein, Non-Wholly Owned Subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company's investment) shall be taken into account for purposes of determining "Debt" (*i.e.*, the numerator) but not taken into account (*i.e.*, added back) for purposes of determining Net Asset Value (*i.e.*, the denominator).

(ss) "Non-Wholly Owned Subsidiary" means any Subsidiary of the Company other than any Wholly Owned Subsidiary.

(tt) "Option Securities" means options, warrants or other rights to purchase or acquire Common Stock, as well as stock appreciation rights, phantom stock units and similar rights whose value is derived from the value of the Common Stock.

(uu) "Organizational Documents" means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended, supplemented or modified in accordance with its terms.

(vv) "Original Issue Date" means May 29, 2014, the first issue date of shares of Series A Preferred Stock.

(ww) "Original Issue Date NAV" means the Base Original Issue Date NAV, as may be increased from time to time by the NAV Escrow Adjustment.

(xx) "Permitted Payment" means any of the following:

(i) The repurchase, redemption or other acquisition of any shares of Common Stock or Junior Securities solely out of the net proceeds of the issuance of, or in exchange for the issuance of, Common Stock;

(ii) Restricted Payments not otherwise permitted hereby in an aggregate amount not to exceed \$750,000;

(iii) (a) repurchase of Equity Securities deemed to occur upon the exercise of stock options or warrants or upon the conversion or exchange of Equity Securities if the Equity Securities represent all or a portion of the exercise price thereof (or related withholding taxes) and (b) Restricted Payments to allow the payment of cash in lieu of the

issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Equity Securities in an aggregate amount under this clause (b) not to exceed \$25,000.

(yy) "Permitted Related Party Transactions" means any of the following:

(i) the payment, by the Company or a Subsidiary, of reasonable and customary regular fees and compensation to, and reasonable and customary indemnification arrangements and similar payments to or on behalf of, directors of the Company or directors of such Subsidiary, respectively, who are not employees of the Company or such Subsidiary, respectively, and qualify as Independent Directors;

(ii) any Permitted Payments or any Restricted Payments if permitted under Section 4(b);

(iii) transactions or payments, including the issuance of Equity Securities pursuant to any employee, officer or director compensation or benefit plans or arrangements by the Company or a Subsidiary existing on the Third Issue Date and listed on the Disclosure Schedule to the January 2015 Securities Purchase Agreement, or approved by the Compensation Committee, by the Board of Directors (or any committee thereof) of such Subsidiary, after the Third Issue Date, respectively;

(iv) the issuance of common stock or junior Equity Securities of the Company or any Subsidiary via a rights offering or otherwise to all stockholders of the Company or such Subsidiary after the Third Issue Date and to which the adjustment provision of SECTION 5(g) apply;

(v) the entering into of any tax sharing agreement or arrangement or any other transactions with any Subsidiaries of the Company or among any Subsidiaries of the Company undertaken in good faith for the sole purpose of improving the tax efficiency of the Company and its Subsidiaries;

(vi) the entering into of any information-sharing agreement or arrangement or any other transactions undertaken in good faith for the sole purpose of the preparation of financial statements and related financial information of the HRG Affiliates, the Company and its Subsidiaries.

(zz) "Person" means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, any agency or political subdivisions thereof or other "Person" as contemplated by Section 13(d) of the Exchange Act.

(aaa) "Preferred Elected Director" has the meaning ascribed thereto under the Series A Certificate of Designation.

(bbb) “Preferred Shares” means the shares of Series A-2 Preferred Stock but shall exclude, for the avoidance of doubt, shares of Series A Preferred Stock and shares of Series A-1 Preferred Stock.

(ccc) “Public Float Hurdle” means, as of any relevant measurement date, that (i) the Common Stock is registered under the Exchange Act, (ii) the Common Stock is listed on an Exchange, (iii) the aggregate value of all outstanding Common Stock (based on the Thirty Day VWAP) is not less than \$200,000,000 and (iv) the Public Market Capitalization is greater than 1.00x the aggregate value of the Common Stock issuable upon conversion of the Preferred Shares and any then outstanding Senior Securities or Parity Securities or “in-the-money” securities of the Company of the type described in clauses (ii) and (iii) of the definition of “Equity Securities” (calculated using the Thirty Day VWAP and the applicable conversion and exercise prices at such time).

(ddd) “Public Market Capitalization” means, as of any relevant measurement date, all issued and outstanding shares of Common Stock, other than Common Stock being held or Beneficially Owned by (A) the HRG Affiliates, (B) the directors and executive officers of the Company or (C) any other Affiliate of the Company.

(eee) “Redemption Date” means the Maturity Date, any Optional Redemption Date or any Change of Control Payment Date, as applicable.

(fff) “Redemption Price” means with respect to each Preferred Share: (i) in connection with a redemption pursuant to SECTION 6(a), the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed, (ii) in connection with a redemption pursuant to SECTION 6(b), the sum of 150% of the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed (the “Standard Call Price”) (provided that if the Public Float Hurdle is not satisfied as of the Optional Redemption Date, the Redemption Price for such redemption pursuant to SECTION 6(b) shall equal the greater of (X) such Standard Call Price and (Y) the Thirty Day VWAP as of the date the Company gives the applicable notice of optional redemption under SECTION 6(b) multiplied by the number of shares of Common Stock into which the Preferred Share is convertible as of such date at the applicable Conversion Price) or (iii) in connection with a Change of Control, the Change of Control Payment Amount.

(ggg) “Related Party Transaction” any transaction (or series of related transactions), arrangement or contract entered into, consummated, renewed, amended or extended between the Company or any Subsidiary of the Company, on the one hand, and any HRG Affiliate or other Affiliate of the Company (other than Subsidiaries of the Company), on the other hand, if such transaction, arrangement or contract involves payments or consideration in excess of \$500,000 in the aggregate; *provided* that (i) the execution of a joinder to the Registration Rights Agreement (as defined in the January 2015

Securities Purchase Agreement) by HRG Affiliates, (ii) the agreement granting information and access rights to the Company by Schuff International, Inc. substantially in the form previously provided to the Holders or (iii) the agreement granting information and access rights to HRG Affiliates by the Company substantially in the form previously provided to the holders shall not constitute a “Related Party Transaction”.

(hhh) “Requisite Holders” means Holders (other than the Company, its employees, its Subsidiaries or any Harbinger Affiliates) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares and shares of Series A Preferred Stock and Series A-1 Preferred Stock, taken as a whole; *provided* that, for purposes of such calculation, the Preferred Shares and shares of Series A Preferred Stock and Series A-1 Preferred Stock held by the Company, its employees, its Subsidiaries or any Harbinger Affiliate shall be treated as not outstanding.

(iii) “Restricted Payment” means (A) any dividend, distribution or other payment in respect of the Common Stock or any other Junior Securities (other than dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B)) or Equity Securities of a Subsidiary or the repurchase, redemption or other acquisition of any shares of Common Stock or any other Junior Securities (or setting aside funds for such purposes) or Equity Securities of a Subsidiary or (B) any dividend, distribution or other payment in respect of Parity Securities or the repurchase, redemption or other acquisition of any Parity Securities (or setting aside funds for such purposes) unless such dividend, distribution, payment, repurchase, redemption or other acquisition is made on a pro rata basis among the Preferred Shares and the Parity Securities in proportion to the amounts to which they are entitled.

(jjj) “Second Issue Date” means September 22, 2014, the first issue date of shares of Series A-1 Preferred Stock.

(kkk) “Securities” with respect to a Person means debt or equity securities issued by such Person or similar obligations of, or participations in, such Person.

(lll) “September 2014 Purchasers” means the several “Purchasers” named in and party to the September 2014 Securities Purchase Agreement.

(mmm) “September 2014 Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated September 22, 2014, by and among the Company and the September 2014 Purchasers, as amended, supplemented or modified in accordance with its terms.

(nnn) “Series A Certificate of Designation” means the Certificate of Designation of the Series A Preferred Stock, as amended.

(ooo) “Series A Preferred Stock” means the Series A Convertible Participating Preferred Stock of the Company, par value \$0.001 per share.

(ppp) “Series A-1 Preferred Stock” means the Series A-1 Convertible Participating Preferred Stock of the Company, par value \$0.001 per share.

(qqq) “Series A-2 Requisite Holders” means holders of Preferred Shares (other than the Company, its employees, its Subsidiaries or any Harbinger Affiliates) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares; *provided* that, for purposes of such calculation, the Preferred Shares held by the Company, its employees, its Subsidiaries or any Harbinger Affiliate shall be treated as not outstanding.

(rrr) “Specified Percentage” means, until the third (3<sup>rd</sup>) anniversary of the Original Issue Date, 150%, and 100% thereafter.

(sss) “Subsidiary” means with respect to any Person, any corporation, association or other business entity of which more than 50% of the outstanding Voting Stock is owned, directly or indirectly, by, or of which more than 50% of the economic value accrues to, or, in the case of a partnership, the sole general partner or the managing partner or the only general partners of which are, such Person and one or more Subsidiaries of such Person (or a combination thereof). Unless otherwise specified, “Subsidiary” means a Subsidiary of the Company.

(ttt) “Third Issue Date” means January 5, 2015, the first issue date of Preferred Shares.

(uuu) “Thirty Day VWAP” means, with respect to a security, the average of the Daily VWAP of such security for each day during a thirty (30) consecutive Trading Day period ending immediately prior to the date of determination. Unless otherwise specified, “Thirty Day VWAP” means the Thirty Day VWAP of the Common Stock.

(vvv) “Trading Day” means any day on which (i) there is no Market Disruption Event and (ii) the Exchange on which the Common Stock (or Reference Property, to the extent applicable) is listed and is open for trading or, if the Common Stock (or Reference Property, to the extent applicable) is not so listed, admitted for trading or quoted, any Business Day. A Trading Day only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then standard closing time for regular trading on the relevant exchange or trading system.

(www) “U.S. Government Obligations” means obligations issued or directly and fully guaranteed or insured by the United States of America or by any agent or instrumentality thereof, *provided* that the full faith and credit of the United States of America is pledged in support thereof.

(xxx) “Voting Power” means either (a) the power to elect, designate or nominate directors to the Board, or (b) vote (as Common Stock or together with Common Stock) on matters to be voted on or consented to by the Common Stock through the ownership of Voting Stock, by contract or otherwise.



(yy) "Voting Stock" means, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

(zz) "Wholly Owned Subsidiary" means any Subsidiary of a Person of which such Person owns, either directly or indirectly, 100% of the common stock or other common equity interests of such Subsidiary (excluding qualifying shares held by directors).

SECTION 11. Miscellaneous. For purposes of this Certificate of Designation, the following provisions shall apply:

(a) Share Certificates. If any certificates representing Preferred Shares shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and in substitution for and upon cancellation of the mutilated certificate, or in lieu of and substitution for the lost, stolen or destroyed certificate, a new Preferred Share certificate of like tenor and representing an equivalent number of Preferred Shares, but only upon receipt of evidence of such loss, theft or destruction of such certificate and indemnity by the holder thereof, if requested, reasonably satisfactory to the Company.

(b) Status of Cancelled Shares. Preferred Shares which have been converted, redeemed, repurchased or otherwise cancelled shall be retired and, following the filing of any certificate required by the DGCL, have the status of authorized and unissued shares of Preferred Stock, without designation as to series, until such shares are once more designated by the Board as part of a particular series of Preferred Stock of the Company.

(c) Severability. If any right, preference or limitation of the Series A-2 Preferred Stock set forth in this Certificate of Designation is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designation which can be given effect without 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 such right, preference or limitation unless so expressed herein.

(d) Remedies.

(i) The Company acknowledges that the obligations imposed on it in this Certificate of Designation are special, unique and of an extraordinary character, and irreparable damages, for which money damages, even if available, would be an inadequate remedy, would occur in the event that the Company does not perform the provisions of this Certificate of Designation in accordance with its specified terms or otherwise breaches such provisions. The Holders of Preferred Stock shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Certificate of Designation and to seek to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled, at law or in equity, including without limitation money damages.

(e) Renunciation under DGCL Section 122(17). Pursuant to Section 122(17) of the Delaware General Corporation Law, the Company renounces any interest or expectancy of the Company in, or being offered an opportunity to participate in, business opportunities that are presented to one or more of the Preferred Elected Directors, in each case other than any business opportunities that are presented to any such Preferred Elected Director solely in his or her capacity as a director of the Company.

(f) Headings. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(g) Notices. All notices or communications in respect of Preferred Stock shall be in writing and shall be deemed delivered (a) one (1) Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, (b) on the date of delivery if delivered personally, or (c) if by facsimile, upon written confirmation of receipt by facsimile. Notwithstanding the foregoing, if Preferred Stock is issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the beneficial holders of Preferred Stock in any manner permitted by such facility.

(h) Other Rights. The shares of 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 Certificate of Incorporation or as provided by applicable law and regulation.

(i) Series A-2 Requisite Holders; Requisite Holders. Notwithstanding anything to the contrary contained herein, any consent, waiver, vote, decision, election or action required or permitted to be taken hereunder by (i) the Holders of the Preferred Shares as a group (i.e., as opposed to by a specified Holder) shall require the approval or action, as applicable, of the Series A-2 Requisite Holders and (ii) the Holders of the Preferred Shares and shares of Series A Preferred Stock and Series A-1 Preferred Stock as a group shall require the approval or action, as applicable, of the Requisite Holders and, in each case, after such approval or action, shall be binding on all such Holders.

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IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be executed by a duly authorized officer of the Company as of January 5, 2015.

**HC2 HOLDINGS, INC.**

By: /s/ Keith M. Hladek

Name: Keith M. Hladek

Title: Chief Operating Officer

*[SIGNATURE PAGE TO CERTIFICATE OF DESIGNATION]*

**CERTIFICATE OF AMENDMENT TO THE CERTIFICATE OF DESIGNATION  
OF  
SERIES A CONVERTIBLE PARTICIPATING PREFERRED STOCK  
OF  
HC2 HOLDINGS, INC.**

The undersigned, Keith M. Hladek, the Chief Operating Officer of HC2 Holdings, Inc. (including any successor in interest, the "Company"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), does hereby certify, in accordance with Sections 103, 141 and 242 of the DGCL as follows:

- A. The Company's Second Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"), authorizes 20,000,000 shares of preferred stock, par value \$0.001 per share (the "Preferred Stock"), issuable from time to time in one or more series.
- B. The Certificate of Incorporation authorizes the Board of Directors (the "Board") to provide by resolution for the issuance of the shares of Preferred Stock in one or more series, the number of shares in each series, the voting powers, if any, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof.
- C. The Board, pursuant to its authority as aforesaid, designated a series of Preferred Stock, par value \$0.001 per share, as the Series A Convertible Participating Preferred Stock, by resolution dated May 29, 2014.
- D. The Company, in accordance with Sections 103 and 151 of the DGCL, filed a certificate of designation on May 29, 2014 with the Secretary of State of the State of Delaware to set the number of shares constituting the Series A Convertible Participating Preferred Stock, and the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof (the "May 2014 Certificate of Designation").
- E. The Company, in accordance with Sections 141 and 242 of the DGCL, filed a certificate of amendment to the May 2014 Certificate of Designation on September 22, 2014 with the Secretary of State of the State of Delaware which amended and restated the May 2014 Certificate of Designation in its entirety (the "September 2014 Certificate of Amendment").
- F. 30,000 shares of the Company's Series A Convertible Participating Preferred Stock are issued and outstanding as of the date hereof.
- G. This Certificate of Amendment to the Certificate of Designation of Series A Convertible Participating Preferred Stock has been duly adopted and approved by the Board in accordance with the provisions of Sections 141 and 242 of the DGCL.

- H. This Certificate of Amendment to the Certificate of Designation of Series A Convertible Participating Preferred Stock has been duly adopted and approved by the Series A Requisite Holders (under and as defined in the September 2014 Certificate of Amendment).
- I. The text of the September 2014 Certificate of Amendment is hereby amended and restated to read as set forth herein in full:

SECTION 1. Number; Designation; Rank.

(a) This series of convertible participating preferred stock is designated as the "Series A Convertible Participating Preferred Stock" (the "Series A Preferred Stock"). The number of shares constituting the Series A Preferred Stock is 30,000 shares, par value \$0.001 per share.

(b) The Series A Preferred Stock ranks, with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise:

(i) senior in preference and priority to the Common Stock and each other class or series of Capital Stock of the Company, except for (x) any class or series of Capital Stock hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior to or on parity, without preference or priority, with the Series A Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively with the Common Stock, the "Junior Securities"), (y) the shares of Series A-1 Preferred Stock and (z) the shares of Series A-2 Preferred Stock;

(ii) on parity, without preference and priority, with the Series A-1 Preferred Stock, the Series A-2 Preferred Stock and each other class or series of Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank on parity, without preference or priority, with the Series A Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively, the "Parity Securities"); and

(iii) junior in preference and priority to each other class or series of Preferred Stock or any other Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior in preference or priority to the Series A Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise (collectively, "Senior Securities").

SECTION 2. Dividends.

(a) Cash Dividends. Holders shall be entitled to receive, out of funds legally available for the payment of dividends to the Company's stockholders under

Delaware law, on each Preferred Share, cumulative cash dividends which accrue daily at a per annum rate of 7.50% on the Accrued Value of such Preferred Share ("Cash Dividends"). Such Cash Dividends shall begin to accrue and be cumulative from the Issue Date. Cash Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period. If and to the extent that the Company does not for any reason (including because there are insufficient funds legally available for the payment of dividends) pay the entire Cash Dividend payable for a particular Dividend Period in cash on the applicable Dividend Payment Date for such period (whether or not there are funds of the Company legally available for the payment of dividends to the Company's stockholders under Delaware law or such dividends are declared by the Board), during the period in which such Cash Dividend remains unpaid, an additional accreting dividend (the "Cash Accretion Dividends") shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Cash Dividend through the daily addition of such Cash Accretion Dividends to the Accrued Value (whether or not such Cash Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law).

(b) Accreting Dividends. In addition to the Cash Dividend, for each Dividend Period beginning on or after the Issue Date, the Holders shall be entitled to receive on each Preferred Share additional dividends at the per annum rates set forth in this SECTION 2(b) (the "Basic Accreting Dividends" and, together with the Cash Accretion Dividends, the Participating Accretion Dividends and the In-Kind Participating Dividends, the "Accreting Dividends"; the Accreting Dividends, together with the Cash Dividend and the Participating Dividends, the "Dividends"). Basic Accreting Dividends shall accrue and be cumulative from the Issue Date. Basic Accreting Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period by the addition of such amount to the Accrued Value, whether or not declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law. Such Basic Accreting Dividend for any Dividend Period shall be at a per annum rate (the "Accreting Dividend Rate") determined as follows:

- (i) If Net Asset Value as of the last day of any Dividend Period is less than 120% of Original Issue Date NAV, a per annum rate of 4.00% of the Accrued Value for the next succeeding Dividend Period;
- (ii) If Net Asset Value as of the last day of any Dividend Period is equal to or greater than 120% and less than or equal to 140% of Original Issue Date NAV, a per annum rate of 2.00% of the Accrued Value for the next succeeding Dividend Period; and
- (iii) If Net Asset Value as of the last day of any Dividend Period is greater than 140% of Original Issue Date NAV, no additional per annum rate for the next succeeding Dividend Period;

provided, however, that (1) the Accreting Dividend Rate with respect to the period from the Original Issue Date through June 30, 2014 shall be 4.00% of the Accrued Value and (2) notwithstanding anything to the contrary contained herein, the Accreting Dividend Rate shall be 7.25% of the Accrued Value during any portion of any Dividend Period during which any of the following is true: (w) the Daily VWAP for the immediately preceding trading day was less than \$1.00 (as adjusted for stock splits, stock dividends, stock combinations and similar events), (x) the Common Stock is not registered under Section 12(b) of the Exchange Act, (y) the Common Stock is not listed on an Exchange or (z) the Company is delinquent in the payment of any Cash Dividends; provided, that the Company's failure to comply with requirements (y) and (z) above will not trigger the increased Accreting Dividend Rate during the first year after the Original Issue Date.

(c) Participating Cash Dividends. If the Company declares, makes or pays any cash dividend or distribution in respect of the Common Stock (a "Common Dividend"), each Holder shall receive a dividend (in addition to the Dividends provided for by SECTION 2(a) and SECTION 2(b)) in respect of each Preferred Share held thereby, in an amount equal to the product of (x) the amount of such Common Dividend paid per share of Common Stock, multiplied by (y) the number of shares of Common Stock issuable if such Preferred Share had been converted into shares of Common Stock immediately prior to the record date for such Common Dividend (such amount per share of Preferred Stock, the "Participating Cash Dividend"). Participating Cash Dividends shall be payable to Holders on the record date for such Common Dividend at the same time and in the same manner as the Common Dividend triggering such Participating Cash Dividend is paid. If and to the extent that the Company does not for any reason pay the entire Participating Cash Dividend when the Common Dividend is paid to the holders of Common Stock, during the period in which such Participating Cash Dividend remains unpaid, an additional accreting dividend (the "Participating Accretion Dividends") shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Participating Cash Dividend through the daily addition of such Participating Accretion Dividends to the Accrued Value (whether or not such Participating Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law).

(d) In-Kind Participating Dividends. If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets, securities or property, in respect of the Common Stock (an "In-Kind Common Dividend"), including without limitation any spin-off of one or more subsidiaries or businesses of the Company but excluding: (I) dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B); and (II) cash dividends with respect to which Holders are entitled to Participating Cash Dividends, then the Holders shall receive in such distribution or other transaction, at the same time and in the same manner as holders of Common Stock, the same type and amount of consideration (the "In-Kind Participating Dividend" and, collectively with the Participating Cash Dividend, the "Participating Dividends") as Holders would have received if, immediately prior to the record date of such In-Kind Common Dividend, they had held the number of shares of Common Stock issuable upon conversion of the Preferred Shares. To the extent that the Company establishes or adopts a stockholder rights plan or agreement

(i.e., a “poison pill”), the Company shall ensure that the Holders will receive, as an In-Kind Participating Dividend, rights under the stockholder rights plan or agreement with respect to any shares of Common Stock that at the time of such distribution would be issuable upon conversion of the Preferred Shares. If and to the extent that the Company does not for any reason pay the entire In-Kind Participating Dividend when the In-Kind Common Dividend is paid to the holders of Common Stock, during the period in which such In-Kind Participating Dividend remains unpaid, an additional accreting dividend (the “In-Kind Accretion Dividends”) shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid In-Kind Participating Dividend through the daily addition of such In-Kind Accretion Dividends to the Accrued Value (whether or not such In-Kind Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company’s stockholders under Delaware law).

(e) Dividends (other than Participating Dividends) payable on the Series A 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 (other than Participating Dividends) payable on the Series A 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.

(f) Cash Dividends and Accreting Dividends that are payable on Series A Preferred Stock on any Dividend Payment Date will be payable to Holders of record on the applicable record date, which shall be the fifteenth (15<sup>th</sup>) calendar day before the applicable Dividend Payment Date, or, with respect to any Cash Dividends not paid on the scheduled Dividend Payment Date therefor, such record date fixed by the Board (or a duly authorized committee of the Board) that is not more than sixty (60) nor less than ten (10) days prior to such date on which such accrued and unpaid Cash Dividends are to be paid (each such record date, 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.

(g) The quarterly dividend periods with respect to Cash Dividends and Accreting Dividends shall commence on and include January 1, April 1, July 1 and October 1 (other than the initial Dividend Period, which shall commence on and include the Issue Date) and shall end on and include the last calendar day of the calendar quarter ending March 31, June 30, September 30 and December 31 preceding the next Dividend Payment Date (a “Dividend Period”).

### SECTION 3. Liquidation Preference.

(a) Upon any Liquidation Event, each Preferred Share entitles the Holder thereof to receive and to be paid out of the assets of the Company legally available for distribution to the Company’s stockholders, before any distribution or payment may be made to a holder of any Junior Securities, an amount in cash per share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any,



on such share to the extent not included in the Accrued Value (such sum, after the Specified Percentage multiplier and as adjusted, the “Regular Liquidation Preference”) and (ii) an amount equal to the amount the Holder of such share would have received upon such Liquidation Event had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the “Liquidation Preference”).

(b) If upon any such Liquidation Event, the assets of the Company legally available for distribution to the Company’s stockholders are insufficient to pay the Holders the full Liquidation Preference and the holders of all Parity Securities the full liquidation preferences to which they are entitled, the Holders and the holders of such Parity Securities will share ratably in any such distribution of the assets of the Company in proportion to the full respective amounts to which they are entitled.

(c) After payment to the Holders of the full Liquidation Preference to which they are entitled, the Holders as such will have no right or claim to any of the assets of the Company.

(d) The value of any property not consisting of cash that is distributed by the Company to the Holders will equal the Fair Market Value thereof on the date of distribution.

(e) No holder of Junior Securities shall receive any cash upon a Liquidation Event unless the entire Liquidation Preference in respect of the Preferred Shares has been paid in cash. To the extent that there is insufficient cash available to pay the entire Liquidation Preference in respect of the Preferred Shares and any liquidation preference in respect of Parity Securities in full in cash upon a Liquidation Event, the Holders and the holders of such Parity Securities will share ratably in any cash available for distribution in proportion to the full respective amounts to which they are entitled upon such Liquidation Event.

#### SECTION 4. As-Converted Voting Rights; Certain Consent Rights.

(a) The Holders are entitled to vote on all matters on which the holders of shares of Common Stock are entitled to vote and, except as otherwise provided herein (including under SECTION 7 below) or by law, the Holders shall vote together with the holders of shares of Common Stock as a single class. As of any record date or other determination date, each Holder shall be entitled to the number of votes such Holder would have had if all Preferred Shares held by such Holder on such date had been converted into shares of Common Stock immediately prior thereto, except that, in the event that any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the receipt of any Accreting Dividends by such Holder, the voting rights of such Holder pursuant to this Section 4(a) shall not be increased as a result of such Holder’s receipt of such Accreting Dividends unless and until such Holder and the Company shall have made their respective filings under the HSR Act and the applicable waiting period shall have expired or been terminated in connection with such filings. The Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with

the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation.

(b) In addition to the voting rights provided for by SECTION 4(a) and SECTION 7 and any voting rights to which the Holders may be entitled to under law, for so long as any Preferred Shares, shares of Series A-1 Preferred Stock or shares of Series A-2 Preferred Stock are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Requisite Holders:

(i) amend the Certificate of Incorporation (excluding for this purpose this Certificate of Designation) or the By-Laws of the Company (including by means of merger, consolidation, reorganization, recapitalization or otherwise), in each case, in a manner adverse to the Holders;

(ii) authorize, create or issue any (x) Senior Securities or any debt securities convertible into or exchangeable for Equity Securities; (y) Parity Securities or (z) any voting securities providing the holders thereof voting or board designation or appointment rights that are disproportionate to such holders' fully diluted ownership of the Common Stock;

(iii) (a) authorize or effect the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (b) consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, or (c) consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors;

(iv) incur, or permit any Subsidiary to incur, any Indebtedness not otherwise permitted by the terms of SECTION 9(a);

(v) enter into, consummate, adopt, approve, establish or amend any Related Party Transaction (including any agreements or arrangements with HRG Affiliates relating to corporate opportunities and including all amendments, waivers and consents relating to any agreements and arrangements subject to this clause (vi)) (other than a Permitted Related Party Transaction, in either case, that has not been approved by a committee of the Board consisting solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director;

(vi) make, or permit any of its Subsidiaries to make, any Restricted Payments other than (A) the purchase of Equity Securities held by officers, directors, employees, consultants or independent contractors or former officers, directors, employees, consultants or independent contractors (or their estates or beneficiaries under their estates), upon death, disability, retirement, severance or other termination of

employment provided that the aggregate cash consideration paid therefor in any twelve-month period after the Original Issue Date does not exceed an aggregate amount of (I) \$250,000 with respect to the Company and its Wholly Owned Subsidiaries, taken together, and (II) \$250,000 with respect to any Non-Wholly Owned Subsidiary of the Company, taken together with all Wholly Owned Subsidiaries of such Non-Wholly Owned Subsidiary, (B) dividends and distributions by Non-Wholly owned Subsidiaries made in accordance with the Organizational Documents of such Non-Wholly Owned Subsidiaries, (C) dividends and distributions to the Company or its Wholly Owned Subsidiaries and (D) Permitted Payments;

(vii) create a new Subsidiary of the Company not in existence on the Third Issue Date for the primary purpose of issuing Equity Securities of such Subsidiary or incurring Debt the proceeds of which will, directly or indirectly, be used to make dividends or other distributions or payments of cash to holders of the Company's Capital Stock other than the Holders; provided, that for the avoidance of doubt, the foregoing shall not prohibit dividends or other distributions to the Company;

(viii) effect any voluntary deregistration under the Exchange Act or voluntary delisting with any Exchange in respect to the Common Stock other than in connection with a Change of Control transaction pursuant to which the Company satisfies in full (in cash with respect to payment obligations) all of its obligations under SECTION 6(c); or

(ix) agree to do, directly or indirectly, any of the foregoing actions set forth in clauses (i) through (viii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Requisite Holders.

(c) In addition to the voting rights provided for by SECTION 4(a), SECTION 4(b) and SECTION 7 and any voting rights to which the Holders may be entitled to under law, for so long as any Preferred Shares are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Series A Requisite Holders:

(i) amend, repeal, alter or add, delete or otherwise change the powers, preferences, rights or privileges of the Series A Preferred Stock;

(ii) authorize or issue any shares of Series A Preferred Stock other than to the May 2014 Purchasers pursuant to SECTION 2 of the May 2014 Securities Purchase Agreement, or effect any stock split or combination, reclassification or similar event with respect to the Series A Preferred Stock;

(iii) incur, or permit any Subsidiary to incur, any Indebtedness not otherwise issued in compliance with the participation rights contained in SECTION 5.4 of the May 2014 Securities Purchase Agreement; or

(iv) agree to do, directly or indirectly, any of the foregoing actions set forth in clauses (i) through (iii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Series A Requisite Holders.

(d) Notwithstanding anything to the contrary contained in this SECTION 4, the Company may not, directly or indirectly, take any action otherwise approved pursuant to Section 4(b) if such action would have a materially adverse and disproportionate effect on the powers, preferences, rights, limitations, qualifications and restrictions or privileges of any Holder with respect to any shares of Series A Preferred Stock held by any Holder, without the prior approval of such Holder.

(e) Written Consent. Any action as to which a class vote of the holders of Preferred Stock, or the holders of Preferred Stock and Common Stock voting together, is required pursuant to the terms of this Certificate of Designation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Company.

SECTION 5. Conversion. Each Preferred Share is convertible into shares of Common Stock (or Reference Property, to the extent applicable) as provided in this SECTION 5.

(a) Conversion at the Option of Holders of Series A Preferred Stock. Subject to SECTION 5(b) hereof, each Holder is entitled to convert, at any time and from time to time, at the option and election of such Holder, any or all outstanding Preferred Shares held by such Holder and receive therefor the property described in SECTION 5(d) upon such conversion. In order to convert Preferred Shares into shares of Common Stock (or Reference Property, to the extent applicable), the Holder must surrender the certificates representing such Preferred Shares at the office of the Company's transfer agent for the Series A Preferred Stock (or at the principal office of the Company, if the Company serves as its own transfer agent), together with (x) written notice that such Holder elects to convert all or part of the Preferred Shares represented by such certificates as specified therein, (y) a written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the transfer agent or the Company, as applicable (if reasonably required by the transfer agent or the Company, as applicable), and (z) funds for any stock transfer, documentary, stamp or similar taxes, if payable by the Holder pursuant to SECTION 5(f)(i). Except as provided in SECTION 5(b) and in SECTION 5(c), the date the transfer agent or the Company, as applicable, receives such certificates, together with such notice and any other documents and amounts required to be paid by the Holder pursuant to this SECTION 5, will be the date of conversion (the "Conversion Date").

(b) Conversion at the Option of the Company. Beginning on the third (3<sup>rd</sup>) anniversary of the Original Issue Date, the Company shall have the right, at its option, to cause all shares of Series A Preferred Stock to be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred

Shares are surrendered), in whole but not in part, into the property described in SECTION 5(d) within five (5) Business Days of any day (the “Forced Conversion Trigger Date”) on which all of the Company Conversion Conditions are satisfied from time to time. The Company may exercise its option under this SECTION 5(b) by providing the Holders with a written notice, which notice shall specify that the Company is exercising the option contemplated by this SECTION 5(b), the Forced Conversion Trigger Date and the Conversion Date on which the conversion shall occur (which Conversion Date shall be not less than ten (10) Business Days following the date such notice is provided to the Holders); *provided* that, once delivered, such notice shall be irrevocable, unless the Company obtains the written consent of the Series A Requisite Holders. For the avoidance of doubt, (x) the Holders shall continue to have the right to convert their Preferred Shares pursuant to SECTION 5(a) until and through the Conversion Date contemplated in this SECTION 5(b) and (y) if any Preferred Shares are converted pursuant to SECTION 5(a), such Preferred Shares shall no longer be converted pursuant to this SECTION 5(b) and the Company’s notice delivered to the Holders pursuant to this SECTION 5(b) shall automatically terminate with respect to such Preferred Shares. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 5(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(b). The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 5(b) announcing the Company’s election to convert Preferred Shares pursuant to this SECTION 5(b).

(c) Automatic Conversion on Maturity Date. In the event that any Holder has not elected to have its Preferred Shares redeemed by the Company on the Maturity Date (as defined herein) pursuant to SECTION 6(a), then such Holder’s Preferred Shares shall be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole and not in part, into the property described in SECTION 5(d), effective as of the Maturity Date, which shall be deemed to be the “Conversion Date” for purposes of this SECTION 5(c). As promptly as practicable (but in no event more than five (5) Business Days) following the Maturity Date, the Company shall deliver a notice to any Holder whose Preferred Shares have been converted by the Company pursuant to this SECTION 5(c), informing such Holder of the number of shares of Common Stock into which such Preferred Shares have been converted, together with certificates evidencing such shares of Common Stock. Notwithstanding the foregoing, any notice delivered by the Company in compliance with this SECTION 5(c) shall be conclusively presumed to have been duly given, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(c). The Company shall issue a press release for

publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following the Maturity Date announcing the aggregate number of Preferred Shares being converted pursuant to this SECTION 5(c) and the number of shares of Common Stock issuable in connection therewith, as well as the aggregate number of Preferred Shares redeemed on the Maturity Date and the purchase price paid by the Company therefor.

(d) Amounts Received Upon Conversion. Upon a conversion of Preferred Shares pursuant to SECTION 5(a), (b) or (c), the Holder of such converted Preferred Shares shall receive in respect of each Preferred Share:

(i) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount (the "Conversion Amount") determined by dividing (A) the Accrued Value for the Preferred Share to be converted by (B) the Conversion Price in effect at the time of conversion; *provided that*, notwithstanding the foregoing, if the Company has elected to convert all Preferred Shares pursuant to SECTION 5(b) and the Public Float Hurdle is not met on the Forced Conversion Trigger Date, then each Holder may elect, by delivery of a notice to the Company no later than the close of business on the Business Day immediately prior to the Conversion Date, to receive, in lieu of Common Stock (or Reference Property, to the extent applicable), cash equal to the Conversion Amount multiplied by the Thirty Day VWAP as of the close of business on the Business Day immediately preceding the Conversion Date, which cash amount shall be delivered to the electing Holders within forty-five (45) calendar days of the date that the last Holder electing to receive cash pursuant to this SECTION 5(d)(i) has provided the Company with notice thereof;

(ii) cash in an amount equal to the amount of any accrued but unpaid Cash Dividends and Participating Cash Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted; *provided that*, to the extent the Company is prohibited by law or by contract from paying such amount, then the Company shall provide written notice to the applicable Holder of such inability to pay, and at the written election of the Holder (which written election shall be delivered to the Company within five (5) Business Days of receipt of such written notice from the Company), the Company shall either pay such amount as soon as payment is no longer so prohibited or issue Common Stock (or Reference Property, to the extent applicable) in the manner specified in SECTION 5(d)(i) as if the amount of such accrued but unpaid Cash Dividends and Participating Cash Dividends were added to the Accrued Value (it being understood that any such Cash Dividends that are not timely paid upon conversion as a result of this proviso will be deemed to be overdue and delinquent for purposes of calculating Cash Accretion Dividends pursuant to SECTION 2(a) hereunder until paid in full in cash);

(iii) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount determined by dividing (A) the amount of any accrued but unpaid Accreting Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted by (B) the Conversion Price in effect at the time of Conversion; and

(iv) any accrued and unpaid In-Kind Participating Dividends.

Notwithstanding the foregoing, in the event any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the conversion of any Preferred Shares into the property described above in this Section 5(d), at the option of such Holder upon written notice to the Company, the effectiveness of such conversion shall be delayed (only to the extent necessary to avoid a violation of the HSR Act), until such Holder shall have made such filing under the HSR Act and the applicable waiting period shall have expired or been terminated; provided, however, that in such circumstances such Holder shall use commercially reasonable efforts to make such filing and obtain the expiration or termination of such waiting period as promptly as reasonably practical and the Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation. Notwithstanding the foregoing, if the conversion of any Preferred Share is delayed pursuant to the preceding sentence at (x) a time when the Company desires to exercise its right to convert shares of Series A Preferred Stock pursuant to SECTION 5(b) or (y) the Maturity Date in connection with the automatic conversion of the shares of Series A Preferred Stock pursuant to SECTION 5(c), from and after the date of the conversions contemplated by SECTIONS 5(b) or 5(c), as applicable, such Preferred Share not then converted shall have no rights, powers, preferences or privileges other than the rights provided by this paragraph and the right to (i) convert into Common Stock if and when such Holder shall have made such filing under the HSR Act and the waiting period in connection with such filing under the HSR Act shall have expired or been terminated and (ii) receive dividends and distributions pursuant to SECTIONS 2(c) and 2(d).

(e) Fractional Shares. No fractional shares of Common Stock (or fractional shares in respect of Reference Property, to the extent applicable) will be issued upon conversion of the Series A Preferred Stock. In lieu of fractional shares, the Company shall pay cash in respect of each fractional share equal to such fractional amount multiplied by the Thirty Day VWAP as of the closing of business on the Business Day immediately preceding the Conversion Date (or the Fair Market Value thereof in respect of any Reference Property). If more than one Preferred Share is being converted at one time by the same Holder, then the number of full shares issuable upon conversion will be calculated on the basis of the aggregate number of Preferred Shares converted by such Holder at such time.

(f) Mechanics of Conversion.

(i) As soon as reasonably practicable after the Conversion Date (and in any event within four (4) Business Days after such date), the Company shall issue and deliver to the applicable Holder one or more certificates for the number of shares of Common Stock (or Reference Property, to the extent applicable) to which such Holder is entitled, together with, at the option of the Holder, a check or wire transfer of immediately available funds for payment of fractional shares and any payment required by SECTION 5(d)(ii) in exchange for the certificates representing the converted Preferred Shares. Such conversion will be deemed to have been made on the Conversion Date, and the Person entitled to receive the shares of Common Stock (or

Reference Property, to the extent applicable) issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock (or Reference Property, to the extent applicable) on such date. The delivery of the Common Stock upon conversion of Preferred Shares shall be made, at the option of the applicable Holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Company to the appropriate Holder on a book-entry basis or by mailing certificates evidencing the shares to such Holder at its address as set forth in the conversion notice. In cases where fewer than all the Preferred Shares represented by any such certificate are to be converted, a new certificate shall be issued representing the unconverted Preferred Shares. The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of Common Stock (or Reference Property, to the extent applicable) upon conversion or due upon the issuance of a new certificate for any Preferred Shares not converted to the converting Holder; provided that the Company shall not be required to pay any such amounts, and any such amounts shall be paid by the converting Holder, in the event that such Common Stock or Preferred Shares are issued in a name other than the name of the converting Holder.

(ii) For the purpose of effecting the conversion of Preferred Shares, the Company shall: (A) at all times reserve and keep available, free from any preemptive rights, out of its treasury or authorized but unissued shares of Common Stock (or Reference Property, to the extent applicable) the full number of shares of Common Stock (or Reference Property, to the extent applicable) deliverable upon the conversion of all outstanding Preferred Shares after taking into account any adjustments to the Conversion Price from time to time pursuant to the terms of this SECTION 5 and any increases to the Accrued Value from time to time and assuming for the purposes of this calculation that all outstanding Preferred Shares are held by one holder) and (B) without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, take all actions reasonably required to amend its Certificate of Incorporation, as expeditiously as reasonably practicable, to increase the authorized and available amount of Common Stock (or Reference Property, to the extent applicable) if at any time such amendment is necessary in order for the Company to be able to satisfy its obligations under this SECTION 5. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon conversion of the Series A Preferred Stock, the Company will take any corporate action which may be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock (or Reference Property, to the extent applicable) upon the conversion of all outstanding Preferred Shares at such adjusted Conversion Price.

(iii) From and after the Conversion Date, the Preferred Shares converted on such date, will no longer be deemed to be outstanding and all rights of the Holder thereof including the right to receive Dividends, but excluding the right to receive from the Company the Common Stock (or Reference Property, to the extent applicable) or any cash payment upon conversion, and except for any rights of Holders (including any voting rights) pursuant to this Certificate of Designation which by their express terms continue following conversion or, for the avoidance of doubt, rights which by their express terms continue following conversion pursuant to any of the other Transaction Agreements (as defined in the May 2014 Securities Purchase Agreement) shall immediately and automatically cease and terminate with



respect to such Preferred Shares; *provided* that, in the event that a Preferred Share is not converted due to a default by the Company or because the Company is otherwise unable to issue the requisite shares of Common Stock (or Reference Property, to the extent applicable), such Preferred Share will, without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, remain outstanding and will continue be entitled to all of the rights attendant to such Preferred Share as provided herein.

(iv) The Company shall comply with all federal and state laws, rules and regulations and applicable rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed. If any shares of Common Stock (or Reference Property, to the extent applicable) to be reserved for the purpose of conversion of Preferred Shares require registration with or approval of any Person or group (as such term is defined in Section 13(d)(3) of the Exchange Act) under any federal or state law or the rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed before such shares may be validly issued or delivered upon conversion, then the Company will, as expeditiously as reasonably practicable, use commercially reasonable efforts to secure such registration or approval, as the case may be. So long as any Common Stock (or Reference Property, to the extent applicable) into which the Preferred Shares are then convertible is then listed on an Exchange, the Company will list and keep listed on any such Exchange, upon official notice of issuance, all shares of such Common Stock (or Reference Property, to the extent applicable) issuable upon conversion.

(v) All shares of Common Stock (or Reference Property, to the extent applicable) issued upon conversion of the Preferred Shares will, upon issuance by the Company, be duly and validly issued, fully paid and nonassessable, not issued in violation of any preemptive or similar rights arising under law or contract and free from all taxes, liens and charges with respect to the issuance thereof, and the Company shall take no action which will cause a contrary result.

(g) Adjustments to Conversion Price.

(i) The Conversion Price shall be subject to the following adjustments:

(A) *Common Stock Dividends or Distributions.* If the Company issues shares of Common Stock as a dividend or distribution on shares of Common Stock, or if the Company effects a share split or share combination with respect to shares of Common Stock, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0}{OS_1}$$

where,

$CP_0$  = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

CP<sub>1</sub> = the Conversion Price in effect immediately after the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be; and

OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this SECTION 5(g)(i)(A) shall become effective immediately after the open of business on the Ex-Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination. If any dividend or distribution of the type described in this SECTION 5(g)(i)(A) is declared but not so paid or made, or any share split or combination of the type described in this SECTION 5(g)(i)(A) is announced but the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to pay such dividend or distribution, or not to split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Price that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(B) *Rights, Options or Warrants on Common Stock.* If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them, for a period expiring not more than sixty (60) days immediately following the record date of such distribution, to purchase or subscribe for shares of Common Stock at a price per share less than the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CP<sub>0</sub> = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such distribution;

CP<sub>1</sub> = the Conversion Price in effect immediately after the open of business on the Ex-Date for such distribution;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such distribution;

X = the number of shares of Common Stock equal to the aggregate price payable to exercise all such rights, options or warrants divided by the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution; and

Y = the total number of shares of Common Stock issuable pursuant to all such rights, options or warrants.

Any adjustment made under this SECTION 5(g)(i)(B) will be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the open of business on the Ex-Date for such distribution. To the extent that shares of Common Stock are not delivered prior to the expiration of such rights, options or warrants, the Conversion Price shall be readjusted following the expiration of such rights to the Conversion Price that would then be in effect had the decrease in the Conversion Price with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to make such distribution, to the Conversion Price that would then be in effect if such distribution had not occurred.

In determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Daily VWAP for the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the fair market value of such consideration, if other than cash, to be reasonably determined by the Board in good faith.

(C) *Tender Offer or Exchange Offer Payments.* If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for Common Stock, if the aggregate value of all cash and any other consideration included in the payment per share of Common Stock (as reasonably determined in good faith by the Board) exceeds the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date on which such tender offer or exchange offer expires, the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 \times SP_1}{AC + (SP_1 \times OS_1)}$$

where,

CP<sub>1</sub> = the Conversion Price in effect immediately after the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CP<sub>0</sub> = the Conversion Price in effect immediately prior to the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires;

SP<sub>1</sub> = the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as reasonably determined in good faith by the Board) paid or payable for shares purchased in such tender or exchange offer; and

OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer and excluding fractional shares).

The adjustment to the Conversion Price under this SECTION 5(g)(i)(C) will occur at the close of business on the tenth (10<sup>th</sup>) Trading Day immediately following, but excluding, the date such tender or exchange offer expires; *provided* that, for purposes of determining the Conversion Price, in respect of any conversion during the ten (10) Trading Days immediately following, but excluding, the date that any such tender or exchange offer expires, references within this SECTION 5(g)(i)(C) to ten (10) consecutive Trading Days shall be deemed replaced with such lesser number of consecutive Trading Days as have elapsed between the date such tender or exchange offer expires and the relevant conversion date.

(D) *Common Stock Issued at Less than Conversion Price.* If, after the Original Issue Date, the Company issues or sells any Common Stock (or Option Securities or Convertible Securities, to the extent set forth in this SECTION 5(g)(i)(D)), other than Excluded Stock, for no consideration or for consideration per share less than the Conversion Price in effect as of the date of such issuance or sale, the Conversion Price in effect immediately prior to each such issuance or sale will (except as provided below) be adjusted at the time of such issuance or sale based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CP<sub>1</sub> = the Conversion Price in effect immediately following such issuance or sale;

CP<sub>0</sub> = the Conversion Price in effect immediately prior to such issuance or sale;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to such issuance or sale (treating for this purpose as outstanding all shares of Common Stock issuable

upon the conversion or exchange of (x) all Preferred Shares issued on the Original Issue Date, all shares of Series A-1 Preferred Stock issued on the Second Issue Date and all shares of Series A-2 Preferred Stock issued on the Third Issue Date and (y) all convertible, exchangeable or exercisable Equity Securities of the Company not listed in (x) if the conversion price, exercise price or exchange price applicable to such Equity Securities of the Company is below Market Value on the determination date);

X = the number of shares of Common Stock that the aggregate consideration received by the Company for the number of shares of Common Stock so issued or sold would purchase at a price per share equal to  $CP_0$ ; and

Y = the number of additional shares of Common Stock so issued.

For the purposes of any adjustment of the Conversion Price pursuant to this SECTION 5(g)(i)(D), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock for cash, the amount of the consideration received by the Company shall be deemed to be the amount of the cash proceeds received by the Company for such Common Stock after deducting therefrom any discounts or commissions allowed, paid or incurred by the Company for any underwriting or otherwise in connection with the issuance and sale thereof

(2) In the case of the issuance of Common Stock (otherwise than upon the conversion of shares of Capital Stock or other securities of the Company) for a consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair market value thereof as reasonably determined by the Board in good faith.

(3) In the case of (A) the issuance of Option Securities (whether or not at the time exercisable) or (B) the issuance of Convertible Securities (whether or not at the time so convertible or exchangeable):

i) the issuance of Option Securities shall be deemed the issuance of all shares of Common Stock deliverable upon the exercise of such Option Securities;

ii) such Option Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2)), if any, received by the Company for such Option Securities, plus the exercise price, strike price or purchase price provided in such Option Securities for the Common Stock covered thereby;

iii) the issuance of Convertible Securities shall be deemed the issuance of all shares of Common Stock deliverable upon conversion of, or in exchange for, such Convertible Securities;

iv) such Convertible Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2) and excluding any cash received on account of accrued interest or accrued dividends), if any, received by the Company for such Convertible Securities, plus the value of the additional consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2)) to be received by the Company upon the conversion or exchange of such Convertible Securities, if any;

v) upon any change in the number of shares of Common Stock deliverable upon exercise of any Option Securities or Convertible Securities or upon any change in the consideration to be received by the Company upon the exercise, conversion or exchange of such securities, the Conversion Price then in effect shall be readjusted to such Conversion Price as would have been in effect had such change been in effect, with respect to any Option Securities or Convertible Securities outstanding at the time of the change, at the time such Option Securities or Convertible Securities originally were issued;

vi) upon the expiration or cancellation of Option Securities (without exercise), or the termination of the conversion or exchange rights of Convertible Securities (without conversion or exchange), if the Conversion Price shall have been adjusted upon the issuance of such expiring, canceled or terminated securities, the Conversion Price shall be readjusted to such Conversion Price as would have been obtained if, at the time of the original issuance of such Option Securities or Convertible Securities, the expired, canceled or terminated Option Securities or Convertible Securities, as applicable, had not been issued;

vii) if the Conversion Price shall have been fully adjusted upon the issuance of any such options, warrants, rights or convertible or exchangeable securities, no further adjustment of the Conversion Price shall be made for the actual issuance of Common Stock upon the exercise, conversion or exchange thereof; and

viii) if any issuance of Common Stock, Option Securities or Convertible Securities would also require an adjustment pursuant to any other adjustment provision of this SECTION 5(g)(i), then only the adjustment most favorable to the Holders shall be made.

(ii) If the Company issues rights, options or warrants that are only exercisable upon the occurrence of certain triggering events (each, a "Trigger Event"), then the Conversion Price will not be adjusted pursuant to SECTION 5(g)(i)(B) until the earliest Trigger Event occurs, and the Conversion Price shall be readjusted to the extent any of these rights, options or warrants are not exercised before they expire (provided, however, that, for the avoidance of doubt, if such Trigger Event would require an adjustment pursuant to SECTION 5(g)(i)(D), such adjustment pursuant to SECTION 5(g)(i)(D) shall be made at the time of issuance of such rights, options or warrants in accordance with such Section).

(iii) Notwithstanding anything in this SECTION 5(g) to the contrary, if a Conversion Price adjustment becomes effective pursuant to any of clauses (A), (B) or (C) of this SECTION 5(g)(i) on any Ex-Date as described above, and a Holder that converts its Preferred Shares on or after such Ex-Date and on or prior to the related record date would be

treated as the record holder of shares of Common Stock as of the related Conversion Date based on an adjusted Conversion Price for such Ex-Date and participate on an adjusted basis in the related dividend, distribution or other event giving rise to such adjustment, then, notwithstanding the foregoing Conversion Price adjustment provisions, the Conversion Price adjustment relating to such Ex-Date will not be made for such converting Holder. Instead, such Holder will be treated as if such Holder were the record owner of the shares of Common Stock on an un-adjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

Notwithstanding anything in this SECTION 5(g) to the contrary, no adjustment under SECTION 5(g)(i) need be made to the Conversion Price unless such adjustment would require a decrease of at least 1% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to a decrease of at least 1% of such Conversion Price; *provided* that, on the date of any conversion of the Preferred Shares pursuant to SECTION 5, adjustments to the Conversion Price will be made with respect to any such adjustment carried forward that has not been taken into account before such date. In addition, at the end of each year, beginning with the year ending December 31, 2014, the Conversion Price shall be adjusted to give effect to any adjustment or adjustments so carried forward, and such adjustments will no longer be carried forward and taken into account in any subsequent adjustment.

(iv) Adjustments Below Par Value. The Company shall not take any action that would require an adjustment to the Conversion Price such that the Conversion Price, as adjusted to give effect to such action, would be less than the then-applicable par value per share of the Common Stock, except that the Company may undertake a share split or similar event if such share split results in a corresponding reduction in the par value per share of the Common Stock such that the as-adjusted new Conversion Price per share would not be below the new as-adjusted par value per share of the Common Stock following such share split or similar transaction and the Conversion Price is adjusted as provided under SECTION 5(g)(i)(A) and any other applicable provision of SECTION 5(g).

(v) Reference Property. In the case of any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision, combination or reclassification described in SECTION 5(g)(i)(A)), a consolidation, merger or combination involving the Company, a sale, lease or other transfer to a third party of all or substantially all of the assets of the Company (or the Company and its Subsidiaries on a consolidated basis), or any statutory share exchange, in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any of the foregoing, a "Transaction"), then, at the effective time of the Transaction, the right to convert each Preferred Share will be changed into a right to convert such Preferred Share into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) (the "Reference Property") that a Holder would have received in respect of the Common Stock issuable upon conversion of such Preferred Shares immediately prior to such Transaction. In the event that holders of Common Stock have the opportunity to elect the form of consideration to be received in the Transaction, the Company shall make adequate provision whereby the Holders of

the Preferred Shares shall have a reasonable opportunity to determine the form of consideration into which all of the Preferred Shares, treated as a single class, shall be convertible from and after the effective date of the Transaction. Any such election shall be made by the Series A Requisite Holders. Any such determination by the Holders shall be subject to any limitations to which all holders of Common Stock are subject, such as pro rata reductions applicable to any portion of the consideration payable in the Transaction, and shall be conducted in such a manner as to be completed at approximately the same time as the time elections are made by holders of Common Stock. The provisions of this SECTION 5(g)(v) and any equivalent thereof in any such securities similarly shall apply to successive Transactions. The Company shall not become a party to any Transaction unless its terms are in compliance with the foregoing.

(vi) Rules of Calculation; Treasury Stock. All calculations will be made to the nearest one-hundredth of a cent or to the nearest one-ten thousandth of a share. Except as explicitly provided herein, the number of shares of Common Stock (or Reference Property, to the extent applicable) outstanding will be calculated on the basis of the number of issued and outstanding shares of Common Stock (or Reference Property, to the extent applicable), not including shares held in the treasury of the Company. The Company shall not pay any dividend on or make any distribution to shares of Common Stock (or Reference Property, to the extent applicable) held in treasury.

(vii) No Duplication. If any action would require adjustment of the Conversion Price pursuant to more than one of the provisions described in this SECTION 5 in a manner such that such adjustments are duplicative, only one adjustment (which shall be the adjustment most favorable to the Holders of Preferred Stock) shall be made.

(viii) Notice of Record Date. In the event of:

- (A) any event described in SECTION 5(f)(i)(A), (B), (C) or (D);
- (B) any Transaction to which SECTION 5(f)(v) applies;
- (C) the dissolution, liquidation or winding-up of the Company; or
- (D) any other event constituting a Change of Control;

then the Company shall mail to the Holders of Preferred Stock at their last addresses as shown on the records of the Company, at least twenty (20) days prior to the record date specified in (A) below or twenty (20) days prior to the date specified in (B) below, as applicable, a notice stating:

(A) the record date for the dividend, other distribution, stock split or combination or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, other distribution, stock split or combination; or



(B) the date on which such reclassification, change, dissolution, liquidation, winding-up or other event constituting a Transaction or Change of Control, or any transaction which would result in an adjustment pursuant to SECTION 5(g)(i)(D), is estimated to become effective or otherwise occur, and the date as of which it is expected that holders of Common Stock of record will be entitled to exchange their shares of Common Stock for Reference Property, other securities or other property deliverable upon such reclassification, change, liquidation, dissolution, winding-up, Transaction or Change of Control or that such issuance of Common Stock, Option Securities or Convertible Securities is anticipated to occur.

(ix) Certificate of Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this SECTION 5, the Company at its expense shall as promptly as reasonably practicable compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder of Preferred Stock a certificate, signed by an officer of the Company (in his or her capacity as such and not in an individual capacity), setting forth (A) the calculation of such adjustments and readjustments in reasonable detail, (B) the facts upon which such adjustment or readjustment is based, (C) the Conversion Price then in effect, and (D) the number of shares of Common Stock (or Reference Property, to the extent applicable) and the amount, if any, of Capital Stock, other securities or other property (including but not limited to cash and evidences of indebtedness) which then would be received upon the conversion of a Preferred Share.

(x) No Upward Revisions to Conversion Price. For the avoidance of doubt, except in the case of a reverse share split or share combination resulting in an adjustment under SECTION 5(g)(i)(A) effected with the approvals, if any, required pursuant to SECTION 4(b), in no event shall any adjustment be made pursuant to this SECTION 5 that results in an increase in the Conversion Price.

#### SECTION 6. Redemption.

(a) Redemption at Maturity. Each Holder shall have the right to require the Company to redeem such Holder's Preferred Shares, in whole or in part, on the seventh (7<sup>th</sup>) anniversary of the Original Issue Date (the "Maturity Date") at a price per share payable, subject to SECTION 6(e), in cash and equal to the Redemption Price. At any time during the period beginning on the thirtieth (30<sup>th</sup>) calendar day prior to the Maturity Date (the "Holder Redemption Notice Period"), each Holder may deliver written notice to the Company notifying the Company of such Holder's election to require the Company to redeem all or a portion of such Holder's Preferred Shares on the Maturity Date (the "Election Notice"). No later than thirty (30) calendar days prior to the commencement of the Holder Redemption Notice Period, the Company shall deliver a notice to each Holder of Preferred Stock including the following information: (A) informing the Holder of the Maturity Date and such Holder's right to elect to have all or a portion of its Preferred Shares redeemed by Company on the Maturity Date, (B) the Redemption Price payable with respect to each share of Series A Preferred Stock on the Maturity Date in connection with any such redemption (to the extent the Redemption Price is known or can be calculated, and to the extent not capable of being calculated, the manner in which such price will be determined); (C) that any certificates representing Preferred Shares which a Holder elects to have redeemed must be surrendered for payment of the Redemption Price at the office of the

Company or any redemption agent located in New York City selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder's compliance with clause (C), payment of the Redemption Price with respect to any Preferred Shares to be made on the Maturity Date will be made to the Holder within five (5) Business Days of the Maturity Date to the account specified in such Holder's redemption election notice; (E) that any Holder may withdraw its Election Notice with respect to all or a portion of its Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Maturity Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder does not elect to have its Preferred Shares redeemed. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(a) disclosing the right of Holders to have the Company redeem Preferred Shares pursuant to this SECTION 6(a).

(b) Optional Redemption by the Company. On and after the third (3<sup>rd</sup>) anniversary of the Original Issue Date, the Company may, at its option, redeem all (but not less than all) of the outstanding Preferred Shares for cash equal to the Redemption Price. If the Company elects to redeem the Preferred Shares pursuant to this SECTION 6(b), the Company shall deliver a notice of redemption to the Holders of Preferred Stock not less than thirty (30) or more than sixty (60) calendar days prior to the date specified for redemption (the "Optional Redemption Date"), which notice shall include: (A) the Optional Redemption Date; (B) the Redemption Price; (C) that on the Optional Redemption Date, if the Holder has not previously elected to convert Preferred Shares into Common Stock, each Preferred Share shall automatically and without further action by the Holder thereof (and whether or not the certificates representing such Preferred Shares are surrendered) be redeemed for the Redemption Price; (D) that payment of the Redemption Price will be made to the Holder within five (5) Business Days of the Redemption Date to the account specified by such Holder to the Company in writing; (E) that the Holder's right to elect to convert its Preferred Shares will end at 5:00 p.m. (New York City time) on the Business Day immediately preceding the Optional Redemption Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder elects to convert its Preferred Shares prior to the Optional Redemption Date. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 6(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the redemption of the Preferred Shares as set forth herein. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if

either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(b) announcing the Company's election to redeem Preferred Shares pursuant to this SECTION 6(b).

(c) Redemption at Option of the Holder upon a Change of Control.

(i) If a Change of Control occurs, each Holder shall have the right to require the Company to redeem its Preferred Shares pursuant to a Change of Control Offer, which Change of Control Offer shall be made by the Company in accordance with Section 6(c)(ii). In such Change of Control Offer, the Company will offer a payment (such payment, a "Change of Control Payment") in cash per Preferred Share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value and (ii) an amount equal to the amount the Holder of such Preferred Share would have received in connection with such Change of Control had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the "Change of Control Payment Amount").

(ii) Within thirty (30) days following any Change of Control, the Company will mail a notice (a "Change of Control Offer") to each Holder describing the transaction or transactions that constituted such Change of Control and offering to redeem the Preferred Shares on the date specified in such notice (the "Change of Control Payment Date"), which date shall be no earlier than thirty (30) days and no later than sixty-one (61) days from the date such notice is mailed. In addition, such Change of Control Offer shall further state: (A) the amount of the Change of Control Payment; (B) that the Holder may elect to have all or any portion of its Preferred Shares redeemed pursuant to the Change of Control Offer, (C) that any Preferred Shares to be redeemed must be surrendered for payment of the Change of Control Payment at the office of the Company or any redemption agent selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder's compliance with clause (C), payment of the Change of Control Payment will be made to the Holder on the Change of Control Payment Date to the account specified by such Holder to the Company in writing; (E) the date and time by which the Holder must make its election, (F) that any Holder may withdraw its election notice with respect to all or a portion of their Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Change of Control Payment Date; and (G) the amount and type of property that the Holder would receive in connection with such Change of Control if the Holder elects to convert its Preferred Shares in connection with the Change of Control. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(c) disclosing the right of Holders to have the Company redeem Preferred Shares pursuant to this SECTION 6(c).

(iii) On the Change of Control Payment Date, the Company will, to the extent lawful: (A) accept for payment all Preferred Shares validly tendered pursuant to the Change of Control Offer; and (B) make a Change of Control Payment to each Holder that validly tendered Preferred Shares pursuant to the Change of Control Offer.

(iv) If at any time prior to consummation of a transaction that would constitute a Change of Control, the Company has publicly announced (whether by press release, SEC filing or otherwise) such transaction or prospective transaction or the entry by the Company into any definitive agreement with respect thereto, the Company shall, within five (5) Business Days of the issuance of such public announcement, deliver a written notice to each Holder notifying them of the same and the anticipated date of consummation of such transaction.

(v) The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer and makes the Change of Control Payment in the manner, at the times and otherwise in compliance with the requirements set forth herein applicable to a Change of Control Offer made by the Company and purchases all Preferred Shares validly tendered under such Change of Control Offer.

(vi) A Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(d) Notwithstanding anything in this SECTION 6 to the contrary, each Holder shall retain the right to elect to convert any Preferred Shares to be redeemed at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding any Redemption Date. Any Preferred Shares that a Holder elects to convert prior to the Redemption Date shall not be redeemed pursuant to this SECTION 6.

(e) Insufficient Funds. Any redemption of the Preferred Shares pursuant to this SECTION 6 shall be payable out of any cash legally available therefor, provided, however, that, other than in respect of a redemption pursuant to SECTION 6(b) (which the Company may only effectuate to the extent it has sufficient cash legally available therefor), if there is not a sufficient amount of cash legally available to pay the Redemption Price in full in cash, then the Company may pay that portion of the Redemption Price with respect to which it does not have cash legally available therefor out of the remaining assets of the Company legally available therefor (valued at the fair market value thereof on the date of payment, as reasonably determined in good faith by the Board). If the Company anticipates not having sufficient cash legally available for a redemption pursuant to SECTION 6(a) or SECTION 6(c), the redemption notice delivered to Holders shall so specify, and indicate the nature of the other assets expected to be distributed and the fair market value of the same as reasonably determined by the Board as aforesaid. At the time of any redemption pursuant to this SECTION 6, the Company shall take all actions required or permitted under Delaware law to permit the redemption of the Preferred Shares, including, without limitation, through the revaluation of its assets in accordance with Delaware law, to make cash funds (and to

the extent cash funds are insufficient, other assets) legally available for such redemption. In connection with any redemption pursuant to SECTION 6(c), to the extent that Holders elect to have their Preferred Shares redeemed and the Company has insufficient funds to redeem such Preferred Shares (after taking into account the amount of any repurchase obligations the Company has or expects to have under any Indebtedness ranking senior to the Series A Preferred Stock), Senior Securities or any Parity Securities resulting from the same facts and circumstances as the Change of Control hereunder), the Company shall use any available funds to redeem a portion of such Preferred Shares and Parity Securities (if any are being redeemed) ratably in proportion to the full respective amounts to which they are entitled; *provided, however*, that the failure for any reason to redeem all Preferred Shares required to be redeemed under SECTION 6(c) when required shall constitute a Specified Breach Event.

(f) Mechanics of Redemption.

(i) The Company (or a redemption agent on behalf of the Company, as applicable) shall pay the applicable Redemption Price on the Redemption Date or the required payment date therefor upon surrender of the certificates representing the Preferred Shares to be redeemed and receipt of any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable, to the extent required by SECTIONS 6(a), 6(b) and 6(c); *provided* that, if such certificates are lost, stolen or destroyed, the Company may require an affidavit certifying to such effect and, if requested, an agreement indemnifying the Company from any losses incurred in connection therewith, in each case, in form and substance reasonably satisfactory to the Company, from such Holder prior to paying such amounts.

(ii) Following any redemption of Preferred Shares on any Redemption Date, the Preferred Shares so redeemed will no longer be deemed to be outstanding and all rights of the Holder thereof shall cease, including the right to receive Dividends; *provided, however*, that any rights of Holders pursuant to this Certificate of Designation that by their terms survive redemption of the Preferred Shares and, for the avoidance of doubt, any rights that survive pursuant to any of the other Transaction Agreements (as defined in the May 2014 Securities Purchase Agreement), shall survive in accordance with their terms. The foregoing notwithstanding, in the event that a Preferred Share is not redeemed by the Company when required, such Preferred Share will remain outstanding and will continue to be entitled to all of the powers, designations, preferences and other rights (including but not limited to the accrual and payment of dividends and the conversion rights) as provided herein.

SECTION 7. Director Election Rights.

For so long as the Preferred Elected Director Condition continues to be satisfied, the Holders of the Preferred Shares and shares of Series A-1 Preferred Stock, voting or consenting, as the case may be, separately as a single class to the exclusion of all other classes of the Company's Voting Stock, by vote of the Series A/A-1 Requisite Holders, shall be entitled to elect a number of directors to the Board equal to the Preferred Director Number (the "Preferred Elected Director(s)"). As of the Third Issue Date, the Preferred Director Number is one. Subject to applicable law, one Preferred Elected Director (as designated by the Series A/A-1 Requisite Holders if there is more than one Preferred Elected Director) shall be entitled to be a member of

each committee of the Board, including the compensation committee, the audit committee and the nominating and corporate governance committee of the Board; *provided*, that notwithstanding anything to the contrary herein, membership on any such committee will be dependent upon such director meeting the qualification, and if applicable, independence criteria deemed necessary to so comply in accordance with any listing requirements of the Exchange on which the Company's capital stock is then listed. The Preferred Elected Director(s) shall be elected as set forth in this SECTION 7; *provided* that as a condition precedent to the election of any such Preferred Elected Director, the individual(s) to be elected by the Series A/A-1 Requisite Holders shall be required to provide to the Company a duly executed and delivered written resignation of such Person to be elected as a Preferred Elected Director, providing that effective immediately and automatically (without any further action by any Person) upon the expiration of the Series A/A-1 Requisite Holders' right to elect such individual to the Board as provided herein, such Preferred Elected Director shall resign from the Board. For the avoidance of doubt, no Preferred Elected Director shall be elected to the Board unless the written resignation referred to in the preceding sentence is delivered to the Company prior thereto. The Preferred Elected Directors shall be elected, at the option of the Series A/A-1 Requisite Holders, (i) by the written consent of the Series A/A-1 Requisite Holders or (ii) at annual or special meetings of stockholders of the Company at which directors are to be elected. If there is a vacancy in the office of a Preferred Elected Director, then the vacancy may only be filled by a nominee of the Series A/A-1 Requisite Holders. Each Preferred Elected Director will be entitled to one (1) vote on any matter with respect to which the Board votes and any Preferred Elected Director may be removed at any time with or without cause by, and shall not be removed otherwise than by, the written consent or vote of the Series A/A-1 Requisite Holders. The Company shall take all such action as may be reasonably requested by the Series A/A-1 Requisite Holders to effect this SECTION 7 (including nominating and recommending the Preferred Elected Director for election, if applicable).

#### SECTION 8. Specified Breach Events.

(a) The following events shall constitute "Specified Breach Events":

(i) the Company fails to declare and pay any Cash Dividends or Accreting Dividends due on any two consecutive Dividend Payment Dates; *provided* that, any such Specified Breach Event shall cease to exist once all such Cash Dividends and Accreting Dividends in arrears through the end of the most recently completed Dividend Period have been declared and paid in full; and

(ii) the Company defaults in the performance of, or breaches the covenants contained in, the following sections of this Certificate of Designation and such default or breach, if curable, is not cured within ninety (90) days: SECTION 2(c) (Participating Cash Dividends); SECTION 2(d) (In-Kind Participating Dividends); the proviso contained in SECTION 5(d)(i) (Amounts Received Upon Conversion); SECTION 6(a) (Redemption at Maturity) or SECTION 6(c) (Redemption at Option of Holder Upon a Change of Control)). Any such Specified Breach Event specified in this clause (ii) shall cease to exist once the underlying default or breach has been waived or cured.

(b) Subject to applicable law and compliance with the rules of any Exchange on which the Common Stock is then listed, if the Preferred Director Number is increased as a result of any Specified Breach Event (as provided in the definition of Preferred Director Number), then unless the Series A/A-1 Requisite Holders otherwise consent in writing, the Company shall, notwithstanding any other provision of this Certificate of Designation, increase the size of the Board as necessary to accommodate such number of additional directors as provided in the definition of Preferred Director Number (each a “Specified Breach Director”) and such Specified Breach Director(s) shall be elected as set forth in this section; provided that as a condition precedent to the election of any such Specified Breach Director, the individual to be elected by the Series A/A-1 Requisite Holders shall be required to provide to the Company a duly executed and delivered written resignation of such Person to be elected as a Specified Breach Director, providing that effective immediately and automatically (without any further action by any Person) upon the expiration of the applicable Breach Period (as defined below), such Specified Breach Director shall resign from the Board. For the avoidance of doubt, no Specified Breach Director shall be elected to the Board unless the written resignation referred to in the preceding sentence is delivered to the Company prior thereto. A Specified Breach Director need not be an “independent director” of the Board pursuant to the rules of the Exchange on which the Company’s Common Stock is then traded. The Specified Breach Directors shall be elected (i) by the written consent of the Series A/A-1 Requisite Holders or (ii) at a special meeting of the Holders of the Series A Preferred Stock and Series A-1 Preferred Stock (which shall be called by the Secretary of the Company at the request of any Holder of the Series A Preferred Stock or Series A-1 Preferred Stock) to be held within thirty (30) days of the occurrence of the Specified Breach Event, or, if the Specified Breach Event occurs less than sixty (60) days before the date fixed for the next annual meeting of the Company’s stockholders, at such annual meeting. At any meeting at which the Specified Breach Director(s) will be elected, the Specified Breach Director(s) shall be elected by the Series A/A-1 Requisite Holders. The Specified Breach Director(s) will serve until there ceases to be any shares of Series A Preferred Stock or Series A-1 Preferred Stock outstanding or until no Specified Breach Event exists or is continuing, whichever occurs earliest (the “Breach Period”) and, upon the expiration of an applicable Breach Period, the director seat(s) held by the Specified Breach Director(s) shall be automatically eliminated and the size of the Board shall be reduced accordingly. If there is a vacancy in the office of a Specified Breach Director during a Breach Period, then the vacancy may only be filled by a nominee of the Series A/A-1 Requisite Holders. Each Specified Breach Director will be entitled to one (1) vote on any matter with respect to which the Board votes. During the Breach Period, any Specified Breach Director may be removed at any time with or without cause by, and shall not be removed otherwise than by, the written consent or vote of the Series A/A-1 Requisite Holders. If after the appointment of a Specified Breach Director the applicable Breach Period expires, if so requested by the Company, the Holders of the Series A Preferred Stock and Series A-1 Preferred Stock shall promptly cause to resign, and take all other action reasonably necessary, or reasonably requested by the Company, to cause the prompt removal of, such Specified Breach Director.

SECTION 9. Covenants.

(a) Restriction on the Issuance of Additional Indebtedness. From and after the Original Issue Date, the Company has not, and has not permitted any Subsidiary to (without obtaining any requisite consent from the Holders of the Series A Preferred Stock or Series A-1 Preferred Stock, as applicable), and from and after the Third Issue Date, the Company shall not, and shall not permit any Subsidiary to, without the consent of the Requisite Holders, borrow or otherwise incur any Indebtedness if, after giving effect to such borrowing or other incurrence, (1) the sum of the total Indebtedness of the Company plus the sum of the total Indebtedness of each of the Company's Subsidiaries divided by (2) the Net Asset Value (the "Debt/NAV Ratio") would be greater than 0.75; *provided*, that (A) the Regular Liquidation Preference of the Preferred Shares (with the references to "150%" contained in such definition being changed to "100%") and the actual liquidation preference of any outstanding Senior Securities and Parity Securities shall count as Indebtedness for such purposes, (B) 100% of the Indebtedness of the Company's wholly-owned and, after taking into account the Company's ownership percentage therein, non-wholly owned subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company's investment in such entities) shall be taken into account for purposes of determining Indebtedness but not taken into account (*i.e.*, added back) for purposes of determining Net Asset Value, and (C) the provisions of this SECTION 9(a) shall not apply to a refinancing of any Indebtedness of the Company or any of its Subsidiaries (x) within six (6) months of the respective maturity date of such Indebtedness or (y) on economic terms more favorable to the Company or such Subsidiary, as applicable, in any such case so long as the amount of such Indebtedness does not result in an increase in the Company's total Indebtedness or the Debt/NAV Ratio (in each case, excluding the impact of the capitalization of customary and reasonable premiums, fees and expenses incurred in connection with such refinancing).

(b) Intentionally Omitted.

(c) Certificates. The Company shall promptly, and in no event later than 30 days after the last day of any calendar quarter, furnish to each Holder a certificate of an officer of the Company setting forth, as of the end of such calendar quarter the Debt/NAV Ratio and the calculation of the same (provided that the Company shall not be obligated to provide the information required by this sentence from and after such time as the covenant in SECTION 9(a) ceases to be applicable).

(i) The Company shall promptly, and in no event later than the 30th day after the first day of a Dividend Period for which the Accreting Dividend rate has been adjusted pursuant to SECTION 2(b), furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth, as of the end of the prior Dividend Period the Net Asset Value as of the end of such prior Dividend Period and the calculation of the same.

(ii) If the Company takes any action, which pursuant to this Certificate of Designation requires the Public Float Hurdle to be met, the Company shall promptly, and in no event later than five (5) days after the date of such action, furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth the date of such action and an analysis of the Public Float Hurdle as of the date of such action.



SECTION 10. Additional Definitions. For purposes of these resolutions, the following terms shall have the following meanings:

(a) "Accrued Value" means \$1,000 per share, as the same may be increased pursuant to SECTION 2.

(b) "Actively Traded Security" means, as of any date of determination, a Security of an entity with \$2,000,000 average daily trading volume during the preceding 60-day period.

(c) "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person.

(d) "Base Original Issue Date NAV" means the final amount thereof as agreed between the Company and the Series A Requisite Holders pursuant to Section 12.16 of the May 2014 Securities Purchase Agreement.

(e) "Beneficial Owner" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" shall be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms "Beneficially Owns" and "Beneficially Owned" shall have a corresponding meaning.

(f) "Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or obligated to close.

(g) "Capital Stock" means, with respect to any Person, any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person's equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

(h) "Cash Equivalents" means: (i) United States dollars, or money in other currencies received in the ordinary course of business; (ii) U.S. Government Obligations or certificates representing an ownership interest in U.S. Government Obligations with maturities not exceeding one year from the date of acquisition; (iii) (A) demand deposits, (B) time deposits and certificates of deposit with maturities of one year or less from the date of acquisition, (C) banker's acceptances with maturities not exceeding one year from the date of acquisition, and (D) overnight bank deposits, in each case with

any bank or trust company organized or licensed under the laws of the United States or any state thereof having capital, surplus and undivided profits in excess of \$500 million whose short-term debt is rated “A-2” or higher by S&P or “P-2” or higher by Moody’s; (iv) repurchase obligations with a term of not more than seven (7) days for underlying securities of the type described in clauses (ii) and (iii) above entered into with any financial institution meeting the qualifications specified in clause (iii) above; (v) commercial paper rated at least P-1 by Moody’s or A-1 by S&P and maturing within six (6) months after the date of acquisition; and (vi) money market funds at least 95% of the assets of which consist of investments of the type described in clauses (i) through (v) above.

(i) “Certificate of Designation” means this certificate of designation, as such shall be amended from time to time, including pursuant to the Certificate of Amendment to this certificate of designation, dated September 22, 2014, and the Certificate of Amendment to this certificate of designation, dated January 5, 2015.

(j) “Change of Control” means (i) a sale of all or substantially all of the consolidated assets of the Company (including by way of any reorganization, merger, consolidation or other similar transaction or a sale of Equity Securities issued by Subsidiaries of the Company), (ii) a direct or indirect acquisition of Beneficial Ownership of Voting Power of the Company by any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) by means of any transaction or series of transactions (including any reorganization, merger, consolidation, joint venture, share transfer, share exchange, share issuance, reclassification or other similar transaction), pursuant to which the stockholders of the Company immediately preceding such transaction or transactions collectively own, following the consummation of such transaction or transactions, less than fifty percent (50%) of the Voting Power of the Company or other surviving entity (or parent thereof), as the case may be, (iii) the obtaining by any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of the power (whether or not exercised), other than pursuant to a revocable proxy in favor of the Company’s proposed slate of directors in respect of an annual meeting or other meeting related to the election of directors, to elect a majority of the members of the Board or more than fifty percent (50% of the Voting Power of the Company; provided, that this clause (iii) will not trigger a Change of Control as a result of the HRG Affiliates or any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) in which the HRG Affiliates own a majority of the voting power (the “HRG Change of Control Group”) obtaining Beneficial Ownership of more than fifty percent (50%) of the Voting Power of the Company if and only if the Public Float Hurdle is satisfied at all times during which the HRG Change of Control Group has the power to elect a majority of the Board or Beneficial Ownership of more than fifty percent (50%) of the Voting Power of the Company, or (iv) the first day on which a majority of the members of the Board are not Continuing Directors; *provided*, that, for the avoidance of doubt, change in the ownership of HRG (without the occurrence of the events listed in (i) through (iv) above) shall not constitute, in and of itself, a Change of Control.

(k) “Common Stock” means the shares of common stock, par value \$0.01 per share, of the Company or any other Capital Stock of the Company into which such Common Stock shall be reclassified or changed.

(l) “Company Conversion Conditions” means the following: (i) the Thirty Day VWAP exceeds 150% of the then applicable Conversion Price; and (ii) the Daily VWAP exceeded 150% of the then applicable Conversion Price for at least twenty (20) Trading Days out of the thirty (30) Trading Days used to calculate the Thirty Day VWAP in clause (i) of this definition.

(m) “Compensation Committee” means the compensation committee of the Board which shall consist solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director.

(n) “Continuing Directors” means, as of any date of determination, (x) any member of the Board who (1) was a member of such Board on the Original Issue Date or (2) was nominated for election or elected to the Board by any HRG Affiliates, or with the approval of either the Holders or a majority of those members of the Board that were both “Continuing Directors” and Independent Directors at the time of such nomination or election or (y) any Preferred Elected Director.

(o) “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”) with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

(p) “Conversion Price” means initially \$4.00, as adjusted from time to time as provided in SECTION 5.

(q) “Convertible Securities” means securities by their terms convertible into or exchangeable for Common Stock or options, warrants or rights to purchase such convertible or exchangeable securities.

(r) “Daily VWAP” means the volume-weighted average price per share of Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) as displayed under the heading “Bloomberg VWAP” on the Bloomberg page for the “<equity> AQR” page corresponding to the “ticker” for such Common Stock or unit (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of such Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) on such Trading Day. The “volume weighted average price” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

(s) “January 2015 Purchasers” means the several “Purchasers” named in and party to the January 2015 Securities Purchase Agreement.

(t) “January 2015 Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated January 5, 2015, by and among the Company and the January 2015 Purchasers, as amended, supplemented or modified in accordance with its terms.

(u) “Dividend Payment Date” means January 15, April 15, July 15 and October 15 of each year, commencing on July 15, 2014; *provided* that, if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be the immediately succeeding Business Day.

(v) “Dividend Rate” means for any Dividend Period, 7.50% plus the applicable Accreting Dividend Rate for such Dividend Period.

(w) “Equity Securities” means, with respect to any Person, (i) shares of Capital Stock of, or other equity or voting interest in, such Person, (ii) any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iii) options, warrants, rights or other commitments or agreements to acquire from such Person, or that obligates such Person to issue, any Capital Stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iv) obligations of such Person to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any Capital Stock of, or other equity or voting interest (including any voting debt) in, such Person and (v) the Capital Stock of such Person.

(x) “Exchange” means the NASDAQ Global Market, the NASDAQ Global Select Market, The New York Stock Exchange, the NYSE MKT LLC or any of their respective successors.

(y) “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(z) “Excluded Stock” means: (i) shares of Common Stock issued by the Company in an event subject to, and for which the Conversion Price is subject to adjustment pursuant to, SECTION 5(g)(i)(A); (ii) Option Securities or shares of Common Stock (including upon exercise of Option Securities) issued to Philip Falcone pursuant to the Option agreement (the “Falcone Option Agreement”) dated May 21, 2014, by and between Mr. Falcone and the Company (as in effect on the Original Issue Date) or otherwise to any director, officer or employee pursuant to compensation arrangements approved by the Compensation Committee of the Board in good faith and otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation; (iii) the issuance of shares of Common Stock upon conversion of the Preferred Shares or upon the exercise or conversion of Option Securities and Convertible Securities of the Company outstanding on the Original Issue Date or otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation (including, for the avoidance of doubt, pursuant to the Falcone Option Agreement (as in effect on the Original Issue Date)); (iv) Common Stock that becomes issuable in connection with, or as a result of, accretions to the face amount of, or payments in kind with respect to, Preferred Shares, Option Securities and Convertible Securities of the Company outstanding on the Original Issue Date or otherwise

permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation (including, for the avoidance of doubt, pursuant to the Falcone Option Agreement (as in effect on the Original Issue Date), (v) Common Stock that becomes issuable in connection with, or as a result of, accretions to the face amount of, or payments in kind with respect to, shares of Series A-1 Preferred Stock issued on the Second Issue Date and shares of Series A-2 Preferred Stock issued on the Third Issue Date; (vi) Option Securities (or Shares of Common Stock upon exercise of such Option Securities) issued to Robert M. Pons or Keith Hladek as referenced in the Company's 8-K filed on May 23, 2014 and (vii) shares of Common Stock issued by the Company pursuant to the May 2014 Securities Purchase Agreement.

(aa) "Ex-Date" means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

(bb) "Fair Market Value" means: (i) in the case of any Security that is either (a) listed on an Exchange or (b) an Actively Traded Security in the over-the-counter-market that represents equity in a Person with a market capitalization of at least \$250,000,000 on each Trading Day in the preceding 60 day period prior to such date, the product of (a) (i) the sum of the Daily VWAP of a single unit of such Security for each of the 20 consecutive Trading Days immediately prior to such date, divided by (ii) 20, multiplied by (b) the number of units of such Security being valued, (ii) in the case of any Security that is not so listed or not an Actively Traded Security or any other property or asset (other than Cash Equivalents), the fair market value thereof (defined as the price that would be negotiated in an arms' length transaction for cash between a willing buyer and willing seller, neither of which is acting under compulsion), as determined by a written opinion of a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company in good faith (provided that the Requisite Holders may object in writing to any such determination of Fair Market Value by such valuation expert once every four (4) Testing Periods and if the Requisite Holders object in writing to any such determination of Fair Market Value by such valuation expert an alternative binding valuation shall be performed by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company and the Requisite Holders jointly, or if the Company and such Requisite Holders cannot jointly select such an alternative valuation expert within ten (10) Business Days of the Requisite Holders delivering to the Company a written notice objecting to the initial valuation, by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by one such valuation expert proposed by the Company and a second such valuation expert proposed by the Requisite Holders (it being understood that the Company shall be solely responsible for the payment of all of the fees and expenses of such alternative valuation expert) and (iii) in the case of Cash Equivalents, the face value thereof; *provided* that with respect to any Security of the type referred to in clause (ii) above, in no event shall the Fair Market Value thereof exceed the Company's cost basis in

such Security (taking into account adjustments made in respect of follow-on capital contributions and other similar investments) plus fifty percent (50%) of any appreciation as determined pursuant to the valuation provisions set forth above.

(cc) “Governmental Entity” shall mean any United States or non-United States federal, state or local government, or any agency, bureau, board, commission, department, tribunal or instrumentality thereof or any court, tribunal, or arbitral or judicial body.

(dd) “hereof”; “herein” and “hereunder” and words of similar import refer to this Certificate of Designation as a whole and not merely to any particular clause, provision, section or subsection.

(ee) “Holders” means the holders of outstanding Preferred Shares and, except where expressly otherwise indicated, shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock as they appear in the records of the Company.

(ff) “HRG Affiliates” means (a) Philip A. Falcone, (b) Harbinger Group, Inc. or any of its subsidiaries, (c) Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or any limited partnership, limited liability company, corporation or other entity that controls, is controlled by, or is under common control with Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or Philip A. Falcone.

(gg) “HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated thereunder.

(hh) “Indebtedness” shall have the meaning set forth in the Loan Agreement (as in effect on the Second Issue Date); *provided, however*, that Indebtedness shall not include:

(i) Hedging obligations entered into in the ordinary course of business and not for speculative purposes or taking a “market view”;

(ii) Indebtedness in respect of bid, performance or surety bonds issued in the ordinary course of business, including guarantees or obligations with respect to letters of credit supporting such bid, performance or surety obligations (in each case other than for an obligation for money borrowed and only so long as such bonds or letters of credit remain undrawn);

(iii) Guarantees in respect of Indebtedness already taken into account for purposes hereof;

(iv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five Business Days of incurrence;

(v) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(vi) Indebtedness for advances of trade accounts payable received in the ordinary course of business on normal trade terms and not overdue by more than 60 days;

(vii) Indebtedness incurred from and after the Second Issue Date not in excess of \$750,000, in the aggregate;

(viii) Purchase Money Obligations (as defined in the Loan Agreement (as in effect on the Second Issue Date));

(ix) interest and other fees and expenses accrued in the ordinary course on Indebtedness that is issued and outstanding on the Third Issue Date and any interest and other fees accrued on any refinancing of such Indebtedness (including reasonable premiums, fees and expenses incurred in connection with such refinancing) in accordance with SECTION 9(a); or

(x) any Contingent Obligations (as defined in the Loan Agreement (as in effect on the Second Issue Date)) of the Company in respect of Indebtedness referred to in the foregoing clauses (i) through (ix).

(ii) “Independent Director” means any director on the Board that is “independent” as defined in the applicable rules of the Exchange on which the Common Stock is listed (or if the Common Stock is not listed on an Exchange, as defined in NASDAQ Marketplace Rule 4200(a) (15)), and in all cases, other than any director that is employed by or an officer, director or manager of a Harbinger Affiliate.

(jj) “Investment” means, with respect to any Person, (1) any direct or indirect advance, loan or other extension of credit to another Person, (2) any capital contribution to another Person, by means of any transfer of cash or other property or in any other form, (3) any purchase or acquisition of Equity Interests, bonds, notes or other Indebtedness, or other instruments or securities issued by another Person, including the receipt of any of the above as consideration for the disposition of assets or rendering of services, or (4) any Guarantee of any obligation of another Person.

(kk) “Issue Date” means, with respect to a Preferred Share, the date on which such share is first issued by the Company.

(ll) “Liquidation Event” means (i) the voluntary or involuntary liquidation, dissolution or winding-up of the Company, (ii) the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (iii) the consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, and (iv) the consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors.

(mm) “Loan Agreement” means the Credit Agreement, dated as of September 22, 2014, among the Company, the Subsidiary Guarantors (as defined therein), the Lenders (as defined therein), and Jefferies Finance LLC, as arranger, as book manager and as documentation agent, syndication agent and administrative agent for the Lenders and as collateral agent for the Secured Parties.

(nn) “Market Disruption Event” means the occurrence or existence for more than one half hour period in the aggregate on any scheduled Trading Day for the Common Stock (or Reference Property, to the extent applicable) of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the applicable Exchange or otherwise) in the Common Stock (or Reference Property, to the extent applicable) or in any options, contracts or future contracts relating to the Common Stock (or Reference Property, to the extent applicable), and such suspension or limitation occurs or exists at any time before 4:00 p.m. (New York City time) on such day.

(oo) “May 2014 Purchasers” means the several “Purchasers” named in and party to the May 2014 Securities Purchase Agreement.

(pp) “May 2014 Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated May 29, 2014, by and among the Company and the May 2014 Purchasers, as amended, supplemented or modified in accordance with its terms.

(qq) “NAV Escrow Adjustment” means the total amount of any escrow proceeds actually received by the Company with respect to the existing escrow amounts of: BID \$19,500,000, NAT tax liability \$4,800,000, NAT PTI Sale \$3,000,000 and NAT indemnification \$6,450,000.

(rr) “Net Asset Value” means, without duplication, the amount, valued twice per annum at June 30 and December 31 of each fiscal year (each a “Testing Period”) beginning December 31, 2014, equal to (A) the sum of (1) the cash and Cash Equivalents of the Company plus (2) the Fair Market Value of all Securities (other than Cash Equivalents) owned by the Company, including Securities issued by Subsidiaries of the Company (after taking into account the Company’s ownership percentage therein, the impact on such Fair Market Value of the cash, Cash Equivalents, preferred liquidation preferences, liabilities and indebtedness of such entities and the relative rights, preferences and privileges of the Company’s Securities and the other outstanding securities issued by such entities), less (B) all Indebtedness and other liabilities of the Company determined in accordance with GAAP, including those related to the Company’s investments to the extent not taken into account in the calculation of the Fair Market Value of such investments under clause (A)(2) above; *provided* that for such purposes, (i) the derivative attributable to the conversion feature in any series of preferred stock will not be considered a liability and (ii) the Accrued Value (as well as any accrued Dividends not yet added to the Accrued Value) of the Preferred Shares and the preference amount (including the accrued value and all accrued but unpaid dividends thereon not included in the accrued value) of any other Senior Securities or Parity



Securities will be considered a liability of the Company; *provided, further* that, solely for purposes of determining the Debt/NAV Ratio, the Indebtedness of the Company's wholly-owned and, after taking into account the Company's ownership percentage therein, Non-Wholly Owned Subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company's investment) shall be taken into account for purposes of determining "Debt" (*i.e.*, the numerator) but not taken into account (*i.e.*, added back) for purposes of determining Net Asset Value (*i.e.*, the denominator).

(ss) "Non-Wholly Owned Subsidiary," means any Subsidiary of the Company other than any Wholly Owned Subsidiary.

(tt) "Option Securities" means options, warrants or other rights to purchase or acquire Common Stock, as well as stock appreciation rights, phantom stock units and similar rights whose value is derived from the value of the Common Stock.

(uu) "Organizational Documents" means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended, supplemented or modified in accordance with its terms.

(vv) "Original Issue Date" means May 29, 2014, the first issue date of Preferred Shares.

(ww) "Original Issue Date NAV" means the Base Original Issue Date NAV, as may be increased from time to time by the NAV Escrow Adjustment.

(xx) "Permitted Payment" means any of the following:

(i) The repurchase, redemption or other acquisition of any shares of Common Stock or Junior Securities solely out of the net proceeds of the issuance of, or in exchange for the issuance of, Common Stock;

(ii) Restricted Payments not otherwise permitted hereby in an aggregate amount not to exceed \$750,000;

(iii) (a) repurchase of Equity Securities deemed to occur upon the exercise of stock options or warrants or upon the conversion or exchange of Equity Securities if the Equity Securities represent all or a portion of the exercise price thereof (or related withholding taxes) and (b) Restricted Payments to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Equity Securities in an aggregate amount under this clause (b) not to exceed \$25,000.

(yy) “Permitted Related Party Transactions” means any of the following:

(i) the payment, by the Company or a Subsidiary, of reasonable and customary regular fees and compensation to, and reasonable and customary indemnification arrangements and similar payments to or on behalf of, directors of the Company or directors of such Subsidiary, respectively, who are not employees of the Company or such Subsidiary, respectively, and qualify as Independent Directors;

(ii) any Permitted Payments or any Restricted Payments if permitted under Section 4(b);

(iii) transactions or payments, including the issuance of Equity Securities pursuant to any employee, officer or director compensation or benefit plans or arrangements by the Company or a Subsidiary existing on the Third Issue Date and listed on the Disclosure Schedule to the January 2015 Securities Purchase Agreement, or approved by the Compensation Committee, by the Board of Directors (or any committee thereof) of such Subsidiary, after the Third Issue Date, respectively;

(iv) the issuance of common stock or junior Equity Securities of the Company or any Subsidiary via a rights offering or otherwise to all stockholders of the Company or such Subsidiary after the Third Issue Date and to which the adjustment provision of SECTION 5(g) apply;

(v) the entering into of any tax sharing agreement or arrangement or any other transactions with any Subsidiaries of the Company or among any Subsidiaries of the Company undertaken in good faith for the sole purpose of improving the tax efficiency of the Company and its Subsidiaries;

(vi) the entering into of any information-sharing agreement or arrangement or any other transactions undertaken in good faith for the sole purpose of the preparation of financial statements and related financial information of the HRG Affiliates, the Company and its Subsidiaries.

(zz) “Person” means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, any agency or political subdivisions thereof or other “Person” as contemplated by Section 13(d) of the Exchange Act.

(aaa) “Preferred Director Number” means one (1); *provided* that (A) for so long as the Preferred Elected Director Condition continues to be satisfied, the percentage obtained by dividing the Preferred Director Number by the total number of directors on the Board shall be no more than 5% below such aggregate ownership percentage of the May 2014 Purchasers and their Affiliates and the September 2014 Purchasers and their Affiliates (*e.g.*, if the May 2014 Purchasers and their Affiliates and the September 2014 Purchasers and their Affiliates own, in the aggregate, at least twenty percent (20%) of the outstanding Common Stock on an as converted basis (*i.e.* assuming conversion of the Preferred Shares and shares of Series A-1 Preferred Stock and including through the ownership of Preferred Shares, Series A-1 Preferred Stock or Common Stock but excluding through the ownership of Series A-2 Preferred Stock), the Preferred Director Number would be the lowest whole

number that is equal to or in excess of 15% of the total number of directors on the Board) and (B) at any time following the occurrence and during the continuance of a Specified Breach Event, the Preferred Director Number shall be increased, if necessary, in order that the Preferred Director Number plus the number of Independent Directors on the Board shall equal more than 50% of the total number of directors on the Board.

(bbb) "Preferred Elected Director Condition" means that the May 2014 Purchasers (and/or any of their Affiliates) and the September 2014 Purchasers (and/or any of their Affiliates) own, in the aggregate, at least (A) fifteen percent (15%) of the outstanding Common Stock on an as converted basis (*i.e.* assuming conversion of the Preferred Shares and shares of Series A-1 Preferred Stock and including through the ownership of Preferred Shares, Series A-1 Preferred Stock or Common Stock, but excluding through the ownership of Series A-2 Preferred Stock) and (B) eighty percent (80%) of the sum of (x) the aggregate number of Shares (as defined in the May 2014 Securities Purchase Agreement) issued to the May 2014 Purchasers on the Original Issue Date (determined on an as-converted to Common Stock basis) plus (y) the aggregate number of shares of Series A-1 Preferred Stock issued to the September 2014 Purchasers on the Second Issue Date (determined on an as-converted to Common Stock basis).

(ccc) "Preferred Shares" means the shares of Series A Preferred Stock but shall exclude, for the avoidance of doubt, shares of Series A-1 Preferred Stock and shares of Series A-2 Preferred Stock.

(ddd) "Public Float Hurdle" means, as of any relevant measurement date, that (i) the Common Stock is registered under the Exchange Act, (ii) the Common Stock is listed on an Exchange, (iii) the aggregate value of all outstanding Common Stock (based on the Thirty Day VWAP) is not less than \$200,000,000 and (iv) the Public Market Capitalization is greater than 1.00x the aggregate value of the Common Stock issuable upon conversion of the Preferred Shares and any then outstanding Senior Securities or Parity Securities or "in-the-money" securities of the Company of the type described in clauses (ii) and (iii) of the definition of "Equity Securities" (calculated using the Thirty Day VWAP and the applicable conversion and exercise prices at such time).

(eee) "Public Market Capitalization" means, as of any relevant measurement date, all issued and outstanding shares of Common Stock, other than Common Stock being held or Beneficially Owned by (A) the HRG Affiliates, (B) the directors and executive officers of the Company or (C) any other Affiliate of the Company.

(fff) "Redemption Date" means the Maturity Date, any Optional Redemption Date or any Change of Control Payment Date, as applicable.

(ggg) "Redemption Price" means with respect to each Preferred Share: (i) in connection with a redemption pursuant to SECTION 6(a), the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed, (ii) in connection with a redemption pursuant to SECTION 6(b), the sum of

150% of the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed (the “Standard Call Price”) (provided that if the Public Float Hurdle is not satisfied as of the Optional Redemption Date, the Redemption Price for such redemption pursuant to SECTION 6(b) shall equal the greater of (X) such Standard Call Price and (Y) the Thirty Day VWAP as of the date the Company gives the applicable notice of optional redemption under SECTION 6(b) multiplied by the number of shares of Common Stock into which the Preferred Share is convertible as of such date at the applicable Conversion Price) or (iii) in connection with a Change of Control, the Change of Control Payment Amount.

(hhh) “Related Party Transaction” any transaction (or series of related transactions), arrangement or contract entered into, consummated, renewed, amended or extended between the Company or any Subsidiary of the Company, on the one hand, and any HRG Affiliate or other Affiliate of the Company (other than Subsidiaries of the Company), on the other hand, if such transaction, arrangement or contract involves payments or consideration in excess of \$500,000 in the aggregate; *provided* that (i) the execution of a joinder to the Registration Rights Agreement (as defined in the January 2015 Securities Purchase Agreement) by HRG Affiliates, (ii) the agreement granting information and access rights to the Company by Schuff International, Inc. substantially in the form previously provided to the Holders or (iii) the agreement granting information and access rights to HRG Affiliates by the Company substantially in the form previously provided to the holders shall not constitute a “Related Party Transaction”.

(iii) “Requisite Holders” means Holders (other than the Company, its employees, its Subsidiaries or any Harbinger Affiliates) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares and shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock, taken as a whole; *provided* that, for purposes of such calculation, the Preferred Shares and shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock held by the Company, its employees, its Subsidiaries or any Harbinger Affiliate shall be treated as not outstanding.

(jjj) “Restricted Payment” means (A) any dividend, distribution or other payment in respect of the Common Stock or any other Junior Securities (other than dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B)) or Equity Securities of a Subsidiary or the repurchase, redemption or other acquisition of any shares of Common Stock or any other Junior Securities (or setting aside funds for such purposes) or Equity Securities of a Subsidiary or (B) any dividend, distribution or other payment in respect of Parity Securities or the repurchase, redemption or other acquisition of any Parity Securities (or setting aside funds for such purposes) unless such dividend, distribution, payment, repurchase, redemption or other acquisition is made on a pro rata basis among the Preferred Shares and the Parity Securities in proportion to the amounts to which they are entitled.

(kkk) “Second Issue Date” means September 22, 2014, the first issue date of shares of Series A-1 Preferred Stock.

(lll) “Securities” with respect to a Person means debt or equity securities issued by such Person or similar obligations of, or participations in, such Person.

(mmm) “September 2014 Purchasers” means the several “Purchasers” named in and party to the September 2014 Securities Purchase Agreement.

(nnn) “September 2014 Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated September 22, 2014, by and among the Company and the September 2014 Purchasers, as amended, supplemented or modified in accordance with its terms.

(ooo) “Series A Requisite Holders” means holders of Preferred Shares (other than the Company, its employees, its Subsidiaries or any Harbinger Affiliates) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares; *provided* that, for purposes of such calculation, the Preferred Shares held by the Company, its employees, its Subsidiaries or any Harbinger Affiliate shall be treated as not outstanding.

(ppp) “Series A/A-1 Requisite Holders” means Holders (other than the Company, its employees, its Subsidiaries or any Harbinger Affiliates) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares and shares of Series A-1 Preferred Stock (but excluding shares of Series A-2 Preferred Stock), taken as a whole; *provided* that, for purposes of such calculation, the Preferred Shares and shares of Series A-1 Preferred Stock held by the Company, its employees, its Subsidiaries or any Harbinger Affiliate shall be treated as not outstanding.

(qqq) “Series A-1 Preferred Stock” means the Series A-1 Convertible Participating Preferred Stock of the Company, par value \$0.001 per share.

(rrr) “Series A-2 Preferred Stock” means the Series A-2 Convertible Participating Preferred Stock of the Company, par value \$0.001 per share.

(sss) “Specified Percentage” means, until the third (3<sup>rd</sup>) anniversary of the Original Issue Date, 150%, and 100% thereafter.

(ttt) “Subsidiary” means with respect to any Person, any corporation, association or other business entity of which more than 50% of the outstanding Voting Stock is owned, directly or indirectly, by, or of which more than 50% of the economic value accrues to, or, in the case of a partnership, the sole general partner or the managing partner or the only general partners of which are, such Person and one or more Subsidiaries of such Person (or a combination thereof). Unless otherwise specified, “Subsidiary” means a Subsidiary of the Company.

(uuu) “Third Issue Date” means January 5, 2015, the first issue date of shares of Series A-2 Preferred Stock.

(vvv) "Thirty Day VWAP" means, with respect to a security, the average of the Daily VWAP of such security for each day during a thirty (30) consecutive Trading Day period ending immediately prior to the date of determination. Unless otherwise specified, "Thirty Day VWAP" means the Thirty Day VWAP of the Common Stock.

(www) "Trading Day" means any day on which (i) there is no Market Disruption Event and (ii) the Exchange on which the Common Stock (or Reference Property, to the extent applicable) is listed and is open for trading or, if the Common Stock (or Reference Property, to the extent applicable) is not so listed, admitted for trading or quoted, any Business Day. A Trading Day only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then standard closing time for regular trading on the relevant exchange or trading system.

(xxx) "U.S. Government Obligations" means obligations issued or directly and fully guaranteed or insured by the United States of America or by any agent or instrumentality thereof, *provided* that the full faith and credit of the United States of America is pledged in support thereof.

(yyy) "Voting Power" means either (a) the power to elect, designate or nominate directors to the Board, or (b) vote (as Common Stock or together with Common Stock) on matters to be voted on or consented to by the Common Stock through the ownership of Voting Stock, by contract or otherwise.

(zzz) "Voting Stock" means, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

(aaaa) "Wholly Owned Subsidiary" means any Subsidiary of a Person of which such Person owns, either directly or indirectly, 100% of the common stock or other common equity interests of such Subsidiary (excluding qualifying shares held by directors).

SECTION 11. Miscellaneous. For purposes of this Certificate of Designation, the following provisions shall apply:

(a) Share Certificates. If any certificates representing Preferred Shares shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and in substitution for and upon cancellation of the mutilated certificate, or in lieu of and substitution for the lost, stolen or destroyed certificate, a new Preferred Share certificate of like tenor and representing an equivalent number of Preferred Shares, but only upon receipt of evidence of such loss, theft or destruction of such certificate and indemnity by the holder thereof, if requested, reasonably satisfactory to the Company.

(b) Status of Cancelled Shares. Preferred Shares which have been converted, redeemed, repurchased or otherwise cancelled shall be retired and, following the filing of any certificate required by the DGCL, have the status of authorized and unissued shares of Preferred Stock, without designation as to series, until such shares are once more designated by the Board as part of a particular series of Preferred Stock of the Company.

(c) Severability. If any right, preference or limitation of the Series A Preferred Stock set forth in this Certificate of Designation is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designation which can be given effect without 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 such right, preference or limitation unless so expressed herein.

(d) Remedies.

(i) The Company acknowledges that the obligations imposed on it in this Certificate of Designation are special, unique and of an extraordinary character, and irreparable damages, for which money damages, even if available, would be an inadequate remedy, would occur in the event that the Company does not perform the provisions of this Certificate of Designation in accordance with its specified terms or otherwise breaches such provisions. The Holders of Preferred Stock shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Certificate of Designation and to seek to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled, at law or in equity, including without limitation money damages.

(e) Renunciation under DGCL Section 122(17). Pursuant to Section 122(17) of the Delaware General Corporation Law, the Company renounces any interest or expectancy of the Company in, or being offered an opportunity to participate in, business opportunities that are presented to one or more of the Preferred Elected Directors, in each case other than any business opportunities that are presented to any such Preferred Elected Director solely in his or her capacity as a director of the Company.

(f) Headings. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(g) Notices. All notices or communications in respect of Preferred Stock shall be in writing and shall be deemed delivered (a) one (1) Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, (b) on the date of delivery if delivered personally, or (c) if by facsimile, upon written confirmation of receipt by facsimile. Notwithstanding the foregoing, if Preferred Stock is issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the beneficial holders of Preferred Stock in any manner permitted by such facility.

(h) Other Rights. The shares of 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 Certificate of Incorporation or as provided by applicable law and regulation.

(i) Series A Requisite Holders; Requisite Holders. Notwithstanding anything to the contrary contained herein, any consent, waiver, vote, decision, election or action required or permitted to be taken hereunder by (i) the Holders of the Preferred Shares as a group (i.e., as opposed to by a specified Holder) shall require the approval or action, as applicable, of the Series A Requisite Holders and (ii) the Holders of the Preferred Shares and shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock as a group shall require the approval or action, as applicable, of the Requisite Holders and, in each case, after such approval or action, shall be binding on all such Holders.

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IN WITNESS WHEREOF, the Company has caused this Certificate of Amendment to the Certificate of Designation to be executed by a duly authorized officer of the Company as of January 5, 2015.

**HC2 HOLDINGS, INC.**

By: /s/ Keith M. Hladek

Name: Keith M. Hladek

Title: Chief Operating Officer

*[SIGNATURE PAGE TO CERTIFICATE OF AMENDMENT TO CERTIFICATE OF DESIGNATION]*

**CERTIFICATE OF AMENDMENT TO THE CERTIFICATE OF DESIGNATION  
OF  
SERIES A-1 CONVERTIBLE PARTICIPATING PREFERRED STOCK  
OF  
HC2 HOLDINGS, INC.**

The undersigned, Keith M. Hladek, the Chief Operating Officer of HC2 Holdings, Inc. (including any successor in interest, the "Company"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), does hereby certify, in accordance with Sections 103, 141 and 242 of the DGCL as follows:

- A. The Company's Second Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"), authorizes 20,000,000 shares of preferred stock, par value \$0.001 per share (the "Preferred Stock"), issuable from time to time in one or more series.
- B. The Certificate of Incorporation authorizes the Board of Directors (the "Board") to provide by resolution for the issuance of the shares of Preferred Stock in one or more series, the number of shares in each series, the voting powers, if any, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof.
- C. The Board, pursuant to its authority as aforesaid, designated a series of Preferred Stock, par value \$0.001 per share, as the Series A-1 Convertible Participating Preferred Stock, by resolution dated September 22, 2014.
- D. The Company, in accordance with Sections 103 and 151 of the DGCL, filed a certificate of designation on September 22, 2014 with the Secretary of State of the State of Delaware to set the number of shares constituting the Series A-1 Convertible Participating Preferred Stock, and the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof (the "September 2014 Certificate of Designation").
- E. 11,000 shares of the Company's Series A-1 Convertible Participating Preferred Stock are issued and outstanding as of the date hereof.
- F. This Certificate of Amendment to the Certificate of Designation of Series A-1 Convertible Participating Preferred Stock has been duly adopted and approved by the Board in accordance with the provisions of Sections 141 and 242 of the DGCL.
- G. This Certificate of Amendment to the Certificate of Designation of Series A-1 Convertible Participating Preferred Stock has been duly adopted and approved by the Requisite Holders (under and as defined in the September 2014 Certificate of Designation).

H. The text of the September 2014 Certificate of Designation is hereby amended and restated to read as set forth herein in full:

SECTION 1. Number; Designation; Rank.

(a) This series of convertible participating preferred stock is designated as the "Series A-1 Convertible Participating Preferred Stock" (the "Series A-1 Preferred Stock"). The number of shares constituting the Series A-1 Preferred Stock is 11,000 shares, par value \$0.001 per share.

(b) The Series A-1 Preferred Stock ranks, with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise:

(i) senior in preference and priority to the Common Stock and each other class or series of Capital Stock of the Company, except for (x) any class or series of Capital Stock hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior to or on parity, without preference or priority, with the Series A-1 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively with the Common Stock, the "Junior Securities"), (y) the shares of Series A Preferred Stock and (z) the shares of Series A-2 Preferred Stock;

(ii) on parity, without preference and priority, with the Series A Preferred Stock, the Series A-2 Preferred Stock and each other class or series of Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank on parity, without preference or priority, with the Series A-1 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively, the "Parity Securities"); and

(iii) junior in preference and priority to each other class or series of Preferred Stock or any other Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior in preference or priority to the Series A-1 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise (collectively, "Senior Securities").

SECTION 2. Dividends.

(a) Cash Dividends. Holders shall be entitled to receive, out of funds legally available for the payment of dividends to the Company's stockholders under Delaware law, on each Preferred Share, cumulative cash dividends which accrue daily at a per annum rate of 7.50% on the Accrued Value of such Preferred Share ("Cash Dividends"). Such Cash Dividends shall begin to accrue and be cumulative from the Issue Date. Cash Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period. If and to the extent that the Company does not for any reason (including because there are insufficient funds legally available for the payment of dividends) pay the entire Cash Dividend payable for a particular Dividend Period in cash on the applicable Dividend Payment Date for such period

(whether or not there are funds of the Company legally available for the payment of dividends to the Company's stockholders under Delaware law or such dividends are declared by the Board), during the period in which such Cash Dividend remains unpaid, an additional accreting dividend (the "Cash Accretion Dividends") shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Cash Dividend through the daily addition of such Cash Accretion Dividends to the Accrued Value (whether or not such Cash Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law).

(b) Accreting Dividends. In addition to the Cash Dividend, for each Dividend Period beginning on or after the Issue Date, the Holders shall be entitled to receive on each Preferred Share additional dividends at the per annum rates set forth in this SECTION 2(b) (the "Basic Accreting Dividends" and, together with the Cash Accretion Dividends, the Participating Accretion Dividends and the In-Kind Participating Dividends, the "Accreting Dividends"; the Accreting Dividends, together with the Cash Dividend and the Participating Dividends, the "Dividends"). Basic Accreting Dividends shall accrue and be cumulative from the Issue Date. Basic Accreting Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period by the addition of such amount to the Accrued Value, whether or not declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law. Such Basic Accreting Dividend for any Dividend Period shall be at a per annum rate (the "Accreting Dividend Rate") determined as follows:

(i) If Net Asset Value as of the last day of any Dividend Period is less than 120% of Original Issue Date NAV, a per annum rate of 4.00% of the Accrued Value for the next succeeding Dividend Period;

(ii) If Net Asset Value as of the last day of any Dividend Period is equal to or greater than 120% and less than or equal to 140% of Original Issue Date NAV, a per annum rate of 2.00% of the Accrued Value for the next succeeding Dividend Period; and

(iii) If Net Asset Value as of the last day of any Dividend Period is greater than 140% of Original Issue Date NAV, no additional per annum rate for the next succeeding Dividend Period;

*provided, however*, that notwithstanding anything to the contrary contained herein, the Accreting Dividend Rate shall be 7.25% of the Accrued Value during any portion of any Dividend Period during which any of the following is true: (w) the Daily VWAP for the immediately preceding trading day was less than \$1.00 (as adjusted for stock splits, stock dividends, stock combinations and similar events), (x) the Common Stock is not registered under Section 12(b) of the Exchange Act, (y) the Common Stock is not listed on an Exchange or (z) the Company is delinquent in the payment of any Cash Dividends; *provided*, that the Company's failure to comply with requirements (y) and (z) above will not trigger the increased Accreting Dividend Rate during the first year after the Original Issue Date.

(c) Participating Cash Dividends. If the Company declares, makes or pays any cash dividend or distribution in respect of the Common Stock (a “Common Dividend”), each Holder shall receive a dividend (in addition to the Dividends provided for by SECTION 2(a) and SECTION 2(b)) in respect of each Preferred Share held thereby, in an amount equal to the product of (x) the amount of such Common Dividend paid per share of Common Stock, multiplied by (y) the number of shares of Common Stock issuable if such Preferred Share had been converted into shares of Common Stock immediately prior to the record date for such Common Dividend (such amount per share of Preferred Stock, the “Participating Cash Dividend”). Participating Cash Dividends shall be payable to Holders on the record date for such Common Dividend at the same time and in the same manner as the Common Dividend triggering such Participating Cash Dividend is paid. If and to the extent that the Company does not for any reason pay the entire Participating Cash Dividend when the Common Dividend is paid to the holders of Common Stock, during the period in which such Participating Cash Dividend remains unpaid, an additional accreting dividend (the “Participating Accretion Dividends”) shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Participating Cash Dividend through the daily addition of such Participating Accretion Dividends to the Accrued Value (whether or not such Participating Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company’s stockholders under Delaware law).

(d) In-Kind Participating Dividends. If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets, securities or property, in respect of the Common Stock (an “In-Kind Common Dividend”), including without limitation any spin-off of one or more subsidiaries or businesses of the Company but excluding: (I) dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B); and (II) cash dividends with respect to which Holders are entitled to Participating Cash Dividends, then the Holders shall receive in such distribution or other transaction, at the same time and in the same manner as holders of Common Stock, the same type and amount of consideration (the “In-Kind Participating Dividend” and, collectively with the Participating Cash Dividend, the “Participating Dividends”) as Holders would have received if, immediately prior to the record date of such In-Kind Common Dividend, they had held the number of shares of Common Stock issuable upon conversion of the Preferred Shares. To the extent that the Company establishes or adopts a stockholder rights plan or agreement (i.e., a “poison pill”), the Company shall ensure that the Holders will receive, as an In-Kind Participating Dividend, rights under the stockholder rights plan or agreement with respect to any shares of Common Stock that at the time of such distribution would be issuable upon conversion of the Preferred Shares. If and to the extent that the Company does not for any reason pay the entire In-Kind Participating Dividend when the In-Kind Common Dividend is paid to the holders of Common Stock, during the period in which such In-Kind Participating Dividend remains unpaid, an additional accreting dividend (the “In-Kind Accretion Dividends”) shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid In-Kind Participating Dividend through the daily addition of such In-Kind Accretion Dividends to the Accrued Value (whether or not such In-Kind Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company’s stockholders under Delaware law).

(e) Dividends (other than Participating Dividends) payable on the Series A-1 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 (other than Participating Dividends) payable on the Series A-1 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.

(f) Cash Dividends and Accreting Dividends that are payable on Series A-1 Preferred Stock on any Dividend Payment Date will be payable to Holders of record on the applicable record date, which shall be the fifteenth (15<sup>th</sup>) calendar day before the applicable Dividend Payment Date, or, with respect to any Cash Dividends not paid on the scheduled Dividend Payment Date therefor, such record date fixed by the Board (or a duly authorized committee of the Board) that is not more than sixty (60) nor less than ten (10) days prior to such date on which such accrued and unpaid Cash Dividends are to be paid (each such record date, 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.

(g) The quarterly dividend periods with respect to Cash Dividends and Accreting Dividends shall commence on and include January 1, April 1, July 1 and October 1 (other than the initial Dividend Period, which shall commence on and include the Issue Date) and shall end on and include the last calendar day of the calendar quarter ending March 31, June 30, September 30 and December 31 preceding the next Dividend Payment Date (a "Dividend Period").

### SECTION 3. Liquidation Preference.

(a) Upon any Liquidation Event, each Preferred Share entitles the Holder thereof to receive and to be paid out of the assets of the Company legally available for distribution to the Company's stockholders, before any distribution or payment may be made to a holder of any Junior Securities, an amount in cash per share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value (such sum, after the Specified Percentage multiplier and as adjusted, the "Regular Liquidation Preference") and (ii) an amount equal to the amount the Holder of such share would have received upon such Liquidation Event had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the "Liquidation Preference").

(b) If upon any such Liquidation Event, the assets of the Company legally available for distribution to the Company's stockholders are insufficient to pay the Holders the full Liquidation Preference and the holders of all Parity Securities the full liquidation preferences to which they are entitled, the Holders and the holders of such Parity Securities will share ratably in any such distribution of the assets of the Company in proportion to the full respective amounts to which they are entitled.

(c) After payment to the Holders of the full Liquidation Preference to which they are entitled, the Holders as such will have no right or claim to any of the assets of the Company.

(d) The value of any property not consisting of cash that is distributed by the Company to the Holders will equal the Fair Market Value thereof on the date of distribution.

(e) No holder of Junior Securities shall receive any cash upon a Liquidation Event unless the entire Liquidation Preference in respect of the Preferred Shares has been paid in cash. To the extent that there is insufficient cash available to pay the entire Liquidation Preference in respect of the Preferred Shares and any liquidation preference in respect of Parity Securities in full in cash upon a Liquidation Event, the Holders and the holders of such Parity Securities will share ratably in any cash available for distribution in proportion to the full respective amounts to which they are entitled upon such Liquidation Event.

**SECTION 4. As-Converted Voting Rights; Certain Consent Rights.**

(a) The Holders are entitled to vote on all matters on which the holders of shares of Common Stock are entitled to vote and, except as otherwise provided herein (including under SECTION 7 below) or by law, the Holders shall vote together with the holders of shares of Common Stock as a single class. As of any record date or other determination date, each Holder shall be entitled to the number of votes such Holder would have had if all Preferred Shares held by such Holder on such date had been converted into shares of Common Stock immediately prior thereto, except that, in the event that any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the receipt of any Accreting Dividends by such Holder, the voting rights of such Holder pursuant to this Section 4(a) shall not be increased as a result of such Holder's receipt of such Accreting Dividends unless and until such Holder and the Company shall have made their respective filings under the HSR Act and the applicable waiting period shall have expired or been terminated in connection with such filings. The Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation.

(b) In addition to the voting rights provided for by SECTION 4(a) and SECTION 7 and any voting rights to which the Holders may be entitled to under law, for so long as any Preferred Shares, shares of Series A Preferred Stock or shares of Series A-2 Preferred Stock are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Requisite Holders:

(i) amend the Certificate of Incorporation (excluding for this purpose this Certificate of Designation) or the By-Laws of the Company (including by means of merger, consolidation, reorganization, recapitalization or otherwise), in each case, in a manner adverse to the Holders;

(ii) authorize, create or issue any (x) Senior Securities or any debt securities convertible into or exchangeable for Equity Securities; (y) Parity Securities or (z) any voting securities providing the holders thereof voting or board designation or appointment rights that are disproportionate to such holders' fully diluted ownership of the Common Stock;

(iii) (a) authorize or effect the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (b) consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, or (c) consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors;

(iv) incur, or permit any Subsidiary to incur, any Indebtedness not otherwise permitted by the terms of SECTION 9(a);

(v) enter into, consummate, adopt, approve, establish or amend any Related Party Transaction (including any agreements or arrangements with HRG Affiliates relating to corporate opportunities and including all amendments, waivers and consents relating to any agreements and arrangements subject to this clause (vi)) (other than a Permitted Related Party Transaction, in either case, that has not been approved by a committee of the Board consisting solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director);

(vi) make, or permit any of its Subsidiaries to make, any Restricted Payments other than (A) the purchase of Equity Securities held by officers, directors, employees, consultants or independent contractors or former officers, directors, employees, consultants or independent contractors (or their estates or beneficiaries under their estates), upon death, disability, retirement, severance or other termination of employment provided that the aggregate cash consideration paid therefor in any twelve-month period after the Original Issue Date does not exceed an aggregate amount of (I) \$250,000 with respect to the Company and its Wholly Owned Subsidiaries, taken together, and (II) \$250,000 with respect to any Non-Wholly Owned Subsidiary of the Company, taken together with all Wholly Owned Subsidiaries of such Non-Wholly Owned Subsidiary, (B) dividends and distributions by Non-Wholly owned Subsidiaries made in accordance with the Organizational Documents of such Non-Wholly Owned Subsidiaries, (C) dividends and distributions to the Company or its Wholly Owned Subsidiaries and (D) Permitted Payments;

(vii) create a new Subsidiary of the Company not in existence on the Third Issue Date for the primary purpose of issuing Equity Securities of such Subsidiary or incurring Debt the proceeds of which will, directly or indirectly, be used to make



dividends or other distributions or payments of cash to holders of the Company's Capital Stock other than the Holders; provided, that for the avoidance of doubt, the foregoing shall not prohibit dividends or other distributions to the Company;

(viii) effect any voluntary deregistration under the Exchange Act or voluntary delisting with any Exchange in respect to the Common Stock other than in connection with a Change of Control transaction pursuant to which the Company satisfies in full (in cash with respect to payment obligations) all of its obligations under SECTION 6(c); or

(ix) agree to do, directly or indirectly, any of the foregoing actions set forth in clauses (i) through (viii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Requisite Holders.

(c) In addition to the voting rights provided for by SECTION 4(a), SECTION 4(b) and SECTION 7 and any voting rights to which the Holders may be entitled to under law, for so long as any Preferred Shares are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Series A-1 Requisite Holders:

(i) amend, repeal, alter or add, delete or otherwise change the powers, preferences, rights or privileges of the Series A-1 Preferred Stock;

(ii) authorize or issue any shares of Series A-1 Preferred Stock other than to the September 2014 Purchasers pursuant to SECTION 2 of the September 2014 Securities Purchase Agreement, or effect any stock split or combination, reclassification or similar event with respect to the Series A-1 Preferred Stock;

(iii) incur, or permit any Subsidiary to incur, any Indebtedness not otherwise issued in compliance with the participation rights contained in SECTION 5.4 of the September 2014 Securities Purchase Agreement; or

(iv) agree to do, directly or indirectly, any of the foregoing actions set forth in clauses (i) through (iii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Series A-1 Requisite Holders.

(d) Notwithstanding anything to the contrary contained in this SECTION 4, the Company may not, directly or indirectly, take any action otherwise approved pursuant to Section 4(b) if such action would have a materially adverse and disproportionate effect on the powers, preferences, rights, limitations, qualifications and restrictions or privileges of any Holder with respect to any shares of Series A-1 Preferred Stock held by any Holder, without the prior approval of such Holder.

(e) Written Consent. Any action as to which a class vote of the holders of Preferred Stock, or the holders of Preferred Stock and Common Stock voting together, is required pursuant to the terms of this Certificate of Designation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Company.

SECTION 5. Conversion. Each Preferred Share is convertible into shares of Common Stock (or Reference Property, to the extent applicable) as provided in this SECTION 5.

(a) Conversion at the Option of Holders of Series A-1 Preferred Stock. Subject to SECTION 5(b) hereof, each Holder is entitled to convert, at any time and from time to time, at the option and election of such Holder, any or all outstanding Preferred Shares held by such Holder and receive therefor the property described in SECTION 5(d) upon such conversion. In order to convert Preferred Shares into shares of Common Stock (or Reference Property, to the extent applicable), the Holder must surrender the certificates representing such Preferred Shares at the office of the Company's transfer agent for the Series A-1 Preferred Stock (or at the principal office of the Company, if the Company serves as its own transfer agent), together with (x) written notice that such Holder elects to convert all or part of the Preferred Shares represented by such certificates as specified therein, (y) a written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the transfer agent or the Company, as applicable (if reasonably required by the transfer agent or the Company, as applicable), and (z) funds for any stock transfer, documentary, stamp or similar taxes, if payable by the Holder pursuant to SECTION 5(f)(i). Except as provided in SECTION 5(b) and in SECTION 5(c), the date the transfer agent or the Company, as applicable, receives such certificates, together with such notice and any other documents and amounts required to be paid by the Holder pursuant to this SECTION 5, will be the date of conversion (the "Conversion Date").

(b) Conversion at the Option of the Company. Beginning on the third (3<sup>rd</sup>) anniversary of the Original Issue Date, the Company shall have the right, at its option, to cause all shares of Series A-1 Preferred Stock to be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole but not in part, into the property described in SECTION 5(d) within five (5) Business Days of any day (the "Forced Conversion Trigger Date") on which all of the Company Conversion Conditions are satisfied from time to time. The Company may exercise its option under this SECTION 5(b) by providing the Holders with a written notice, which notice shall specify that the Company is exercising the option contemplated by this SECTION 5(b), the Forced Conversion Trigger Date and the Conversion Date on which the conversion shall occur (which Conversion Date shall be not less than ten (10) Business Days following the date such notice is provided to the Holders); *provided* that, once delivered, such notice shall be irrevocable, unless the Company obtains the written consent of the Series A-1 Requisite Holders. For the avoidance of doubt, (x) the Holders shall continue to have the right to convert their Preferred Shares pursuant to SECTION 5(a) until and through the Conversion Date contemplated in this SECTION 5(b)

and (y) if any Preferred Shares are converted pursuant to SECTION 5(a), such Preferred Shares shall no longer be converted pursuant to this SECTION 5(b) and the Company's notice delivered to the Holders pursuant to this SECTION 5(b) shall automatically terminate with respect to such Preferred Shares. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 5(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(b). The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 5(b) announcing the Company's election to convert Preferred Shares pursuant to this SECTION 5(b).

(c) Automatic Conversion on Maturity Date. In the event that any Holder has not elected to have its Preferred Shares redeemed by the Company on the Maturity Date (as defined herein) pursuant to SECTION 6(a), then such Holder's Preferred Shares shall be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole and not in part, into the property described in SECTION 5(d), effective as of the Maturity Date, which shall be deemed to be the "Conversion Date" for purposes of this SECTION 5(c). As promptly as practicable (but in no event more than five (5) Business Days) following the Maturity Date, the Company shall deliver a notice to any Holder whose Preferred Shares have been converted by the Company pursuant to this SECTION 5(c), informing such Holder of the number of shares of Common Stock into which such Preferred Shares have been converted, together with certificates evidencing such shares of Common Stock. Notwithstanding the foregoing, any notice delivered by the Company in compliance with this SECTION 5(c) shall be conclusively presumed to have been duly given, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(c). The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following the Maturity Date announcing the aggregate number of Preferred Shares being converted pursuant to this SECTION 5(c) and the number of shares of Common Stock issuable in connection therewith, as well as the aggregate number of Preferred Shares redeemed on the Maturity Date and the purchase price paid by the Company therefor.

(d) Amounts Received Upon Conversion. Upon a conversion of Preferred Shares pursuant to SECTION 5(a), (b) or (c), the Holder of such converted Preferred Shares shall receive in respect of each Preferred Share:

(i) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount (the "Conversion Amount") determined by dividing (A) the Accrued Value for the Preferred Share to be converted by (B) the Conversion Price in effect at the time of conversion; *provided* that, notwithstanding the foregoing, if the Company has elected to convert all Preferred Shares pursuant to SECTION 5(b) and the Public Float Hurdle is not met on the Forced Conversion Trigger Date, then each Holder may elect, by delivery of a notice to the Company no later than the close of business on the Business Day immediately prior to the Conversion Date, to receive, in lieu of Common Stock (or Reference Property, to the extent applicable), cash equal to the Conversion Amount multiplied by the Thirty Day VWAP as of the close of business on the Business Day immediately preceding the Conversion Date, which cash amount shall be delivered to the electing Holders within forty-five (45) calendar days of the date that the last Holder electing to receive cash pursuant to this SECTION 5(d)(i) has provided the Company with notice thereof;

(ii) cash in an amount equal to the amount of any accrued but unpaid Cash Dividends and Participating Cash Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted; *provided* that, to the extent the Company is prohibited by law or by contract from paying such amount, then the Company shall provide written notice to the applicable Holder of such inability to pay, and at the written election of the Holder (which written election shall be delivered to the Company within five (5) Business Days of receipt of such written notice from the Company), the Company shall either pay such amount as soon as payment is no longer so prohibited or issue Common Stock (or Reference Property, to the extent applicable) in the manner specified in SECTION 5(d)(i) as if the amount of such accrued but unpaid Cash Dividends and Participating Cash Dividends were added to the Accrued Value (it being understood that any such Cash Dividends that are not timely paid upon conversion as a result of this proviso will be deemed to be overdue and delinquent for purposes of calculating Cash Accretion Dividends pursuant to SECTION 2(a) hereunder until paid in full in cash);

(iii) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount determined by dividing (A) the amount of any accrued but unpaid Accreting Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted by (B) the Conversion Price in effect at the time of Conversion; and

(iv) any accrued and unpaid In-Kind Participating Dividends.

Notwithstanding the foregoing, in the event any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the conversion of any Preferred Shares into the property described above in this Section 5(d), at the option of such Holder upon written notice to the Company, the effectiveness of such conversion shall be delayed (only to the extent necessary to avoid a violation of the HSR Act), until such Holder shall have made such filing under the HSR Act and the applicable waiting period shall have expired or been terminated; *provided*, however, that in such circumstances such Holder shall use commercially reasonable efforts to make such filing and obtain the expiration or termination of such waiting period as promptly as reasonably practical and the Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of

such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation. Notwithstanding the foregoing, if the conversion of any Preferred Share is delayed pursuant to the preceding sentence at (x) a time when the Company desires to exercise its right to convert shares of Series A-1 Preferred Stock pursuant to SECTION 5(b) or (y) the Maturity Date in connection with the automatic conversion of the shares of Series A-1 Preferred Stock pursuant to SECTION 5(c), from and after the date of the conversions contemplated by SECTIONS 5(b) or 5(c), as applicable, such Preferred Share not then converted shall have no rights, powers, preferences or privileges other than the rights provided by this paragraph and the right to (i) convert into Common Stock if and when such Holder shall have made such filing under the HSR Act and the waiting period in connection with such filing under the HSR Act shall have expired or been terminated and (ii) receive dividends and distributions pursuant to SECTIONS 2(c) and 2(d).

(e) Fractional Shares. No fractional shares of Common Stock (or fractional shares in respect of Reference Property, to the extent applicable) will be issued upon conversion of the Series A-1 Preferred Stock. In lieu of fractional shares, the Company shall pay cash in respect of each fractional share equal to such fractional amount multiplied by the Thirty Day VWAP as of the closing of business on the Business Day immediately preceding the Conversion Date (or the Fair Market Value thereof in respect of any Reference Property). If more than one Preferred Share is being converted at one time by the same Holder, then the number of full shares issuable upon conversion will be calculated on the basis of the aggregate number of Preferred Shares converted by such Holder at such time.

(f) Mechanics of Conversion.

(i) As soon as reasonably practicable after the Conversion Date (and in any event within four (4) Business Days after such date), the Company shall issue and deliver to the applicable Holder one or more certificates for the number of shares of Common Stock (or Reference Property, to the extent applicable) to which such Holder is entitled, together with, at the option of the Holder, a check or wire transfer of immediately available funds for payment of fractional shares and any payment required by SECTION 5(d)(ii) in exchange for the certificates representing the converted Preferred Shares. Such conversion will be deemed to have been made on the Conversion Date, and the Person entitled to receive the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock (or Reference Property, to the extent applicable) on such date. The delivery of the Common Stock upon conversion of Preferred Shares shall be made, at the option of the applicable Holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Company to the appropriate Holder on a book-entry basis or by mailing certificates evidencing the shares to such Holder at its address as set forth in the conversion notice. In cases where fewer than all the Preferred Shares represented by any such certificate are to be converted, a new certificate shall be issued representing the unconverted Preferred Shares. The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of Common Stock (or Reference Property, to the extent applicable) upon conversion or due upon the issuance of a new certificate for any Preferred Shares not converted to the converting Holder; provided that the

Company shall not be required to pay any such amounts, and any such amounts shall be paid by the converting Holder, in the event that such Common Stock or Preferred Shares are issued in a name other than the name of the converting Holder.

(ii) For the purpose of effecting the conversion of Preferred Shares, the Company shall: (A) at all times reserve and keep available, free from any preemptive rights, out of its treasury or authorized but unissued shares of Common Stock (or Reference Property, to the extent applicable) the full number of shares of Common Stock (or Reference Property, to the extent applicable) deliverable upon the conversion of all outstanding Preferred Shares after taking into account any adjustments to the Conversion Price from time to time pursuant to the terms of this SECTION 5 and any increases to the Accrued Value from time to time and assuming for the purposes of this calculation that all outstanding Preferred Shares are held by one holder) and (B) without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, take all actions reasonably required to amend its Certificate of Incorporation, as expeditiously as reasonably practicable, to increase the authorized and available amount of Common Stock (or Reference Property, to the extent applicable) if at any time such amendment is necessary in order for the Company to be able to satisfy its obligations under this SECTION 5. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon conversion of the Series A-1 Preferred Stock, the Company will take any corporate action which may be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock (or Reference Property, to the extent applicable) upon the conversion of all outstanding Preferred Shares at such adjusted Conversion Price.

(iii) From and after the Conversion Date, the Preferred Shares converted on such date, will no longer be deemed to be outstanding and all rights of the Holder thereof including the right to receive Dividends, but excluding the right to receive from the Company the Common Stock (or Reference Property, to the extent applicable) or any cash payment upon conversion, and except for any rights of Holders (including any voting rights) pursuant to this Certificate of Designation which by their express terms continue following conversion or, for the avoidance of doubt, rights which by their express terms continue following conversion pursuant to any of the other Transaction Agreements (as defined in the September 2014 Securities Purchase Agreement) shall immediately and automatically cease and terminate with respect to such Preferred Shares; *provided* that, in the event that a Preferred Share is not converted due to a default by the Company or because the Company is otherwise unable to issue the requisite shares of Common Stock (or Reference Property, to the extent applicable), such Preferred Share will, without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, remain outstanding and will continue be entitled to all of the rights attendant to such Preferred Share as provided herein.

(iv) The Company shall comply with all federal and state laws, rules and regulations and applicable rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed. If any shares of Common Stock (or Reference Property, to the extent applicable) to be reserved for the purpose of conversion of Preferred Shares require registration with or approval of any Person or group (as such term is defined in Section 13(d)(3) of the Exchange Act) under any federal or state law

or the rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed before such shares may be validly issued or delivered upon conversion, then the Company will, as expeditiously as reasonably practicable, use commercially reasonable efforts to secure such registration or approval, as the case may be. So long as any Common Stock (or Reference Property, to the extent applicable) into which the Preferred Shares are then convertible is then listed on an Exchange, the Company will list and keep listed on any such Exchange, upon official notice of issuance, all shares of such Common Stock (or Reference Property, to the extent applicable) issuable upon conversion.

(v) All shares of Common Stock (or Reference Property, to the extent applicable) issued upon conversion of the Preferred Shares will, upon issuance by the Company, be duly and validly issued, fully paid and nonassessable, not issued in violation of any preemptive or similar rights arising under law or contract and free from all taxes, liens and charges with respect to the issuance thereof, and the Company shall take no action which will cause a contrary result.

(g) Adjustments to Conversion Price.

(i) The Conversion Price shall be subject to the following adjustments:

(A) *Common Stock Dividends or Distributions.* If the Company issues shares of Common Stock as a dividend or distribution on shares of Common Stock, or if the Company effects a share split or share combination with respect to shares of Common Stock, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0}{OS_1}$$

where,

$CP_0$  = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

$CP_1$  = the Conversion Price in effect immediately after the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be; and

$OS_1$  = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this SECTION 5(g)(i)(A) shall become effective immediately after the open of business on the Ex-Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination. If any dividend or distribution of the type described in this SECTION 5(g)(i)(A) is declared but not so paid or made, or any share split or combination of the type described in this SECTION 5(g)(i)(A) is announced but the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to pay such dividend or distribution, or not to split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Price that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(B) *Rights, Options or Warrants on Common Stock.* If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them, for a period expiring not more than sixty (60) days immediately following the record date of such distribution, to purchase or subscribe for shares of Common Stock at a price per share less than the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CP<sub>0</sub> = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such distribution;

CP<sub>1</sub> = the Conversion Price in effect immediately after the open of business on the Ex-Date for such distribution;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such distribution;

X = the number of shares of Common Stock equal to the aggregate price payable to exercise all such rights, options or warrants divided by the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution; and

Y = the total number of shares of Common Stock issuable pursuant to all such rights, options or warrants.

Any adjustment made under this SECTION 5(g)(i)(B) will be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the open of business on the Ex-Date for such distribution. To the extent that shares of Common Stock are not delivered prior to the expiration of such rights, options or warrants, the Conversion



Price shall be readjusted following the expiration of such rights to the Conversion Price that would then be in effect had the decrease in the Conversion Price with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to make such distribution, to the Conversion Price that would then be in effect if such distribution had not occurred.

In determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Daily VWAP for the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the fair market value of such consideration, if other than cash, to be reasonably determined by the Board in good faith.

(C) *Tender Offer or Exchange Offer Payments.* If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for Common Stock, if the aggregate value of all cash and any other consideration included in the payment per share of Common Stock (as reasonably determined in good faith by the Board) exceeds the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date on which such tender offer or exchange offer expires, the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 \times SP_1}{AC + (SP_1 \times OS_1)}$$

where,

$CP_1$  = the Conversion Price in effect immediately after the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

$CP_0$  = the Conversion Price in effect immediately prior to the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires;

$SP_1$  = the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as reasonably determined in good faith by the Board) paid or payable for shares purchased in such tender or exchange offer; and

OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer and excluding fractional shares).

The adjustment to the Conversion Price under this SECTION 5(g)(i)(C) will occur at the close of business on the tenth (10<sup>th</sup>) Trading Day immediately following, but excluding, the date such tender or exchange offer expires; *provided* that, for purposes of determining the Conversion Price, in respect of any conversion during the ten (10) Trading Days immediately following, but excluding, the date that any such tender or exchange offer expires, references within this SECTION 5(g)(i)(C) to ten (10) consecutive Trading Days shall be deemed replaced with such lesser number of consecutive Trading Days as have elapsed between the date such tender or exchange offer expires and the relevant conversion date.

(D) *Common Stock Issued at Less than Conversion Price.* If, after the Original Issue Date, the Company issues or sells any Common Stock (or Option Securities or Convertible Securities, to the extent set forth in this SECTION 5(g)(i)(D)), other than Excluded Stock, for no consideration or for consideration per share less than the Conversion Price in effect as of the date of such issuance or sale, the Conversion Price in effect immediately prior to each such issuance or sale will (except as provided below) be adjusted at the time of such issuance or sale based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CP<sub>1</sub> = the Conversion Price in effect immediately following such issuance or sale;

CP<sub>0</sub> = the Conversion Price in effect immediately prior to such issuance or sale;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to such issuance or sale (treating for this purpose as outstanding all shares of Common Stock issuable upon the conversion or exchange of (x) all Preferred Shares issued on the Second Issue Date, all shares of Series A Preferred Stock issued on the Original Issue Date and all shares of Series A-2 Preferred Stock issued on the Third Issue Date and (y) all convertible, exchangeable or exercisable Equity Securities of the Company not listed in (x) if the conversion price, exercise price or exchange price applicable to such Equity Securities of the Company is below Market Value on the determination date);

X = the number of shares of Common Stock that the aggregate consideration received by the Company for the number of shares of Common Stock so issued or sold would purchase at a price per share equal to CP<sub>0</sub>; and

Y = the number of additional shares of Common Stock so issued.

For the purposes of any adjustment of the Conversion Price pursuant to this SECTION 5(g)(i)(D), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock for cash, the amount of the consideration received by the Company shall be deemed to be the amount of the cash proceeds received by the Company for such Common Stock after deducting therefrom any discounts or commissions allowed, paid or incurred by the Company for any underwriting or otherwise in connection with the issuance and sale thereof

(2) In the case of the issuance of Common Stock (otherwise than upon the conversion of shares of Capital Stock or other securities of the Company) for a consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair market value thereof as reasonably determined by the Board in good faith.

(3) In the case of (A) the issuance of Option Securities (whether or not at the time exercisable) or (B) the issuance of Convertible Securities (whether or not at the time so convertible or exchangeable):

i) the issuance of Option Securities shall be deemed the issuance of all shares of Common Stock deliverable upon the exercise of such Option Securities;

ii) such Option Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2)), if any, received by the Company for such Option Securities, plus the exercise price, strike price or purchase price provided in such Option Securities for the Common Stock covered thereby;

iii) the issuance of Convertible Securities shall be deemed the issuance of all shares of Common Stock deliverable upon conversion of, or in exchange for, such Convertible Securities;

iv) such Convertible Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2) and excluding any cash received on account of accrued interest or accrued dividends), if any, received by the Company for such Convertible Securities, plus the value of the additional consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2)) to be received by the Company upon the conversion or exchange of such Convertible Securities, if any;

v) upon any change in the number of shares of Common Stock deliverable upon exercise of any Option Securities or Convertible Securities or upon any change in the consideration to be received by the Company upon the exercise,

conversion or exchange of such securities, the Conversion Price then in effect shall be readjusted to such Conversion Price as would have been in effect had such change been in effect, with respect to any Option Securities or Convertible Securities outstanding at the time of the change, at the time such Option Securities or Convertible Securities originally were issued;

vi) upon the expiration or cancellation of Option Securities (without exercise), or the termination of the conversion or exchange rights of Convertible Securities (without conversion or exchange), if the Conversion Price shall have been adjusted upon the issuance of such expiring, canceled or terminated securities, the Conversion Price shall be readjusted to such Conversion Price as would have been obtained if, at the time of the original issuance of such Option Securities or Convertible Securities, the expired, canceled or terminated Option Securities or Convertible Securities, as applicable, had not been issued;

vii) if the Conversion Price shall have been fully adjusted upon the issuance of any such options, warrants, rights or convertible or exchangeable securities, no further adjustment of the Conversion Price shall be made for the actual issuance of Common Stock upon the exercise, conversion or exchange thereof; and

viii) if any issuance of Common Stock, Option Securities or Convertible Securities would also require an adjustment pursuant to any other adjustment provision of this SECTION 5(g)(i), then only the adjustment most favorable to the Holders shall be made.

(ii) If the Company issues rights, options or warrants that are only exercisable upon the occurrence of certain triggering events (each, a "Trigger Event"), then the Conversion Price will not be adjusted pursuant to SECTION 5(g)(i)(B) until the earliest Trigger Event occurs, and the Conversion Price shall be readjusted to the extent any of these rights, options or warrants are not exercised before they expire (provided, however, that, for the avoidance of doubt, if such Trigger Event would require an adjustment pursuant to SECTION 5(g)(i)(D), such adjustment pursuant to SECTION 5(g)(i)(D) shall be made at the time of issuance of such rights, options or warrants in accordance with such Section).

(iii) Notwithstanding anything in this SECTION 5(g) to the contrary, if a Conversion Price adjustment becomes effective pursuant to any of clauses (A), (B) or (C) of this SECTION 5(g)(i) on any Ex-Date as described above, and a Holder that converts its Preferred Shares on or after such Ex-Date and on or prior to the related record date would be treated as the record holder of shares of Common Stock as of the related Conversion Date based on an adjusted Conversion Price for such Ex-Date and participate on an adjusted basis in the related dividend, distribution or other event giving rise to such adjustment, then, notwithstanding the foregoing Conversion Price adjustment provisions, the Conversion Price adjustment relating to such Ex-Date will not be made for such converting Holder. Instead, such Holder will be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

Notwithstanding anything in this SECTION 5(g) to the contrary, no adjustment under SECTION 5(g)(i) need be made to the Conversion Price unless such adjustment would require a decrease of

at least 1% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to a decrease of at least 1% of such Conversion Price; *provided* that, on the date of any conversion of the Preferred Shares pursuant to SECTION 5, adjustments to the Conversion Price will be made with respect to any such adjustment carried forward that has not been taken into account before such date. In addition, at the end of each year, beginning with the year ending December 31, 2014, the Conversion Price shall be adjusted to give effect to any adjustment or adjustments so carried forward, and such adjustments will no longer be carried forward and taken into account in any subsequent adjustment.

(iv) Adjustments Below Par Value. The Company shall not take any action that would require an adjustment to the Conversion Price such that the Conversion Price, as adjusted to give effect to such action, would be less than the then-applicable par value per share of the Common Stock, except that the Company may undertake a share split or similar event if such share split results in a corresponding reduction in the par value per share of the Common Stock such that the as-adjusted new Conversion Price per share would not be below the new as-adjusted par value per share of the Common Stock following such share split or similar transaction and the Conversion Price is adjusted as provided under SECTION 5(g)(i)(A) and any other applicable provision of SECTION 5(g).

(v) Reference Property. In the case of any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision, combination or reclassification described in SECTION 5(g)(i)(A)), a consolidation, merger or combination involving the Company, a sale, lease or other transfer to a third party of all or substantially all of the assets of the Company (or the Company and its Subsidiaries on a consolidated basis), or any statutory share exchange, in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any of the foregoing, a "Transaction"), then, at the effective time of the Transaction, the right to convert each Preferred Share will be changed into a right to convert such Preferred Share into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) (the "Reference Property") that a Holder would have received in respect of the Common Stock issuable upon conversion of such Preferred Shares immediately prior to such Transaction. In the event that holders of Common Stock have the opportunity to elect the form of consideration to be received in the Transaction, the Company shall make adequate provision whereby the Holders of the Preferred Shares shall have a reasonable opportunity to determine the form of consideration into which all of the Preferred Shares, treated as a single class, shall be convertible from and after the effective date of the Transaction. Any such election shall be made by the Series A-1 Requisite Holders. Any such determination by the Holders shall be subject to any limitations to which all holders of Common Stock are subject, such as pro rata reductions applicable to any portion of the consideration payable in the Transaction, and shall be conducted in such a manner as to be completed at approximately the same time as the time elections are made by holders of Common Stock. The provisions of this SECTION 5(g)(v) and any equivalent thereof in any such securities similarly shall apply to successive Transactions. The Company shall not become a party to any Transaction unless its terms are in compliance with the foregoing.

(vi) Rules of Calculation; Treasury Stock. All calculations will be made to the nearest one-hundredth of a cent or to the nearest one-ten thousandth of a share. Except as explicitly provided herein, the number of shares of Common Stock (or Reference Property, to the extent applicable) outstanding will be calculated on the basis of the number of issued and outstanding shares of Common Stock (or Reference Property, to the extent applicable), not including shares held in the treasury of the Company. The Company shall not pay any dividend on or make any distribution to shares of Common Stock (or Reference Property, to the extent applicable) held in treasury.

(vii) No Duplication. If any action would require adjustment of the Conversion Price pursuant to more than one of the provisions described in this SECTION 5 in a manner such that such adjustments are duplicative, only one adjustment (which shall be the adjustment most favorable to the Holders of Preferred Stock) shall be made.

(viii) Notice of Record Date. In the event of:

- (A) any event described in SECTION 5(f)(i)(A), (B), (C) or (D);
- (B) any Transaction to which SECTION 5(f)(v) applies;
- (C) the dissolution, liquidation or winding-up of the Company; or
- (D) any other event constituting a Change of Control;

then the Company shall mail to the Holders of Preferred Stock at their last addresses as shown on the records of the Company, at least twenty (20) days prior to the record date specified in (A) below or twenty (20) days prior to the date specified in (B) below, as applicable, a notice stating:

(A) the record date for the dividend, other distribution, stock split or combination or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, other distribution, stock split or combination; or

(B) the date on which such reclassification, change, dissolution, liquidation, winding-up or other event constituting a Transaction or Change of Control, or any transaction which would result in an adjustment pursuant to SECTION 5(g)(i)(D), is estimated to become effective or otherwise occur, and the date as of which it is expected that holders of Common Stock of record will be entitled to exchange their shares of Common Stock for Reference Property, other securities or other property deliverable upon such reclassification, change, liquidation, dissolution, winding-up, Transaction or Change of Control or that such issuance of Common Stock, Option Securities or Convertible Securities is anticipated to occur.

(ix) Certificate of Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this SECTION 5, the Company

at its expense shall as promptly as reasonably practicable compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder of Preferred Stock a certificate, signed by an officer of the Company (in his or her capacity as such and not in an individual capacity), setting forth (A) the calculation of such adjustments and readjustments in reasonable detail, (B) the facts upon which such adjustment or readjustment is based, (C) the Conversion Price then in effect, and (D) the number of shares of Common Stock (or Reference Property, to the extent applicable) and the amount, if any, of Capital Stock, other securities or other property (including but not limited to cash and evidences of indebtedness) which then would be received upon the conversion of a Preferred Share.

(x) No Upward Revisions to Conversion Price. For the avoidance of doubt, except in the case of a reverse share split or share combination resulting in an adjustment under SECTION 5(g)(i)(A) effected with the approvals, if any, required pursuant to SECTION 4(b), in no event shall any adjustment be made pursuant to this SECTION 5 that results in an increase in the Conversion Price.

#### SECTION 6. Redemption.

(a) Redemption at Maturity. Each Holder shall have the right to require the Company to redeem such Holder's Preferred Shares, in whole or in part, on the seventh (7<sup>th</sup>) anniversary of the Original Issue Date (the "Maturity Date") at a price per share payable, subject to SECTION 6(e), in cash and equal to the Redemption Price. At any time during the period beginning on the thirtieth (30<sup>th</sup>) calendar day prior to the Maturity Date (the "Holder Redemption Notice Period"), each Holder may deliver written notice to the Company notifying the Company of such Holder's election to require the Company to redeem all or a portion of such Holder's Preferred Shares on the Maturity Date (the "Election Notice"). No later than thirty (30) calendar days prior to the commencement of the Holder Redemption Notice Period, the Company shall deliver a notice to each Holder of Preferred Stock including the following information: (A) informing the Holder of the Maturity Date and such Holder's right to elect to have all or a portion of its Preferred Shares redeemed by Company on the Maturity Date, (B) the Redemption Price payable with respect to each share of Series A-1 Preferred Stock on the Maturity Date in connection with any such redemption (to the extent the Redemption Price is known or can be calculated, and to the extent not capable of being calculated, the manner in which such price will be determined); (C) that any certificates representing Preferred Shares which a Holder elects to have redeemed must be surrendered for payment of the Redemption Price at the office of the Company or any redemption agent located in New York City selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder's compliance with clause (C), payment of the Redemption Price with respect to any Preferred Shares to be made on the Maturity Date will be made to the Holder within five (5) Business Days of the Maturity Date to the account specified in such Holder's redemption election notice; (E) that any Holder may withdraw its Election Notice with respect to all or a portion of its Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Maturity Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property)

and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder does not elect to have its Preferred Shares redeemed. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(a) disclosing the right of Holders to have the Company redeem Preferred Shares pursuant to this SECTION 6(a).

(b) Optional Redemption by the Company. On and after the third (3<sup>rd</sup>) anniversary of the Original Issue Date, the Company may, at its option, redeem all (but not less than all) of the outstanding Preferred Shares for cash equal to the Redemption Price. If the Company elects to redeem the Preferred Shares pursuant to this SECTION 6(b), the Company shall deliver a notice of redemption to the Holders of Preferred Stock not less than thirty (30) or more than sixty (60) calendar days prior to the date specified for redemption (the "Optional Redemption Date"), which notice shall include: (A) the Optional Redemption Date; (B) the Redemption Price; (C) that on the Optional Redemption Date, if the Holder has not previously elected to convert Preferred Shares into Common Stock, each Preferred Share shall automatically and without further action by the Holder thereof (and whether or not the certificates representing such Preferred Shares are surrendered) be redeemed for the Redemption Price; (D) that payment of the Redemption Price will be made to the Holder within five (5) Business Days of the Redemption Date to the account specified by such Holder to the Company in writing; (E) that the Holder's right to elect to convert its Preferred Shares will end at 5:00 p.m. (New York City time) on the Business Day immediately preceding the Optional Redemption Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder elect to convert its Preferred Shares prior to the Optional Redemption Date. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 6(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the redemption of the Preferred Shares as set forth herein. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(b) announcing the Company's election to redeem Preferred Shares pursuant to this SECTION 6(b).

(c) Redemption at Option of the Holder upon a Change of Control.

(i) If a Change of Control occurs, each Holder shall have the right to require the Company to redeem its Preferred Shares pursuant to a Change of Control Offer, which Change of Control Offer shall be made by the Company in accordance with Section 6(c)(ii). In such Change of Control Offer, the Company will offer a payment (such payment, a



“Change of Control Payment”) in cash per Preferred Share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value and (ii) an amount equal to the amount the Holder of such Preferred Share would have received in connection with such Change of Control had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the “Change of Control Payment Amount”).

(ii) Within thirty (30) days following any Change of Control, the Company will mail a notice (a “Change of Control Offer”) to each Holder describing the transaction or transactions that constituted such Change of Control and offering to redeem the Preferred Shares on the date specified in such notice (the “Change of Control Payment Date”), which date shall be no earlier than thirty (30) days and no later than sixty-one (61) days from the date such notice is mailed. In addition, such Change of Control Offer shall further state: (A) the amount of the Change of Control Payment; (B) that the Holder may elect to have all or any portion of its Preferred Shares redeemed pursuant to the Change of Control Offer, (C) that any Preferred Shares to be redeemed must be surrendered for payment of the Change of Control Payment at the office of the Company or any redemption agent selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder’s compliance with clause (C), payment of the Change of Control Payment will be made to the Holder on the Change of Control Payment Date to the account specified by such Holder to the Company in writing; (E) the date and time by which the Holder must make its election, (F) that any Holder may withdraw its election notice with respect to all or a portion of their Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Change of Control Payment Date; and (G) the amount and type of property that the Holder would receive in connection with such Change of Control if the Holder elects to convert its Preferred Shares in connection with the Change of Control. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(c) disclosing the right of Holders to have the Company redeem Preferred Shares pursuant to this SECTION 6(c).

(iii) On the Change of Control Payment Date, the Company will, to the extent lawful: (A) accept for payment all Preferred Shares validly tendered pursuant to the Change of Control Offer; and (B) make a Change of Control Payment to each Holder that validly tendered Preferred Shares pursuant to the Change of Control Offer.

(iv) If at any time prior to consummation of a transaction that would constitute a Change of Control, the Company has publicly announced (whether by press release, SEC filing or otherwise) such transaction or prospective transaction or the entry by the Company into any definitive agreement with respect thereto, the Company shall, within five (5) Business Days of the issuance of such public announcement, deliver a written notice to each Holder notifying them of the same and the anticipated date of consummation of such transaction.

(v) The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer and makes the Change of Control Payment in the manner, at the times and otherwise in compliance with the requirements set forth herein applicable to a Change of Control Offer made by the Company and purchases all Preferred Shares validly tendered under such Change of Control Offer.

(vi) A Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(d) Notwithstanding anything in this SECTION 6 to the contrary, each Holder shall retain the right to elect to convert any Preferred Shares to be redeemed at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding any Redemption Date. Any Preferred Shares that a Holder elects to convert prior to the Redemption Date shall not be redeemed pursuant to this SECTION 6.

(e) Insufficient Funds. Any redemption of the Preferred Shares pursuant to this SECTION 6 shall be payable out of any cash legally available therefor, provided, however, that, other than in respect of a redemption pursuant to SECTION 6(b) (which the Company may only effectuate to the extent it has sufficient cash legally available therefor), if there is not a sufficient amount of cash legally available to pay the Redemption Price in full in cash, then the Company may pay that portion of the Redemption Price with respect to which it does not have cash legally available therefor out of the remaining assets of the Company legally available therefor (valued at the fair market value thereof on the date of payment, as reasonably determined in good faith by the Board). If the Company anticipates not having sufficient cash legally available for a redemption pursuant to SECTION 6(a) or SECTION 6(c), the redemption notice delivered to Holders shall so specify, and indicate the nature of the other assets expected to be distributed and the fair market value of the same as reasonably determined by the Board as aforesaid. At the time of any redemption pursuant to this SECTION 6, the Company shall take all actions required or permitted under Delaware law to permit the redemption of the Preferred Shares, including, without limitation, through the revaluation of its assets in accordance with Delaware law, to make cash funds (and to the extent cash funds are insufficient, other assets) legally available for such redemption. In connection with any redemption pursuant to SECTION 6(c), to the extent that Holders elect to have their Preferred Shares redeemed and the Company has insufficient funds to redeem such Preferred Shares (after taking into account the amount of any repurchase obligations the Company has or expects to have under any Indebtedness ranking senior to the Series A-1 Preferred Stock), Senior Securities or any Parity Securities resulting from the same facts and circumstances as the Change of Control hereunder), the Company shall use any available funds to redeem a portion of such Preferred Shares and Parity Securities (if any are being redeemed) ratably in proportion to the full respective amounts to which they are entitled; *provided, however*, that the failure for any reason to redeem all Preferred Shares required to be redeemed under SECTION 6(c) when required shall constitute a Specified Breach Event.

(f) Mechanics of Redemption.

(i) The Company (or a redemption agent on behalf of the Company, as applicable) shall pay the applicable Redemption Price on the Redemption Date or the required payment date therefor upon surrender of the certificates representing the Preferred Shares to be redeemed and receipt of any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable, to the extent required by SECTIONS 6(a), 6(b) and 6(c); *provided* that, if such certificates are lost, stolen or destroyed, the Company may require an affidavit certifying to such effect and, if requested, an agreement indemnifying the Company from any losses incurred in connection therewith, in each case, in form and substance reasonably satisfactory to the Company, from such Holder prior to paying such amounts.

(ii) Following any redemption of Preferred Shares on any Redemption Date, the Preferred Shares so redeemed will no longer be deemed to be outstanding and all rights of the Holder thereof shall cease, including the right to receive Dividends; *provided, however*, that any rights of Holders pursuant to this Certificate of Designation that by their terms survive redemption of the Preferred Shares and, for the avoidance of doubt, any rights that survive pursuant to any of the other Transaction Agreements (as defined in the September 2014 Securities Purchase Agreement), shall survive in accordance with their terms. The foregoing notwithstanding, in the event that a Preferred Share is not redeemed by the Company when required, such Preferred Share will remain outstanding and will continue to be entitled to all of the powers, designations, preferences and other rights (including but not limited to the accrual and payment of dividends and the conversion rights) as provided herein.

SECTION 7. Director Election Rights.

For so long as the Preferred Elected Director Condition continues to be satisfied, the Holders of the Preferred Shares and shares of Series A-1 Preferred Stock, voting or consenting, as the case may be, separately as a single class to the exclusion of all other classes of the Company's Voting Stock, by vote of the Series A/A-1 Requisite Holders, shall be entitled to elect a number of directors to the Board equal to the Preferred Director Number (the "Preferred Elected Director(s)"). As of the Third Issue Date, the Preferred Director Number is one. Subject to applicable law, one Preferred Elected Director (as designated by the Series A/A-1 Requisite Holders if there is more than one Preferred Elected Director) shall be entitled to be a member of each committee of the Board, including the compensation committee, the audit committee and the nominating and corporate governance committee of the Board; *provided*, that notwithstanding anything to the contrary herein, membership on any such committee will be dependent upon such director meeting the qualification, and if applicable, independence criteria deemed necessary to so comply in accordance with any listing requirements of the Exchange on which the Company's capital stock is then listed. The Preferred Elected Director(s) shall be elected as set forth in this SECTION 7; *provided* that as a condition precedent to the election of any such Preferred Elected Director, the individual(s) to be elected by the Series A/A-1 Requisite Holders shall be required to provide to the Company a duly executed and delivered written resignation of such Person to be elected as a Preferred Elected Director, providing that effective immediately and automatically (without any further action by any Person) upon the expiration of the Series A/A-1 Requisite Holders' right to elect such individual to the Board as provided

herein, such Preferred Elected Director shall resign from the Board. For the avoidance of doubt, no Preferred Elected Director shall be elected to the Board unless the written resignation referred to in the preceding sentence is delivered to the Company prior thereto. The Preferred Elected Directors shall be elected, at the option of the Series A/A-1 Requisite Holders, (i) by the written consent of the Series A/A-1 Requisite Holders or (ii) at annual or special meetings of stockholders of the Company at which directors are to be elected. If there is a vacancy in the office of a Preferred Elected Director, then the vacancy may only be filled by a nominee of the Series A/A-1 Requisite Holders. Each Preferred Elected Director will be entitled to one (1) vote on any matter with respect to which the Board votes and any Preferred Elected Director may be removed at any time with or without cause by, and shall not be removed otherwise than by, the written consent or vote of the Series A/A-1 Requisite Holders. The Company shall take all such action as may be reasonably requested by the Series A/A-1 Requisite Holders to effect this SECTION 7 (including nominating and recommending the Preferred Elected Director for election, if applicable).

**SECTION 8. Specified Breach Events.**

(a) The following events shall constitute "Specified Breach Events":

(i) the Company fails to declare and pay any Cash Dividends or Accreting Dividends due on any two consecutive Dividend Payment Dates; *provided that*, any such Specified Breach Event shall cease to exist once all such Cash Dividends and Accreting Dividends in arrears through the end of the most recently completed Dividend Period have been declared and paid in full; and

(ii) the Company defaults in the performance of, or breaches the covenants contained in, the following sections of this Certificate of Designation and such default or breach, if curable, is not cured within ninety (90) days: SECTION 2(c) (Participating Cash Dividends); SECTION 2(d) (In-Kind Participating Dividends); the proviso contained in SECTION 5(d)(i) (Amounts Received Upon Conversion); SECTION 6(a) (Redemption at Maturity) or SECTION 6(c) (Redemption at Option of Holder Upon a Change of Control)). Any such Specified Breach Event specified in this clause (ii) shall cease to exist once the underlying default or breach has been waived or cured.

(b) Subject to applicable law and compliance with the rules of any Exchange on which the Common Stock is then listed, if the Preferred Director Number is increased as a result of any Specified Breach Event (as provided in the definition of Preferred Director Number), then unless the Series A/A-1 Requisite Holders otherwise consent in writing, the Company shall, notwithstanding any other provision of this Certificate of Designation, increase the size of the Board as necessary to accommodate such number of additional directors as provided in the definition of Preferred Director Number (each a "Specified Breach Director") and such Specified Breach Director(s) shall be elected as set forth in this section; provided that as a condition precedent to the election of any such Specified Breach Director, the individual to be elected by the Series A/A-1 Requisite Holders shall be required to provide to the Company a duly executed and delivered written resignation of such Person to be elected as a Specified Breach Director, providing that effective immediately and automatically (without any further action by any Person) upon the

expiration of the applicable Breach Period (as defined below), such Specified Breach Director shall resign from the Board. For the avoidance of doubt, no Specified Breach Director shall be elected to the Board unless the written resignation referred to in the preceding sentence is delivered to the Company prior thereto. A Specified Breach Director need not be an “independent director” of the Board pursuant to the rules of the Exchange on which the Company’s Common Stock is then traded. The Specified Breach Directors shall be elected (i) by the written consent of the Series A/A-1 Requisite Holders or (ii) at a special meeting of the Holders of the Series A Preferred Stock and Series A-1 Preferred Stock (which shall be called by the Secretary of the Company at the request of any Holder of the Series A Preferred Stock or Series A-1 Preferred Stock) to be held within thirty (30) days of the occurrence of the Specified Breach Event, or, if the Specified Breach Event occurs less than sixty (60) days before the date fixed for the next annual meeting of the Company’s stockholders, at such annual meeting. At any meeting at which the Specified Breach Director(s) will be elected, the Specified Breach Director(s) shall be elected by the Series A/A-1 Requisite Holders. The Specified Breach Director(s) will serve until there ceases to be any shares of Series A Preferred Stock or Series A-1 Preferred Stock outstanding or until no Specified Breach Event exists or is continuing, whichever occurs earliest (the “Breach Period”) and, upon the expiration of an applicable Breach Period, the director seat(s) held by the Specified Breach Director(s) shall be automatically eliminated and the size of the Board shall be reduced accordingly. If there is a vacancy in the office of a Specified Breach Director during a Breach Period, then the vacancy may only be filled by a nominee of the Series A/A-1 Requisite Holders. Each Specified Breach Director will be entitled to one (1) vote on any matter with respect to which the Board votes. During the Breach Period, any Specified Breach Director may be removed at any time with or without cause by, and shall not be removed otherwise than by, the written consent or vote of the Series A/A-1 Requisite Holders. If after the appointment of a Specified Breach Director the applicable Breach Period expires, if so requested by the Company, the Holders of the Series A Preferred Stock and Series A-1 Preferred Stock shall promptly cause to resign, and take all other action reasonably necessary, or reasonably requested by the Company, to cause the prompt removal of, such Specified Breach Director.

#### SECTION 9. Covenants.

(a) Restriction on the Issuance of Additional Indebtedness. From and after the Original Issue Date, the Company has not, and has not permitted any Subsidiary to (without obtaining any requisite consent from the Holders of the Series A Preferred Stock or Series A-1 Preferred Stock, as applicable), and from and after the Third Issue Date, the Company shall not, and shall not permit any Subsidiary to, without the consent of the Requisite Holders, borrow or otherwise incur any Indebtedness if, after giving effect to such borrowing or other incurrence, (1) the sum of the total Indebtedness of the Company plus the sum of the total Indebtedness of each of the Company’s Subsidiaries divided by (2) the Net Asset Value (the “Debt/NAV Ratio”) would be greater than 0.75; *provided*, that (A) the Regular Liquidation Preference of the Preferred Shares (with the references to “150%” contained in such definition being changed to “100%”) and the actual liquidation preference of any outstanding Senior Securities and Parity Securities shall count as Indebtedness for such purposes, (B) 100% of the Indebtedness of the Company’s wholly-owned and, after

taking into account the Company's ownership percentage therein, non-wholly owned subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company's investment in such entities) shall be taken into account for purposes of determining Indebtedness but not taken into account (*i.e.*, added back) for purposes of determining Net Asset Value, and (C) the provisions of this SECTION 9(a) shall not apply to a refinancing of any Indebtedness of the Company or any of its Subsidiaries (x) within six (6) months of the respective maturity date of such Indebtedness or (y) on economic terms more favorable to the Company or such Subsidiary, as applicable, in any such case so long as the amount of such Indebtedness does not result in an increase in the Company's total Indebtedness or the Debt/NAV Ratio (in each case, excluding the impact of the capitalization of customary and reasonable premiums, fees and expenses incurred in connection with such refinancing).

(b) Intentionally Omitted.

(c) Certificates. The Company shall promptly, and in no event later than 30 days after the last day of any calendar quarter, furnish to each Holder a certificate of an officer of the Company setting forth, as of the end of such calendar quarter the Debt/NAV Ratio and the calculation of the same (provided that the Company shall not be obligated to provide the information required by this sentence from and after such time as the covenant in SECTION 9(a) ceases to be applicable).

(i) The Company shall promptly, and in no event later than the 30th day after the first day of a Dividend Period for which the Accreting Dividend rate has been adjusted pursuant to SECTION 2(b), furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth, as of the end of the prior Dividend Period the Net Asset Value as of the end of such prior Dividend Period and the calculation of the same.

(ii) If the Company takes any action, which pursuant to this Certificate of Designation requires the Public Float Hurdle to be met, the Company shall promptly, and in no event later than five (5) days after the date of such action, furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth the date of such action and an analysis of the Public Float Hurdle as of the date of such action.

SECTION 10. Additional Definitions. For purposes of these resolutions, the following terms shall have the following meanings:

(a) "Accrued Value" means \$1,000 per share, as the same may be increased pursuant to SECTION 2.

(b) "Actively Traded Security" means, as of any date of determination, a Security of an entity with \$2,000,000 average daily trading volume during the preceding 60-day period.

(c) "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person.

(d) “Base Original Issue Date NAV” means the final amount thereof as agreed between the Company and the Series A Requisite Holders (as defined in the Series A Certificate of Designation) pursuant to Section 12.16 of the May 2014 Securities Purchase Agreement.

(e) “Beneficial Owner” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” shall be deemed to have beneficial ownership of all securities that such “person” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms “Beneficially Owns” and “Beneficially Owned” shall have a corresponding meaning.

(f) “Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or obligated to close.

(g) “Capital Stock” means, with respect to any Person, any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person’s equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

(h) “Cash Equivalents” means: (i) United States dollars, or money in other currencies received in the ordinary course of business; (ii) U.S. Government Obligations or certificates representing an ownership interest in U.S. Government Obligations with maturities not exceeding one year from the date of acquisition; (iii) (A) demand deposits, (B) time deposits and certificates of deposit with maturities of one year or less from the date of acquisition, (C) banker’s acceptances with maturities not exceeding one year from the date of acquisition, and (D) overnight bank deposits, in each case with any bank or trust company organized or licensed under the laws of the United States or any state thereof having capital, surplus and undivided profits in excess of \$500 million whose short-term debt is rated “A-2” or higher by S&P or “P-2” or higher by Moody’s; (iv) repurchase obligations with a term of not more than seven (7) days for underlying securities of the type described in clauses (ii) and (iii) above entered into with any financial institution meeting the qualifications specified in clause (iii) above; (v) commercial paper rated at least P-1 by Moody’s or A-1 by S&P and maturing within six (6) months after the date of acquisition; and (vi) money market funds at least 95% of the assets of which consist of investments of the type described in clauses (i) through (v) above.

(i) “Certificate of Designation” means this certificate of designation, as such shall be amended from time to time, including pursuant to the Certificate of Amendment to this certificate of designation, dated January 5, 2015.

(j) “Change of Control” means (i) a sale of all or substantially all of the consolidated assets of the Company (including by way of any reorganization, merger,

consolidation or other similar transaction or a sale of Equity Securities issued by Subsidiaries of the Company), (ii) a direct or indirect acquisition of Beneficial Ownership of Voting Power of the Company by any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) by means of any transaction or series of transactions (including any reorganization, merger, consolidation, joint venture, share transfer, share exchange, share issuance, reclassification or other similar transaction), pursuant to which the stockholders of the Company immediately preceding such transaction or transactions collectively own, following the consummation of such transaction or transactions, less than fifty percent (50%) of the Voting Power of the Company or other surviving entity (or parent thereof), as the case may be, (iii) the obtaining by any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of the power (whether or not exercised), other than pursuant to a revocable proxy in favor of the Company’s proposed slate of directors in respect of an annual meeting or other meeting related to the election of directors, to elect a majority of the members of the Board or more than fifty percent (50%) of the Voting Power of the Company; provided, that this clause (iii) will not trigger a Change of Control as a result of the HRG Affiliates or any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) in which the HRG Affiliates own a majority of the voting power (the “HRG Change of Control Group”) obtaining Beneficial Ownership of more than fifty percent (50%) of the Voting Power of the Company if and only if the Public Float Hurdle is satisfied at all times during which the HRG Change of Control Group has the power to elect a majority of the Board or Beneficial Ownership of more than fifty percent (50%) of the Voting Power of the Company, or (iv) the first day on which a majority of the members of the Board are not Continuing Directors; *provided*, that, for the avoidance of doubt, change in the ownership of HRG (without the occurrence of the events listed in (i) through (iv) above) shall not constitute, in and of itself, a Change of Control.

(k) “Common Stock” means the shares of common stock, par value \$0.01 per share, of the Company or any other Capital Stock of the Company into which such Common Stock shall be reclassified or changed.

(l) “Company Conversion Conditions” means the following: (i) the Thirty Day VWAP exceeds 150% of the then applicable Conversion Price; and (ii) the Daily VWAP exceeded 150% of the then applicable Conversion Price for at least twenty (20) Trading Days out of the thirty (30) Trading Days used to calculate the Thirty Day VWAP in clause (i) of this definition.

(m) “Compensation Committee” means the compensation committee of the Board which shall consist solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director.

(n) “Continuing Directors” means, as of any date of determination, (x) any member of the Board who (1) was a member of such Board on the Original Issue Date or (2) was nominated for election or elected to the Board by any HRG Affiliates, or with the approval of either the Holders or a majority of those members of the Board that were both “Continuing Directors” and Independent Directors at the time of such nomination or election or (y) any Preferred Elected Director.



(o) “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”) with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

(p) “Conversion Price” means initially \$4.25, as adjusted from time to time as provided in SECTION 5.

(q) “Convertible Securities” means securities by their terms convertible into or exchangeable for Common Stock or options, warrants or rights to purchase such convertible or exchangeable securities.

(r) “Daily VWAP” means the volume-weighted average price per share of Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) as displayed under the heading “Bloomberg VWAP” on the Bloomberg page for the “<equity> AQR” page corresponding to the “ticker” for such Common Stock or unit (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of such Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) on such Trading Day. The “volume weighted average price” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

(s) “January 2015 Purchasers” means the several “Purchasers” named in and party to the January 2015 Securities Purchase Agreement.

(t) “January 2015 Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated January 5, 2015, by and among the Company and the January 2015 Purchasers, as amended, supplemented or modified in accordance with its terms.

(u) “Dividend Payment Date” means January 15, April 15, July 15 and October 15 of each year, commencing on July 15, 2014; *provided* that, if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be the immediately succeeding Business Day.

(v) “Dividend Rate” means for any Dividend Period, 7.50% plus the applicable Accreting Dividend Rate for such Dividend Period.

(w) “Equity Securities” means, with respect to any Person, (i) shares of Capital Stock of, or other equity or voting interest in, such Person, (ii) any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iii) options, warrants, rights or other commitments or agreements to acquire from such Person, or that obligates such Person to issue, any Capital Stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for

shares of Capital Stock of, or other equity or voting interest in, such Person, (iv) obligations of such Person to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any Capital Stock of, or other equity or voting interest (including any voting debt) in, such Person and (v) the Capital Stock of such Person.

(x) “Exchange” means the NASDAQ Global Market, the NASDAQ Global Select Market, The New York Stock Exchange, the NYSE MKT LLC or any of their respective successors.

(y) “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(z) “Excluded Stock” means: (i) shares of Common Stock issued by the Company in an event subject to, and for which the Conversion Price is subject to adjustment pursuant to, SECTION 5(g)(i)(A); (ii) Option Securities or shares of Common Stock (including upon exercise of Option Securities) issued to Philip Falcone pursuant to the Option agreement (the “Falcone Option Agreement”) dated May 21, 2014, by and between Mr. Falcone and the Company (as in effect on the Original Issue Date) or otherwise to any director, officer or employee pursuant to compensation arrangements approved by the Compensation Committee of the Board in good faith and otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation; (iii) the issuance of shares of Common Stock upon conversion of the Preferred Shares or upon the exercise or conversion of Option Securities and Convertible Securities of the Company outstanding on the Original Issue Date or otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation (including, for the avoidance of doubt, pursuant to the Falcone Option Agreement (as in effect on the Original Issue Date)); (iv) Common Stock that becomes issuable in connection with, or as a result of, accretions to the face amount of, or payments in kind with respect to, shares of Series A Preferred Stock, Option Securities and Convertible Securities of the Company outstanding on the Original Issue Date or otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation (including, for the avoidance of doubt, pursuant to the Falcone Option Agreement (as in effect on the Original Issue Date), (v) Common Stock that becomes issuable in connection with, or as a result of, accretions to the face amount of, or payments in kind with respect to, shares of Series A-1 Preferred Stock issued on the Second Issue Date and shares of Series A-2 Preferred Stock issued on the Third Issue Date; (vi) Option Securities (or Shares of Common Stock upon exercise of such Option Securities) issued to Robert M. Pons or Keith Hladek as referenced in the Company’s 8-K filed on May 23, 2014 and (vii) shares of Common Stock issued by the Company pursuant to the May 2014 Securities Purchase Agreement.

(aa) “Ex-Date” means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

(bb) “Fair Market Value” means: (i) in the case of any Security that is either (a) listed on an Exchange or (b) an Actively Traded Security in the over-the-counter-market that represents equity in a Person with a market capitalization of at least \$250,000,000 on each Trading Day in the preceding 60 day period prior to such date, the product of (a) (i) the sum of the Daily VWAP of a single unit of such Security for each of the 20 consecutive Trading Days immediately prior to such date, divided by (ii) 20, multiplied by (b) the number of units of such Security being valued, (ii) in the case of any Security that is not so listed or not an Actively Traded Security or any other property or asset (other than Cash Equivalents), the fair market value thereof (defined as the price that would be negotiated in an arms’ length transaction for cash between a willing buyer and willing seller, neither of which is acting under compulsion), as determined by a written opinion of a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company in good faith (provided that the Requisite Holders may object in writing to any such determination of Fair Market Value by such valuation expert once every four (4) Testing Periods and if the Requisite Holders object in writing to any such determination of Fair Market Value by such valuation expert an alternative binding valuation shall be performed by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company and the Requisite Holders jointly, or if the Company and such Requisite Holders cannot jointly select such an alternative valuation expert within ten (10) Business Days of the Requisite Holders delivering to the Company a written notice objecting to the initial valuation, by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by one such valuation expert proposed by the Company and a second such valuation expert proposed by the Requisite Holders (it being understood that the Company shall be solely responsible for the payment of all of the fees and expenses of such alternative valuation expert) and (iii) in the case of Cash Equivalents, the face value thereof; *provided* that with respect to any Security of the type referred to in clause (ii) above, in no event shall the Fair Market Value thereof exceed the Company’s cost basis in such Security (taking into account adjustments made in respect of follow-on capital contributions and other similar investments) plus fifty percent (50%) of any appreciation as determined pursuant to the valuation provisions set forth above.

(cc) “Governmental Entity” shall mean any United States or non-United States federal, state or local government, or any agency, bureau, board, commission, department, tribunal or instrumentality thereof or any court, tribunal, or arbitral or judicial body.

(dd) “hereof”; “herein” and “hereunder” and words of similar import refer to this Certificate of Designation as a whole and not merely to any particular clause, provision, section or subsection.

(ee) “Holdings” means the holders of outstanding Preferred Shares and, except where expressly otherwise indicated, shares of Series A Preferred Stock and Series A-2 Preferred Stock as they appear in the records of the Company.

(ff) “HRG Affiliates” means (a) Philip A. Falcone, (b) Harbinger Group, Inc. or any of its subsidiaries, (c) Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or any limited partnership, limited liability company, corporation or other entity that controls, is controlled by, or is under common control with Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or Philip A. Falcone.

(gg) “HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated thereunder.

(hh) “Indebtedness” shall have the meaning set forth in the Loan Agreement (as in effect on the Second Issue Date); *provided, however*, that Indebtedness shall not include:

- (i) Hedging obligations entered into in the ordinary course of business and not for speculative purposes or taking a “market view”;
- (ii) Indebtedness in respect of bid, performance or surety bonds issued in the ordinary course of business, including guarantees or obligations with respect to letters of credit supporting such bid, performance or surety obligations (in each case other than for an obligation for money borrowed and only so long as such bonds or letters of credit remain undrawn);
- (iii) Guarantees in respect of Indebtedness already taken into account for purposes hereof;
- (iv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five Business Days of incurrence;
- (v) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;
- (vi) Indebtedness for advances of trade accounts payable received in the ordinary course of business on normal trade terms and not overdue by more than 60 days;
- (vii) Indebtedness incurred from and after the Second Issue Date not in excess of \$750,000, in the aggregate;
- (viii) Purchase Money Obligations (as defined in the Loan Agreement (as in effect on the Second Issue Date));
- (ix) interest and other fees and expenses accrued in the ordinary course on Indebtedness that is issued and outstanding on the Third Issue Date and any interest and other fees accrued on any refinancing of such Indebtedness (including reasonable premiums, fees and expenses incurred in connection with such refinancing) in accordance with SECTION 9(a); or
- (x) any Contingent Obligations (as defined in the Loan Agreement (as in effect on the Second Issue Date)) of the Company in respect of Indebtedness referred to in the foregoing clauses (i) through (ix).

(ii) “Independent Director” means any director on the Board that is “independent” as defined in the applicable rules of the Exchange on which the Common Stock is listed (or if the Common Stock is not listed on an Exchange, as defined in NASDAQ Marketplace Rule 4200(a) (15)), and in all cases, other than any director that is employed by or an officer, director or manager of a Harbinger Affiliate.

(jj) “Investment” means, with respect to any Person, (1) any direct or indirect advance, loan or other extension of credit to another Person, (2) any capital contribution to another Person, by means of any transfer of cash or other property or in any other form, (3) any purchase or acquisition of Equity Interests, bonds, notes or other Indebtedness, or other instruments or securities issued by another Person, including the receipt of any of the above as consideration for the disposition of assets or rendering of services, or (4) any Guarantee of any obligation of another Person.

(kk) “Issue Date” means, with respect to a Preferred Share, the date on which such share is first issued by the Company.

(ll) “Liquidation Event” means (i) the voluntary or involuntary liquidation, dissolution or winding-up of the Company, (ii) the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (iii) the consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, and (iv) the consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors.

(mm) “Loan Agreement” means the Credit Agreement, dated as of September 22, 2014, among the Company, the Subsidiary Guarantors (as defined therein), the Lenders (as defined therein), and Jefferies Finance LLC, as arranger, as book manager and as documentation agent, syndication agent and administrative agent for the Lenders and as collateral agent for the Secured Parties.

(nn) “Market Disruption Event” means the occurrence or existence for more than one half hour period in the aggregate on any scheduled Trading Day for the Common Stock (or Reference Property, to the extent applicable) of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the applicable Exchange or otherwise) in the Common Stock (or Reference Property, to the extent applicable) or in any options, contracts or future contracts relating to the Common Stock (or Reference Property, to the extent applicable), and such suspension or limitation occurs or exists at any time before 4:00 p.m. (New York City time) on such day.

(oo) "May 2014 Purchasers" means the several "Purchasers" named in and party to the May 2014 Securities Purchase Agreement.

(pp) "May 2014 Securities Purchase Agreement" means that certain Securities Purchase Agreement, dated May 29, 2014, by and among the Company and the May 2014 Purchasers, as amended, supplemented or modified in accordance with its terms.

(qq) "NAV Escrow Adjustment" means the total amount of any escrow proceeds actually received by the Company with respect to the existing escrow amounts of: BID \$19,500,000, NAT tax liability \$4,800,000, NAT PTI Sale \$3,000,000 and NAT indemnification \$6,450,000.

(rr) "Net Asset Value" means, without duplication, the amount, valued twice per annum at June 30 and December 31 of each fiscal year (each a "Testing Period") beginning December 31, 2014, equal to (A) the sum of (1) the cash and Cash Equivalents of the Company plus (2) the Fair Market Value of all Securities (other than Cash Equivalents) owned by the Company, including Securities issued by Subsidiaries of the Company (after taking into account the Company's ownership percentage therein, the impact on such Fair Market Value of the cash, Cash Equivalents, preferred liquidation preferences, liabilities and indebtedness of such entities and the relative rights, preferences and privileges of the Company's Securities and the other outstanding securities issued by such entities), less (B) all Indebtedness and other liabilities of the Company determined in accordance with GAAP, including those related to the Company's investments to the extent not taken into account in the calculation of the Fair Market Value of such investments under clause (A)(2) above; *provided* that for such purposes, (i) the derivative attributable to the conversion feature in any series of preferred stock will not be considered a liability and (ii) the Accrued Value (as well as any accrued Dividends not yet added to the Accrued Value) of the Preferred Shares and the preference amount (including the accrued value and all accrued but unpaid dividends thereon not included in the accrued value) of any other Senior Securities or Parity Securities will be considered a liability of the Company; *provided, further* that, solely for purposes of determining the Debt/NAV Ratio, the Indebtedness of the Company's wholly-owned and, after taking into account the Company's ownership percentage therein, Non-Wholly Owned Subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company's investment) shall be taken into account for purposes of determining "Debt" (*i.e.*, the numerator) but not taken into account (*i.e.*, added back) for purposes of determining Net Asset Value (*i.e.*, the denominator).

(ss) "Non-Wholly Owned Subsidiary" means any Subsidiary of the Company other than any Wholly Owned Subsidiary.

(tt) "Option Securities" means options, warrants or other rights to purchase or acquire Common Stock, as well as stock appreciation rights, phantom stock units and similar rights whose value is derived from the value of the Common Stock.

(uu) "Organizational Documents" means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and

other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended, supplemented or modified in accordance with its terms.

(vv) "Original Issue Date" means May 29, 2014, the first issue date of shares of Series A Preferred Stock.

(ww) "Original Issue Date NAV" means the Base Original Issue Date NAV, as may be increased from time to time by the NAV Escrow Adjustment.

(xx) "Permitted Payment" means any of the following:

(i) The repurchase, redemption or other acquisition of any shares of Common Stock or Junior Securities solely out of the net proceeds of the issuance of, or in exchange for the issuance of, Common Stock;

(ii) Restricted Payments not otherwise permitted hereby in an aggregate amount not to exceed \$750,000;

(iii) (a) repurchase of Equity Securities deemed to occur upon the exercise of stock options or warrants or upon the conversion or exchange of Equity Securities if the Equity Securities represent all or a portion of the exercise price thereof (or related withholding taxes) and (b) Restricted Payments to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Equity Securities in an aggregate amount under this clause (b) not to exceed \$25,000.

(yy) "Permitted Related Party Transactions" means any of the following:

(i) the payment, by the Company or a Subsidiary, of reasonable and customary regular fees and compensation to, and reasonable and customary indemnification arrangements and similar payments to or on behalf of, directors of the Company or directors of such Subsidiary, respectively, who are not employees of the Company or such Subsidiary, respectively, and qualify as Independent Directors;

(ii) any Permitted Payments or any Restricted Payments if permitted under Section 4(b);

(iii) transactions or payments, including the issuance of Equity Securities pursuant to any employee, officer or director compensation or benefit plans or arrangements by the Company or a Subsidiary existing on the Third Issue Date and listed on the Disclosure Schedule to the January 2015 Securities Purchase Agreement, or approved by the Compensation Committee, by the Board of Directors (or any committee thereof) of such Subsidiary, after the Third Issue Date, respectively;

(iv) the issuance of common stock or junior Equity Securities of the Company or any Subsidiary via a rights offering or otherwise to all stockholders of the Company or such Subsidiary after the Third Issue Date and to which the adjustment provision of SECTION 5(g) apply;

(v) the entering into of any tax sharing agreement or arrangement or any other transactions with any Subsidiaries of the Company or among any Subsidiaries of the Company undertaken in good faith for the sole purpose of improving the tax efficiency of the Company and its Subsidiaries;

(vi) the entering into of any information-sharing agreement or arrangement or any other transactions undertaken in good faith for the sole purpose of the preparation of financial statements and related financial information of the HRG Affiliates, the Company and its Subsidiaries.

(zz) “Person” means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, any agency or political subdivisions thereof or other “Person” as contemplated by Section 13(d) of the Exchange Act.

(aaa) “Preferred Director Number” means one (1); *provided* that (A) for so long as the Preferred Elected Director Condition continues to be satisfied, the percentage obtained by dividing the Preferred Director Number by the total number of directors on the Board shall be no more than 5% below such aggregate ownership percentage of the May 2014 Purchasers and their Affiliates and the September 2014 Purchasers and their Affiliates (*e.g.*, if the May 2014 Purchasers and their Affiliates and the September 2014 Purchasers and their Affiliates own, in the aggregate, at least twenty percent (20%) of the outstanding Common Stock on an as converted basis (*i.e.* assuming conversion of the Preferred Shares and shares of Series A Preferred Stock and including through the ownership of Preferred Shares, Series A Preferred Stock or Common Stock but excluding through the ownership of Series A-2 Preferred Stock), the Preferred Director Number would be the lowest whole number that is equal to or in excess of 15% of the total number of directors on the Board) and (B) at any time following the occurrence and during the continuance of a Specified Breach Event, the Preferred Director Number shall be increased, if necessary, in order that the Preferred Director Number plus the number of Independent Directors on the Board shall equal more than 50% of the total number of directors on the Board.

(bbb) “Preferred Elected Director Condition” means that the May 2014 Purchasers (and/or any of their Affiliates) and the September 2014 Purchasers (and/or any of their Affiliates) own, in the aggregate, at least (A) fifteen percent (15%) of the outstanding Common Stock on an as converted basis (*i.e.* assuming conversion of the Preferred Shares and shares of Series A Preferred Stock and including through the ownership of Preferred Shares, Series A Preferred Stock, or Common Stock, but excluding through the ownership of Series A-2 Preferred Stock) and (B) eighty percent (80%) of the sum of (x) the aggregate number of Shares (as defined in the May 2014 Securities Purchase Agreement) issued to the May 2014 Purchasers on the Original Issue Date (determined on an as-converted to Common Stock basis) plus (y) the aggregate number of Preferred Shares issued to the September 2014 Purchasers on the Second Issue Date (determined on an as-converted to Common Stock basis).



(ccc) “Preferred Shares” means the shares of Series A-1 Preferred Stock but shall exclude, for the avoidance of doubt, shares of Series A Preferred Stock and shares of Series A-2 Preferred Stock.

(ddd) “Public Float Hurdle” means, as of any relevant measurement date, that (i) the Common Stock is registered under the Exchange Act, (ii) the Common Stock is listed on an Exchange, (iii) the aggregate value of all outstanding Common Stock (based on the Thirty Day VWAP) is not less than \$200,000,000 and (iv) the Public Market Capitalization is greater than 1.00x the aggregate value of the Common Stock issuable upon conversion of the Preferred Shares and any then outstanding Senior Securities or Parity Securities or “in-the-money” securities of the Company of the type described in clauses (ii) and (iii) of the definition of “Equity Securities” (calculated using the Thirty Day VWAP and the applicable conversion and exercise prices at such time).

(eee) “Public Market Capitalization” means, as of any relevant measurement date, all issued and outstanding shares of Common Stock, other than Common Stock being held or Beneficially Owned by (A) the HRG Affiliates, (B) the directors and executive officers of the Company or (C) any other Affiliate of the Company.

(fff) “Redemption Date” means the Maturity Date, any Optional Redemption Date or any Change of Control Payment Date, as applicable.

(ggg) “Redemption Price” means with respect to each Preferred Share: (i) in connection with a redemption pursuant to SECTION 6(a), the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed, (ii) in connection with a redemption pursuant to SECTION 6(b), the sum of 150% of the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed (the “Standard Call Price”) (provided that if the Public Float Hurdle is not satisfied as of the Optional Redemption Date, the Redemption Price for such redemption pursuant to SECTION 6(b) shall equal the greater of (X) such Standard Call Price and (Y) the Thirty Day VWAP as of the date the Company gives the applicable notice of optional redemption under SECTION 6(b) multiplied by the number of shares of Common Stock into which the Preferred Share is convertible as of such date at the applicable Conversion Price) or (iii) in connection with a Change of Control, the Change of Control Payment Amount.

(hhh) “Related Party Transaction” any transaction (or series of related transactions), arrangement or contract entered into, consummated, renewed, amended or extended between the Company or any Subsidiary of the Company, on the one hand, and any HRG Affiliate or other Affiliate of the Company (other than Subsidiaries of the Company), on the other hand, if such transaction, arrangement or contract involves payments or consideration in excess of \$500,000 in the aggregate; *provided* that (i) the execution of a joinder to the Registration Rights Agreement (as defined in the January 2015

Securities Purchase Agreement) by HRG Affiliates, (ii) the agreement granting information and access rights to the Company by Schuff International, Inc. substantially in the form previously provided to the Holders or (iii) the agreement granting information and access rights to HRG Affiliates by the Company substantially in the form previously provided to the holders shall not constitute a "Related Party Transaction".

(iii) "Requisite Holders" means Holders (other than the Company, its employees, its Subsidiaries or any Harbinger Affiliates) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares and shares of Series A Preferred Stock and Series A-2 Preferred Stock, taken as a whole; *provided* that, for purposes of such calculation, the Preferred Shares and shares of Series A Preferred Stock and Series A-2 Preferred Stock held by the Company, its employees, its Subsidiaries or any Harbinger Affiliate shall be treated as not outstanding.

(jjj) "Restricted Payment" means (A) any dividend, distribution or other payment in respect of the Common Stock or any other Junior Securities (other than dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B)) or Equity Securities of a Subsidiary or the repurchase, redemption or other acquisition of any shares of Common Stock or any other Junior Securities (or setting aside funds for such purposes) or Equity Securities of a Subsidiary or (B) any dividend, distribution or other payment in respect of Parity Securities or the repurchase, redemption or other acquisition of any Parity Securities (or setting aside funds for such purposes) unless such dividend, distribution, payment, repurchase, redemption or other acquisition is made on a pro rata basis among the Preferred Shares and the Parity Securities in proportion to the amounts to which they are entitled.

(kkk) "Second Issue Date" means September 22, 2014, the first issue date of Preferred Shares.

(lll) "Securities" with respect to a Person means debt or equity securities issued by such Person or similar obligations of, or participations in, such Person.

(mmm) "September 2014 Purchasers" means the several "Purchasers" named in and party to the September 2014 Securities Purchase Agreement.

(nnn) "September 2014 Securities Purchase Agreement" means that certain Securities Purchase Agreement, dated September 22, 2014, by and among the Company and the September 2014 Purchasers, as amended, supplemented or modified in accordance with its terms.

(ooo) "Series A Certificate of Designation" means the Certificate of Designation of the Series A Preferred Stock, as amended.

(ppp) "Series A Preferred Stock" means the Series A Convertible Participating Preferred Stock of the Company, par value \$0.001 per share.

(qqq) “Series A/A-1 Requisite Holders” means Holders (other than the Company, its employees, its Subsidiaries or any Harbinger Affiliates) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares and shares of Series A Preferred Stock (but excluding shares of Series A-2 Preferred Stock), taken as a whole; *provided* that, for purposes of such calculation, the Preferred Shares and shares of Series A Preferred Stock held by the Company, its employees, its Subsidiaries or any Harbinger Affiliate shall be treated as not outstanding.

(rrr) “Series A-1 Requisite Holders” means holders of Preferred Shares (other than the Company, its employees, its Subsidiaries or any Harbinger Affiliates) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares; *provided* that, for purposes of such calculation, the Preferred Shares held by the Company, its employees, its Subsidiaries or any Harbinger Affiliate shall be treated as not outstanding.

(sss) “Series A-2 Preferred Stock” means the Series A-2 Convertible Participating Preferred Stock of the Company, par value \$0.001 per share.

(ttt) “Specified Percentage” means, until the third (3<sup>rd</sup>) anniversary of the Original Issue Date, 150%, and 100% thereafter.

(uuu) “Subsidiary” means with respect to any Person, any corporation, association or other business entity of which more than 50% of the outstanding Voting Stock is owned, directly or indirectly, by, or of which more than 50% of the economic value accrues to, or, in the case of a partnership, the sole general partner or the managing partner or the only general partners of which are, such Person and one or more Subsidiaries of such Person (or a combination thereof). Unless otherwise specified, “Subsidiary” means a Subsidiary of the Company.

(vvv) “Third Issue Date” means January 5, 2015, the first issue date of shares of Series A-2 Preferred Stock.

(www) “Thirty Day VWAP” means, with respect to a security, the average of the Daily VWAP of such security for each day during a thirty (30) consecutive Trading Day period ending immediately prior to the date of determination. Unless otherwise specified, “Thirty Day VWAP” means the Thirty Day VWAP of the Common Stock.

(xxx) “Trading Day” means any day on which (i) there is no Market Disruption Event and (ii) the Exchange on which the Common Stock (or Reference Property, to the extent applicable) is listed and is open for trading or, if the Common Stock (or Reference Property, to the extent applicable) is not so listed, admitted for trading or quoted, any Business Day. A Trading Day only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then standard closing time for regular trading on the relevant exchange or trading system.

(yyy) “U.S. Government Obligations” means obligations issued or directly and fully guaranteed or insured by the United States of America or by any agent or instrumentality thereof, *provided* that the full faith and credit of the United States of America is pledged in support thereof.

(zzz) "Voting Power" means either (a) the power to elect, designate or nominate directors to the Board, or (b) vote (as Common Stock or together with Common Stock) on matters to be voted on or consented to by the Common Stock through the ownership of Voting Stock, by contract or otherwise.

(aaaa) "Voting Stock" means, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

(bbbb) "Wholly Owned Subsidiary," means any Subsidiary of a Person of which such Person owns, either directly or indirectly, 100% of the common stock or other common equity interests of such Subsidiary (excluding qualifying shares held by directors).

SECTION 11. Miscellaneous. For purposes of this Certificate of Designation, the following provisions shall apply:

(a) Share Certificates. If any certificates representing Preferred Shares shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and in substitution for and upon cancellation of the mutilated certificate, or in lieu of and substitution for the lost, stolen or destroyed certificate, a new Preferred Share certificate of like tenor and representing an equivalent number of Preferred Shares, but only upon receipt of evidence of such loss, theft or destruction of such certificate and indemnity by the holder thereof, if requested, reasonably satisfactory to the Company.

(b) Status of Cancelled Shares. Preferred Shares which have been converted, redeemed, repurchased or otherwise cancelled shall be retired and, following the filing of any certificate required by the DGCL, have the status of authorized and unissued shares of Preferred Stock, without designation as to series, until such shares are once more designated by the Board as part of a particular series of Preferred Stock of the Company.

(c) Severability. If any right, preference or limitation of the Series A-1 Preferred Stock set forth in this Certificate of Designation is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designation which can be given effect without 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 such right, preference or limitation unless so expressed herein.

(d) Remedies.

(i) The Company acknowledges that the obligations imposed on it in this Certificate of Designation are special, unique and of an extraordinary character, and irreparable damages, for which money damages, even if available, would be an inadequate

remedy, would occur in the event that the Company does not perform the provisions of this Certificate of Designation in accordance with its specified terms or otherwise breaches such provisions. The Holders of Preferred Stock shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Certificate of Designation and to seek to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled, at law or in equity, including without limitation money damages.

(e) Renunciation under DGCL Section 122(17). Pursuant to Section 122(17) of the Delaware General Corporation Law, the Company renounces any interest or expectancy of the Company in, or being offered an opportunity to participate in, business opportunities that are presented to one or more of the Preferred Elected Directors, in each case other than any business opportunities that are presented to any such Preferred Elected Director solely in his or her capacity as a director of the Company.

(f) Headings. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(g) Notices. All notices or communications in respect of Preferred Stock shall be in writing and shall be deemed delivered (a) one (1) Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, (b) on the date of delivery if delivered personally, or (c) if by facsimile, upon written confirmation of receipt by facsimile. Notwithstanding the foregoing, if Preferred Stock is issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the beneficial holders of Preferred Stock in any manner permitted by such facility.

(h) Other Rights. The shares of 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 Certificate of Incorporation or as provided by applicable law and regulation.

(i) Series A-1 Requisite Holders; Requisite Holders. Notwithstanding anything to the contrary contained herein, any consent, waiver, vote, decision, election or action required or permitted to be taken hereunder by (i) the Holders of the Preferred Shares as a group (i.e., as opposed to by a specified Holder) shall require the approval or action, as applicable, of the Series A-1 Requisite Holders and (ii) the Holders of the Preferred Shares and shares of Series A Preferred Stock and Series A-2 Preferred Stock as a group shall require the approval or action, as applicable, of the Requisite Holders and, in each case, after such approval or action, shall be binding on all such Holders.

*[Rest of page intentionally left blank.]*

IN WITNESS WHEREOF, the Company has caused this Certificate of Amendment to the Certificate of Designation to be executed by a duly authorized officer of the Company as of January 5, 2015.

**HC2 HOLDINGS, INC.**

By: /s/ Keith M. Hladek

Name: Keith M. Hladek

Title: Chief Operating Officer

*[SIGNATURE PAGE TO CERTIFICATE OF AMENDMENT TO CERTIFICATE OF DESIGNATION]*

**SECURITIES PURCHASE AGREEMENT****by and among****HC2 HOLDINGS, INC.****and the****PURCHASERS PARTY HERETO****January 5, 2015**

This Securities Purchase Agreement contains a number of representations and warranties which the Company and the Purchasers have made to each other. The assertions embodied in those representations and warranties are qualified by information in confidential disclosure schedules that the Company and the Purchasers have exchanged in connection with signing this Securities Purchase Agreement. These disclosure schedules contain information that has been included in the general prior public disclosures of the Company, as well as additional non-public information. While we do not believe that this non-public information is required to be publicly disclosed by the Company under the applicable securities laws, that information does modify, qualify and create exceptions to the representations and warranties set forth in this Securities Purchase Agreement. In addition, these representations and warranties were made as of the date of this Securities Purchase Agreement. Information concerning the subject matter of the representations and warranties may have changed since the date of this Securities Purchase Agreement, which subsequent information may or may not be fully reflected in the public disclosures of the Company. Moreover, representations and warranties are frequently utilized in Securities Purchase Agreements as a means of allocating risks, both known and unknown, rather than to make affirmative factual claims or statements. Accordingly, **ONLY THE PARTIES TO THIS AGREEMENT SHOULD RELY ON THE REPRESENTATIONS AND WARRANTIES AS CURRENT CHARACTERIZATIONS OF FACTUAL INFORMATION ABOUT THE COMPANY OR THE PURCHASERS.**

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**Annexes**

Annex A	Preferred Shares and Purchasers
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**Exhibits**

**Exhibit A**

Form of Certificate of Designation

**Exhibit B**

Form of Second Amended and Restated Registration Rights Agreement

## SECURITIES PURCHASE AGREEMENT

SECURITIES PURCHASE AGREEMENT (this "**Agreement**"), dated January , 2015, by and among HC2 Holdings, Inc., Delaware corporation (the "**Company**"), and the parties set forth on Annex A hereto as Purchasers (each a "**Purchaser**" and collectively, the "**Purchasers**").

WHEREAS, the Company has authorized the issuance and sale pursuant to this Agreement of 14,000 shares of Series A-2 Convertible Participating Preferred Stock, par value \$0.001 per share, of the Company (the "**Convertible Preferred Stock**"), the rights, preferences and privileges of which are to be set forth in a Certificate of Designation, in the form attached hereto as

**Exhibit A** (the “**Certificate of Designation**”), which shares of Convertible Preferred Stock shall be convertible into authorized but unissued shares of Common Stock (as defined below);

WHEREAS, subject to the terms and conditions set forth herein, the Company desires to issue and sell to the several Purchasers, and the several Purchasers desire to purchase from the Company, the Preferred Shares (as defined below);

WHEREAS, the Board (as defined below) has (i) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement and the other Transaction Agreements (as defined below) to which the Company is a party providing for the transactions contemplated hereby and thereby in accordance with the General Corporation Law of the State of Delaware (the “**DGCL**”), upon the terms and subject to the conditions set forth herein, and (ii) approved the execution, delivery and performance of this Agreement and the other Transaction Agreements to which the Company is a party and the consummation of the transactions contemplated hereby and thereby in accordance with the DGCL upon the terms and conditions contained herein and therein;

WHEREAS, each Purchaser has approved the execution, delivery and performance of this Agreement and the other Transaction Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby in accordance with applicable law upon the terms and conditions contained herein and therein;

WHEREAS, as a condition to the consummation of the transactions contemplated hereby, on the Closing Date the Company and the Purchasers will enter into the Second Amended and Restated Registration Rights Agreement in the form attached as Exhibit B hereto (the “**Registration Rights Agreement**”); and

NOW THEREFORE, in consideration of the mutual agreements, representations, warranties and covenants herein contained, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

“**Accreting Dividends**” shall have the meaning set forth in the Certificate of Designation.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person. Notwithstanding the foregoing, (i) none of the Company, its Subsidiaries or its other controlled Affiliates, nor any HRG Affiliates shall be considered Affiliates of any Purchaser, (ii) no Purchaser shall be considered an Affiliate of any Portfolio Company in which such Purchaser or any of its Affiliates have made a debt or equity investment (provided, however, that for purposes of Sections 5.3 and 5.5 hereof, a Purchaser shall be considered an Affiliate of any such Portfolio Company if such Portfolio Company has received Confidential Information regarding the Company or any of its Subsidiaries from such Purchaser or any of its Affiliates in violation of Section 5.8 (disregarding for this purpose clause (v) of Section 5.8(a)), (iii) no Purchaser shall be considered an Affiliate of any other Purchaser or any of such other Purchaser’s Affiliates’ and (iv) no holder of Convertible

Preferred Stock, Series A Convertible Preferred Stock, Series A-1 Convertible Preferred Stock or Common Stock shall be considered an Affiliate of any other holder of Convertible Preferred Stock, Series A Convertible Preferred Stock, Series A-1 Convertible Preferred Stock or Common Stock solely by virtue of such holding; provided, however, that a Portfolio Company shall be deemed to be an Affiliate of a Purchaser if such Purchaser, directly or indirectly, encouraged, directed or caused such Portfolio Company to take any action that would have been prohibited by the terms of this Agreement if such Portfolio Company had been an Affiliate of such Purchaser but for clause (ii) of this definition.

“**Agreement**” shall have the meaning set forth in the preamble.

“**Basket Amount**” shall have the meaning set forth in Section 10.4.

“**Beneficially Own,**” “**Beneficially Owned,**” or “**Beneficial Ownership**” shall have the meaning set forth in Rule 13d-3 of the rules and regulations promulgated under the Exchange Act; provided, however, that, other than for purposes of the definition of “Hedging Agreement”, a Person will be deemed to be the beneficial owner of any security which may be acquired by such Person whether within 60 days or thereafter, upon the conversion, exchange or exercise (without giving effect to any provision governing such security that would limit, reduce or otherwise restrict the conversion, exchange or exercise features of such security) of any rights, options, warrants or similar securities to subscribe for, purchase or otherwise acquire such security.

“**Benefit Plans**” with respect to any Person shall mean each material “employee benefit plan” (within the meaning of Section 3(3) of ERISA), and all stock purchase, stock option, severance, employment, change-in-control, fringe benefit, collective bargaining, bonus, incentive, deferred compensation, employee loan and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transaction contemplated by this Agreement or otherwise), whether formal or informal, oral or written, legally binding or not, under which any employee of such Person or its Subsidiaries has any present or future right to benefits or which are contributed to, sponsored by or maintained by the Person or any of its Subsidiaries.

“**Board**” shall mean the Board of Directors of the Company.

“**Business Day**” shall mean any day, other than a Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close.

“**Capitalization Date**” shall have the meaning set forth in Section 3.2(a).

“**Caspian Purchasers**” means each of Mariner LDC, Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master Fund, L.P., Caspian HLSC1, LLC, Super Caspian Cayman Fund Limited and Caspian SC Holdings, L.P.

“**Certificate of Designation**” shall have the meaning set forth in the recitals.

“**Change**” shall have the meaning set forth in the definition of “Material Adverse Effect.”

“**Closing**” shall have the meaning set forth in Section 2.2.

“**Closing Date**” shall have the meaning set forth in Section 2.2.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Common Stock**” shall mean the Common Stock, par value \$0.001 per share, of the Company, or any other shares of capital stock into which the Common Stock shall be reclassified or changed.

“**Company**” shall have the meaning set forth in the preamble.

“**Company Plan**” shall mean any Benefit Plan sponsored by or contributed to the Company, its Subsidiaries or any of its ERISA Affiliates or for which the Company, its Subsidiaries or any of its ERISA Affiliates has any liability, contingent or otherwise.

“**Company Annual Report**” shall have the meaning set forth in Section 3.8(a).

“**Change of Control**” shall have the meaning set forth in the Certificate of Designation as in effect as of the date hereof.

“**Company Financial Statements**” shall have the meaning set forth in Section 3.8(c).

“**Company Indemnified Party**” shall have the meaning set forth in Section 10.3.

“**Company Intellectual Property**” shall have the meaning set forth in Section 3.12(c).

“**Company Option**” shall mean an option to acquire shares of Common Stock that was issued under any Company Stock Plan.

“**Company SEC Filings**” shall have the meaning set forth in Section 3.8(a).

“**Company Stock Plans**” shall mean the plans listed on Schedule 1.2.

“**Confidential Information**” shall have the meaning set forth in Section 5.8(a).

“**Consent**” shall have the meaning set forth in Section 3.6.

“**Contracts**” shall have the meaning set forth in Section 3.23(a)(v).

“**control**” (including the terms “**controlling**” “**controlled by**” and “**under common control with**”) with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“**Conversion Price**” shall have the meaning set forth in the Certificate of Designation.

“**Conversion Shares**” shall mean the shares of Common Stock issuable upon the conversion of the Convertible Preferred Stock as provided for in the Certificate of Designation.

“**Convertible Preferred Stock**” shall have the meaning set forth in the recitals.

“**DGCL**” shall have the meaning set forth in the recitals.

“**Director**” means any member of the Board.

“**Disclosure Schedule**” shall have the meaning set forth in Section 3.

“**Environmental Law**” shall mean any and all Laws relating to the protection of the environment (including ambient air, surface water, groundwater or land) or natural resources and any other Laws concerning human exposure to Hazardous Substances.

“**Environmental Permits**” shall have the meaning set forth in Section 3.20(a)(i).

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” shall have the meaning set forth in Section 3.13(c).

“**Equity Securities**” shall mean, with respect to any Person, (i) shares of capital stock of, or other equity or voting interest in, such Person, (ii) any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interest in, such Person, (iii) options, warrants, rights or other commitments or agreements to acquire from such Person, or that obligates such Person to issue, any capital stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interest in, such Person, (iv) obligations of such Person to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock of, or other equity or voting interest (including any voting debt) in, such Person and (v) the capital stock of such Person.

“**Exchange**” means the NASDAQ Global Market, the NASDAQ Global Select Market, The New York Stock Exchange, the NYSE MKT LLC or any of their respective successors.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended, and all of the rules and regulations promulgated thereunder.

“**Fraud**” shall mean with respect to any claim or action, all of the following elements: (a) a false statement of a material fact relating to such claim or action; (b) knowledge on the part of the Person making such statement of a material fact that the statement is false; (c) intent on the part of the Person making such statement of a material fact to deceive the receiving party by making the false statement; (d) justifiable reliance by the receiving party on the false statement of material fact; and (e) injury to the receiving party as a result of such reliance on the false statement of material fact.

“**Foreign Benefit Plans**” shall have the meaning set forth in Section 3.13(g).



“GAAP” shall have the meaning set forth in [Section 3.9\(b\)](#).

“Governmental Entity” shall mean any United States or non-United States federal, state or local government, or any agency, bureau, board, commission, department, tribunal or instrumentality thereof or any court, tribunal, or arbitral or judicial body.

“HRG Affiliate” shall mean (a) Philip A. Falcone, (b) Harbinger Group, Inc. or any of its Subsidiaries, (c) Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or any limited partnership, limited liability company, corporation or other entity that controls, is controlled by, or is under common control with Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or Philip A. Falcone.

“Hazardous Substance” shall mean any substance, material or chemical that is characterized or regulated under any Environmental Law as “hazardous,” a “pollutant,” “waste,” a “contaminant,” “toxic” or words of similar meaning or effect, or that could result in liability under any Environmental Law, and shall include petroleum and petroleum products, polychlorinated biphenyls, lead, crystalline silica and asbestos.

“Hedging Agreement” shall mean any swap, forward or option contract or any other agreement, arrangement, contract or transaction that hedges the direct or indirect economic exposure to a decline in value resulting from ownership by any Person of the Common Stock, the Convertible Preferred Stock, the Series A Convertible Preferred Stock, the Series A-1 Convertible Preferred Stock or the equity securities of any Subsidiary of the Company that are traded on a national securities exchange or on the OTCQB, regardless of whether any such agreement, arrangement, contract or transaction is to be settled by delivery of securities, in cash or otherwise; provided, however, that, for the avoidance of doubt, in no event shall an agreement providing for the direct Transfer of Common Stock, Convertible Preferred Stock, Series A Convertible Preferred Stock or Series A-1 Convertible Preferred Stock actually Beneficially Owned by such Person be deemed a “Hedging Agreement” hereunder.

“Hedging Limitation Period” shall mean the period from the date hereof until the twelve (12) month anniversary of the Closing Date.

“HSR Act” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and all of the rules and regulations promulgated thereunder.

“Imperial Purchaser” means Long Ball Partners, LLC.

“Indenture” means that certain Indenture, dated as of November 20, 2014, by and among the Company, the subsidiary guarantors party thereto, and U.S. Bank National Association, as Trustee.

“Indemnified Party” shall have the meaning set forth in [Section 10.5](#).

“Indemnifying Party” shall have the meaning set forth in [Section 10.5](#).

“Initial Holders” means each of (i) Hudson Bay Absolute Return Credit Opportunities Master Fund Ltd., (ii) DG Value Partners, LP, (iii) DG Value Partners II Master Fund, LP, (iii)

Special Situations, LLC, (iv) Special Situations X, LLC, (v) DG Credit Opportunities, LP., (vi) Providence Debt Fund III L.P., (vii) Providence Debt Fund III Master (Non-US) L.P., (viii) PECM Strategic Funding L.P. and (ix) Benefit Street Partners SMA LM L.P.

**“Intellectual Property”** shall mean all U.S. or foreign intellectual property, including (i) patents, trademarks, service marks, trade names, domain names, other source indicators and the goodwill of the business symbolized thereby, copyrights, works of authorship in any medium, designs and trade secrets, (ii) applications for and registrations of such patents, trademarks, service marks, trade names, domain names, copyrights and designs (**“Registered Intellectual Property”**), (iii) inventions, processes, formulae, methods, schematics, technology, know-how, computer software programs and applications, and (iv) other tangible or intangible proprietary or confidential information and materials.

**“Investment Securities”** with respect to a Person means debt or equity securities issued by such Person or similar obligations of, or participations in, such Person.

**“Knowledge”** shall mean, with respect to the Company, the knowledge of any of the Persons set forth on Schedule 1.1. Such individuals will be deemed to have “knowledge” of a particular fact or other matter if (i) such individual has or at any time had actual knowledge of such fact or other matter or (ii) a prudent individual would be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably diligent review concerning the existence thereof with each employee of the Company or any of its Subsidiaries who reports directly to such individual and who (x) has responsibilities or (y) would reasonably be expected to have actual knowledge of circumstances or other information, in each case, that would reasonably be expected to be pertinent to such fact or other matter. Notwithstanding the foregoing, the Company will be deemed to have knowledge of any fact or matter of which an officer of the Company has received written notice (whether in hard copy, digital or electronic format).

**“Law”** shall have the meaning set forth in Section 3.5.

**“Leased Real Property”** shall have the meaning set forth in Section 3.21(b).

**“Legal Proceeding”** shall mean any action, suit, litigation, petition, claim, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, or investigation by or before, or otherwise involving, any court or other Governmental Entity or arbitral body.

**“Liability”** shall mean any liability, obligation or commitment of any kind (whether accrued, absolute, contingent, matured, unmatured or otherwise and whether or not required to be recorded or reflected on a balance sheet prepared in accordance with GAAP).

**“Lien”** shall have the meaning set forth in Section 3.5.

**“Losses”** shall mean any and all actions, causes of action, suits, claims, liabilities, losses, damages, penalties, judgments, costs and out-of-pocket expenses in connection therewith (including reasonable attorneys’ fees and expenses), it being agreed that Losses shall include any losses that any Person deciding any dispute in respect thereof (whether a court, jury or other Person) may determine are recoverable, including if so determined to be recoverable, losses that represent diminution in value.

“**Luxor Holders**” means each of (i) Luxor Capital Partners, LP, (ii) Luxor Capital Partners Offshore Master Fund, LP and (iii) Luxor Wavefront, LP.

“**Material Adverse Effect**” shall mean any fact, circumstance, event, change, effect, occurrence or development (each, a “**Change**”) that, individually or in the aggregate with all other Changes, (i) has or would reasonably be expected to have a material adverse effect on or with respect to the business, operations, assets (including intangible assets), liabilities, results of operation or financial condition of the Company and its Subsidiaries taken as a whole or (ii) results in or would reasonably be expected to result in a Liability or Loss to the Company or its Subsidiaries in an amount exceeding \$1,000,000.

“**Material Contracts**” shall have the meaning set forth in [Section 3.23\(a\)](#).

“**May SPA**” means that certain Securities Purchase Agreement, dated as of May 29, 2014, by and among the Initial Holders and the Company, as amended from time to time.

“**New York Court**” shall have the meaning set forth in [Section 12.5\(b\)](#).

“**Non-Convertible Preferred Participation Amount**” shall mean (i) with respect to the Caspian Purchasers, up to 6% of a total issuance by the Company of Non-Convertible Preferred Securities and (ii) with respect to the Imperial Purchaser, up to 2% of a total issuance of Non-Convertible Preferred Securities by the Company, provided that in no case shall the total Non-Convertible Preferred Participation Amount exceed 8% of a total issuance of Non-Convertible Preferred Securities by the Company.

“**OTCQB**” means the OTCQB Market.

“**Participation Rights Fraction**” shall mean, with respect to a Purchaser, a fraction, the numerator of which is the number of shares of Common Stock held by such Purchaser and its Affiliates in the aggregate on an as converted basis, as of such date, and the denominator of which is the number of shares of Common Stock then outstanding (assuming all Preferred Stock, Series A Convertible Preferred Stock and Series A-1 Convertible Preferred Stock is converted to Common Stock), as of such date.

“**Permitted Liens**” means, (a) local, state and federal Laws, including, without limitation, zoning or planning restrictions, and utility lines, easements, permits, covenants, conditions, restrictions, rights-of-way, oil, gas or mineral leases of record and other restrictions or limitations on the use of real property or irregularities in title thereto, which do not materially impair the value of such properties or the continued use of such property for the purposes for which the property is currently being used by the Company or any Subsidiary, (b) Liens for Taxes not yet due and payable, that are payable without penalty or that are being contested in good faith and for which adequate reserves have been recorded on the Company Financial Statements, (c) Liens for carriers’, warehousemen’s, mechanics’, repairmen’s, workers’ and similar Liens incurred in the ordinary course of business, consistent with past practice, in each case for sums not yet due and payable or due but not delinquent or being contested in good faith

by appropriate proceedings and for which adequate reserves have been recorded on the Company Financial Statements, (d) Liens incurred in the ordinary course of business, consistent with past practice, in connection with workers' compensation, unemployment insurance and other types of social security or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds and similar obligations, which do not materially impair the value of the underlying property or the continued use of such property for the purposes for which the property is currently being used by the Company or any Subsidiary, (e) Liens granted under equipment leases with third parties entered into in the ordinary course of business consistent with past practice, (f) Liens permissible under any applicable loan agreements and indentures, (g) restrictions arising under applicable securities Laws and (h) Liens securing the indebtedness under the Indenture or any other existing indebtedness for borrowed money of the Company or any of its Subsidiaries.

**"Person"** shall mean an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or any other entity or organization.

**"Portfolio Company"** means, with respect to a referent Person, any other Person that issues Investment Securities if such referent Person beneficially owns Investment Securities representing a controlling interest in such Person.

**"Preferred Holders"** means each of the Initial Holders and the Luxor Holders.

**"Preferred Share Purchase Price"** shall have the meaning set forth in [Section 2.1](#).

**"Preferred Stock"** shall have the meaning set forth in [Section 3.2\(a\)](#).

**"Public Market Capitalization"** shall have the meaning set forth in the Certificate of Designation.

**"Purchasers"** shall have the meaning set forth in the recitals.

**"Purchaser Adverse Effect"** shall have the meaning set forth in the [Section 4.3](#).

**"Purchaser Board Observer"** shall have the meaning set forth in the [Section 7.1](#).

**"Purchaser Indemnified Party"** shall have the meaning set forth in [Section 10.1](#).

**"Registered Intellectual Property"** shall have the meaning set forth in the definition of "Intellectual Property."

**"Registration Rights Agreement"** shall have the meaning set forth in the recitals.

**"Representatives"** means, with respect to any Person, such Person's Affiliates (other than any Portfolio Company) and their respective directors, officers, employees, managers, trustees, principals, stockholders, members, general or limited partners, agents and other representatives.

“**Requisite Holders**” means Purchasers (or permitted transferees thereof) holding not less than 75% of the Shares issued to the Purchasers hereunder on the Closing Date (determined on an as-converted to Common Stock basis).

“**Rule 144**” shall have the meaning set forth in Section 4.8(a).

“**Schuff**” means Schuff International, Inc.

“**SEC**” shall mean the Securities and Exchange Commission.

“**Securities Act**” shall mean the Securities Act of 1933, as amended, and all of the rules and regulations promulgated thereunder.

“**Securities Exercise Notice**” shall have the meaning set forth in Section 5.4(b)(ii).

“**Securities Participation Amount**” shall have the meaning set forth in Section 5.4(a).

“**Securities Participation Right**” shall have the meaning set forth in Section 5.4(a).

“**Securities Participation Rights Notice**” shall have the meaning set forth in Section 5.4(b)(i).

“**September SPA**” means that certain Securities Purchase Agreement, dated as of September 22, 2014, by and among the Luxor Holders, DG Value Partners, LP, DG Value Partners II Master Fund, LP, DG Credit Opportunities, LP and the Company, as amended from time to time.

“**Series A Convertible Preferred Stock**” means the Series A Convertible Participating Preferred Stock, par value \$0.001 per share, of the Company.

“**Series A-1 Convertible Preferred Stock**” means the Series A-1 Convertible Participating Preferred Stock, par value \$0.001 per share, of the Company.

“**Significant Subsidiary**” shall mean any Subsidiary or group of Subsidiaries that would, taken together, be a “significant subsidiary” as defined in Article 1, Rule 1-02 (w)(1) or (2) of Regulation S-X promulgated under the Securities Act, as such regulation is in effect from time to time. For the avoidance of any doubt, Schuff and its Subsidiaries shall be deemed to be Significant Subsidiaries of the Company for all purposes, including, with respect to the representations and warranties of the Company set forth in Section 3 hereof, except with respect to Section 3.8(d).

“**Specified Breach Event**” shall have the meaning set forth in the Certificate of Designation.

“**Standstill Period**” shall have the meaning set forth in Section 5.3(a).

“**Subsidiary**” of any Person shall mean any corporation, partnership, joint venture, limited liability company, trust or other form of legal entity (whether incorporated or

unincorporated) of which (or in which) more than 50% of (i) the Voting Power; (ii) the interest in the capital or profits of such partnership, joint venture or limited liability company; or (iii) the beneficial interest in such trust or estate; is, directly or indirectly, owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries. For the avoidance of any doubt, Schuff and its Subsidiaries are Subsidiaries of the Company for all purposes, including, with respect to the representations and warranties of the Company set forth in Section 3 hereof, except with respect to [Section 3.8\(d\)](#).

**"Tax Returns"** shall mean returns, reports, information statements and other documentation (including any additional or supporting material) filed or required to be filed in connection with the calculation, determination, assessment or collection of any Tax, including any schedules or amendments thereto.

**"Taxes"** shall mean any and all taxes, levies, fees, imposts, duties and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto) imposed by any Governmental Authority, including, without limitation, taxes imposed on, or measured by, income, franchise, profits or gross receipts, and any ad valorem, value added, sales, use, service, real or personal property, capital stock, license, payroll, withholding, employment, social security, workers' compensation, unemployment compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, transfer and gains taxes and customs or duties.

**"Third Party Intellectual Property"** shall have the meaning set forth in [Section 3.12\(c\)](#).

**"Transaction Agreements"** shall mean this Agreement, the Certificate of Designation, and the Registration Rights Agreement.

**"Transfer"** shall mean the direct or indirect transfer, sale, assignment, exchange, distribution, mortgage, pledge or disposition of any Equity Securities of the Company.

**"Treasury Regulation"** shall mean the Treasury Regulations promulgated under the Code.

**"Voting Power"** shall mean either (a) the power to elect, designate or nominate directors to the Board, or (b) vote (as Common Stock or together with Common Stock) on matters to be voted on or consented to by the Common Stock through the ownership of Voting Stock, by contract or otherwise.

**"Voting Stock"** shall mean securities of any class or kind ordinarily having the power to vote generally for the election of (x) Directors of the Company or its successor (including the Common Stock, the Convertible Preferred Stock, the Series A Convertible Preferred Stock and the Series A-1 Convertible Preferred Stock) or (y) directors of any Subsidiary of the Company.

**"Wholly Owned Subsidiary"** means any Subsidiary of the Company of which the Company owns, either directly or indirectly, 100% of the outstanding equity interests of such Subsidiary (excluding qualifying shares held by directors).

## 2. Authorization, Purchase and Sale of Preferred Shares.

2.1 Authorization, Purchase and Sale. Subject to and upon the terms and conditions of this Agreement, the Company will issue and sell to the several Purchasers, and the several Purchasers will purchase from the Company, at the Closing, the number of shares of Convertible Preferred Stock (each, a “**Preferred Share**” and collectively, the “**Preferred Shares**”) set forth next to each such Purchaser’s name on Annex A. The purchase price per Preferred Share shall be \$1,000 and the aggregate purchase price (the “**Preferred Share Purchase Price**”) for the Preferred Shares shall be the amount set forth on Annex A.

### 2.2 Closing.

(a) The closing of the purchase and sale of the Preferred Shares (the “**Closing**”) shall take place at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York immediately following the satisfaction or waiver of each of the conditions set forth in Section 6 with respect to Closing (other than those conditions which, by their terms, are to be satisfied or waived at the Closing), at 7:00 am Eastern Time on January 1, 2015 (the “**Closing Date**”).

#### (b) Closing Deliveries:

(i) At the Closing the Company shall deliver to each Purchaser certificates representing the Preferred Shares purchased by such Purchaser; and

(ii) At the Closing, each Purchaser shall deliver, or cause to be delivered, to the Company, subject to any reductions for expenses as set forth in Section 12.8, an amount equal to the portion of the Preferred Share Purchase Price set forth next to such Purchaser’s name on Annex A by wire transfer of immediately available funds to an account designated by the Company in writing.

3. Representations and Warranties of the Company. Except as set forth in the disclosure schedule delivered by the Company to the Purchasers on the date hereof (the “**Disclosure Schedule**”) (it being agreed that disclosure of any item in any section of the Disclosure Schedule shall also be deemed disclosure with respect to any other Section of this Agreement to which the relevance of such item is reasonably apparent) or as disclosed in the Company SEC Filings, filed on or after January 1, 2012 and publicly available prior to the date of this Agreement and only as and to the extent disclosed therein (but excluding any risk factor disclosures contained under the heading “Risk Factors,” any disclosure of risks included in any “forward-looking statements” disclaimer or any other statements that are similarly forward-looking), the Company hereby represents and warrants to the Purchasers as follows:

### 3.1 Organization and Power.

(a) Each of the Company and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization. Each of the Company and its Subsidiaries has the requisite corporate power and authority to carry on its respective business as it is presently being conducted and to own, lease or operate its respective properties and assets, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Each of the Company and its Subsidiaries is duly qualified to do business and is in good standing as a foreign corporation (or other legal entity) in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The organizational or governing documents of the Company and each of its Subsidiaries are in full force and effect. Neither the Company nor any Subsidiary is in violation of its organizational or governing documents. The Company has delivered or made available to the Purchasers complete and correct copies of the certificates of incorporation and bylaws or other constituent documents, as amended to date and currently in full force and effect, of the Company and its Significant Subsidiaries.

### 3.2 Capitalization.

(a) As of the date of this Agreement, after giving effect to the filing of the Certificate of Designation, the authorized shares of capital stock of the Company consist of 80,000,000 shares of Common Stock and 20,000,000 shares of preferred stock, par value \$0.001 per share (“**Preferred Stock**”), of which 30,000 shares are authorized as Series A Convertible Preferred Stock, 11,000 shares are authorized as Series A-1 Convertible Preferred Stock and 14,000 shares are authorized as Convertible Preferred Stock. As of the close of business on December 15, 2014 (the “**Capitalization Date**”), (i) 23,813,085 shares of Common Stock were issued and outstanding (which includes 331,941 shares of unvested restricted stock), (ii) 4,503,605 shares of Common Stock were reserved for issuance under the Company Stock Plans, (iii) 30,000 shares of Series A Convertible Preferred Stock were issued and outstanding, (iv) 11,000 shares of Series A-1 Convertible Preferred Stock were issued and outstanding, (v) 0 shares of Convertible Preferred Stock were issued and outstanding, (vi) 7,601,933 shares of Common Stock were reserved for issuance upon conversion of the currently outstanding Series A Convertible Preferred Stock in accordance with the Certificate of Designation of the Series A Convertible Preferred Stock, as amended, (vi) 2,590,824 shares of Common Stock were reserved for issuance upon conversion of the currently outstanding Series A-1 Convertible Preferred Stock in accordance with the Certificate of Designation of the Series A-1 Convertible Preferred Stock, as amended, and (vi) 31,626 shares of Common Stock were held by the Company as treasury shares. All outstanding shares of Common Stock, Series A Convertible Preferred Stock and Series A-1 Convertible Preferred Stock are validly issued, fully paid, nonassessable and free of preemptive or similar rights. Since the Capitalization Date, the Company has not sold or issued or repurchased, redeemed or otherwise acquired any shares of the Company’s capital stock (other than issuances pursuant to the exercise of any Company Option or vesting of any share unit award that had been granted under any Company Stock Plan, or repurchases, redemptions or other acquisitions pursuant to agreements contemplated by a Company Stock Plan). No Subsidiary of the Company owns any Equity Securities of the Company.

(b) As of the Capitalization Date, with respect to the Company Stock Plans, (i) there were 3,582,425 shares of Common Stock underlying outstanding Company Options to acquire shares of Common Stock, such outstanding Company Options having the



exercise price per share as of the Capitalization Date as set forth on Schedule 3.2, (ii) there were 6,761 shares of Common Stock issuable upon the vesting of outstanding restricted stock units and (iii) 4,503,605 additional shares of Common Stock were reserved for issuance for future grants pursuant to the Company Stock Plans. All shares of Common Stock reserved for issuance as noted in the foregoing sentence, when issued in accordance with the respective terms thereof, shall be validly issued, fully paid, nonassessable and free of preemptive or similar rights. Each Company Option was granted with an exercise price per share equal to or greater than the per share fair market value (as such term is used in Code Section 409A and the Department of Treasury regulations and other interpretive guidance issued thereunder) of the Common Stock underlying such Company Option on the grant date thereof and was otherwise issued in material compliance with applicable Law.

(c) Schedule 3.2 sets forth a list of all outstanding warrants to purchase any Equity Securities of the Company as of the date of this Agreement, together with the number of shares subject thereto, the exercise price thereof, the dates of any scheduled vesting thereof, in each case as of the date hereof.

(d) Except as set forth in this Section 3.2, as of the date of this Agreement, there are no outstanding Equity Securities of the Company and no other obligations by the Company or any of its Subsidiaries to make any payments based on the price or value of any Equity Securities of the Company. There are no outstanding agreements of any kind which obligate the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Equity Securities of the Company.

(e) Except as set forth in the Transaction Agreements or as set forth in Schedule 3.2, neither the Company nor any of its Subsidiaries is a party to any agreement relating to the voting of, requiring registration of, or granting any preemptive, anti-dilutive rights or rights of first refusal or other similar rights with respect to any Equity Securities of the Company.

(f) Upon the filing of the Certificate of Designation with the Secretary of State of the State of Delaware, (i) the Preferred Shares will be duly authorized and (ii) a sufficient number of Conversion Shares will have been duly authorized and validly reserved for issuance upon conversion of the Preferred Shares in accordance with the Certificate of Designation. When the Preferred Shares are issued and paid for in accordance with the provisions of this Agreement and the Certificate of Designation, all such Preferred Shares will be duly authorized, validly issued, fully paid, nonassessable and free of preemptive or similar rights except as set forth in the Transaction Agreements and Schedule 3.2. When Conversion Shares are issued in accordance with the provisions of the Certificate of Designation all such Conversion Shares will be duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights.

(g) Neither the Company nor any of its Subsidiaries have any Liabilities in respect of any Indebtedness (as defined in the Certificate of Designation) except as set forth on Schedule 3.2(g). For each item of Indebtedness, Schedule 3.2(g) sets forth the debtor, the principal amount of the Indebtedness as the date of this Agreement, the creditor, the maturity date, and the collateral, if any, securing the Indebtedness. Except as set forth on Schedule 3.2(g),

neither the Company, nor any of its Subsidiaries has any Liability in respect of a guarantee of any indebtedness or other Liability of any other Person (other than the Company or any of its Subsidiaries).

3.3 Authorization. The Company has all requisite corporate power to enter into each of the Transaction Agreements to which it is a party and to consummate the transactions contemplated by each of the Transaction Agreements to which it is a party and to carry out and perform its obligations thereunder. All corporate action on the part of the Company, its officers and directors necessary for the authorization of the Preferred Shares and the authorization, execution, delivery and performance of the Transaction Agreements to which the Company is a party has been taken. The execution, delivery and performance of the Transaction Agreements to which the Company is a party by the Company and the issuance of the Common Stock upon conversion of the Preferred Shares, in each case in accordance with their terms, and the consummation of the other transactions contemplated herein do not require any approval of the Company's stockholders, except as set forth on Schedule 3.3. Upon their respective execution by the Company and the other parties thereto and assuming that they constitute legal and binding agreements of each Purchaser party thereto, each of the Transaction Agreements to which the Company is a party will constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that such enforceability (a) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting or relating to creditors' rights generally, and (b) is subject to general principles of equity (regardless of whether considered in a proceeding in equity or at Law).

3.4 Registration Requirements. Subject to the accuracy of the representations made by the Purchasers in Section 4, the offer, sale and issuance of the Preferred Shares and the conversion of the Preferred Shares into Common Stock in accordance with the Certificate of Designation (i) has been and will be made in compliance with applicable exemptions from the registration and prospectus delivery requirements of the Securities Act and (ii) will have been registered or qualified (or are exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable Blue Sky laws.

3.5 No Conflict. Except as set forth on Schedule 3.5, the execution, delivery and performance of the Transaction Agreements to which the Company is a party by the Company, the issuance of the Preferred Shares and the Common Stock upon conversion of the Preferred Shares and the consummation of the other transactions contemplated hereby and by the other Transaction Agreements to which the Company is a party will not (i) conflict with or result in any violation of any provision of the certificate of incorporation or bylaws of the Company, or, upon its filing with the Secretary of State of the State of Delaware, the Certificate of Designation, (ii) result in any breach or violation of, or default (with or without notice or lapse of time, or both) under, require consent under, or give rise to a right of termination, cancellation, modification or acceleration of any obligation or to the loss of any benefit under any mortgage, Contract, insurance policy (including any directors and officers insurance policy), purchase or sale order, instrument, permit, concession, franchise, right or license, binding upon the Company or any of its Subsidiaries or result in the creation of any liens, claims, mortgages, encumbrances, pledges, security interests, equities or charges of any kind (each, a "**Lien**") upon any of the properties, assets or rights of the Company or any of its Subsidiaries, except as would not,

individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or (iii) subject to the matters referred to in Section 3.6, conflict with or violate any applicable material law, statute, code, ordinance, rule, regulation (including rules or regulations applicable to the listing of the Company's capital stock on any trading exchange), or agency requirement of or undertaking to or agreement with any Governmental Entity, including common law (collectively, "Laws" and each, a "Law") or any judgment, order, injunction or decree issued by any Governmental Entity.

3.6 Consents. No consent, approval, order, or authorization of, or filing or registration with, or notification to (any of the foregoing being a "Consent"), any Governmental Entity or any trading exchange is required on the part of the Company or its Subsidiaries in connection with (a) the execution, delivery or performance of the Transaction Agreements to which the Company is a party and the consummation of the transactions contemplated hereby and thereby, or (b) the issuance of the Preferred Shares or the issuance of the Common Stock upon conversion of the Preferred Shares in accordance with the Certificate of Designation; other than (i) the filing of the Certificate of Designation with the Secretary of State of the State of Delaware, (ii) those to be obtained, in connection with the registration of the Preferred Shares under the Registration Rights Agreement, under the applicable requirements of the Securities Act and any related filings and approvals under applicable state securities laws, and (iii) such Consents the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.7 Permits. The Company and each of its Subsidiaries possess all material permits, licenses, authorizations, consents, approvals and franchises of Governmental Entities or any trading exchange that are required to conduct its business.

### 3.8 SEC Reports; Financial Statements.

(a) The Company has filed, since January 1, 2012, all forms, reports and documents with the SEC that have been required to be filed by it under applicable Laws (the "Company SEC Filings"), including the Annual Report of the Company on Form 10-K for the fiscal year ended December 31, 2013, as amended through the date of this Agreement (the "Company Annual Report"). Each Company SEC Filing complied as of its filing date, as to form in all material respects with the applicable requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date such Company SEC Filing was filed (and, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseded filing). As of its filing date (and, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseded filing), each Company SEC Filing did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. None of the Company's Subsidiaries is required to file any forms, reports or other documents with the SEC pursuant to Sections 13(d) and 15(d) of the Exchange Act. No executive officer of the Company has failed to make the certifications required by him or her under Section 302 and 906 of the Sarbanes Oxley Act of 2002 with respect to any Company SEC Filing. There are no transactions that have occurred since January 1, 2012 that are required to be disclosed in the appropriate Company SEC Filings pursuant to Item 404 of Regulation S-K that have not been disclosed in the Company SEC Filings.

(b) The consolidated financial statements (including all related notes and schedules) of the Company and its Subsidiaries included in the Company SEC Filings and (collectively, the “**Company Financial Statements**”) (i) comply as to form in all material respects with the published rules and regulations of the SEC with respect thereto and (ii) fairly present, in all material respects, the consolidated financial position of the Company and its Subsidiaries as of the dates indicated and the results of their operations and their cash flows for the periods therein specified, all in accordance with United States generally accepted accounting principles applied on a consistent basis (“**GAAP**”) throughout the periods therein specified (except as otherwise noted therein, and in the case of quarterly financial statements except for the absence of footnote disclosure and subject, in the case of interim periods, to normal year-end adjustments, the effect of which will not, individually or in the aggregate, be materially adverse, and the absence of footnote disclosure that if presented, would not differ materially from those included in the audited Company Financial Statements).

(c) Except as disclosed on the Disclosure Schedule, there are no Liabilities of the Company or any of its Subsidiaries of any kind whatsoever, other than: (i) Liabilities disclosed and provided for in the Company Financial Statements; (ii) Liabilities incurred in the ordinary course of business consistent with past practice; (iii) Liabilities incurred in connection with the transactions contemplated by this Agreement or the other Transaction Agreements to which the Company is a party; or (iv) Liabilities individually or in the aggregate have not had and would not be reasonably expected to have a Material Adverse Effect (excluding clause (ii) of such definition).

(d) The Company’s principal executive officer and its principal financial officer have (i) devised and maintained a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and preparation of financial statements in accordance with GAAP, and have evaluated such system at the times required by the Exchange Act and in any event no less frequently than at reasonable intervals and (ii) disclosed to the Company’s management, auditors and the audit committee of the Board (x) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the Company’s or any of its Subsidiaries’ ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company, and the Company has provided to the Purchasers copies of any written materials relating to the foregoing. The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a 15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company and its Subsidiaries required to be included in the Company’s periodic reports under the Exchange Act is made known to the Company’s principal executive officer and its principal financial officer by others within those entities, and such disclosure controls and procedures are sufficient to ensure that the Company’s principal executive officer and its principal financial officer are made aware of such material information required to be included in the Company’s periodic reports required under the Exchange Act. There are no outstanding loans made by the Company or any of its

Subsidiaries to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Company. Neither the Company, nor any Subsidiary of the Company, since the date that the Company acquired (either directly or indirectly) a majority of the outstanding capital stock of such Subsidiary, has made any loans to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Company or any of its Subsidiaries. For the purposes of this Section 3.8(d), Schuff and its Subsidiaries shall be deemed not to be a Subsidiary of the Company.

3.9 Litigation. Except as set forth on Schedule 3.9, there are no (i) investigations or, to the Knowledge of the Company, proceedings pending or threatened by any Governmental Entity with respect to the Company or any of its Subsidiaries or any of their properties or assets, (ii) Legal Proceedings pending or, to the Knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, or any of their respective properties or assets, at Law or in equity that would reasonably be expected to result in liability to the Company or its Subsidiaries in excess of \$250,000 or any other material non-monetary Liability or restrictions, or (iii) orders, judgments or decrees of any Governmental Entity against the Company or any of its Subsidiaries.

3.10 Absence of Certain Changes. Since December 31, 2013, there has not been any Change which, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect and except as disclosed on Schedule 3.10, the business of the Company and its Subsidiaries has been conducted in the ordinary course of business consistent with past practices and there has not been:

(a) any declaration, setting aside or payment of any dividend or other distribution with respect to any shares of capital stock of the Company, or any repurchase, redemption or other acquisition by the Company or any of its Subsidiaries of any outstanding shares of capital stock or other securities of the Company or any of its Subsidiaries;

(b) any incurrence, assumption or guarantee by the Company or any of its Subsidiaries of any indebtedness for borrowed money in excess of \$250,000, individually, or \$1,000,000, in the aggregate, or the repurchase, redemption or repayment of any indebtedness for borrowed money of the Company or any of its Subsidiaries in excess of \$250,000, individually, or \$1,000,000, in the aggregate, other than any such incurrence, assumption or guarantee in relation to the Indenture;

(c) any event of default (or event which with notice, the passage of time or both, would become an event of default) in the payment of any indebtedness for borrowed money in an aggregate principal amount in excess of \$250,000 by the Company or any of its Subsidiaries;

(d) any change in any methods of accounting by the Company or any of its Subsidiaries, except as may be appropriate to conform to changes in GAAP; or

(e) any material Tax election made by the Company or any of its Subsidiaries or any settlement or compromise of any material Tax liability by the Company or any of its Subsidiaries, except (i) as required by applicable Law or (ii) with respect to any material Tax election, consistent with elections historically made by the Company.

3.11 Compliance with Law. The Company and each of its Subsidiaries are in compliance with and are not in default under or in violation of, and have not received any written notices of non-compliance, default or violation with, in each case, in any material respect, with respect to any material Laws, in each case, except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect or to materially delay or hinder the ability of the Company to perform its obligations under the Transaction Agreements.

3.12 Intellectual Property.

(a) The Company and its Subsidiaries own, license, sublicense or otherwise possess respects legally enforceable rights to use all Intellectual Property necessary to conduct the business of the Company and its Subsidiaries, as currently conducted, free and clear of all Liens (other than non-exclusive licenses granted in the ordinary course of business or Permitted Liens), except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all material Intellectual Property developed for the Company or any of its Subsidiaries by any employees, contractors and consultants of the Company or any of its Subsidiaries is exclusively owned by the Company or one of its Subsidiaries, free and clear of all Liens (other than non-exclusive licenses granted in the ordinary course of business or Permitted Liens).

(b) All Registered Intellectual Property owned by the Company or any of its Subsidiaries is subsisting and has not expired or been cancelled or abandoned and, to the Company's Knowledge, is valid and enforceable, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company's Knowledge, no third party is infringing, violating or misappropriating any of the Company Intellectual Property in any material respect.

(c) The execution and delivery of the Transaction Agreements to which the Company is a party by the Company and the consummation of the transactions contemplated hereby and thereby will not result in, the breach of, or create on behalf of any third party the right to terminate or modify, (i) any license or other agreement relating to any Intellectual Property owned by the Company or any of its Subsidiaries (the "**Company Intellectual Property**"), or (ii) any license, sublicense and other agreement as to which the Company or any of its Subsidiaries is a party and pursuant to which the Company or any of its Subsidiaries is authorized to use any third party Intellectual Property, excluding generally commercially available, off-the-shelf software programs licensed for a license fee of less than \$50,000 in the aggregate (the "**Third Party Intellectual Property**"), except, in either case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) Except as set forth in Schedule 3.12(d), to the Company's Knowledge, the conduct of the business of the Company and its Subsidiaries has not infringed,

violated or constituted a misappropriation of any Intellectual Property of any third party and as currently conducted does not infringe, violate or constitute a misappropriation of any Intellectual Property of any third party, except, in either case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth in Schedule 3.12(d), neither the Company nor any of its Subsidiaries (i) has received any written claim or notice alleging any such infringement, violation or misappropriation, or (ii) has been or is subject to any settlement, order, decree, injunction, or stipulation imposed by any Governmental Entity that may affect the use, validity or enforceability of Company Intellectual Property.

(e) The Company and its Subsidiaries take all reasonable actions respects to protect the Company Intellectual Property and to protect and preserve the confidentiality of their trade secrets, including disclosing trade secrets to a third party only where such third party is bound by a confidentiality agreement, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### 3.13 Employee Benefits.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, with respect to any Company Plan, no Legal Proceeding has been threatened, asserted, instituted, or, to the Knowledge of the Company, is anticipated (other than non-material routine claims for benefits, and appeals of such claims), and, to the Knowledge of the Company, no facts or circumstances exist that would give rise to any such Legal Proceeding. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) no Company Plan is or, within the last six (6) years, has been the subject of an examination or audit by a Governmental Entity, is the subject of an application or filing under, or is a participant in, a government-sponsored amnesty, voluntary compliance, self-correction or similar program, (ii) the Company has satisfied all reporting and disclosure requirements under the Code and ERISA that are applicable to the Company Plans, and (iii) the Company has not terminated any Company Plan or taken any action with respect thereto that would result in a Lien on any of the assets or properties of the Company.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Company Plan has been established and administered in accordance with its terms and any applicable collective bargaining agreement, and in compliance with the applicable provisions of ERISA, the Code and all other applicable laws, rules and regulations, and each Company Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or opinion letter from the Internal Revenue Service to the effect that such Company Plan is qualified under the Code (or is entitled to rely on a prototype letter with regard to such determination) and nothing has occurred that would reasonably be expected to cause the loss of such qualification. The Company and its Subsidiaries has complied with reporting and disclosure requirements under the Code and ERISA that are applicable to the Company Plans, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth in Schedule 3.13(c), neither the Company, any of its Subsidiaries, nor any other entity which, together with the Company or any of its Subsidiaries would be treated as a single employer under Section 4001 of ERISA or Section 414

of the Code (each such entity, an “ERISA Affiliate”) sponsors, maintains, contributes to, or has had in the past six (6) years an obligation at any time to sponsor, maintain or contribute to, or has any liability in respect of (i) any “defined benefit pension plan” (as defined in Section 3(35) of ERISA), (ii) any “employee benefit plan” (as defined in Section 3(3) of ERISA) subject to Section 412 of the Code or Section 302 of ERISA or Title IV of ERISA, including any “multiemployer plan” (as defined in Section 4001(a)(15) of ERISA) (“**Multiemployer Plan**”), (iii) any other plan which is subject to Section 4063, 4064 or 4069 of ERISA, or (iv) any “employee pension benefit plan” (within the meaning of Section 3(2) of ERISA) that is not intended to be qualified under Section 401(a) of the Code. Except as set forth in Schedule 3.13(c), except as required by Section 4980B of the Code, no Company Plan provides any retiree or post-employment medical, disability or life insurance benefits to any person. The assets of any defined benefit pension plan equal or exceed the projected benefit obligation of such plan, as determined using the actuarial assumptions used for purposes of the Company Financial Statements. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) none of the Company, any of its Subsidiaries or ERISA Affiliates has incurred any withdrawal liability, within the meaning of Section 4201 of ERISA, or any contingent withdrawal liability under Section 4204 of ERISA, to any Multiemployer Plan, which liability could become a liability of the Company, any of its Subsidiaries, or any of its ERISA Affiliates or impose any lien or encumbrance against the assets of the Company, any Subsidiaries or any ERISA Affiliate, and the execution of the Transaction Agreements or the transactions contemplated hereby will not cause or result in any such withdrawal liability (contingent or actual), (ii) all contributions that the Company, its Subsidiaries or any of its ERISA Affiliates are required to have made to any Multiemployer Plan have been made, (iii) no liability under Title IV of ERISA has been incurred or is expected to be incurred with respect to any Company Plan subject thereto (other than PBGC premiums incurred and paid when due), nor has there been any “reportable event” within the meaning of Section 4043(c) of ERISA with respect to any such Company Plan, and (iv) no non-exempt “prohibited transaction” (within the meaning of Section 4975 of the Code or Section 406 of ERISA) has occurred with respect to any Company Plan that has subjected or could reasonably be expected to subject the Company, its Subsidiaries or any ERISA Affiliate, to a Tax or penalty pursuant to Section 502 of ERISA or Section 4975 of the Code or any other liability or penalty with respect thereto.

(d) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each “nonqualified deferred compensation plan” (as defined in Code Section 409A(d)(1) and applicable regulations) with respect to any service provider to the Company or its Subsidiaries (i) complies and has been operated in compliance with the requirements of Code Section 409A and regulations promulgated thereunder, or (ii) is exempt from compliance under the “grandfather” provisions of IRS Notice 2005-1 and applicable regulations and has not been “materially modified” (within the meaning of IRS Notice 2005-1 and Treasury Regulations §1.409A-6(a)(4)) subsequent to October 3, 2004.

(e) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all required contributions to, and premium payments on account of, each Company Plan have been made on a timely basis. Each Company Plan may be amended or terminated without penalty other than the funding or payment of benefits, fees or charges accrued or incurred through the date of termination.



(f) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or as set forth on Schedule 3.13(f), neither the execution of the Transaction Agreements nor the consummation of the transactions contemplated hereby and thereby will (i) accelerate the time of payment or vesting or increase the amount of compensation or benefits due to any Company employee, or (ii) give rise to any other liability or funding obligation under any Company Plan or otherwise, including liability for severance pay, unemployment compensation or termination pay.

(g) Except as set forth on Schedule 3.13(g), no Benefit Plan of the Company is maintained outside the jurisdiction of the United States, or covers any employee residing or working outside the United States (any such Benefit Plan the “**Foreign Benefit Plans**”). Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all Foreign Benefit Plans that are required to be funded are fully funded, and with respect to all other Foreign Benefit Plans, adequate reserves therefor have been established on the accounting statements of the Company or its applicable Subsidiary.

### 3.14 Labor Relations.

(a) (i) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or as set for in Schedule 3.14, no Company employee is represented by a labor union or works council and, to the Knowledge of the Company, no organizing efforts have been conducted within the last three years or are now being conducted, (ii) neither the Company nor any of its Subsidiaries is a party to any material collective bargaining agreement or other labor contract or collective agreement, and (iii) neither the Company nor any of its Subsidiaries currently has, or, to the Knowledge of the Company, is there now threatened, a strike, picket, work stoppage, work slowdown or other material labor dispute.

(b) (i) Each of the Company and its Subsidiaries has complied with all applicable laws relating to the employment of labor, including all applicable laws relating to wages, hours, collective bargaining, employment discrimination, civil rights, safety and health, workers’ compensation, pay equity and the collection and payment of withholding and/or social security taxes, except as would not, individually or in the aggregate, have a Material Adverse Effect and (ii) neither the Company nor any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or any similar state or local Law within the last two years which remains unsatisfied.

### 3.15 Taxes.

(a) The Company and each of its Subsidiaries have filed all federal income Tax Returns and all other material Tax Returns required to have been filed as of the date hereof (taking into account any extensions that have been duly obtained) and such Tax Returns are correct and complete in all respects and have paid all Taxes required to have been timely paid by them in full through the date hereof, regardless of whether or not shown on any such Tax Return, except to the extent such Taxes are both (i) being challenged in good faith and (ii) adequately provided for on the financial statements of the Company and its Subsidiaries in accordance with GAAP, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Neither the Company nor any of its Subsidiaries has any current liability, and to the Knowledge of the Company, there are no events or circumstances which would result in any liability, for Taxes of any Person (other than the Company and its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or otherwise, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) None of the Company or any of its Subsidiaries is a party to, is bound by or has any obligation under any Tax sharing or Tax indemnity agreement or similar Contract or arrangement other than any such agreement or similar Contract or arrangement to which the Company and any of its Subsidiaries are the exclusive parties.

(d) All Taxes required to be withheld, collected or deposited by or with respect to Company and each of its Subsidiaries have been timely withheld, collected or deposited as the case may be, and to the extent required, have been paid to the relevant taxing authority except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(e) No deficiencies for any Taxes have been proposed or assessed in writing against or with respect to the Company or any of its Subsidiaries, and there is no outstanding audit, assessment, dispute or claim concerning any Tax liability of the Company or any of its Subsidiaries pending or raised by an authority in writing, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No written claim has been made by any Governmental Entity in a jurisdiction where neither the Company nor any of its Subsidiaries files Tax Returns that the Company or any of its Subsidiaries is or may be subject to taxation by that jurisdiction. Neither the Company nor any of its Subsidiaries has granted any waiver of any federal, state, local or foreign statute of limitations with respect to, or any extension of a period for the assessment of, any material Tax.

(f) There are no material Liens with respect to Taxes upon any of the assets or properties of either the Company or any of its Subsidiaries, other than with respect to Taxes not yet delinquent except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(g) No closing agreement pursuant to Section 7121 of the Code (or any similar provision of state, local or foreign law) has been entered into by or with respect to the Company or any of its Subsidiaries.

(h) Neither the Company nor any of its Subsidiaries has participated in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

(i) The representations and warranties expressly set forth in this Section 3.15 shall be the only representations and warranties, express or implied, written or oral, with respect to the subject matter contained in this Section 3.15.

3.16 Registration. Shares of the Common Stock are registered pursuant to Section 12(g) of the Exchange Act and there is no action pending by the Company or any other Person to terminate the registration of the Common Stock under the Exchange Act, nor has the Company received any notification that the SEC is currently contemplating terminating such registration.

3.17 Investment Company Act. The Company is not, nor immediately after the Company's receipt of the Preferred Share Purchase Price from the Purchasers, will the Company be, an "investment company" within the meaning of, and required to be registered under, the Investment Company Act of 1940, as amended.

3.18 Brokers. The Company has not retained, utilized or been represented by any broker or finder who is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement.

### 3.19 Subsidiaries.

(a) As of the date hereof, the Company has no Subsidiaries other than as listed in Schedule 3.19.

(b) Except as set forth on Schedule 3.19, all of the outstanding shares of capital stock of, or other equity or voting interest in, each Subsidiary of the Company that are owned by the Company or one of its Subsidiaries (i) have been duly authorized, validly issued and are fully paid and nonassessable and (ii) are owned, directly or indirectly, by the Company or one of its Subsidiaries, free and clear of all Liens (other than restrictions under applicable securities Laws and Liens securing the indebtedness under the Indenture or under any other existing Indebtedness for borrowed money of Schuff or any of its Subsidiaries set forth on Schedule 3.2(g)).

### 3.20 Environmental Matters.

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(i) The Company and its Subsidiaries and their respective operations are and have been in compliance with all, and have not violated any, applicable Environmental Laws, which compliance includes the possession and maintenance of, and compliance with, all permits, licenses, authorizations, waivers, exemptions, registrations, consents, approvals and franchises from Governmental Entities required under applicable Environmental Laws ("**Environmental Permits**") for the operation of the business of the Company and its Subsidiaries; the Company has no reason to believe that any such Environmental Permits will be modified, revoked or otherwise made ineffective, or will not be renewed on terms substantially the same as those currently in effect.

(ii) Neither the Company nor any of its Subsidiaries, nor any other entity for which the Company or any of its Subsidiaries is responsible, has transported, produced, processed, manufactured, generated, used, treated, handled, stored or disposed of any Hazardous Substances, except in compliance with applicable Environmental Laws and in a

manner that would not result in liability under any applicable Environmental Law. No Hazardous Substance has been released by the Company, the Subsidiaries, or to the Knowledge of the Company, by any other Person (including, without limitation, any of the predecessors in interest to the Company or any of its Subsidiaries), at, on, about or under (i) any property now or formerly owned, operated or leased by the Company, its Subsidiaries or their respective predecessors in interest; or (ii) any property to which the Company, its Subsidiaries or their respective predecessors in interest has sent waste;

(iii) Neither the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any of their respective predecessors in interest has exposed any employee or any third party to Hazardous Substances in violation of, or in a manner that would result in a liability under, any applicable Environmental Law or tort law;

(iv) Neither, the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any of their respective predecessors in interest, is a party to or the subject of any pending, or, to the Knowledge of the Company, threatened, Legal Proceeding alleging Liabilities under or noncompliance with any Environmental Law or seeking to impose any financial responsibility for any investigation, cleanup, removal, containment or any other remediation or compliance under any Environmental Law. Neither the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any of their respective predecessors in interest, is subject to any orders, judgments or decrees or agreement by or with any Governmental Entity or third party imposing any Liabilities with respect to any Environmental Laws or any Hazardous Substances;

(v) There are no liabilities of any third party arising out of or related to Environmental Laws or Hazardous Substances that the Company, its Subsidiaries or, to the Knowledge of the Company, their respective predecessors in interest has expressly agreed to assume, to indemnify or retain by contract or otherwise;

(vi) Neither the Company nor the Subsidiaries has received any notice, claim, subpoena, or summons from any Person alleging: (i) any environmental liability relating to the Company, the Subsidiaries, or their respective predecessors in interest; or (ii) any violation by the Company, the Subsidiaries or their respective predecessors in interest of any Environmental Law;

(vii) Neither the Company nor any of its Subsidiaries has manufactured any products that are not or were not in compliance with all Environmental Laws applicable to such products to be imported, sold, or otherwise marketed in any jurisdiction in which such products are currently, or have been, imported, sold, or otherwise marketed; and

(viii) None of the products currently or formerly manufactured, produced, distributed, sold, leased, licensed, repaired, delivered, installed, conveyed or otherwise put into the stream of commerce by the Company or any of its Subsidiaries, or, to the Knowledge of the Company, any other Person for which the Company or any of its Subsidiaries is responsible by contract or operation of law, contains or has contained (i) asbestos; or (ii) any other Hazardous Substance that has resulted in or would reasonably be expected to result in any liability to the Company or any of its Subsidiaries.

(b) As of the date hereof, all reports of environmental site assessments, reviews, audits, investigations or similar evaluations, and any material documents in the possession or control of the Company or any of its Subsidiaries concerning (i) environmental conditions at any facilities or real property ever owned, operated or leased by the Company, the Subsidiaries or any of their respective predecessors in interest; or (ii) any environmental liability of the Company, its Subsidiaries or any of their respective predecessors in interest have been made available to the Purchasers.

(c) The representations and warranties expressly set forth in this Section 3.20 shall be the only representations and warranties, express or implied, written or oral, with respect to the subject matter contained in this Section 3.20.

### 3.21 Assets.

(a) The Company and its Subsidiaries have good and marketable title to all of its or their real or personal properties (whether tangible or intangible), rights and assets, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, in each case, free and clear of all Liens (other than Permitted Liens or as disclosed on Schedule 3.21). The properties and assets owned and leased by the Company and its Subsidiaries are sufficient to carry on their businesses as they are now being conducted except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company or a Subsidiary of the Company has good and valid leasehold interests in all of its leased properties, whether as lessee or sublessee (the "**Leased Real Property**"), in each case, sufficient to conduct its respective businesses as currently conducted, free and clear of all Liens (other than Permitted Liens), assuming the timely discharge of all obligations owing under or related to Leased Real Property. Except as set forth on Schedule 3.21(b), neither the Company nor any of its Subsidiaries owns or has ever owned any real property.

3.22 Insurance. The Company and its Subsidiaries have and maintain in effect policies of insurance covering the Company, its Subsidiaries or any of their respective employees, properties or assets, including policies of life, property, fire, workers' compensation, products liability, directors' and officers' liability and other casualty and liability insurance, that is in a form and amount that is customarily carried by persons conducting business similar to that of the Company and its Subsidiaries and which the Company reasonably believes are adequate for the operation of its business. All such insurance policies are in full force and effect, no written notice of cancellation has been received by the Company as of the date hereof and, to the Knowledge of the Company, no such notice is imminent, and there is no existing default or event which, with the giving of notice or lapse of time or both, would constitute a default, by any insured thereunder, except for such defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no material claim pending under any of such policies as to which coverage has been denied or disputed by the underwriters of such policies and there has been no threatened termination of any such policies, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### 3.23 Material Contracts.

(a) Except as filed as an exhibit to the Company SEC Filings or as set forth on Schedule 3.23, there are none of the following (each a “**Material Contract**”):

(i) Contracts restricting the payment of dividends upon, or the redemption, repurchase or conversion of, the Convertible Preferred Stock or the Common Stock issuable upon conversion thereof;

(ii) joint venture, partnership, limited liability or other similar Contract or arrangement relating to the formation, creation, operation, management or control of any partnership or joint venture that is material to the business of the Company and its Subsidiaries, taken as a whole;

(iii) any Contract relating to the acquisition or disposition of any business, stock or assets that (x) is material to the business of the Company and its Subsidiaries, taken as a whole, other than in the ordinary course of business consistent with past practice, or (y) has representations, covenants, escrows, indemnities, purchase price payments, “earn-outs”, adjustments or other obligations that are still in effect;

(iv) Contracts containing any covenant (x) limiting the right of the Company or any of its Subsidiaries to engage in any line of business or in any geographic area, or (y) prohibiting the Company or any of its Subsidiaries from engaging in business with any Person or levying a fine, charge or other payment for doing so;

(v) “material contracts” (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC, excluding any exhibits, schedules and annexes to such material contracts that are not required to be filed with the SEC, and those agreements and arrangements described in Item 601(b)(10)(iii) with respect to the Company and its Subsidiaries required to be filed with the SEC (the Material Contracts, together with any lease, binding commitment, option, insurance policy, benefit plan or other contract, agreement, instrument or obligation (whether oral or written) to which the Company or any of its Subsidiaries may be bound, the “**Contracts**”);

(vi) Contracts relating to indebtedness for borrowed money of the Company or any of its Subsidiaries in an amount exceeding \$250,000;

(vii) Contracts (other than the Transaction Agreements) that would be or purport to be binding on the Purchasers or any of their Affiliates after the Closing;

(viii) Contracts with any Governmental Entity that imposes any material obligation or restriction on the Company or any of its Subsidiaries, taken as a whole; and

(ix) any material Contract with any current or former director, officer or employee, or with any HRG Affiliate.

(b) Each Material Contract is valid and binding on the Company (and/or each such Subsidiary of the Company party thereto) and, to the Knowledge of the Company, on each other party thereto, and is in full force and effect, and neither the Company nor any of its Subsidiaries that is a party thereto, nor, to the Knowledge of the Company, any other party thereto, is in breach of, or default under, any such Material Contract, and no event has occurred that with notice or lapse of time or both would constitute such a breach or default thereunder or would result in the termination thereof or would cause or permit the acceleration or other change of any right or obligation of the loss of any benefit thereunder by the Company or any of its Subsidiaries, or, to the Knowledge of the Company, any other party thereto, except for such failures to be in full force and effect and such breaches and defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.24 Right of First Refusal; Stockholders Agreement; Voting and Registration Rights; and Related Party Transactions. Except as set forth on Schedule 3.24 or as provided for in this Agreement or the other Transaction Agreements, no party has any right of first refusal, right of first offer, right of co-sale, preemptive right, anti-dilution right or other similar right regarding Equity Securities of the Company. Except as set forth on Schedule 3.24, there are no provisions of the Company's organizational documents and no Material Contracts other than the Certificate of Designation, this Agreement or the other Transaction Agreements, which (a) may affect or restrict the voting rights of the Purchasers with respect to the Preferred Shares in their capacity as stockholders of the Company, (b) restrict the ability of the Purchasers, or any successor thereto or assignee or transferee thereof, to transfer the Preferred Shares, (c) would adversely affect the Company's or the Purchasers' right or ability to consummate the transactions contemplated by this Agreement or comply with the terms of the other Transaction Agreements or the Certificates of Designation and the transactions contemplated hereby or thereby, (d) require the vote of more than a majority of the Company's issued and outstanding Common Stock or require a separate class vote, voting together as a single class, to take or prevent any corporate action (other than those matters expressly requiring a different vote under the provisions of the DGCL) or (e) entitle any party to nominate or elect any director of the Company or require any of the Company's stockholders to vote for any such nominee or other person as a director of the Company. Except for the matters disclosed on Schedule 3.24 or as described in the Company SEC Filings, no Affiliate of the Company or any of its Subsidiaries and no officer or director (or equivalent) of the Company or any of its Subsidiaries (or, to the Company's Knowledge, any family member of any such Person who is an individual or any entity in which any such Person or any such family member thereof owns a material interest): (a) has any material interest in any material asset owned or leased by the Company or any of its Subsidiaries or used in connection with the business of the Company or (b) has engaged in or is a party to any material transaction, arrangement or understanding with the Company or any of its Subsidiaries (other than payments made to, and other compensation provided to, officers and directors (or equivalent) in the ordinary course of business).

3.25 Section 203 of DGCL. The Company has elected in its certificate of incorporation not to be governed by Section 203 of the DGCL and no other state takeover statute or similar regulation applies to or purports to apply to the Transaction Agreements and the transactions contemplated hereby and thereby.

3.26 No Other Representations and Warranties. Except for the representations and warranties contained in Section 3 (including, or as qualified by, the Disclosure Schedule), the Company makes no other representation or warranty, express or implied, written or oral, and hereby, to the maximum extent permitted by applicable Law, disclaims any such representation or warranty, whether by the Company or any other Person, with respect to the Company or with respect to any other information (including, without limitation, pro-forma financial information, financial projections or other forward-looking statements) provided to or made available to any Purchaser in connection with the transactions contemplated hereby. Neither the Company nor any other Person will have or be subject to any liability or indemnification obligation to any Purchaser or any other Person resulting from any other express or implied representation or warranty with respect to the Company, unless any such information is expressly included in a representation or warranty contained in Section 3 or in an applicable section of the Disclosure Schedule.

4. Representations and Warranties of the Purchasers. Except as set forth in Section 4.10, each Purchaser represents and warrants, severally and not jointly, to the Company as follows:

4.1 Organization. Such Purchaser is a legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization.

4.2 Authorization. Such Purchaser has all requisite corporate or other power to enter into this Agreement and the other Transaction Agreements to which such Purchaser is a party and to consummate the transactions contemplated by the Transaction Agreements to which such Purchaser is a party and to carry out and perform its obligations thereunder. All corporate or other action on the part of such Purchaser or the holders of the capital stock or other equity interests of such Purchaser necessary for the authorization, execution, delivery and performance of the Transaction Agreements to which such Purchaser is a party has been taken. Upon their respective execution by such Purchaser and the other parties thereto and assuming that they constitute legal and binding agreements of the Company, each of the Transaction Agreements to which such Purchaser is a party will constitute a legal, valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with its terms, except that such enforceability (a) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting or relating to creditors' rights generally, and (b) is subject to general principles of equity (regardless of whether considered in a proceeding in equity or at Law).

4.3 No Conflict. The execution, delivery and performance of the Transaction Agreements to which such Purchaser is a party by such Purchaser, the issuance of the Preferred Shares and the Common Stock upon conversion of the Preferred Shares in accordance with the Certificate of Designation and the consummation of the other transactions contemplated hereby will not (i) conflict with or result in any violation of any provision of the certificate of incorporation or by-laws or other equivalent organizational document, in each case as amended, of such Purchaser, (ii) result in any breach or violation of, or default (with or



without notice or lapse of time, or both) under, require consent under, any Contract binding upon such Purchaser or (iii) subject to the matters referred to in Section 4.4, conflict with or violate any applicable Laws or any judgment, order, injunction or decree issued by any Governmental Entity, except in the case of each of clauses (i), (ii) and (iii) as would not, individually or in the aggregate, be reasonably expected to materially delay or hinder the ability of such Purchaser to perform its obligations under the Transaction Agreements (with respect to each Purchaser, a “**Purchaser Adverse Effect**”).

4.4 Consents. No Consent of any Governmental Entity is required on the part of such Purchaser in connection with (a) the execution, delivery or performance of the Transaction Agreements to which such Purchaser is a party and the consummation of the transactions contemplated hereby and thereby, and (b) the issuance of the Preferred Shares or the issuance of the Common Stock upon conversion of the Preferred Shares in accordance with the Certificate of Designation, other than (i) those to be obtained, in connection with the registration of the Preferred Shares under the Registration Rights Agreement, under the applicable requirements of the Securities Act and any related filings and approvals under applicable state securities Laws, (ii) such filings and approvals as may be required by any federal or state securities Laws, including compliance with any applicable requirements of the Exchange Act, and (iii) such Consents the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Purchaser Adverse Effect.

4.5 Brokers. Such Purchaser has not retained, utilized or been represented by any broker or finder in connection with the transactions contemplated by this Agreement whose fees the Company would be required to pay.

4.6 Purchase Entirely for Own Account. Such Purchaser is acquiring the Preferred Shares for its own account solely for the purpose of investment, not as nominee or agent, and not with a view to, or for sale in connection with, any distribution of the Preferred Shares in violation of the Securities Act, and such Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same, in violation of the Securities Act. Such Purchaser has no present agreement, undertaking, arrangement, obligation or commitment providing for the disposition of the Preferred Shares.

4.7 Investor Status. Such Purchaser certifies and represents to the Company that such Purchaser is an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act. Such Purchaser’s financial condition is such that it is able to bear the risk of holding the Preferred Shares for an indefinite period of time and the risk of loss of its entire investment. Such Purchaser has been afforded the opportunity to receive information from, and to ask questions of and receive answers from the management of, the Company concerning this investment so as to allow it to make an informed investment decision prior to its investment and has sufficient knowledge and experience in investing in companies similar to the Company so as to be able to evaluate the risks and merits of its investment in the Company.

#### 4.8 Securities Not Registered.

(a) Such Purchaser understands that the Preferred Shares and the Conversion Shares have not been approved or disapproved by the SEC or by any state securities commission nor have the Preferred Shares or the Conversion Shares been registered under the Securities Act, by reason of their issuance by the Company in a transaction exempt from the registration requirements of the Securities Act, and that the Preferred Shares and the Conversion Shares must continue to be held by such Purchaser unless a subsequent disposition thereof is registered under the Securities Act or is exempt from such registration. Such Purchaser understands that the exemptions from registration afforded by Rule 144 under the Securities Act (“**Rule 144**”) (the provisions of which are known to it) depend on the satisfaction of various conditions, and that, if applicable, Rule 144 may afford the basis for sales only in limited amounts.

(b) The Preferred Shares and the Conversion Shares shall be subject to the restrictions contained herein.

(c) It is understood that the Preferred Shares and the Conversion Shares, and any securities issued in respect thereof or in exchange therefor, may bear one or all of the legends set forth in Section 9.

4.9 Financing. Such Purchaser has (and at the Closing will have) an amount of cash sufficient to enable it to consummate the transactions contemplated hereunder (including the purchase of the Preferred Shares set forth next to such Purchaser’s name on Annex A) on the terms and conditions set forth in this Agreement.

#### 4.10 Equity Securities of the Company and its Subsidiaries.

(a) Each of the Caspian Purchasers represent and warrant to the Company that no Caspian Purchasers nor any of their Affiliates Beneficially Owns any Equity Securities of the Company or any of its Subsidiaries, except, as of the Closing, the Preferred Shares.

(b) Except as disclosed to the Company in writing on or prior to the date hereof, the Imperial Purchaser represents and warrants to the Company that neither the Imperial Purchaser nor any of its Affiliates Beneficially Owns any Equity Securities of the Company or any of its Subsidiaries, except, as of the Closing, the Preferred Shares.

4.11 Indebtedness. Except as disclosed to the Company in writing on or prior to the date hereof, neither such Purchaser nor any of its Affiliates owns any debt securities or other indebtedness issued by the Company or any of its Subsidiaries.

#### 5. Covenants.

5.1 Shares Issuable Upon Conversion. The Company will at all times have reserved and available for issuance such number of shares of Common Stock as shall be from time to time sufficient to permit the conversion in full of the outstanding Preferred Shares into Common Stock, including as may be adjusted for share splits, combinations or other similar transactions as of the date of determination or due to the accrual of Accreting Dividends.

## 5.2 Commercially Reasonable Efforts; Further Assurances.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Purchasers and the Company shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties or parties hereto in doing, all things reasonably necessary, proper or advisable under applicable Law to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement and the other Transaction Agreements, including using commercially reasonable efforts to: (i) cause the conditions to the applicable Closing set forth in Section 6 to be satisfied; (ii) obtain all necessary actions or non-actions, waivers, consents, approvals, orders and authorizations from Governmental Entities and make all necessary registrations, declarations and filings with Governmental Entities; and (iii) execute or deliver any additional instruments reasonably necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement and the other Transaction Agreements.

(b) Each party agrees to cooperate with each other and their respective officers, employees, attorneys, accountants and other agents, and, generally, do such other reasonable acts and things in good faith as may be reasonably necessary to effectuate the transactions contemplated by this Agreement and the other Transaction Agreements, subject to the terms and conditions hereof and thereof and compliance with applicable Law, including taking reasonable action to facilitate the filing of any document or the taking of reasonable action to assist the other parties hereto in complying with the terms hereof and thereof.

## 5.3 Standstill.

(a) Each Purchaser hereby agrees that from the Closing until the date that is three (3) years following the Closing (the “**Standstill Period**”), such Purchaser shall not, and shall cause its Affiliates not to, directly or indirectly:

(i) except for Equity Securities of the Company received (1) by way of stock splits, stock dividends, reclassifications, recapitalizations or other distributions by the Company in respect of the Preferred Shares (or the Common Stock issuable on conversion of the Preferred Shares), (2) pursuant to the conversion of the Preferred Shares, (3) pursuant to Section 5.4, (4) by such Purchaser by way of a transfer or sale from any other Purchaser, (5) by way of an issuance by the Company, or (6) upon the exercise or conversion of any convertible or exercisable Equity Securities of the Company received pursuant to the foregoing sub-clauses (1), (2), (3), (4) or (5), (x) acquire (directly or indirectly, by purchase or otherwise) any Equity Securities of the Company or (y) authorize or make a tender offer, exchange offer or other offer or proposal, whether oral or written, to acquire (directly or indirectly, by purchase or otherwise) Equity Securities of the Company, in each case, if such acquisition (together with any other Equity Securities of the Company previously acquired) would result in such Purchaser and its Affiliates Beneficially Owning (on an as converted basis) an amount of Common Stock equal to or greater than fifteen percent (15%) of the Company’s issued and outstanding Common Stock (assuming the conversion of the Preferred Shares held by such Purchaser and its Affiliates);

(ii) except indirectly as a result of ownership of Equity Securities of the Company acquired hereunder at any Closing or thereafter in accordance with Section 5.3(a)(i), (x) acquire (directly or indirectly, by purchase or otherwise) any Equity Securities of any Subsidiary of the Company or (y) authorize or make a tender offer, exchange offer or other offer or proposal, whether oral or written, to acquire (directly or indirectly, by purchase or otherwise) Equity Securities of any Subsidiary of the Company, in each case if such acquisition (together with any other Equity Securities of any Subsidiary of the Company previously acquired) would result in such Purchaser and its Affiliates Beneficially Owning (on an as converted basis) an amount of any such Subsidiary's common stock equal to or greater than fifteen percent (15%) of such Subsidiary's issued and outstanding common stock (assuming conversion of any Equity Securities that is convertible into common stock held by such Purchaser and its Affiliates);

(iii) make, or in any way participate, directly or indirectly, in any "solicitation" of "proxies" to vote (as such terms are used in the rules of the SEC), or seek to advise or influence any Person (other than (x) such Purchaser or its Affiliates or (y) in accordance with and consistent with the recommendation of the Board) with respect to the voting of any Voting Stock;

(iv) authorize or commence any tender offer or exchange offer for shares of Voting Stock (for the avoidance of doubt, tendering into any tender offer or exchange offer not otherwise violating this clause this Section 5.3(a)(iv) will not violate this Section 5.3(a)(iv));

(v) form, join or in any way participate in a "group" as defined in Section 13(d)(3) of the Exchange Act, for the purpose of voting, acquiring, holding, or disposing of any Voting Stock;

(vi) submit to the Board a written proposal for or offer of (with or without conditions), any merger, recapitalization, reorganization, business combination or other extraordinary transaction involving the Company or any Subsidiary thereof or any of the securities or assets, or make any public announcement with respect to such proposal or offer;

(vii) request the Company or any of its Affiliates, directly or indirectly, to amend or waive any provision of this Section 5.3; or

(viii) enter into any arrangements with any third party concerning any of the foregoing.

(b) If, at any time prior to the termination of the Standstill Period, (i) the Company has entered into a definitive agreement, the consummation of which would result in a Change of Control, (ii) any Person shall have commenced and not withdrawn a bona fide public tender or exchange offer which if consummated would result in a Change of Control and the Board has not recommended that the stockholders of the Company reject such offer within the time period contemplated by Rule 14e-3 under the Exchange Act, or (iii) the Company

files or consents to the filing against the Company of a petition for relief or reorganization or arrangement or any other petition in bankruptcy, insolvency, reorganization or other similar Law, makes an assignment for the benefit of creditors or consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to the Company or with respect to any substantial part or its property, then, in each case, for so long as such condition continues to apply, the limitation on the actions described in clauses (iii), (iv), (v), (vi), (vii) and (viii) of Section 5.3(a) (and any related acquisition of Beneficial Ownership by such Purchaser and/or their Affiliates) shall not be applicable to such Purchaser.

(c) Anything in this Section 5.3 to the contrary notwithstanding, this Section 5.3 shall not be construed to prohibit or restrict (i) any actions taken by any designee, nominee or appointee on the Board, in their capacities as a member of the Board and in compliance with and subject to his or her fiduciary duties as a member of the Board or (ii) the Purchaser from making non-public suggestions, recommendations and proposals regarding the future management of, or business plans of, the Company to the Company's management or its Board, in each case that would not require any Person to publicly disclose such suggestions, recommendations or proposals.

#### 5.4 Securities Participation Rights.

(a) For so long as a Purchaser (together with its Affiliates) owns at least 50% of the aggregate number of Preferred Shares issued to such Purchaser and its Affiliates at the Closing (or the Common Stock issued upon conversion thereof), the Company shall not issue, or agree to issue, any Equity Securities (including, without limitation, any Preferred Stock) of the Company to any Person unless the Company offers such Purchaser (together with its Affiliates) the right (the "**Securities Participation Right**") to purchase in the aggregate (i) subject to the following clause (ii), up to the number of such Equity Securities of the Company (the "**Securities Participation Amount**") equal to the product of (x) the total number of such offered shares of Equity Securities of the Company multiplied by (y) such Purchaser's Participation Rights Fraction, or (ii) in the event that the Equity Securities of the Company issued are preferred stock that are not convertible into Common Stock (or Equity Securities of the Company that are convertible into Common Stock) and non-voting (treating preferred stock that is entitled to elect no more than two directors upon a default resulting from the failure to pay six (6) or more consecutive quarterly dividends as non-voting for this purpose) ("**Non-Convertible Preferred Securities**"), up to such Purchaser's Non-Convertible Preferred Participation Amount, at the same price per security (payable in cash, except to the extent that the consideration for such issuance is an exchange of Convertible Preferred Stock) and otherwise upon the same terms and conditions as those offered to such Person in accordance with the procedures set forth in this Section 5.4; provided that the Securities Participation Rights shall not be applicable to the issuance of the following Equity Securities of the Company: (i) an underwritten registered public offering of Common Stock for cash (which shall exclude for this purpose any registered direct offering to one or more purchasers (other than to or through brokers, dealers, underwriters or market makers, in each case purchasing for resale to investors) in an aggregate amount greater than the lesser of \$5 million and 1% of the shares the Company's Common Stock then outstanding), (ii) an issuance of equity or equity linked securities pursuant to any director, officer or employee compensation arrangements that is permitted, or not prohibited by, the Certificate of Designation or any issuance of equity or equity linked securities

pursuant to the existing terms of any such arrangements in effect as of the Closing Date, (iii) an issuance of equity to a seller, or in the case of a merger, the shareholders of the target company, and the employees or officers of any target company in connection with a bona fide merger, business combination transaction or acquisition of stock or assets outside of the ordinary course (other than any issuance to an Affiliate in connection thereof), (iv) a conversion of shares of one class of capital stock of the Company into shares of another class of capital stock of the Company in accordance with the terms of such securities, (v) a stock split or other subdivision or combination, or a stock dividend made to all holders on a pro rata basis of any Equity Securities of the Company or (vi) an issuance of Equity Securities of the Company that is incidental to and is issued as part of a debt financing from a bank, institutional lender or similar financial institution. For purposes of clarity, the parties agree that the issuance of Conversion Shares shall not be subject to the Securities Participation Rights. In no event will any Convertible Preferred Stock, Series A Convertible Preferred Stock or Series A-1 Convertible Preferred Stock (or any Common Stock issuable in connection with the conversion of any Convertible Preferred Stock, Series A Convertible Preferred Stock or Series A-1 Convertible Preferred Stock) issued in connection with or as a result of accretions to the face amount of, or payments in kind with respect to, any Convertible Preferred Stock, Series A Convertible Preferred Stock, Series A-1 Convertible Preferred Stock or Equity Securities of the Company outstanding on the Closing or otherwise permitted to be issued, or not prohibited, by the Certificate of Designation be subject to the Securities Participation Rights. A Purchaser shall be entitled to apportion or assign its Securities Participation Amount or Non-Convertible Preferred Participation Amount in such proportions as it deems appropriate, among itself, its Affiliates, and to any other Purchaser, provided that the total amount of Non-Convertible Preferred Participation Amount that the Purchasers shall be entitled to purchase in the aggregate pursuant to this section shall not exceed 8% of the aggregate amount of Non-Convertible Preferred Securities issued in such transaction.

(b) *Securities Participation Rights Process.*

(i) The Company shall send a written notice (the “**Securities Participation Rights Notice**”) to each Purchaser stating the number of Equity Securities of the Company to be offered, a description of the terms of such Equity Securities of the Company if not Common Stock, the price and terms on which it proposes to offer such Equity Securities of the Company (including a description of any non-cash consideration sufficiently detailed to permit a valuation thereof), and a reference to such Purchaser’s Securities Participation Rights hereunder.

(ii) Within ten (10) Business Days after the delivery of the Securities Participation Rights Notice, each such Purchaser may elect by written notice to the Company (the “**Securities Exercise Notice**”) to purchase such Equity Securities of the Company, at the price and on the terms specified in the Securities Participation Rights Notice (or, if such price includes non-cash consideration, an amount of cash equal to the fair market value of such non-cash consideration, except to the extent that the consideration for such issuance is an exchange of Convertible Preferred Stock), up to (i) such Purchaser’s Securities Participation Amount or, (ii) in the event that the offered securities are preferred securities that are not convertible into Common Stock or Equity Securities of the Company that are convertible into Common Stock, up to such Purchaser’s Non-Convertible Preferred Participation Amount (or, in the case of each of the foregoing clauses (i) and (ii), such higher amount as has been

assigned to such Purchaser by any other Purchaser in accordance with Section 5.4(a) hereof). A Securities Exercise Notice shall constitute a binding agreement of such Purchaser to purchase the amount of Equity Securities of the Company so specified at the price and other terms set forth in the Securities Participation Rights Notice (subject to the form, terms and conditions of the definitive documentation thereof being reasonable satisfactory to such Purchaser). Assuming delivery of the Securities Participation Rights Notice in accordance with the terms hereof, the failure of any such Purchaser to respond within such ten (10) Business Day period shall be deemed a waiver of such Purchaser's rights under this Section 5.4 with respect to the offering described in the applicable Securities Participation Rights Notice. Notwithstanding anything to the contrary herein, at any time prior to the issuance of the Equity Securities of the Company (whether or not a Securities Exercise Notice shall have been delivered), the Company may elect (in its sole discretion), upon written notice to the applicable Purchasers, not to issue such Equity Securities of the Company and rescind, in such event, the applicable Securities Participation Rights Notice without liability to any Person hereunder.

(iii) Subject to the last sentence of this Section 5.4(b)(iii), the Company may offer the Equity Securities of the Company specified in the Securities Participation Rights Notice in excess of the Securities Participation Amount, if any, to any Person or Persons at a price not less than, and on terms no more favorable to such offerees than, those set forth in such Securities Participation Rights Notice, at any time after the Securities Participation Rights Notice is sent but on or before the 90th day after the Securities Participation Rights Notice was sent. In addition, during the period beginning ten (10) Business Days after the Securities Participation Rights Notice was sent and ending on the 90th day after the Securities Participation Rights Notice was sent, the Company may offer any Equity Securities of the Company of the Securities Participation Amount that are not timely elected to be purchased by the applicable Purchasers in accordance herewith to any other Person or Persons, provided that if such Equity Securities of the Company are to be offered at a price less than, or on terms materially more favorable to such offerees than, those specified in the Securities Participation Rights Notice, the Company shall promptly notify the applicable Purchasers in writing of such modified terms and such Purchasers shall have five (5) Business Days after the receipt of such notice in which to elect to purchase the Securities Participation Amount of such Equity Securities of the Company at the price and on the terms specified in such subsequent notice.

(iv) The closing of the purchase of Equity Securities of the Company by each Purchaser pursuant to this Section 5.4(b) shall occur as promptly as practicable following delivery of the Securities Exercise Notice to the Company by all Purchasers; provided that such closing shall be subject to and shall occur not earlier than the later of (x) concurrently with the closing of the purchase of Equity Securities of the Company by such offeree and (y) ten (10) Business Days after delivery of the Securities Exercise Notice by each Purchaser to the Company. The closing of the purchase of Equity Securities of the Company by the applicable Purchasers pursuant to this Section 5.4(b) shall also be subject to the receipt of any necessary regulatory approvals, the expiration of any required waiting periods and applicable Law.

(v) Notwithstanding anything to the contrary contained in this Agreement, in the event any Purchaser would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the purchase of Equity Securities of the Company by

such Purchaser pursuant to this Section 5.4, the closing of such purchase by such Purchaser shall be delayed (in whole, or at the option of such Purchaser, only to the extent necessary to avoid a violation of the HSR Act), until such Purchaser shall have made such filing under the HSR Act and such Purchaser shall have received early termination clearance in respect thereof or the waiting period in connection with such filing under the HSR Act shall have expired. In such circumstances such Purchaser shall use commercially reasonable efforts to make such filing and obtain such clearance or expiration of such waiting period as promptly as reasonably practical and the Company shall use commercially reasonable efforts to make all required filings and reasonably cooperate with and assist such holder in connection with the making of such filing and obtaining such clearance or expiration of such waiting period.

5.5 Hedging Restrictions. Each Purchaser agrees that, during the Hedging Limitation Period, it shall not, and shall cause each of its Affiliates not to, enter into any Hedging Agreement with respect to the Common Stock, the Convertible Preferred Stock, the Series A Convertible Preferred Stock, the Series A-1 Convertible Preferred Stock or the equity securities of any Subsidiary of the Company that are traded on a national securities exchange or the OTCQB. For the avoidance of doubt, following the Hedging Limitation Period, nothing in this Section 5.5 shall prohibit such Purchaser or its Affiliates from entering into any Hedging Agreement with respect to the Common Stock, the Convertible Preferred Stock, the Series A Convertible Preferred Stock, the Series A-1 Convertible Preferred Stock or the equity securities of any Subsidiary of the Company, including any transactions involving an index-based portfolio of securities that includes Common Stock or the equity securities of any Subsidiary of the Company (regardless of the value of such Common Stock or equity securities of any Subsidiary of the Company in such portfolio relative to the total value of the portfolio of securities) or involving the purchase or sale of derivative securities or any short sale of the Common Stock or the equity securities of any Subsidiary of the Company.

5.6 Form 8-K. The Company shall, promptly following the date hereof (but in any event within the time period required by the rules and regulations of the SEC), file a Current Report on Form 8-K, disclosing the material terms of the transactions contemplated hereby and filing the Transaction Agreements as exhibits thereto, provided that the Company shall afford the Purchasers with reasonable opportunity to review and comment on such Current Report on Form 8-K prior to the filing thereof.

5.7 Tax Characterization. Unless otherwise required by a “determination”, as defined in Section 1313(a) of the Code, the parties agree to treat the Convertible Preferred Stock as stock other than preferred stock for U.S. federal, and to the extent applicable, state and local income tax purposes.

5.8 Confidential Information.

(a) Each Purchaser recognizes that Confidential Information may have been and may be disclosed to such Purchaser by the Company or any of its Subsidiaries. Each Purchaser shall not engage in the unauthorized use, and shall cause its Affiliates not to engage in the unauthorized use, or make any unauthorized disclosure to any third party, of any Confidential Information without the prior written consent of the Company and shall use due care to ensure that such Confidential Information is kept confidential, including by treating such information as



such party would treat its own Confidential Information. Notwithstanding the foregoing, the Purchasers shall have the right to share any Confidential Information with any of their Representatives, each of whom shall be required to agree to keep confidential such Confidential Information to the extent required of the Purchaser under this Section 5.8. As used herein, “**Confidential Information**” means all information, knowledge, systems or data relating to the business, operations, finances, policies, strategies, intentions or inventions of the Company and/or its Subsidiaries (including any of the terms of this Agreement) from whatever source obtained, except for any such information, knowledge, systems or data which (i) has become publicly known and made generally available through no wrongful act of such Purchaser, (ii) has been rightfully received by such Purchaser from a third party who, to the knowledge of such Purchaser, is not bound any obligations of confidentiality with respect to such information, knowledge, systems or data, (iii) is independently developed by such Purchaser without use of Confidential Information, (iv) is already known by or is already in the possession of such Purchaser or any of its Affiliates prior to the date hereof, or (v) subject to the obligations set forth in Section 5.8(b), is required by law, court order, subpoena, stock exchange, self-regulatory organization, governmental agency, or regulatory body to be disclosed.

(b) If any Purchaser is requested to disclose any Confidential Information by any Governmental Entity or for any regulatory reason, such Purchaser will promptly notify the Company, as is reasonably practicable and legally permissible under the circumstances, to permit it to seek a protective order or take other action that the Board in its discretion deems appropriate, and such Purchaser will cooperate in any such efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded such Confidential Information, at the Company’s sole cost and expense. If, in the absence of a protective order, such Purchaser is compelled to disclose any such information in any proceeding or pursuant to legal process, such Purchaser may disclose to the party compelling disclosure only the part of such Confidential Information as is required to be disclosed (in which case, prior to such disclosure, such Purchaser will advise and, if requested by the Board, consult with the Company and its counsel as to such disclosure and the nature and wording of such disclosure) and such Purchaser will use its commercially reasonable efforts to obtain confidential treatment therefor. Notwithstanding the foregoing, the Purchaser shall not be required to notify the Company if it is required to disclose Confidential Information pursuant to a routine regulatory inquiry or blanket document request, not targeting the Company or the Board.

## 6. Conditions Precedent.

6.1 Conditions to the Obligation of the Purchasers to Consummate the Closing. The obligations of the Purchasers to consummate the transactions to be consummated at the Closing, and to purchase and pay for the Preferred Shares pursuant to this Agreement, are subject to the satisfaction of the following conditions precedent:

(a) the Company shall have filed with the Secretary of State of the State of Delaware the Certificate of Designation;

(b) the Company shall have executed and delivered the Registration Rights Agreement; and

(c) the Company shall have delivered to the Purchasers a certificate dated as of the Closing Date to the effect that each of the conditions specified in Section 6.1 has been satisfied (“**Closing Certificate**”).

6.2 Conditions to the Obligation of the Company to Consummate the Closing. The obligation of the Company to consummate the transactions to be consummated at the Closing, and to issue and sell to the Purchasers the Preferred Shares pursuant to this Agreement, is subject to the satisfaction of the following conditions precedent:

- (a) each Purchaser shall have executed and delivered each Transaction Agreement to which such Purchaser is a party; and
- (b) the Certificate of Designation shall have been duly filed and accepted by the Secretary of State of the State of Delaware.

7. Additional Covenants.

7.1 Board Observer Rights.

(a) Subject to the limitations set forth in this Section 7.1, effective immediately following the Closing and for so long as the Caspian Purchasers own at least 35% of the Preferred Shares in the aggregate issued to the Caspian Purchasers at the Closing (or the Common Stock issued upon conversion thereof), the Caspian Purchasers (along with their Affiliates) shall have the right to appoint one non-voting observer to the Board, any committee of the Board and to the board of directors (or equivalent governing body) of any Wholly Owned Subsidiary and to any committees thereof (the "**Purchaser Board Observer**"). For the avoidance of doubt, no Purchaser Board Observer (x) will have any rights to vote or (y) be counted for quorum purposes, in each case, with respect to any meeting of a board of directors or equivalent managing body (including any committees thereof). Additionally, the Company will use commercially reasonable efforts to request that the Caspian Purchasers be permitted to appoint a Purchaser Board Observer to the board of directors or equivalent managing body (including any committees thereof) of any Subsidiary of the Company that is not a Wholly Owned Subsidiary.

(b) The Purchaser Board Observer shall be entitled to observe all meetings of the board of directors (or equivalent governing body) and board committees of the Company (or the relevant Subsidiary of the Company) in person and shall receive reasonable prior written notice of all meetings of the board of directors (or equivalent governing body) and committees thereof in the same manner as notice is provided to members of such board of directors (or equivalent managing body) or committees thereof. The Purchaser Board Observer shall be provided with all of the information that is provided to the Board or the board of directors (or equivalent managing body) of the Company's Subsidiaries, or to any committees of the Board or the board of directors (or equivalent managing body) of any of the Company's Subsidiaries, or any member of any of the foregoing in their capacity as a director or committee member, as the case may be, at the same time and in the same manner as such information is provided to such board of directors (or equivalent managing body) or committee or any member thereof in their capacity as such and the Purchaser Board Observer shall be provided with any

written information prepared by the management of the Company or the applicable Subsidiary and distributed to the members of independent committees thereof and any written information provided by or on behalf of such independent committees to the Board or the board of directors of the applicable Subsidiary or any member of either of the foregoing in their capacity as such (in each case, at the same time and in the same manner as such written information is distributed to the members of such independent committees or any such member), provided that such Purchaser shall cause the Purchaser Board Observer to keep all such information confidential (such confidentiality obligations to be on customary terms and conditions and no more restrictive than the confidentiality obligations imposed on directors). The Company and its Subsidiaries shall not establish or employ committees with the purpose or effect of circumventing the rights of the Purchaser Board Observer established in this Section 7.1. Notwithstanding the foregoing, the Purchaser Board Observer may be prohibited from attending a meeting of a board of directors (or equivalent governing body) or any committees thereof of the Company or its Subsidiaries or receiving information to preserve any attorney-client privilege or other privilege or to prevent any breach of contract with any third party regarding non-disclosure, provided that the Company (or relevant Subsidiary) is advised by nationally recognized outside legal counsel that taking such action is necessary to preserve any such privilege or avoid breaching such Specified Non-Disclosure agreement.

7.2 Material Non-Public Information. If, at any time, a Purchaser has notified the Company in writing that it does not want to receive any material nonpublic information regarding the Company and its Subsidiaries, the Company shall thereafter not disclose material nonpublic information to such Purchaser, or to advisors to or representatives of such Purchaser (in their capacity as such) until such time as such Purchaser may again request in writing to receive such information; provided, that this Section 7.2 shall not apply to the Caspian Purchasers if the Caspian Purchasers are exercising their right to appoint a Purchaser Board Observer.

7.3 Information Rights. For so long as a Purchaser and its Affiliates collectively own at least seven and a half percent (7.5%) of the issued and outstanding shares of Common Stock (assuming conversion of any Preferred Shares they own), whether or not the Company is required to file any forms, reports or documents with the SEC, the Company shall deliver to each such Purchaser all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Form 10-Q or Form 10-K, as applicable, if the Company were required to file such Form with the SEC and, with respect to the annual information only, a report thereon by the Company's independent registered accountants. Notwithstanding the foregoing, the Company's obligation under this Section 7.3 to deliver the foregoing information shall be deemed to have been satisfied upon the filing of the abovementioned forms, reports and documents with the SEC in accordance with applicable Laws.

8. Transfer Restrictions. Each Purchaser understands and agrees that the Preferred Shares and any Conversion Shares may be offered, resold, pledged or otherwise transferred only (a) in a transaction not involving a public offering, (b) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available), (c) pursuant to an effective registration statement under the Securities Act, (d) to the Company or one of its Subsidiaries, (e) to any Affiliate of such Purchaser (provided such Person is an institutional

investor) or (f) to any other holder of shares of Convertible Preferred Stock and to any Affiliates thereof (provided such Person is an institutional investor); in each of cases (a) through (e) in accordance with any applicable state and federal securities laws; provided that as a condition precedent to a transfer of any Preferred Shares or Conversion Shares to an Affiliate of a Purchaser pursuant to clause (e), any such Affiliate shall assume, on a several and not joint basis, all then continuing obligations of such Purchaser hereunder pursuant to a written agreement reasonably acceptable to the Company. Any purported transfer of Preferred Shares or Conversion Shares other than in compliance with the terms hereof shall be void ab initio.

#### 9. Legends; Securities Act Compliance.

9.1 Legend. Each certificate representing the Preferred Shares and each certificate representing Conversion Shares will bear a legend conspicuously thereon to the following effect:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNLESS THE SAME ARE REGISTERED AND QUALIFIED IN ACCORDANCE WITH THE SAID ACT AND ANY OTHER APPLICABLE STATE SECURITIES LAWS OR SUCH OFFER, SALE, TRANSFER OR OTHER DISPOSITION IS EXEMPT FROM REGISTRATION UNDER SUCH ACT AND ANY OTHER APPLICABLE STATE SECURITIES LAWS.”

9.2 Termination of 1933 Act Legend. The requirement imposed by Section 9.2 hereof shall cease and terminate as to any particular Preferred Shares (a) when, in the opinion of counsel reasonably acceptable to the Company, such legend is no longer required in order to assure compliance by the Company with the Securities Act or (b) when such Preferred Shares have been effectively registered under the Securities Act or transferred pursuant to Rule 144. Wherever (x) such requirement shall cease and terminate as to any Preferred Shares or (y) such Preferred Shares shall be transferable under paragraph (b)(1) of Rule 144, the holder thereof shall be entitled to receive from the Company, without expense, new certificates not bearing the legend set forth in Section 9.2 hereof.

#### 10. Indemnification; Survival.

10.1 Company Indemnification. The Company shall defend, indemnify, exonerate and hold free and harmless each Purchaser and its Affiliates and their respective directors, officers and employees (each, a “**Purchaser Indemnified Party**” and, collectively, the “**Purchaser Indemnified Parties**”) from and against any and all Losses actually incurred by such Indemnified Parties that arise out of, or result from: (i) any inaccuracy in or breach of the Company’s representations or warranties in this Agreement or the Closing Certificates or (ii) the Company’s breach of its agreements or covenants in this Agreement.

10.2 Survival of Representations and Warranties; Covenants. The representations and warranties contained herein shall survive until the earlier of (i) 5:00 p.m. EDT on the twenty four (24) month anniversary of the Closing or (ii) the date that the Public Float Hurdle (as such term is defined in the Certificate of Designation) is met but in any event for a minimum of fifteen (15) months following the Closing, other than the representations and warranties set forth in Sections 3.1, 3.2, 3.3, and 3.4, which shall survive indefinitely. For the avoidance of doubt, all other covenants, agreements and obligations contained in this Agreement shall survive indefinitely (unless a different period is specifically provided for pursuant to the provisions of this Agreement expressly relating thereto).

10.3 Purchaser Indemnification. Each Purchaser, severally and not jointly, shall defend, indemnify, exonerate and hold free and harmless the Company and its Affiliates and their respective directors, officers and employees (each a “**Company Indemnified Party**” and collectively, the “**Company Indemnified Parties**”) from and against any and all Losses actually incurred by such Company Indemnified Parties that arise out of, or result from: (i) any inaccuracy in or breach of such Purchaser’s representations or warranties in this Agreement (which breach and any resulting Losses shall be determined for purposes of this Section 10.3 without giving effect to any qualification as to “materiality”, “Material Adverse Effect” or words of like meaning set forth therein) or (ii) such Purchaser’s breach of its agreements or covenants in this Agreement.

10.4 Limitations. Notwithstanding anything in this Agreement to the contrary, (i) no indemnification claims for Losses shall be asserted by the Purchaser Indemnified Parties under Section 10.1 (other than indemnification claims for Losses with respect to the representations and warranties set forth in Sections 3.1, 3.2, 3.3, 3.4, 3.15 and 3.18, (the foregoing referred to as the “**Company Fundamental Representations**”) or based on Fraud) or by the Company Indemnified Parties under Section 10.3 (other than indemnification claims for Losses with respect to the representation and warranties set forth in Section 4.1, 4.2, 4.5, and 4.7 or based on Fraud), unless and until (x) the aggregate amount of Losses that would otherwise be payable under Section 10.1 or Section 10.3, as applicable, exceeds \$500,000 (the “**Basket Amount**”), whereupon the Purchaser Indemnified Party or Company Indemnified Party, as applicable, shall be entitled to receive only amounts for Losses in excess of the Basket Amount or (y) Losses have been asserted against such Person in accordance with this Section 10.4, and (ii) the aggregate liability of the Company or any Purchaser for Losses under Section 10.1 or Section 10.3, as applicable, shall in no event exceed the applicable Preferred Share Purchase Price.

10.5 Procedures. A party entitled to indemnification hereunder (each, an “**Indemnified Party**”) shall give written notice to the party from whom indemnification is sought (the “**Indemnifying Party**”) of any claim with respect to which it seeks indemnification promptly after the discovery by such Indemnified Party of any matters giving rise to a claim for indemnification hereunder; provided, that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 10 unless and to the extent that the Indemnifying Party shall have been materially prejudiced by the failure of such Indemnified Party to so notify such party. Such notice shall describe in reasonable detail such claim. In case any such action, suit, claim or proceeding is brought against an Indemnified Party, the Indemnifying Party shall be entitled to assume and conduct the

defense thereof, with counsel reasonably satisfactory to the Indemnified Party unless (i) such claim seeks remedies, in addition to or other than, monetary damages that are reasonably likely to be awarded, (ii) such claim involves a criminal proceeding or (iii) counsel to the Indemnified Party advises such Indemnifying Party in writing that such claim involves a conflict of interest that would reasonably be expected to make it inappropriate for the same counsel to represent both the Indemnifying Party and the Indemnified Party. If any one of the foregoing clauses (i) through (iii) applies, the Indemnified Party shall be entitled to retain its own counsel at the cost and expense of the Indemnifying Party (except that the Indemnifying Party shall only be liable for the legal fees and expenses of one law firm for all Indemnified Parties, taken together with respect to any single action or group of related actions, other than local counsel). If the Indemnifying Party assumes the defense of any claim, the Indemnified Party shall nevertheless be entitled to hire, at its own expense, separate counsel and participate in the defense thereof; provided, that all Indemnified Parties shall thereafter deliver to the Indemnifying Party copies of all notices and documents (including court papers) received by the Indemnified Party relating to the claim, and each Indemnified Party shall reasonably cooperate in the defense or prosecution of such claim. Such reasonable cooperation shall include the retention and (upon the Indemnifying Party's reasonable request) the provision to the Indemnifying Party of records and information that are reasonably relevant to such claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Indemnifying Party shall not be liable for any settlement of any action, suit, claim or proceeding effected without its prior written consent (not to be unreasonably withheld, conditioned or delayed). The Indemnifying Party further agrees that it will not, without the Indemnified Party's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), settle or compromise any claim or consent to entry of any judgment in respect thereof in any pending or threatened action, suit, claim or proceeding in respect of which indemnification has been sought or may be hereunder unless such settlement or compromise includes an unconditional release of such Indemnified Party from all liability arising out of such action, suit, claim or proceeding and is solely for monetary damages.

10.6 Additional Limitations. Notwithstanding anything contained herein to the contrary, "Losses" shall not include (i) any Losses to the extent such Losses could not have been reasonably foreseen by the parties as of the Closing, and (ii) punitive damages, except to the extent payable by an Indemnified Party to a third party. No party hereto shall be obligated to indemnify any other Person with respect to any representation, warranty, covenant or condition specifically waived in writing by any other party on or prior to the applicable Closing.

10.7 Exclusive Remedies. Notwithstanding anything to the contrary herein, other than in the case of Fraud, the provisions of Section 10 and Section 12.6 shall be the sole and exclusive remedies of parties under this Agreement following the Closing for any and all breaches or alleged breaches of any representations or warranties, covenants or agreements of the parties contained in this Agreement. For the avoidance of doubt, this Section 10 shall not prevent the parties from obtaining specific performance or other non-monetary remedies in equity or at Law pursuant to Section 12.6 of this Agreement and shall not limit other remedies that may be available to the parties under any of the Transaction Agreements (other than this Agreement).

## 11. Termination.

11.1 Conditions of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated at any time before the Closing by either the Company, on the one hand, or any Purchaser, on the other hand, if the Closing shall not have occurred on or prior to 5:00 p.m., New York time, on the date hereof.

11.2 Effect of Termination. In the event of any termination pursuant to Section 11.1 hereof, this Agreement shall become null and void and have no further effect, with no liability on the part of the Company or any Purchaser, or their directors, partners, members, employees, affiliates, officers, stockholders or agents or other representatives, with respect to this Agreement, except for the terms of this Section 11.2 and Section 12 (Miscellaneous Provisions), which shall survive the termination of this Agreement.

## 12. Miscellaneous Provisions.

12.1 Public Statements or Releases. Neither the Company nor any Purchaser shall make any public release or announcement with respect to the existence or terms of this Agreement or the transactions provided for herein without the prior approval of the other parties, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, nothing in this Section 12.1 shall prevent any party from making any public release required (in the exercise of its reasonable judgment) in order to satisfy its obligations under law or under the rules or regulations of any United States national securities exchange, in which case the party or parties, as applicable, required to make the release or announcement shall, to the extent reasonably practicable, allow the other party or parties, as applicable, reasonable time to comment on such release or announcement in advance of such issuance.

12.2 Interpretation. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and subsection references are to this Agreement unless otherwise specified. The headings in this Agreement are included for convenience of reference only and will not limit or otherwise affect the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” The phrases “the date of this Agreement,” “the date hereof” and terms of similar import, unless the context otherwise requires, will be deemed to refer to the date set forth in the first paragraph of this Agreement. The meanings given to terms defined herein will be equally applicable to both the singular and plural forms of such terms. All matters to be agreed to by any party hereto must be agreed to in writing by such party unless otherwise indicated herein. Except as specified otherwise herein, references to agreements, policies, standards, guidelines or instruments, or to statutes or regulations, are to such agreements, policies, standards, guidelines or instruments, or statutes or regulations, as amended or supplemented from time to time (or to successors thereto). All references herein to the Subsidiaries of a Person shall be deemed to include all direct and indirect Subsidiaries of such Person, unless otherwise indicated or the context otherwise requires. The parties hereto agree that they have been represented by counsel during the negotiation and execution of the Transaction Agreements and, therefore, waive the application of any Law, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

12.3 Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed delivered (a) three (3) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid (b) one (1) Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, (c) on the date of delivery if delivered personally, or (d) if by facsimile, upon written confirmation of receipt by facsimile, in each case to the intended recipient as set forth below:

- (a) if to the Company, addressed as follows:

HC2 Holdings, Inc.  
460 Herndon Parkway,  
Suite 150,  
Herndon, VA 20170  
Attention: Andrea L. Mancuso  
Facsimile: (703) 650-4295

with copies (which shall not constitute notice) to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019  
Attention: Jeffrey D. Marell  
Facsimile: (212) 757-3990

- (b) if to the Caspian Purchasers, to them at:

c/o Caspian Capital LP  
767 Fifth Avenue, 45<sup>th</sup> Floor  
New York, New York 10153  
Attention: Richard A. Holahan  
Phone: (212) 826-7539  
Email: rick@caspianlp.com

- (c) if to the Imperial Purchaser, to it at:

Long Ball Partners, LLC  
c/o Imperial Capital Asset Management, LLC  
2000 Avenue of the Stars, 9<sup>th</sup> Floor South  
Los Angeles, California 90067  
Attention: Mark Martis  
Phone: (310) 246-3674  
Fax: (310) 246-3667  
Email: mmartis@imperialcapital.com



Any party may change the address to which notices, requests, consents or other communications hereunder are to be delivered by giving the other parties notice in the manner set forth in this Section 12.3.

12.4 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

12.5 Governing Law; Jurisdiction; WAIVER OF JURY TRIAL.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof.

(b) Each of the parties hereto irrevocably (i) agrees that any legal suit, action or proceeding brought by any party hereto against arising out of or based upon this Agreement may be instituted in any United States federal court or New York State court located in the Borough of Manhattan in The City of New York (a "**New York Court**"), (ii) waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such proceeding and (iii) submits to the non-exclusive jurisdiction of a New York Court in any such suit, action or proceeding.

(c) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PURCHASER OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

12.6 Specific Performance. The parties hereto agree that the obligations imposed on them in this Agreement are special, unique and of an extraordinary character, and that irreparable damages for which money damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement in accordance with its specified terms or otherwise breach such provisions. The parties acknowledge and agree that the parties shall be entitled to seek an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled, at law or in equity; and the parties hereto further agree to waive any requirement for the securing or posting of any bond or other security in connection with the obtaining of any such injunctive or other equitable relief. Each of the parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief as provided herein on the basis that (x) either party has an adequate remedy at law or (y) an award of specific performance is not an appropriate remedy for any reason at law or equity.

12.7 Delays or Omissions; Waiver. No delay or omission to exercise any right, power, or remedy accruing to a party upon any breach or default of another party under this Agreement shall impair any such right, power, or remedy of such party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement. Any agreement on the part of a party or parties hereto to any waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party or parties, as applicable. Any delay in exercising any right under this Agreement shall not constitute a waiver of such right.

12.8 Fees; Expenses.

(a) Except as set forth in this Section 12.8, all fees and expenses incurred in connection with the Transaction Agreements and the transactions contemplated hereby and thereby shall be paid by the party or parties, as applicable, incurring such expenses whether or not the transactions contemplated hereby and thereby are consummated.

(b) The Company shall reimburse the Caspian Purchasers for up to \$10,000 of reasonable out-of-pocket costs and expenses of the Caspian Purchasers and their advisors incurred in connection with their due diligence of the Company and its Subsidiaries, negotiation and preparation of the Transaction Agreements and participating in the transaction contemplated by the Transaction Agreements. The Company shall reimburse the Imperial Purchaser for up to \$10,000 of reasonable out-of-pocket costs and expenses of the Imperial Purchaser and its advisors incurred in connection with their due diligence of the Company and its Subsidiaries, negotiation and preparation of the Transaction Agreements and participating in the transaction contemplated by the Transaction Agreements. An estimate of the fees and expenses of such advisors may be paid by wire transfer to such advisor at the Closing by the Purchasers, the amount of such check or wire transfer being deducted from the aggregate amount to be paid by such Purchasers at the Closing for the Preferred Shares. In addition, the Company shall pay all reasonable out of pocket costs and expenses of the Purchasers incurred with respect to any subsequent amendments, approvals or modifications associated with the transactions contemplated by the Transaction Agreements.

(c) The Company shall pay any and all documentary, stamp or similar issue or transfer Tax payable in connection with this Agreement, the issuance of the Preferred Shares at Closing and the issuance of the Conversion Shares.

12.9 Assignment. Except as otherwise provided herein, none of the parties may assign its rights or obligations under this Agreement without the prior written consent of the other parties, provided, however, that each Purchaser may assign its right and obligations

hereunder to an Affiliate of such Purchaser without the prior written consent of the Company or any other Purchaser or in connection with a transfer of Preferred Shares or Conversion Shares in accordance with Section 8 hereof with the prior written consent of the Company (which consent shall not be unreasonably withheld, delayed or conditioned); provided, further, that as a condition precedent to such assignment (x) any such Affiliate shall assume, on a several and not joint basis, all then continuing obligations of such Purchaser hereunder pursuant to a written agreement reasonably acceptable to the Company, and (y) no assignment and assumption shall relieve such Purchaser from any liability hereunder; provided, further, that any assignment to an Affiliate shall only be effective for so long as such Person remains an Affiliate of the applicable Purchaser and the rights assigned to such Person shall cease to be of further force and effect when such Person ceases to be an Affiliate of the applicable Purchaser. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties to this Agreement and their respective successors and permitted assigns. Any purported assignment other than in compliance with the terms hereof shall be void ab initio.

12.10 No Third Party Beneficiaries. Except for Sections 10 (with respect to which all Indemnified Parties shall be third party beneficiaries) and 12.13 (with respect to which all Purchaser Representatives named therein shall be third party beneficiaries), this Agreement does not create any rights, claims or benefits inuring to any Person that is not a party hereto nor create or establish any third party beneficiary hereto. Without limiting the foregoing, the representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Consequently, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

12.11 Counterparts. This Agreement may be executed and delivered (including by facsimile or electronic transmission) in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed an original, but all of which taken together shall constitute a single instrument.

12.12 Entire Agreement; Amendments; Actions. This Agreement and the documents and instruments and other agreements among the parties hereto as contemplated by or referred to herein, including the Disclosure Schedule and the Annexes and Exhibits hereto, constitute the entire agreement between the parties hereto respecting the subject matter hereof and supersede all prior agreements, negotiations, understandings, representations and statements respecting the subject matter hereof, whether written or oral. No modification, alteration, waiver or change in any of the terms of this Agreement shall be valid or binding upon the parties hereto unless made in writing and duly executed by the Company, on the one hand, and subject to the last sentence of this Section 12.12, the Purchasers on the other hand. Notwithstanding anything to the contrary contained herein, any consent, waiver, vote, decision, election or action required or permitted to be taken hereunder by the Purchasers as a group, including with respect to the immediately foregoing clause, shall require the approval of the Requisite Holders, and after such approval, such decision shall be binding on all Purchasers.

12.13 Freedom to Pursue Opportunities. Each of the parties hereto expressly acknowledges and agrees that: (i) the each Purchaser and each Purchaser Representative has the right to, and shall have no duty (contractual or otherwise) not to, directly or indirectly engage in the same or similar business activities or lines of business as the Company or any of its Subsidiaries, including those deemed to be competing with the Company or any of its Subsidiaries; and (ii) in the event that the Purchaser or any Purchaser Representative acquires knowledge of a potential transaction or matter (other than to the extent knowledge of such transaction or matter was acquired by such Person solely in their capacity as a director) that may be a corporate opportunity for each of the Company and the Purchaser or any Purchaser Representative, such Person shall have no duty (contractual or otherwise) to communicate or present such corporate opportunity to the Company or any of its Subsidiaries, as the case may be, and, notwithstanding any provision of this Agreement to the contrary, shall not be liable to the Company or its Affiliates for breach of any duty (contractual or otherwise) by reason of the fact that the Purchaser, Purchaser Representative, directly or indirectly, pursues or acquires such opportunity for itself, directs such opportunity to another Person, or does not present such opportunity to the Company.

12.14 No Personal Liability of Directors, Officers, Owners, Etc. No director, officer, employee, incorporator, shareholder, managing member, member, general partner, limited partner, principal or other agent of any of the Purchasers or the Company shall have any liability for any obligations of the Purchasers or the Company, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the respective obligations of the Purchasers or the Company, as applicable, under this Agreement. Each party hereby waives and releases all such liability. This waiver and release is a material inducement to each party's entry into this Agreement.

12.15 Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under this Agreement or any Transaction Agreement are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under this Agreement or any other Transaction Agreement. Nothing contained herein or in any other Transaction Agreement, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement or any other Transaction Agreement. Each Purchaser confirms that it has independently participated in the negotiation of the transactions contemplated hereby and has been represented by counsel. All rights, powers and remedies provided to the Purchasers under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative or exclusive, and the exercise or beginning of the exercise of any thereof by any party shall not preclude the simultaneous or later exercise of any other rights, powers or remedies by such party or any other party.

*[Remainder of the Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**COMPANY:**

HC2 HOLDINGS, INC.

By: /s/ Keith M. Hladek

Name: Keith M. Hladek

Title: Chief Operating Officer

[Signature Page to Securities Purchase Agreement]

**CASPIAN PURCHASERS**

**MARINER LDC**

By: /s/ Richard D. Holahan, Jr.  
Name: Richard D. Holahan, Jr.  
Title: Authorized Signatory

**CASPIAN SELECT CREDIT MASTER FUND, LTD.**

By: /s/ Richard D. Holahan, Jr.  
Name: Richard D. Holahan, Jr.  
Title: Authorized Signatory

**CASPIAN SOLITUDE MASTER FUND, L.P.**

By: /s/ Richard D. Holahan, Jr.  
Name: Richard D. Holahan, Jr.  
Title: Authorized Signatory

**CASPIAN HLSC1, LLC**

By: /s/ Richard D. Holahan, Jr.  
Name: Richard D. Holahan, Jr.  
Title: Authorized Signatory

**SUPER CASPIAN CAYMAN FUND LIMITED**

By: /s/ Richard D. Holahan, Jr.  
Name: Richard D. Holahan, Jr.  
Title: Authorized Signatory

[Signature Page to Securities Purchase Agreement]

CASPIAN SC HOLDINGS, L.P.

By: /s/ Richard D. Holahan, Jr.

Name: Richard D. Holahan, Jr.

Title: Authorized Signatory

[Signature Page to Securities Purchase Agreement]

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**IMPERIAL PURCHASER**

LONG BALL PARTNERS, LLC

By: Imperial Capital Asset Management, LLC, its Managing  
Member

By: /s/ Mark Martis

Name: Mark Martis

Title: Chief Operating Officer

[Signature Page to Securities Purchase Agreement]



**Annex A**

**Convertible Preferred Stock Shares and Purchasers**

<u>Purchaser</u>	<u>Shares</u>	<u>Type</u>	<u>Share Purchase Price</u>
<b><u>Caspian Purchasers</u></b>			
Mariner LDC	355.511	Convertible Preferred Stock	\$ 355,511.00
Caspian Select Credit Master Fund, Ltd.	7,444.150	Convertible Preferred Stock	\$ 7,444,150.00
Caspian Solitude Master Fund, L.P.	306.381	Convertible Preferred Stock	\$ 306,381.00
Caspian HLSC1, LLC	860.093	Convertible Preferred Stock	\$ 860,093.00
Super Caspian Cayman Fund Limited	390.697	Convertible Preferred Stock	\$ 390,697.00
Caspian SC Holdings, L.P.	643.168	Convertible Preferred Stock	\$ 643,168.00
<b><u>Imperial Purchaser</u></b>			
Long Ball Partners, LLC	4,000.00000	Convertible Preferred Stock	\$ 4,000,000.00
<b>TOTAL:</b>	<b><u>14,000</u></b>		<b><u>\$ 14,000,000</u></b>

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**Exhibit A**

**Form of Certificate of Designation**

[see attached]

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**Exhibit B**

**Form of Second Amended and Restated Registration Rights Agreement**

[see attached]

**SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

**by and among**

**HC2 HOLDINGS INC.**

**and the INVESTORS party hereto**

**Dated January 5, 2015**

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## SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

THIS SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), is made as of the 5<sup>th</sup> day of January, 2015, by and among HC2 Holdings Inc., a Delaware corporation (the “**Company**”), and each of the investors listed on Schedule A hereto (each of which is referred to in this Agreement as an “**Investor**”).

### RECITALS

**WHEREAS**, the Company entered into that certain Securities Purchase Agreement dated as of May 29, 2014 (as amended, the “**May Purchase Agreement**”) with the investors party thereto (the “**May Preferred Holders**”), pursuant to which the Company has issued and sold to the May Preferred Holders shares of Series A Convertible Participating Preferred Stock, par value \$0.001 per share, of the Company (the “**Series A Preferred Stock**”) and Common Stock (as defined below). The Series A Preferred Stock was issued pursuant to that certain Certificate of Designation, dated as of May 29, 2014 (as amended, the “**Series A Certificate of Designation**”).

**WHEREAS**, the Company entered into that certain Securities Purchase Agreement dated as of September 22, 2014 (the “**September Purchase Agreement**”) with the investors party thereto (the “**September Preferred Holders**”), pursuant to which the Company has issued and sold to the September Preferred Holders shares of Series A-1 Convertible Participating Preferred Stock, par value \$0.001 per share, of the Company (the “**Series A-1 Preferred Stock**”). The Series A-1 Preferred Stock was issued pursuant to that certain Certificate of Designation, dated as of September 22, 2014 (the “**Series A-1 Certificate of Designation**”). In connection with the transactions contemplated by the September Purchase Agreement, the Series A Certificate of Designation was amended and restated and the May Purchase Agreement was amended.

**WHEREAS**, the Company, the Caspian Investors and the Imperial Investor are parties to the Securities Purchase Agreement dated as of the date hereof (the “**January Purchase Agreement**,” and together with the May Purchase Agreement and the September Purchase Agreement, the “**Purchase Agreements**”), pursuant to which the Company has issued and sold to the Caspian Investors and the Imperial Investor shares of Series A-2 Convertible Participating Preferred Stock, par value \$0.001 per share, of the Company (the “**Series A-2 Preferred Stock**” and, together with the Series A Preferred Stock and the Series A-1 Preferred Stock, the “**Preferred Stock**”). The Series A-2 Preferred Stock was issued pursuant to that certain Certificate of Designation, dated as of the date hereof (the “**Series A-2 Certificate of Designation**”).

**WHEREAS**, the Series A Certificate of Designation has been amended and restated as of the date hereof in connection with the transactions contemplated by the January Purchase Agreement (as amended, the “**Amended Series A Certificate of Designation**”).

**WHEREAS**, the Series A-1 Certificate of Designation has been amended and restated as of the date hereof in connection with the transactions contemplated by the January Purchase Agreement (as amended, the “**Amended Series A-1 Certificate of Designation**”).

**WHEREAS**, the Preferred Stock is convertible into shares of Common Stock of the Company in accordance with the terms of the Amended Series A Certificate of Designation, the Amended Series A-1 Certificate of Designation and the Series A-2 Certificate of Designation, as applicable.

**WHEREAS**, the Company, the May Preferred Holders and the September Preferred Holders were party to that certain Amended and Restated Registration Rights Agreement (the "**Registration Rights Agreement**"), dated as of September 22, 2014, and desire to amend and restate the Registration Rights Agreement in its entirety to reflect the Amended Series A Certificate of Designation, the Amended Series A-1 Certificate of Designation, the adoption of the Series A-2 Certificate of Designation, the issuance of Series A-2 Preferred Stock to the Caspian Investors and the Imperial Investor and the granting of registration rights with respect to the Registrable Securities (as defined below) issued to the Caspian Investors and the Imperial Investor.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

1.1 "**Affiliate**" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person.

1.2 "**Amended Series A Certificate of Designation**" has the meaning set forth in the Recitals.

1.3 "**Amended Series A-1 Certificate of Designation**" has the meaning set forth in the Recitals.

1.4 "**Automatic Shelf Registration Statement**" means an "automatic shelf registration statement" as defined in Rule 405 promulgated under the Securities Act.

1.5 "**Board of Directors**" means the board of directors of the Company (or any duly authorized committee thereof).

1.6 "**Caspian Investors**" means those investors listed under the heading "Caspian Investors" on Schedule A.

1.7 "**Caspian Registrable Securities**" means, as of any date, the Registrable Securities held by the Caspian Investors or their successors and assigns on such date.

1.8 "**Common Stock**" means shares of the Company's common stock, par value \$0.001 per share.

1.9 "**Cut Back Shares**" has the meaning set forth in Subsection 2.1(f).

1.10 “**Damages**” means any loss, damage, claim or liability (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law, insofar as such loss, damage, claim or liability (or any action in respect thereof) arises out of or is based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company, including any preliminary prospectus, free writing prospectus prepared by a Holder or the Company, as applicable, or final prospectus contained therein or any amendments or supplements thereto; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of this Agreement, the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state securities law.

1.11 “**January Purchase Agreement**” has the meaning set forth in the Recitals.

1.12 “**Demand Notice**” has the meaning set forth in Subsection 2.1.

1.13 “**DG Investors**” means those investors listed under the heading “DG Investors” on Schedule A.

1.14 “**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

1.15 “**Excluded Registration**” means (i) a registration relating to the sale of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; or (iii) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

1.16 “**FINRA**” means the Financial Industry Regulatory Authority.

1.17 “**Form S-1**” means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

1.18 “**Form S-3**” means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits incorporation of substantial information by reference to other documents filed by the Company with the SEC.

1.19 “**Hedging Counterparty**” means a broker-dealer registered under Section 15(b) of the Exchange Act or an Affiliate thereof.

1.20 “**Hedging Transaction**” means any transaction involving a security linked to Registrable Securities or any security that would be deemed to be a “derivative security” (as defined in Rule 16a-1(c) promulgated under the Exchange Act)



with respect to Registrable Securities or transaction (even if not a security) which would (were it a security) be considered such a derivative security, or which transfers some or all of the economic risk of ownership of Registrable Securities, including any forward contract, equity swap, put or call, put or call equivalent position, collar, non-recourse loan, sale of exchangeable security or similar transaction. For the avoidance of doubt, the following transactions shall be deemed to be Hedging Transactions:

- (a) transactions by a Holder in which a Hedging Counterparty engages in short sales of securities of the same class as Registrable Securities pursuant to a Prospectus and may use Registrable Securities to close out its short position;
- (b) transactions pursuant to which a Holder sells short securities of the same class as Registrable Securities pursuant to a Prospectus and delivers Registrable Securities to close out its short position;
- (c) transactions by a Holder in which the Holder delivers, in a transaction exempt from registration under the Securities Act, Registrable Securities to the Hedging Counterparty who will then publicly resell or otherwise transfer such Registrable Securities pursuant to a Prospectus or an exemption from registration under the Securities Act; and
- (d) a loan or pledge of Registrable Securities to a Hedging Counterparty who may then become a selling stockholder and sell the loaned shares or, in an event of default in the case of a pledge, sell the pledged shares, in each case, in a public transaction pursuant to a Prospectus.

1.21 “**Holdback Period**” has the meaning set forth in Section 2.11.

1.22 “**Holdback Extension**” has the meaning set forth in Section 2.11.

1.23 “**Holders**” means any Investor and any other holder of Registrable Securities who is a party to this Agreement.

1.24 “**HRG**” means Harbinger Group Inc., a Delaware corporation.

1.25 “**Hudson Bay Investors**” means those investors listed under the heading “Hudson Bay Investors” on Schedule A.

1.26 “**Hudson Bay Registrable Securities**” means, as of any date, the Registrable Securities held by the Hudson Bay Investors or their successors and assigns on such date.

1.27 “**Immediate Family Member**” means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including, adoptive relationships, of a natural person referred to herein.

- 1.28 “**Imperial Investor**” means the investor listed under the heading “Imperial Investor” on Schedule A.
- 1.29 “**Initiating Holders**” means, collectively, Holders who properly initiate a registration request under this Agreement.
- 1.30 “**Luxor Investors**” means those investors listed under the heading “Luxor Investors” on Schedule A.
- 1.31 “**Luxor Registrable Securities**” means, as of any date, the Registrable Securities held by the Luxor Investors or their successors and assigns on such date.
- 1.32 “**Majority Caspian Investors**” means, as of any date, the Holders of a majority of the Caspian Registrable Securities on such date.
- 1.33 “**Majority Hudson Bay Investors**” means, as of any date, the Holders of a majority of the Hudson Bay Registrable Securities on such date.
- 1.34 “**Majority Luxor Investors**” means, as of any date, the Holders of a majority of the Luxor Registrable Securities on such date.
- 1.35 “**Majority PECM Investors**” means, as of any date, the Holders of a majority of the PECM Registrable Securities on such date.
- 1.36 “**May Preferred Holders**” has the meaning set forth in the Recitals.
- 1.37 “**May Purchase Agreement**” has the meaning set forth in the Recitals.
- 1.38 “**Other Requesting Holders**” has the meaning set forth in Subsection 2.4(a).
- 1.39 “**PECM Investors**” means those investors listed under the heading “PECM Investors” on Schedule A.
- 1.40 “**PECM Registrable Securities**” means, as of any date, the Registrable Securities held by the PECM Investors or their successors and assigns on such date.
- 1.41 “**Person**” means any individual, corporation, partnership, trust, limited liability company, association or other entity.
- 1.42 “**Preferred Stock**” has the meaning set forth in the Recitals.

1.43 “**Prospectus**” means the prospectus related to any Registration Statement (whether preliminary or final or any prospectus supplement, including, without limitation, a prospectus or prospectus supplement that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance on Rule 415, 424, 430A, 430B or 430C under the Securities Act, as amended or supplemented by any amendment or prospectus supplement), including post-effective amendments, and all materials incorporated by reference in such prospectus.

1.44 “**Purchase Agreements**” has the meaning set forth in the Recitals.

1.45 “**Registration Rights Agreement**” has the meaning set forth in the Recitals.

1.46 “**Registrable Securities**” means (i) any shares of Common Stock acquired pursuant to the Purchase Agreements; (ii) any shares of Common Stock otherwise acquired from time to time by a Holder or any permitted transferee hereunder; (iii) any and all shares of Common Stock or other securities issuable or issued upon conversion of the Preferred Stock or issued or issuable upon the conversion of any other securities beneficially owned by a Holder; and (iv) shares of Common Stock issued as a dividend or distribution with respect to, or in exchange for or in replacement of, the shares referenced in (i) through (iii) above or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization; provided, that Registrable Securities held by any Holder will cease to be Registrable Securities, when they have been (A) sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction (including pursuant to Rule 144 of the Securities Act), or (B) sold in a transaction in which the transferor’s rights under this Agreement are not validly assigned in accordance with this Agreement.

1.47 “**Registrable Securities then outstanding**” means the number of shares determined by adding the number of shares of outstanding Common Stock that are Registrable Securities and the number of shares of Common Stock issuable (directly or indirectly) pursuant to then exercisable and/or convertible securities that are Registrable Securities.

1.48 “**Registration Statement**” means any registration statement filed pursuant to the Securities Act.

1.49 “**SEC**” means the Securities and Exchange Commission.

1.50 “**SEC Restrictions**” has the meaning set forth in Subsection 2.1(f).

1.51 “**SEC Rule 144**” means Rule 144 promulgated by the SEC under the Securities Act.

1.52 “**SEC Rule 145**” means Rule 145 promulgated by the SEC under the Securities Act.

1.53 “**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

1.54 “**Selling Holder Counsel**” has the meaning set forth in Subsection 2.6.

1.55 “**Selling Expenses**” means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for any Holder, except for the fees and disbursements of the Selling Holder Counsel borne and paid by the Company as provided in Subsection 2.6.

1.56 “**September Preferred Holders**” has the meaning set forth in the Recitals.

1.57 “**September Purchase Agreement**” has the meaning set forth in the Recitals.

1.58 “**Series A Certificate of Designation**” has the meaning set forth in the Recitals.

1.59 “**Series A Preferred Stock**” has the meaning set forth in the Recitals.

1.60 “**Series A-1 Certificate of Designation**” has the meaning set forth in the Recitals.

1.61 “**Series A-1 Preferred Stock**” has the meaning set forth in the Recitals.

1.62 “**Series A-2 Certificate of Designation**” has the meaning set forth in the Recitals.

1.63 “**Series A-2 Preferred Stock**” has the meaning set forth in the Recitals.

1.64 “**Shelf Registration**” means a registration of securities pursuant to a Registration Statement filed with the Commission in accordance with and pursuant to Rule 415 promulgated under the Securities Act.

1.65 “**Shelf Registration Statement**” has the meaning set forth in Subsection 2.1(b) hereof.

1.66 “**Suspension Period**” has the meaning set forth in Subsection 2.1(d).

1.67 “**Underwriter**” means the underwriter, placement agent or other similar intermediary participating in an Underwriting.

1.68 “**Underwriting**” of securities means a public offering of securities registered under the Securities Act in which an underwriter, placement agent or other similar intermediary participates in the distribution of such securities.

1.69 “**Underwritten Takedown**” means an underwritten offering takedown to be conducted by one or more Holders in accordance with Section 2.3(b).

2. Registration Rights. The Company covenants and agrees as follows:

2.1 Demand and Shelf Registration.

(a) Form S-1 Demand. If at any time after the date hereof, the Company receives a request from a Holder or Holders of Registrable Securities then outstanding that the Company file a Form S-1 registration statement with respect to any outstanding Registrable Securities of such Holders having an anticipated aggregate offering price, net of Selling Expenses, of at least \$5 million, then the Company shall (x) within two (2) days after the date such request is given, give notice thereof (the “**Demand Notice**”) to all Holders other than the Initiating Holders; and (y) as soon as practicable, and in any event within thirty (30) days after the date such request is given by the Initiating Holders, file a Form S-1 registration statement under the Securities Act covering all Registrable Securities that the Initiating Holders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within five (5) days of the date the Demand Notice is given, and in each case, subject to the limitations of Subsections 2.1(c) and 2.3. No Holder shall deliver an initiating request under this Section 2.1(a) at any time when a Shelf Registration Statement covering such Holder’s Registrable Securities is effective and available for use in connection with a resale of such Registrable Securities. The Company shall not be required to file a Form S-1 registration statement under this Section 2.1(a) if it is then eligible to use Form S-3 for secondary offerings of Registrable and it advises the Initiating Holders that it is preparing a Shelf Registration Statement in accordance with the first sentence of Section 2.1(b)(i).

(b) Shelf Registration.

(i) Within thirty (30) days after the date on which a Holder of Registrable Securities shall so request (provided, that the Company is, at the time of receipt of such request, eligible to use a Form S-3 registration statement for secondary offerings of Registrable Securities) and for so long as there are Registrable Securities outstanding, the Company shall use its reasonable best efforts to ensure that the Company shall at all times have and maintain an effective Registration Statement for a Shelf Registration covering the resale of all of the Registrable Securities requested to be included by any Holder, on a delayed or continuous basis (the “**Shelf Registration Statement**”). The Company shall give written notice of the filing of any Shelf Registration Statement at least fifteen (15) days prior to filing such Shelf Registration Statement to all Holders of Registrable Securities and shall, upon receipt of a request from any Holder, include in such Shelf Registration Statement all Registrable Securities of each requesting Holder. The Company shall use its reasonable best efforts to maintain the effectiveness of such Shelf Registration Statement in accordance with the terms hereof. The “Plan of Distribution” section of such Shelf Registration Statement shall permit all lawful means

of disposition of Registrable Securities, including firm-commitment underwritten public offerings, block trades, agented transactions, sales directly into the market, purchases or sales by brokers, Hedging Transactions, distributions to stockholders, partners or members of such Holders and sales not involving a public offering.

(ii) From and after the date that the Shelf Registration Statement is initially effective, as promptly as is practicable after receipt of a request from a Holder, and in any event within (x) ten (10) days after the date such request is received by the Company or (y) if a request is so received during a Suspension Period, five (5) days after the expiration of such Suspension Period, the Company shall take all necessary action to cause the requesting Holder to be named as a selling securityholder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus in connection with sales of such Registrable Securities to the purchasers thereof in accordance with applicable law, which action may include: (A) if required by applicable law, filing with the Commission a post-effective amendment to the Shelf Registration Statement; (B) preparing and, if required by applicable law, filing a supplement or supplements to the related Prospectus or a supplement or amendment to any document incorporated therein by reference; (C) filing any other required document; or (D) with respect to a post-effective amendment to the Shelf Registration Statement that is not automatically effective, using its reasonable best efforts to cause such post-effective amendment to be declared or to otherwise become effective under the Securities Act as promptly as is practicable; provided that: (A) the Company may delay such filing until the date that is twenty (20) days after any prior such filing; (B) if the Shelf Registration Statement is not an Automatic Shelf Registration Statement and the Company has already made such a filing during the calendar quarter in which such filing would otherwise be required to be made, the Company may delay such filing until the tenth (10th) day of the following calendar quarter; and (C) if such request is delivered during a Suspension Period, the Company shall so inform the Holder delivering such request and shall take the actions set forth above upon expiration of the Suspension Period in accordance with Subsection 2.1(d).

(c) Notwithstanding the foregoing obligations, if the Company furnishes to Holders requesting a registration pursuant to this Subsection 2.1 a certificate signed by the Company's chief executive officer stating that in the good faith judgment of the Company's Board of Directors, after consultation with counsel, it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) be expected to have a material adverse effect on any proposal or plan of the Company to effect a merger, acquisition, disposition, financing, reorganization, recapitalization or similar transaction; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act, then the Company shall have the right to defer taking action with respect to such filing, and any time periods with respect to filing or effectiveness thereof shall be tolled correspondingly, for a period of not more than forty five (45) days after the request of the Initiating Holders is given; provided, however, that the Company may not invoke this right more than once in any twelve (12) month period; and provided further that the Company shall not register any securities for its own account or that of any other stockholder during such forty five (45) day period other than an Excluded Registration

(d) Suspension Periods. Upon written notice to the Holders of Registrable Securities, (x) the Company shall be entitled to suspend, for a period of time, the use of any Registration Statement or Prospectus if the Board of Directors determines in its good faith judgment, after consultation with counsel, that the Registration Statement or any Prospectus may contain an untrue statement of a material fact or omits any fact necessary to make the statements in the Registration Statement or Prospectus not misleading and (y) the Company shall not be required to amend or supplement the Registration Statement, any related Prospectus or any document incorporated therein by reference if the Board of Directors determines in its good faith judgment, after consultation with counsel, that such amendment or supplement would reasonably be expected to have a material adverse effect on any proposal or plan of the Company to effect a merger, acquisition, disposition, financing, reorganization, recapitalization or similar transaction, in each case that is material to the Company (in case of each clause (x) and (y), a “**Suspension Period**”); provided that (A) the duration of all Suspension Periods may not exceed one hundred and twenty (120) days in the aggregate in any 12-month period and (B) the Company shall use its commercially reasonable efforts to amend or supplement the Registration Statement and/or Prospectus to correct such untrue statement or omission as soon as reasonably practicable, but in no event shall any single suspension period exceed forty five (45) days.

(e) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Subsection 2.1(a) during the period ending ninety (90) days after the effective date of, another registration by the Company, including a Company-initiated registration, in each case, in which Holders were entitled to include Registrable Securities in accordance with Section 2.2. A registration shall not be counted as “effected” for purposes of this Subsection 2.1(e) until such time as the applicable registration statement has been declared effective by the SEC; provided, however, if the Initiating Holders withdraw their request for such registration and elect to pay the registration expenses therefor, such withdrawn registration statement shall not be counted as “effected” for purposes of this Subsection 2.1(e).

(f) Secondary Offering. If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in a Registration Statement are not eligible to be made as a secondary offering, the Company shall use commercially reasonable best efforts to persuade the SEC that the offering contemplated by the Registration Statement is a bona fide secondary offering. In the event that the SEC refuses to alter its position, the Company shall (i) remove from the Registration Statement such portion of the Registrable Securities (the “**Cut Back Shares**”) and/or (ii) agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure that the Registration Statement is deemed a secondary offering (collectively, the “**SEC Restrictions**”); provided, however, that the Company shall not agree to name any Holder as an “underwriter” in such Registration Statement without the prior written consent of such Holder. Any cut-back imposed pursuant to this Section 2.1(f) shall be allocated among the Holders on a pro rata basis in accordance with the number of shares that such Holders have requested to be included in such Registration Statement, unless the SEC Restrictions otherwise require or provide or the participating Holders otherwise agree. From and after the date that the Company is able to effect the registration of such Cut Back Shares in accordance with any SEC Restrictions, all of the provisions of this Section 2.1 shall again be applicable to such Cut Back Shares.

2.2 Company Registration. If the Company proposes to register (including, for this purpose, a registration effected by the Company for stockholders other than the Holders) any of its Common Stock under the Securities Act in connection with the public offering of such securities solely for cash (other than in an Excluded Registration), the Company shall, at such time, promptly give each Holder written notice of such Registration. In the case of a takedown offering under a Shelf Registration, the Company shall give each Holder notice of such registration not less than five (5) days prior to the expected date of commencement of marketing efforts for such takedown. Upon the request of each Holder given within two (2) days after such notice is given by the Company, the Company shall, subject to the provisions of Subsection 2.3, cause to be included all of the Registrable Securities that each such Holder has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Subsection 2.2 before the effective date of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. The expenses (other than Selling Expenses) of such withdrawn registration shall be borne by the Company in accordance with Subsection 2.6.

2.3 Underwriting Requirements.

(a) If, pursuant to Subsection 2.1(a), the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an Underwriting, they shall so advise the Company as a part of their request made pursuant to Subsection 2.1, and the Company shall include such information in the Demand Notice. The managing Underwriter(s) will be selected by the Initiating Holders, subject only to the reasonable approval of the Company. In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such Underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such Underwriting shall (together with the Company as provided in Subsection 2.4(n)) enter into an underwriting agreement in customary form with the Underwriter(s) selected for such Underwriting. Notwithstanding any other provision of this Subsection 2.3, if the managing Underwriter(s) advise the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities that otherwise would be underwritten pursuant hereto, and the number of Registrable Securities that shall be included in the underwriting shall be allocated among such Holders of Registrable Securities, including the Initiating Holders, in proportion (as nearly as practicable) to the number of Registrable Securities proposed by each Holder to be included in the registration or in such other proportion as shall mutually be agreed to in writing by all such selling Holders; provided, however, that the number of Registrable Securities held by the Holders to be included in such underwriting shall not be reduced unless all other securities to be sold by persons who are not Holders are first entirely excluded from the underwriting.

(b) Shelf Underwritten Takedown.

(i) At any time after the Company has an effective shelf registration one or more Holders of outstanding Registrable Securities may request that the Company effect an underwritten takedown under the Shelf Registration Statement of at least \$5 million in Registrable Securities, based on the closing market price on the trading day



immediately prior to the initial request of such requesting Holders. Within five (5) days of receipt of such request, the Company shall notify all other Holders whose Registrable Securities are included in such Shelf Registration Statement of such request and shall (except as provided in clause (iii) below) include in such Underwritten Takedown all Registrable Securities requested to be included therein by Holders who respond within five (5) days of the Company's notification described above.

(ii) For any Underwritten Takedown from a Shelf Registration Statement, the managing underwriter or underwriters shall be selected by the Holders participating in such offering holding a majority of the Registrable Securities to be disposed of pursuant to such offering and shall be reasonably acceptable to the Company.

(iii) If the managing underwriter or underwriters for the Underwritten Takedown advise the Company that in their reasonable opinion the number of securities requested to be included in such underwritten offering takedown exceeds the number which can be sold in an orderly manner in such offering within a price range acceptable to the Initiating Holders, the Company shall include in such Underwritten Takedown the number which can be so sold in the following order of priority: (A) first, the securities requested to be included by the Holders (pro rata among the Holders of such securities on the basis of the number of securities requested to be included therein by each such holder), (B) second, the securities requested to be included in such Underwritten Takedown by holders exercising piggyback registration rights (pro rata among the holders of such securities on the basis of the number of securities requested to be included therein by each such holder), (C) third, the securities the Company proposes to sell, and (D) fourth, other securities requested to be included in such Underwritten Takedown (pro rata among the holders of such securities on the basis of the number of securities requested to be included therein by each such holder).

(iv) The Company shall not be required to effect an Underwritten Takedown more than once in any six (6) month period.

(c) In connection with any offering involving an underwriting of shares of the Company's capital stock pursuant to Subsection 2.2, the Company shall not be required to include any of the Holders' Registrable Securities in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company. If the total number of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the number of securities to be sold that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be allocated among the selling Holders in proportion (as nearly as practicable to) to the number of Registrable Securities proposed by each Holder to be included in the registration or in such other proportions as shall mutually be agreed to in writing by all such selling Holders. Notwithstanding the foregoing, in no event shall (i) the

number of Registrable Securities included in the offering be reduced unless all other securities (other than securities to be sold by the Company) are first entirely excluded from the offering. For purposes of the provision in this Subsection 2.3(c) and Sections 2.3(a) and 2.3(b)(iii) concerning apportionment, for any selling Holder that is a partnership, limited liability company, or corporation, the partners, members, retired partners, retired members, stockholders, and Affiliates of such Holder, or the estates and Immediate Family Members of any such partners, retired partners, members, and retired members and any trusts for the benefit of any of the foregoing Persons, shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such "selling Holder," as defined in this sentence.

(d) For purposes of Subsection 2.1 and 2.3(b), a registration shall not be counted as "effected" if, as a result of an exercise of the underwriter's cutback provisions in Subsection 2.3(a), fewer than seventy-five percent (75%) of the total number of Registrable Securities that Holders have requested to be included in such registration statement are actually included.

2.4 Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the registration statement has been completed; provided, however, that (i) such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains, at the request of an underwriter of Common Stock (or other securities) of the Company, from selling any securities included in such registration, and (ii) in the case of any registration of Registrable Securities on Form S-3 that are intended to be offered on a continuous or delayed basis, subject to compliance with applicable SEC rules, such one hundred twenty (120) day period shall be extended in accordance with Section 2.1(b) until all such Registrable Securities are sold;

(b) prepare and file with the SEC such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the Securities Act in order to enable the disposition of all securities covered by such registration statement;

(c) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act, and such other documents as the Holders may reasonably request in order to facilitate their disposition of their Registrable Securities;

- (d) provide counsel to the Holders a reasonable opportunity to review and comment upon any Registration Statement and any Prospectus supplements;
- (e) if requested by any participating Holder, promptly include in a Prospectus supplement or amendment such information as the Holder may reasonably request, including in order to permit the intended method of distribution of such securities, and make all required filings of such Prospectus supplement or such amendment as soon as reasonably practicable after the Company has received such request;
- (f) use its commercially reasonable efforts to register and qualify, or obtain an exemption from registration or qualification for the securities covered by such registration statement under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by the selling Holders; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;
- (g) in the case of certificated Registrable Securities, cooperate with the participating Holders of Registrable Securities and the managing underwriters to facilitate the timely preparation and delivery of certificates (not bearing any legends) representing Registrable Securities sold pursuant to a Shelf Registration Statement;
- (h) in the case of an underwritten offering, use its commercially reasonable efforts to obtain a “comfort” letter or letters, dated as of such date or dates as the managing underwriters reasonably requests, from the Company’s independent public accountants in customary form and covering such matters of the type customarily covered by “comfort” letters as any managing underwriter reasonably requests;
- (i) in the case of a underwritten offering, furnish, at the request of any managing underwriter for such offering an opinion with respect to legal matters and a negative assurance letter with respect to disclosure matters, dated as of each closing date of such offering of counsel representing the Company for the purposes of such registration, addressed to the underwriters, covering such matters with respect to the registration in respect of which such opinion and letter are being delivered as the underwriters, may reasonably request and are customarily included in such opinions and negative assurance letters;
- (j) in the case of an underwritten offering, furnish, at the request of any managing underwriter for such offering an opinion with respect to legal matters and a negative assurance letter with respect to disclosure matters, dated as of each closing date of such offering of counsel representing the Company for the purposes of such registration, addressed to the underwriters, covering such matters with respect to the registration in respect of which such opinion and letter are being delivered as the underwriters, may reasonably request and are customarily included in such opinions and negative assurance letters;
- (k) in the case of an underwritten offering, use its commercially reasonable efforts to cooperate and assist in any filings required to be made with FINRA and in the performance of any due diligence investigation by any underwriter and its counsel (including

any “qualified independent underwriter,” if applicable) that is (A) required or requested by FINRA in order to obtain written confirmation from FINRA that FINRA does not object to the fairness and reasonableness of the underwriting terms and arrangements (or any deemed underwriting terms and arrangements) relating to the resale of Registrable Securities pursuant to the Shelf Registration Statement, including, without limitation, information provided to FINRA through its COBRADesk system or (B) required to be retained in accordance with the rules and regulations of FINRA;

(l) if requested by the managing underwriters, if any, or by any Holder of Registrable Securities being sold in an underwritten offering, promptly incorporate in a Prospectus supplement or post-effective amendment to the Registration Statement such information as the managing underwriters, if any, or such Holders indicate relates to them or that they reasonably request be included therein and make appropriate members of management available to meeting with potential investors in the offering;

(m) cause the Registrable Securities covered by such Registration Statement to be registered with or approved by such other governmental agencies or authorities, as may be reasonably necessary by virtue of the business and operations of the Company to enable the seller or sellers of Registrable Securities to consummate the disposition of such Registrable Securities;

(n) in the event of any underwritten offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering;

(o) in the event of the issuance or threatened issuance of any stop order suspending the effectiveness of a Registration Statement, or of any order suspending or preventing the use of any related Prospectus or suspending the qualification of any Registrable Securities included in such Registration Statement for sale in any jurisdiction, use its commercially reasonable efforts promptly to (i) prevent the issuance of any such stop order, and in the event of such issuance, to obtain the withdrawal of such order and (ii) obtain, at the earliest practicable date, the withdrawal of any order suspending or preventing the use of any related Prospectus or suspending qualification of any Registrable Securities included in such Registration Statement for sale in any jurisdiction;

(p) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on each securities exchange and trading system (if any) on which similar securities issued by the Company are then listed;

(q) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(r) promptly make available for inspection by the selling Holders, any managing underwriter(s) participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the

selling Holders, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company's officers, directors, employees, and independent accountants to supply all oral or written information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith;

(s) notify each selling Holder, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed;

(t) notify each selling Holder at any time when a Prospectus relating to the applicable Registration Statement is required to be delivered under the Securities Act: (i) as promptly as practicable upon discovery that, or upon the happening of any event as a result of which, such Registration Statement, or the Prospectus relating to such Registration Statement, or any document incorporated or deemed to be incorporated therein by reference contains an untrue statement of a material fact or omits any fact necessary to make the statements in the Registration Statement, the Prospectus relating thereto not misleading or otherwise requires the making of any changes in such Registration Statement, Prospectus, or document, and, at the request of any such Holder and subject to the Company's ability to declare Suspension Periods pursuant to Section 2.1(d), the Company shall promptly prepare a supplement or amendment to such Prospectus, furnish a reasonable number of copies of such supplement or amendment to each such seller of such Registrable Securities, and file such supplement or amendment with the SEC so that, as thereafter delivered to the purchasers of such Registrable Securities, such Prospectus as so amended or supplemented shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading, (ii) as promptly as practicable after the Company becomes aware of any request by the SEC or any Federal or state governmental authority for amendments or supplements to a Registration Statement or related Prospectus covering Registrable Securities or for additional information relating thereto, (iii) as promptly as practicable after the Company becomes aware of the issuance or threatened issuance by the SEC of any stop order suspending or threatening to suspend the effectiveness of a Registration Statement covering the Registrable Securities or (iv) as promptly as practicable after the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any Registrable Security for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose; and

(u) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus.

In addition, the Company shall ensure that, at all times after any registration statement covering a public offering of securities of the Company under the Securities Act shall have become effective, its insider trading policy shall provide that the Company's directors may implement a trading program under Rule 10b5-1 of the Exchange Act.

2.5 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as is reasonably required to effect the registration of such Holder's Registrable Securities.

2.6 Expenses of Registration. All expenses (other than Selling Expenses) incurred in connection with registrations, filings, or qualifications pursuant to Section 2, including all registration, filing, and qualification fees; printers' and accounting fees; fees and disbursements of counsel for the Company; and the reasonable fees and disbursements of one counsel for each of the selling Holders ("**Selling Holder Counsel**"), shall be borne and paid by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Subsection 2.1 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all selling Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration); provided further that if, at the time of such withdrawal, the Holders shall have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness after learning of such information then the Holders shall not be required to pay any of such expenses. All Selling Expenses relating to Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

2.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration pursuant to this Agreement as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8 Indemnification. If any Registrable Securities are included in a Registration Statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, and the partners, members, officers, directors, and stockholders of each such Holder; legal counsel and accountants for each such Holder; any underwriter (as defined in the Securities Act) for each such Holder; and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any Damages, and the Company will pay to each such Holder, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any such Holder, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, and each of its directors, each of its officers who has signed the Registration Statement, each Person (if any), who controls the Company within the meaning of the Securities Act, legal counsel and accountants for the Company, any underwriter (as defined in the Securities Act), any other Holder selling securities in such registration statement, and any controlling Person of any such underwriter or other Holder, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Holder expressly for use in connection with such registration; and each such selling Holder will pay to the Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(b) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; and provided further that in no event shall the aggregate amounts payable by any Holder by way of indemnity or contribution under Subsections 2.8(b) and 2.8(d) exceed the proceeds from the related offering received by such Holder (net of any Selling Expenses paid by such Holder).

(c) Promptly after receipt by an indemnified party under this Subsection 2.8 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Subsection 2.8, give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action.

(d) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which either: (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this Subsection 2.8 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Subsection 2.8 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of any party hereto for which indemnification is provided under this Subsection 2.8, then, and in each such case, such parties will contribute to the aggregate losses,

claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact, or the omission or alleged omission of a material fact, relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; provided, however, that, in any such case no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; and provided further that in no event shall a Holder's liability pursuant to this Subsection 2.8(d), when combined with the amounts paid or payable by such Holder pursuant to Subsection 2.8(b), exceed the proceeds from the related offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of willful misconduct or fraud by such Holder.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control between the parties to such agreement.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Company and Holders under this Subsection 2.8 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.9 Reports Under Exchange Act. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after the Company is subject to such reporting requirements); and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144, the Securities Act, and the Exchange Act, or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); and (ii) such other information as may be



reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

2.10 Limitations on Subsequent Registration Rights. Subject to Section 3.11, from and after the date of this Agreement, the Company shall not, without the prior written consent of the Majority Hudson Bay Investors, the Majority PECM Investors, the Majority Luxor Investors, the Majority Caspian Investors and the Holders of a majority of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that would provide to such holder the right to include securities in any registration on other than a subordinate basis after all Holders have had the opportunity to include in the registration and offering all shares of Registrable Securities that they wish to so include.

2.11 Market Stand-off Agreement. Each Holder and the Company hereby agree that it will not, without the prior written consent of the managing underwriter, in connection with an underwritten offering pursuant to Section 2.2 by the Company for its own behalf of shares of its Common Stock or any other equity securities under the Securities Act on a registration statement on Form S-1 or Form S-3, during the period commencing on the date of the final prospectus relating to and ending on the date specified by the Company and the managing underwriter (such period not to exceed ninety (90) days (the “**Holdback Period**”)), effect any sale or distribution of equity securities of the Company, as applicable, or any securities convertible into or exchangeable or exercisable for such securities. If (x) the Company issues an earnings release or other material news or a material event relating to the Company and its subsidiaries occurs during the last 17 days of the Holdback Period or (y) prior to the expiration of the Holdback Period, the Company announces that it will release earnings results during the 16-day period beginning upon the expiration of the Holdback Period, then to the extent necessary for a managing or co-managing underwriter of an underwritten offering required hereunder to comply with FINRA Rule 2711(f)(4) or any successor regulation, the Holdback Period shall be extended until 18 days after the earnings release or the occurrence of the material news or event, as the case may be (such period the “**Holdback Extension**”). The Company may impose stop-transfer instructions with respect to its securities that are subject to the forgoing restriction until the end of such period, including any period of Holdback Extension. The foregoing provisions of this Subsection 2.11 shall (i) not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, (ii) shall be applicable to the Holders only if all officers and directors are subject to substantially the same restrictions and the Company uses commercially reasonable efforts to obtain a similar agreement from all stockholders individually owning more than five percent (5%) of the Company’s outstanding Common Stock (after giving effect to conversion into Common Stock of all outstanding Preferred Stock) and (iii) shall be applicable to the Holders only if the Company has complied with its obligations under Section 2 and has included at least 75% of the Registered Securities requested by such Holders in such underwritten offering. The underwriters in connection with such underwritten offering are intended third-party beneficiaries of this Subsection 2.11 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such underwritten offering that are consistent with this Subsection 2.11 or that are necessary to give further effect thereto.

2.12 Termination of Registration Rights. The right of any Holder to request registration or inclusion of Registrable Securities in any registration pursuant to Subsections 2.1 or 2.2 shall terminate upon when all shares of such Holder's that were Registrable Securities cease to be Registrable Securities, provided that the indemnification provisions of Subsection 2.8 shall survive such termination.

2.13 Hedging Transactions.

(i) The Company agrees that, in connection with any proposed Hedging Transaction, if, in the reasonable judgment of counsel to the Holders' it is necessary or desirable to register under the Securities Act such Hedging Transaction or sales or transfers (whether short or long) of securities of the same class as the Registrable Securities in connection therewith, then the Company shall use its reasonable best efforts to take such actions (which may include, among other things, the filing of a post-effective amendment to a Registration Statement to include additional or changed information that is material or is otherwise required to be disclosed, including a description of such Hedging Transaction, the name of the Hedging Counterparty, identification of the Hedging Counterparty or its affiliates as underwriters or potential underwriters, if applicable, or any change to the plan of distribution) as may reasonably be required to register such Hedging Transaction or sales or transfers of securities of the same class as the Registrable Securities in connection therewith under the Securities Act in a manner consistent with the rights and obligations of the Company hereunder with respect to the registration of Registrable Securities. Any information provided by the Holders regarding the Hedging Transaction that is included in a Registration Statement, Prospectus or other document pursuant to this Section 2.13 shall be deemed to be information provided by the Holders selling Registrable Securities pursuant to such Registration Statement for purposes of Section 2.8.

(ii) All Registration Statements in which Holders may include Registrable Securities under this Agreement shall be subject to the provisions of this Section 2.13, and the registration of securities of the same class as the Registrable Securities thereunder pursuant to this Section 2.13 shall be subject to the provisions of this Agreement applicable to any such Registration Statements; provided, however, that the selection of any Hedging Counterparty shall in the sole discretion of the Holders of a majority of the Registrable Securities subject to the Hedging Transaction that are proposed to be included in such Registration Statement.

(iii) If in connection with a Hedging Transaction, a Hedging Counterparty or any affiliate thereof is (or may be considered under applicable SEC guidance) an underwriter or selling stockholder, then it shall, if requested by the relevant Holder, be required to provide customary indemnities to the Company regarding the plan of distribution and like matters.

(iv) The Company further agrees to include, under the caption "Plan of Distribution" (or the equivalent caption), in each Registration Statement, and any related Prospectus (to the extent such inclusion is permitted under applicable Commission regulations and is consistent with comments received from the Commission during any Commission review of the Registration Statement), such disclosure as is mutually agreed upon by the Company, the relevant Holders and the Hedging Counterparty describing such Hedging Transaction.

### 3. Miscellaneous.

3.1 Successors and Assigns. This Agreement shall inure, as hereinafter provided, to the benefit of and be binding upon the successors and permitted assigns of each of the parties, including each person who is a transferee of a Holder of any Registrable Securities, who executes a Joinder in the form attached as Annex A hereto, provided that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Amended Series A Certificate of Designation, the Amended Series A-1 Certificate of Designation, the Series A-2 Certificate of Designation, applicable law and any applicable agreement. If any transferee of any Holder shall acquire Registrable Securities, in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to and benefit from all of the terms of this Agreement, and by taking and holding such Registrable Securities, such person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such person shall be entitled to receive the benefits hereof.

3.2 Governing Law. This Agreement shall be governed by the internal law of the State of New York.

3.3 Jurisdiction. Any action or proceeding against any party hereto relating in any way to this Agreement or the transactions contemplated hereby may be brought and enforced in any United States federal court or New York State Court located in the Borough of Manhattan in The City of New York, and each party, on behalf of itself and its respective successors and assigns, irrevocably consents to the jurisdiction of each such court in respect of any such action or proceeding. Each party, on behalf of itself and its respective successors and assigns, irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, return receipt requested, to such person or entity at the address for such person or entity set forth in Section 3.7 hereof of this Agreement or such other address such person or entity shall notify the other in writing. The foregoing shall not limit the right of any person or entity to serve process in any other manner permitted by law or to bring any action or proceeding, or to obtain execution of any judgment, in any other jurisdiction.

Each party, on behalf of itself and its respective successors and assigns, hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising under or relating to this Agreement or the transactions contemplated hereby in any court located in the Borough of Manhattan in The City of New York. Each party, on behalf of itself and its respective successors and assigns, hereby irrevocably waives any claim that a court located in the State of New York is not a convenient forum for any such action or proceeding.

Each party, on behalf of itself and its respective successors and assigns, hereby irrevocably waives, to the fullest extent permitted by applicable United States federal and state law, all immunity from jurisdiction, service of process, attachment (both before and after judgment) and execution to which he might otherwise be entitled in any action or proceeding relating in any way to this Agreement or the transactions contemplated hereby in the courts of the State of New York, of the United States or of any other country or jurisdiction, and hereby waives any right he might otherwise have to raise or claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

3.4 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

3.5 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

3.6 Titles and Subtitles. The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

3.7 Notices. All notices, demands and other communications provided for or permitted hereunder shall be made in writing and shall be made by registered or certified first-class mail, return receipt requested, telecopy, electronic transmission, courier service or personal delivery:

(a) If to the Company:

Suite 150  
460 Herndon Parkway  
Herndon, VA 20170  
Telecopy: (703) 650-4295  
Attention: Andrea L. Mancuso, General Counsel

With a copy to (which shall not constitute notice hereunder):

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Telecopy: (212) 492-0105  
Attention: Jeffery D. Marell

(b) If to any Holder, at its address as it appears on Exhibit A, or at the Holder's address as it appears in the records of the Company if updated after the execution of this Agreement.

All such notices, demands and other communications shall be deemed to have been duly given when delivered by hand, if personally delivered; when delivered by courier, if delivered by commercial courier service; five (5) days after being deposited in the mail, postage prepaid, if mailed; and when receipt is acknowledged, if telecopied or electronically transmitted. Any party may by notice given in accordance with this Section 3.7 designate another address or Person for receipt of notices hereunder. If the due date for any notice is a day that is not a business day for commercial banks in the City of New York, then such notice shall be considered timely delivered if it is delivered by the end of the following such business day.

3.8 Amendments and Waivers. This Agreement may be amended with the consent of the Company and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company shall have obtained a written consent to such amendment, action or omission to act of the Majority Hudson Bay Investors, the Majority PECM Investors, the Majority Luxor Investors and the Majority Caspian Investors and the Holders of at least a majority of the Registrable Securities then outstanding, provided however, that any modification, alteration, waiver or change that has a disproportionate and adverse effect on any right of any Holder or any person named in Section 3.11 to the extent he or it has not yet become a party to this Agreement pursuant to Section 3.11 under this Agreement shall not be effective against such Holder without the prior written consent of such Holder.

No waiver of any terms or conditions of this Agreement shall operate as a waiver of any other breach of such terms and conditions or any other term or condition, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision hereof. No written waiver hereunder, unless it by its own terms explicitly provides to the contrary, shall be construed to effect a continuing waiver of the provisions being waived and no such waiver in any instance shall constitute a waiver in any other instance or for any other purpose or impair the right of the party against whom such waiver is claimed in all other instances or for all other purposes to require full compliance with such provision. The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the right of such party thereafter to enforce each provision of this Agreement in accordance with its terms.

3.9 Severability. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

3.10 Aggregation of Stock. All shares of Registrable Securities held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

3.11 Additional Investor. Notwithstanding anything to the contrary contained herein, each of Philip A Falcone and HRG may become a party to this Agreement by executing and delivering a joinder to this Agreement in the form attached hereto as Exhibit A, and thereafter shall be deemed an “Investor” for all purposes hereunder. No action or consent by the Investors shall be required for such joinder to this Agreement by HRG, so long as HRG has agreed in writing to be bound by all of the obligations as an “Investor” hereunder.

3.12 Entire Agreement. This Agreement (including any Schedules and Exhibits hereto) constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

HC2 HOLDINGS INC.

By: /s/ Mesfin Demise

Name: Mesfin Demise

Title: Chief Financial Officer

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

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INVESTORS:

HUDSON BAY ABSOLUTE RETURN CREDIT  
OPPORTUNITIES MASTER FUND LTD.

By: /s/ Marc Sole

Name: Marc Sole

Title: Authorized Signatory

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**



PROVIDENCE DEBT FUND III L.P.

By: /s/ Bryan Martoken  
Name: Bryan Martoken  
Title: CFO – Capital Markets Group

PROVIDENCE DEBT FUND III MASTER (NON-US) L.P.

By: /s/ Bryan Martoken  
Name: Bryan Martoken  
Title: CFO – Capital Markets Group

PECM STRATEGIC FUNDING L.P.

By: PECM Strategic Funding GP L.P.  
By: PECEM Strategic Funding GP Ltd.

By: /s/ Bryan Martoken  
Name: Bryan Martoken  
Title: CFO – Capital Markets Group

BENEFIT STREET PARTNERS SMA LM L.P.

By: /s/ Bryan Martoken  
Name: Bryan Martoken  
Title: CFO – Capital Markets Group

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

DG VALUE PARTNERS, LP

By: DG Capital Management, LLC, *its investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

DG VALUE PARTNERS II MASTER FUND, LP

By: DG Capital Management, LLC, *its investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

SPECIAL SITUATIONS, LLC

By: DG Capital Management, LLC, *its investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

SPECIAL SITUATIONS X, LLC

By: DG Capital Management, LLC, *its investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

DG CREDIT OPPORTUNITIES, LP

By: DG Capital Management, LLC, *its investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

LUXOR CAPITAL PARTNERS, LP

By: /s/ Norris Nissim

Name: Norris Nissim

Title: General Counsel

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

LUXOR CAPITAL PARTNERS OFFSHORE MASTER  
FUND, LP

By: /s/ Norris Nissim

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Name: Norris Nissim

Title: General Counsel

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**



LUXOR WAVEFRONT, LP

By: /s/ Norris Nissim

Name: Norris Nissim

Title: General Counsel

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

MARINER LDC

By: /s/ Richard D. Holahan, Jr.  
Name: Richard D. Holahan, Jr.  
Title: Authorized Signatory

CASPIAN SELECT CREDIT MASTER FUND, LTD.

By: /s/ Richard D. Holahan, Jr.  
Name: Richard D. Holahan, Jr.  
Title: Authorized Signatory

CASPIAN SOLITUDE MASTER FUND, L.P.

By: /s/ Richard D. Holahan, Jr.  
Name: Richard D. Holahan, Jr.  
Title: Authorized Signatory

CASPIAN HLSC1, LLC

By: /s/ Richard D. Holahan, Jr.  
Name: Richard D. Holahan, Jr.  
Title: Authorized Signatory

SUPER CASPIAN CAYMAN FUND LIMITED

By: /s/ Richard D. Holahan, Jr.  
Name: Richard D. Holahan, Jr.  
Title: Authorized Signatory

CASPIAN SC HOLDINGS, L.P.

By: /s/ Richard D. Holahan, Jr.  
Name: Richard D. Holahan, Jr.  
Title: Authorized Signatory

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

LONG BALL PARTNERS, LLC

By: Imperial Capital Asset Management, LLC, its Managing  
Member

By: /s/ Mark Martis

Name: Mark Martis

Title: Chief Operating Officer

**SIGNATURE PAGE TO SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

**SCHEDULE A**

**Investors**

**Hudson Bay Investors**

HUDSON BAY ABSOLUTE RETURN CREDIT OPPORTUNITIES MASTER FUND LTD.

**PECM Investors**

PROVIDENCE DEBT FUND III L.P.  
PROVIDENCE DEBT FUND III MASTER (NON-US) L.P.  
PECM STRATEGIC FUNDING L.P.  
BENEFIT STREET PARTNERS SMA LM L.P.

**Luxor Investors**

LUXOR CAPITAL PARTNERS, LP  
LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP  
LUXOR WAVEFRONT, LP

**DG Investors**

DG VALUE PARTNERS, LP  
DG VALUE PARTNERS II MASTER FUND, LP  
SPECIAL SITUATIONS, LLC  
SPECIAL SITUATIONS X, LLC  
DG CREDIT OPPORTUNITIES, LP

**Caspian Investors**

MARINER LDC  
CASPIAN SELECT CREDIT MASTER FUND, LTD.  
CASPIAN SOLITUDE MASTER FUND, L.P.  
CASPIAN HLSC1, LLC  
SUPER CASPIAN CAYMAN FUND LIMITED  
CASPIAN SC HOLDINGS, L.P.

**Imperial Investors**

LONG BALL PARTNERS, LLC

**EXHIBIT A**

**FORM OF JOINDER**

THIS JOINDER is made on this      day of      ,

BETWEEN

(1)                      (the “New Party”);

AND

(2) THE INVESTORS

(collectively, the “Current Parties” and individually, a “Current Party”);

AND

(3) HC2 HOLDINGS INC., (the “Company”).

WHEREAS a Second Amended and Restated Registration Rights Agreement was entered into on January      , 2015 by and among, inter alia, certain of the Current Parties and the Company (the “Registration Rights Agreement”), a copy of which the New Party hereby confirms that it has been supplied with and acknowledges the terms therein.

NOW IT IS AGREED as follows:

1. In this Joinder, unless the context otherwise requires, words and expressions respectively defined or construed in the Registration Rights Agreement shall have the same meanings when used or referred to herein.
2. The New Party hereby accedes to and ratifies the Registration Rights Agreement and covenants and agrees with the Current Parties and the Company to be bound by the terms of the Registration Rights Agreement as an “Investor” and to duly and punctually perform and discharge all liabilities and obligations whatsoever from time to time to be performed or discharged by it under or by virtue of the Registration Rights Agreement in all respects as if named as a party therein.
3. The Company covenants and agrees that the New Party shall be entitled to all the benefits of the terms and conditions of the Registration Rights Agreement to the intent and effect that the New Party shall be deemed, with effect from the date on which the New Party executes this Joinder, to be a party to the Registration Rights Agreement as an “Investor.”
4. This Joinder shall hereafter be read and construed in conjunction and as one document with the Registration Rights Agreement and references in the Registration Rights Agreement to “the Agreement” or “this Agreement,” and references in all other instruments and documents executed thereunder or pursuant thereto to the Registration Rights Agreement, shall for all purposes refer to the Registration Rights Agreement incorporating and as supplemented by this Joinder.

5. THIS JOINDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF.

6. Any action or proceeding against any party hereto relating in any way to this Joinder or the transactions contemplated hereby may be brought and enforced in any United States federal court or New York State Court located in the Borough of Manhattan in The City of New York, and each party, on behalf of itself and its respective successors and assigns, irrevocably consents to the jurisdiction of each such court in respect of any such action or proceeding. Each party, on behalf of itself and its respective successors and assigns, irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, return receipt requested, to such person or entity at the address for such person or entity set forth in Section 3.7 of the Registration Rights Agreement or such other address such person or entity shall notify the other in writing. The foregoing shall not limit the right of any person or entity to serve process in any other manner permitted by law or to bring any action or proceeding, or to obtain execution of any judgment, in any other jurisdiction.

7. Each party, on behalf of itself and its respective successors and assigns, hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising under or relating to this Joinder or the transactions contemplated hereby in any court located in the Borough of Manhattan in The City of New York. Each party, on behalf of itself and its respective successors and assigns, hereby irrevocably waives any claim that a court located in the State of New York is not a convenient forum for any such action or proceeding.

8. Each party, on behalf of itself and its respective successors and assigns, hereby irrevocably waives, to the fullest extent permitted by applicable United States federal and state law, all immunity from jurisdiction, service of process, attachment (both before and after judgment) and execution to which he might otherwise be entitled in any action or proceeding relating in any way to this Joinder or the transactions contemplated hereby in the courts of the State of New York, of the United States or of any other country or jurisdiction, and hereby waives any right he might otherwise have to raise or claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

9. The address of the undersigned for purposes of all notices under the Registration Rights Agreement is:

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[NEW PARTY]

By: \_\_\_\_\_

Name:

Title:



**FOR IMMEDIATE RELEASE**

**HC2 Receives \$9.7 Million Dividend from its Subsidiary Global Marine  
and Issues \$14 Million of Preferred Stock**

HERNDON, VA — (Marketwired) — 1/8/2015 — HC2 Holdings, Inc. (“HC2”) (NYSE MKT HCHC) announced that its indirectly held subsidiary Global Marine declared and paid a \$10 million dividend, of which HC2 received 97%. HC2 also announced it issued \$14 million of Series A-2 Convertible Participating Preferred Stock (“Preferred Stock”).

“We are pleased with the performance of Global Marine, which permitted the payment of the dividend, and the additional capital raise, with the sale of Preferred Stock,” stated Philip Falcone, HC2’s Chairman, President and CEO. “The dividend income and funds from the Preferred Stock will be used for the continued implementation of our business plan.”

HC2 issued and sold to the purchasers 14,000 shares of Preferred Stock for a purchase price of \$1,000 per share. The Preferred Stock is initially convertible at a conversion price of \$8.25, subject to adjustment from time to time for various corporate transactions. The terms of the Preferred Stock also include a quarterly cash dividend at an annualized rate of 7.50%, and a cumulative quarterly pay-in-kind dividend at an annualized rate of 4.00%, which may be increased to 7.25% upon the occurrence of certain events and may be reduced to 2.00% or 0% if HC2 achieves specified rates of growth measured by net asset value. As of today, the Preferred Stock represents on an as-converted basis, approximately 0.71% of HC2’s outstanding common stock.

Holders of the Preferred Stock will have the right to vote together with the holders of common stock on all matters upon which the holders of common stock are entitled to vote, on an as-converted basis. Please refer to HC2’s Form 8-K to be filed with the Securities and Exchange Commission for a more complete description of the terms of the Preferred Stock.

**Cautionary Statement Regarding Forward Looking Statements**

Safe Harbor’s Statement Under the Private Securities Litigation Reform Act of 1995: This release contains, and certain oral statements made by our representatives from time to time may contain, forward-looking statements. Generally, forward-looking statements include information



describing the offering and other actions, events, results, strategies and expectations and are generally identifiable by use of the words “believes,” “expects,” “intends,” “anticipates,” “plans,” “seeks,” “estimates,” “projects,” “may,” “will,” “could,” “might,” or “continues” or similar expressions. These statements are based on the beliefs and assumptions of HC2’s management and the management of HC2’s subsidiaries. Factors that could cause actual results, events and developments to differ include, without limitation, capital market conditions, the ability of HC2’s subsidiaries to generate sufficient net income and cash flows to make upstream cash distributions, trading characteristics of the HC2 common stock, the ability of HC2 and its subsidiaries to identify any suitable future acquisition opportunities, efficiencies/cost avoidance, cost savings, income and margins, growth, economies of scale, combined operations, future economic performance, conditions to, and the timetable for, completing the integration of financial reporting of acquired or target businesses, completing future acquisitions and dispositions, litigation, potential and contingent liabilities, management’s plans, changes in regulations, taxes and the risks that may affect the performance of the operating subsidiaries of HC2 and those factors listed under the caption “Risk Factors” in HC2’s most recent Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, filed with the Securities and Exchange Commission. All forward-looking statements described herein are qualified by these cautionary statements and there can be no assurance that the actual results, events or developments referenced herein will occur or be realized. HC2 does not undertake any obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or changes to future operation results.

## **About HC2**

HC2 Holdings, Inc. is a publicly traded (NYSE MKT: HCHC), diversified holding company, which seeks to acquire and grow attractive businesses that generate sustainable free cash flow. HC2 has a diverse array of operating subsidiaries, each with its own dedicated management team, across a broad set of industries, including, but not limited to, telecom/infrastructure, large-scale U.S. construction, energy, and life sciences. HC2 seeks opportunities that generate attractive returns and significant cash flow in order to maximize value for all stakeholders. Currently, HC2’s largest operating subsidiaries are Schuff International, Inc., a leading structural steel fabricator in the United States, and Global Marine Systems Limited, a global offshore engineering company focused on subsea cable installation and maintenance. Founded in 1994, HC2 is headquartered in Herndon, Virginia.

For information on HC2 Holdings, Inc., please contact:

HC2  
ir@HC2.com