

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

ELITE PHARMACEUTICALS INC /DE/

CIK: **1053369** | IRS No.: **223542636** | State of Incorporation: **DE** | Fiscal Year End: **0331**
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SIC: **2834** Pharmaceutical preparations

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

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

June 25, 2010

Date of Report (Date of earliest event reported)

ELITE PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-15697
(Commission
File Number)

22-3542636
(IRS Employer
Identification No.)

165 Ludlow Avenue, Northvale, NJ 07647
(Address of principal executive offices)

(201) 750-2646
(Company's telephone number, including area code)

(Former name or former address, if changed since last report)

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 (*see* General Instruction A.2. below):

- 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

Item 3.02 Unregistered Sale of Equity Securities

Item 3.03 Material Modification to Rights of Security Holders

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

Item 8.01 Other Events

On or about September 22, 2009, Midsummer Investments, Ltd. (“Midsummer”) and Bushido Capital Master Fund, LP (“Bushido”, and together with Midsummer, the “Plaintiffs”) filed a complaint against Elite Pharmaceuticals, Inc., a Delaware corporation (the “Company”), in the United States District Court, Southern District of New York (Case No. 09 CIV 8074) (the “Action”). The Plaintiffs asserted claims for breach of contract (injunctive relief and damages), anticipatory breach of contract (injunctive relief), conversion (injunctive relief and damages), and attorneys’ fees, arising out of a Securities Purchase Agreement, dated September 15, 2008, by and among the Company and certain purchasers of the Company’s securities (including the Plaintiffs) and the Certificate of Designation of Preferences, Rights and Limitations of Series D 8% Convertible Preferred Stock, filed with the Secretary of State of the State of Delaware on September 15, 2009 (the “Series D Certificate”). Plaintiffs claimed that they were entitled to a reduced conversion price for their Series D 8% Convertible Preferred Stock, par value US\$0.01 per share (the “Series D Preferred Stock”), as a result of the Strategic Alliance Agreement, dated March 18, 2009, as amended (the “Epic SAA”), by and among the Company, on the one hand, and Epic Pharma, LLC (“Epic”) and Epic Investments, LLC (“Epic Investments”, and together with Epic, the “Epic Parties”). With their complaint, the Plaintiffs concurrently filed a request for preliminary injunction. Pursuant to an order of the Court entered into on October 16, 2009, the Plaintiffs’ request for a preliminary injunction was denied. Thereafter, Plaintiffs filed an amended complaint (the “Complaint”), asserting claims for breach of contract (injunctive relief and damages), anticipatory breach of contract (injunctive relief), conversion (damages) and attorneys’ fees, seeking compensatory damages of \$7,455,363.00, delivery of 1,000,000 shares of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), a declaration that all future conversions of the Series D Preferred Stock, held by Plaintiffs is at a conversion price of \$0.05, attorneys’ fees, interest and costs.

The Company disputed the claims in the Complaint, believing the lawsuit to be without merit, and vigorously defended against them. The Company moved for summary judgment on the Complaint and the judge in the case did not issue an order on such motion. The Company proceeded with extensive, time-consuming and costly discovery. The court scheduled the trial to commence on June 28, 2010.

In order to avoid the delays, expense and risks inherent in litigation, after extensive negotiations, the Company entered into (i) a Stipulation of Settlement and Release, dated June 25, 2010 (the “Settlement Agreement”), with the Plaintiffs and the Epic Parties, (ii) an Amendment Agreement, dated June 25, 2010 (the “Series D Amendment Agreement”), with the Plaintiffs and (iii) an Amendment Agreement, dated June 25, 2010 (the “Series E Amendment Agreement”) with the Epic Parties. As part of the Settlement Agreement, the Action will be dismissed with prejudice.

Series D Amendment Agreement

Pursuant to the Series D Amendment Agreement, the Company and Plaintiffs agreed to amend the Series D Certificate. The holders of at least 50.1%, in the aggregate, of the Company’s outstanding Series B Preferred 8% Convertible Preferred Stock, par value US\$0.01 per share, Series C 8% Convertible Preferred Stock, par value US\$0.01 per share, and Series D Preferred Stock, voting as one class, consented to the filing of the Amended Certificate of Designations of the Series D 8% Convertible Preferred Stock (the “Amended Series D Certificate”) with the Secretary of State of the State of Delaware. On June 29, 2010, pursuant to the authority of its Board of Directors, the Company filed with the Secretary of State of the State of Delaware the Amended Series D Certificate.

Pursuant to the terms of the Amended Series D Certificate, the terms of the Series D Preferred Stock have been amended as follows:

- Dividends: The Series D Preferred Stock will continue to accrue dividends at the rate of 8% per annum on their stated value of US\$1,000 per share, payable quarterly on January 1, April 1, July 1 and October 1 and such rate shall not increase to 15% per annum as previously provided prior to giving effect to the Series D Amendment Agreement. In addition to being payable in cash and shares of Common Stock, as provided in the Series D Certificate, such dividends may also be paid in shares of Series D Preferred Stock (the "Dividend Payment Preferred Stock") or a combination of cash, Common Stock and Dividend Payment Preferred Stock. Dividend Payment Preferred Stock will have the same rights, privileges and preferences as the Series D Preferred Stock, except that such Dividend Payment Preferred Stock will not be entitled to, nor accrue, any dividends pursuant to the Amended Series D Certificate.
- Conversion Price: The conversion price of the Series D Preferred Stock shall be reduced from US\$0.20 per share to US\$0.07 per share (subject to adjustment as provided in the Amended Series D Certificate).

- Automatic Monthly Conversion: On each Monthly Conversion Date (as defined below), a number of shares of Series D Preferred Stock equal to each holder's pro-rata portion (based on the shares of Series D Preferred Stock held by each Holder on June 25, 2010) of the Monthly Conversion Amount (as defined below) will automatically convert into shares of Common Stock at the then-effective conversion price (each such conversion, a "Monthly Conversion"). Notwithstanding the foregoing, the Company will not be permitted to effect a Monthly Conversion on a Monthly Conversion Date unless (i) the Common Stock shall be listed or quoted for trading on a trading market, (ii) there is a sufficient number of authorized shares of Common Stock for issuance of all Common Stock to be issued upon such Monthly Conversion, (iii) as to any holder of Series D Preferred Stock, the issuance of the shares will not cause a breach of the beneficial ownership limitations set forth in the Amended Series D Certificate, (iv) if requested by a holder of Series D Preferred Stock and a customary Rule 144 representation letter relating to all shares of Common Stock to be issued upon each Monthly Conversion is provided by such holder after request from the Company, the shares of Common Stock issued upon such Monthly Conversion are delivered electronically through the Depository Trust Company or another established clearing corporation performing similar functions ("DTC"), may be resold by such holder pursuant to an exemption under the Securities Act and are otherwise free of restrictive legends and trading restrictions on such Holder, (v) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction (as such terms are defined in the Amended Series D Certificate) that has not been consummated, (vi) the applicable holder of Series D Preferred Stock is not in possession of any information provided to such holder by the Company that constitutes material non-public information, and (vii) the average VWAP (as defined in the Amended Series D Certificate) for the 20 trading days immediately prior to the applicable Monthly Conversion Date equals or exceeds the then-effective conversion price of the Series D Preferred Stock. Shares of the Series D Preferred Stock issued to the holders of Series D Preferred Stock as Dividend Payment Preferred Stock shall be the last shares of Series D Preferred Stock to be subject to Monthly Conversion. As used herein, the following terms have the following meanings: (i) "Monthly Conversion Date" means the first day of each month, commencing on August 1, 2010, and terminating on the date the Series D Preferred Stock is no longer outstanding; (ii) "Monthly Conversion Amount" means an aggregate Stated Value of Series D Preferred Stock among all Holders that is equal to 25% of aggregate dollar trading volume of the Common Stock during the 20 trading days immediately prior to the applicable Monthly Conversion Date (such 20 trading day period, the "Measurement Period"), increasing to 35% of the aggregate dollar trading volume during the Measurement Period if the average VWAP during such Measurement Period equals or exceeds \$0.12 (subject to adjustment for forward and reverse stock splits and the like that occur after June 25, 2010) and further increasing to 50% of the aggregate dollar trading volume during such Measurement Period if the average VWAP during such Measurement Period equals or exceeds \$0.16 (subject to adjustment for forward and reverse stock splits and the like that occur after June 25, 2010).
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- Change of Control Transaction: Epic and its affiliates were expressly excluded from any event which would otherwise constitute a “Change of Control Transaction” due to the acquisition in excess of 40% of the Company’s voting securities.

Pursuant to the Series D Amendment Agreement, the exercise price of the Warrants (the “Series D Warrants”) to purchase shares of Common Stock issued to the holders of Series D Preferred Stock pursuant to the Securities Purchase Agreement, dated as of September 15, 2008, by and among the Company and the purchasers of Series D Preferred Stock will be reduced from \$0.25 per share to US\$0.125. In addition, the exercise price of the Series D Warrants may be reduced as follows:

- (i) by 20%, if on September 15, 2011, the holder of such Warrant still beneficially owns more than 50% of the Series D Preferred Stock beneficially owned by such holder as of June 25, 2010 (“Base Ownership”); and
- (ii) by 20%, if (a) on September 15, 2011, such holder then beneficially owns more than 25% of the Base Ownership and 50% or less of the Base Ownership and (b) on September 15, 2012, such holder then beneficially owns more than 25% of the Base Ownership.

Notwithstanding the foregoing, (x) in no event will the exercise price of the Series D Warrants be reduced more than once as a result of the amendments to such Series D Warrants, and (y) in the event that on September 15, 2011 or, if the condition of clause (ii)(a) above is met, on September 15, 2012, the Holder beneficially owns 25% or less of the Base Ownership, then no adjustment shall occur pursuant to the Series D Warrants, as amended by the Series D Amendment Agreement. Additionally, there will be no corresponding increase in the number of shares of Common Stock issuable upon exercise of the Warrants solely as a result of the foregoing adjustments.

To the extent such issuance does not cause the breach of the beneficial ownership limitations set forth in the Amended Series D Certificate (any excess shares will be issued to the affected holder of Series D Preferred Stock upon written notice from such holder when such holder’s beneficial ownership is below 9.9% to the extent that such issuance does not cause such holder to exceed such amount), the Company agreed to issue certain shares of Common Stock to the Plaintiffs and their respective affiliates in satisfaction of the Company’s obligation to pay certain previously accrued but unpaid dividends through March 31, 2010 owing to the Plaintiffs and their respective affiliates.

Series E Amendment Agreement

Pursuant to the Series E Amendment Agreement, the Company agreed to amend the Certificate of Designation of Preferences, Rights and Limitations of the Series E Convertible Preferred Stock, filed with Secretary of State of the State of Delaware on June 3, 2009 (the “Series E Certificate”). The Epic Parties, constituting all holders of Series E Preferred Stock, consented to the filing of the Amended Certificate of Designations of the Series E Convertible Preferred Stock (the “Amended Series E Certificate”) with the Secretary of State of the State of Delaware. On June 29, 2010, pursuant to the authority of its Board of Directors, Company filed with the Secretary of State of the State of Delaware the Amended Series E Certificate. Pursuant to the terms of the Amended Series E Certificate, the conversion price of the Series E Preferred Stock will be adjusted downward to reflect, on a pro rata basis, the reduction in the conversion price of the Series D Preferred Stock as the result of the Series D Amendment Agreement, to the extent shares of Series D Preferred Stock are converted at the reduced conversion price set forth in the Amended Series D Certificate.

Pursuant to the Series E Amendment Agreement, the Epic SAA was amended so that the purchase of the 750 Additional Shares of Series E Preferred Stock described therein for an aggregate purchase price of \$750,000 would occur in 12 installments of 62.5 shares (for a purchase price of \$62,500) (i) on or prior to November 1, 2009 (which has been satisfied) and (ii) within 10 business days following the last day of each calendar quarter, beginning with the first calendar quarter ending on September 30, 2010 and continuing for each of the 10 calendar quarters thereafter.

In addition, under the Series E Amendment Agreement, the third closing date is scheduled to occur on or before December 31, 2010, subject to certain conditions set forth in the Epic SAA (as amended by the Series E Amendment Agreement).

Under each of the Series D Amendment Agreement and the Series E Amendment Agreement, the Company agreed that at its next meeting of shareholders it will seek shareholder approval to amend its certificate of incorporation to increase the number of authorized but unissued shares of Common Stock to at least 760,000,000.

Settlement Agreement

Pursuant to the Settlement Agreement, Elite and the Epic Parties, individually and on behalf of each of their respective officers, directors, agents, representatives, successors, affiliated entities, subsidiaries, heirs, employees, administrators and assigns (the "Elite Releasors") agreed to release and discharge each of the Plaintiffs, BCMF Trustees LLC, an affiliate of Bushido ("BCMF"), their respective owners, officers, directors, investors, agents, representatives, successors, affiliated entities, subsidiaries, heirs, employees, administrators and assigns (the "Plaintiffs' Releasees") from any and all actions, causes of action, claims, liens, suits, debts, accounts, liabilities, expenses, attorneys' fees, agreements, promises, charges, complaints and demands (collectively, "Loses") which the Elite Releasors have or may have against the Plaintiffs' Releasees that could have been asserted in the Action or any other court action, based upon any conduct up to and including the date of the Settlement Agreement. Notwithstanding the foregoing, the Elite Releasors will not release any claim of breach of the terms of the Settlement Agreement, breach of the terms of the Series D Amendment Agreement, or any cause of action arising from future conduct by the Plaintiffs' Releasees.

Pursuant to the Settlement Agreement, the Plaintiffs and BCMF, individually and on behalf of each of their respective owners, officers, directors, investors, agents, representatives, successors, affiliated entities, subsidiaries, heirs, employees, administrators and assigns (the "Plaintiffs' Releasors") agreed to release and discharge Elite and the Epic Parties and each of their respective officers, directors, agents, representatives, successors, affiliated entities, subsidiaries, heirs, employees, administrators and assigns (the "Elite Releasees"), from any and all Losses which the Plaintiffs' Releasors have or may have against the Elite Releasees that could have been asserted in the Action or any other court action, based upon any conduct up to and including the date of the Settlement Agreement. Notwithstanding the foregoing, the Plaintiffs' Releasors did not release any claim of breach of the terms of the Settlement Agreement, breach of the terms of the Series D Amendment Agreement or any cause of action arising from future conduct by the Elite Releasees.

In addition, concurrently with the execution of the Settlement Agreement, legal counsel for both the Company and the Plaintiffs executed a Stipulation of Discontinuance of the Action, which such counsel will file once all conditions precedent to the effectiveness of the Settlement Agreement have been satisfied.

The foregoing description of the Amended Series D Certificate, Amended Series E Certificate, Settlement Agreement, Series D Amendment Agreement and Series E Amendment Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of such documents which are filed herewith and incorporated herein by reference.

On June 30, 2010, the Company issued a press release announcing the settlement of the litigation with the Plaintiffs. A copy of such press release is attached hereto as Exhibit 99.1.

Item 9.01 Financial Statements and Exhibits

- a) Not applicable.
- b) Not applicable.
- c) Not applicable.
- d) Exhibits

Exhibit No.	Exhibit Description
3.1	Amended Certificate of Designations of the Series D 8% Convertible Preferred Stock as filed with the Secretary of State of the State of Delaware on June 29, 2010
3.2	Amended Certificate of Designations of the Series E Convertible Preferred Stock as filed with the Secretary of State of the State of Delaware on June 29, 2010
10.1	Form of Stipulation of Settlement and Release, dated as of June 25, 2010, by and among the Company, Midsummer Investment, Ltd., Bushido Capital Master Fund, LP, BCMF Trustees, LLC, Epic Pharma, LLC and Epic Investments, LLC
10.2	Form of Amendment Agreement, dated as of June 25, 2010, by and among the Company, and the investors signatory thereto
10.3	Form of Amendment Agreement, dated as of June 2010, by and among the Company, Epic Pharma, LLC and Epic Investments, LLC
99.1	Press Release dated June 30, 2010

SIGNATURE

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

July 1, 2010

ELITE PHARMACEUTICALS, INC.

By: /s/ Jerry Treppel
Jerry Treppel
Chief Executive Officer

AMENDED
CERTIFICATE OF DESIGNATIONS
OF THE
SERIES D 8 % CONVERTIBLE PREFERRED STOCK
OF
ELITE PHARMACEUTICALS, INC.

PURSUANT TO SECTION 151 OF THE
DELAWARE GENERAL CORPORATION LAW

ELITE PHARMACEUTICALS, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

First: The Corporation filed a Certificate of Designation of Preferences, Rights and Limitations of the Series D 8% Convertible Preferred Stock, par value US\$0.01 per share (the "Series D Preferred Stock"), with the Secretary of State of the State of Delaware on September 15, 2008 (the "Original Series D Certificate of Designation").

Second: The Board of Directors of the Corporation (the "Board") duly adopted the following resolutions setting forth amendments to the Original Series D Certificate of Designation:

"WHEREAS, the Corporation filed a Certificate of Designation of Preferences, Rights and Limitations of the Series D 8% Convertible Preferred Stock with the Secretary of State of the State of Delaware on September 15, 2008;

WHEREAS, it is the desire of the Board of Directors of the Corporation, pursuant to its authority as aforesaid and with the requisite consent of the holders of the outstanding shares of Series B 8% Convertible Preferred Stock, par value \$0.01 per share, Series C 8% Convertible Preferred Stock, par value \$0.01 per share, and Series D 8% Convertible Preferred Stock, par value \$0.01 per share, to amend, in its entirety, the Certificate of Designation of Preferences, Rights and Limitations of the Series D 8% Convertible Preferred Stock as follows:

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the provisions of the Amended Certificate of Incorporation of the Corporation, the Board of Directors hereby amends in its entirety the Certificate of Designation of the Series D 8% Convertible Preferred Stock, dated September 15, 2008, as follows:

TERMS OF SERIES D 8% CONVERTIBLE PREFERRED STOCK

Section 1. Definitions. Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement. For the purposes hereof, the following terms shall have the following meanings:

“Alternate Consideration” shall have the meaning set forth in Section 7(e).

“Amendment” means the amendment to the Corporation’s articles of incorporation, and a restatement thereof, that increases the number of authorized shares of Common Stock from 150,000,000 shares to 200,000,000 shares.

“Authorized Share Approval” means the vote by the shareholders of the Corporation to approve the Amendment and the filing by the Corporation of the Amendment with the Secretary of State the State of Delaware and the acceptance of the Amendment by the Secretary of State the State of Delaware.

“Authorized Share Approval Date” means the date when all of the actions set forth in the definition of the Authorized Share Approval have been completed.

“Bankruptcy Event” means any of the following events: (a) the Corporation or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Corporation or any Significant Subsidiary thereof; (b) there is commenced against the Corporation or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement; (c) the Corporation or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered; (d) the Corporation or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment; (e) the Corporation or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors; (f) the Corporation or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts; or (g) the Corporation or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

“Base Conversion Price” shall have the meaning set forth in Section 7(b).

“Beneficial Ownership Limitation” shall have the meaning set forth in Section 6(c).

“Bushido” shall have the meaning set forth in Section 4.

“Business Day” means any day except Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Buy-In” shall have the meaning set forth in Section 6(e)(iii).

“Cash Redemption Triggering Events” shall have the meaning set forth in Section 9(b).

“Change of Control Transaction” means the occurrence after the date hereof of any of (i) an acquisition after the date hereof by an individual, legal entity or “group” (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Corporation, by contract or otherwise) of in excess of 40% of the voting securities of the Corporation (other than by means of conversion or exercise of Preferred Stock and the Securities issued together with the Preferred Stock), or (ii) the Corporation merges into or consolidates with any other Person, or any Person merges into or consolidates with the Corporation and, after giving effect to such transaction, the stockholders of the Corporation immediately prior to such transaction own less than 60% of the aggregate voting power of the Corporation or the successor entity of such transaction, or (iii) the Corporation sells or transfers all or substantially all of its assets to another Person and the stockholders of the Corporation immediately prior to such transaction own less than 60% of the aggregate voting power of the acquiring entity immediately after the transaction, or (iv) a replacement at one time or within a one year period of more than one-half of the members of the Corporation’s board of directors which is not approved by a majority of those individuals who are members of the board of directors on the date hereof (or by those individuals who are serving as members of the board of directors on any date whose nomination to the board of directors was approved by a majority of the members of the board of directors who are members on the date hereof), or (v) the execution by the Corporation of an agreement to which the Corporation is a party or by which it is bound, providing for any of the events set forth in clauses (i) through (iv) above; provided that any transaction between the Corporation and Epic Pharma (as defined below) or any of its Affiliates shall not constitute a “Change of Control Transaction” under clause (i) above.

“Closing Date” means the Trading Day when all of the Transaction Documents have been executed and delivered by the applicable parties thereto and all conditions precedent to (i) the Holders’ obligations to pay the Subscription Amount and (ii) the Corporation’s obligations to deliver the Securities have been satisfied or waived.

“Commission” means the Securities and Exchange Commission.

“Common Stock” means the Corporation’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“Common Stock Equivalents” means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Conversion Amount” means the sum of the Stated Value at issue.

“Conversion Date” shall have the meaning set forth in Section 6(a).

“Conversion Price” shall have the meaning set forth in Section 6(b).

“Conversion Shares” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Series D Preferred Stock in accordance with the terms hereof.

“Conversion Shares Registration Statement” means a registration statement required pursuant to Section 4.19 of the Purchase Agreement that registers the resale of all Conversion Shares of the Holder, who shall be named as a “selling stockholder” therein.

“Dilutive Issuance” shall have the meaning set forth in Section 7(b).

“Dilutive Issuance Notice” shall have the meaning set forth in Section 7(b).

“Dividend Payment Date” shall have the meaning set forth in Section 3(a).

“Dividend Share Amount” shall have the meaning set forth in Section 3(a).

“Effective Date” means the earlier of (a) the effective date of a Conversion Shares Registration Statement registering the resale of all of the Conversion Shares and (b) the date on which the Conversion Shares issuable pursuant to the Transaction Documents may be sold under Rule 144 without (i) the requirements for the Corporation to be in compliance with the current public information required under Rule 144 as to such Conversion Shares and (ii) volume or manner-of-sale restrictions, as determined by the counsel to the Corporation pursuant to a written opinion letter to such effect, if such opinion letter is required by the Transfer Agent, addressed and acceptable to the Transfer Agent and the Purchasers.

“Equity Conditions” means, during the period in question, as to a Holder, (i) after June 25, 2010, the Corporation shall have duly honored all conversions scheduled to occur or occurring by virtue of one or more Notices of Conversion of the applicable Holder on or prior to the dates so requested or required, if any, (ii) the Corporation shall have paid all liquidated damages and other amounts owing to such Holder in respect of the Series D Preferred Stock, (iii) (a) there is an effective Conversion Shares Registration Statement pursuant to which such Holder is permitted to utilize the prospectus thereunder to resell all of the shares of Common Stock issuable to such Holder pursuant to the Transaction Documents (and the Corporation believes, in good faith, that such effectiveness will continue uninterrupted for the foreseeable future) or (b) the Conversion Shares issuable to such Holder pursuant to the Transaction Documents may be resold pursuant to Rule 144 without volume or manner-of-sale restrictions as determined by the counsel to the Corporation pursuant to a written opinion letter to such effect, if such opinion letter is required by the Transfer Agent, addressed and acceptable to the Transfer Agent, (iv) the Common Stock is trading on a Trading Market and all of the shares issuable pursuant to the Transaction Documents are listed for trading on such Trading Market (and the Corporation believes, in good faith, that trading of the Common Stock on a Trading Market will continue uninterrupted for the foreseeable future), (v) there is a sufficient number of authorized, but unissued and otherwise unreserved, shares of Common Stock for the issuance in connection with the Company obligation to be satisfied by such issuance (such as the payment in kind of dividends) for which Equity Conditions are required to exist, (vi) after June 25, 2010, there is no existing Triggering Event or no existing event which, with the passage of time or the giving of notice, would constitute a Triggering Event, (vii) the issuance of the shares in question (or, in the event of an Optional Redemption, of the issuance of all the Conversion Shares underlying the Series D Preferred Stock) to such Holder would not violate the limitations set forth in Section 6(c) herein, (viii) except with respect to Section 8(b), there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, and (ix) such Holder is not in possession of any information that constitutes material non-public information as a result of the disclosure of such information to such Holder by the Corporation or any of its Affiliates.

“Excess Preferred” shall have the meaning set forth in Section 6(d).

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

“Exempt Issuance” means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Corporation pursuant to any stock or option plan duly adopted by a majority of the non-employee members of the Board of Directors of the Corporation or a majority of the members of a committee of non-employee directors established for such purpose, (b) securities upon the exercise or exchange of or conversion of any Securities issued pursuant to the Purchase Agreement and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of the Purchase Agreement, provided that such securities have not been amended since the date of the Purchase Agreement to increase the number of such securities or to decrease the exercise, exchange or conversion price of any such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors, provided any such issuance shall only be to a Person which is, itself or through its subsidiaries, an operating company in, or an individual that operates, a business synergistic with the business of the Corporation and in which the Corporation receives benefits in addition to the investment of funds, but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities (each such transaction, a “Strategic Transaction”), (d) up to a maximum of 1,500,000 shares of Common Stock or Common Stock Equivalents (subject to adjustment for reverse and forward stock splits and the like) in any rolling 12 month period issued to consultants, vendors, financial institutions or lessors in connection with services provided by such Persons referred to in this clause (d), but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, and provided that none of such shares may be registered for sale or resale by any of such holders; (e) securities issued as a dividend or distribution any of the Securities pursuant to the terms of the Transaction Documents; and (f) securities issued in connection with any stock split, stock dividend or recapitalization of the Common Stock. As used herein, the term “Strategic Transaction” shall expressly include the transactions set forth in, and the securities issued, or to be issued, to Epic Investments, LLC (“Epic Investments”) and Epic Pharma, LLC (“Epic Pharma”) pursuant to, that certain Strategic Alliance Agreement, dated March 18, 2009, as amended through the fourth amendment thereof dated June 25, 2010 (such agreement through the fourth amendment thereof, the “Epic SAA”); provided that the designation of the transactions set forth in the Epic SAA as a “Strategic Transaction” shall have no effect on whether (x) any future transaction between the Corporation and either Epic Investments or Epic Pharma shall constitute a “Strategic Transaction” (and any such future transaction shall be evaluated on a stand-alone basis as to whether such transaction is, or is not, a “Strategic Transaction”) or (y) any securities issued pursuant to an amendment or modification to the Epic SAA made following the date of the fourth amendment thereto or the above-referenced June 25, 2010 amendment shall constitute an Exempt Issuance.

“Forced Conversion Amount” means the sum of (i) 100% of the aggregate Stated Value then outstanding, (ii) accrued but unpaid dividends and (iii) all liquidated damages and other amounts due in respect of the Series D Preferred Stock.

“Forced Conversion Date” shall have the meaning set forth in Section 8(a).

“Forced Conversion Notice” shall have the meaning set forth in Section 8(a).

“Forced Conversion Notice Date” shall have the meaning set forth in Section 8(a).

“Fundamental Transaction” shall have the meaning set forth in Section 7(e).

“Holder” or “Holders” means the holder or holders, as the case may be, of Series D Preferred Stock.

“Indebtedness” means (a) any liabilities for borrowed money or amounts owed in excess of \$50,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements and other contingent obligations in respect of Indebtedness of others, whether or not the same are or should be reflected in the Corporation’s balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business, and (c) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved.

“Issuable Maximum” shall have the meaning set forth in Section 6(d).

“Junior Securities” means the Common Stock and all other Common Stock Equivalents of the Corporation, other than those securities which are explicitly senior or *pari passu* to the Series D Preferred Stock in dividend rights or liquidation preference, including but not limited to the Series B Preferred Stock and Series C Preferred Stock.

“Liquidation” shall have the meaning set forth in Section 5.

“Midsummer” shall have the meaning set forth in Section 4.

“New York Courts” shall have the meaning set forth in Section 11(d).

“Non-Cash Redemption Triggering Events” shall have the meaning set forth in Section 9(b).

“Notice of Conversion” shall have the meaning set forth in Section 6(a).

“Optional Redemption” shall have the meaning set forth in Section 8(b).

“Optional Redemption Amount” means the sum of (i) prior to September 15, 2011, 115% of the aggregate Stated Value then outstanding or after such date, 100% of the aggregate Stated Value then outstanding, (ii) accrued but unpaid dividends and (iii) all liquidated damages and other amounts due in respect of the Preferred Stock..

“Optional Redemption Date” shall have the meaning set forth in Section 8(b).

“Optional Redemption Notice” shall have the meaning set forth in Section 8(b).

“Optional Redemption Notice Date” shall have the meaning set forth in Section 8(b).

“Original Issue Date” means the date of the first issuance of any shares of the Series D Preferred Stock regardless of the number of transfers of any particular shares of Series D Preferred Stock and regardless of the number of certificates which may be issued to evidence such Series D Preferred Stock.

“Permitted Indebtedness” means (a) the Indebtedness existing on the Original Issue Date as set forth on the Disclosure Schedules attached to the Purchase Agreement and (b) non-equity linked lines of credit or term loans from a regulated financial institution, lease obligations and purchase money indebtedness of up to \$3,000,000 in the aggregate.

“Permitted Lien” means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Corporation) have been established in accordance with GAAP; (b) Liens imposed by law which were incurred in the ordinary course of the Corporation’s business, such as carriers’, warehousemen’s and mechanics’ Liens, statutory landlords’ Liens, and other similar Liens arising in the ordinary course of the Corporation’s business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Corporation and its consolidated Subsidiaries or (y) which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, and (c) Liens incurred in connection with Permitted Indebtedness under clause (b) thereunder, provided that such Liens are not secured by assets of the Corporation or its Subsidiaries other than the assets so acquired or leased, except that any line of credit or term loan from a regulated financial institution may be secured by a general Lien on all assets of the Corporation.

“Preferred Stock” means the Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock collectively.

“Purchase Agreement” means the Securities Purchase Agreement, dated as of the Original Issue Date, to which the Corporation and the original Holders are parties, as amended, modified or supplemented from time to time in accordance with its terms.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Series B Certificate” means the Certificate of Designation of Preferences, Rights and Limitations of Series B 8% Convertible Preferred Stock of the Corporation filed with the Secretary of State of the State of Delaware on March 16, 2006, as amended by the Amendment to the Certificate of Designation of Preferences, Rights and Limitations of Series B 8% Convertible Preferred Stock of the Corporation filed with the Secretary of State of the State of Delaware on April 24, 2007.

“Series B Preferred Stock” means the Series B 8% Convertible Preferred Stock, par value \$0.01 per share, of the Corporation.

“Series C Certificate” means the Certificate of Designation of Preferences, Rights and Limitations of Series C 8% Convertible Preferred Stock of the Corporation filed with the Secretary of State of the State of Delaware on April 24, 2007, as amended by the Certificate of Correction Relating to the Certificate of Designation of Preferences, Rights and Limitations of Series C 8% Convertible Preferred Stock of the Corporation filed with the Secretary of State of the State of Delaware on April 25, 2007.

“Series C Preferred Stock” means the Series C 8% Convertible Preferred Stock, par value \$0.01 per share, of the Corporation.

“Series D Preferred Stock” shall have the meaning set forth in Section 2.

“Share Delivery Date” shall have the meaning set forth in Section 6(e).

“Shareholder Approval” shall have the meaning set forth in Section 6(d).

“Stated Value” shall have the meaning set forth in Section 2.

“Subscription Amount” means, as to each Purchaser, the amount in United States Dollars and in immediately available funds to be paid for the Series D Preferred Stock purchased pursuant to the Purchase Agreement as specified below such Purchaser’s name on the signature page of the Purchase Agreement and next to the heading “Subscription Amount.”

“Subsidiary” shall have the meaning set forth in the Purchase Agreement.

“Threshold Period” shall have the meaning set forth in Section 8(a).

“Trading Day” means a day on which the principal Trading Market is open for business.

“Trading Market” means the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the American Stock Exchange, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange or the OTC Bulletin Board.

“Transaction Documents” shall have the meaning set forth in the Purchase Agreement.

“Triggering Event” shall have the meaning set forth in Section 9(a).

“Triggering Redemption Amount” means, for each share of Series D Preferred Stock, the sum of (a)(i) as to Cash Redemption Triggering Event, the greater of (A) 130% of the Stated Value and (B) the product of (y) the VWAP on the Trading Day immediately preceding the date of the Triggering Event and (z) the Stated Value divided by the then Conversion Price and, (ii) as to Non-Cash Redemption Triggering Events, 130% of the Stated Value, (b) all accrued but unpaid dividends thereon and (c) all liquidated damages and other costs, expenses or amounts due in respect of the Series D Preferred Stock.

“Triggering Redemption Payment Date” shall have the meaning set forth in Section 9(b).

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted for trading as reported by Bloomberg Financial L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)); (b) if the OTC Bulletin Board is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board; (c) if the Common Stock is not then quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the “Pink Sheets” published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported; or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders and reasonably acceptable to the Corporation.

Section 2. Designation, Amount and Par Value. This series of preferred stock shall be designated as its Series D 8% Convertible Preferred Stock (the “Series D Preferred Stock”) and the number of shares so designated shall be 30,000 (which shall not be subject to increase without the requisite affirmative vote of the Holders as set forth in Section 4). Each share of Series D Preferred Stock shall have a par value of \$0.01 per share and a stated value equal to \$1,000 (the “Stated Value”).

Section 3. Dividends.

a) Dividends in Cash or in Kind. Other than in the case of shares of Dividend Payment Preferred Stock, the Holders shall be entitled to receive, and the Corporation shall pay, cumulative dividends at the rate per share (as a percentage of the Stated Value per share) of 8% per annum, payable quarterly on January 1, April 1, July 1 and October 1, beginning on the first such date after the Original Issue Date and on each Conversion Date (except that, if such date is not a Trading Day, the payment date shall be the next succeeding Trading Day) (each such date, a “Dividend Payment Date”) in (i) cash, (ii) duly authorized, validly issued, fully paid and non-assessable shares of Common Stock as set forth in this Section 3(a) (the amount to be paid in shares of Common Stock, the “Dividend Share Amount”), (iii) duly authorized, validly issued, fully paid and non-assessable shares of Series D Preferred Stock (such shares of Series D Preferred Stock issued in satisfaction of dividends hereunder, the “Dividend Payment Preferred Stock”) or (iv) a combination of (i), (ii) and (iii). The form of dividend payments to each Holder shall be determined in the following order of priority: (i) if funds are legally available for the payment of dividends and the Equity Conditions have not been met during the 20 consecutive Trading Days immediately prior to the applicable Dividend Payment Date, in cash only; (ii) if funds are legally available for the payment of dividends and the Equity Conditions have been met during the 20 consecutive Trading Days immediately prior to the applicable Dividend Payment Date, at the sole election of the Corporation, in cash or shares of Common Stock which shall be valued solely for such purpose at 95% of the average of the VWAPs for the 20 consecutive Trading Days ending on the Trading Day that is immediately prior to the Dividend Payment Date; (iii) if funds are not legally available for the payment of dividends and the Equity Conditions have been met during the 20 consecutive Trading Days immediately prior to the applicable Dividend Payment Date, in shares of Common Stock which shall be valued solely for such purpose at 95% of the average of the VWAPs for the 20 consecutive Trading Days ending on the Trading Day that is immediately prior to the Dividend Payment Date; (iv) if funds are not legally available for the payment of dividends and the Equity Conditions relating to an effective Conversion Shares Registration Statement has been waived by such Holder, as to such Holder only, in unregistered shares of Common Stock which shall be valued solely for such purpose at 95% of the average of the VWAPs for the 20 consecutive Trading Days ending on the Trading Day that is immediately prior to the Dividend Payment Date; (v) at the option of the Corporation, regardless of whether or not the “Equity Conditions” are then satisfied, in shares of Dividend Payment Preferred Stock having a Stated Value equal to the aggregate cash value of such dividend payment; and (vi) if funds are not legally available for the payment of dividends and the Equity Conditions have not been met during the 20 consecutive Trading Days immediately prior to the applicable Dividend Payment Date, then such dividends shall accrue to the next Dividend Payment Date. The Holders shall have the same rights and remedies with respect to the delivery of any such shares as if such shares were being issued pursuant to Section 6. Upon the request of the Corporation, each Holder shall provide to the Corporation, a customary Rule 144 representation letter relating to all shares of Common Stock to be issued as payment in kind dividends. On the Closing Date the Corporation shall have notified the Holders whether or not it may legally pay cash dividends as of the Closing Date. Absent prior written notice from the Corporation as provided for below and subject to the Equity Conditions being met, the default method of payment shall be in shares of Common Stock. In the event the Corporation determines to pay in Dividend Payment Preferred Stock or cash or the Corporation determines that the Equity Conditions are not met, the Corporation shall provide at least 20 Trading Day’s prior notice to the Holder of such its election to pay in Dividend Payment Preferred Stock or cash; provided, that the failure to notify the Holders that the Equity Conditions are not met shall not constitute a “Trigger Event” under Section 9(a) hereof. Dividends on the Series D Preferred Stock shall be calculated on the basis of a 360-day year, shall accrue daily commencing on the Original Issue Date, and shall be deemed to accrue from such date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Except as otherwise provided herein, if at any time the Corporation pays dividends partially in cash and partially in shares, then such payment shall be distributed ratably among the Holders based upon the number of shares of Series D Preferred Stock held by each Holder on such Dividend Payment Date. Any dividends, whether paid in cash, Dividend Payment Preferred Stock or shares of Common Stock, that are not paid within five Trading Days following a Dividend Payment Date shall continue to accrue and shall entail a late fee, which must be paid in cash, at the rate of 18% per annum or the lesser rate permitted by applicable law (such fees to accrue daily, from the Dividend Payment Date through and including the date of payment); provided that any such late fee which may have accrued prior to June 25, 2010 is irrevocably waived by all Holders. Dividend Payment Preferred Stock shall have the same rights, privileges, preferences as the other Series D Preferred Stock, except that such Dividend Payment Preferred Stock shall not be entitled to, nor accrue, any dividends pursuant to this Section 3(a) and each certificate evidencing any shares of Dividend Payment Preferred Stock shall bear a legend substantially to the following effect (in addition to any other legends required by law or by contract):

“THE SHARES OF SERIES D PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE WERE ISSUED AS “DIVIDEND PAYMENT PREFERRED STOCK” UNDER THE TERMS OF CERTIFICATE OF DESIGNATION OF PREFERENCES, RIGHTS AND LIMITATIONS OF SERIES D 8% CONVERTIBLE PREFERRED STOCK, FILED WITH SECRETARY OF STATE OF THE STATE OF DELAWARE ON SEPTEMBER 15, 2008, AS MAY BE AMENDED (THE “CERTIFICATE OF DESIGNATION”) AND, AS SUCH, DO NOT ENTITLE THE HOLDER HERETO TO ANY DIVIDENDS PURSUANT TO SECTION 3(A) OF THE CERTIFICATE OF DESIGNATION.

If at any time, the Corporation determines that creation of a separate series of Preferred Stock is necessary or advisable for purposes of issuing shares of Dividend Payment Preferred Stock pursuant to this Section 3(a), the Corporation shall be authorized, without any further consent or approval of the Holders, to create such additional series of Preferred Stock (the “Series D-1 Preferred Stock”) having the same rights, privileges, preferences as the Series D Preferred Stock, except that such Series D-1 Preferred Stock shall not be entitled to, nor accrue, any dividends pursuant to this Section 3(a). Upon creation of such series of Series D-1 Preferred Stock, all references herein to Dividend Payment Preferred Stock shall be deemed to refer to such Series D-1 Preferred Stock and no shares of Series D-1 Preferred Stock shall be issued by the Corporation for any purposes other than the payment of dividends to the Holders, at the option of the Corporation, under this Section 3(a) in the form of Dividend Payment Preferred Stock.

b) So long as any Series D Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall redeem, purchase or otherwise acquire directly or indirectly any Junior Securities except as expressly permitted by Section 9(a)(vi). So long as any Series D Preferred Stock shall remain outstanding, (i) neither the Corporation nor any Subsidiary thereof shall directly or indirectly pay or declare any dividend or make any distribution upon (other than a dividend or distribution described in Section 6 or dividends due and paid in the ordinary course on preferred stock of the Corporation at such times when the Corporation is in compliance with its payment and other obligations hereunder), (ii) nor shall any distribution be made in respect of, any Junior Securities as long as any dividends due on the Series D Preferred Stock remain unpaid, (iii) nor shall any monies be set aside for or applied to the purchase or redemption (through a sinking fund or otherwise) of any Junior Securities or shares *pari passu* with the Series D Preferred Stock (other than in the case of a purchase or redemption of any shares of Series B Preferred Stock or Series C Preferred Stock that occurs simultaneous with the purchase or redemption of shares of Series D Preferred Stock provided that the Series D Preferred Stock is redeemed in full).

c) The Corporation acknowledges and agrees that the capital of the Corporation (as such term is used in Section 154 of the Delaware General Corporation Law) in respect of the Series D Preferred Stock and any future issuances of the Corporation's capital stock shall be equal to the aggregate par value of such Series D Preferred Stock or capital stock, as the case may be, and that, on or after the date of the Purchase Agreement, it shall not increase the capital of the Corporation with respect to any shares of the Corporation's capital stock issued and outstanding on such date. The Corporation also acknowledges and agrees that it shall not create any special reserves under Section 171 of the Delaware General Corporation Law without the prior written consent of each Holder.

d) The Series D Preferred Stock shall rank senior with respect to all dividend payments to any other preferred stock of the Corporation, including but not limited to the Series B Preferred Stock and Series C Preferred Stock.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Series D Preferred Stock shall have no voting rights. However, as long as any shares of Series D Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of Holders holding at least 50.1%, in the aggregate, of the then outstanding shares of Preferred Stock (which, for the avoidance of doubt, shall include Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, voting as a single class), which such affirmative vote shall include the vote of Midsummer Investment, Ltd. (together with any of its Affiliates, "Midsummer") and Bushido Capital Master Fund LP (together with any of its Affiliates, "Bushido") (so long as Midsummer or Bushido, as the case may be, holds in excess of \$2,000,000, in the aggregate, Stated Value of Preferred Stock), (a) alter or change adversely the powers, preferences or rights given to any Preferred Stock or alter or amend this Certificate of Designation, (b) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation (as defined in Section 5) senior to or otherwise pari passu with the Preferred Stock, (c) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the holders of Preferred Stock, (d) increase the authorized number of shares of any series of Preferred Stock, or (e) enter into any agreement or understanding with respect to any of the foregoing. Notwithstanding the above, this Section 4 shall not apply to any security issued in connection with a Strategic Transaction that ranks as to dividends, redemption or distribution of assets upon a Liquidation that is pari passu with or junior to the Series D Preferred Stock.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount equal to the Stated Value, plus any accrued and unpaid dividends thereon (other than in the case of Dividend Payment Preferred Stock), and any other fees or liquidated damages owing thereon for each share of Series D Preferred Stock before any distribution or payment shall be made to the holders of any Junior Securities, and if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among the holders of all outstanding shares of Series D Preferred Stock in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. A Fundamental Transaction or Change of Control Transaction shall not be deemed a Liquidation. The Corporation shall mail written notice of any such Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder. The Series D Preferred Stock shall rank senior to the Series B Preferred Stock and the Series C Preferred Stock with respect to distributions upon a Liquidation.

Section 6. Conversion.

a) Conversions at Option of Holder. Each share of Series D Preferred Stock shall be convertible at the option of the Holder, at any time and from time to time from and after the Original Issue Date into that number of shares of Common Stock (subject to the limitations set forth in Section 6(c) and Section 6(d)) determined by dividing the Stated Value of such share of Series D Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Series D Preferred Stock to be converted, the number of shares of Series D Preferred Stock owned prior to the conversion at issue, the number of shares of Series D Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the Holder delivers by facsimile such Notice of Conversion to the Corporation (the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions, as the case may be, of shares of Series D Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing such shares of Series D Preferred Stock to the Corporation unless all of the shares of Series D Preferred Stock represented thereby are so converted, in which case the Holder shall deliver the certificate representing such shares of Series D Preferred Stock promptly following the Conversion Date at issue. Shares of Series D Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

b) Conversion Price. The conversion price for the Series D Preferred Stock shall equal \$0.07, subject to adjustment herein (the "Conversion Price").

c) Beneficial Ownership Limitation. The Corporation shall not effect any conversion of the Series D Preferred Stock, and a Holder shall not have the right to convert any portion of the Series D Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any other Person or entity acting as a group together with such Holder or any of such Holder's Affiliates) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates shall include the number of shares of Common Stock issuable upon conversion of the Series D Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (A) conversion of the remaining, unconverted Stated Value of Series D Preferred Stock beneficially owned by such Holder or any of its Affiliates and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitation contained herein (including the Warrants) beneficially owned by such Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 6(c), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 6(c) applies, the determination of whether the Series D Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates) and of how many shares of Series D Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Series D Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates) and how many shares of the Series D Preferred Stock are convertible, in each case subject to such aggregate percentage limitations. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Corporation shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(c), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (A) the Corporation's most recent Form 10-Q or Form 10-K, as the case may be, (B) a more recent public announcement by the Corporation or (C) a more recent notice by the Corporation or the Corporation's transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Corporation shall within two Trading Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Series D Preferred Stock, by such Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Series D Preferred Stock held by the Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(c) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Series D Preferred Stock.

- d) Reserved.
- e) Reserved.
- f) Mechanics of Conversion

i. Delivery of Certificate Upon Conversion. Not later than three Trading Days after each Conversion Date (the “Share Delivery Date”), the Corporation shall deliver, or cause to be delivered, to the Holder (A) a certificate or certificates which, on or after the Effective Date, shall be free of restrictive legends and trading restrictions (other than those which may then be required by the Purchase Agreement) representing the number of shares of Common Stock being acquired upon the conversion of shares of Series D Preferred Stock, and (B) a bank check in the amount of accrued and unpaid dividends (if the Corporation has elected or is required to pay accrued dividends in cash). The Corporation shall deliver any certificate or certificates required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company or another established clearing corporation performing similar functions. If in the case of any Notice of Conversion such certificate or certificates are not delivered to or as directed by the applicable Holder by the fifth Trading Day after the Conversion Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such certificate or certificates, to rescind such Notice of Conversion by written notice to the Corporation, in which event the Corporation shall promptly return to the Holder any original Series D Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return any Common Stock certificates representing the shares of Series D Preferred Stock tendered for conversion to the Corporation.

ii. Obligation Absolute; Partial Liquidated Damages. The Corporation’s obligation to issue and deliver the Conversion Shares upon conversion of Series D Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to the Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against the Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Series D Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or any one associated or affiliated with the Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Series D Preferred Stock of the Holder shall have been sought and obtained. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to the Holder such certificate or certificates pursuant to Section 6(e)(i) on the second Trading Day after the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Stated Value of Series D Preferred Stock being converted, \$10 per Trading Day (increasing to \$20 per Trading Day on the third Trading Day after such damages begin to accrue) for each Trading Day after such second Trading Day after the Share Delivery Date until such certificates are delivered. Nothing herein shall limit a Holder’s right to pursue actual damages or declare a Triggering Event pursuant to Section 9 for the Corporation’s failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The Exercise (as defined in the Warrant) of any such rights shall not prohibit the Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

iii. Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. If the Corporation fails to deliver to the Holder such certificate or certificates by the Share Delivery Date pursuant to Section 6(e)(i), and if after such Share Delivery Date the Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which the Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a “Buy-In”), then the Corporation shall (A) pay in cash to the Holder (in addition to any other remedies available to or elected by the Holder) the amount by which (x) the Holder’s total purchase price (including any brokerage commissions) for the shares of Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of the Holder, either reissue (if surrendered) the shares of Series D Preferred Stock equal to the number of shares of Series D Preferred Stock submitted for conversion or deliver to the Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(e)(i). For example, if the Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Series D Preferred Stock with respect to which the actual sale price (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay the Holder \$1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder’s right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation’s failure to timely deliver certificates representing shares of Common Stock upon conversion of the shares of Series D Preferred Stock as required pursuant to the terms hereof.

iv. Reservation of Shares Issuable Upon Conversion. Prior to the Authorized Share Approval Date, the Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series D Preferred Stock and payment of dividends on the Series D Preferred Stock and shares issuable upon exercise of the Warrants, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series D Preferred Stock, 87,059,562 shares of the Common Stock, subject to adjustment for reverse and forward stock splits and the like. After the Authorized Share Approval Date, the Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series D Preferred Stock and payment of dividends on the Series D Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series D Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of all outstanding shares of Series D Preferred Stock and payment of dividends hereunder. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

v. Fractional Shares. Upon a conversion hereunder, the Corporation shall not be required to issue stock certificates representing fractions of shares of Common Stock, but may if otherwise permitted, make a cash payment in respect of any final fraction of a share based on the VWAP at such time. If the Corporation elects not, or is unable, to make such a cash payment, the Holder shall be entitled to receive, in lieu of the final fraction of a share, one whole share of Common Stock.

vi. Transfer Taxes. The issuance of certificates for shares of the Common Stock on conversion of this Series D Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series D Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Series D Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock or Dividend Payment Preferred Stock issued by the Corporation upon conversion of, or payment of a dividend on, the Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (D) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If the Corporation or any Subsidiary thereof, at any time while this Series D Preferred Stock is outstanding, sells or grants any option to purchase or sells or grants any right to reprice its securities (other than a reduction in the Exercise Price (as defined in the Warrant) of the Warrants issued to the Holders on the Original Issue Date), or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition) any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then applicable Conversion Price (such lower price, the "Base Conversion Price", and such issuances collectively, a "Dilutive Issuance") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the then applicable Conversion Price, such issuance shall be deemed to have occurred for less than the then applicable Conversion Price on such date of the Dilutive Issuance), then the then applicable Conversion Price shall be reduced to equal the Base Conversion Price. Notwithstanding the foregoing, no adjustment will be made under this Section 7(b) in respect of an Exempt Issuance. The Corporation shall notify the Holder in writing, no later than the Business Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 7(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Corporation provides a Dilutive Issuance Notice pursuant to this Section 7(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the adjusted Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the adjusted Conversion Price in the Notice of Conversion.

c) Subsequent Rights Offerings. If the Corporation, at any time while this Series D Preferred Stock is outstanding, shall issue rights, options or warrants to all holders of Common Stock (and not to Holders) entitling them to subscribe for or purchase shares of Common Stock at a price per share that is lower than the VWAP on the record date referenced below, then the Conversion Price shall be multiplied by a fraction of which the denominator shall be the sum of (A) the number of shares of Common Stock issued and outstanding on the date of issuance of such rights, options or warrants plus (B) the number of shares of Common Stock issuable upon conversion or exercise of Common Stock Equivalents issued and outstanding on the date of issuance of such rights, options or warrants plus (C) the number of additional shares of Common Stock offered for subscription or purchase, and of which the numerator shall be the sum of (X) the number of shares of the Common Stock issued and outstanding on the date of issuance of such rights, options or warrants plus (Y) the number of shares of Common Stock issuable upon conversion or exercise of Common Stock Equivalents issued and outstanding on the date of issuance of such rights, options or warrants plus (Z) the number of shares which the aggregate offering price of the total number of shares so offered (assuming delivery to the Corporation in full of all consideration payable upon exercise of such rights, options or warrants) would purchase at such VWAP. Such adjustment shall be made whenever such rights or warrants are issued, and shall become effective immediately after the record date for the determination of stockholders entitled to receive such rights, options or warrants. If any such rights, options or warrants expire without having been exercised, the Conversion Price as adjusted upon the issuance of such rights, options or warrants shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that only additional shares of Common Stock so issued were the additional shares of Common Stock, if any, actually issued or sold on the exercise of such rights, options or warrants and such additional shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights, options or warrants, whether or not exercised, provided that such readjustment shall not apply to prior conversions of the Series D Preferred Stock.

d) Pro Rata Distributions. If the Corporation, at any time while the Series D Preferred Stock is outstanding, distributes to all holders of Common Stock (and not to Holders) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security (other than Common Stock, which shall be subject to Section 7(b)), then in each such case the Conversion Price shall be adjusted by multiplying such Conversion Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the VWAP determined as of the record date mentioned above, and of which the numerator shall be such VWAP on such record date less the then fair market value at such record date of the portion of such assets, evidence of indebtedness or rights or warrants so distributed applicable to one outstanding share of the Common Stock as determined by the Board of Directors of the Corporation in good faith. In either case the adjustments shall be described in a statement delivered to the Holder describing the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

e) Fundamental Transaction. If, at any time while this Series D Preferred Stock is outstanding, (A) the Corporation effects any merger or consolidation of the Corporation with or into another Person, (B) the Corporation effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, (C) any tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (D) the Corporation effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a “Fundamental Transaction”), then, upon any subsequent conversion of this Series D Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the “Alternate Consideration”). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Series D Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation of the Series D Preferred Stock with the same terms and conditions and issue to the Holder new preferred stock consistent with the foregoing provisions and evidencing the Holder’s right to convert such preferred stock into Alternate Consideration. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 7(e) and insuring that this Series D Preferred Stock (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

f) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

g) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly mail to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, of any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Series D Preferred Stock, and shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Corporation, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. The Holder is entitled to convert the Conversion Amount of this Series D Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice.

Section 8.

a) Forced Conversion. Notwithstanding anything herein to the contrary, if after the later of the Effective Date and the date that Shareholder Approval is obtained and deemed effective, one of the following conditions are met:

(i)(y) the VWAP for each of any 20 consecutive Trading Day period, which 20 consecutive Trading Day period shall have commenced only after the later of the Effective Date and the date that Shareholder Approval is obtained and deemed effective (such 20 consecutive Trading Day period, the "Threshold Period"), exceeds \$1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations, stock dividends and the like) and (z) the daily trading volume for each Trading Day during such Threshold Period exceeds 250,000 shares of Common Stock (subject to adjustment for forward and reverse stock splits, recapitalizations, stock dividends and the like);

(ii)(y) the VWAP during the Threshold Period exceeds \$1.25 (subject to adjustment for forward and reverse stock splits, recapitalizations, stock dividends and the like) and (z) the daily trading volume for each Trading Day during such Threshold Period exceeds 200,000 shares of Common Stock (subject to adjustment for forward and reverse stock splits, recapitalizations, stock dividends and the like);

(iii)(y) the VWAP during the Threshold Period exceeds \$1.50 (subject to adjustment for forward and reverse stock splits, recapitalizations, stock dividends and the like) and (z) the daily trading volume for each Trading Day during such Threshold Period exceeds 150,000 shares of Common Stock (subject to adjustment for forward and reverse stock splits, recapitalizations, stock dividends and the like); or

(iv)(y) the VWAP during the Threshold Period exceeds \$1.75 (subject to adjustment for forward and reverse stock splits, recapitalizations, stock dividends and the like) and (y) the daily trading volume for each Trading Day during such Threshold Period exceeds 100,000 shares of Common Stock (subject to adjustment for forward and reverse stock splits, recapitalizations, stock dividends and the like),

then the Corporation may, within two Trading Days after the end of any such Threshold Period, deliver a written notice to all Holders (a “Forced Conversion Notice” and the date such notice is delivered to all Holders, the “Forced Conversion Notice Date”) to cause each Holder to convert all or part of such Holder’s Series D Preferred Stock (as specified in such Forced Conversion Notice) plus all accrued but unpaid dividends thereon (other than in the case of Dividend Payment Preferred Stock) and all liquidated damages and other amounts due in respect of the Series D Preferred Stock pursuant to Section 6, it being agreed that the “Conversion Date” for purposes of Section 6 shall be deemed to occur on the third Trading Day following the Forced Conversion Notice Date (such third Trading Day, the “Forced Conversion Date”). The Corporation may not deliver a Forced Conversion Notice, and any Forced Conversion Notice delivered by the Corporation shall not be effective, unless (y) a forced conversion of the Series B Preferred Stock and the Series C Preferred Stock in accordance with the Series B Certificate and the Series C Certificate, respectively, occurs simultaneously with the forced conversion of the Series D Preferred Stock in accordance with this Section 8, and (z) all of the Equity Conditions have been met on each Trading Day occurring during the applicable Threshold Period through and including the later of the Forced Conversion Date and the Trading Day after the date that the Conversion Shares issuable pursuant to such conversion are actually delivered to the Holder pursuant to the Forced Conversion Notice. Any Forced Conversion Notices shall be applied ratably to all of the holders of Preferred Stock based the number of shares of Preferred Stock held by each holder of Preferred Stock as of the forced Conversion Date, provided that any voluntary conversions by a Holder shall be applied against such Holder’s pro-rata allocation, thereby decreasing the aggregate amount forcibly converted hereunder if less than all shares of the Preferred Stock are forcibly converted. For purposes of clarification, a Forced Conversion shall be subject to all of the provisions of Section 6, including, without limitation, the provisions requiring payment of liquidated damages and limitations on conversions.

b) Optional Redemption at Election of Corporation. Subject to the provisions of this Section 8, at any time after the later of the Effective Date and the date that Shareholder Approval is obtained and deemed effective, the Corporation may deliver a notice to the Holders (an “Optional Redemption Notice” and the date such notice is deemed delivered hereunder, the “Optional Redemption Notice Date”) of its irrevocable election to redeem some or all of the then outstanding Series D Preferred Stock, for cash in an amount equal to the Optional Redemption Amount on the 20th Trading Day following the Optional Redemption Notice Date (such date, the “Optional Redemption Date” and such redemption, the “Optional Redemption”). The Optional Redemption Amount is payable in full on the Optional Redemption Date. The Corporation may only effect an Optional Redemption if each of the Equity Conditions shall have been met on each Trading Day occurring during the period commencing on the Optional Redemption Notice Date through to the Optional Redemption Date and through and including the date payment of the Optional Redemption Amount is actually made. If any of the Equity Conditions shall cease to be satisfied at any time during such 20 Trading Day period, then a Holder may elect to nullify the Optional Redemption Notice as to such Holder by notice to the Corporation within 3 Trading Days after the first day on which any such Equity Condition has not been met (provided that if, by a provision of the Transaction Documents, the Corporation is obligated to notify the Holders of the non-existence of an Equity Condition, such notice period shall be extended to the third Trading Day after proper notice from the Corporation) in which case the Optional Redemption Notice shall be null and void, *ab initio*. Additionally, the Corporation may only effect an Optional Redemption if a similar redemption of the Series B Preferred Stock and the Series C Preferred Stock, in accordance with the Series B Certificate and the Series C Certificate, respectively, occurs simultaneously with the Optional Redemption of the Series D Preferred Stock in accordance with this Section 8(b). The Corporation covenants and agrees that it will honor all Notices of Conversion tendered from the time of delivery of the Optional Redemption Notice through the date the Optional Redemption Amount is paid in full. Any Optional Redemption Notices shall be applied ratably to all of the holders of Preferred Stock based the number of shares of Preferred Stock held by each holder of Preferred Stock as of the Optional Redemption Date, provided that any voluntary conversions by a Holder shall be applied against such Holder’s pro-rata allocation, thereby decreasing the aggregate amount redeemed hereunder if less than all shares of the Preferred Stock are redeemed.

c) Automatic Monthly Conversions. Subject to the terms herein, on each Monthly Conversion Date (as defined below), a number of shares of Series D Preferred Stock equal to each Holder's pro-rata portion (based on the shares of Series D Preferred Stock held by each Holder on June 25, 2010) of the Monthly Conversion Amount (as defined below) shall automatically convert into shares of Common Stock at the then-effective Conversion Price (each such conversion, a (the "Monthly Conversion"). Each Holder may convert, pursuant to Section 6(a), all or a portion of its Series D Preferred Stock subject to a Monthly Conversion at any time prior to a Monthly Conversion Date. Any Series D Preferred Stock converted (other than pursuant to a Monthly Conversion) during the calendar month immediately prior to a Monthly Conversion Date shall be applied to such Holder's pro rata portion of such Monthly Conversion Amount (up to such Holder's pro rata portion for such month). Notwithstanding anything to the contrary set forth herein, the Corporation shall not be permitted to effect a Monthly Conversion on a Monthly Conversion Date unless (i) the Common Stock shall be listed or quoted for trading on a Trading Market, (ii) there is a sufficient number of authorized shares of Common Stock for issuance of all Common Stock to be issued upon such Monthly Conversion, (iii) as to any Holder, the issuance of the shares shall not cause a breach of any provision of Section 6(c) herein, (iv) if requested by the Holder and a Rule 144 Rep Letter (as defined below) shall have been provided by such Holder after request from the Corporation, the Conversion Shares are delivered electronically through the Depository Trust Company or another established clearing corporation performing similar functions, may be resold by the Holder pursuant to an exemption under the Securities Act and are otherwise free of restrictive legends and trading restrictions on the Holder, (v) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, (vi) the applicable Holder is not in possession of any information provided to the applicable Holder by the Corporation that constitutes material non-public information, and (vii) the average VWAP for the 20 Trading Days immediately prior to the applicable Monthly Conversion Date equals or exceeds the then-effective Conversion Price. Shares of the Series D Preferred Stock issued to the Holders as Dividend Payment Preferred Stock shall be the last shares of Series D Preferred Stock to be subject to Monthly Conversion. As used herein, the following terms shall have the following meanings: (i) "Monthly Conversion Date" means the first day of each month, commencing on August 1, 2010, and terminating on the date the Series D Preferred Stock is no longer outstanding; (ii) "Monthly Conversion Amount" means an aggregate Stated Value of Series D Preferred Stock among all Holders that is equal to 25% of aggregate dollar trading volume of the Common Stock during the 20 Trading Days immediately prior to the applicable Monthly Conversion Date (such 20 Trading Day period, the "Measurement Period"), increasing to 35% of the aggregate dollar trading volume during the Measurement Period if the average VWAP during such Measurement Period equals or exceeds \$0.12 (subject to adjustment for forward and reverse stock splits and the like that occur after June 25, 2010) and further increasing to 50% of the aggregate dollar trading volume during such Measurement Period if the average VWAP during such Measurement Period equals or exceeds \$0.16 (subject to adjustment for forward and reverse stock splits and the like that occur after June 25, 2010). All shares of Common Stock issued on a Monthly Conversion Date shall be delivered otherwise in accordance with the procedures and time frames set forth in Section 6 above. Upon the request of the Corporation, each Holder shall provide to the Corporation, a customary Rule 144 representation letter relating to all shares of Common Stock to be issued upon each Monthly Conversion (a "Rule 144 Rep Letter").

Section 9. Redemption Upon Triggering Events.

a) “Triggering Event” means any one or more of the following events (whatever the reason and whether it shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. the Corporation shall fail to deliver certificates representing Conversion Shares issuable upon a conversion hereunder that comply with the provisions hereof prior to the twelfth Trading Day after such shares are required to be delivered hereunder, or the Corporation shall provide written notice to any Holder, including by way of public announcement, at any time, of its intention not to comply with requests for conversion of any shares of Series D Preferred Stock in accordance with the terms hereof;

ii. the Corporation shall fail for any reason to pay in full the amount of cash due pursuant to a Buy-In within thirty calendar days after notice therefor is delivered hereunder;

iii. at any time after the Authorized Share Approval Date, the Corporation shall fail to have available a sufficient number of authorized and unreserved shares of Common Stock to issue to such Holder upon a conversion hereunder and such failure shall continue for a period in excess of 75 calendar days;

iv. unless specifically addressed elsewhere in this Certificate of Designation as a Triggering Event, the Corporation shall fail to observe or perform any other covenant, agreement or warranty contained in, or otherwise commit any breach of the Transaction Documents, such failure or breach may be cured by the Corporation, and such failure or breach shall not, if subject to the possibility of a cure by the Corporation, have been cured within 30 calendar days after the date on which written notice of such failure or breach shall have been delivered, or, if such cure is not possible within 30 calendar days, such cure shall have been commenced within 30 calendar days and be diligently pursued to completion;

v. any breach of the agreements delivered to the initial Holders at the Closing pursuant to Section 2.2(a)(vii) of the Purchase Agreement;

vi. the Corporation shall redeem more than a de minimis number of Junior Securities other than as to repurchases of Common Stock or Common Stock Equivalents from departing officers, directors, employees and consultants of the Corporation, provided that, while any of the Series D Preferred Stock remains outstanding, such repurchases shall not exceed an aggregate of \$150,000 from all officers, directors and employees;

vii. the Corporation shall be party to a Change of Control Transaction;

viii. there shall have occurred a Bankruptcy Event;

ix. the Common Stock shall fail to be listed or quoted for trading on a Trading Market for more than thirty Trading Days, which need not be consecutive Trading Days; or

x. any monetary judgment, writ or similar final process shall be entered or filed against the Corporation, any Subsidiary or any of their respective property or other assets for greater than \$200,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days.

b) Upon the occurrence of a Triggering Event, each Holder shall (in addition to all other rights it may have hereunder or under applicable law) have the right, exercisable at the sole option of such Holder, to require the Corporation to, (A) with respect to the Triggering Events set forth in Sections 9(a)(i), (iii), (vi) and (viii) (as to voluntary filings only) (collectively, “Cash Redemption Triggering Events”), redeem all of the Series D Preferred Stock then held by such Holder for a redemption price, in cash, equal to the Triggering Redemption Amount or (B) at the option of the Holder and with respect to the Triggering Events set forth in Sections 9(a)(ii), (iv), (v), (vii), (viii) (as to involuntary filings only), (ix) and (x), (collectively, “Non-Cash Redemption Triggering Events”) redeem all of the Series D Preferred Stock then held by such Holder for a redemption price, in shares of Common Stock, equal to a number of shares of Common Stock equal to the Triggering Redemption Amount divided by 85% of the average of the 10 VWAPs immediately prior to the date of election hereunder (provided, however, if the issuance of shares of Common Stock pursuant to clause B of this Section 9(b) would violate the limitations set forth in Sections 6(d) and 6(e) hereof, each Holder that exercises its option to have its Series D Preferred Stock redeemed pursuant to clause B shall be issued its pro-rata portion of the lesser of the Issuable Maximum or Authorized Share Maximum (calculated as of the Original Issue Date), and the remaining shares of Common Stock shall be issued upon Shareholder Approval, provided, further that the issuance of such shares shall be based on the lower of the price at which shares would have been issued if not for Sections 6(d) and 6(e) and 85% of the average of the 10 VWAPs immediately prior to the date that Shareholder Approval is obtained and deemed effective. The Triggering Redemption Amount, in cash or in shares, shall be due and payable or issuable, as the case may be, within ten Trading Days of the date on which the notice for the payment therefor is provided by a Holder (the “Triggering Redemption Payment Date”). If the Corporation fails to pay in full the Triggering Redemption Amount hereunder on the date such amount is due in accordance with this Section (whether in cash or shares of Common Stock), the Corporation will pay interest thereon at a rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law, accruing daily from such date until the Triggering Redemption Amount, plus all such interest thereon, is paid in full. For purposes of this Section, a share of Series D Preferred Stock is outstanding until such date as the Holder shall have received Conversion Shares upon a conversion (or attempted conversion) thereof that meets the requirements hereof or has been paid the Triggering Redemption Amount in cash. Notwithstanding anything herein the contrary, the term “Triggering Event” shall not include any transactions contemplated under the Epic SAA”, including, without limitation, the issuance of any shares of Common Stock or Common Stock Equivalents.

c) It is understood that the Series D Preferred Stock is intended to be included under a general heading “stockholders’ equity” in the Corporation’s future balance sheets prepared in compliance with Regulation S-X of the Exchange Act. Accordingly, notwithstanding Section 9(b), in the event that (i) the Corporation’s auditors, in a written opinion letter, (ii) the Commission, in writing, (iii) any Trading Market, in writing or (iv) any other governmental or regulatory body, in writing, having actual jurisdiction over the financial reporting of the Corporation shall determine, at any time, that any Cash Redemption Triggering Event constitutes a condition for redemption which is not solely within the control of the Corporation (as set forth in Item 28 of Rule 5-02 of Regulation S-X of the Exchange Act, as it may be amended or supplemented from time to time, or any successor rule thereto (“Rule 5-02”)) or that as a result of any Cash Redemption Triggering Event, the Series D Preferred Stock shall not be included in the Corporation’s balance sheet under a general heading “stockholders’ equity”, the Holders shall not have the right to receive any cash payment from the Corporation upon the occurrence of such Cash Redemption Triggering Event and shall, instead, have the right to receive the remedy that would otherwise be received by the Holders upon the occurrence of a Non-Cash Redemption Triggering Event.

Section 10. Negative Covenants. So long as any shares of Series D Preferred Stock are outstanding, the Corporation shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, without the affirmative written consent of Holders holding at least 50.1%, in the aggregate, of the then outstanding shares of Preferred Stock (which, for the avoidance of doubt, will include the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock, voting as a single class), which such consent shall include the consent of Midsummer and Bushido (so long as Midsummer or Bushido, as the case may be, holds in excess of \$2,000,000, in the aggregate, Stated Value the then outstanding shares of Preferred Stock):

- a) other than Permitted Indebtedness, until September 15, 2011, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;
- b) other than Permitted Liens, until September 15, 2011, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;
- c) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a *de minimis* number of shares of its Common Stock, Common Stock Equivalents or Junior Securities, except for the Conversion Shares to the extent permitted or required under the Transaction Documents or as otherwise permitted by the Transaction Documents;
- d) enter into any agreement or understanding with respect to any of the foregoing; or
- e) pay cash dividends or distributions on Junior Securities of the Corporation.

Section 11. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holder hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address set forth above, facsimile number 201-750-2755, Attn: Chief Executive Officer, or such other facsimile number or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 11. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of the Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section 11 prior to 5:30 p.m. (New York City time) on any date, (ii) the date immediately following the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section 11 between 5:30 p.m. and 11:59 p.m. (New York City time) on any date, (iii) the second Business Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages, accrued dividends and accrued interest, as applicable, on the shares of Series D Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

c) Lost or Mutilated Series D Preferred Stock Certificate. If a Holder's Series D Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series D Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If either party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Corporation or the Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation. The failure of the Corporation or the Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation. Any waiver by the Corporation or the Holder must be in writing.

f) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

i) Status of Converted or Redeemed Series D Preferred Stock. Shares of Series D Preferred Stock may only be issued pursuant to the Purchase Agreement. If any shares of Series D Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series D 8% Convertible Preferred Stock.

RESOLVED, FURTHER, that the Chairman, the president or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file a Certificate of Designation of the Series D 8% Convertible Preferred Stock in accordance with the foregoing resolution and the provisions of Delaware law.”

[remainder of this page is intentionally blank]

IN WITNESS WHEREOF, the Corporation has caused this Amended Certificate of Designations of the Series D 8% Convertible Preferred Stock to be signed by Jerry Treppel, its Chief Executive Officer, made to be effective as of June 29, 2010.

ELITE PHARMACEUTICALS, INC.

By: /s/ Jerry Treppel

Name: Jerry Treppel

Title: Chief Executive Officer

Attest:

By: /s/ Carter J. Ward

Name: Carter J. Ward

Title: Chief Financial Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF SERIES D PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series D 8% Convertible Preferred Stock indicated below into shares of common stock, par value \$0.001 per share (the "Common Stock"), of Elite Pharmaceuticals, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required by the Corporation in accordance with the Purchase Agreement. No fee will be charged to the Holder for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: _____

Number of shares of Series D Preferred Stock owned prior to Conversion: _____

Number of shares of Series D Preferred Stock to be Converted: _____

Stated Value of shares of Series D Preferred Stock to be Converted: _____

Number of shares of Common Stock to be Issued: _____

Applicable Conversion Price: _____

Number of shares of Series D Preferred Stock subsequent to Conversion: _____

[HOLDER]

By: _____
Name:
Title:

AMENDED
CERTIFICATE OF DESIGNATIONS
OF THE
SERIES E CONVERTIBLE PREFERRED STOCK
OF
ELITE PHARMACEUTICALS, INC.

PURSUANT TO SECTION 151 OF THE
DELAWARE GENERAL CORPORATION LAW

ELITE PHARMACEUTICALS, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

First: The Corporation filed a Certificate of Designation of Preferences, Rights and Limitations of the Series E Convertible Preferred Stock, par value US\$0.01 per share (the "Series E Preferred Stock"), with the Secretary of State of the State of Delaware on June 3, 2009 (the "Original Series E Certificate of Designation").

Second: The Board of Directors of the Corporation (the "Board") duly adopted the following resolutions setting forth amendments to the Original Series E Certificate of Designation:

"WHEREAS, the Corporation filed a Certificate of Designation of Preferences, Rights and Limitations of the Series E Convertible Preferred Stock with the Secretary of State of the State of Delaware on June 3, 2009;

WHEREAS, it is the desire of the Board of Directors of the Corporation, pursuant to its authority as aforesaid and with the requisite consent of the holders of the outstanding shares of Series E Convertible Preferred Stock, par value \$0.01 per share, to amend, in its entirety, the Certificate of Designation of Preferences, Rights and Limitations of the Series E Convertible Preferred Stock as follows:

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the provisions of the Amended Certificate of Incorporation of the Corporation, the Board of Directors hereby amends in its entirety the Certificate of Designation of the Series E Convertible Preferred Stock, dated June 3, 2009, as follows:

TERMS OF SERIES E CONVERTIBLE PREFERRED STOCK

Section 1. Definitions. Capitalized terms used and not otherwise defined herein that are defined in the Strategic Agreement shall have the meanings given such terms in the Strategic Agreement. A copy of the Strategic Agreement as in effect on the date hereof shall be provided without charge to any holder of Common Stock or Preferred Stock upon written request therefor. For the purposes hereof, the following terms shall have the following meanings:

“Adjusted Convertible Outstanding Amount” means, for purposes of determining the adjustment to the Conversion Price under Section 7(i) hereof, as of the time of such determination, the sum of (i) the number of outstanding shares of Common Stock (assuming, solely for purposes of such calculation, that all shares of Series D Preferred Stock which have converted after the date of the Series D Amendment Agreement shall have converted at the Adjusted Series D Conversion Price), (ii) the number of shares of Common Stock into which all Series B Preferred Stock are then convertible at the Original Series B Preferred Stock Conversion Price, (iii) the number of shares of Common Stock into which all Series C Preferred Stock are then convertible at the Original Series C Preferred Stock Conversion Price, and (iv) the number of shares of Common Stock into which all Series D Preferred Stock are then convertible at the Original Series D Preferred Stock Conversion Price. For the avoidance of doubt, the Adjusted Convertible Outstanding Amount shall not include any shares of Common Stock into which the Series E Preferred Stock is convertible.

“Adjusted Series D Conversion Price” means the conversion price of the Series D Preferred Stock under the Series D Certificate, as in effect immediately after the date of the Series D Certificate Amendment (without any future adjustment under the Series D Certificate other than adjustment under Section 7(a) thereof), which initially was \$0.07.

“Alternate Consideration” shall have the meaning set forth in Section 7(f).

“Amendment” means the amendment to the Corporation’s certificate of incorporation that (i) increases the number of authorized shares of Common Stock from 210,000,000 shares to 340,000,000 shares and (ii) reduces the par value of the authorized shares of Common Stock from \$.01 to \$.001 per share.

“Authorized Share Approval” means the vote by the shareholders of the Corporation to approve the Amendment and the filing by the Corporation of the Amendment with the Secretary of State the State of Delaware and the acceptance of the Amendment by the Secretary of State the State of Delaware.

“Authorized Share Approval Date” means the date when all of the actions set forth in the definition of the Authorized Share Approval have been completed.

“Business Day” means any day except Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Common Stock” means the Corporation’s common stock, par value U.S.\$0.001 per share (as amended by the Amendment), and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“Common Stock Equivalents” means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock

“Conversion Amount” means the sum of the Stated Value at issue.

“Conversion Date” shall have the meaning set forth in Section 6(a).

“Conversion Price” shall have the meaning set forth in Section 6(b).

“Conversion Shares” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Series E Preferred Stock in accordance with the terms hereof.

“Dilutive Issuance” shall have the meaning set forth in Section 7(b).

“Dilutive Issuance Notice” shall have the meaning set forth in Section 7(b).

“Dividend Issuance” shall have the meaning set forth in Section 7(c).

“Dividend Issuance Notice” shall have the meaning set forth in Section 7(c).

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

“Exempt Issuance” means, subject to the requirement to obtain the prior consent of the Holder pursuant to Section 4(b), to the extent such requirement exists, the issuance of (a) shares of Common Stock or options to purchase Common Stock to employees, consultants, officers or directors of the Corporation pursuant to any stock or option plan existing on the date hereof and disclosed in the Company Disclosure Schedules or duly adopted by a majority of the independent members of the Board of Directors or a majority of a committee of independent members of the Board of Directors established for such purpose, (b) securities upon the exercise or exchange of or conversion of any securities of the Corporation outstanding on the date hereof and disclosed in the Company Disclosure Schedules, including the Existing Preferred Stock, pursuant to the terms thereof, provided that such securities have not been amended since the date of this Agreement to increase the number of securities or to decrease the exercise, exchange or conversion price of any such securities, except for adjustments required by the terms thereof (c) up to a maximum of 2,000,000 shares of Common Stock or Common Stock Equivalents in any rolling 12 month period issued to consultants, vendors, financial institutions or lessors in connection with services provided by such Persons referred to in this clause (c), but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, and provided that none of such shares may be registered for sale or resale by any such holders, and provided further that issuances described in this clause (c) are approved by a majority of the independent members of the Board of Directors, (d) securities as a dividend or distribution on any of the Securities issued pursuant to the Strategic Agreement, (e) shares of Common Stock upon the exercise of the Conversion Warrants and (f) securities in connection with any stock split, stock dividend or recapitalization of the Common Stock.

“Existing Preferred Stock” means, as of any date of determination, the then issued and outstanding shares of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock.

“Forced Conversion” shall have the meaning set forth in Section 8.

“Fundamental Transaction” shall have the meaning set forth in Section 7(f).

“Holder” means Epic Investments, LLC, a Delaware limited liability company.

“Junior Securities” means the Common Stock, Series B Preferred Stock, Series C Preferred Stock and all other Common Stock Equivalents of the Corporation, other than (i) the Series D Preferred Stock and (ii) those securities which are explicitly senior or *pari passu* to the Series E Preferred Stock in dividend rights or liquidation preference.

“Liquidation” shall have the meaning set forth in Section 5.

“New York Courts” shall have the meaning set forth in Section 10(d).

“Notice of Conversion” shall have the meaning set forth in Section 6(a).

“Original Issue Date” means the date of the first issuance of any shares of the Series E Preferred Stock regardless of the number of transfers of any particular shares of Series E Preferred Stock and regardless of the number of certificates which may be issued to evidence such Series E Preferred Stock.

“Original Series B Conversion Price” means \$1.56, representing the conversion price of the Series B Preferred Stock under the Series B Certificate in effect immediately prior to the date of the Series D Amendment Agreement (subject only to adjustment under Section 7(a) of the Series B Certificate).

“Original Series C Conversion Price” means \$1.61, representing the conversion price of the Series C Preferred Stock under the Series C Certificate in effect immediately prior to the date of the Series D Amendment Agreement (subject only to adjustment under Section 7(a) of the Series C Certificate).

“Original Series D Conversion Price” means \$0.20, representing the conversion price of the Series D Preferred Stock under the Series D Certificate in effect immediately prior to the date of the Series D Certificate Amendment (subject only to adjustment under Section 7(a) of the Series D Certificate).

“Preferred Stock” means the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock collectively.

“Redemption Issuance” shall have the meaning set forth in Section 7(d).

“Redemption Issuance Notice” shall have the meaning set forth in Section 7(d).

“Series B Certificate” means the Amended Certificate of Designations of the Series B 8% Convertible Preferred Stock of Elite Pharmaceuticals, Inc. filed with the Secretary of State of the State of Delaware on September 15, 2008.

“Series B Preferred Stock” means the Series B 8% Convertible Preferred Stock, par value U.S.\$0.01 per share, of the Corporation.

“Series C Certificate” means the Amended Certificate of Designations of the Series C 8% Convertible Preferred Stock of Elite Pharmaceuticals, Inc. filed with the Secretary of State of the State of Delaware on September 15, 2008, as corrected by the Certificate of Correction Relating to the Amended Certificate of Designations of the Series C 8% Convertible Preferred Stock of Elite Pharmaceuticals, Inc. filed with the Secretary of State of the State of Delaware on February 13, 2009.

“Series C Preferred Stock” means the Series C 8% Convertible Preferred Stock, par value U.S.\$0.01 per share, of the Corporation.

“Series D Amendment Agreement” means the certain Amendment Agreement, dated as of June 25, 2010, by and among the Corporation, Bushido Capital Master Fund, LP and Midsummer Investment Ltd.

“Series D Certificate” means the Certificate of Designation of Preferences, Rights and Limitations of the Series D 8% Convertible Preferred Stock, filed with the Secretary of State of the State of Delaware on September 15, 2008, as amended by the Series D Certificate Amendment.

“Series D Certificate Amendment” means the Amended Certificate of Designation of the Series D 8% Preferred Stock filed with the Secretary of State of the State of Delaware on June 29, 2010.

“Series D Preferred Stock” means the Series D 8% Convertible Preferred Stock, par value U.S.\$0.01 per share, of the Corporation.

“Series D Warrants” means the common stock warrant, as amended, issued to the purchasers of the Series D Preferred Stock pursuant to a certain Securities Purchase Agreement, dated September 15, 2008, as amended, among the Corporation and the investors signatory thereto.

“Series E Preferred Stock” shall have the meaning set forth in Section 2.

“Share Delivery Date” shall have the meaning set forth in Section 6(d)(i).

“Stated Value” shall have the meaning set forth in Section 2.

“Strategic Agreement” means the Strategic Alliance Agreement, dated as of March 18, 2009, to which the Corporation and the Holder are parties, as amended, modified or supplemented from time to time in accordance with its terms.

“Trading Day” means a day on which the principal Trading Market is open for business.

“Trading Market” means the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the American Stock Exchange, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange or the OTC Bulletin Board.

“Transfer” means any voluntary or involuntary, direct or indirect sale, transfer, conveyance, assignment, pledge, hypothecation, gift, delivery or other disposition; provided, however, (i) the conversion by the Holder of any shares of Series E Preferred Stock into Conversion Shares shall not be deemed a “Transfer” for purposes hereof, and (ii) any sale, transfer, conveyance, assignment or other disposition in connection with a Fundamental Transaction shall not be deemed a Transfer hereunder.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted for trading as reported by Bloomberg Financial L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)); (b) if the OTC Bulletin Board is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board; (c) if the Common Stock is not then quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the “Pink Sheets” published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported; or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Corporation.

Section 2. Designation, Amount and Par Value. This series of preferred stock shall be designated as its Series E Convertible Preferred Stock (the “Series E Preferred Stock”) and the number of shares so designated shall be 5,000 (which shall not be subject to increase without the requisite affirmative vote of the Holder as set forth in Section 4(b)). Each share of Series E Preferred Stock shall have a par value of U.S.\$0.01 per share and a stated value equal to U.S.\$1,000 (the “Stated Value”).

Section 3. Dividends.

a) So long as any Series E Preferred Stock shall remain outstanding, the Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends payable pursuant to the Series B Certificate, the Series C Certificate and the Series D Certificate) unless the Holder shall first receive, or simultaneously receive, a dividend on each outstanding share of Series E Preferred Stock in an amount equal to the dividend the Holder would have been entitled to receive upon conversion, in full, of one share of Series E Preferred Stock immediately prior to the record date for determination of holders entitled to receive such dividend.

b) So long as any Series E Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall redeem, purchase or otherwise acquire directly or indirectly any Junior Securities. So long as any Series E Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall directly or indirectly pay or declare any dividend or make any distribution upon (other than dividends described in Section 3(a)), nor shall any monies be set aside for or applied to the purchase or redemption (through a sinking fund or otherwise) of, any Junior Securities or shares *pari passu* with the Series E Preferred Stock (other than in the case of a purchase or redemption of any shares of Series D Preferred Stock).

c) The Corporation acknowledges and agrees that the capital of the Corporation (as such term is used in Section 154 of the Delaware General Corporation Law) in respect of the Series E Preferred Stock and any future issuances of the Corporation’s capital stock shall be equal to the aggregate par value of such Series E Preferred Stock or capital stock, as the case may be, and that, on or after the date of the Strategic Agreement, it shall not increase the capital of the Corporation with respect to any shares of the Corporation’s capital stock issued and outstanding on such date.

Section 4. Voting Rights.

(a) On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), the Holder shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series E Preferred Stock held by the Holder are convertible as of the record date for determining the stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of this Certificate of Designation, the Holder shall vote together with the holders of Common Stock, as a single class.

(b) The Corporation shall not, between the Original Issue Date and the date which is the earlier of (x) the date the Purchaser Directors constitute a majority of the Board of Directors and (y) the date that is 90 days following the fifth (5th) anniversary of the Original Issue Date, except as specifically permitted by any other provision hereof or the other Transaction Documents or as the Holder shall otherwise agree in writing, directly or indirectly, do, or agree to do, any of the following without the prior written consent of the Holder:

i. amend or otherwise change the Corporation's certificate of incorporation or bylaws so as to adversely affect the Holder in a material manner;

ii. (A) issue, sell, pledge, dispose of, grant, transfer, encumber, or authorize the issuance, sale, pledge, disposition, grant, transfer, or encumbrance of (1) any shares of Common Stock or Common Stock Equivalents or (2) other shares of capital stock of the Corporation or securities convertible or exchangeable or exercisable for any shares of such capital stock, or any options, warrants or other rights of any kind to acquire any shares of such capital stock or such convertible or exchangeable securities, or any other ownership interest (including, without limitation, any such interest represented by contract right), provided that the prohibitions referred to in clauses (1) and (2) of this Section 4(b)(ii) shall not be applicable to Exempt Issuances, or (B) sell, pledge, dispose of, transfer, lease, license, guarantee or encumber, or authorize the sale, pledge, disposition, transfer, lease, license, guarantee or encumbrance of, any material property or assets of the Corporation, except pursuant to existing Contracts or commitments or the sale or purchase of goods in the ordinary course of business consistent with past practice, or enter into any commitment or transaction outside the ordinary course of business consistent with past practice;

iii. declare, set aside, make or pay any dividend or other distribution (whether payable in cash, stock, property or a combination thereof) with respect to any of its capital stock, other than dividends payable on outstanding shares of Existing Preferred Stock in accordance with the terms thereof as in effect on the date hereof;

iv. other than in connection with a reverse stock split, reclassify, combine, split, subdivide or redeem, purchase or otherwise acquire, directly or indirectly, any of its capital stock, Common Stock, Common Stock Equivalents, Preferred Stock or Preferred Stock Equivalents or other securities;

v. (A) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) any interest in any Person or any division thereof or any assets, other than acquisitions of inventory or other assets in the ordinary course of business consistent with past practice; or (B) other than Permitted Indebtedness, for a period of three (3) years from the Initial Closing Date, incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any person, except for indebtedness for borrowed money incurred by the Corporation in the ordinary course of business consistent with past practice pursuant to the terms of a current Company Material Contract;

vi. except as may be required by contractual commitments or corporate policies with respect to employee severance or termination pay in existence on the date hereof as disclosed in the Company Disclosure Schedules: (A) increase the compensation or benefits payable or to become payable to its directors, officers or employees, except for customary increases to compensation or benefits of the Corporation's employees (other than officers and directors) of not more than five percent (5%) in the aggregate per annum made by the Corporation consistent with past practice and approved by a majority of the independent members of the Board of Directors; or (B) grant any rights to severance or termination pay to, or enter into any employment or severance agreement with, any director, officer or other employee of the Corporation, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any director, officer or employee, except to the extent required by applicable law and except for such employment, severance or termination agreements with the Corporation's employees (other than officers and directors) that are entered into on an arm's length basis and approved by a majority of the independent members of the Board of Directors;

vii. (A) pay, discharge or satisfy any material claims, liabilities or obligations (absolute, accrued, contingent or otherwise), except in the ordinary course of business consistent with past practice and in accordance with their terms; (B) accelerate or delay collection of any material notes or accounts receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the ordinary course of business consistent with past practice, or (C) delay or accelerate payment of any material account payable in advance of its due date or the date such liability would have been paid in the ordinary course of business consistent with past practice;

viii. make any material change in accounting policies or procedures, other than in the ordinary course of business consistent with past practice or except as required by GAAP or by a governmental entity;

ix. waive, release, assign, settle or compromise any material claims, or any material litigation or arbitration;

x. make any material tax election, settle or compromise any material liability for Taxes, or materially amend any material Tax Return;

xi. be a party to any Change of Control Transaction or enter into any sale, transfer, assignment, lease, license, mortgage, pledge, exchange or other disposition of all or substantially all of the assets or property (real or personal, tangible or intangible) of the Corporation or any merger, consolidation or reorganization of the Corporation with another entity;

xii. take any action or step in connection with the voluntary liquidation and dissolution of the Corporation or the filing of a voluntary petition or other institution of proceedings to have the Corporation adjudicated as bankrupt or the consenting to the institution of such proceedings against the Corporation; or

xiii. authorize or enter into any agreement or otherwise make any commitment to do any of the foregoing.

Notwithstanding the anything to the contrary contained in this Section 4(b), (A) the provisions set forth in clauses (ii) (B), (ix), (x), (xi) and (xii) shall not apply after the expiration of the Lock-Up Period, if at such time the Holder does not own the Minimum Share Requirement and (B) if at any time after the Holder has acquired, pursuant to the Strategic Agreement or other Transaction Documents, a number of shares of Series E Preferred Stock and/or Conversion Shares representing twenty-five percent (25%) or more of the shares of the capital stock of the Corporation, on an as-converted basis, the Holder's ownership percentage of the shares of the capital stock of the Corporation, on an as-converted basis, falls below twenty percent (20%) as a result of Transfers made by the Holder, then the prior written consent of the Holder shall not be required prior to the consummation of any action of the Corporation referred to under this Section 4(b).

(d) Except for the rights expressly set forth herein or in the Transaction Documents, nothing contained herein or in the other Transaction Documents shall give the Holder, directly or indirectly, the right to control or direct the operations of the Corporation and the Corporation shall exercise, consistent with the terms and conditions hereof and the other Transaction Documents, complete control and supervision over its operations.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the Holder shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount equal to the Stated Value for each share of Series E Preferred Stock held by the Holder before any distribution or payment shall be made to the holders of any Junior Securities, including, without limitation, the Series B Preferred Stock and the Series C Preferred Stock. Upon a Liquidation, the Series E Preferred Stock will rank (a) *pari passu* with the Series D Preferred Stock and (b) senior to any Junior Securities, including, without limitation, the Series B Preferred Stock and the Series C Preferred Stock. If the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holder and the holders of all outstanding shares of Series D Preferred Stock shall be ratably distributed among the Holder and such holders of Series D Preferred Stock in accordance with the respective amounts that would be payable on the shares of Series E Preferred Stock owned by the Holder and such shares of Series D Preferred Stock if all amounts payable thereon were paid in full. The Corporation shall mail written notice to the Holder of any such Liquidation, not less than 45 calendar days prior to the payment date stated therein.

Section 6. Conversion.

a) Conversions at Option of the Holder. Subject to Section 6(c) below, each share of Series E Preferred Stock shall be convertible at the option of the Holder, at any time and from time to time from and after the Original Issue Date into that number of shares of Common Stock determined by dividing the Stated Value of such share of Series E Preferred Stock by the Conversion Price. The Holder shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Series E Preferred Stock to be converted, the number of shares of Series E Preferred Stock owned by the Holder prior to the conversion at issue, the number of shares of Series E Preferred Stock owned by the Holder subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the Holder delivers such Notice of Conversion to the Corporation in accordance with Section 10(a) (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered in accordance with Section 10(a). The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions, as the case may be, of shares of Series E Preferred Stock, the Holder shall not be required to surrender the certificate(s) representing such shares of Series E Preferred Stock to the Corporation unless all of the shares of Series E Preferred Stock represented thereby are so converted, in which case the Holder shall deliver the certificate representing such shares of Series E Preferred Stock promptly following the Conversion Date at issue. Shares of Series E Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

b) Conversion Price. The conversion price for the Series E Preferred Stock shall equal U.S.\$0.05, subject to adjustment herein (the "Conversion Price").

c) Authorized Share Limitations. Notwithstanding anything herein to the contrary, the Holder's ability to convert Series E Preferred Stock into Conversion Shares shall be limited to a number of Conversion Shares equal to the difference between (a) the Company's total authorized shares of Common Stock as of the applicable Conversion Date, minus (b) as of the applicable Conversion Date, the sum of (i) the Company's total issued and outstanding Common Stock and (ii) the total number of shares of Common Stock reserved for issuance upon the exercise or conversion, as applicable, of outstanding Common Stock Equivalents (including, without limitation, the Warrants, the Series D Preferred Stock and the Series D Warrants), after giving effect to the Series D Amendment Agreement. The portion of the Series E Preferred Stock which may not be converted as a result of this Section 6(c) shall thereafter be unconvertible to such extent until and unless approval by the Corporation's stockholders of an increase in the number of authorized shares of Common Stock of the Corporation is subsequently obtained; provided, however, the rights and preferences of the Series E Preferred Stock otherwise set forth in this Certificate of Designation shall otherwise remain in full force and effect. For the avoidance of doubt, the voting rights of the Holder under Section 4(a) shall not be affected by the restrictions of this Section 6(c).

d) Mechanics of Conversion

i. Delivery of Certificate Upon Conversion. Not later than three (3) Trading Days after each Conversion Date (the “Share Delivery Date”), the Corporation shall deliver, or cause to be delivered, to the Holder a certificate or certificates representing the number of Conversion Shares being acquired upon the conversion of shares of Series E Preferred Stock.

ii. Obligation Absolute; Partial Liquidated Damages. Subject to the limits set forth in Section 6(c), the Corporation’s obligation to issue and deliver the Conversion Shares upon conversion of Series E Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to the Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against the Holder. In the event the Holder shall elect to convert any or all of the Stated Value of its shares of Series E Preferred Stock, the Corporation may not refuse conversion based on any claim that the Holder or any one associated or affiliated with the Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to the Holder, restraining and/or enjoining conversion of all or part of the Series E Preferred Stock of the Holder shall have been sought and obtained. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. Nothing herein shall limit the Holder’s right to pursue actual damages for the Corporation’s failure to deliver Conversion Shares within the period specified herein and the Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

iii. Reservation of Conversion Shares Issuable Upon Conversion. The Corporation covenants that it will at all times take all steps necessary to reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series E Preferred Stock, as provided herein, and shares of Common Stock issuable upon exercise of the Warrants, as provided in such Warrants, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder, not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of all outstanding shares of Series E Preferred Stock and upon the exercise of the Warrants. To the extent that the Amendment does not result in an increase of the Corporation's authorized and unissued shares of Common Stock adequate for the conversion in full of the Series E Preferred Stock and exercise in full of the Warrants, the Corporation shall undertake to promptly seek stockholder approval to increase such number of authorized and unissued shares of Common Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

iv. Fractional Shares. Upon a conversion hereunder, the Corporation shall not be required to issue stock certificates representing fractions of shares of Common Stock, but may if otherwise permitted, make a cash payment in respect of any final fraction of a share based on the VWAP at such time. If the Corporation elects not, or is unable, to make such a cash payment, the Holder shall be entitled to receive, in lieu of the final fraction of a share, one whole share of Common Stock.

v. Transfer Taxes. The issuance of certificates for Conversion Shares on conversion of the Series E Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series E Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while the Series E Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, the Existing Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (D) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Dilutive Issuances. If the Corporation or any Subsidiary thereof, at any time while this Series E Preferred Stock is outstanding, sells or grants any option to purchase or sells or grants any right to reprice its securities (other than a reduction in the Exercise Price (as defined in the Warrant) of the Warrant issued to the Holder on the Original Issue Date), or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition) any Common Stock or Common Stock Equivalents in connection with an Exempt Issuance, for which the Holder's consent was not required under Section 4(b), entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then applicable Conversion Price (any such issuance, a "Dilutive Issuance") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the then applicable Conversion Price, such issuance shall be deemed to have occurred for less than the then applicable Conversion Price on such date of the Dilutive Issuance), then the then applicable Conversion Price shall be reduced to a price determined by multiplying the then applicable Conversion Price by a fraction, the numerator of which is the sum of (i) the number of shares of Common Stock issued and outstanding immediately prior to the Dilutive Issuance *plus* (ii) the number of shares of Common Stock issuable upon conversion or exercise of Common Stock Equivalents issued and outstanding immediately prior to the Dilutive Issuance *plus* (iii) the number of shares of Common Stock which the offering price for such Dilutive Issuance would purchase at the then applicable Conversion Price, and the denominator of which shall be the sum of (1) the number of shares of Common Stock issued and outstanding immediately prior to the Dilutive Issuance *plus* (2) the number of shares of Common Stock issuable upon conversion or exercise of Common Stock Equivalents issued and outstanding immediately prior to the Dilutive Issuance *plus* (3) the number of shares of Common Stock so issued or issuable in connection with the Dilutive Issuance. Notwithstanding the foregoing, no adjustment will be made under this Section 7(b) in respect of any issuance as to which the Holder has provided its written approval under Section 4(b) or otherwise. The Corporation shall notify the Holder in writing, no later than five (5) Business Days following a Dilutive Issuance, indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). Such Dilutive Issuance Notice shall be given by the Corporation to the Holder in accordance with Section 10(a). For purposes of clarification, whether or not the Corporation provides a Dilutive Issuance Notice pursuant to this Section 7(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the adjusted Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the adjusted Conversion Price in the Notice of Conversion.

c) Subsequent Dividend Issuances. If the Corporation, at any time while the Series E Preferred Stock is outstanding, shall issue shares of Common Stock or shares of Series D Preferred Stock in lieu of cash in satisfaction of its dividend obligations on shares of outstanding Existing Preferred Stock in accordance with the Series B Certificate, Series C Certificate and/or Series D Certificate, as applicable (any such issuance, a “Dividend Issuance”), then the then applicable Conversion Price shall be reduced to a price equal to (i) the aggregate Stated Value of Series E Preferred Stock then outstanding divided by (ii) the product of (x) aggregate number of Conversion Shares issuable upon conversion of the then outstanding Series E Preferred Stock immediately prior to Dividend Issuance multiplied by (y) the sum of one plus a fraction with: (A) a numerator equal to (I) the number of outstanding shares of Common Stock immediately after giving effect to the Dividend Issuance (assuming conversion of all Existing Preferred Stock in accordance with the Series B Certificate, Series C Certificate and/or Series D Certificate, as applicable, but not the Series E Preferred Stock) minus (II) the number of outstanding shares of Common Stock immediately prior to the Dividend Issuance (assuming conversion of all Existing Preferred Stock in accordance with the Series B Certificate, Series C Certificate and/or Series D Certificate, as applicable, but not the Series E Preferred Stock); and (B) a denominator equal to the number of outstanding shares of Common Stock immediately prior to the Dividend Issuance (assuming conversion of all Existing Preferred Stock in accordance with the Series B Certificate, Series C Certificate and/or Series D Certificate, as applicable, but not the Series E Preferred Stock). The Corporation shall notify the Holder in writing following a Dividend Issuance, indicating therein the occurrence of the applicable Dividend Issuance triggering such adjustment and the calculation of such adjusted Conversion Price (such notice, the “Dividend Issuance Notice”). Such Dividend Issuance Notice shall be given by the Corporation to the Holder in accordance with Section 10(a). For purposes of clarification, whether or not the Corporation provides a Dividend Issuance Notice pursuant to this Section 7(c), upon the occurrence of any Dividend Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the adjusted Conversion Price on or after the date of such Dividend Issuance, regardless of whether the Holder accurately refers to the adjusted Conversion Price in the Notice of Conversion.

d) Subsequent Redemption Issuances. If the Corporation, at any time while the Series E Preferred Stock is outstanding, shall issue shares of Common Stock as a result of any holder of Series D Preferred Stock exercising its right to require the Corporation to redeem all of such holder's shares of Series D Preferred Stock pursuant to a Non-Cash Redemption Triggering Event (as such term is defined in the Series D Certificate) (any such issuance, a "Redemption Issuance"), then the then applicable Conversion Price shall be reduced to a price equal to (i) the aggregate Stated Value of Series E Preferred Stock then outstanding *divided* by (ii) the product of (x) aggregate number of Conversion Shares issuable upon conversion of the then outstanding Series E Preferred Stock immediately prior to Redemption Issuance multiplied by (y) the sum of one *plus* a fraction with: (A) a numerator equal to (I) the number of outstanding shares of Common Stock immediately after giving effect to the Redemption Issuance (assuming conversion of all Existing Preferred Stock but not the Series E Preferred Stock) *minus* (II) the number of outstanding shares of Common Stock immediately prior to the Redemption Issuance (assuming conversion of all Existing Preferred Stock but not the Series E Preferred Stock); and (B) a denominator equal to the number of outstanding shares of Common Stock immediately prior to the Redemption Issuance (assuming conversion of all Existing Preferred Stock but not the Series E Preferred Stock). The Corporation shall notify the Holder in writing following a Redemption Issuance, indicating therein the occurrence of the applicable Redemption Issuance triggering such adjustment and the calculation of such adjusted Conversion Price (such notice, the "Redemption Issuance Notice"). Such Redemption Issuance Notice shall be given by the Corporation to the Holder in accordance with Section 10(a). For purposes of clarification, whether or not the Corporation provides a Redemption Issuance Notice pursuant to this Section 7(d), upon the occurrence of any Redemption Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the adjusted Conversion Price on or after the date of such Redemption Issuance, regardless of whether the Holder accurately refers to the adjusted Conversion Price in the Notice of Conversion.

e) Pro Rata Distributions. If the Corporation, at any time while the Series E Preferred Stock is outstanding, distributes to all holders of Common Stock (and not to the Holder) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security (other than Common Stock, which shall be subject to Sections 7(b), 7(c) or 7(d)), then in each such case the Conversion Price shall be adjusted by multiplying such Conversion Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the VWAP determined as of the record date mentioned above, and of which the numerator shall be such VWAP on such record date less the then fair market value at such record date of the portion of such assets, evidence of indebtedness or rights or warrants so distributed applicable to one outstanding share of the Common Stock as determined by the Board of Directors of the Corporation in good faith. In either case the adjustments shall be described in a statement delivered to the Holder describing the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

f) Fundamental Transaction. If, at any time while the Series E Preferred Stock is outstanding, (A) the Corporation effects any merger or consolidation of the Corporation with or into another Person (other than the Holder), (B) the Corporation effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, other than to the Holder, (C) any tender offer or exchange offer (whether by the Corporation or another Person (other than the Holder)) is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (D) the Corporation effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a “Fundamental Transaction”), then, upon any subsequent conversion of the Series E Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the “Alternate Consideration”). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of the Series E Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation of the Series E Preferred Stock with the same terms and conditions and issue to the Holder new preferred stock consistent with the foregoing provisions and evidencing the Holder’s right to convert such preferred stock into Alternate Consideration. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 7(f) and insuring that the Series E Preferred Stock (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

g) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

h) Notice to the Holder.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly cause to be delivered to the Holder in accordance with Section 10(a) a written notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by the Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, of any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series E Preferred Stock, and shall cause to be delivered to the Holder in accordance with Section 10(a), at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that, except in respect of the approval of the stockholders described in the preceding clause (D), the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. The Holder is entitled to convert the Conversion Amount of the Series E Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice.

i) Special Adjustment relating to Series D Preferred Stock. If the Corporation, at any time while the Series E Preferred Stock is outstanding, shall issue shares of Common Stock in conversion of shares of outstanding Series D Preferred Stock in accordance with the Series D Certificate (any such issuance, a “Series D Conversion Issuance”), then the then applicable Series E Conversion Price shall be reduced to a price equal to (i) the aggregate Stated Value of Series E Preferred Stock then outstanding divided by (ii) the product of (x) the aggregate number of Conversion Shares issuable upon conversion of the then outstanding Series E Preferred Stock immediately prior to the Series D Conversion Issuance multiplied by (y) the sum of one plus a fraction with: (A) a numerator equal to (I) the Adjusted Convertible Outstanding Amount immediately after giving effect to such Series D Conversion Issuance minus (II) the Adjusted Convertible Outstanding Amount immediately prior to such Series D Conversion Issuance; and (B) a denominator equal to the Adjusted Convertible Outstanding Amount immediately prior to such Series D Conversion Issuance. The Corporation shall notify the Holder in writing on a quarterly basis of all Series D Conversions which shall have occurred during the preceding calendar quarter, indicating therein the number of shares of Series D Preferred Stock as to which a Series D Conversion shall have occurred and the calculation of such adjusted Conversion Price (such notice, the “Series D Conversion Adjustment Notice”). Such Series D Conversion Adjustment Notice shall be given by the Corporation to the Holder in accordance with Section 10(a). For purposes of clarification, whether or not the Corporation provides a Series D Conversion Adjustment Notice pursuant to this Section 7(c), upon the occurrence of any Series D Conversion, the Holder is entitled to receive a number of Conversion Shares based upon the adjusted Conversion Price on or after the date of such Series D Conversion, regardless of whether the Holder accurately refers to the adjusted Conversion Price in the Notice of Conversion.

Section 8. Forced Conversion. At any time following the date upon which there are no outstanding shares of Existing Preferred Stock, the Corporation may automatically convert all of the then outstanding shares of Series E Preferred Stock into Common Stock at the then effective Conversion Price (such automatic conversion, the "Forced Conversion"), if, after giving effect to the Forced Conversion, the Conversion Shares issued to the Holder upon such Forced Conversion *plus* the number of shares of Common Stock owned by the Holder immediately prior to such Forced Conversion shall equal a number of shares of Common Stock that is greater than fifty percent (50%) of the then outstanding Common Stock. The Holder will be given at least five (5) Business Days' prior written notice of the date fixed and the place designated for mandatory conversion of all of such shares of Series E Preferred Stock pursuant to this Section 8. Such written notice shall be given by the Corporation to the Holder in accordance with Section 10(a). On or before the date fixed for conversion the Holder shall surrender its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of Conversion Shares into which the Holder's shares of Series E Preferred Stock are convertible. On the date fixed for conversion, all rights with respect to the Series E Preferred Stock so converted will terminate, except only the rights of the Holder, upon surrender of its certificate or certificates therefor, to receive certificates for the number of Conversion Shares into which such Series E Preferred Stock has been converted and payment of any declared and unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the Holder. All certificates evidencing shares of Series E Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date such certificates are so required to be surrendered, be deemed to have been retired and canceled and the shares of Series E Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the Holder to surrender such certificates on or prior to such date. As soon as practicable after the date of such mandatory conversion and the surrender of the certificate or certificates for Series E Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered to the Holder, or on or its written order, a certificate or certificates for the number of Conversion Shares issuable on such conversion in accordance with the provisions hereof and cash as provided in Section 6(d)(i) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

Section 9. Transfers. Notwithstanding anything herein to the contrary, other than with respect to Transfers to Affiliates of the Holder, the Holder shall not be entitled to Transfer its shares of Series E Preferred Stock without the prior written consent of the Corporation; provided, however, that nothing in this Section 9 shall prohibit or otherwise restrict the Holder's ability to Transfer the Conversion Shares issued to it following a conversion of its shares of Series E Preferred Stock in accordance with the terms hereof following the Lock-Up Period.

Section 10. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holder hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address set forth above, facsimile number (201) 750-2755, Attn: Chief Operating Officer, or such other facsimile number or address as the Corporation may specify for such purposes by notice to the Holder delivered in accordance with this Section 10. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to the Holder at the facsimile number or address of the Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of the Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section 10 prior to 5:30 p.m. (New York City time) on any date, (ii) the date immediately following the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section 10 between 5:30 p.m. and 11:59 p.m. (New York City time) on any date, (iii) the second Business Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Lost or Mutilated Series E Preferred Stock Certificate. If the Holder's Series E Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series E Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

c) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the “New York Courts”). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If either party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys’ fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

d) Waiver. Any waiver by the Corporation or the Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation. The failure of the Corporation or the Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation. Any waiver by the Corporation or the Holder must be in writing.

e) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

f) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

g) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

h) Status of Converted or Redeemed Series E Preferred Stock. Shares of Series E Preferred Stock may only be issued pursuant to the Strategic Agreement. If any shares of Series E Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series E Preferred Stock.

RESOLVED, FURTHER, that the Chairman, the president or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file a Certificate of Designation of Preferences, Rights and Limitations of the Series E Convertible Preferred Stock in accordance with the foregoing resolution and the provisions of Delaware law.”

[Remainder of this page is intentionally blank; signature page follows]

IN WITNESS WHEREOF, the Corporation has caused this Amended Certificate of Designations of the Series E Convertible Preferred Stock to be signed by Jerry Treppel, its Chief Executive Officer, made to be effective as of June 29, 2010.

ELITE PHARMACEUTICALS, INC.

By: /s/ Jerry Treppel

Name: Jerry Treppel

Title: Chief Executive Officer

Attest:

By: /s/ Carter J. Ward

Name: Carter J. Ward

Title: Chief Financial Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED THE HOLDER IN ORDER TO CONVERT SHARES OF SERIES E PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series E Convertible Preferred Stock indicated below into shares of common stock, par value U.S.\$0.001 per share (the "Common Stock"), of Elite Pharmaceuticals, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required by the Corporation in accordance with the Strategic Agreement. No fee will be charged to the Holder for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: _____

Number of shares of Series E Preferred Stock owned prior to Conversion: _____

Number of shares of Series E Preferred Stock to be Converted: _____

Stated Value of shares of Series E Preferred Stock to be Converted: _____

Number of shares of Common Stock to be Issued: _____

Applicable Conversion Price: _____

Number of shares of Series E Preferred Stock subsequent to Conversion: _____

EPIC, LLC

By: _____

Name:

Title:

STIPULATION OF SETTLEMENT AND RELEASE

This Stipulation of Settlement and Release ("Stipulation"), entered into as of June 25, 2010 (the "Effective Date"), is by and among Elite Pharmaceuticals, Inc., a Delaware corporation ("Elite"), and Midsummer Investment, Ltd., a Bermuda corporation ("Midsummer") and Bushido Capital Master Fund, LP, a Cayman Islands limited partnership ("Bushido", and collectively with Midsummer, the "Plaintiffs"), BCMF Trustees LLC ("BCMF"), Epic Pharma, LLC, a Delaware limited liability company, and EPIC INVESTMENTS, LLC, a Delaware limited liability company (Epic Pharma and Epic Investments collectively, "Epic"). Elite, the Plaintiffs, BCMF and Epic (the "Parties" and each a "Party") intending to be legally bound, covenant, agree and represent as follows:

WHEREAS, the Plaintiffs filed an action against Elite in the United States District Court, Southern District of New York, Number 09 CV 8074 (SHS), seeking injunctive relief and monetary damages relating to the issuance of the Series E Convertible Preferred Stock (the "Action");

WHEREAS, Elite denied all material allegations asserted in the Action and asserted defenses;

WHEREAS, to avoid the delays, expense and risks inherent in litigation, the Parties desire to resolve their dispute under the terms and conditions of this Stipulation and the Amendment Agreement, dated as of June 25, 2010 among Elite and the investors signatory thereto ("Amendment Agreement"); and

WHEREAS, the Parties believe that the terms of this Stipulation are fair and were reached in good faith.

NOW THEREFORE, in consideration of the obligations and promises as set forth in this Stipulation, the full sufficiency of which the Parties hereby acknowledge, and in full settlement of the Parties' claims, the Parties agree as follows:

1. Execution of the Amendment Agreement. This Stipulation will only become binding upon the Parties upon both complete execution of the Amendment Agreement and satisfaction or waiver of the conditions set forth in Sections 2.12 and 2.13 of the Amendment Agreement.

2. Dismissal of Action. Concurrent with the execution of this Stipulation, counsel for the Parties will execute a Stipulation of Discontinuance of the Action, with prejudice and without costs, substantially in the form annexed hereto as Exhibit A. Counsel for Plaintiffs will file the Stipulation of Discontinuance once this Stipulation becomes binding pursuant to the terms of paragraph 1 herein, and send a stamped copy to counsel for Elite.

3. Elite Release. In exchange for the execution of this Agreement, and the promises herein, and the execution of the Amendment Agreement, Elite and Epic, individually and on behalf of each of their respective officers, directors, agents, representatives, successors, affiliated entities, subsidiaries, heirs, employees, administrators and assigns (the "Elite Releasers") hereby releases and forever discharges each of the Plaintiffs, BCMF, their owners, officers, directors, investors, agents, representatives, successors, affiliated entities, subsidiaries, heirs, employees, administrators and assigns (the "Plaintiffs' Releasees") from any and all actions, causes of action, claims, liens, suits, debts, accounts, liabilities, expenses, attorneys' fees, agreements, promises, charges, complaints and demands whatsoever, known or unknown, whether in law or equity, which the Elite Releasers may now have or hereafter can have, shall have, may have, or may have had for, upon, or by reason of any cause or thing whatsoever including, but not limited to, claims that could have been asserted in the Action or any other court action, based upon any conduct from the beginning of the world up to and including the date of this Stipulation; provided, however, that the Elite Releasers do not release any claim of breach of the terms of this Stipulation, breach of the terms of the Amendment Agreement, or any cause of action arising from future conduct by the Plaintiffs' Releasees.

4. Plaintiffs' Release. In exchange for the execution of this Agreement, the promises herein, and the execution of the Amendment Agreement, Plaintiffs and BCMF, individually and on behalf of each of their respective owners, officers, directors, investors, agents, representatives, successors, affiliated entities, subsidiaries, heirs, employees, administrators and assigns (the "Plaintiffs' Releasors") hereby release and forever discharge Elite and Epic and each of their respective officers, directors, agents, representatives, successors, affiliated entities, subsidiaries, heirs, employees, administrators and assigns (the "Elite Releasees"), from any and all actions, causes of action, claims, liens, suits, debts, accounts, liabilities, expenses, attorneys' fees, agreements, promises, charges, complaints and demands whatsoever, known or unknown, whether in law or equity, which the Plaintiffs' Releasors may now have or hereafter can have, shall have, may have, or may have had for, upon, or by reason of any cause or thing whatsoever including, but not limited to, claims that could have been asserted in the Action or any other court action, based upon any conduct from the beginning of the world up to and including the date of this Stipulation; provided, however, that the Plaintiffs' Releasors do not release any claim of breach of the terms of this Stipulation, breach of the terms of the Amendment Agreement or any cause of action arising from future conduct by the Elite Releasees.

5. Continued Rights and Obligations. It is expressly understood and agreed that nothing herein affects any future rights or obligations of the Parties under the Transaction Documents, as defined in the Amendment Agreement.

6. Non-Admission. Each of the Parties expressly denies any wrongdoing or liability and nothing in this Stipulation shall be interpreted as an admission of liability by any of the Parties to this Stipulation.

7. Enforceability. The Parties understand and acknowledge that this Stipulation is final and binding, and the Parties agree not to challenge its enforceability.

8. Governing Law. The Parties further agree that this Stipulation will be governed by the laws of the State of New York.

9. Severability. The Parties further agree that if any of the provisions, terms, clauses, waivers and releases of claims and rights contained in this Stipulation are declared illegal, unenforceable, or ineffective in a legal forum of competent jurisdiction, such provisions, terms, clauses, waivers and releases of claims or rights shall be modified, if possible, in order to achieve, to the extent possible, the intentions of the Parties, and, if necessary, such provisions, terms, clauses, waivers and releases of claims and rights shall be deemed severable, such that all other provisions, terms, clauses, waivers and releases of claims and rights contained in this Stipulation shall remain valid and binding upon all Parties.

10. Amendments. The Parties further agree that this Stipulation may not be altered, amended, modified, superseded, canceled or terminated except by an express written agreement duly executed by all the Parties or their attorneys on their behalf, which makes specific reference to this Stipulation.

11. Drafting. The Parties agree that this Stipulation has been jointly drafted and negotiated with the assistance of counsel for each Party and that any ambiguity shall not be construed against any Party as the drafter of the Stipulation.

12. Counsel. The Parties acknowledge and represent that each has been represented by the counsel of his or its choosing in the negotiation and execution of this Stipulation, that each Party has read the entire Stipulation, and is fully aware of its legal effect. Parties shall each pay their own legal fees and costs, except as otherwise expressly set forth in this Stipulation.

13. Notices. Any notices or other communications to be given in accordance with this Stipulation shall be made in accordance with the provisions of the Securities Purchase Agreement, dated September 15, 2008, as amended.

14. Authority. The Parties represent and warrant that they have the power, authority and authorization to enter into this Stipulation and that they have not transferred, assigned or hypothecated to any third party any of their rights released in this Stipulation.

15. Copies. This Stipulation may be executed in one or more counterpart originals, whether by facsimile or otherwise, all of which, taken together, shall constitute one and the same instrument.

[THE REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

To signify their agreement to the terms of this Stipulation, the Parties have executed this Stipulation on the date set forth opposite their signatures which appear below.

Dated: June 25, 2010

ELITE PHARMACEUTICALS, INC.

By: _____
Name:
Title:

Dated: June 25, 2010

MIDSUMMER INVESTMENT, LTD.

By: _____
Name:
Title:

Dated: June 25, 2010

BUSHIDO CAPITAL MASTER FUND, LP

By: _____
Name:
Title:

Dated: June 25, 2010

BCMF TRUSTEES LLC

By: _____
Name:
Title:

Dated: June 25, 2010

EPIC PHARMA, LLC

By: _____
Name:
Title:

Dated: June 25, 2010

EPIC INVESTMENTS, LLC

By: _____
Name:
Title:

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

Midsummer Investment, Ltd., and
Bushido Capital Master Fund, LP,

Plaintiffs,

09 CV 8074 (SHS)

-against-

Elite Pharmaceuticals, Inc.,

Defendant.

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

x

IT IS HEREBY STIPULATED AND AGREED by and among the parties that the above-captioned action, be dismissed in its entirety, with prejudice, with no award of counsel fees or costs by the Court to either side.

Dated: New York, New York
June __, 2010

Law Offices of Kenneth A. Zitter

Richardson & Patel LLP

Kenneth A. Zitter (KAZ-3195)
Attorney for Plaintiffs
260 Madison Avenue, 18th floor
New York, New York 10016
212-532-8000

David Gordon (DG-0010)
Attorneys for Defendant
750 Third Avenue, 9th floor
New York, New York 10017
646-755-7315

AMENDMENT AGREEMENT

This Amendment Agreement (the "Agreement"), dated as of June 25, 2010, is by and among Elite Pharmaceuticals, Inc., a Delaware corporation (the "Company") and the investors signatory hereto (each, a "Purchaser" and collectively, the "Purchasers").

WHEREAS, pursuant to a Securities Purchase Agreement, dated September 15, 2008, as amended (the "Purchase Agreement"), among the Company and the investors signatory thereto, the Company issued Series D 8% Convertible Preferred Stock (the "Series D Preferred Stock"), pursuant to a Certificate of Designation of Preferences, Rights and Limitations of Series D 8% Convertible Preferred Stock, filed with Secretary of State of the State of Delaware on September 15, 2008 (the "COD"), and were issued warrants (the "Warrants" and, together with the Purchase Agreement and the COD, the "Transaction Documents") exercisable for shares of Common Stock of the Company;

WHEREAS, the parties wish to amend certain terms of the Transaction Documents.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Purchasers and the Company agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions. Capitalized terms not defined in this Agreement shall have the meanings ascribed to such terms in the Purchase Agreement.

ARTICLE II AMENDMENTS AND OTHER AGREEMENTS

Section 2.1. Warrant Amendments.

(i) Section 2(b) of the Warrants is hereby amended and restated in its entirety as follows (for purposes of clarification, solely as a result of this adjustment, there will be no corresponding increase in the number of Warrant Shares):

Exercise Price. The exercise price per share of the Common Stock under this Warrant shall be US\$0.125, subject to adjustment hereunder (the "Exercise Price")."

(ii) The following is added as new Section 3(h) to each Warrant:

“Other Adjustment. In addition to the other adjustments herein, the Exercise Price shall be reduced as follows: (i) by 20% if on September 15, 2011 the Holder still beneficially owns more than 50% of the Preferred Stock beneficially owned by it as of the date of that certain Amendment Agreement, dated June 25, 2010, pursuant to which this provision was amended to this Warrant (“Base Ownership”) (excluding for purposes of such calculation, shares of Preferred Stock issued on the date hereof in lieu of dividend payments on the Preferred Stock, if any); and (ii) by 20% if (a) on September 15, 2011, the Holder then beneficially owns more than 25% of the Base Ownership and 50% or less of the Base Ownership and (b) on September 15, 2012, the Holder then beneficially owns more than 25% of the Base Ownership; provided that, under this Section 3(h), the reduction in Exercise Price may only occur once. Notwithstanding anything herein to the contrary, in the event that on September 15, 2011 or, if the condition of clause (ii)(a) above is met, on September 15, 2012, the Holder beneficially owns 25% or less of the Base Ownership, then no adjustment shall occur hereunder. Additionally, solely as a result of this adjustment, there will be no corresponding increase in the number of Warrant Shares”

Section 2.2 Amendment to Certificate of Designation. On or prior to the date hereof, the Company shall deliver evidence of the filing of an Amendment to the Certificate of Designation, in the form attached hereto as Exhibit A (the “Certificate of Amendment”). Each Purchaser hereby consents to terms and filing of the Certificate of Amendment.

Section 2.3 Amendment to Section 1.1 of the Purchase Agreement. The definition of “Exempt Issuance” in Section 1.1 of the Purchase Agreement is hereby amended to add the following as the last two sentences of such definition:

“As used herein, the term “Strategic Transaction” shall expressly include securities issued to Epic Investments, LLC (“Epic Investments”) and Epic Pharma, LLC (“Epic Pharma”) pursuant to that certain Strategic Alliance Agreement, dated March 18, 2009, as amended through the fourth amendment thereof dated June 25, 2010 (such agreement through the fourth amendment thereof, the “Epic SAA”); provided that the designation of the transactions set forth in the Epic SAA as a “Strategic Transaction” shall have no effect on whether (x) any future transaction between the Company and either Epic Investments or Epic Pharma shall constitute a “Strategic Transaction” (and any such future transaction shall be evaluated on a stand-alone basis as to whether such transaction is, or is not, a “Strategic Transaction”) or (y) any securities issued pursuant to an amendment or modification to the Epic SAA made following the date of the fourth amendment thereto or the above-referenced June 2010 amendment shall constitute an Exempt Issuance.”

Section 2.4 SEC Filings/Misc. So long as the Purchasers beneficially own, in the aggregate, at least 15% of the Series D Preferred Stock held by the Purchasers as of the date hereof (including for purposes of such calculation, shares of Preferred Stock issued on the date hereof in lieu of dividend payments on the Preferred Stock), the Company hereby agrees:

- (i) to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act;
- (ii) not to engage in a “going-private” transaction subject to Rule 13e-3 of the Exchange Act; and
- (iii) to use commercially reasonable efforts to obtain analyst coverage from a FINRA member firm and to have such analyst publish reports on the Company on at least a semi-annual basis.

Section 2.5 Increase in Authorized Shares; Reverse Split.

(i) At its next meeting of shareholders the Company shall seek shareholder approval to amend the Company’s certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least 760 million shares (the “Authorized Share Increase”), subject to downward adjustment if the Company shall effect a Reverse Split (as defined below), with the recommendation of the Company’s Board of Directors that such proposal be approved, and the Company shall solicit proxies from its shareholders in connection therewith in the same manner as all other management proposals in such proxy statement and all management-appointed proxyholders shall vote their proxies in favor of such proposal.

(ii) Each Purchaser, severally, and not jointly, hereby agrees to vote all shares of Common Stock beneficially owned by it on the applicable record date in favor of (i) the Authorized Share Increase and (ii) a reverse stock split, in the ratio of no greater than 50 to 1 (the “Reverse Split”). The Company represents, warrants and covenants that all outstanding securities of the Company (including Common Stock and Common Stock Equivalents) will proportionally adjust as to the number of shares issuable and the conversion or exercise prices as a result of any reverse stock split.

Section 2.6 Future Agreements with other Preferred Stock Holders. In the event any holder of the Company’s preferred stock that is not an Affiliate (as defined in the Transaction Documents) of a Purchaser takes action against the Company with respect to the transaction set forth in the Strategic Alliance Agreement, dated March 18, 2009, between the Company, Epic Investments, LLC and Epic Pharma, LLC as amended through the fourth amendment dated June 25, 2010 (such agreement through the fourth amendment thereof, the “Epic SAA”), and if the Company settles any such action, or is forced to settle, on terms more favorable than the terms hereunder, each Purchaser may within twenty Trading Days after disclosure of such settlement, cause the Company to amend the terms of this transaction as to such Purchaser only so as to give such Purchaser the benefit of such more favorable terms or conditions, on a proportionate basis.

Section 2.7 Limitation on Consent Consideration. In the event that the Company is required to seek consent from the holders of other classes of its preferred stock to approve the transactions under this Agreement, the Company shall not offer any consideration to such security holders without the prior written consent of the Purchasers and, in the event such consideration is in the form of Common Stock or Common Stock Equivalents, in no event, if in the form of an option or warrant, on terms less favorable to the Company than the Warrants.

Section 2.8 Limitation on Future Security Acquisitions. Each Purchaser, severally, and not jointly with the other Purchasers, hereby agrees that it will not acquire additional shares of Common Stock or preferred stock of the Company, other than in connection with the conversion or exercise of Common Stock Equivalents held by it or pursuant to hedging or covering transactions with respect to any Common Stock Equivalents held by it.

Section 2.9. Series E Preferred Stock. The Purchasers hereby consent to, and the Company agrees to cause as a condition to the effectiveness of this Agreement, the Epic Amendments (as defined below) which amend to the terms of the Company's Series E Convertible Preferred Stock (the "Series E Preferred Stock") issued pursuant to a Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock, filed with the Secretary of State of the State of Delaware on June 3, 2009.

Section 2.10 Effect on Purchase Agreement. The foregoing consents and waivers are given solely in respect of the transactions described herein. Except as expressly set forth herein, all of the terms and conditions of the Transaction Documents shall continue in full force and effect after the execution of this Agreement, and shall not be in any way changed, modified or superseded by the terms set forth herein. This Agreement shall not constitute a novation or satisfaction and accord of any Transaction Document.

Section 2.11 Filing of Form 8-K. Within 2 Trading Days of the date hereof, the Company shall issue a Current Report on Form 8-K, reasonably acceptable to each Purchaser disclosing the material terms of the transactions contemplated hereby, which shall include this Agreement as an attachment thereto.

Section 2.12 Conditions to Purchasers' Obligations. The respective obligations of the Purchasers hereunder in connection with the Closing are subject to the following conditions being met:

- (a) the accuracy in all material respects on the date of the Closing of the representations and warranties of the Company contained herein;
- (b) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing shall have been performed;
- (c) the execution and delivery of a settlement and release agreement, by and among the Company, the Purchaser and the other parties thereto, in the form attached hereto as Exhibit B;

(d) In satisfaction of payment of all accrued but unpaid dividends as of March 31, 2010, to the extent such issuance does not cause the Purchaser's beneficial ownership on the date of issuance to exceed 9.9% of the issued and outstanding shares of Common Stock (any excess shares shall be issued to the Purchaser upon written notice from such Purchaser when such Purchaser's beneficial ownership is below 9.9% to the extent that such issuance does not cause the Purchaser to exceed such amount), the Company shall have issued the following newly issued shares of Common Stock, without restrictive legends, on account of all accrued but unpaid dividends on the Series D Preferred Stock owed to such Purchaser as of the date hereof (the "Unpaid Series D Dividends"), and delivered such shares to each Purchaser electronically through the Depository Trust Company ("DTC") to the DTC account of such Purchaser set forth on the signature page hereto): (i) 543,143 shares of Common Stock to Midsummer Investment, Ltd.; (ii) 105,566 shares of Common Stock to Bushido Capital Master Fund, LP and (iii) 172,426 shares of Common Stock to BCMF Trustees LLC; *provided* that such issuance and delivery shall be conditioned upon the delivery to the Company by each Purchaser of a Rule 144 Rep Letter (as defined below) with respect to such shares; and

(e) the execution and delivery of an amendment to the transaction documents under the Epic SAA (including the fourth amendment to the Epic SAA) (collectively, the "Epic Amendments"), in the form attached hereto as Exhibit C.

Section 2.13 Conditions to Company's Obligations. The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

(a) the accuracy in all material respects on the date of the Closing of the representations and warranties of the Purchasers contained herein;

(b) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to the Closing shall have been performed;

(c) the execution and delivery of a settlement and release agreement, by and among the Company, the Purchaser and the other parties thereto, in the form attached hereto as Exhibit B;

(d) any consent or approval as may be required from the Company's preferred stockholders with respect to the transactions contemplated by this Agreement (the "Shareholder Approval") shall have been obtained;

(e) each Purchaser shall have provided to the Company a customary Rule 144 representation letter (a "Rule 144 Rep Letter"), in the form previously provided to the Purchasers, to accompany the legal opinion to be provided by Company's counsel to its transfer agent in connection with the issuance of shares of Common Stock in payment of the Unpaid Series D Dividends in accordance with Section 2.12(d) above; and

(f) the execution and delivery of the Epic Amendments.

Section 2.14 Consent. Each Purchaser hereby consents, as holders of Series D Preferred Stock, to the filing with the Secretary of State of the State of Delaware of amendments to the Company's certificate of incorporation (including each application certificate of designation) to effect the amendments set forth herein and in the Epic Amendment.

Section 2.15 144 Rep Letters. As a condition to the issuance by the Company via DTC of any shares of Common Stock to be issued by the Company without restrictive legends (including, without limitation, shares to be issued upon voluntary and/or mandatory conversions of Series D Preferred Stock and upon payment of dividends on Series D Preferred Stock), the Purchaser to receive such shares shall provide to the Company a Rule 144 Rep Letter with respect to the issuance of such shares without restrictive legends pursuant to Rule 144 promulgated under the Securities Act of 1933, as amended.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Section 3.1. Representations and Warranties of the Company. The Company hereby make the representations and warranties set forth below to the Purchasers that as of the date of its execution of this Agreement:

(a) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by the Company and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, its board of directors or its stockholders in connection therewith the Shareholder Approval. This Agreement has been duly executed by the Company and, when delivered in accordance with the terms hereof will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) No Conflicts. Subject to the Shareholder Approval, the execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby do not and will not: (i) conflict with or violate any provision of the Company's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any lien upon any of the properties or assets of the Company, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any material agreement, credit facility, debt or other material instrument (evidencing Company debt or otherwise) or other material understanding to which the Company is a party or by which any property or asset of the Company is bound or affected, or (iii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company is bound or affected.

Section 3.2. Representations and Warranties of the Purchasers. Each Purchaser, severally, and not jointly, hereby make the representations and warranties set forth below to the Company as of the date of its execution of this Agreement:

(a) Authorization; Enforcement. The Purchaser has the requisite corporate, partnership and/or company power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by the Purchaser and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of such Purchaser and no further action is required by such Purchaser, its board of directors (or equivalent governing body) or its stockholders, member or partner in connection therewith. This Agreement has been duly executed by the Purchaser and, when delivered in accordance with the terms hereof will constitute the valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Ownership of Series D Preferred Stock. Schedule I attached hereto sets forth to aggregate number of shares of Series D Preferred Stock owned by such Purchaser and each of its Affiliates as of the date of this Agreement (and prior to the issuance of any shares of Series D Preferred Stock as payment in kind dividends). Other than the shares of Common Stock issued on account of the Unpaid Series D Dividends, there are no accrued and unpaid dividends owing upon the Series D Preferred Stock owned by such Purchaser and each of its Affiliates as of the date of this Agreement (it being understood that the next dividend payment date shall be with respect to the dividends that accrue for the period of April 1, 2010 through June 30, 2010).

ARTICLE IV MISCELLANEOUS

Section 4.1. Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be made in accordance with the provisions of the Purchase Agreement.

Section 4.2. Survival. All warranties and representations (as of the date such warranties and representations were made) made herein or in any certificate or other instrument delivered by it or on its behalf under this Agreement shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery hereof. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties; provided however that no party may assign this Agreement or the obligations and rights of such party hereunder without the prior written consent of the other parties hereto.

Section 4.3. Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof.

Section 4.4. Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

Section 4.5. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined pursuant to the Governing Law provision of the Purchase Agreement.

Section 4.6. Entire Agreement. The Agreement, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

Section 4.7. Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

Section 4.8 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser hereunder are several and not joint with the obligations of any other Purchasers hereunder, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Purchaser pursuant hereto, 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 with respect to such obligations or the transactions contemplated by this Agreement. Each Purchaser shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

Section 4.9 Waiver of Late Fees and Trigger Events. Each Purchaser, on its own behalf and on behalf of any Affiliate holding shares of the Company's preferred stock (including, without limitation, shares of Series D Preferred Stock) hereby irrevocably waives (i) any right it may have, as a holder of such preferred stock, for any interest or late fee under any provision of the COD (including, without limitation, Section 3(a)) which may have existed on or prior to the date of this Agreement and (y) any Trigger Event (as defined in the COD) which may have occurred or existed on or prior to the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

ELITE PHARMACEUTICALS, INC.

By: _____
Name:
Title:

[PURCHASER SIGNATURE PAGES TO ELITE
AMENDMENT AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Amendment Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: _____

Signature of Authorized Signatory of Purchaser: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Email Address of Purchaser: _____

Address for Notice of Purchaser:

DTC Instructions of Purchaser:

SCHEDULE I

Series D Holder	Number of Shares of Series D Preferred Stock held as of June 25, 2010
Midsummer Investment LTD	3,956
Bushido Master Capital Fund LP	761.8
BCMF Trustees LLC	1302.6

EXHIBIT A
FORM OF CERTIFICATE OF AMENDMENT TO THE SERIES D CERTIFICATE OF DESIGNATION

1. The following definitions included in Section 1 of the Certificate of Designation are hereby amended in their entirety and replaced with the following:

“Change of Control Transaction” means the occurrence after the date hereof of any of (i) an acquisition after the date hereof by an individual, legal entity or “group” (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Corporation, by contract or otherwise) of in excess of 40% of the voting securities of the Corporation (other than by means of conversion or exercise of Preferred Stock and the Securities issued together with the Preferred Stock), or (ii) the Corporation merges into or consolidates with any other Person, or any Person merges into or consolidates with the Corporation and, after giving effect to such transaction, the stockholders of the Corporation immediately prior to such transaction own less than 60% of the aggregate voting power of the Corporation or the successor entity of such transaction, or (iii) the Corporation sells or transfers all or substantially all of its assets to another Person and the stockholders of the Corporation immediately prior to such transaction own less than 60% of the aggregate voting power of the acquiring entity immediately after the transaction, or (iv) a replacement at one time or within a one year period of more than one-half of the members of the Corporation’s board of directors which is not approved by a majority of those individuals who are members of the board of directors on the date hereof (or by those individuals who are serving as members of the board of directors on any date whose nomination to the board of directors was approved by a majority of the members of the board of directors who are members on the date hereof), or (v) the execution by the Corporation of an agreement to which the Corporation is a party or by which it is bound, providing for any of the events set forth in clauses (i) through (iv) above; provided that any transaction between the Corporation and Epic Pharma (as defined below) or any of its Affiliates shall not constitute a “Change of Control Transaction” under clause (i) above .

“Equity Conditions” means, during the period in question, as to a Holder, (i) after June 25, 2010, the Corporation shall have duly honored all conversions scheduled to occur or occurring by virtue of one or more Notices of Conversion of the applicable Holder on or prior to the dates so requested or required, if any, (ii) the Corporation shall have paid all liquidated damages and other amounts owing to such Holder in respect of the Series D Preferred Stock, (iii) (a) there is an effective Conversion Shares Registration Statement pursuant to which such Holder is permitted to utilize the prospectus thereunder to resell all of the shares of Common Stock issuable to such Holder pursuant to the Transaction Documents (and the Corporation believes, in good faith, that such effectiveness will continue uninterrupted for the foreseeable future) or (b) the Conversion Shares issuable to such Holder pursuant to the Transaction Documents may be resold pursuant to Rule 144 without volume or manner-of-sale restrictions as determined by the counsel to the Corporation pursuant to a written opinion letter to such effect, if such opinion letter is required by the Transfer Agent, addressed and acceptable to the Transfer Agent, (iv) the Common Stock is trading on a Trading Market and all of the shares issuable pursuant to the Transaction Documents are listed for trading on such Trading Market (and the Corporation believes, in good faith, that trading of the Common Stock on a Trading Market will continue uninterrupted for the foreseeable future), (v) there is a sufficient number of authorized, but unissued and otherwise unreserved, shares of Common Stock for the issuance in connection with the Company obligation to be satisfied by such issuance (such as the payment in kind of dividends) for which Equity Conditions are required to exist, (vi) after June 2010, there is no existing Triggering Event or no existing event which, with the passage of time or the giving of notice, would constitute a Triggering Event, (vii) the issuance of the shares in question (or, in the event of an Optional Redemption, of the issuance of all the Conversion Shares underlying the Series D Preferred Stock) to such Holder would not violate the limitations set forth in Section 6(c) herein, (viii) except with respect to Section 8(b), there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, and (ix) such Holder is not in possession of any information that constitutes material non-public information as a result of the disclosure of such information to such Holder by the Corporation or any of its Affiliates.

“Exempt Issuance” means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Corporation pursuant to any stock or option plan duly adopted by a majority of the non-employee members of the Board of Directors of the Corporation or a majority of the members of a committee of non-employee directors established for such purpose, (b) securities upon the exercise or exchange of or conversion of any Securities issued pursuant to the Purchase Agreement and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of the Purchase Agreement, provided that such securities have not been amended since the date of the Purchase Agreement to increase the number of such securities or to decrease the exercise, exchange or conversion price of any such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors, provided any such issuance shall only be to a Person which is, itself or through its subsidiaries, an operating company in, or an individual that operates, a business synergistic with the business of the Corporation and in which the Corporation receives benefits in addition to the investment of funds, but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities (each such transaction, a “Strategic Transaction”), (d) up to a maximum of 1,500,000 shares of Common Stock or Common Stock Equivalents (subject to adjustment for reverse and forward stock splits and the like) in any rolling 12 month period issued to consultants, vendors, financial institutions or lessors in connection with services provided by such Persons referred to in this clause (d), but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, and provided that none of such shares may be registered for sale or resale by any of such holders; (e) securities issued as a dividend or distribution any of the Securities pursuant to the terms of the Transaction Documents; and (f) securities issued in connection with any stock split, stock dividend or recapitalization of the Common Stock. As used herein, the term “Strategic Transaction” shall expressly include the transactions set forth in, and the securities issued, or to be issued, to Epic Investments, LLC (“Epic Investments”) and Epic Pharma, LLC (“Epic Pharma”) pursuant to, that certain Strategic Alliance Agreement, dated March 18, 2009, as amended through the fourth amendment thereof dated June 25, 2009 (such agreement through the fourth amendment thereof, the “Epic SAA”); provided that the designation of the transactions set forth in the Epic SAA as a “Strategic Transaction” shall have no effect on whether (x) any future transaction between the Corporation and either Epic Investments or Epic Pharma shall constitute a “Strategic Transaction” (and any such future transaction shall be evaluated on a stand-alone basis as to whether such transaction is, or is not, a “Strategic Transaction”) or (y) any securities issued pursuant to an amendment or modification to the Epic SAA made following the date of the fourth amendment thereto or the above-referenced June 2010 amendment shall constitute an Exempt Issuance).

2. Section 3(a) of the Certificate of Designation is hereby amended in its entirety and replaced with the following:

a) Dividends in Cash or in Kind. Other than in the case of shares of Dividend Payment Preferred Stock, the Holders shall be entitled to receive, and the Corporation shall pay, cumulative dividends at the rate per share (as a percentage of the Stated Value per share) of 8% per annum, payable quarterly on January 1, April 1, July 1 and October 1, beginning on the first such date after the Original Issue Date and on each Conversion Date (except that, if such date is not a Trading Day, the payment date shall be the next succeeding Trading Day) (each such date, a "Dividend Payment Date") in (i) cash, (ii) duly authorized, validly issued, fully paid and non-assessable shares of Common Stock as set forth in this Section 3(a) (the amount to be paid in shares of Common Stock, the "Dividend Share Amount"), (iii) duly authorized, validly issued, fully paid and non-assessable shares of Series D Preferred Stock (such shares of Series D Preferred Stock issued in satisfaction of dividends hereunder, the "Dividend Payment Preferred Stock") or (iv) a combination of (i), (ii) and (iii). The form of dividend payments to each Holder shall be determined in the following order of priority: (i) if funds are legally available for the payment of dividends and the Equity Conditions have not been met during the 20 consecutive Trading Days immediately prior to the applicable Dividend Payment Date, in cash only; (ii) if funds are legally available for the payment of dividends and the Equity Conditions have been met during the 20 consecutive Trading Days immediately prior to the applicable Dividend Payment Date, at the sole election of the Corporation, in cash or shares of Common Stock which shall be valued solely for such purpose at 95% of the average of the VWAPs for the 20 consecutive Trading Days ending on the Trading Day that is immediately prior to the Dividend Payment Date; (iii) if funds are not legally available for the payment of dividends and the Equity Conditions have been met during the 20 consecutive Trading Days immediately prior to the applicable Dividend Payment Date, in shares of Common Stock which shall be valued solely for such purpose at 95% of the average of the VWAPs for the 20 consecutive Trading Days ending on the Trading Day that is immediately prior to the Dividend Payment Date; (iv) if funds are not legally available for the payment of dividends and the Equity Conditions relating to an effective Conversion Shares Registration Statement has been waived by such Holder, as to such Holder only, in unregistered shares of Common Stock which shall be valued solely for such purpose at 95% of the average of the VWAPs for the 20 consecutive Trading Days ending on the Trading Day that is immediately prior to the Dividend Payment Date; (v) at the option of the Corporation, regardless of whether or not the "Equity Conditions" are then satisfied, in shares of Dividend Payment Preferred Stock having a Stated Value equal to the aggregate cash value of such dividend payment; and (vi) if funds are not legally available for the payment of dividends and the Equity Conditions have not been met during the 20 consecutive Trading Days immediately prior to the applicable Dividend Payment Date, then such dividends shall accrue to the next Dividend Payment Date. The Holders shall have the same rights and remedies with respect to the delivery of any such shares as if such shares were being issued pursuant to Section 6. Upon the request of the Corporation, each Holder shall provide to the Corporation, a customary Rule 144 representation letter relating to all shares of Common Stock to be issued as payment in kind dividends. On the Closing Date the Corporation shall have notified the Holders whether or not it may legally pay cash dividends as of the Closing Date. Absent prior written notice from the Corporation as provided for below and subject to the Equity Conditions being met, the default method of payment shall be in shares of Common Stock. In the event the Corporation determines to pay in Dividend Payment Preferred Stock or cash or the Corporation determines that the Equity Conditions are not met, the Corporation shall provide at least 20 Trading Day's prior notice to the Holder of such its election to pay in Dividend Payment Preferred Stock or cash; provided, that the failure to notify the Holders that the Equity Conditions are not met shall not constitute a "Trigger Event" under Section 9(a) hereof. Dividends on the Series D Preferred Stock shall be calculated on the basis of a 360-day year, shall accrue daily commencing on the Original Issue Date, and shall be deemed to accrue from such date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Except as otherwise provided herein, if at any time the Corporation pays dividends partially in cash and partially in shares, then such payment shall be distributed ratably among the Holders based upon the number of shares of Series D Preferred Stock held by each Holder on such Dividend Payment Date. Any dividends, whether paid in cash, Dividend Payment Preferred Stock or shares of Common Stock, that are not paid within five Trading Days following a Dividend Payment Date shall continue to accrue and shall entail a late fee, which must be paid in cash, at the rate of 18% per annum or the lesser rate permitted by applicable law (such fees to accrue daily, from the Dividend Payment Date through and including the date of payment); provided that any such late fee which may have accrued prior to June 25, 2010 is irrevocably waived by all Holders. Dividend Payment Preferred Stock shall have the same rights, privileges, preferences as the other Series D Preferred Stock, except that such Dividend Payment Preferred Stock shall not be entitled to, nor accrue, any dividends pursuant to this Section 3(a) and each certificate evidencing any shares of Dividend Payment Preferred Stock shall bear a legend substantially to the following effect (in addition to any other legends required by law or by contract):

“THE SHARES OF SERIES D PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE WERE ISSUED AS “DIVIDEND PAYMENT PREFERRED STOCK” UNDER THE TERMS OF CERTIFICATE OF DESIGNATION OF PREFERENCES, RIGHTS AND LIMITATIONS OF SERIES D 8% CONVERTIBLE PREFERRED STOCK, FILED WITH SECRETARY OF STATE OF THE STATE OF DELAWARE ON SEPTEMBER 15, 2008, AS MAY BE AMENDED (THE “CERTIFICATE OF DESIGNATION”) AND, AS SUCH, DO NOT ENTITLE THE HOLDER HERETO TO ANY DIVIDENDS PURSUANT TO SECTION 3(A) OF THE CERTIFICATE OF DESIGNATION.

If at any time, the Corporation determines that creation of a separate series of Preferred Stock is necessary or advisable for purposes of issuing shares of Dividend Payment Preferred Stock pursuant to this Section 3(a), the Corporation shall be authorized, without any further consent or approval of the Holders, to create such additional series of Preferred Stock (the “Series D-1 Preferred Stock”) having the same rights, privileges, preferences as the Series D Preferred Stock, except that such Series D-1 Preferred Stock shall not be entitled to, nor accrue, any dividends pursuant to this Section 3(a). Upon creation of such series of Series D-1 Preferred Stock, all references herein to Dividend Payment Preferred Stock shall be deemed to refer to such Series D-1 Preferred Stock and no shares of Series D-1 Preferred Stock shall be issued by the Corporation for any purposes other than the payment of dividends to the Holders, at the option of the Corporation, under this Section 3(a) in the form of Dividend Payment Preferred Stock.

3. The first sentence of Section 5 of the Certificate of Designation is hereby amended in its entirety and replaced with the following:

“Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a “Liquidation”), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount equal to the Stated Value, plus any accrued and unpaid dividends thereon (other than in the case of Dividend Payment Preferred Stock), and any other fees or liquidated damages owing thereon for each share of Series D Preferred Stock before any distribution or payment shall be made to the holders of any Junior Securities, and if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among the holders of all outstanding shares of Series D Preferred Stock in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full.”

4. Section 6(b) of the Certificate of Designation is hereby amended in its entirety and replaced with the following:

“Conversion Price. The conversion price for the Series D Preferred Stock shall equal \$0.07, subject to adjustment herein (the “Conversion Price”).”

5. The last four sentences of Section 6(c) of the Certificate of Designation are hereby amended in their entirety and replaced with the following *three* sentences:

“The “Beneficial Ownership Limitation” shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Series D Preferred Stock held by the Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(c) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Series D Preferred Stock.”

6. Section 6(d) of the Certificate of Designation is hereby amended in its entirety and replaced with the following:

“Reserved”

7. Section 6(e) of the Certificate of Designation is hereby amended in its entirety and replaced with the following:

“Reserved”

8. The second sentence of Section 6(f)(i) of the Certificate of Designation is hereby amended in its entirety and replaced with the following:

“The Corporation shall deliver any certificate or certificates required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company or another established clearing corporation performing similar functions.”

9. The first sentence of Section 7(a) of the Certificate of Designation is hereby amended in its entirety and replaced with the following:

“Stock Dividends and Stock Splits. If the Corporation, at any time while this Series D Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock or Dividend Payment Preferred Stock issued by the Corporation upon conversion of, or payment of a dividend on, the Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (D) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event.”

10. The first sentence of the final paragraph of Section 8(a) of the Certificate of Designation is hereby amended in its entirety and replaced with the following:

“then the Corporation may, within two Trading Days after the end of any such Threshold Period, deliver a written notice to all Holders (a “Forced Conversion Notice” and the date such notice is delivered to all Holders, the “Forced Conversion Notice Date”) to cause each Holder to convert all or part of such Holder’s Series D Preferred Stock (as specified in such Forced Conversion Notice) plus all accrued but unpaid dividends thereon (other than in the case of Dividend Payment Preferred Stock) and all liquidated damages and other amounts due in respect of the Series D Preferred Stock pursuant to Section 6, it being agreed that the “Conversion Date” for purposes of Section 6 shall be deemed to occur on the third Trading Day following the Forced Conversion Notice Date (such third Trading Day, the “Forced Conversion Date”).”

11. The following is hereby added to the Certificate of Designation as new Section 8(c):

“8(c) Automatic Monthly Conversions. Subject to the terms herein, on each Monthly Conversion Date (as defined below), a number of shares of Series D Preferred Stock equal to each Holder’s pro-rata portion (based on the shares of Series D Preferred Stock held by each Holder on June 25, 2010) of the Monthly Conversion Amount (as defined below) shall automatically convert into shares of Common Stock at the then-effective Conversion Price (each such conversion, a (the “Monthly Conversion”). Each Holder may convert, pursuant to Section 6(a), all or a portion of its Series D Preferred Stock subject to a Monthly Conversion at any time prior to a Monthly Conversion Date. Any Series D Preferred Stock converted (other than pursuant to a Monthly Conversion) during the calendar month immediately prior to a Monthly Conversion Date shall be applied to such Holder’s pro rata portion of such Monthly Conversion Amount (up to such Holder’s pro rata portion for such month). Notwithstanding anything to the contrary set forth herein, the Corporation shall not be permitted to effect a Monthly Conversion on a Monthly Conversion Date unless (i) the Common Stock shall be listed or quoted for trading on a Trading Market, (ii) there is a sufficient number of authorized shares of Common Stock for issuance of all Common Stock to be issued upon such Monthly Conversion, (iii) as to any Holder, the issuance of the shares shall not cause a breach of any provision of Section 6(c) herein, (iv) if requested by the Holder and a Rule 144 Rep Letter (as defined below) shall have been provided by such Holder after request from the Corporation, the Conversion Shares are delivered electronically through the Depository Trust Company or another established clearing corporation performing similar functions, may be resold by the Holder pursuant to an exemption under the Securities Act and are otherwise free of restrictive legends and trading restrictions on the Holder, (v) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, (vi) the applicable Holder is not in possession of any information provided to the applicable Holder by the Corporation that constitutes material non-public information, and (vii) the average VWAP for the 20 Trading Days immediately prior to the applicable Monthly Conversion Date equals or exceeds the then-effective Conversion Price. Shares of the Series D Preferred Stock issued to the Holders as Dividend Payment Preferred Stock shall be the last shares of Series D Preferred Stock to be subject to Monthly Conversion. As used herein, the following terms shall have the following meanings: (i) “Monthly Conversion Date” means the first day of each month, commencing on August 1, 2010, and terminating on the date the Series D Preferred Stock is no longer outstanding; (ii) “Monthly Conversion Amount” means an aggregate Stated Value of Series D Preferred Stock among all Holders that is equal to 25% of aggregate dollar trading volume of the Common Stock during the 20 Trading Days immediately prior to the applicable Monthly Conversion Date (such 20 Trading Day period, the “Measurement Period”), increasing to 35% of the aggregate dollar trading volume during the Measurement Period if the average VWAP during such Measurement Period equals or exceeds \$0.12 (subject to adjustment for forward and reverse stock splits and the like that occur after June 25, 2010) and further increasing to 50% of the aggregate dollar trading volume during such Measurement Period if the average VWAP during such Measurement Period equals or exceeds \$0.16 (subject to adjustment for forward and reverse stock splits and the like that occur after June 25, 2010). All shares of Common Stock issued on a Monthly Conversion Date shall be delivered otherwise in accordance with the procedures and time frames set forth in Section 6 above. Upon the request of the Corporation, each Holder shall provide to the Corporation, a customary Rule 144 representation letter relating to all shares of Common Stock to be issued upon each Monthly Conversion (a “Rule 144 Rep Letter”).”

12. The following is hereby added as the last sentence of Section 9(b) of the Certificate of Designation:

“Notwithstanding anything herein the contrary, the term “Triggering Event” shall not include any transactions contemplated under the Epic SAA”, including, without limitation, the issuance of any shares of Common Stock or Common Stock Equivalents.

AMENDMENT AGREEMENT

This Amendment Agreement (the "Agreement"), dated as of June 25, 2010, by and among Elite Pharmaceuticals, Inc., a Delaware corporation (the "Company"), on the one hand, and Epic Pharma, LLC, a Delaware limited liability company (the "Parent"), and Epic Investments, LLC, a Delaware limited liability company (including its successors and assigns, the "Purchaser" and together with the Parent, the "Epic Parties"), on the other hand.

WHEREAS, pursuant to a Strategic Alliance Agreement, dated March 18, 2009 (as amended, the "SAA"), among the Company, on the one hand, and the Epic Parties, on the other hand, the Company issued Series E Convertible Preferred Stock (the "Series E Preferred Stock"), pursuant to a Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock, filed with Secretary of State of the State of Delaware on June 3, 2009 (the "COD" and, together with the SAA, the "Transaction Documents");

WHEREAS, the parties wish to amend certain terms of the Transaction Documents and the amendments to the SAA shall constitute the fourth amendment thereof.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Epic Parties agree as follows:

ARTICLE I DEFINITIONS

Section 1 Definitions. Capitalized terms not defined in this Agreement shall have the meanings ascribed to such terms in the SAA.

ARTICLE II AMENDMENTS AND OTHER AGREEMENTS

Section 2.1 Amendment to COD. On or prior to the date hereof, the Company shall deliver evidence of the filing of an Amendment to the Certificate of Designation, in the form attached hereto as Exhibit A (the "Certificate of Amendment"). Each of the Epic Parties hereby consents to the terms and the filing of the Certificate of Amendment, including the Purchaser as the sole holder of Series E Preferred Stock.

Section 2.2 Amendment to Section 1.1 of the SAA. The definition of "Third Closing Date" in Section 1.1 of the SAA is hereby amended in its entirety and replaced with the following:

"Third Closing Date" means the date of the Third Closing, which shall occur on or before December 31, 2010, provided that all conditions precedent to (i) the Purchaser's obligation to purchase the Third Closing Shares have been satisfied or waived by the Purchaser and (ii) the Company's obligation to issue and deliver the Third Closing Shares have been satisfied or waived by the Company."

Section 2.3 Amendment to Section 2.7 of the SAA. The first sentence of Section 2.7 of the SAA is hereby amended in its entirety and replaced with the following:

“Additional Shares. In addition, the Company agrees to issue and sell, and the Purchaser agrees to purchase, Sixty Two and one-half (62.5) shares of Series E Preferred Stock on each of the following dates (each such date, an “Additional Closing Date”): (y) on or prior to November 30, 2009 and (x) within ten (10) Business Days following the last day of each calendar quarter, beginning with the calendar quarter ending on September 30, 2010 and continuing for each of the ten (10) calendar quarters thereafter, upon the terms and subject to the conditions set forth herein.”

Section 2.4 Effect on SAA. The foregoing consents and waivers are given solely in respect of the transactions described herein. Except as expressly set forth herein, all of the terms and conditions of the Transaction Documents shall continue in full force and effect after the execution of this Agreement, and shall not be in any way changed, modified or superseded by the terms set forth herein. This Agreement shall not constitute a novation or satisfaction and accord of any Transaction Document.

Section 2.5 Increase in Authorized Shares; Reverse Split.

(i) At its next meeting of shareholders the Company shall seek shareholder approval to amend the Company’s certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least 760 million shares (the “Authorized Share Increase”), subject to downward adjustment if the Company shall effect a Reverse Split (as defined below), with the recommendation of the Company’s Board of Directors that such proposal be approved, and the Company shall solicit proxies from its shareholders in connection therewith in the same manner as all other management proposals in such proxy statement and all management-appointed proxyholders shall vote their proxies in favor of such proposal.

(ii) The Purchaser hereby agrees to vote all shares of Series E Preferred Stock and Common Stock beneficially owned by it on the applicable record date in favor of (i) the Authorized Share Increase and (ii) a reverse stock split, in the ratio of no greater than 50 to 1 (the “Reverse Split”). The Company represents, warrants and covenants that all outstanding securities of the Company (including Common Stock and Common Stock Equivalents) will proportionally adjust as to the number of shares issuable and the conversion or exercise prices as a result of any reverse stock split.

Section 2.6. Series D Preferred Stock. The Epic Parties hereby consent to, and the Company agrees to cause as a condition to the effectiveness of this Agreement, the amendments set forth in the Series D Amendment Agreement (as defined below), including, without limitation, the amendment (the “Series D COD Amendment”) of the terms of the Company’s Series D Convertible Preferred Stock (the “Series D Preferred Stock”) issued pursuant to a Certificate of Designation of Preferences, Rights and Limitations of Series D 8% Convertible Preferred Stock, filed with the Secretary of State of the State of Delaware on September 15, 2008.

Section 2.6 Conditions to the Epic Parties’ Obligations. The respective obligations of the Epic Parties hereunder in connection with the Closing are subject to the following conditions being met:

- (a) the accuracy in all material respects on the date of the Closing of the representations and warranties of the Company contained herein;
- (b) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing shall have been performed;
- (c) the execution and delivery of the Amendment Agreement, by and among the Company, Bushido Capital Master Fund, LP and Midsummer Investment Ltd. (the “Series D Amendment Agreement”), in substantially the form attached hereto as Exhibit B and the receipt of all necessary consents to the Series D COD Amendment, and the receipt by the Epic Parties of true, correct and complete copies thereof (including evidence of the filing of the Series D COD Amendment); and
- (d) the execution and delivery of a settlement and release agreement, by and among the Company, Bushido Capital Master Fund, LP, BCMF Trustees, LLC, Midsummer Investment Ltd. And the Epic Parties (the “Settlement Agreement”), in substantially the form attached hereto as Exhibit C.

Section 2.7 Conditions to Company’s Obligations. The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

- (a) the accuracy in all material respects on the date of the Closing of the representations and warranties of each of the Epic Parties contained herein;
- (b) all obligations, covenants and agreements of each of the Epic Parties required to be performed at or prior to the Closing shall have been performed;
- (c) the execution and delivery of the Series D Amendment Agreement; and
- (d) the execution and delivery of the Settlement Agreement.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of the Company. The Company hereby make the representations and warranties set forth below to the Epic Parties that as of the date of its execution of this Agreement:

(a) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by the Company and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, its board of directors or its stockholders in connection therewith. This Agreement has been duly executed by the Company and, when delivered in accordance with the terms hereof will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) No Conflicts. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby do not and will not: (i) conflict with or violate any provision of the Company's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any lien upon any of the properties or assets of the Company, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any material agreement, credit facility, debt or other material instrument (evidencing Company debt or otherwise) or other material understanding to which the Company is a party or by which any property or asset of the Company is bound or affected, or (iii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company is bound or affected.

Section 3.2 Representations and Warranties of the Epic Parties. Each Epic Party, jointly and severally, hereby represents and warrants to the Company that, as of the date hereof, each Epic Party has the requisite corporate, partnership and/or company power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by each Epic Party and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of each Epic Party and no further action is required by either Epic Party, their respective board of directors (or equivalent governing body) or their respective stockholders, members or partners in connection therewith. This Agreement has been duly executed by each Epic Party and, when delivered in accordance with the terms hereof will constitute the valid and binding obligation of each Epic Party enforceable against each Epic Party in accordance with its terms except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

**ARTICLE IV
MISCELLANEOUS**

Section 4.1 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be made in accordance with the provisions of the SAA.

Section 4.2 Survival. All warranties and representations (as of the date such warranties and representations were made) made herein or in any certificate or other instrument delivered by it or on its behalf under this Agreement shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery hereof. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties; provided however that no party may assign this Agreement or the obligations and rights of such party hereunder without the prior written consent of the other parties hereto.

Section 4.3 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile or email transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or email signature page were an original thereof.

Section 4.4 Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

Section 4.5 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined pursuant to the Governing Law provision of the SAA.

Section 4.6 Entire Agreement. The Agreement, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

Section 4.7 Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

ELITE PHARMACEUTICALS, INC.

By: _____
Name:
Title:

EPIC PHARMA, LLC

By: _____
Name:
Title:

EPIC INVESTMENTS, LLC

By: EPIC PHARMA LLC, its Managing Member

By: _____
Name:
Title:

EXHIBIT A
FORM OF CERTIFICATE OF AMENDMENT TO THE SERIES E CERTIFICATE OF DESIGNATION

1. (a) The following definitions shall be added to Section 1 of the Certificate of Designation in the correct alphabetical order:

“Adjusted Convertible Outstanding Amount” means, for purposes of determining the adjustment to the Conversion Price under Section 7(i) hereof, as of the time of such determination, the sum of (i) the number of outstanding shares of Common Stock (assuming, solely for purposes of such calculation, that all shares of Series D Preferred Stock which have converted after the date of the Series D Amendment Agreement shall have converted at the Adjusted Series D Conversion Price), (ii) the number of shares of Common Stock into which all Series B Preferred Stock are then convertible at the Original Series B Preferred Stock Conversion Price, (iii) the number of shares of Common Stock into which all Series C Preferred Stock are then convertible at the Original Series C Preferred Stock Conversion Price, and (iv) the number of shares of Common Stock into which all Series D Preferred Stock are then convertible at the Original Series D Preferred Stock Conversion Price. For the avoidance of doubt, the Adjusted Convertible Outstanding Amount shall not include any shares of Common Stock into which the Series E Preferred Stock is convertible.

“Adjusted Series D Conversion Price” means the conversion price of the Series D Preferred Stock under the Series D Certificate, as in effect immediately after the date of the Series D Certificate Amendment (without any future adjustment under the Series D Certificate other than adjustment under Section 7(a) thereof), which initially was \$0.07.”

“Original Series B Conversion Price” means \$1.56, representing the conversion price of the Series B Preferred Stock under the Series B Certificate in effect immediately prior to the date of the Series D Amendment Agreement (subject only to adjustment under Section 7(a) of the Series B Certificate).”

“Original Series C Conversion Price” means \$1.61, representing the conversion price of the Series C Preferred Stock under the Series C Certificate in effect immediately prior to the date of the Series D Amendment Agreement (subject only to adjustment under Section 7(a) of the Series C Certificate).”

“Original Series D Conversion Price” means \$0.20, representing the conversion price of the Series D Preferred Stock under the Series D Certificate in effect immediately prior to the date of the Series D Certificate Amendment (subject only to adjustment under Section 7(a) of the Series D Certificate).”

“Series D Amendment Agreement” means the certain Amendment Agreement, dated as of June 25, 2010, by and among the Corporation, Bushido Capital Master Fund, LP and Midsummer Investment Ltd.”

“Series D Certificate Amendment” means the Series D Certificate of Amendment to Certificate of Designation filed with the Secretary of State of the State of Delaware on June __, 2010.”

“Series D Warrants” means the common stock warrant, as amended, issued to the purchasers of the Series D Preferred Stock pursuant to a certain Securities Purchase Agreement, dated September 15, 2008, as amended, among the Corporation and the investors signatory thereto.”

(b) The following definitions set forth in Section 1 of the Certificate of Designation shall be amended to read as follows:

“Existing Preferred Stock” means, as of any date of determination, the then issued and outstanding shares of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock.”

“Series D Certificate” means the Certificate of Designation of Preferences, Rights and Limitations of the Series D 8% Convertible Preferred Stock, filed with the Secretary of State of the State of Delaware on September 15, 2008, as amended by the Series D Certificate Amendment.”

2. The first sentence of Section 6(a) of the Certificate of Designation is hereby amended in its entirety and replaced with the following:

“Conversions at Option of the Holder. Subject to Section 6(c) below, each share of Series E Preferred Stock shall be convertible at the option of the Holder, at any time and from time to time from and after the Original Issue Date into that number of shares of Common Stock determined by dividing the Stated Value of such share of Series E Preferred Stock by the Conversion Price.”

3. Section 6(c) of the Certificate of Designation is hereby amended in its entirety and replaced with the following:

“Authorized Share Limitations. Notwithstanding anything herein to the contrary, the Holder’s ability to convert Series E Preferred Stock into Conversion Shares shall be limited to a number of Conversion Shares equal to the difference between (a) the Company’s total authorized shares of Common Stock as of the applicable Conversion Date, minus (b) as of the applicable Conversion Date, the sum of (i) the Company’s total issued and outstanding Common Stock and (ii) the total number of shares of Common Stock reserved for issuance upon the exercise or conversion, as applicable, of outstanding Common Stock Equivalents (including, without limitation, the Warrants, the Series D Preferred Stock and the Series D Warrants), after giving effect to the Series D Amendment Agreement. The portion of the Series E Preferred Stock which may not be converted as a result of this Section 6(c) shall thereafter be unconvertible to such extent until and unless approval by the Corporation’s stockholders of an increase in the number of authorized shares of Common Stock of the Corporation is subsequently obtained; provided, however, the rights and preferences of the Series E Preferred Stock otherwise set forth in this Certificate of Designation shall otherwise remain in full force and effect. For the avoidance of doubt, the voting rights of the Holder under Section 4(a) shall not be affected by the restrictions of this Section 6(c).”

4. The first sentence of Section 7(c) of the Certificate of Designation is hereby amended in its entirety and replaced with the following:

“Subsequent Dividend Issuances. If the Corporation, at any time while the Series E Preferred Stock is outstanding, shall issue shares of Common Stock or shares of Series D Preferred Stock in lieu of cash in satisfaction of its dividend obligations on shares of outstanding Existing Preferred Stock in accordance with the Series B Certificate, Series C Certificate and/or Series D Certificate, as applicable (any such issuance, a “Dividend Issuance”), then the then applicable Conversion Price shall be reduced to a price equal to (i) the aggregate Stated Value of Series E Preferred Stock then outstanding divided by (ii) the product of (x) aggregate number of Conversion Shares issuable upon conversion of the then outstanding Series E Preferred Stock immediately prior to Dividend Issuance multiplied by (y) the sum of one plus a fraction with: (A) a numerator equal to (I) the number of outstanding shares of Common Stock immediately after giving effect to the Dividend Issuance (assuming conversion of all Existing Preferred Stock in accordance with the Series B Certificate, Series C Certificate and/or Series D Certificate, as applicable, but not the Series E Preferred Stock) minus (II) the number of outstanding shares of Common Stock immediately prior to the Dividend Issuance (assuming conversion of all Existing Preferred Stock in accordance with the Series B Certificate, Series C Certificate and/or Series D Certificate, as applicable, but not the Series E Preferred Stock); and (B) a denominator equal to the number of outstanding shares of Common Stock immediately prior to the Dividend Issuance (assuming conversion of all Existing Preferred Stock in accordance with the Series B Certificate, Series C Certificate and/or Series D Certificate, as applicable, but not the Series E Preferred Stock).”

5. The following is hereby added to the Certificate of Designation as new Section 7(i):

“Special Adjustment relating to Series D Preferred Stock. If the Corporation, at any time while the Series E Preferred Stock is outstanding, shall issue shares of Common Stock in conversion of shares of outstanding Series D Preferred Stock in accordance with the Series D Certificate (any such issuance, a “Series D Conversion Issuance”), then the then applicable Series E Conversion Price shall be reduced to a price equal to (i) the aggregate Stated Value of Series E Preferred Stock then outstanding divided by (ii) the product of (x) the aggregate number of Conversion Shares issuable upon conversion of the then outstanding Series E Preferred Stock immediately prior to the Series D Conversion Issuance multiplied by (y) the sum of one plus a fraction with: (A) a numerator equal to (I) the Adjusted Convertible Outstanding Amount immediately after giving effect to such Series D Conversion Issuance minus (II) the Adjusted Convertible Outstanding Amount immediately prior to such Series D Conversion Issuance; and (B) a denominator equal to the Adjusted Convertible Outstanding Amount immediately prior to such Series D Conversion Issuance. The Corporation shall notify the Holder in writing on a quarterly basis of all Series D Conversions which shall have occurred during the preceding calendar quarter, indicating therein the number of shares of Series D Preferred Stock as to which a Series D Conversion shall have occurred and the calculation of such adjusted Conversion Price (such notice, the “Series D Conversion Adjustment Notice”). Such Series D Conversion Adjustment Notice shall be given by the Corporation to the Holder in accordance with Section 10(a). For purposes of clarification, whether or not the Corporation provides a Series D Conversion Adjustment Notice pursuant to this Section 7(c), upon the occurrence of any Series D Conversion, the Holder is entitled to receive a number of Conversion Shares based upon the adjusted Conversion Price on or after the date of such Series D Conversion, regardless of whether the Holder accurately refers to the adjusted Conversion Price in the Notice of Conversion.”



ELITE ANNOUNCES SETTLEMENT OF LITIGATION

NORTHVALE, N.J. – June 30, 2010 – Elite Pharmaceuticals, Inc. (“Elite”) (OTCBB: ELTP) announces the settlement of the litigation pending in the United States District Court for the Southern District of New York between Elite and certain holders of Elite’s Series D Preferred Stock. The plaintiffs in such action, Midsummer Investment, Ltd. and Bushido Capital Master Fund, LP, have entered into a settlement agreement with Elite pursuant to which the lawsuit will be dismissed with prejudice and the parties provided mutual releases.

About Elite Pharmaceuticals, Inc.

Elite Pharmaceuticals, Inc. develops oral sustained and controlled release products. Elite's strategy includes assisting partner companies in the life cycle management of products to improve off-patent drug products and developing generic versions of controlled release drug products with high barriers to entry. Two of Elite’s products, Lodrane 24® and Lodrane 24D®, are marketed by a partner, ECR Pharmaceuticals, for allergy treatment. Elite’s lead pipeline products are novel sustained release oral formulations of oxycodone for the treatment of chronic pain, which address two of the limitations of existing oral opioids: the provision of consistent relief of baseline pain levels and deterrence of potential abuse. Both products, ELI-216, a once-daily abuse resistant oxycodone, and ELI-154, a once-daily oxycodone, are in late-stage development. Elite, with partners, also has an ANDA filed with the FDA for a generic equivalent of a pain product and has a generic gastrointestinal drug product in clinical development. Elite operates a GMP and DEA registered facility for research, development, and manufacturing located in Northvale, NJ.

This news release contains forward-looking statements, including those related to the preliminary nature of the clinical program results and the potential for further product development, that involve known and unknown risks, delays, uncertainties and other factors not under the control of Elite, which may cause actual results, performance or achievements of the companies to be materially different from the results, performance or other expectations implied by these forward-looking statements. In particular, because substantial future testing will be required prior to approval, the results described above may not be supported by additional data or by the results of subsequent trials. These risks and other factors, including the timing or results of pending and future clinical trials, regulatory reviews and approvals by the Food and Drug Administration and other regulatory authorities, and intellectual property protections and defenses, are discussed in Elite's filings with the Securities and Exchange Commission such as the 10K, 10Q and 8K reports. Elite undertakes no obligation to update any forward-looking statements.

Contact:

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