

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

Date of Report (Date of earliest event reported): June 14, 2016

BIOSCRIP, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State of Incorporation)

000-28740
(Commission File Number)

05-0489664
(I.R.S. Employer
Identification No.)

1600 Broadway, Suite 950, Denver, Colorado
(Address of principal executive offices)

80202
(Zip Code)

Registrant's telephone number, including area code: (720) 697-5200

N/A
(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:

- 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.

Exchange Agreement

On June 10, 2016, the Company entered into an Exchange Agreement (the “Series B Exchange Agreement”) with certain holders (the “PIPE Investors”) of the Company’s Series A Convertible Preferred Stock, par value \$0.0001 per share (the “Series A Preferred Stock”), pursuant to which the PIPE Investors agreed to exchange 614,177 shares of Series A Preferred Stock on a one for one basis for shares of the Company’s Series B Convertible Preferred Stock, par value \$0.0001 per share (the “Series B Preferred Stock”). The Series B Preferred Stock had the same terms as the Series A Preferred Stock, except that the terms of the Series B Preferred Stock included the authority of the holders of the Series B Preferred Stock to waive the requirement that the Company reserve a sufficient number of shares of common stock to allow for the conversion of the Series B Preferred Stock.

On June 14, 2016, the Company entered into another Exchange Agreement (the “Series C Exchange Agreement”) with the PIPE Investors, pursuant to which the PIPE Investors agreed to exchange their shares of Series B Preferred Stock issued pursuant to the Series B Exchange Agreement on a one for one basis for shares of a new series of preferred stock of the Company (the “Series C Preferred Stock” and, together with the Series A preferred Stock and the Series B Preferred Stock, the “Preferred Stock”), designated “Series C Convertible Preferred Stock,” having the terms set forth in the form of Certificate of Designations of Series C Convertible Preferred Stock, par value \$0.0001 per share, which is attached to this Report as Exhibit 3.1.

The PIPE Investors agreed under the terms of the Series C Exchange Agreement to exchange 614,177 shares of the Series B Preferred Stock for an identical number of shares of Series C Preferred Stock, which have the same terms as the Series B Preferred Stock, except that the terms of the Series C Preferred Stock provide that the 11.5% per annum rate of non-cash dividends payable on the shares of the Series C Preferred Stock will be reduced based on the achievement by the Company of specified earnings before interest, taxes, depreciation and amortization (referred to as “Consolidated EBITDA” in the Company’s Credit Agreement, dated as of July 31, 2013, as such Credit Agreement has been amended through the date of the Series C Exchange Agreement). In addition, pursuant to the Series C Exchange Agreement, the PIPE Investors agreed to waive the requirement under the Warrant Agreement governing the 1,800,000 Class A and 1,800,000 Class B Warrants held by the PIPE Investors (the “Warrants”) to reserve 3,600,000 shares of our common stock for the exercise of the Warrants.

In the Series C Exchange Agreement, we agreed that within four months of the date of the Series C Exchange Agreement, we will call a special meeting of our stockholders to seek approval to an amendment of our Certificate of Incorporation to increase the number of authorized shares of common stock so as to allow us to reserve sufficient shares for, among other things, the conversion of the Series C Preferred Stock and the exercise of the Warrants held by the PIPE Investors (the “Authorization Proposal”). If approval of the Authorization Proposal is not obtained at such meeting, we agreed to resubmit the Authorization Proposal at the annual or a special meeting of our stockholders on an annual basis beginning in 2017 until stockholder approval is obtained. Until stockholder approval is obtained, we agreed that we will not issue any additional shares of common stock or equity awards to employees without the consent of the investors holding a majority of the voting power of the Series C Preferred Stock, provided that we may grant awards with respect to the 1.93 million shares of common stock currently authorized for issuance under our 2008 Equity Incentive Plan. If stockholder approval of the Authorization Proposal is not obtained prior to the earlier of May 17, 2021 and the date all of the Company’s obligations under indenture governing the Company’s 8.875% Senior Notes due 2021 have been satisfied, then each holder of the Series C Preferred Stock may elect to require the Company to redeem for cash all shares of Series C Preferred Stock held by such holder for which there are not sufficient authorized shares of common stock reserved to allow conversion of such shares of Series C Preferred Stock. The redemption price would be calculated as the greater of the liquidation preference of each redeemed share of Series C Preferred Stock and the product of the volume-weighted average share price of our common stock on the NASDAQ for a ten trading day period ending two trading days prior to the date that the Company receives the redemption notice and the number of shares of common stock into which each share of Series C Preferred Stock is convertible.

The foregoing description of the Exchange Agreement does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Exchange Agreement, a copy of which is filed herewith as Exhibits 10.1 and is incorporated by reference herein.

Rights and Preferences of the Series C Preferred Stock

The description below provides a summary of certain other material terms of the Series C Preferred Stock issued pursuant to the Exchange Agreement.

- *Dividends.* Dividends of the Series C Preferred Stock are noncumulative and accrue from the date of original issuance at a rate of 8.5% per annum on the liquidation preference (defined below) then in effect (a “Cash Dividend”). If the Company does not declare and pay a Cash Dividend, the liquidation preference on the Series C Preferred Stock will be increased to an amount equal to the liquidation preference in effect at the start of the applicable dividend period, plus an amount equal to such then applicable liquidation preference multiplied by 11.5% per annum (an “Accrued Dividend”). If the Company achieves on a trailing twelve month basis at the end of any fiscal quarter, (1) at least \$75 million in Consolidated EBITDA, but less than \$85 million in Consolidated EBITDA, the non-cash dividend rate for the quarter following such 12 month period will be 10.5% per annum; (2) at least \$85 million in Consolidated EBITDA, but less than \$95 million in Consolidated EBITDA, the non-cash dividend rate for the quarter following such 12 month period will be 9.5% per annum; and (3) at least \$95 million in Consolidated EBITDA, the non-cash dividend rate for the quarter following such 12 month period will be 8.5% per annum. Cash Dividends, if declared, are payable quarterly in arrears on January 1, April 1, July 1 and October 1 of each year, and, if declared, will begin to accrue on the first day of the applicable dividend period. If applicable, the Accrued Dividend will begin to accrue and be cumulative on the same schedule as set forth above for Cash Dividends and will also be compounded on each applicable subsequent dividend date.
 - *Liquidation Preference.* Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company (each, a “Liquidation Event”), after satisfaction of all liabilities and obligations to creditors of the Company and distribution of any assets of the Company to the holders of any stock or debt that is senior to the Series C Preferred Stock, and before any distribution or payment is made to holders of any junior stock, each holder of Series C Preferred Stock will be entitled to either convert the Series C Preferred Stock into common stock and share in any distribution made to the holders of common stock or receive, out of the assets of the Company or proceeds thereof (whether capital or surplus) legally available therefor, an amount per share of Series C Preferred Stock equal to the liquidation preference. The initial liquidation preference is equal to \$115.48 per share, which may be adjusted from time to time in the amount of any Accrued Dividends. The holders of the Series C Preferred Stock are also entitled, at their election, to either convert their shares of Series C Preferred Stock into common stock and on a pro rata basis share in any distribution made to the common stock holders or be paid the liquidation preference upon the occurrence of events that are “Deemed Liquidation Events”, such as certain merger transactions where the Company is not the survivor or a sale of all or substantially all of the Company’s assets.
 - *Rank.* The Series C Preferred Stock will, with respect to dividend rights and rights upon liquidation, winding up or dissolution, rank senior to the Company’s common stock and each other class or series of shares that the Company may issue in the future that do not expressly provide that such class or series ranks equally with, or senior to, the Series C Preferred Stock, with respect to dividend rights and/or rights upon liquidation, winding up or dissolution. The Series C Preferred Stock will also rank junior to the Company’s existing and future indebtedness.
 - *Conversion Rate and Conversion Price.* The conversion rate in effect at any applicable time for conversion of each share of Series C Preferred Stock into common stock will be the quotient obtained by dividing the liquidation preference then in effect (which will include any cash dividends that the Company has notified holders that it intends to pay but has not yet declared and any cash dividends that have been declared but remain unpaid, calculated at the Accrued Dividend rate) by the conversion price then in effect, plus cash in lieu of fractional shares. The conversion price for the Series C Preferred Stock will initially be \$5.17 and is subject to adjustment from time to time upon the occurrence of certain events, including a stock split, a reverse stock split, or a dividend of common stock to the Company’s common stockholders.
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- *Optional Conversion.* The Series C Preferred Stock may, at the option of the holder, be converted into Company common stock. The holders of the Series C Preferred Stock have agreed in the Exchange Agreement that the Company need not keep reserved for issuance shares of common stock in amounts sufficient to allow such conversion until the Authorization Proposal is obtained.
 - *Mandatory Conversion.* If, at any time following the third anniversary date of the issuance of the Series C Preferred Stock, the volume weighted average price of the Company's common stock equals or exceeds three (3) times the conversion price of the Series C Preferred Stock for a period of 30 consecutive trading days, the Company may, at its option, require that any or all of the then outstanding shares of Series C Preferred Stock be automatically converted into Company common stock at the conversion rate. The Company may not elect to exercise the foregoing option if at any time during the period commencing on the date that the Company has made a public announcement that it has entered into a definitive agreement with respect to a transaction constituting a "Deemed Liquidation Event" (as defined in the Certificate of Designations) and ending on the date that is the first to occur of (i) the consummation of the transaction and (ii) the date that the Company has made a public announcement that any such definitive agreement has been terminated.
 - *Optional Special Dividend and Conversion on Certain Change of Control.* Upon the occurrence of a change of control effected by a third party tender offer and that results in any person (other than the holders of Series C Preferred Stock or any of their respective affiliates, acting either individually or through a group) beneficially owning, directly or indirectly shares of the Company's capital stock entitling such person to exercise 50% or more of the total voting power of all classes of voting stock of the Company, at the written request of a majority of the voting power of the outstanding shares of Series C Preferred Stock: (i) the Board will, subject to applicable law, declare and the Company will pay a special cash dividend on each share of Series C Preferred Stock, out of any legally available funds in the amount of the liquidation preference per share then in effect with respect to the Series C Preferred Stock to the extent the legally available funds are sufficient to pay the special dividend in full; and (ii) as of the payment date of the special dividend, all outstanding shares of Series C Preferred Stock automatically will be converted (without further action) into a number of shares of common stock at the conversion rate then in effect.
 - *Voting.* Holders of shares of Series C Preferred Stock will be entitled to vote with the holders of shares of common stock (and any other class or series similarly entitled to vote with the holders of common stock) and not as a separate class, at any annual or special meeting of stockholders of the Company, and may act by written consent in the same manner as the holders of common stock, on an as-converted basis. In addition, a majority of the voting power of the Series C Preferred Stock must approve certain actions that adversely affect their rights, such as the creation or issuance of a series of stock with equal or greater rights than the Series C Preferred Stock and issuance of equity securities, or securities convertible into equity, at a price that is 25% below fair market value at the time of issuance, voluntary liquidation, dissolution or winding-up of the Company if the Series C Preferred Stock would not have the option to receive the then liquidation preference on the liquidation, dissolution, or winding-up of the Company, or subject to certain exceptions, a merger transaction that will effectively represent the sale of the Company to a successor, a sale of substantially all Company assets, and any recapitalization transaction, but only if the results of any such transaction is that holders of the Series C Preferred Stock would not have the option to receive the full liquidation preference as a result of that transaction.
 - *Redemption at the Option of the Holder.* From and after the tenth anniversary of the original issuance of the Series C Preferred Stock, each holder of shares of Series C Preferred Stock will have the right to request that the Company redeem, in full, out of funds legally available, by irrevocable written notice to the Company, all of such holder's shares of Series C Preferred Stock at a redemption price per share equal to the liquidation preference then in effect per share of Series C Preferred Stock. If the Company elects not to redeem a holder's shares of Series C Preferred Stock pursuant to such notice, the conversion price then in effect with respect to the shares of Series C Preferred Stock will be decreased to the lesser of (A) the conversion price then in effect and (B) 80% of the volume weighted average price of the Company's common stock for the 10 consecutive trading days prior to the date of the redemption request. In addition, upon a change of control event that is neither a liquidation event nor the result of a person (other than the holders of Series C Preferred Stock and their affiliates) acquiring 50% or more of the total voting power of all classes of voting stock of the Company as a result of a tender offer, subject to the Company's prior satisfaction of certain debt obligations, each holder of Preferred Stock that remains outstanding may require the Company to redeem shares of Series C Preferred Stock at a price equal to the liquidation preference then in effect.
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- *Redemption at the Option of the Company.* From and after the tenth anniversary of the original issuance of the Series C Preferred Stock, the Company may redeem the outstanding Series C Preferred Stock, in whole or in part, at a price per share equal to the liquidation preference then in effect per share of Series C Preferred Stock.
- *Board Representation.* So long as shares of the Series C Preferred Stock represent at least five percent (5%) of the outstanding voting stock of the Company, a majority of the voting power of the Series C Preferred Stock shall have the right to designate one (1) member to the Company's board of directors who shall be appointed to a minimum of two (2) committees of the board.
- *Anti-dilution.* The conversion price of the Series C Preferred Stock is subject to anti-dilution protections if the Company effects a stock split, stock dividend, subdivision, reclassification or combination of its common stock.
- *Maturity Date.* The Series C Preferred Stock is perpetual, and therefore does not have a maturity date.

Registration Rights Agreement

The Company entered into a second amendment, dated June 14, 2016, to the Registration Rights Agreement, dated March 9, 2015, by and among the Company and the PIPE Investors ("Amendment No. 2 to the Registration Rights Agreement") that, among other things, and subject to certain exceptions, requires the Company, upon the request of the holders of the Series C Preferred Stock to register the shares of common stock of the Company issuable upon conversion of the Series C Preferred Stock. Pursuant to the terms of Amendment No. 2 to the Registration Rights Agreement, the costs incurred in connection with such registrations will be borne by the Company.

This summary of Amendment No. 2 to the Registration Rights Agreement is qualified in its entirety by reference to Amendment No. 2 to the Registration Rights Agreement, which is attached hereto as Exhibit 4.1 and is incorporated herein by reference.

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

In connection with the Exchange Agreement, the Company filed with the Secretary of State of the State of Delaware the Certificate of Designations for the Series C Convertible Preferred Stock (the "Certificate of Designations") as an amendment to its Certificate of Incorporation. The Certificate of Designations sets forth the rights and preferences of the Series C Preferred Stock, certain material terms of which are discussed in Item 1.01 above (which Item 1.01 is incorporated into this Item 5.03 by reference). Pursuant to the Certificate of Designations, the Company is authorized to issue an aggregate of 625,000 shares of Series C Preferred Stock. The Certificate of Designations became effective on June 14, 2016.

This summary of the Certificate of Designations and the summary of the terms of the Series C Preferred Stock in Item 1.01 are qualified in their entirety by reference to the Certificate of Designations, which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

Item 8.01. Other Events.

Additional Information and Where It Can Be Found

In connection with the transactions contemplated under the Series C Exchange Agreement, the Company will prepare a proxy statement to be filed with the Securities and Exchange Commission ("SEC"). When completed, a definitive proxy statement and a form of proxy will be mailed to the stockholders of the Company. **The Company's security holders are urged to read the proxy statement carefully when it becomes available, as well as any other relevant documents filed by the Company with SEC, because they will contain important information.** The Company's stockholders will be able to obtain, without charge, a copy of the proxy statement (when available) and other relevant documents filed with the SEC from the SEC's website at <http://www.sec.gov>. The Company's stockholders will also be able to obtain, without charge, a copy of the proxy statement and other relevant documents (when available) by directing a request by mail or telephone to BioScrip, Inc., Attn: Chief Financial Officer, 1600 Broadway, Suite 950, Denver, CO 80202, telephone: (720) 697-5200, or from the investor relations page on the Company's website at <http://bioscrip.com/overview>.

The Company and its directors and officers may be deemed to be participants in the solicitation of proxies from the Company's stockholders in connection with the transactions contemplated under the Series C Exchange Agreement. Information about the Company's directors and executive officers and their ownership of the Company's equity interests is set forth in the proxy statement for the Company's 2016 Annual Meeting of Stockholders, which was filed with the SEC on April 27, 2016. Stockholders may obtain additional information regarding the interests of the Company and its directors and executive officers in the transactions contemplated under the Series C Exchange Agreement, which may be different than those of the Company's stockholders generally, by reading the proxy statement and other relevant documents related to the transactions contemplated under the Series C Exchange Agreement when filed with the SEC.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits. See the Exhibit Index which is hereby incorporated by reference.

SIGNATURES

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

BIOSCRIP, INC.

Date: June 14, 2016

/s/ Kathryn M. Stalmack

By: Kathryn M. Stalmack

Senior Vice President, General Counsel and Secretary

Index to Exhibits

Exhibit Number	Description
3.1	Certificate of Designations for Series C Convertible Preferred Stock.
4.1	Amendment No.2 to the Registration Rights Agreement dated June 14, 2016, by and among Bioscrip, Inc., Coliseum Capital Partners, L.P., Coliseum Capital Partners II, L.P and Blackwell Partners, LLC Series A.
10.1	Exchange Agreement, dated as of June 14, 2016, entered into by and among BioScrip, Inc. and each of the Stockholders signatory thereto.

**CERTIFICATE OF DESIGNATIONS OF
SERIES C CONVERTIBLE PREFERRED STOCK,
PAR VALUE \$0.0001 PER SHARE,
OF
BIOSCRIP, INC.**

**Pursuant to Section 151 of the
General Corporation Law of the State of Delaware**

The undersigned DOES HEREBY CERTIFY that the following resolution was duly adopted by the Board of Directors (the “Board”) of BioScrip, Inc., a Delaware corporation (hereinafter called the “Corporation”), with the voting powers, designations, preferences and relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof, having been fixed by the Board pursuant to authority granted to it under Article FIFTH of the Corporation’s Second Amended and Restated Certificate of Incorporation (as amended through the date hereof, the “Certificate of Incorporation”) and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware:

RESOLVED: That, pursuant to authority conferred upon the Board by the Certificate of Incorporation, the Board hereby authorizes 625,000 shares of Series C Convertible Preferred Stock, par value \$0.0001 per share, of the Corporation and hereby fixes the voting powers, designations, preferences and relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof, of such shares, in addition to those set forth in the Certificate of Incorporation, as follows:

Defined terms used, but not separately defined herein, shall have the respective meanings ascribed thereto in Section 10 of this Certificate of Designations.

Section 1. Number and Designation. The shares of such series shall be designated “Series C Convertible Preferred Stock,” and the number of shares so designated shall be 625,000 (the “Series C Preferred Stock”). The number of shares of Series C Preferred Stock may be increased or decreased by resolution of the Board and the approval by the holders of the Series C Preferred Stock as provided in Section 5(b)(iii) hereof; provided, however, that no decrease shall reduce the number of shares of Series C Preferred Stock to a number less than the number of shares of such series then outstanding. Each share of Series C Preferred Stock shall have a par value of \$0.0001 per share.

Section 2. Ranking. The Series C Preferred Stock shall, with respect to dividend rights and rights upon liquidation, winding up or dissolution, rank (a) equal to the outstanding shares of the Corporation’s “Series A Convertible Preferred Stock, par value \$0.0001 per share, (b) equal to the outstanding shares of the Corporation’s “Series B Convertible Preferred Stock, par value \$0.0001 per share, and (b) senior to the common stock of the Corporation, par value \$0.0001 per share (the “Common Stock”) and each other class or series of shares of the Corporation that the Corporation may issue in the future the terms of which do not expressly provide that such class or series ranks equally with, or senior to, the Series C Preferred Stock, with respect to dividend rights and/or rights upon liquidation, winding up or dissolution (such junior stock being referred to hereinafter collectively as “Junior Stock”).

The Series C Preferred Stock shall, with respect to dividend rights and rights upon liquidation, winding up or dissolution, rank equally with each other class or series of shares of the Corporation that the Corporation may issue in the future the terms of which expressly provide that such class or series shall rank equally with the Series C Preferred Stock with respect to dividend rights and rights upon liquidation, winding up or dissolution (“Parity Stock”).

The Series C Preferred Stock shall, with respect to dividend rights and rights upon liquidation, winding up or dissolution, rank junior to each class or series of shares of the Corporation that the Corporation may issue in the future the terms of which expressly provide that such class or series shall rank senior to the Series C Preferred Stock with respect to dividend rights and rights upon liquidation, winding up or dissolution (“Senior Stock”). The Series C Preferred Stock shall also rank junior to the Corporation’s existing and future Indebtedness.

Section 3. Dividends.

(a) Regular Dividends.

(i) The Corporation may pay a noncumulative cash dividend on each share of Series C Preferred Stock, when, as and if declared by the Board and permitted by the DGCL, out of any funds that are legally available therefor, at the rate of eight and one-half percent (8.5%) per annum on the Liquidation Preference then in effect (as defined in Section 4(a) below) (a “Cash Dividend”) before any dividends shall be declared, set apart for or paid upon the Junior Stock. Following the Issue Date, on or before the third (3rd) Business Day immediately preceding each fiscal quarter of the Corporation, the Corporation shall determine its intention whether or not to pay a Cash Dividend with respect to such ensuing fiscal quarter and shall give notice of such intention to each holder of Series C Preferred Stock as soon as practicable thereafter.

(ii) In the event the Corporation determines not to declare and pay a Cash Dividend during any fiscal quarter pursuant to Section 3(a)(i), or in fact fails to pay the entire Cash Dividend set forth in Section 3(a)(i), the Liquidation Preference shall be increased as of the beginning of such fiscal quarter to an amount equal to the Liquidation Preference in effect at the start of the applicable Regular Dividend Period, plus an amount equal to such then applicable Liquidation Preference multiplied by eleven and one-half percent (11.5%) per annum, computed on the basis of a 365-day year and the actual number of days elapsed from the start of the applicable Regular Dividend Period to the applicable date of determination (the “Accrued Dividend”) and together with the Cash Dividend, the “Regular Dividends”).

(iii) Notwithstanding the foregoing, the Accrued Dividend shall be adjusted based on the Consolidated EBITDA of the Corporation as provided in this Section 3(a)(iii). Promptly (and no later than five (5) business days following) after the time the Corporation files its quarterly (or, in the case of the fourth fiscal quarter of any fiscal year, annual) financial statements with the Securities and Exchange Commission (the “SEC”), the Corporation’s Chief Executive Officer or Chief Financial Officer shall deliver to each holder of Series C Preferred Stock a certificate (each, an “EBITDA Certificate”) setting forth the calculation of the Consolidated EBITDA of the Corporation on a last twelve-month basis through the end of such fiscal quarter (the “Base Quarter”). If the Corporation’s Consolidated EBITDA for the twelve –month period ending as of the last day of the Base Quarter as evidenced in an EBITDA Certificate:

(A) equals or exceeds \$75,000,000, but is less than \$85,000,000, then the Accrued Dividend with respect to the fiscal quarter following the Base Quarter shall be calculated based on a per annum rate of ten and one-half percent (10.5%) of the Liquidation Preference in effect as of the end of the Base Quarter;

(B) equals or exceeds \$85,000,000, but is less than \$95,000,000, then the Accrued Dividend with respect to the fiscal quarter following the Base Quarter shall be calculated based on a per annum rate of nine and one-half percent (9.5%) of the Liquidation Preference then in effect as of the end of the Base Quarter; and

(C) equals or exceeds \$95,000,000, then the Accrued Dividend with respect to the fiscal quarter following the Base Quarter shall be calculated based on a per annum rate of eight and one-half percent (8.5%) of the Liquidation Preference then in effect as of the end of the Base Quarter.

(D) Notwithstanding the foregoing, (1) if the Corporation does not comply with the applicable filing deadlines for filings with the SEC for any quarterly or annual financial statement or does not provide each holder of Series C Preferred Stock an EBITDA Certificate within the period prescribed by Section 3(a)(iii), in each case with respect to any particular Base Quarter, the Accrued Dividend with respect to the fiscal quarter following such Base Quarter shall be as set forth in Section 3(a)(ii) and (2) in the event that the Consolidated EBITDA of the Corporation as reported in any EBITDA Certificate delivered hereunder is shown to be inaccurate, and such inaccuracy, if corrected, would have led to a higher or lower Accrued Dividend calculation as set forth in this Section 3(a)(iii), for any fiscal quarter, then the Corporation shall retroactively adjust the calculation of the Accrued Dividend for the quarter in question so as to make the holders of Series C Preferred Stock, or the Corporation, as the case may be, whole, and the Chief Executive Officer or Chief Financial Officer shall promptly provide written certification to each holder of Series C Preferred Stock of such correction and adjustment.

(b) **Participating Dividends.** In the event that the Corporation shall, at any time, pay a dividend or make a distribution, whether in cash, in kind or other property, on the outstanding shares of Common Stock (other than any dividend in the form of stock, warrants, options or other rights where the dividended stock or the stock issuable upon exercise of such warrants, options or other rights is Common Stock or stock that ranks equally with or junior to the Common Stock; in which case an adjustment shall be made to the Conversion Price in accordance with Section 8(a) or Section 8(b), as applicable), the Corporation shall, at the same time, pay to each holder of Series C Preferred Stock a dividend equal to the dividend that would have been payable to such holder if all (*i.e.*, without regard to any restrictions on conversion at such time) of the shares of Series C Preferred Stock Beneficially Owned by such holder had been converted into Common Stock pursuant to Section 6 immediately prior to the applicable record date for determining the stockholders eligible to receive such dividend or distribution (the "Participating Dividends" and, together with the Cash Dividends, the "Dividends").

(c) **Dividend Payment Dates.** If and to the extent declared by the Board, Cash Dividends shall be payable quarterly in arrears on January 1, April 1, July 1 and October 1 of each year (unless any such day is not a Business Day, in which event such dividends shall be payable on the next succeeding Business Day, without accrual to the actual payment date), commencing on June 14, 2016 (each such payment date being a "Regular Dividend Payment Date," and the period from the Issue Date to June 30, 2016 and each full quarterly period thereafter being a "Regular Dividend Period"). Participating Dividends shall be payable if, as and when paid to the holders of shares of Common Stock (each such date being a "Participating Dividend Payment Date," and, together with each Regular Dividend Payment Date, a "Dividend Payment Date"). For the avoidance of doubt, nothing herein shall require declaration or payment of any cash Dividends on the shares of Series C Preferred Stock.

(d) **Accrual of Dividends.** If declared, the Cash Dividend shall begin to accrue on the first day of the applicable Regular Dividend Period. Cash Dividends are noncumulative. If applicable, the Accrued Dividend (i) shall begin to accrue and be cumulative on the first day of each applicable Regular Dividend Period and shall remain accumulated dividends with respect to such Series C Preferred Stock until paid and (ii) shall compound at the applicable annual rate on each applicable subsequent Regular Dividend Payment Date. Accrued Dividends shall accrue whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Any Cash Dividends payable on the Series C Preferred Stock pursuant to Section 3(a) (i) for any period shall be computed on the basis of a 365-day year and the actual number of days elapsed.

(e) **Partial Payments of Dividends.** When Cash Dividends are not paid in full upon the shares of Series C Preferred Stock, all dividends declared on Series C Preferred Stock and any other Parity Stock shall be paid pro rata so that the amount of dividends so declared on the shares of Series C Preferred Stock and each such other class or series of Parity Stock shall in all cases bear to each other the same ratio as accumulated dividends on the shares of Series C Preferred Stock and such other class or series of Parity Stock bear to each other.

(f) **Priority of Series C Preferred Stock Dividends.** The Corporation shall not declare or pay any dividends on shares of Common Stock unless the holders of the Series C Preferred Stock then outstanding shall simultaneously receive Participating Dividends. From and after the time, if any, that the Corporation shall have failed to pay on the date set for payment any Cash Dividend declared by the Board for any applicable Regular Dividend Period, no dividends shall be declared or paid or set apart for payment, or other distribution declared or made, upon any Junior Stock, nor shall any Junior Stock be redeemed, purchased or otherwise acquired for any consideration (nor shall any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such Junior Stock) by the Corporation, directly or indirectly until all such Cash Dividends have been paid in full, without the approval of holders of the Series C Preferred Stock, as provided in Section 5(b)(iv) hereof; provided, however, that the foregoing limitation shall not apply to: (i) purchases, redemptions or other acquisitions of shares of Junior Stock that are approved by the Board and made in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors, managers or consultants of or to the Corporation or any of its Subsidiaries; (ii) an exchange, redemption, reclassification or conversion of any class or series of Junior Stock solely for any class or series of Junior Stock; or (iii) any dividend in the form of stock, warrants, options or other rights where the dividended stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equal or junior to that stock.

(g) **Forfeiture of Certain Cash Dividends.** Shares of Series C Preferred Stock shall not be entitled to any Cash Dividends or any other cash dividend to the extent provided in Section 4(a).

Section 4. Liquidation, Dissolution or Winding Up.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (each, a "Liquidation Event"), after satisfaction of all liabilities and obligations to creditors of the Corporation and distribution of any assets of the Corporation to the holders of Senior Stock, and before any distribution or payment shall be made to holders of any Junior Stock, each holder of Series C Preferred Stock, at their election, shall be entitled to receive, out of the assets of the Corporation or proceeds thereof (whether capital, surplus or earnings) legally available therefor, (xx) an amount in cash per share of Series C Preferred Stock equal to the Liquidation Preference or (yy) assuming notice of conversion has been given by the holder of the Series C Preferred Stock, such amount payable (in the same form of consideration payable upon shares of Common Stock) per share of Common Stock issuable upon conversion of the Series C Preferred Stock pursuant to Section 6 hereof immediately prior to such Liquidation Event (in either case, the "Liquidation Amount"). As used in this Certificate of Designations, the term "Liquidation Preference" shall mean \$115.48 (the "Issue Price"), as such amount may be adjusted from time to time pursuant to Section 3(a)(ii); provided, however, that if, at any applicable date of determination of the Liquidation Preference hereunder, (i) any Cash Dividend has been declared by the Board but is unpaid or (ii) the Corporation has given notice (or failed to give such notice) of its intention to pay a Cash Dividend pursuant to Section 3(a)(i) but such Cash Dividend has not yet been declared by the Board, then Cash Dividends described in the foregoing clause (i) and Cash Dividends described in the foregoing clause (ii) shall be deemed, for purposes of calculating the applicable Liquidation Preference, to be Accrued Dividends, determined and calculated as of the first day of any Regular Dividend Period in which the foregoing clauses (i) or (ii) shall apply. Upon (1) payment of the Liquidation Amount pursuant to this Section 4 or (2) the determination of the Liquidation Preference for purposes of a conversion or redemption of shares of Series C Preferred Stock pursuant to Section 6 or Section 7 hereof, as applicable, shares of Series C Preferred Stock that have received such payment of the Liquidation Amount or the Liquidation Preference, as the case may be, or that are being so converted or redeemed shall not be entitled to any Cash Dividends described in the foregoing clause (i), even if outstanding on the record date set for payment of such Cash Dividends, or Cash Dividends described in the foregoing clause (ii). If, in connection with any distribution described in the first sentence of this Section 4(a), the assets of the Corporation or proceeds thereof are not sufficient to pay in full the Liquidation Preference then in effect and the corresponding amounts payable on the Parity Stock, then such assets, or the proceeds thereof, shall be distributed to the holders of Series C Preferred Stock and the holders of the Parity Stock in proportion to the full amounts to which the holders of the Series C Preferred Stock and the holders of the Parity Stock would otherwise be entitled pursuant to this Section 4(a) and the certificate of designations (or other governing instrument) of the Parity Stock, respectively.

(b) After the payment of the full Liquidation Preference of the Series C Preferred Stock as set forth in Section 4(a), the assets of the Corporation legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock. For the avoidance of doubt, the Series C Preferred Stock shall not be convertible into Common Stock after the payment of the Liquidation Preference pursuant to Section 4(a) above, and the holders of Series C Preferred Stock shall not participate in any distribution made to the holders of Common Stock pursuant to this Section 4(b).

(c) The occurrence of a Change of Control (but solely to the extent contemplated by clause (ii) of the definition thereof) shall be deemed a Liquidation Event hereunder (a "Deemed Liquidation Event"), unless such treatment is waived in writing by holders of a majority in voting power of the outstanding shares of the Series C Preferred Stock, and the holders of Series C Preferred Stock, in accordance with their election pursuant to Section 4(a) above, shall receive payment of the Liquidation Preference in cash upon such Deemed Liquidation Event.

Section 5. Voting Rights.

(a) **General Rights.** Except as otherwise provided herein or as required by law, holders of shares of Series C Preferred Stock shall be entitled to vote with the holders of shares of Common Stock (and any other class or series that may similarly be entitled to vote with the holders of Common Stock) and not as a separate class, at any annual or special meeting of stockholders of the Corporation, and may act by written consent in the same manner as the holders of Common Stock. In the event of any such vote or action by written consent, each holder of shares of Series C Preferred Stock shall be entitled to that number of votes equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series C Preferred Stock are convertible (pursuant to Section 6 hereof) as of the Close of Business on the record date fixed for such vote or such written consent. Subject to the foregoing, each holder of shares of the Series C Preferred Stock shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which all shares of Series C Preferred Stock held of record by such holder could then be converted (taking into account, for the avoidance of doubt, the Liquidation Preference then in effect for purposes of the Conversion Rate and any Conversion Price adjustments made pursuant to Section 8) at the record date for the determination of the stockholders entitled to vote on or consent to such matters. The holders of Series C Preferred Stock shall be entitled to notice of any meeting of stockholders in accordance with the bylaws of the Corporation (the "Bylaws").

(b) **Separate Vote of Preferred Stock.** In addition to any other vote or consent required herein or by applicable law, unless waived in writing by holders of a majority in voting power of the outstanding shares of the Series C Preferred Stock, the vote or written consent of the holders of a majority in voting power of the outstanding shares of the Series C Preferred Stock shall be necessary for effecting or validating the following actions (whether taken by amendment, merger, consolidation or otherwise):

(i) Any change, amendment, alteration or repeal (including as a result of a merger, consolidation, or other similar or extraordinary transaction) of any provisions of the Certificate of Incorporation or Bylaws that amends or modifies, in a manner adverse to, in any material respect, the rights, preferences, privileges or voting powers of the Series C Preferred Stock;

(ii) Any authorization, designation, recapitalization, whether by reclassification, by merger or otherwise, or issuance of any new class or series of stock or any other securities convertible into equity securities of the Corporation having rights, preferences or privileges senior to or on a parity with the Series C Preferred Stock (including additional shares of Series C Preferred Stock);

(iii) Any increase or decrease in the authorized number of shares of Series C Preferred Stock;

(iv) Any redemption, repurchase or other acquisition, or payment of dividends or other distributions, by the Corporation with respect to any securities of the Corporation that constitute Junior Stock, except as permitted by Section 3(f);

(v) The entry by the Corporation into any contract, agreement, arrangement, or understanding that would prohibit or otherwise restrict the Corporation from performing its obligations to the holders of Series C Preferred Stock under this Certificate of Designations, the Certificate of Incorporation or otherwise;

(vi) The entry by any Subsidiary into any contract, agreement, arrangement, or understanding that would prohibit or otherwise restrict the payment of dividends or the making of distributions to the Corporation, other than the Credit Facility or the Indenture;

(vii) The issuance by the Corporation of equity or securities convertible into equity of the Corporation at a price that is more than 25% below fair market value of such equity or securities at the time of issuance thereof;

(viii) Any voluntary initiation of any liquidation, dissolution or winding up of the Corporation but only if such liquidation, dissolution or winding up of the Corporation would result in each holder of the Series C Preferred Stock not having the option to receive a distribution equal to the full Liquidation Preference in accordance with Section 4(a) above; or

(ix) Any Deemed Liquidation Event, but only if as a result of the Deemed Liquidation Event each holder of the Series C Preferred Stock would not have the option to receive a distribution equal to the full Liquidation Preference in accordance with Section 4(a) above. Notwithstanding the foregoing, the voting rights of the Series C Preferred Stock shall not apply with respect to any Deemed Liquidation Event that is effected by the holders (or any administrative or collateral agent acting on their behalf) of the Indebtedness under either the Credit Facility or the Indenture in the exercise of their rights and remedies with respect to, or in connection with the satisfaction of all or a portion of the obligations under, the Credit Facility or the Indenture, including, without limitation, any consensual or non-consensual debt restructuring, recapitalization, reclassification, exchange, merger, consolidation, sale of assets, liquidation or similar transaction (a "Creditor Deemed Liquidation Event"), unless the Creditor Deemed Liquidation Event is required by applicable law to be approved by the holders of Common Stock in order to be effective.

(c) **Board of Directors.** So long as shares of Series C Preferred Stock representing at least five percent (5%) of the outstanding Voting Stock of the Corporation (on an as converted basis) are outstanding, holders of shares of Series C Preferred Stock, by the vote or written consent of the holders of a majority in voting power of the outstanding shares of the Series C Preferred Stock shall have the right to designate one (1) member to the Board of Directors of the Corporation, in addition to such members as are elected by holders of Common Stock of the Corporation. Subject to applicable law (including the listing standards of The Nasdaq Stock Market), the director designated to the Board of Directors of the Corporation pursuant to this Section 5(c) shall also be appointed to a minimum of two committees of the Board of Directors of the Corporation at such director's request.

Section 6. Conversion.

(a) **Optional Conversion by Holders.** Subject to and in compliance with the provisions of this Section 6, any shares of Series C Preferred Stock may, at the option of the holder thereof, be converted at any time into fully paid and nonassessable shares of Common Stock. Upon conversion, a holder of Series C Preferred Stock shall be entitled to a number of shares of Common Stock equal to the product obtained by multiplying the Conversion Rate (as defined in and determined as provided for in Section 6(d)) then in effect, by the number of shares of Series C Preferred Stock being converted, plus cash in lieu of fractional shares, as set out in Section 8(i).

(b) **Optional Conversion by the Corporation.** If, at any time following the third anniversary date of the Issue Date, the VWAP of the Common Stock equals or exceeds three (3) times the Conversion Price for a period of 30 consecutive Trading Days (the Business Day immediately following such 30th Trading Day, the "Corporation Conversion Date"), and if the Corporation shall so elect, any or all shares of Series C Preferred Stock may be converted automatically (and without further action following any such election) into a number of shares of Common Stock equal to the product obtained by multiplying the Conversion Rate then in effect, by the number of shares of Series C Preferred Stock being converted, plus cash in lieu of fractional shares, as set out in Section 8(i) (the "Corporation Conversion"). Notwithstanding the foregoing, the Corporation may not elect a Corporation Conversion at any time during the period (the "Standstill Period") commencing on the earlier of (1) the date that the Corporation shall have made a public announcement and (2) the date that such information is otherwise made public, that the Corporation is in negotiations relating to, or has entered into, a definitive agreement with respect to a transaction constituting a Deemed Liquidation Event and ending on the date of the first to occur of (i) the consummation of such transaction and (ii) the date that the Corporation shall have made a public announcement that any such definitive agreement or the negotiations relating thereto has been terminated. For purposes of calculating the next available Corporation Conversion Date, the VWAP shall not be deemed to equal or exceed three (3) times the Conversion Price at any time during the Standstill Period.

(c) **Optional Special Dividend and Conversion on Certain Change of Control.** At the written election (including written notice to the Corporation) by holders of a majority in voting power of the outstanding shares of the Series C Preferred Stock, upon the occurrence of a Change of Control pursuant to clause (i) of the definition thereof (but solely in connection with a transaction that is a third party tender offer that is publicly disclosed and approved (or recommended to stockholders of the Corporation) by the Board and does not otherwise contemplate any other transaction that would constitute a Change of Control apart from clause (i) of the definition of thereof):

(i) the Board shall, subject to applicable law, declare and the Corporation shall pay a special cash dividend (as such may be adjusted pursuant to this Section 6(c), the “Special Dividend”) on each share of Series C Preferred Stock, out of any funds that are legally available therefor (the “Legally Available Funds”), in the amount of the Liquidation Preference per share then in effect with respect to the Series C Preferred Stock; provided, however, that to the extent the Legally Available Funds are not sufficient to pay the Special Dividend in full (the amount of such shortfall being referred to as a “Funds Shortfall”), the aggregate Special Dividend in respect of all shares of Series C Preferred Stock and any special dividend applicable to Parity Stock shall be reduced to an aggregate amount equal to the Legally Available Funds and the Special Dividend (as so reduced) and any applicable special dividend with respect to Parity Stock shall be paid to the holders of Series C Preferred Stock and the holders of the Parity Stock in proportion to the full amounts to which the holders of the Series C Preferred Stock and the holders of the Parity Stock would otherwise be entitled pursuant to Section 3(e) and the certificate of designations (or other governing instrument) of the Parity Stock, respectively; and

(ii) as of the payment date of the Special Dividend, all outstanding shares of Series C Preferred Stock automatically shall be converted (without further action) into a number of shares of Common Stock equal to the product obtained by multiplying the Conversion Rate then in effect, by the number of shares of Series C Preferred Stock being converted, plus cash in lieu of fractional shares, as set out in Section 8(i); provided; however, that for purposes of determining the Conversion Rate as applicable to this Section 6(c)(ii), the aggregate Liquidation Preference on each share of Series C Preferred Stock and the liquidation preference on each share of any applicable Parity Stock as provided in the certificate of designations (or other governing instrument) of such Parity Stock shall be increased by the Funds Shortfall applicable to each such share.

(d) Conversion Rate and Conversion Price. The conversion rate in effect at any applicable time for conversion of each share of Series C Preferred Stock into Common Stock (the “Conversion Rate”) shall be the quotient obtained by dividing the Liquidation Preference then in effect by the Conversion Price (as defined below). The conversion price for the Series C Preferred Stock shall initially be \$5.17 (the “Conversion Price”). Such initial Conversion Price shall be adjusted from time to time in accordance with Section 8. All references to the Conversion Price herein shall mean the Conversion Price as so adjusted.

(e) Conversion Procedures. In order to exercise the conversion privilege set forth in Section 6(a) with respect to any shares of Series C Preferred Stock held in book-entry form with the Depository Trust Company or its successor (“DTC”), a holder must comply with DTC’s procedures for converting any shares of Series C Preferred Stock. In order to exercise the conversion privilege set forth in Section 6(a) with respect to any certificated shares of Series C Preferred Stock, a holder must do each of the following in order to convert its shares of Series C Preferred Stock:

(i) complete and manually sign the conversion notice provided by the conversion agent, and deliver such notice to the conversion agent;

(ii) deliver to the conversion agent the certificate or certificates representing the shares of Series C Preferred Stock to be converted (or, if such certificate or certificates have been lost, stolen or destroyed, a lost certificate affidavit and indemnity in form and substance reasonably acceptable to the Corporation);

(iii) if required, furnish appropriate endorsements and transfer documents in form and substance reasonably acceptable to the Corporation; and

(iv) if required, pay any stock transfer, documentary, stamp or similar taxes not payable by the Corporation pursuant to Section 6(i).

(f) Effect of Conversion. Effective immediately prior to the Close of Business on the Conversion Date applicable to any shares of Series C Preferred Stock, dividends shall no longer accrue or be declared on any such shares of Series C Preferred Stock and such shares of Series C Preferred Stock shall cease to be outstanding.

(g) Record Holder of Underlying Securities as of Conversion Date. The Person or Persons entitled to receive the Common Stock and, to the extent applicable, cash, payable in lieu of fractional shares, upon conversion of Series C Preferred Stock on any applicable Conversion Date shall be treated for all purposes as the record holder(s) of such shares of Common Stock and/or cash as of the Close of Business on such Conversion Date. As promptly as practicable on or after the applicable Conversion Date and, in the case of a conversion pursuant to Section 6(a), compliance by the applicable holder with the relevant conversion procedures contained in Section 6(e) (and in any event no later than three Trading Days thereafter), the Corporation shall issue the number of whole shares of Common Stock issuable upon conversion (and deliver payment of cash in lieu of fractional shares). Such delivery of shares of Common Stock shall be made, at the option of the applicable holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Corporation to the appropriate holder on a book-entry basis or by mailing certificates evidencing the shares to the holders at their respective addresses as set forth in the conversion notice. If fewer than all of the shares of Series C Preferred Stock Beneficially Owned by any holder hereto are converted pursuant to this Section 6, then book-entry shares (or, if elected by the holder, a new certificate) representing the unconverted shares of Series C Preferred Stock shall be issued to such holder concurrently with the issuance of the certificates (or book-entry shares) representing the applicable shares of Common Stock. Any cash payable in lieu of fractional shares shall be delivered to the applicable holder at the address for such holder as set forth in the conversion notice. In the event that a holder shall not by written notice designate the name in which shares of Common Stock and, to the extent applicable, cash to be delivered upon conversion of shares of Series C Preferred Stock should be registered or paid, or the manner in which such shares and, if applicable, cash should be delivered, the Corporation shall be entitled to register and deliver such shares and, if applicable, cash in the name of the holder and in the manner shown on the records of the Corporation.

(h) Status of Converted or Acquired Shares. Shares of Series C Preferred Stock duly converted in accordance with this Certificate of Designations, or otherwise acquired by the Corporation in any manner whatsoever, shall be retired promptly after the conversion or acquisition thereof. All such shares shall upon their retirement and any filing required by the DGCL become authorized but unissued shares of preferred stock of the Corporation, without designation as to series until such shares are once more designated as part of a particular Series Cy the Board pursuant to the provisions of the Certificate of Incorporation.

(i) Taxes.

(i) The Corporation and its paying agent shall be entitled to withhold taxes on all payments on the Series C Preferred Stock, Common Stock, or other securities issued upon conversion of the Series C Preferred Stock to the extent required by law. Prior to the date of any such payment, each holder of Series C Preferred Stock shall deliver to the Corporation or its paying agent a duly executed, valid, accurate and properly completed Internal Revenue Service Form W-9 or an appropriate Internal Revenue Service Form W-8, as applicable.

(ii) The Corporation shall pay any and all documentary, stamp and similar issue or transfer tax due on (A) the issue of the Series C Preferred Stock and (B) the issue of shares of Common Stock upon conversion of the Series C Preferred Stock. However, in the case of conversion of Series C Preferred Stock, the Corporation shall not be required to pay any tax or duty that may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock or Series C Preferred Stock in a name other than that of the holder of the shares to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Corporation the amount of any such tax or duty, or has established to the satisfaction of the Corporation that such tax or duty has been paid.

Section 7. Redemption.

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

(i) Upon the occurrence of a Change of Control (other than (A) a Change of Control constituting a Deemed Liquidation Event (unless such Deemed Liquidation Event is waived as provided in Section 4(c)) and (B) a Change of Control resulting in a conversion under Section 6(c)) and subject to applicable law and the prior indefeasible payment in full in cash of all outstanding Indebtedness and other obligations under the Credit Facility (and the termination of all commitments thereunder) and the Indenture (and the termination of all commitments thereunder), each holder of shares of Series C Preferred Stock that remain outstanding thereafter, if any, shall have the right to require the Corporation to redeem, in full, out of funds legally available therefor, by irrevocable written notice to the Corporation, all of such holder's shares of Series C Preferred Stock at a redemption price per share equal to the Liquidation Preference then in effect per share of the Series C Preferred Stock.

(ii) Within 30 days of the occurrence of a Change of Control, the Corporation shall send notice by first class mail, postage prepaid, addressed to the holders of record of the shares of Series C Preferred Stock at their respective last addresses appearing on the books of the Corporation stating (A) that a Change of Control has occurred, (B) subject to (x) the prior indefeasible payment in full of all outstanding Indebtedness and other obligations under the Credit Facility (and the termination of all commitments thereunder), if required by the terms thereof and (y) the consummation of a Change of Control Offer under the Indenture (as defined in the Indenture), if required by the terms thereof, that all shares of Series C Preferred Stock tendered prior to a Business Day no earlier than 30 days nor later than 60 days from the date such notice is mailed shall be accepted for redemption and (C) the procedures that holders of the Series C Preferred Stock must follow in order for their shares of Series C Preferred Stock to be redeemed, including the place or places where certificates for such shares are to be surrendered (or an indemnification undertaking as reasonably determined by the Corporation with respect to such certificates in the event of their loss, theft or destruction) for payment of the redemption price. Any notice mailed as provided in this subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series C Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series C Preferred Stock.

(b) Redemption at the Option of the Holder Other Than Upon a Change of Control.

(i) Subject to applicable law, each holder of shares of Series C Preferred Stock, at any time from and after the tenth (10th) anniversary date of the Issue Date, shall have the right to request that the Corporation redeem, in full, out of funds legally available therefor, by irrevocable written notice to the Corporation, all of such holder's shares of Series C Preferred Stock at a redemption price per share equal to the Liquidation Preference then in effect per share of the Series C Preferred Stock. Such notice shall be given by first class mail, postage prepaid, addressed to the Corporation, and shall be conclusively presumed to have been duly given on the day the notice is mailed to the Corporation, whether or not the Corporation receives such notice. Each notice of redemption given to the Corporation shall state: (A) the redemption date and (B) the number of shares of the Series C Preferred Stock to be redeemed. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption in the notice.

(ii) If the Corporation elects to exercise its option to redeem a holder's shares of Series C Preferred Stock pursuant to the notice provided by such holder pursuant to Section 7(b)(i), then, upon receipt of such notice, the Corporation shall within three (3) Business Days notify such holder, by irrevocable written notice to such holder, of (A) its election to redeem such shares of Series C Preferred Stock pursuant to the notice and (B) the place or places where certificates for such shares are to be surrendered (or an indemnification undertaking as reasonably determined by the Corporation with respect to such certificates in the event of their loss, theft or destruction) for payment of the redemption price.

(iii) If the Corporation elects not to exercise its option to redeem a holder's shares of Series C Preferred Stock pursuant to the notice provided by such holder pursuant to Section 7(b)(i), then, upon receipt of such notice, the Corporation shall within three (3) Business Days notify such holder, by irrevocable written notice to such holder, of its election not to so redeem such shares of Series C Preferred Stock. In such an event, the Conversion Price then in effect with respect to the shares of Series C Preferred Stock subject to the notice provided by such holder pursuant to Section 7(b)(i) shall, as of the date the Corporation provides notice to such holder pursuant to this Section 7(b)(iii), be decreased to the lesser of (A) the Conversion Price then in effect and (B) 80% of the VWAP of the Common Stock for the 10 consecutive Trading Days prior to the date such holder duly gives notice to the Corporation pursuant to Section 7(b)(i).

(iv) If the Corporation does not provide notice to such holder pursuant to Section 7(b)(ii) or 7(b)(iii), then the Corporation will be deemed to have not elected to exercise its option to redeem a holder's shares of Series C Preferred Stock pursuant to the notice provided by such holder pursuant to Section 7(b)(i), and the Conversion Price then in effect with respect to the shares of Series C Preferred Stock subject to the notice provided by such holder pursuant to Section 7(b)(i) shall, as of the date the holder provided notice to the Corporation pursuant to Section 7(b)(i), be decreased to the lesser of (A) the Conversion Price then in effect and (B) 80% of the VWAP of the Common Stock for the 10 consecutive Trading Days prior to the date such holder duly gives notice to the Corporation pursuant to Section 7(b)(i).

(v) Any adjustment to the Conversion Price pursuant to Section 7(b)(iii) or 7(b)(iv) shall be in addition to any adjustments to the Conversion Price pursuant to Section 8 herein.

(c) **Redemption at the Option of the Corporation.** Subject to applicable law, the Series C Preferred Stock may be redeemed, in whole or in part, out of funds legally available therefor, at any time from and after the tenth (10th) anniversary date of the Issue Date, at the option of the Corporation, upon giving notice of redemption pursuant to Section 7(d), at a redemption price per share equal to the Liquidation Preference then in effect per share of the Series C Preferred Stock.

(d) **Notice of Redemption at the Option of the Corporation.** Notice of every redemption of shares of Series C Preferred Stock pursuant to Section 7(c) shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 7(d) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series C Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series C Preferred Stock. Each notice of redemption given to a holder shall state: (i) the redemption date; (ii) the number of shares of the Series C Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; and (iv) the place or places where certificates for such shares are to be surrendered (or an indemnification undertaking as reasonably determined by the Corporation with respect to such certificates in the event of their loss, theft or destruction) for payment of the redemption price.

(e) **Partial Redemption.** In case of any redemption of part of the shares of Series C Preferred Stock at the time outstanding pursuant to this Section 7, the shares to be redeemed shall be selected pro rata. Subject to the provisions hereof, the Corporation shall have the power and authority to prescribe reasonable and customary terms and conditions upon which shares of Series C Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, then book-entry shares (or, if elected by the holder, a new certificate) shall be issued representing the unredeemed shares without charge to the holder thereof.

(f) **Effectiveness of Redemption.** Notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall be retired as provided for in Section 6(h) and such shares will no longer be issued and outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption, without interest.

Section 8. Anti-Dilution Provisions.

(a) **Adjustment Upon Common Stock Event.** Upon the (i) the issuance by the Corporation of additional shares of Common Stock as a dividend or other similar distribution on outstanding shares of Common Stock, (ii) a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock, or (iii) a combination of the outstanding shares of Common Stock into a smaller number of shares of Common Stock (other than such events wherein the holders of the Series C Preferred Stock participate therein pursuant to Section 3(b)) (each, a "**Common Stock Event**") after the Issue Date, the Conversion Price shall, simultaneously with the happening of such Common Stock Event, be adjusted by multiplying the Conversion Price in effect immediately prior to such Common Stock Event by a fraction, (A) the numerator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to such Common Stock Event, and (B) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event, and the product so obtained shall thereafter be the Conversion Price. The Conversion Price shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event.

(b) **Adjustments for Other Dividends and Distributions.** If at any time or from time to time after the Issue Date, the Corporation pays a dividend or makes another distribution to the holders of the Common Stock payable in securities of the Corporation, other than an event constituting a Common Stock Event and other than such events wherein the holders of the Series C Preferred Stock participate therein pursuant to Section 3(b), then in each such event provision shall be made so that the holders of Series C Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof, the amount of securities of the Corporation which they would have received had their Series C Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) and had they thereafter, during the period from the date of such event (or such record date, as applicable) to and including the applicable Conversion Date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 8 with respect to the rights of the holders of Series C Preferred Stock or with respect to such other securities by their terms.

(c) **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Issue Date, the Common Stock issuable upon the conversion of Series C Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than by a Common Stock Event described in Section 8(a) or as described in Section 8(b)), then in any such event each holder of such Series C Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Series C Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(d) **Reorganizations, Mergers and Consolidations.** If at any time or from time to time after the Issue Date, there is a reorganization of the Corporation (other than as described in Section 8(a), (b) or (c)) or a merger or consolidation of the Corporation with or into another corporation (except, for all purposes of this Section 8(d), a Deemed Liquidation Event that is not waived as provided in Section 4(c)), then, as a part of such reorganization, merger or consolidation, provision shall be made so that the holders of such Series C Preferred Stock shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such reorganization, merger or consolidation by holders of the number of shares of Common Stock into which such shares of Series C Preferred Stock could have been converted immediately prior to such reorganization, merger or consolidation, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 8 with respect to the rights of the holders of such Series C Preferred Stock after the reorganization, merger or consolidation to the end that the provisions of this Section 8 (including adjustment of the Conversion Price then in effect and number of shares issuable upon conversion of the Series C Preferred Stock) shall be applicable after that event and be as nearly equivalent to the provisions hereof as may be practicable. This Section 8(d) shall similarly apply to successive reorganizations, mergers and consolidations. The Corporation shall not effect any such reorganization, merger or consolidation unless prior to the consummation thereof the successor entity (if other than the Corporation) resulting from such consolidation or merger shall assume by written instrument the obligations of the Corporation under this Certificate of Designations.

(e) **Successive Adjustments.** After an adjustment to the Conversion Price under this Section 8, any subsequent event requiring an adjustment under this Section 8 shall cause an adjustment to each such Conversion Price as so adjusted.

(f) **Multiple Adjustments.** For the avoidance of doubt, if an event occurs that would trigger an adjustment to the Conversion Price pursuant to this Section 8 under more than one subsection hereof, such event, to the extent fully taken into account in a single adjustment, shall not result in multiple adjustments hereunder; provided, however, that if more than one subsection of this Section 8 is applicable to a single event, the subsection shall be applied that produces the largest adjustment.

(g) **Notice of Adjustments.** Whenever the Conversion Price is adjusted as provided under this Section 8, the Corporation shall as soon as reasonably practicable following the occurrence of an event that requires such adjustment (or if the Corporation is not aware of such occurrence, as soon as reasonably practicable after becoming so aware):

(i) compute the adjusted applicable Conversion Rate in accordance with this Section 8 and prepare and transmit to the conversion agent an officer's certificate setting forth the applicable Conversion Rate, the method of calculation thereof in reasonable detail, and the facts requiring such adjustment and upon which such adjustment is based; and

(ii) provide a written notice to the holders of the Series C Preferred Stock of the occurrence of such event and a statement in reasonable detail setting forth the method by which the adjustment to the applicable Conversion Rate was determined and setting forth the adjusted applicable Conversion Rate.

(h) **Conversion Agent.** The conversion agent, if other than the Corporation, shall not at any time be under any duty or responsibility to any holder of Series C Preferred Stock to determine whether any facts exist that may require any adjustment of the applicable Conversion Price or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed in making the same. The conversion agent, if other than the Corporation, shall be fully authorized and protected in relying on any officer's certificate delivered pursuant to Section 8(g) and any adjustment contained therein and the conversion agent shall not be deemed to have knowledge of any adjustment unless and until it has received such certificate. The conversion agent, if other than the Corporation, shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, that may at the time be issued or delivered with respect to any Series C Preferred Stock; and the conversion agent makes no representation with respect thereto. The conversion agent, if other than the Corporation, shall not be responsible for any failure of the Corporation to issue, transfer or deliver any shares of Common Stock pursuant to the conversion of Series C Preferred Stock or to comply with any of the duties, responsibilities or covenants of the Corporation contained in this Section 8.

(i) **Fractional Shares.** No fractional shares of Common Stock will be delivered to the holders of Series C Preferred Stock upon conversion of shares of Series C Preferred Stock into Common Stock as provided herein. In lieu of fractional shares otherwise issuable, holders of Series C Preferred Stock will be entitled to receive an amount in cash equal to the fraction of a share of Common Stock, multiplied by the Closing Price of the Common Stock on the Trading Day immediately preceding the applicable Conversion Date. In order to determine whether the number of shares of Common Stock to be delivered to a holder of Series C Preferred Stock upon the conversion of such holder's shares of Series C Preferred Stock will include a fractional share (in lieu of which cash would be paid hereunder), such determination shall be based on the aggregate number of shares of Series C Preferred Stock of such holder that are being converted on any single Conversion Date.

Section 9. Reservation of Shares Issuable Upon Conversion. The Corporation shall 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 C Preferred Stock and payment of dividends on the Series C Preferred Stock, each as herein provided, free from preemptive rights, 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 8) upon the conversion of all outstanding shares of Series C Preferred Stock and payment of dividends hereunder (and all dividends payable in the next twelve (12) months, assuming all such dividends will be Accrued Dividends); provided, however, that the holders of a majority in voting power of the outstanding shares of the Series C Preferred Stock may waive the Corporation's reservation obligation under this Section 9 on such terms and conditions as such majority holders and the Corporation may agree (the terms and conditions of any such waiver being herein referred to as the "Waiver Terms"). The Corporation shall comply with all securities laws regulating the offer and delivery of shares of Common Stock upon conversion of the Series C Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the then-outstanding shares of the Series C Preferred Stock and payment of dividends hereunder (and all dividends payable in the next twelve (12) months, assuming all such dividends will be Accrued Dividends), the Corporation shall take, subject to any applicable Waiver Terms, such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose. All shares of Common Stock which may be issued in connection with the conversion provisions set forth herein will, upon issuance by the Corporation, be validly issued, fully paid and nonassessable.

Section 10. Certain Definitions.

As used in this Certificate of Designations, the following terms shall have the following meanings, unless the context otherwise requires:

“Accrued Dividend” shall have the meaning ascribed to it in Section 3(a)(ii).

“Affiliate” with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with, such other Person; provided, however, that the Corporation, any of its Subsidiaries, or any of the Corporation’s other controlled Affiliates, in each case, will not be deemed to be Affiliates of the Investors for purposes of this Certificate of Designations. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) when used with respect to any Person, means the possession, directly or indirectly, of the power to cause the direction of management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Beneficially Own” shall mean “beneficially own” as defined in Rule 13d-3 of the Exchange Act or any successor provision thereto.

“Board” shall have the meaning ascribed to it in the recitals.

“Business Day” shall mean a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York, New York generally are authorized or obligated by law, regulation or executive order to close.

“Bylaws” shall have the meaning ascribed to it in Section 5(a).

“Capital Stock” shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by the Corporation.

“Cash Dividend” shall have the meaning ascribed to it in Section 3(a)(i).

“Certificate of Designations” shall mean this Certificate of Designations relating to the Series C Preferred Stock, as it may be amended from time to time.

“Certificate of Incorporation” shall have the meaning ascribed to it in the recitals.

“Change of Control” shall mean the occurrence of any of the following:

(i) any Person (other than the Investors or any of their respective Affiliates or a Person acting as a group with the Investors or any of their respective Affiliates) shall Beneficially Own, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, shares of the Corporation’s Capital Stock entitling such Person to exercise 50% or more of the total voting power of all classes of Voting Stock of the Corporation, other than an acquisition by the Corporation, any of the Corporation’s Subsidiaries or any of the Corporation’s employee benefit plans (for purposes of this clause (i), “Person” shall include any group as such term is used in Rule 13d-5(b) promulgated under the Exchange Act); or

(ii) the Corporation (A) merges or consolidates with or into any other Person, another Person merges with or into the Corporation, or the Corporation sells, leases, licenses, transfers, or otherwise disposes of all or substantially all of the assets of the Corporation to another Person or (B) engages in any recapitalization, reclassification or other transaction in which all or substantially all of the Common Stock is exchanged for or converted into cash, securities or other property, in each case other than a merger or consolidation:

(1) that does not result in a reclassification, conversion, exchange or cancellation of outstanding Common Stock;

or

(2) which is effected solely to change the Corporation’s jurisdiction of incorporation and results in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity; or

(3) where the Voting Stock outstanding immediately prior to such transaction is converted into or exchanged for Voting Stock of the surviving or transferee Person constituting a majority of the outstanding shares of such Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance).

“Close of Business” shall mean 5:00 p.m., New York City time, on any applicable Business Day.

“Closing Price” shall mean, on any particular date, (a) the last reported trade price per share of Common Stock on such date on the Trading Market (as reported by Bloomberg L.P. at 4:15 p.m. (New York City time)), or (b) if there is no such price on such date, the closing bid price on the Trading Market on the date nearest preceding such date (as reported by Bloomberg L.P. at 4:15 p.m. (New York City time)), or (c) if the Common Stock is not then listed or quoted for the Trading Market and if prices for the Common Stock are then reported in the “pink sheets” published by Pink Sheets LLC (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) if the shares of Common Stock are not publicly traded, the fair market value of a share of Common Stock as determined by the Board in good faith.

“Common Stock” shall have the meaning ascribed to it in Section 2.

“Common Stock Event” shall have the meaning ascribed to it in Section 8(a).

“Consolidated EBITDA” means “Consolidated EBITDA” as defined in the Credit Facility as in effect on the date hereof.

“Conversion Date” shall mean, with respect to a conversion of Series C Preferred Stock pursuant to:

(a) Section 6(a), the date on which a holder complies in all respects with the procedures set forth in Section 6(e);

(b) Section 6(b), the Corporation Conversion Date; and

(c) Section 6(c), the date of the applicable conversion event specified therein.

“Conversion Price” shall have the meaning ascribed to it in Section 6(d).

“Conversion Rate” shall have the meaning ascribed to it in Section 6(d).

“Corporation” shall have the meaning ascribed to it in the recitals.

“Corporation Conversion” shall have the meaning ascribed to it in Section 6(b).

“Corporation Conversion Date” shall have the meaning ascribed to it in Section 6(b).

“Credit Facility” means that certain senior secured credit agreement, dated July 31, 2013, by and among the Corporation, the several banks and financial institutions and lenders from time to time party thereto, and SunTrust Bank, in its capacity as administrative agent (as amended, modified, supplemented, restated, replaced or refinanced from time to time).

“Creditor Deemed Liquidation Event” shall have the meaning ascribed to it in Section 5(b)(ix).

“Deemed Liquidation Event” shall have the meaning ascribed to it in Section 4(c).

“DGCL” shall mean the Delaware General Corporation law, as amended from time to time.

“Dividends” shall have the meaning ascribed to it in Section 3(b).

“Dividend Payment Date” shall have the meaning ascribed to it in Section 3(c).

“DTC” shall have the meaning ascribed to it in Section 6(e).

“Funds Shortfall” shall have the meaning ascribed to it in Section 6(c)(i).

“Indebtedness” shall mean any indebtedness (including principal and premium) in respect of borrowed money.

“Indenture” means that certain Indenture, dated as of February 11, 2014, by and among the Corporation, the Guarantors party thereto and U.S. Bank National Association, as Trustee.

“Issue Date” shall mean June 14, 2016.

“Issue Price” shall have the meaning ascribed to it in Section 4(a).

“Junior Stock” shall have the meaning ascribed to it in Section 2.

“Legally Available Funds” shall have the meaning ascribed to it in Section 6(c)(i).

“Liquidation Amount” shall have the meaning ascribed to it in Section 4(a).

“Liquidation Event” shall have the meaning ascribed to it in Section 4(a).

“Liquidation Preference” shall have the meaning ascribed to it in Section 4(a).

“Parity Stock” shall have the meaning ascribed to it in Section 2.

“Participating Dividends” shall have the meaning ascribed to it in Section 3(b).

“Participating Dividend Payment Date” shall have the meaning ascribed to it in Section 3(c).

“Person” shall mean any individual, company, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, government or agency or political subdivision thereof or any other entity.

“Regular Dividends” shall have the meaning ascribed to it in Section 3(a)(ii).

“Regular Dividend Payment Date” shall have the meaning ascribed to it in Section 3(c).

“Regular Dividend Period” shall have the meaning ascribed to it in Section 3(c).

“Senior Stock” shall have the meaning ascribed to it in Section 2.

“Series C Preferred Stock” shall have the meaning ascribed to it in Section 1.

“Special Dividend” shall have the meaning ascribed to it in Section 6(c)(i).

“Standstill Period” shall have the meaning ascribed to it in Section 6(b).

“Subsidiary” means any entity for which the Corporation owns, directly or indirectly, an amount of the voting securities, other voting rights or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, more than 50% of the equity interests of such entity).

“Trading Day” shall mean any Business Day on which the Common Stock is traded, or able to be traded, on the principal national securities exchange on which the Common Stock is listed or admitted to trading, or if the Common Stock is not trading on a national securities exchange, a Business Day on which the Common Stock is trading in its principal market.

“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 Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange.

“Voting Stock” shall mean Capital Stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances (determined without regard to any classification of directors) to elect one or more members of the Board of Directors of the Corporation (without regard to whether or not, at the relevant time, Capital Stock of any other class or classes (other than Common Stock) shall have or might have voting power by reason of the happening of any contingency).

“VWAP” shall mean, as of any applicable date of determination, the volume weighted average per share price of the Common Stock on the applicable Trading Day on the principal national securities exchange on which the Common Stock is listed or admitted to trading, of not so admitted or listed, as otherwise reasonably determined by the Board.

Section 11. Headings. The headings of the paragraphs of this Certificate of Designations are for convenience of reference only and shall not define, limit or affect any of the provisions hereof.

Section 12. Record Holders. To the fullest extent permitted by applicable law, the Corporation and the transfer agent, if any, may deem and treat the record holder of any share of the Series C Preferred Stock as the true and lawful owner thereof for all purposes, and, to the fullest extent permitted by law, neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

Section 13. Notices. All notices or communications in respect of the Series C Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or Bylaws or by applicable law or regulation. Notwithstanding the foregoing, if the Series C Preferred Stock is issued in book-entry form through The Depository Trust Corporation or any similar facility, such notices may be given to the holders of the Series C Preferred Stock in any manner permitted by such facility.

In the event :

(a) that the Corporation shall authorize the issuance of rights, options or warrants to subscribe for or purchase shares of Common Stock or of any other subscription rights or warrants;

(b) that the Corporation shall authorize a dividend or distribution to all holders of shares of Common Stock; or

(c) of any Change of Control, Liquidation Event and/or Deemed Liquidation Event;

then the Corporation shall cause to be given to each holder of Series C Preferred Stock notice, pursuant to this Section 13, at least twenty (20) Business Days prior to the applicable record date (or in the case of events for which there is no record date, at least twenty (20) Business Days prior to such event), of: (x) the date as of which the holders of record of shares of Common Stock to be entitled to receive any such dividend or distribution are to be determined, (y) the initial expiration date set forth in any tender offer or exchange offer for shares of Common Stock or (z) the date on which any such Change of Control, Liquidation Event and/or Deemed Liquidation Event is expected to become effective or be consummated, and the date as of which it is expected that holders of record of shares of Common Stock shall be entitled to exchange such shares for securities or other property, if any, deliverable upon such Change of Control, Liquidation Event and/or Deemed Liquidation Event or other transactions.

Section 14. Replacement Certificates. The Corporation shall replace any mutilated certificate at the holder’s expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates that become destroyed, stolen or lost at the holder’s expense upon delivery to the Corporation of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be required by the Corporation.

Section 15. Transfer Agent, Conversion Agent, Registrar and Paying Agent. The duly appointed transfer agent, conversion agent, registrar and paying agent for the Series C Preferred Stock shall be the Corporation. The Corporation may, in its sole discretion, appoint a successor transfer agent and remove such transfer agent in accordance with the agreement between the Corporation and the transfer agent; provided, however, that the Corporation shall appoint a successor transfer agent who shall accept such appointment prior to the effectiveness of such removal. Upon any such removal or appointment, the Corporation shall send notice thereof by first-class mail, postage prepaid, to the holders of the Series C Preferred Stock.

Section 16. Severability. If any term of the Series C Preferred Stock (or part thereof) set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms (or parts thereof) set forth herein which can be given effect without the invalid, unlawful or unenforceable term will, nevertheless, remain in full force and effect, and no term herein (or parts thereof) set forth will be deemed dependent upon any other such term unless so expressed herein.

Section 17. Other Rights. The shares of Series C Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law and regulation.

IN WITNESS WHEREOF, Bioscrip, Inc. has caused this Certificate of Designations to be duly executed by its authorized corporate officer this 14th day of June, 2016.

BioScrip, Inc.

By: /s/ Richard M. Smith

Name: Richard M. Smith

Title: President and Chief Executive Officer

AMENDMENT NO. 2 TO REGISTRATION RIGHTS AGREEMENT

THIS AMENDMENT NO. 2 TO THE REGISTRATION RIGHTS AGREEMENT (this “Amendment”), effective as of June 14, 2016, is by and between BioScrip, Inc. (the “Company”), Coliseum Capital Partners, L.P., a Delaware limited partnership, Coliseum Capital Partners II, L.P., a Delaware limited partnership and Blackwell Partners, LLC Series A, a Georgia limited liability company (each a “Stockholder” and collectively, the “Stockholders”).

Capitalized but otherwise undefined terms herein have the meanings given to them in the Registration Rights Agreement (as defined below).

WHEREAS, the Company and the Stockholders are party to that certain Registration Rights Agreement, dated March 9, 2015, as amended by that certain Amendment No.1 to the Registration Rights Agreement, dated June 10, 2016 (the “Registration Rights Agreement”), governing the Company’s obligations to register Registrable Securities of the Stockholders; and

WHEREAS, in connection with entering into that certain Exchange Agreement, dated as of the date hereof, by and between the Company and the Stockholders pursuant to which the Company will issue shares of Series C Convertible Preferred Stock of the Company in exchange for shares of Series B Convertible Preferred Stock of the Company, the Company and the Stockholders desire to amend the Registration Rights Agreement pursuant to Section 11(c) thereof and upon such terms as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Amendment to Registration Rights Agreement. The definition of Preferred Stock in Section 10 of the Registration Rights Agreement is hereby amended and restated in its entirety to read as follows:

“**Preferred Stock**” means any shares of Series A Convertible Preferred Stock of the Company, \$0.0001 par value per share, any shares of Series B Convertible Preferred Stock, \$0.0001 par value per share, or any shares of Series C Convertible Preferred Stock, \$0.0001 par value per share.”

2. Confirmation. Except as expressly modified by the terms and provisions of this Amendment, all of the terms and provisions of the Registration Rights Agreement are unchanged and continue in full force and effect and all rights, remedies, liabilities and obligations evidenced by the Registration Rights Agreement are hereby acknowledged by the Company and the Stockholders to be valid and in full force and effect.

3. Counterparts. This Amendment may be executed in any number of counterparts, by facsimile if necessary, each of which shall be an original, but all of which together shall constitute one instrument.

4. Governing Law. This Amendment shall be governed by and construed in accordance with the internal laws of New York applicable to parties residing in New York, without regard applicable principles of conflicts of law. Each party irrevocably consents to the exclusive jurisdiction of any court located within New York County, New York, in connection with any matter based upon or arising out of this Amendment or the matters contemplated hereby and it agrees that process may be served upon it in any manner authorized by the laws of the State of New York for such persons and waives and covenants not to assert or plead any objection which it might otherwise have to such jurisdiction and such process.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered as of the date first above written.

COMPANY:

BIOSCRIP, INC.

/s/ Richard M. Smith

Name: Richard M. Smith

Title: President & Chief Executive Officer

STOCKHOLDERS:

COLISEUM CAPITAL PARTNERS, L.P.

COLISEUM CAPITAL PARTNERS II, L.P.

BLACKWELL PARTNERS, LLC SERIES A

By: Coliseum Capital Management, LLC as Investment Manager

/s/ Adam Gray

Name: Adam Gray

Title: Managing Partner

Address:

One Station Place, 7th Floor South
Stamford, CT 06902

[Signature Page to Amendment No. 2 to Registration Rights Agreement]

EXCHANGE AGREEMENT

This Exchange Agreement (this “Agreement”), dated as of June 14, 2016 (the “Effective Date”), is entered into by and among BioScrip, Inc., a Delaware corporation (the “Company”), and each of the other persons who are signatories to this Agreement and who are listed on Schedule 1 attached hereto (each of them is referred to as a “Stockholder” and together they are referred to as “Stockholders”).

RECITALS

WHEREAS, on June 10, 2016, the Company and the Stockholders entered into an Exchange Agreement (the “Series B Exchange Agreement”), pursuant to which the Stockholders collectively exchanged 614,177 shares of the Company’s Series A convertible preferred stock, par value \$0.0001 per share (the “Series A Preferred Stock”) with the Company and were in return issued 614,177 shares of the Company’s Series B convertible preferred stock, par value \$0.0001 per share (the “Series B Preferred Stock”);

WHEREAS, as of the date hereof, the Stockholders collectively beneficially own and hold (i) 614,177 shares of the Series B Preferred Stock, (ii) 1,800,000 Class A Warrants (the “Class A Warrants”) to purchase the shares of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”) and (iii) 1,800,000 Class B Warrants (the “Class B Warrants”) and, together with the Class A Warrants, the “Warrants”) to purchase the shares of Common Stock;

WHEREAS, the Company launched a public offering of shares of Common Stock on June 13, 2016 (the “Equity Offering”); and

WHEREAS, each Stockholder desires to exchange the number of shares of Series B Preferred Stock (the “Exchange”) set forth on Schedule 1 for a new series of convertible preferred stock (the “Series C Preferred Stock”) of the Company, to be designated “Series C Convertible Preferred Stock,” having the terms set forth in the form of Certificate of Designations of Series C Convertible Preferred Stock, par value \$0.0001 per share, of the Company set forth on Exhibit A hereto (the “Certificate of Designations”), and the Company desires to issue the Series C Preferred Stock in exchange for such Series B Preferred Stock, all on the terms and conditions set forth in this Agreement in reliance on the exemption from registration provided by Section 3(a)(9) of the Securities Act of 1933, as amended (the “Securities Act”).

NOW THEREFORE, in order to implement the foregoing and in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Company and each of the Stockholders agree as follows:

Section 1. Exchange of Shares.

(a) Each of the parties hereto agrees that on the Effective Date the Company shall issue to each Stockholder, and each such Stockholder shall receive and accept from the Company, the number of shares of Series C Preferred Stock set forth on Schedule 1 to this Agreement in exchange (the “Exchange”) for all of such Stockholder’s rights, interests and claims with respect to the shares of Series B Preferred Stock set forth on Schedule 1 to the extent such rights, interests and claims are held by such Stockholder.

(b) Assuming the accuracy of the representations and warranties of the Company and each Stockholder set forth in Sections 2 and 3, respectively, of this Agreement, the parties acknowledge and agree that the purpose of such representations and warranties is, among other things, to ensure that the Exchange qualifies as an exchange of securities under Section 3(a)(9) of the Securities Act.

(c) As part of the Exchange, the Company shall promptly issue to each such Stockholder a stock certificate evidencing the shares Series C Preferred Stock as set forth next to such Stockholder's name on Schedule 1 upon the delivery by such Stockholder of this Agreement and the surrender by such Stockholder of each stock certificate or certificates, if any, representing the shares of Series B Preferred Stock set forth on Schedule 1 hereto (for the avoidance of doubt the Company and the Stockholders acknowledge and agree that such shares of Series B Preferred Stock are currently represented by certificates designated as Series A Preferred Stock). The Company and the Stockholders agree to use their commercially reasonable efforts to cooperate with each other and the Company's stock transfer agent and registrar following the Effective Date to effectuate the issuance of such new stock certificates representing shares of Series C Preferred Stock and the surrender of existing stock certificates representing shares of Series B Preferred Stock.

Section 2. Representations and Warranties of the Company. The Company represents and warrants to each Stockholder as of the date hereof that:

(a) Common Stock; Preferred Stock. The authorized capital stock of the Company consists of 125,000,000 shares of Common Stock, of which 68,680,241 shares are issued and outstanding, and 5,000,000 shares preferred stock, par value \$0.0001 ("Preferred Stock"), of which (X) 825,000 shares of Preferred Stock have been designated as Series A Preferred Stock, of which 21,645 shares are issued and outstanding and (Y) 825,000 shares of Preferred Stock have been designated as Series B Preferred Stock, of which 614,177 shares are issued and outstanding. The table attached hereto as Schedule 2.2(a) sets forth, as of the date hereof, the shares of Common Stock currently reserved for issuance with respect to (1) the Company's equity incentive plan, (2) the Series A Preferred Stock, (3) the Series B Preferred Stock, (4) the Warrants and (5) certain other matters. Upon consummation of the Exchange and the other transactions contemplated by the Transaction Documents (the "Transactions"), (a) 625,000 shares of Preferred Stock shall be designated as Series C Preferred Stock pursuant to the terms of the Certificate of Designations, all of which will be duly authorized, and when issued pursuant to the Exchange will be validly issued, fully paid and non-assessable and (b) the shares of Common Stock issuable upon conversion of the Series C Preferred Stock, when issued, will be validly issued, fully paid and non-assessable. As of the Effective Date, the Stockholders own all of the outstanding Series C Preferred Stock, free and clear of all liens, security interests, mortgages, pledges, charges, equities, claims or restrictions on transferability or encumbrances of any kind (collectively, "Liens") and none of the shares of Series C Preferred Stock, or, after the Stockholder Approval has been obtained, shares of Common Stock issuable upon conversion of the Series C Preferred Stock, will have been, or will be, issued in violation of the preemptive rights of any security holders of the Company arising as a matter of law or under or pursuant to the Company's certificate of incorporation, as amended, the Company's bylaws, as amended, or any agreement or instrument to which the Company is a party or by which it is bound. The Stockholders, as the holders of the Series C Preferred Stock, shall be entitled to all rights accorded to a holder of Series C Preferred Stock or Common Stock, in accordance with, and as set forth in, the Certificate of Designations.

(b) Capitalization and Other Capital Stock Matters. All of the issued and outstanding shares of capital stock of the Company have been duly authorized and validly issued, are fully paid and nonassessable and were not issued in violation of, and are not subject to, any preemptive or similar rights.

(c) Subsidiaries. Each corporation, partnership or other entity in which the Company, directly or indirectly through any of its subsidiaries, owns more than fifty percent (50%) of any class of equity securities or interests is listed on Schedule 2(c) (the “Subsidiaries”).

(d) Organization and Qualification. The Company and each of the Subsidiaries (i) has been duly organized or formed, as the case may be, is validly existing and is in good standing under the laws of its jurisdiction of organization, (ii) has all requisite power and authority to carry on its business and to own, lease and operate its properties and assets and (iii) is duly qualified or licensed to do business and is in good standing as a foreign corporation, partnership or other entity as the case may be, authorized to do business in each jurisdiction in which the nature of such businesses or the ownership or leasing of such properties requires such qualification, except where the failure to be so qualified or, solely with respect to the Subsidiaries, in good standing would not, individually or in the aggregate, have a material adverse effect on (A) the properties, business, prospects, operations, earnings, assets, liabilities or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, (B) the ability of the Company or any Subsidiary to perform its obligations in all material respects under any Transaction Document, (C) the validity or enforceability of any of the Transaction Documents, or (D) the consummation of any of the Transactions (each, a “Material Adverse Effect”)

(e) Legal Power and Authority. The Company has all necessary power and authority to execute, deliver and perform its obligations under the Transaction Documents and to consummate the Transactions, and no stockholder actions are necessary for the Company’s execution, delivery and performance of its obligations under the Transaction Documents and to consummate the Transactions, other than, for the avoidance of doubt, Stockholder Approval to allow the Company to comply with its obligations under Section 4(b) of this Agreement.

(f) This Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance, fraudulent transfer or other similar laws now or hereafter in effect relating to creditors’ rights generally, (ii) general principles of equity (whether applied by a court of law or equity) and the discretion of the court before which any proceeding therefor may be brought and (iii) with respect to the rights to indemnity or contribution hereunder, federal and state securities laws and public policy considerations.

(g) Compliance with Existing Instruments. Neither the Company nor any of the Subsidiaries is (i) in violation of its certificate of incorporation, by-laws or other organizational documents (the “Charter Documents”); (ii) in violation of any U.S. or non-U.S. federal, state or local statute, law (including, without limitation, common law) or ordinance, or any judgment, decree, rule, regulation, order or injunction (collectively, “Applicable Law”) of any U.S. or non-U.S. federal, state, local or other governmental or regulatory authority, governmental or regulatory agency or body, court, arbitrator or self-regulatory organization (each, a “Governmental Authority”), applicable to any of them or any of their respective properties, except as would not result in a Material Adverse Effect; or (iii) in breach of or default under any Applicable Agreement (defined below), except as set forth in Schedule 2(g). To the Company’s Knowledge, all Applicable Agreements are in full force and effect and are legal, valid and binding obligations. For purposes of this Agreement, (A) “Applicable Agreement” means any agreement or instrument entered into by the Company, including the Existing Indebtedness Agreements, a breach or default of which could reasonably be expected to have a Material Adverse Effect, (B) “Knowledge” means in the case of the Company and its Subsidiaries, the actual knowledge as of the date of this Agreement of Richard M. Smith, Jeffrey M. Kreger and Kathryn Stalmack and (C) “Existing Indebtedness Agreements” shall mean (x) that certain credit agreement, dated July 31, 2013 (as amended, modified or supplemented to date), by and among the Company, the several banks and other financial institutions and lenders from time to time party thereto, and SunTrust Bank, in its capacity as administrative agent (the “Credit Facility”) and (y) the Company’s 8.875% Senior Notes due 2021 issued pursuant to that indenture, dated as of February 11, 2014, by and among the Company, the guarantors party thereto and U.S. Bank National Association, as trustee (the “Senior Notes Indenture”).

(h) No Consents. No consent, approval, authorization, order, filing or registration of or with any Governmental Authority or third party is required for execution, delivery or performance of the Transaction Documents or the consummation of the Transactions, except (i) those that have been official or made, as the case may be, that are in full force and effect and (ii) as may be required under the securities or “Blue Sky” laws of U.S. state or non-U.S. jurisdictions.

(i) No Material Applicable Laws or Proceedings. (i) No Applicable Law has have been enacted, adopted or issued, (ii) no stop order suspending the qualification or exemption from qualification of any of the shares of Common Stock in any jurisdiction has been issued and no proceeding for that purpose has been commenced or, to the Company’s Knowledge, is pending or contemplated, and (iii) there is no legal, administrative, arbitral or other proceeding, action, claim, suit, demand, hearing, arbitration, mediation, governmental or regulatory investigation or audit, notice of violation or deficiency, or proceeding pending, or, to the Knowledge of the Company threatened or contemplated by Governmental Authorities or threatened by others (collectively, “Proceedings”) that, with respect to clauses (i), (ii), and (iii) of this Section 2(i) would at the date hereof restrain, enjoin, prevent or interfere with the consummation of the Exchange or any of the Transactions or would, individually or in the aggregate, have a Material Adverse Effect.

(j) Issuance of Series C Preferred Stock. The issuance of the Series C Preferred Stock is duly authorized and, upon issuance in accordance with the terms hereof, the shares of Series C Preferred Stock will be validly issued, fully paid and non-assessable. The shares of Common Stock issued upon conversion or exercise of the Series C Preferred Stock, when issued and delivered in accordance with the terms of the Series C Preferred Stock, will be duly and validly issued, fully paid and non-assessable, free and clear of all Liens, other than restrictions on transfer under applicable state and federal securities laws. The issuance by the Company of the Series C Preferred Stock in accordance with this Agreement is exempt from the registration requirements of the Securities Act under Section 3(a)(9) of the Securities Act.

(k) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance of the Series C Preferred Stock and the consummation by it of the Transactions will not conflict with, violate, constitute a breach of or a default (with the passage of time or otherwise) or a “Debt Repayment Triggering Event” under, or result in the imposition of a Lien on any assets of the Company or any of its Subsidiaries, or the imposition of any penalty under or pursuant to (i) the Charter Documents, (ii) any Applicable Agreement, (iii) any Applicable Law or (iv) any order, writ, judgment, injunction, decree, determination or award binding upon the Company and the Subsidiaries. As used herein, a “Debt Repayment Triggering Event” means any event or condition that gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of the Subsidiaries or any of their respective properties. For purposes of this Agreement, the “Transaction Documents” means this Agreement, the Registration Rights Agreement dated as of March 9, 2015, by and among the Company and the Stockholders, as amended by Amendment 1 thereto on June 10, 2016, and Amendment No.2 to such Registration Rights Agreement dated as of the date hereof, and any documents executed in connection with this Agreement or the Transactions.

(l) Acknowledgment Regarding the Exchange. The Company acknowledges and agrees that each Stockholder is acting solely in the capacity of an arm’s length third party with respect to this Agreement and the transactions contemplated hereby. The Company further acknowledges that no Stockholder is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby, and the Company has not relied in any way on any advice given by any Stockholder or any of representatives or agents of any Stockholder in connection with this Agreement, any other Transaction Document or any of the Transactions.

(m) 3(a)(9) Representation. The Company has not, nor has any person acting on its behalf, directly or indirectly made any offers or sales of any security or solicited any offers to buy any security under circumstances that would cause the Exchange and the issuance of the Series C Preferred Stock pursuant to this Agreement to be integrated with prior offerings by the Company for purposes of the Securities Act which would prevent the Company from delivering the Series C Preferred Stock to the Stockholders pursuant to Section 3(a)(9) of the Securities Act, nor will the Company take any action or steps that would cause the Exchange or the issuance and delivery of the Series C Preferred Stock to be integrated with other offerings to the effect that the delivery of the Series C Preferred Stock to the Stockholders would be seen not to be exempt pursuant to Section 3(a)(9) of the Securities Act.

(n) Company SEC Reports. The Company has timely filed with or furnished to, as applicable, the Securities and Exchange Commission (the "SEC") all registration statements, prospectuses, reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated by reference) required to be filed or furnished by it with the SEC since January 1, 2015 (the "Company SEC Documents"). As of their respective filing dates (or, if amended or superseded by a subsequent filing, as of the date of the last such amendment or superseding filing prior to the date hereof), each of the Company SEC Documents complied as to form in all material respects with the applicable requirements of the Securities Act, and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations of the SEC thereunder applicable to such Company SEC Documents. None of the Company SEC Documents, including any financial statements, schedules or exhibits included or incorporated by reference therein at the time they were filed (or, if amended or superseded by a subsequent filing, as of the date of the last such amendment or superseding filing prior to the date hereof), contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

Section 3. Representations and Warranties of the Stockholders. Each Stockholder hereby jointly and severally represents and warrants to the Company that:

(a) Ownership of the Series B Preferred Stock. Such Stockholder is the legal and beneficial owner of the Series B Preferred Stock and the Warrants listed next to such Stockholder's name on Schedule 1 to this Agreement. Each Stockholder acquired its (i) shares of Series B Preferred Stock pursuant to the Series B Exchange Agreement, and (ii) Warrants pursuant to that certain Warrant Agreement dated as of March 9, 2015 (the "Warrant Agreement") and has continuously held the Securities since issuance. Each Stockholder owns the Securities outright and free and clear of any options, contracts, agreements, Liens, security interests, or other encumbrances.

(b) No Public Sale or Distribution. Such Stockholder is acquiring the Series C Preferred Stock in the ordinary course of business for its own account, with the intention of holding such shares of Series C Preferred Stock for investment purposes and with no present intention of participating, directly or indirectly, in a distribution of such shares in violation of applicable securities laws.

(c) Accredited Investor. Such Stockholder is an "accredited investor" as that term is defined in Rule 501 of Regulation D under the Securities Act.

(d) Reliance on Exemptions. Such Stockholder understands that the Exchange is being made in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Stockholder's compliance with, the representations, warranties, agreements, acknowledgments and understandings of each Stockholder set forth herein in order to determine the availability of such exemptions and the eligibility of each Stockholder to complete the Exchange and to acquire the Series C Preferred Stock .

(e) Information. Such Stockholder has been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the Exchange which have been requested by such Stockholder. Such Stockholder has been afforded the opportunity to ask questions of the Company. Such Stockholder acknowledges that all of the documents filed by the Company with the SEC under Sections 13(a), 14(a) or 15(d) of the Exchange Act, that have been posted on the EDGAR site maintained by the Securities and Exchange Commission (“SEC”) are available to such Stockholder, and such Stockholder has not relied on any statement of the Company not contained in such documents in connection with such Stockholder’s decision to enter into this Agreement and the Exchange or any of the other Transaction Documents.

(f) No Governmental Review. Such Stockholder understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement in connection with the Exchange or the fairness or suitability of the investment in the New Preferred Stock nor have such authorities passed upon or endorsed the merits of the New Preferred Stock.

(g) Organization; Authorization. Such Stockholder is duly organized, validly existing and in good standing under the laws of its state of formation and has the requisite organizational power and authority to enter into and perform its obligations under this Agreement.

(h) Validity; Enforcement. This Agreement has been duly and validly authorized, executed and delivered by such Investor. This Agreement is valid, binding and enforceable against such Investor in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance, fraudulent transfer or other similar laws now or hereafter in effect relating to creditors’ rights generally, (ii) general principles of equity (whether applied by a court of law or equity) and the discretion of the court before which any proceeding therefor may be brought and (iii) with respect to the rights to indemnity or contribution hereunder, federal and state securities laws and public policy considerations.

(i) Tax Consequences. Such Stockholder acknowledges that the Company has made no representation regarding the potential or actual tax consequences for such Stockholder which will result from entering into the Agreement and from consummation of the Exchange. Such Stockholder acknowledges that it bears complete responsibility for obtaining adequate tax advice regarding the Agreement and the Exchange.

Section 4. Covenants.

(a) Waiver of Reservation Obligation. Subject to the following sentence and the performance of the Company of the Company’s obligations under this Agreement, each Stockholder hereby waives (the “Waiver”) (i) the requirement under Section 9 of the Certificate of Designations that the Company reserve shares of Common Stock in an amount sufficient to satisfy the Stockholders’ right to convert the shares of Series C Preferred Stock and (ii) the requirement under Section 3.1 of each of the Warrant Agreements that the Company reserve shares of Common Stock in an amount sufficient to allow the exercise in full of all Warrants. Notwithstanding the foregoing, the Company agrees that the upon consummation or abandonment of the Equity Offering, any shares of Common Stock not issued and sold by the Company in the Equity Offering shall be reserved and kept available out of its authorized and unissued shares in order to allow such shares to be utilized to allow for the conversion of the Series C Preferred Stock or exercise of the Warrants, as the case may be.

(b) Shareholder Vote. The Company agrees that within four (4) months following the date hereof, the Board shall submit for approval of the Company's stockholders at a special meeting of stockholders a proposal (the "Authorization Proposal") to increase the authorized capital stock of the Company in an amount at least sufficient enough to allow the Company to comply with its obligations under Section 9 of the Certificate of Designation and Section 3.1 of the Warrant Agreement as if the Waiver had not been granted (such approval, the "Stockholder Approval"). If the Stockholder Approval is not obtained at such meeting, the Board shall submit the Authorization Proposal on an annual basis beginning in 2017 at either the annual meeting of the Company's stockholders or at a special meeting of the Company's stockholders called to consider the Authorization Proposal until the Stockholder Approval is obtained or a waiver of this Section 4(b) is granted by the Majority-in-Interest (as defined below). Upon the receipt of Stockholder Approval, the Company agrees that it will promptly file an amendment to the Certificate of Incorporation of the Company to reflect the increased in authorized share capital.

(c) Prohibited Issuances. Until (1) the Stockholder Approval is obtained and (2) sufficient shares of Common Stock are reserved for issuance such that the Company is in compliance with Section 9 of the Certificate of Designations and Section 3.1 of the Warrant Agreement with respect to each Stockholder, the Company agrees that it shall not issue or undertake to issue any additional shares of Common Stock or any equity awards or any securities convertible into or exchangeable for shares of Common Stock without the consent of the holders of a majority of the voting power of the shares of Series C Preferred Stock (a "Majority-in-Interest"); provided, however, that (i) the foregoing shall not prohibit the Company from issuing shares of Common Stock in connection with the conversion or exchange or exercise of any securities of the Company outstanding on the date hereof and (ii) the Company may grant awards with respect to the 1,926,561 shares of Common Stock available for issuance under the Company's 2008 Equity Incentive Plan (any shares previously granted that have been forfeited and are made available by the Board under the 2008 Equity Incentive Plan shall increase the amount available under this proviso).

(d) Redemption.

(i) If sufficient shares of Common Stock have not been reserved for issuance such that the Company is in compliance with Section 9 of the Certificate of Designations and Section 3.1 of the Warrant Agreement with respect to each Stockholder, prior to the earlier of (X) May 17, 2021, and (Y) the date that all of the Company's obligations under the Indenture (as defined in the Certificate of Designations) have been satisfied (such earlier date, the "Trigger Date"), then the Company shall provide notice to each holder of Series C Preferred Stock setting out the Trigger Date (the "Redemption Notice"), and the Company agrees that each holder of Series C Preferred Stock may require the Company to redeem in whole or in part, out of funds legally available therefor, by irrevocable written notice to the Company (the "Election Notice"), all or a portion of such holder's Impaired Shares (as defined below) at a cash redemption price per share (the "Redemption Price") equal to the greater of (A) the Liquidation Preference (as defined in the Certificate of Designations) then in effect per share of the Series C Preferred Stock and (B) the product of (1) the Average Price (as defined below) for a share of Common Stock and (2) the number of shares of Common Stock into which an Impaired Share is convertible. An Election Notice shall include the date on which the redemption should take place, which shall be the 10th day following the date of the Election Notice. Each holder electing to have its Series C Preferred Stock redeemed shall be entitled to have the Company redeem up to (X) that number of shares of Series C Preferred Stock owned by such holder multiplied by (Y) the Pro Rata Proportion (as defined below).

(ii) If the Company does not redeem some or all of the Shares of Series C Preferred Stock for which holders were entitled to, and requested, redemption pursuant to Section 4(d)(1), then from the date set forth in the Redemption Notice for redemption until the date on which the Company pays the Redemption Price with respect to such shares of Series C Preferred Stock, interest at the rate of the WSJ Prime Rate plus 3% per annum shall accrue on such aggregate Redemption Price and the Company shall be in breach of its contractual obligations under this Agreement. In addition, in such event, the Company shall be required to pay any dividends required to be paid in respect of such Impaired Shares under the Certificate of Designations as a “Cash Divided” (as defined in the Certificate of Designations) pursuant to Section 3(a)(i) of the Certificate of Designations and shall not be entitled to elect to accrue such dividends under Section 3(a)(ii) of the Certificate of Designations.

(iii) “Average Price” means the VWAP (as defined in the Certificate of Designations) of the Common Stock for the ten (10) consecutive trading day period ending two (2) trading days prior to the date of the Redemption Notice.

(iv) “Impaired Shares” means shares of Series C Preferred Stock (X) for which there are not sufficient authorized shares of Common Stock to allow conversion of such shares of Series C Preferred or (Y) the holder of which cannot exercise the voting rights of such shares.

(v) “Pro Rata Proportion” means as of any date (A) the sum of (1) the aggregate number of shares of Impaired Shares on an as converted basis, plus (2) the aggregate number of Uncovered Warrants (as defined below) divided by (B) the sum of (1) the aggregate number of shares of Series C Preferred Stock outstanding on an as converted basis, plus (2) the aggregate number of Warrants outstanding.

(e) Cash Settlement of Warrants. If (1) the Stockholder Approval has not been obtained and the (2) sufficient shares of Common Stock have not been reserved for issuance such that the Company is in compliance with Section 9 of the Certificate of Designations and Section 3.1 of the Warrant Agreement with respect to each Stockholder, prior to the Trigger Date, then the Company shall provide notice to each holder of Warrants setting out the Trigger Date (the “Warrant Notice”), and the Company agrees that any Stockholder holding Warrants for which there are not sufficient authorized shares of Common Stock to allow exercise of such Warrants (the “Uncovered Warrants”) may exercise by irrevocable written notice (the “Exercise Notice”) such Uncovered Warrants and that the Company will satisfy (within 10 days of such exercise, a “Warrant Deadline”) its obligations to the Stockholder holding such Uncovered Warrants pursuant to the Warrant Agreement in cash in an amount equal to the product of (i) (A) the Average Price on the Trigger Date minus (B) the exercise price of such Uncovered Warrant and (ii) (A) the number of shares of Common Stock subject to the Warrants owned by such holder multiplied by (B) the Pro Rata Proportion (the “Warrant Settlement Amount”). If the Company does not pay the Warrant Settlement Amount with respect to any particular Exercise Notice, then from the Warrant Deadline with respect to such Exercise Notice until the date on which the Company pays the Warrant Settlement Amount with respect to the Uncovered Warrants for which an Exercise Notice was provided, interest at the rate of the WSJ Prime Rate plus 3% per annum shall accrue on such Warrant Settlement Amount and the Company shall be in breach of its contractual obligations under this Agreement.

(f) Voting Agreement.

(i) Each Stockholder hereby agrees that, at any regular or special meeting of the stockholders of the Company at which the Stockholder Approval is sought, however called, including any adjournment, recess or postponement thereof, and in connection with any written consent of the stockholders of the Company, each Stockholder shall, in each case to the fullest extent that the Covered Securities (as defined below) are entitled to vote thereon or consent thereto, (A) appear (in person or by proxy) at each such meeting or otherwise cause all of the Covered Securities to be counted as present thereat for purposes of calculating a quorum; and (B) vote (or cause to be voted), in person or by proxy, or deliver (or cause to be delivered) a written consent covering, all of the Covered Securities Beneficially Owned (as defined below) by such Stockholder: (1) in favor of the Authorization Proposal; (2) in favor of the approval of any proposal to adjourn or postpone any meeting of the stockholders of the Company to a later date if there are not sufficient votes for adoption of the Authorization Proposal on the date on which such meeting is held; (3) against any action, proposal, transaction or agreement that would reasonably be expected to result in a breach of any covenant, representation or warranty or any other obligation or agreement of the Stockholders contained in this Agreement; and (4) against any action, proposal, transaction or agreement that would reasonably be expected to impede, interfere with, discourage, frustrate, prevent, nullify, adversely affect or inhibit the Authorization Proposal; provided, however, that nothing in this Section 4(f) shall require the Stockholders to vote for any proposal at any meeting of Stockholders other than the Authorization Proposal. For purposes of this Agreement, "Covered Securities" means the shares of Series C Preferred Stock that are Beneficially Owned by the Stockholders, together with any other Common Stock, Series A Preferred Stock or other voting securities of the Company and any securities convertible into or exercisable or exchangeable for Common Stock or other voting securities of the Company, in each case that a Stockholder acquires Beneficial Ownership of in accordance with this Agreement. "Beneficial Ownership" by a person of any securities includes ownership by any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares (i) voting power which includes the power to vote, or to direct the voting of, such security and/or (ii) investment power which includes the power to dispose, or to direct the disposition, of such security; and shall otherwise be interpreted in accordance with the term "beneficial ownership" as defined in Rule 13d-3 adopted under the Exchange Act. The terms "Beneficially Own," "Beneficially Owned" and "Beneficial Owner" shall have a correlative meaning.

(ii) Each Stockholder hereby represents, covenants and agrees that, except for this Agreement, such Stockholder (A) has not entered into, and shall not enter into, any voting agreement, voting trust or similar agreement or understanding, with respect to any of the Covered Securities, (B) has not granted, and shall not grant at any time while this Agreement remains in effect, a proxy, consent or power of attorney with respect to any of the Covered Securities, (C) has not given, and shall not give, any voting instructions in any manner inconsistent with this [Section 4\(f\)](#), with respect to any of the Covered Securities and (D) has not taken and shall not knowingly take any action that would constitute a breach hereof, make any representation or warranty of such Stockholder contained herein untrue or incorrect or have the effect of preventing or disabling the Stockholder from performing any of its obligations under this Agreement.

Section 5. [Indemnification](#).

(a) The Company shall indemnify, defend and hold the Stockholders and each officer, director, member, partner, affiliate, employee, agent and representative of the Stockholders (collectively, "[Stockholder Indemnitees](#)") harmless against all liability, loss, and damage (including taxes thereon) together with all reasonable and properly documented costs and expenses related thereto (including reasonable and properly documented legal fees and expenses), relating to or arising from: (i) any breach of any of the representations, warranties, covenants or agreements of the Company contained in this Agreement, and (ii) the execution or delivery of any Transaction Document, the performance by the parties to the Transaction Documents of their respective obligations thereunder or the consummation of the Exchange and any transaction facilitated thereby, except to the extent that any such losses, claims, damages, expenses and liabilities are attributable to the gross negligence, willful misconduct or fraud of such Stockholder Indemnitee. In the event that any Stockholder Indemnitee claims any such right of indemnification, such Stockholder Indemnitee shall provide to the Company prompt written notice thereof, together with reasonable detail regarding such claims and in the event that such claim involves third party claims, allow the Company at its expense to defend such claim(s) on the Stockholder Indemnitee's behalf. The Company shall promptly reimburse each Stockholder Indemnitee for any reasonable and properly documented legal and any other necessary expenses incurred by such Stockholder Indemnitee in connection with investigating and defending any such expense, loss, judgment, claim, damage, liability or action, but only to the extent incurred prior to the assumption by the Company of the defense thereof. Any reimbursement by the Company under this [Section 5\(a\)](#) shall be within sixty (60) days of the Stockholder Indemnitee providing reasonable and documented evidence of such expenses, provided that any individual expense in excess of \$10,000 shall require the Company's prior approval. Notwithstanding the foregoing, the Company reserves the right to withhold approval where in the good faith judgment of the Company, the expenses are not reasonable or properly documented. The Company agrees that it will not, without the Stockholder Indemnitee's prior written consent, settle or compromise any claim or consent to entry of any judgment in respect thereof in any pending or threatened action, suit, claim or proceeding in respect of which indemnification has been sought hereunder unless such settlement or compromise includes an unconditional release of such Stockholder Indemnitee from all liability arising out of such action, suit, claim or proceeding. The obligations of the Company under this [Section 5](#) shall survive the consummation of the transactions contemplated by this Agreement and the transfer, conversion, exchange or redemption of any Series C Preferred Stock. Notwithstanding anything contained in this Agreement to the contrary, the Company shall not be liable to any Stockholder Indemnitee for any consequential, incidental, indirect, special, exemplary or punitive damages of such Stockholder Indemnitee relating to any matters for which indemnification is provided for under this [Section 5](#), other than any such damages arising from a claim of a third party. Except for fraud, the provisions of this [Section 5](#) are intended to and shall provide for the exclusive monetary remedy for any and all Stockholder Indemnitees for the matters for which a Stockholder Indemnitee may be indemnified under this [Section 5](#) following the consummation of the transactions contemplated by this Agreement.

(b) The foregoing right to the indemnity and advancement of expenses shall be in addition to any rights that the Stockholder Indemnities may have at common law, pursuant to contract or otherwise (both as to action in his or its official capacity and as to action in another capacity while holding such position or related to the Company). Each of the parties hereto acknowledges that certain Stockholder Indemnities have or may have certain rights to indemnification, advancement of expenses and/or insurance provided by the Company (through an insurance policy) or the Stockholders or the affiliates of a Stockholder (collectively, the “Other Indemnitors”) and hereby agrees that the Company and its affiliates are, collectively, the indemnitor of first resort (it being understood, for the avoidance of doubt, that the obligations of the Other Indemnitors, if any, are secondary and any obligation of the Company to advance expenses or to provide indemnification (including, without limitation, through director and officer insurance policies) for the same expenses or liabilities incurred by the Stockholder Indemnitees are primary).

(c) Each Stockholder shall, severally, not jointly, indemnify, defend and hold the Company and each officer, director, member, partner, employee, agent and representative of the Company (collectively, “Company Indemnitees”) harmless against all liability, loss, and damage (including taxes thereon) together with all reasonable and properly documented costs and expenses related thereto (including reasonable and properly documented legal fees and expenses), relating to or arising from any breach of any of the representations, warranties, covenants or agreements of the Stockholders contained in this Agreement. In the event that any Company Indemnitee claims any such right of indemnification, such Company Indemnitee shall provide to such Stockholder written notice thereof, together with reasonable detail regarding such claims and in the event that such claim involves third party claims, allow such Stockholder at its expense to defend such claim(s) on the Company Indemnitee’s behalf. Such Stockholder shall promptly reimburse the Company Indemnitee for any reasonable and properly documented legal and any other necessary expenses incurred by the Company Indemnitee in connection with investigating and defending any such expense, loss, judgment, claim, damage, liability or action, but only to the extent incurred prior to the assumption by such Stockholder of the defense thereof. Any reimbursement by the Stockholder under this Section 5(c) shall be within sixty (60) days of the Company Indemnitee providing reasonable and documented evidence of such expenses, provided that any individual expense in excess of \$10,000 shall require such Stockholder’s prior approval. Notwithstanding the foregoing, such Stockholder reserves the right to withhold approval where in the good faith judgment of such Stockholder, the expenses are not reasonable or properly documented. The Company agrees that it will not, without the Company Indemnitee’s prior written consent, settle or compromise any claim or consent to entry of any judgment in respect thereof in any pending or threatened action, suit, claim or proceeding in respect of which indemnification has been sought hereunder unless such settlement or compromise includes an unconditional release of such Company Indemnitee from all liability arising out of such action, suit, claim or proceeding. The obligations of such Stockholder under this Section 5 shall survive the consummation of the transactions contemplated by this Agreement and the transfer, conversion, exchange or redemption of any Series C Preferred Stock. Notwithstanding anything contained in this Agreement to the contrary, such Stockholder shall not be liable to any Company Indemnitee for any consequential, incidental, indirect, special, exemplary or punitive damages of such Company Indemnitee relating to any matters for which indemnification is provided for under this Section 5, other than any such damages arising from a claim of a third party. Except for fraud, the provisions of this Section 5 are intended to and shall provide for the exclusive monetary remedy for any and all Company Indemnitees for the matters for which a Company Indemnitee may be indemnified under this Section 5 following the consummation of the transactions contemplated by this Agreement.

Section 6. Expenses. The Company shall pay all of the reasonable and documented fees and expenses of the Company and the Stockholders (including, without limitation, the reasonable and documented fees of Paul Hastings LLP and Potter Anderson Corroon LLP) incurred in connection with the preparation, execution and delivery of the Transaction Documents and the consummation of the transactions contemplated thereby; provided, however, that such fees and expenses shall not exceed \$100,000 without the prior written consent of the Company, such consent not to be unreasonably withheld.

Section 7. Governing Law; Jurisdiction; Consent to Service of Process. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of laws principles thereof. Each party hereto agrees that it shall bring any action, proceeding, suit, demand, or claim with respect to any matter arising out of or related to this Agreement or the transactions contained in or contemplated by this Agreement, exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (unless the Delaware Court of Chancery shall decline to accept jurisdiction over a particular matter, in which case, in any Delaware state or federal court within the State of Delaware) (such courts, collectively, the "Delaware Courts"), and solely in connection with claims arising under this Agreement or the transactions that are the subject of this Agreement (i) irrevocably submits to the exclusive jurisdiction of the Delaware Courts, (ii) waives any objection to laying venue in any such action or proceeding in the Delaware Courts, (iii) waives any objection that the Delaware Courts are an inconvenient forum or do not have jurisdiction over either party hereto, (iv) agrees that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with Section 11 of this Agreement, although nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law and (v) agrees not to seek a transfer of venue on the basis that another forum is more convenient. Notwithstanding anything herein to the contrary, (A) nothing in this Section 7 shall prohibit any party from seeking or obtaining orders for conservatory or interim relief from any court of competent jurisdiction and (B) each party hereto agrees that any judgment issued by a Delaware Court may be recognized, recorded, registered or enforced in any jurisdiction in the world and waives any and all objections or defenses to the recognition, recording, registration or enforcement of such judgment in any such jurisdiction.

Section 8. Nature of Obligations; No Waiver. The obligations of the Stockholders under this Agreement are several and not joint. The Company acknowledges and agrees that by executing this Agreement the Stockholders are not waiving any claims they may have under, or releasing the Company from any obligations it may have under (i) that certain Securities Purchase Agreement dated as of March 9, 2015, or (ii) the Series B Exchange Agreement; provided, however, the Company and the Stockholders agree that Sections 4(b) through 4(f) of the Series B Exchange Agreement shall be of no further force or effect.

Section 9. Assignment; Binding Effect; Benefits. This Agreement is not assignable without the written consent of each of the other parties hereto. Subject to the foregoing, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended or shall be construed to give any person other than the parties or their respective successors or assigns any legal or equitable right, remedy or claim under or in respect of any agreement or any provision contained herein.

Section 10. Amendment. This Agreement may be amended only by a written instrument signed by each of the parties hereto which specifically states that it is amending this Agreement.

Section 11. Counterparts. This Agreement may be executed in counterparts or in facsimiles, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Notwithstanding anything in this Agreement to the contrary, the failure of one or more Stockholders (for whom this Agreement sets forth a signature line) to execute or otherwise to become bound by this Agreement shall not affect the enforceability of this Agreement against, or otherwise impact the validity of this Agreement with respect to, the persons who execute and deliver this Agreement.

Section 12. Notice. All notices and other communications made under this Agreement shall be in writing and shall be mailed by registered or certified U.S. mail or a nationally reputable overnight carrier, postage prepaid, sent by facsimile or otherwise delivered by hand or courier addressed to each party's address or facsimile number set forth on the signature page hereto.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties have executed this Exchange Agreement as of the date first written above.

BIOSCRIP, INC.

/s/ Richard M. Smith

Name: Richard M. Smith

Title: President and Chief Executive Officer

(Signature page to Exchange Agreement)

IN WITNESS WHEREOF, the parties have executed this Exchange Agreement as of the date first written above.

STOCKHOLDERS:

**COLISEUM CAPITAL PARTNERS, L.P.
COLISEUM CAPITAL PARTNERS II, L.P.
BLACKWELL PARTNERS, LLC SERIES A**

By: Coliseum Capital Management, LLC as Investment Manager

/s/ Adam Gray

Name: Adam Gray

Title: Managing Partner

Address:

One Station Place, 7th Floor South
Stamford, CT 06902

(Signature page to Exchange Agreement)

SCHEDULE 1

Name of Stockholder	Number of shares of Series B Preferred Stock to be exchanged	Number of shares of Series C Preferred Stock to be Issued in Exchange for the Series B Preferred Stock
COLISEUM CAPITAL PARTNERS, L.P.	386,655	386,655
COLISEUM CAPITAL PARTNERS II, L.P.	86,520	86,520
BLACKWELL PARTNERS, LLC SERIES A	141,002	141,002
Total:		614,177

Exhibit A
Certificate of Designations
