

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): November 21, 2023

AULT ALLIANCE, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-12711
(Commission File Number)

94-1721931
(I.R.S. Employer Identification No.)

11411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141
(Address of principal executive offices) (Zip Code)

(949) 444-5464
(Registrant's telephone number, including area code)

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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value	AULT	NYSE American
13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, par value \$0.001 per share	AULT PRD	NYSE American

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

On November 15, 2023, Ault Alliance, Inc., a Delaware corporation (the “**Company**”) filed a Certificate of Designations of Preferences, Rights and Limitations of Series C Convertible Preferred Stock (the “**Series C Certificate of Designations**”) with the Secretary of State of the State of Delaware to establish the preferences, limitations and relative rights of the Series C convertible preferred stock (the “**Series C Convertible Preferred Stock**”).

The material terms of the Series C Convertible Preferred Stock are summarized below.

Description of the Series C Convertible Preferred Stock

Conversion Rights

Each share of Series C Convertible Preferred Stock has a stated value of \$1,000.00 and is convertible into shares of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”) at a conversion price equal to the greater of (i) \$0.10 per share (the “**Floor Price**”), and (ii) the lesser of (A) \$0.2098, which represents 105% of the volume weighted average price of the Common Stock during the ten trading days immediately prior to November 6, 2023 (the “**Execution Date**”), or (B) 105% of the volume weighted average price of the Common Stock during the ten trading days immediately prior to the date of conversion (the “**Conversion Price**”). The Conversion Price is subject to adjustment in the event of an issuance of Common Stock at a price per share lower than the Conversion Price then in effect, as well as upon customary stock splits, stock dividends, combinations or similar events. The Floor Price, however, shall not be adjusted for stock dividends, stock splits, stock combinations or other similar transactions.

Voting Rights

The holders of the Series C Convertible Preferred Stock are entitled to vote with the Common Stock as a single class on an as-converted basis, subject to applicable law provisions of the Delaware General Company Law (the “**DGCL**”) and the NYSE American (the “**Exchange**”), provided however, that for purposes of complying with Exchange regulations, the conversion price, for purposes of determining the number of votes the holder of Series C Convertible Preferred Stock is entitled to cast, shall not be lower than \$0.123 (the “**Voting Floor Price**”), which represents the closing sale price of the Common Stock on the trading day immediately prior to the Execution Date. The Voting Floor Price shall be adjusted for stock dividends, stock splits, stock combinations and other similar transactions.

In addition, after stockholder approval has been obtained, Ault & Company, Inc., a Delaware corporation (the “**Purchaser**”) will be entitled to elect such number of directors to the Company’s Board of Directors as shall be equal to a percentage determined by dividing (i) the number of shares of Common Stock issuable upon conversion of the Series C Convertible Preferred Stock then owned by the Purchaser (the “**Conversion Shares**”), by (ii) the sum of the number of shares of Common Stock then outstanding plus the number of Conversion Shares.

Dividend Rights

The holders of Series C Convertible Preferred Stock are entitled to cumulative cash dividends at an annual rate of 9.5%, or \$95.00 per share, based on the stated value per share. Dividends shall accrue from the date of closing of the Securities Purchase Agreement dated November 6, 2023 by and between the Company and the Purchaser (the “**Closing Date**”), until the 10-year anniversary of the Closing Date and are payable quarterly in arrears. For the first two years, the Company may elect to pay the dividend amount in Common Stock rather than cash, with the number of shares of Common Stock issued at the Conversion Price at the date that the dividend payment is due. Dividends will accrue regardless of the Company’s earnings or funds availability and will not exceed the full cumulative dividends. If dividends are in arrears for one or more periods where dividends are to be paid and the Purchaser is contractually required to pay any penalties or damages as a result of the failure of the Company to pay such dividend, the dividend rate will increase to 12% per annum (equivalent to \$120.00 per annum per share) and will be paid either in cash or additional shares of Series C Convertible Preferred Stock (if the Common Stock is then listed on a national securities exchange) or if not, freely tradeable Common Stock.

Liquidation Rights

In the event of liquidation, dissolution, or winding up of the Company, the holders of Series C Convertible Preferred Stock have a preferential right to receive an amount equal to the stated value per share of Series C Convertible Preferred Stock before any distribution to other classes of capital stock. If the assets are insufficient, the distribution will be prorated among the holders of Series C Convertible Preferred Stock. The remaining assets will be distributed pro rata to the holders of outstanding Common Stock and all holders of Series C Convertible Preferred Stock as if they had converted their Series C Convertible Preferred Stock into Common Stock. The Series C Convertible Preferred Stock rank senior over other classes of preferred stock, including the Series A, B and D Preferred Stock. Additionally, any transaction that constitutes a change of control transaction shall be deemed to be a liquidation under the Series C Certificate of Designations.

The foregoing description of the Series C Certificate of Designations does not purport to be complete and is subject to, and is qualified in its entirety by reference to, the full text of the document which is attached hereto as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

Exhibit No.	Description
3.1	<u>Certificate of Designations of Preferences, Rights and Limitations of Series C Convertible Preferred Stock, dated November 15, 2023.</u>
101	Pursuant to Rule 406 of Regulation S-T, the cover page is formatted in Inline XBRL (Inline eXtensible Business Reporting Language).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document and included in Exhibit 101).

SIGNATURE

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

AULT ALLIANCE, INC.

Dated: November 21, 2023

/s/ Henry Nisser
Henry Nisser
President and General Counsel

Delaware

The First State

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I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
COPY OF THE CERTIFICATE OF DESIGNATION OF "AULT ALLIANCE,
INC.", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF NOVEMBER,
A.D. 2023, AT 5:38 O`CLOCK P.M.



6551776 8100
SR# 20233988486

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JB", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Authentication: 204606135
Date: 11-16-23

AULT ALLIANCE, INC.

CERTIFICATE OF DESIGNATION OF PREFERENCES, RIGHTS AND LIMITATIONS

OF

SERIES C CONVERTIBLE PREFERRED STOCK

PURSUANT TO SECTION 151 OF THE
DELAWARE GENERAL CORPORATION LAW

State of Dela
Secretary of :
Division of Corp
Delivered 05:38 PM
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The undersigned, William B. Horne, does hereby certify that:

1. He is the Chief Executive Officer of Ault Alliance, Inc., a Delaware corporation (the "**Corporation**").
2. The Corporation is authorized to issue 25,000,000 shares of preferred stock, par value \$0.001 per share, 3,600,000 shares of which have been previously designated.
3. The following resolutions were duly adopted by the Board of Directors of the Corporation (the "**Board**"):

WHEREAS, the Certificate of Incorporation of the Corporation, as amended (the "**Certificate of Incorporation**"), provides for a class of its authorized stock known as preferred stock, consisting of 25,000,000 shares, \$0.001 par value per share, issuable from time to time in one or more series;

WHEREAS, the Board is authorized by resolution to provide for the issuance of preferred stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, privileges, preferences and relative participating, optional or other rights, if any, of the shares of each such series and the qualifications, limitations or restrictions thereof; and

WHEREAS, it is the desire of the Board, pursuant to its authority as described above, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 50,000 shares of preferred stock which the Corporation has the authority to issue.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby provide for the issuance of a series of preferred stock to be designated "Series C Convertible Preferred Stock" and does hereby fix and determine the designation, powers, privileges, preferences and relative participating, optional or other rights, if any, of the shares of each such series and the qualifications, limitations or restrictions thereof as follows:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"**Affiliate**" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

"**Alternate Consideration**" shall have the meaning set forth in Section 7(d).

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

"**Buy-In**" shall have the meaning set forth in Section 6(c)(iv).

"**Certificate of Designation**" means this Certificate of Designation of Preferences, Rights and Limitations of the Series C Convertible Preferred Stock.

"**Change of Control Transaction**" means the occurrence after the date hereof of any of (a) an acquisition by an individual or legal entity or "group" (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Corporation, by contract or otherwise) of in excess of 50% of the voting securities of the Corporation (other than by means of the issuance, sale, conversion or exercise of Series C Preferred Stock), (b) the Corporation merges into or consolidates with any other Person, or any Person merges into or consolidates with the Corporation and, after giving effect to such transaction, the stockholders of the Corporation immediately prior to such transaction own less than 50% of the aggregate voting power of the Corporation or the successor entity of such transaction, (c) the Corporation (and all of its Subsidiaries, taken as a whole) sells or transfers all or substantially all of its assets to another Person and the stockholders of the Corporation

immediately prior to such transaction own less than 50% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a one year period of more than one-half of the members of the Board which is not approved by a majority of those individuals who are members of the Board on the Original Issue Date (or by those individuals who are serving as members of the Board on any date whose nomination to the Board was approved by a majority of the members of the Board who are members on the Original Issue Date), or (e) the execution by the Corporation of an agreement to which the Corporation is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above, provided, however, that no transaction with an Affiliate of the Corporation shall be deemed a Change of Control Transaction.

"Closing" means the closing of the purchase and sale of the Series C Preferred Stock pursuant to Section 2.1 of the Purchase Agreement.

"Closing Date" means the Trading Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto and all conditions precedent to (i) each Holder's obligations to pay the Purchase Price and (ii) the Corporation's obligations to deliver the Series C Preferred Stock have been satisfied or waived.

"Commission" means the United States Securities and Exchange Commission.

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

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

"Conversion Amount" means the Stated Value at issue.

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

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

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

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

"Fundamental Transaction" shall have the meaning set forth in Section 7(d).

"GAAP" means United States generally accepted accounting principles.

"Holder" shall have the meaning given such term in Section 2.

"Liquidation" shall have the meaning set forth in Section 5.

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

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

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"PIK Dividend" means a dividend accrued on each share of Series C Preferred Stock and paid in shares (including fractional shares) of Common Stock.

"PIK Dividend Shares" means the shares (including fractional shares) of Common Stock paid and issued in connection with a PIK Dividend.

"Purchase Agreement" means the Securities Purchase Agreement, dated as of November 6, 2023, among the Corporation and the original Holder, as amended, modified or supplemented from time to time in accordance with its terms.

"Purchase Price" means the aggregate dollar amount to be paid for the Series C Preferred Stock pursuant to the Purchase Agreement.

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

"Series C Preferred Stock" shall have the meaning set forth in Section 2.

"Share Delivery Date" shall have the meaning set forth in Section 6(c).

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

"Subsidiary" means any subsidiary of the Corporation as set forth on Schedule 3.1(a) of the Purchase Agreement and shall, where applicable, also include any direct or indirect subsidiary of the Corporation formed or acquired after the date of the Purchase Agreement.

"Successor Entity" shall have the meaning set forth in Section 7(d).

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

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, or the New York Stock Exchange (or any successors to any of the foregoing).

"Transaction Documents" means this Certificate of Designation, the Series C Preferred Stock Certificate of Designation, the Purchase Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated pursuant to the Purchase Agreement, in each case as amended, modified or supplemented from time to time in accordance with its terms.

"Transfer Agent" means Computershare, and any successor transfer agent of the Corporation.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as "Series C Convertible Preferred Stock" (the **"Series C Preferred Stock"**) and the number of shares of such series shall be 50,000 (which shall not be subject to increase without the written consent of the holder (each, a **"Holder"** and collectively, the **"Holders"**) of a majority of the then outstanding shares of the Series C Preferred Stock). Each share of Series C Preferred Stock shall have a par value of \$0.001 per share and a stated value equal to \$1,000.00 (the **"Stated Value"**).

Section 3. Dividends.

(a) **Dividend Rate.** Holders of shares of the Series C Preferred Stock are entitled to receive, when and as declared by the Board, out of funds legally available for the payment of dividends, other than as set forth in Section 3(d) below, cumulative cash dividends at an annual rate of 9.5%, which is initially equivalent to \$95 per annum per share, based on the Stated Value per share preference, payable quarterly in arrears on the original Stated Value together with any accrued but unpaid dividends. (the **"Dividend Rate"**). The Dividend Rate shall accrue from, and including, the Issuance Date to, but not including the 10-year anniversary of the Issuance Date.

(b) **Dividend Amount.** With respect to each share of Series C Preferred Stock from time to time outstanding (including, for the avoidance of doubt, the PIK Dividend Shares), from the Dividend Payment Date of such share, dividends shall accrue on each share of Series C Preferred Stock, in an amount for each share of Series C Preferred Stock, equal to the Dividend Rate times the Stated Value (compounded as provided for immediately below, including with respect to any accrued and unpaid dividends) (such per share amount, as applicable, the **"Dividend Amount"**) during each quarterly period following the applicable Dividend Record Date. All Dividend Amounts paid in cash or elected to be paid as PIK Dividends shall be compounded as applicable. PIK Dividends shall be paid by delivering to each record holder of Preferred Shares a number of shares of Common Stock (**"PIK Dividend Shares"**) determined by dividing (x) the total aggregate dollar amount of dividends accrued and unpaid with respect to Preferred Shares owned by such record holder on the record date for the applicable Dividend Payment Date (rounded to the nearest whole cent) by (y) the then applicable Conversion Price. In order to deliver PIK Dividend Shares in lieu of cash on a Dividend Payment Date, the Corporation must deliver, on or before the fifteenth (15th) calendar day immediately prior to such date, written notice to each Holder of Preferred Shares stating that the Corporation wishes to do so (a **"PIK Stock Dividend Notice"**); in the event that the Corporation does not deliver a PIK Stock

Dividend Notice on or before such fifteenth (15th) day, the Corporation will be deemed to have elected to pay the related dividend in cash.

(c) Dividend Payment Date; Dividend Record Date. Dividends on the Series C Preferred Stock shall accrue daily and be cumulative until paid from, and including, the date of the Issuance Date and shall be payable monthly on the fifth (5th) day following the last day of each fiscal quarter (each such payment date, a “**Dividend Payment Date**,” and each such quarterly period, a “**Dividend Period**”); provided that if any Dividend Payment Date is not a Business Day, then the dividend that would otherwise have been payable on that Dividend Payment Date may be paid on the next succeeding Business Day, and no interest, additional dividends or other sums will accrue on the amount so payable for the period from and after that Dividend Payment Date to that next succeeding Business Day. The first dividend on the Series C Preferred Stock is scheduled to be paid on the fifth day of the next calendar quarter after the Issuance Date in the quarterly amount of \$23.75 per share, which for the first Dividend Period shall be appropriately pro-rated, to the persons who are the holders of record of the Series C Preferred Stock at the close of business on the corresponding record date. Any dividend payable on the Series C Preferred Stock, including dividends payable for any partial Dividend Period, will be computed on the basis of a 360-day year consisting of four 90-day quarters. Dividends will be payable to holders of record as they appear in the Corporation’s stock records for the Series C Preferred Stock at the close of business on the applicable record date, which shall be the last day of the calendar quarter, whether or not a Business Day, in which the applicable Dividend Payment Date falls (each, a “**Dividend Record Date**”).

(d) PIK Dividend. For the first two (2) years following the Issuance Date, the Dividend Amount may at the Corporation’s election, be paid in cash or PIK Dividend Shares. Thereafter, the Dividend Amount shall be paid in cash, subject to Section 3(e) of this Certificate. The Dividend Amount shall be automatically declared and the applicable Dividend Amount automatically paid to the Holder as set forth above. For the avoidance of doubt, unless otherwise expressly set forth herein, with respect to PIK Dividend Shares, the Dividend Payment Date of such shares shall be the Issuance Date of such shares for all purposes hereunder. All Dividend Amounts payable with respect to the Holders of Series C Preferred Stock shall be paid, whether in cash or in PIK Dividend Shares pursuant to this Section 3(d), pro rata to each Holder of shares of Series C Preferred Stock based upon the aggregate accrued but unpaid dividends on the shares held by each such Holder. PIK Dividend Shares issued on the applicable Dividend Payment Date shall have an aggregate Dividend Amount on such Dividend Payment Date equal to the total Dividend Amount accrued on such shares as of such Dividend Payment Date minus any portion thereof paid in cash pursuant hereto. Notwithstanding anything contained herein to the contrary, the Corporation shall take all actions necessary for all PIK Dividend Shares to be duly authorized and validly issued, fully paid and nonassessable, and issued free and clear of all liens, mortgages, security interests, pledges, deposits, restrictions or other encumbrances, on each Dividend Payment Date. The Corporation shall update its books and records to reflect the issuance of any PIK Dividend Shares promptly following each Dividend Payment Date, and at the request of any Holder of shares of Series C Preferred Stock, shall deliver to such Holder a copy of such books and records reflecting the issuance of such PIK Dividend Shares; provided, however, that the failure of the Corporation to comply with the terms of this sentence shall not in any way affect the issuance of such PIK Dividend Shares in accordance with the terms hereof.

(e) Limiting Documents. No dividends on shares of Series C Preferred Stock shall be authorized by the Board or paid or set apart for payment by the Corporation at any time when the payment thereof would be unlawful under the laws of the State of Delaware or when the terms and provisions of any agreement of the Corporation, including any agreement relating to the Corporation’s indebtedness (the “**Limiting Documents**”), prohibit the authorization, payment or setting apart for payment thereof or provide that the authorization, payment or setting apart for payment thereof would constitute a breach of the Limiting Documents or a default under the Limiting Documents, or if the authorization, payment or setting apart for payment shall be restricted or prohibited by law.

(f) Dividend Accrual. Notwithstanding the foregoing, dividends on the Series C Preferred Stock will accrue regardless of whether (i) the Corporation has earnings; (ii) there are funds legally available for the payment of such dividends; or (iii) such dividends are declared by the Board. No interest, or sum in lieu of interest, will be payable in respect of any dividend payment or payments on the Series C Preferred Stock which may be in arrears, and holders of the Series C Preferred Stock will not be entitled to any dividends in excess of full cumulative dividends described above. Any dividend payment made on the Series C Preferred Stock shall first be credited against the earliest accumulated but unpaid dividend due with respect to those shares.

(g) Dividends on Junior Stock or Parity Stock. Unless full cumulative dividends on the Series C Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past Dividend Periods, no dividends (other than in shares of the Corporation’s Common Stock, par value \$0.001 per share (the “**Common Stock**”), or in shares of any series of Preferred Stock outstanding or that the Corporation may issue ranking junior to the Series C Preferred Stock as to dividends and upon liquidation) shall be declared or paid or set aside for payment upon shares of any capital stock of the Corporation other than the Series C Preferred Stock and the Series C Preferred Stock issued pursuant to the Purchase Agreement. This Section 3(g) shall not apply to spin-offs or dividends of the common stock of any Subsidiary.

(h) Pro Rata Dividends. When dividends are not paid in full (or a sum sufficient for such full payment is not so

set apart) upon the Series C Preferred Stock and the shares of any other series of Preferred Stock that the Corporation may issue ranking on parity as to dividends with the Series C Preferred Stock, all dividends declared upon the Series C Preferred Stock and any other series of Preferred Stock ranking on parity that the Corporation may issue as to dividends with the Series C Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series C Preferred Stock and such other series of Preferred Stock that the Corporation may issue shall in all cases bear to each other the same ratio that accrued dividends per share on the Series C Preferred Stock and such other series of Preferred Stock that the Corporation may issue (which shall not include any accrual in respect of unpaid dividends for prior Dividend Periods if such Preferred Stock does not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Series C Preferred Stock which may be in arrears. For avoidance of doubt, the Series C Preferred Stock ranks on parity with the Series C Preferred Stock.

(i) **Payment of Accrued and Unpaid Dividends.** Holders of Series C Preferred Stock shall not be entitled to any dividend in excess of all accumulated accrued and unpaid dividends on the Series C Preferred Stock as described in this Section 3. Any dividend payment made on the Series C Preferred Stock shall first be credited against the earliest accumulated accrued and unpaid dividend due with respect to such shares which remains payable at the time of such payment. Provided, however, if a Person is a Holder of the Series C Preferred Stock as of the record date for any spin-off or dividend of the common stock of any Subsidiary, other than White River Energy Corp or Wolf Energy Services Inc., the Holder shall be entitled to such stock dividend on an as converted basis.

(j) **Dividend Default.** Whenever dividends on any shares of Series C Preferred Stock are in arrears for one or more Dividend Periods, whether or not consecutive (a "**Dividend Default**"), and provided the Holders of Series C Preferred Stock are required to pay any penalties or damages as a result of any contractual provisions in effect on any existing securities of the Holder as of the Original Issue Date:

(i) the Dividend Rate shall be increased to 12% per annum (equivalent to \$120 per annum per share) (as increased, the "**Penalty Rate**"), commencing on the first day after the Dividend Payment Date on which a Dividend Default occurs and for each subsequent Dividend Payment Date thereafter until such time as the Corporation has paid all accumulated accrued and unpaid dividends on the Series C Preferred Stock in full, at which time the Dividend Rate shall revert to the rate of 9.5% of the Stated Value per share (the "**Stated Rate**");

(ii) on the next Dividend Payment Date following the Dividend Payment Date on which a Dividend Default occurs, and continuing until such time as the Corporation has paid all accumulated accrued and unpaid dividends on the Series C Preferred Stock in full, the Corporation shall pay all dividends on the Series C Preferred Stock, including all accumulated accrued and unpaid dividends, on each Dividend Payment Date either in cash or, if not paid in cash, by issuing to the holders thereof shares of Series C Preferred Stock if the Common Stock is then subject to a National Market Listing (as hereinafter defined), or if not, shares of freely tradeable Common Stock with a value equal to the amount of dividends being paid, calculated based on the Fair Market Value of the Common Stock calculated as of the Trading Day immediately prior to the next Payment Date referenced above, plus cash in lieu of any fractional share of Common Stock; and

(iii) to the extent that the Corporation determines a shelf registration statement to cover resales of Common Stock or Series C Preferred Stock is required in connection with the issuance of, or for resales of, such Common Stock or Series C Preferred Stock issued as payment of a dividend, the Corporation will use its commercially reasonable efforts to file and maintain the effectiveness of such a shelf registration statement until such time as all shares of such stock have been resold thereunder or such shares are eligible for resale pursuant to Rule 144(b)(1) under the Securities Act of 1933, as amended.

For purposes hereof, a "National Market Listing" shall mean that the Common Stock is listed on the New York Stock Exchange ("**NYSE**"), the NYSE American LLC (the "**NYSE American**") or Nasdaq Stock Market ("**Nasdaq**"), or listed on an exchange that is a successor to the NYSE, the NYSE American or Nasdaq.

Following any Dividend Default that has been cured by the Corporation as provided above in Section 3(h)(i), if the Corporation subsequently fails to pay cash dividends on the Series C Preferred Stock in full for any Dividend Period, such subsequent failure shall constitute a separate Dividend Default, and the foregoing provisions of this Section 3(h) shall immediately apply until such subsequent Dividend Default is cured as so provided.

Notwithstanding anything in this Certificate to the contrary, cash dividends on any shares of Series C Preferred Stock will be payable solely in shares of Series C Preferred Stock unless and until the Corporation has, in the judgment of the Board, sufficient cash available to permit the declaration and payment of such dividends in accordance with the Corporation's Certificate of Incorporation and Bylaws and applicable laws.

Section 4. Voting Rights.

(a) **Quorum and Voting Power.** For purposes of determining the presence of a quorum at any meeting of the stockholders of the Corporation at which the shares of Series C Preferred Stock are entitled to vote and the voting power of the shares of Series C Preferred Stock, each Holder of outstanding shares of Series C Preferred Stock shall be entitled to a number of votes equal to the number of shares of Common Stock into which such shares of Series C Preferred Stock are then convertible, disregarding, for such purposes, any limitations on conversion set forth herein, provided, however, that solely for purposes of this Section 4(a), the Voting Floor Price shall not be lower than the closing sale price of the Common Stock on the Trading Day immediately preceding the execution date of the Purchase Agreement. For purposes of this Section 4(a), the term "**Voting Floor Price**" shall mean the Company's closing sale price on the Trading Day immediately preceding the execution date of the Purchase Agreement. The Voting Floor Price shall be adjusted for stock dividends, stock splits, stock combinations and other similar transactions.

(b) **Voting Generally.** Each Holder shall be entitled to vote with holders of outstanding shares of Common Stock, voting together as a single class, with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration (whether at a meeting of stockholders of the Corporation, by written action of stockholders in lieu of a meeting or otherwise), except as provided by law or by the provisions of Section 5(b) below. In any such vote, (i) in the case of the election of directors, the Series C Preferred Stock shall be voted on an "as converted" basis together with the Common Stock, and (ii) in all other cases, the Series C Preferred Stock shall be voted on an "as converted" basis together with the Common Stock, subject to the provisions of the DGCL. Each holder of outstanding shares of Series C Preferred Stock shall be entitled to notice of all stockholder meetings (or requests for written consent) in accordance with the Corporation's bylaws.

(c) **Board Membership.** Provided that stockholder approval shall have been obtained as provided in the Purchase Agreement ("**Stockholder Approval**"), the Holder may designate a number of directors (the "**Series C Directors**") to the Corporation's Board of Directors equal to a percentage determined by the number of beneficially owned (determined on an "as converted" basis) divided by the sum of the number of shares of Common Stock outstanding plus the number of Conversion Shares determined on an "as converted" basis. As by way of example only, if the number of shares of Series C Preferred Stock owned by the Holder represents 20% of the outstanding shares of Common Stock and Preferred Shares (as determined on an as converted basis), the Holder shall, through its ownership of shares of Series C Preferred Stock, have the right to designate one director of a five member board. The Holder's applicable percentage right to designate a number of directors shall initially be determined on the date that Stockholder Approval is obtained and cannot be decreased unless the Holder converts or sells all or a portion of its shares of Series C Preferred Stock, in which case the number of directors that the Holder may designate will be re-calculated. The right to designate a director is a contractual right granted to the Holder and not to a subsequent owner of shares of Series C Preferred Stock. In the event that a vacancy is created on the Board at any time due to the death, disability, retirement, resignation or removal of a Series C Director, then the Holders (voting as a separate class by majority vote with each share of Series C Preferred stock entitled to one vote) shall have the right to designate an individual to fill such vacancy. In the event that the Holders shall fail to designate in writing a representative to fill the vacant Series C Director seat on the Board, such Board seat shall remain vacant until such time as the Holders elect an individual to fill such seat in accordance with this Section 4(c), and during any period where such seat remains vacant, the Board nonetheless shall be deemed duly constituted.

For so long as the Holders shall continue to hold any shares of Series C Preferred Stock, any Series C Director elected as provided in the preceding paragraph may be removed without cause by, and only by, the affirmative vote of the Holder, given either at a special meeting of such shareholders duly called for that purpose or pursuant to a written consent of the Holder. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series C Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding voting power of the shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 4(c), a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 4(c).

(d) **Protective Provisions.** Without limiting the foregoing, as long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not, without the prior written consent of the Majority Holders, (i) alter or change adversely the powers, preferences or rights given to the Series C Preferred Stock or alter or amend this Certificate of Designations, (ii) amend its Certificate of Incorporation or other charter documents in any manner that adversely affects any rights of the Holders of Series C Preferred Stock, (iii) increase or decrease the number of authorized shares of Series C Preferred Stock, (iv) whether or not prohibited by the terms of the Series C Preferred Stock, circumvent a right or preference of the Series C Preferred Stock, or (v) enter into any agreement with respect to any of the foregoing. Holders shall be entitled to written notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholder) with respect to which they would be entitled to vote, which notice shall be provided pursuant to the Corporation's Bylaws and the DGCL.

Section 5. Liquidation Preference.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (a

"Liquidation"), the assets of the Corporation available for distribution to its shareholders whether from capital, surplus or earnings, shall be distributed as follows:

(i) The Holders of Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution to the Holders of the Common Stock or any other class of the Corporation's capital stock, whether now existing or hereafter created, for each share of Series C Preferred Stock held by such Holders, an amount equal to the Stated Value. If upon any Liquidation, the assets of the Corporation available for distribution to its stockholders are insufficient to pay all Holders of Series C Preferred Stock the full preference amount to which they shall be entitled, the Holders of Series C Preferred Stock shall share pro rata in any distribution of assets in accordance with their applicable full preference amounts;

(ii) After distribution of the amounts set forth in Section 5(a)(i) hereof to the Holders of the Series C Preferred Stock, the remaining assets of the Corporation available for distribution, if any, to the stockholders of the Corporation shall be distributed to the holders of outstanding Common Stock and to all Holders of Series C Preferred Stock, on a pro rata basis, as if such Holders of Series C Preferred Stock had converted all outstanding shares of such Series C Preferred Stock into Common Stock pursuant to Section 6 hereof immediately prior to the Liquidation or Change of Control Transaction, based upon their respective holdings.

(b) Unless otherwise approved by the prior written consent of all Holders of Series C Preferred Stock, for purposes of this Section 5, any transaction constituting a Change of Control Transaction shall be treated as and deemed to be a Liquidation.

(c) Unless otherwise approved by the prior written consent of a majority of the Holders, voting as a separate class, upon consummation of a Change of Control Transaction, the Corporation shall pay or cause to be paid to the Holders of Series C Preferred Stock an amount equal to the amount they would be entitled to receive pursuant to Section 5(a) hereof as if the Corporation, on the date of consummation of such Change of Control Transaction, had assets available for distribution equal to the aggregate amount payable to the Corporation and all stockholders thereof in connection with such Change of Control Transaction. The amount payable pursuant to this Section 5(c) shall be payable in accordance with and in order of the priorities set forth in Section 5(a) immediately following the closing of the Change of Control Transaction.

Section 6. Conversion.

(a) Conversions at Option of Holder. Each share of Series C Preferred Stock shall be convertible, at any time and from time to time, at the option of the Holder thereof, into that number of shares of Common Stock determined by dividing the Stated Value of such share of Series C Preferred Stock by the Conversion Price. Holders shall effect conversions by delivering to the Corporation and the Holder Representative a conversion notice in the form attached hereto as Annex A (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Series C Preferred Stock to be converted, the number of shares of Series C Preferred Stock owned prior to the conversion at issue, the number of shares of Series C Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers such Notice of Conversion to the Corporation (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be as of the close of business on the Business Day that such Notice of Conversion is delivered to the Corporation, or if such day is not a Business Day or if the Notice of Conversion is delivered after regular business hours, the next Business Day. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. From and after the Conversion Date, until presented for transfer or exchange, certificates that previously represented shares of Series C Preferred Stock shall represent, in lieu of the number of shares of Series C Preferred Stock previously represented by such certificate, the number of shares of Series C Preferred Stock, if any, previously represented by such certificate that were not converted pursuant to the Notice of Conversion, plus the number of shares of Conversion Shares into which the shares of Series C Preferred Stock previously represented by such certificate were converted. To effect conversions of shares of Series C Preferred Stock, a Holder shall not be required to surrender the certificate(s), if any, representing the shares of Series C Preferred Stock to the Corporation unless all of the shares of Series C Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Series C Preferred Stock promptly following the Conversion Date at issue. Shares of Series C Preferred Stock converted into Common Stock shall be canceled and shall not be reissued.

(b) Conversion Price. The Series C Preferred Stock shall be convertible at the Holder's option into shares of Common Stock at a conversion price equal to the greater of (i) \$0.10 per share (the "Floor Price"), which Floor Price shall not be adjusted for stock dividends, stock splits, stock combinations and other similar transactions and (ii) the lesser of a 5% premium to the Volume Weighted Average Price during the ten trading days immediately prior to (A) the Trading Day immediately preceding the execution date of the Purchase Agreement, or (B) the date of conversion into shares of Common Stock (the "Conversion Price").

(c) Mechanics of Conversion.

(i) *Delivery of Conversion Shares Upon Conversion.* Not later than the earlier of (i) three (3) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) after each Conversion Date (the “**Share Delivery Date**”), the Corporation shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Series C Preferred Stock, which Conversion Shares shall be free of restrictive legends and trading restrictions so long as either (A) there is an effective registration statement to cover the resale of the Conversion Shares or (B) if the Conversion Shares may be resold under Rule 144. The Corporation shall use its reasonable best efforts to deliver the Conversion Shares required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company or another established clearing corporation performing similar functions. As used herein, “**Standard Settlement Period**” means the standard settlement period, expressed in a number of Trading Days, on the Corporation’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

(ii) *Failure to Deliver Conversion Shares.* If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Series C Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

(iii) *Obligation Absolute; Partial Liquidated Damages.* The Corporation’s obligation to issue and deliver the Conversion Shares upon conversion of Series C Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other Person, and irrespective of any other circumstance, which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Series C Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or anyone associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Series C Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 100% of the Stated Value of the Series C Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(c)(i) by the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$5,000 of Stated Value of Series C Preferred Stock being converted, \$25 per Trading Day (increasing to \$50 per Trading Day on the third Trading Day after the Share Delivery Date) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder’s right to pursue actual damages for the Corporation’s failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

(iv) *Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion.* In addition to any other rights available to the Holder, if the Corporation fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(c)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder’s brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a “**Buy-In**”), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder’s total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Series C Preferred Stock equal to the number of shares of Series C Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of

Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(c)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Series C Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder \$1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver the Conversion Shares upon conversion of the shares of Series C Preferred Stock as required pursuant to the terms hereof.

(v) *Reservation of Shares Issuable Upon Conversion.* Until no shares of Series C Preferred Stock remain outstanding, the Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series C Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Series C Preferred Stock), not less than the aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account any adjustments under Section 7) upon the conversion of the then outstanding shares of Series C Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and non-assessable.

(vi) *Fractional Shares.* No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series C Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share. Notwithstanding anything to the contrary contained herein, but consistent with the provisions of this subsection with respect to fractional Conversion Shares, nothing shall prevent any Holder from converting fractional shares of Series C Preferred Stock.

(vii) *Transfer Taxes and Expenses.* The issuance of Conversion Shares on conversion of the Series C Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Series C Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

Section 7. Certain Adjustments.

(a) *Stock Dividends and Stock Splits.* If the Corporation, at any time while the Series C Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions that is payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, the Series C Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification. Notwithstanding the foregoing in no event shall the Conversion Price be less than the Floor Price.

(b) *Subsequent Rights Offerings.* In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of Common Stock or any class thereof (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Series C Preferred Stock immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is

taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(c) **Distributions.** During such time as the Series C Preferred Stock is outstanding, if the Corporation declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Series C Preferred Stock immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

(d) **Fundamental Transaction.** If, at any time while the Series C Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person (other than for a transaction the sole purpose of which is changing the name or the domicile of the Corporation), (ii) the Corporation (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of at least 50% of the outstanding Common Stock, or (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, (each a "**Fundamental Transaction**"), then, upon any subsequent conversion of the Series C Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "**Alternate Consideration**") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which the Series C Preferred Stock is convertible immediately prior to such Fundamental Transaction. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of the Series C Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "**Successor Entity**") to assume in writing all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents in accordance with the provisions of this Section 7(d) pursuant to written agreements in customary form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for the Series C Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Series C Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of the Series C Preferred Stock (without regard to any limitations on the conversion of the Series C Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of the Series C Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Corporation herein.

(e) **Subsequent Equity Sales.** If, at any time while shares of Series C Preferred Stock are outstanding, the Corporation or any subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice outstanding securities, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or any Common Stock Equivalent, entitling any Person to acquire shares of Common Stock at an effective price per share that is

lower than the then Conversion Price (such lower price, the "**Base Conversion Price**" and such issuances, collectively, a "**Dilutive Issuance**") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 7 in respect of an Exempt Issuance (as hereafter defined). The Corporation shall notify the Holder in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 7, indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "**Dilutive Issuance Notice**"). For purposes of clarification, whether or not the Corporation provides a Dilutive Issuance Notice, upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

For the purposes hereof, an "**Exempt Issuance**" shall mean the issuance of (i) shares of Common Stock, restricted stock units or stock options (and Common Stock issued upon exercise of such securities) to employees, officers, consultants, advisors or directors of the Corporation in consideration of services to the Corporation pursuant to any stock or option plan duly adopted for such purpose by a majority of the members of the Board or a majority of the members of a committee of directors established for such purpose, not to exceed ten percent (10%) of the shares of Common Stock issued and outstanding on the Effective Date (as defined in the Purchase Agreement), (ii) the Securities (as defined in the Purchase Agreement) issued hereunder and any Common Stock or other securities issued upon the conversion, exercise, or exchange of any Securities issued hereunder and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of the Purchase Agreement, provided that such securities have not been amended since the date of the Purchase Agreement to increase the number of such securities or to decrease the exercise, exchange or conversion price of such securities; (iii) shares of Common Stock issued upon any anti-dilution adjustment to Common Stock and Common Stock Equivalents held by current unaffiliated security holders as of the date of the Purchase Agreement; (iv) securities issued to any underwriter, placement agent or other registered broker-dealer as reasonable commissions or fees in connection with any financing transactions; (v) securities issued pursuant to any merger, acquisition, asset purchase or similar transaction approved by the Board or a duly authorized committee thereof, provided that any such issuance shall only be to a Person or Persons (or to the equity holders of a Person or Persons) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Corporation and shall have received the express prior written consent of the Purchaser, but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities; and (vi) securities issued pursuant to any purchase money equipment loan, capital leasing arrangement or debt financing from a commercial bank or similar financial institution.

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

(g) Notice to Holders.

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

(ii) Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation (and all of its Subsidiaries, taken as a whole), or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series C Preferred Stock, and shall cause to be delivered by email to each Holder at its last email address as it shall appear upon the stock books of the Corporation, at least ten (10) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or

warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of the Series C Preferred Stock (or any part hereof) during the 10-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Ranking. The shares of Series C Preferred Stock shall rank senior to the Corporation's classes of preferred stock, including the Series B Convertible Preferred Stock, the Series A Cumulative Redeemable Perpetual Preferred Stock, the Series D Cumulative Redeemable Perpetual Preferred Stock, the Series E Preferred Stock, the Series F Preferred Stock and the Series G Preferred Stock with respect to the preferences as to dividends, redemption, or distribution of assets and payments upon the liquidation, dissolution and winding up of the Corporation.

Section 9. Miscellaneous.

(a) **Notices.** Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile or email attachment, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at 1411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141, Attention: William B. Horne, Chief Executive Officer, email address: Will@aault.com, or such other email address or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 9. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by email attachment, or sent by a nationally recognized overnight courier service addressed to each Holder at the email address or address of such Holder appearing on the books of the Corporation, or if no such email address or address appears on the books of the Corporation, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time of transmission, if such notice or communication is delivered via email attachment at the email address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the time of transmission, if such notice or communication is delivered via email attachment at the email address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

(b) **Lost or Mutilated Preferred Stock Certificate.** If a Holder's Series C Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series C Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation (which shall not include the posting of any bond).

(c) **Severability.** If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances.

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

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

(f) **Status of Converted Preferred Stock.** Shares of Series C Preferred Stock may only be issued pursuant to the Purchase Agreement. If any shares of Series C Preferred Stock shall be converted or reacquired by the Corporation, such shares may not be reissued and shall automatically be retired and cancelled and shall resume the status of authorized but unissued shares of preferred stock.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 15th day of November, 2023.

AULT ALLIANCE, INC.

/s/William B. Horne

Name: William B. Horne

Title: Chief Executive Officer

NOTICE OF CONVERSION

The undersigned hereby elects to convert the number of shares of Series C Convertible Preferred Stock indicated below into shares of common stock, par value \$0.001 per share (the "**Common Stock**"), of Ault Alliance, Inc., a Delaware corporation (the "**Corporation**"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: _____
Number of shares of Series C Preferred Stock owned prior to Conversion: _____
Number of shares of Series C Preferred Stock to be Converted: _____
Stated Value of shares of Series C Preferred Stock to be Converted: _____
Number of shares of Common Stock to be Issued: _____
Applicable Conversion Price: _____
Number of shares of Series C Preferred Stock subsequent to Conversion: _____
Address for Delivery: _____
Or
DWAC Instructions:
Broker no: _____
Account no: _____

HOLDER

By: _____
Name:
Title:
