

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME
EFFECTIVE DATE:	08/10/2006

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Powerhouse Technologies Group, Inc.		08/04/2006	CORPORATION: DELAWARE

RECEIVING PARTY DATA

Name:	Migo Software, Inc.
Street Address:	555 Twin Dolphin Drive
Internal Address:	Suite 650
City:	Redwood City
State/Country:	CALIFORNIA
Postal Code:	94065
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 6

Property Type	Number	Word Mark
Registration Number:	3004971	MIGO
Serial Number:	78782562	MIGO
Serial Number:	78979147	MIGO
Serial Number:	78782573	MIGO
Serial Number:	78979146	MIGO
Serial Number:	77130683	MIGO

CORRESPONDENCE DATA

Fax Number: (415)362-2928
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 415-362-3800
 Email: cyc@fdml.com
 Correspondent Name: Sheldon R. Meyer

OP \$165.00 3004971

Address Line 1: 650 California Street
Address Line 2: 14th Floor
Address Line 4: San Francisco, CALIFORNIA 94108

ATTORNEY DOCKET NUMBER:	MIGO-0000US0-SRM/CYC
NAME OF SUBMITTER:	Sheldon R. Meyer
Signature:	/sheldon r. meyer/
Date:	10/05/2007

Total Attachments: 20

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Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "POWERHOUSE TECHNOLOGIES GROUP, INC.", CHANGING ITS NAME FROM "POWERHOUSE TECHNOLOGIES GROUP, INC." TO "MIGO SOFTWARE, INC.", FILED IN THIS OFFICE ON THE EIGHTH DAY OF AUGUST, A.D. 2006, AT 11 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID RESTATED CERTIFICATE IS THE TENTH DAY OF AUGUST, A.D. 2006.



3052698 8100

060740897

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4958373

DATE: 8/8/06
TRADEMARK

REEL: 003634 FRAME: 0634

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
POWERHOUSE TECHNOLOGIES GROUP, INC.**

Pursuant to the provisions of Section 245 of the General Corporation Law of the State of Delaware (the "DGCL"), PowerHouse Technologies Group, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the DGCL, does hereby certify as follows:

1. The present name of the Corporation is PowerHouse Technologies Group, Inc. The date of filing the original Certificate of Incorporation of the Corporation (the "Original Certificate of Incorporation") with the Secretary of State was June 9, 1999, under the name Agate Technologies, Inc. The Original Certificate of Incorporation was amended by a Certificate of Merger filed June 28, 1999; a Certificate of Renewal filed June 14, 2002; a Certificate of Amendment filed June 27, 2002; a Certificate of Amendment filed on April 8, 2003 changing its name to "PowerHouse Technologies Group, Inc."; a Certificate of Amendment filed May 24, 2004; a Certificate of Designations filed May 24, 2004; a Certificate of Designations (the "Junior A Certificate of Designations") filed June 7, 2004; a Certificate of Correction filed August 11, 2004; a Certificate of Amendment filed August 11, 2004; a Certificate of Amendment filed August 12, 2004; a Certificate of Ownership and Merger filed November 19, 2004; a Certificate of Correction filed September 12, 2005; a Certificate of Amendment filed September 21, 2005; and a Certificate of Amendment filed February 22, 2006.
2. This Amended and Restated Certificate of Incorporation (the "Amended and Restated Certificate of Incorporation") amends and restates the Original Certificate of Incorporation as previously amended.
3. The Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Sections 242 and 245 of the DGCL.
4. This Amended and Restated Certificate of Incorporation amends and restates the Original Certificate of Incorporation as heretofore amended by striking out the Original Certificate of Incorporation as heretofore amended in its entirety and substituting in lieu thereof the Amended and Restated Certificate of Incorporation provided for hereinafter.
5. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware, and notice of the majority written consent of stockholders in lieu of meeting has been provided to the stockholders who did not consent to such action.
6. This Amended and Restated Certificate of Incorporation shall become effective upon the commencement of business on August 10, 2006.

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
MIGO SOFTWARE, INC.

ARTICLE I

Name

The name of the corporation is Migo Software, Inc. (the "Corporation").

ARTICLE II

Registered Office and Registered Agent

The address of the registered office of the Corporation in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Wilmington, County of Kent. The name of the registered agent of the Corporation at such address is National Registered Agents, Inc.

ARTICLE III

Corporate Purpose

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

ARTICLE IV

Capital Stock

The total number of shares of stock which the Corporation shall have authority to issue is Two Hundred Ten Million (210,000,000) shares, which shall be divided into two classes as follows:

A. Two Hundred Million (200,000,000) shares of Common Stock, par value \$.0001 per share; and

B. Ten Million (10,000,000) shares of Preferred Stock, par value \$.0001 per share, of which 5,000,000 shares have been designated as Series A Junior Preferred Stock and 5,000,000 shares remain undesignated. The rights and preferences of the Series A Junior Preferred Stock shall be as set forth in the Certificate of Designations, Preferences and Rights as previously filed with the Secretary of State of Delaware on June 7, 2004, and attached hereto as Exhibit "A" and hereby made a part hereof.

Shares of Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, by adopting appropriate resolutions and causing one or more certificates of amendment to be signed, verified and delivered in accordance with the General Corporation Law of the State of Delaware, to establish from time to time the number of shares to be included in such series, and to fix the designations, relative rights, preferences and limitations of the shares of each such series. Such designations, relative rights, preferences and limitations may include, but are not limited to, the fixing or alteration of the dividend rights, dividend rate, conversion rights, exchange rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, and the liquidation preferences of any wholly unissued series of shares of Preferred Stock, or any of them. In accordance with the authority hereby granted, the Board of Directors may increase or decrease the number of shares of any series subsequent to the issued shares of that series, but not above the total number of authorized shares of Preferred Stock and not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. Except as may otherwise be required by law or this Certificate of Incorporation, the terms of any series of Preferred Stock may be amended without the consent of the holders of any other series of Preferred Stock, or Common Stock.

In the event the application of anti-dilution provisions in contracts or commitments of the Corporation would otherwise require the Corporation to issue more shares than this Amended Certificate of Incorporation authorizes, then the issuance of such shares shall be delayed until such time as there is sufficient authorized capital. In such event, the Corporation shall take all such action as may be necessary to assure that such shares of stock may be issued as committed without violation of any applicable law or this Amended Certificate of Incorporation.

ARTICLE V

Directors

(1) The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors (the "Board of Directors").

(2) Elections of directors of the Corporation need not be by written ballot, except and to the extent provided in the By-laws of the Corporation.

(3) To the fullest extent permitted by the DGCL as it now exists and as it may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

(4) Removal of Directors. Any director, or the entire Board of Directors, may be removed by the stockholders from office at any time prior to the expiration of his term of office, with or without cause, and only by the affirmative vote of a majority of the shares then entitled to vote at an election of directors.

ARTICLE VI

Indemnification of Directors, Officers and Others

(1) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person's conduct was unlawful.

(2) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(3) To the extent that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections (1) and (2) of this Article VI, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

(4) Any indemnification under Sections (1) and (2) of this Article VI (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in such Sections (1) and (2). Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (a) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (b) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (d) by the stockholders of the Corporation.

(5) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation authorized in this Article VI. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

(6) The indemnification and advancement of expenses provided by, or granted pursuant to, the other sections of this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any law, by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

(7) The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of Section 145 of the DGCL.

(8) For purposes of this Article VI, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including

any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

(9) For purposes of this Article VI, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves service by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VI.

(10) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(11) It is the intent of this Corporation under this Article of this Amended and Restated Certificate of Incorporation that the indemnification provided hereunder extend only to the maximum amount permissible under the laws of the State of Delaware. To the extent that there is a conflict between the provisions set forth in this Article and the laws of the State of Delaware, such laws shall govern and if one or more words, phrases, clauses, sentences or sections of this Article should be held unenforceable for any reason, the remaining portions of this Article shall remain in full force and effect only to the extent permissible under the laws of the State of Delaware.

ARTICLE VII

By-Laws

The directors of the Corporation shall have the power to adopt, amend or repeal the By-laws of the Corporation.

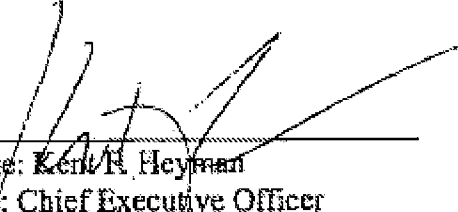
ARTICLE VIII

Amendment

The Corporation reserves the right to amend, alter, change or repeal any provision of this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred on stockholders in this Amended and Restated Certificate of Incorporation are subject to this reservation.

IN WITNESS WHEREOF, POWERHOUSE TECHNOLOGIES GROUP, INC. has caused this Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer and attested by its Secretary on the 17th day of December, 2006.

POWERHOUSE TECHNOLOGIES
GROUP, INC.

By: 
Name: Ken R. Heyman
Title: Chief Executive Officer


ATTEST:
By: 
Name: Richard Liebman
Title: Secretary

EXHIBIT "A" TO AMENDED
AND RESTATED CERTIFICATE
OF INCORPORATION OF
POWERHOUSE TECHNOLOGIES GROUP, INC.

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:46 PM 06/07/2004
FILED 01:39 PM 06/07/2004
SRV 040420309 - 3052598 FILE

CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS

OF

SERIES A JUNIOR CONVERTIBLE PREFERRED STOCK

OF

POWERHOUSE TECHNOLOGIES GROUP, INC.

(Pursuant to Section 151 of the
Delaware General Corporation Law)

PowerHouse Technologies Group, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Company"), hereby certifies that, pursuant to authority vested in the Board of Directors of the Company by Article 4 of the Amended Certificate of Incorporation of the Company, the following resolution was adopted as of April 28, 2004, by the Board of Directors of the Company pursuant to Section 141 of the Delaware General Corporation Law:

"Pursuant to authority vested in the Board of Directors of the Company by Article 4 of the Company's Amended Certificate of Incorporation, of the total authorized number of 25,000,000 shares of Company preferred stock (the "Preferred Stock"), par value \$0.0001 per share, there shall be designated a series of 5,000,000 shares which shall be issued hereunder and constitute a single series to be known as "Series A Junior Convertible Preferred Stock" (hereinafter called the "Series A Junior Preferred Stock"). The shares of Series A Junior Preferred Stock have the voting powers, designations, preferences and other special rights, and qualifications, limitations and restrictions thereof set forth below:

1. Certain Definitions.

"Average Price" shall mean, with respect to any shares of stock or securities, including the Common Stock (as defined below), on any date of determination, the average for the ten (10) consecutive Trading Days (as defined below) preceding and including such date of determination of the reported last sale prices per share on the principal national securities exchange or inter-dealer quotation system on which such stock or security is listed or admitted to trading, or if not listed or admitted to trading on any national securities exchange or inter-dealer quotation system or if last sale prices are not available, the average for the ten (10) consecutive Trading Days preceding and including the date of determination of the average of the closing bid and asked prices per share or security in the over-the-counter market as published by the National Quotation Service or the OTC Bulletin Board or, if no such quotations are published or

Preference and the place where said sums shall be payable shall be given by mail, postage prepaid, not less than 30 or more than 60 days prior to the payment date stated therein, to the holders of record of the Series A Junior Preferred Stock, such notice to be addressed to each shareholder at his post office address as shown by the records of the Company.

3C. Sale as a Liquidation. Unless waived in writing by the holders of a majority of the Series A Junior Preferred Stock then outstanding, voting together as one class, a consolidation or merger of the Company into or with any other entity or entities, or the sale or transfer by the Company of all or substantially all of its assets, in each case under circumstances in which the holders of a majority in voting power of the outstanding capital stock of the Company, immediately prior to such a merger, consolidation or sale, own less than a majority in voting power of the outstanding capital stock of the corporation or the surviving or resulting corporation or acquirer, as the case may be, immediately following such a merger, consolidation or sale (each such transaction being hereinafter referred to as a "Corporate Transaction") shall be treated as a liquidation within the meaning of this Section 3 for the purpose of determining the consideration to be received by holders of the Series A Junior Preferred Stock upon redemption of such shares as well as the timing of such deemed redemption.

4. Conversion. The holders of shares of Series A Junior Preferred Stock shall have the following rights and, in certain cases, obligations, to convert all or a portion of their shares into fully paid and non-assessable shares of Common Stock or any capital stock or other securities into which such Common Stock shall have been changed or any capital stock or other securities resulting from a reclassification thereof:

4A. Right to Convert. Subject to the terms and conditions of this paragraph 4A, the holder of any share or shares of Series A Junior Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series A Junior Preferred Stock into such number of fully paid and nonassessable whole shares of Common Stock as is obtained by multiplying the number of shares of Series A Junior Preferred Stock to be converted by the Junior Liquidation Preference per share and dividing the result by the conversion price of \$3.06 per share or, if there has been an adjustment of the conversion price, by the conversion price as last adjusted and in effect at the date any share or shares of Series A Junior Preferred Stock are surrendered for conversion (such price, or such price as last adjusted, being referred to herein as the "Conversion Price").

Such rights of conversion shall be exercised by the holder thereof by surrender of a certificate or certificates for the shares to be converted to the Company at its principal office (or such other office or agency of the Company as the Company may designate by notice in writing to the holder or holders of the Series A Junior Preferred Stock) at any time during its usual business hours on the date set forth in such notice, together with a properly completed notice of conversion in the form attached to the Series A Junior Preferred Stock certificate with a statement of the name or names (with address), subject to compliance with applicable laws to the extent such designation shall involve a transfer, in which the certificate or certificates for shares of Common Stock, shall be issued. Accrued and unpaid dividends on the Series A Junior Preferred Stock shall be taken into

account in determining the number of shares of Common Stock to be received by holders upon conversion, provided, however, no dividends will be paid on the Series A Junior Preferred Stock at the time of conversion.

4B. Issuance of Certificates: Time Conversion Effected. Promptly after the receipt by the Company of the written notice referred to in subparagraph 4A and surrender of the certificate or certificates for the share or shares of the Series A Junior Preferred Stock to be converted, the Company shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, subject to compliance with applicable laws to the extent such designation shall involve a transfer, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Series A Junior Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected and the Conversion Price shall be determined as of the close of business on the date on which such written notice shall have been received by the Company and the certificate or certificates for such shares shall have been surrendered as aforesaid, and at such time the Series A Junior Preferred Stock rights of the holder of such share or shares shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

4C. Fractional Shares; Dividends; Partial Conversion. No fractional shares shall be issued upon conversion of the Series A Junior Preferred Stock into Common Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share, and no payment or adjustment shall be made upon any conversion on account of any cash dividends paid on the Series A Junior Preferred Stock so converted or the Common Stock issued upon such conversion. In case the number of shares of Series A Junior Preferred Stock represented by the certificate or certificates surrendered pursuant to subparagraph 4A exceeds the number of shares converted, the Company shall upon such conversion, execute and deliver to the holder thereof at the expense of the Company, a new certificate for the number of shares of Series A Junior Preferred Stock represented by the certificate or certificates surrendered which are not to be converted.

4D. Adjustment of Conversion Price Upon Issuance. The Conversion Price shall not be adjusted if the Company shall issue or sell, or is, in accordance with subparagraphs 4D(1) through 4D(9), deemed to have issued or sold, any shares of Excluded Stock. Further, provided that any adjustment of the conversion price of the Series A Junior Preferred Stock does not dilute the shares of the Series A Senior Preferred Stock, and if and at any time or from time to time, after the date of first issuance of shares of Series A Junior Preferred Stock (the "Original Issuance Date") a Triggering Event shall occur, the Conversion Price of the Series A Junior Preferred Stock shall be immediately adjusted as follows: the aggregate number of shares of Common Stock into which the shares of Series A Junior Preferred Stock shall be convertible shall be the number of shares of Common Stock equal to the result obtained by multiplying (x) the "Post-Event Number of Net Common Shares" by (y) the "Pre-Event Junior Preferred

Portion". For such purposes (I) the Post-Event Number of Net Common Shares shall be the difference between (A) the sum of all the shares of (i) the Common Stock issued and outstanding (including the shares of Common Stock owned or claimed to be owned by the Proctor Group) and (ii) reserved for issuance upon exercise or conversion or exchange of all outstanding securities of the Company that are exercisable or exchangeable for, or convertible into, Common Stock and (B) the sum of all shares of Common Stock theretofore issued and issuable upon conversion of the Series A Senior Preferred Stock, and (II) the Pre-Event Junior Preferred Portion shall be a fraction, (A) the numerator of which shall be the number of shares of Common Stock into which the Series A Junior Preferred Stock is convertible immediately prior to the occurrence of such Triggering Event and (B) the denominator of which shall be the difference between (i) the sum of all shares of Common Stock issued and reserved for issuance on such date and (ii) the shares of Common Stock issued and reserved for issuance upon conversion of the Series A Senior Preferred Stock.

No adjustment of the Conversion Price, however, shall be made in an amount less than \$0.01 per share, and any such lesser adjustment shall be carried forward and shall be made at the time and together with the next subsequent adjustment which together with any adjustments so carried forward shall amount to \$0.01 per share or more.

For purposes of this subparagraph 4D, the following paragraphs 4D(1) to 4D(8) shall also be applicable:

4D(i). Issuance of Rights or Options. In case at any time the Company shall in any manner grant (whether directly or by assumption in a merger or otherwise) any rights to subscribe for or to purchase, or any option or warrant for the purchase of, Common Stock or any stock or securities convertible into or exchangeable for Common Stock (such rights or options being herein called "Options" and such convertible or exchangeable stock or securities being herein called "Convertible Securities" and, together with Options, the "Common Stock Equivalents"), whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Company as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Company upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issued upon the exercise of such Options shall be deemed to have

been issued for such price per share as of the date of granting of such Options and thereafter shall be deemed to be outstanding. Except as otherwise provided in subparagraph 4D(3), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

4D(2). Issuance of Convertible Securities. In case the Company shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert thereunder are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Company as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in subparagraph 4D(3) below, no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities, and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Option to purchase any such Convertible Securities for which adjustments of the Conversion Price have been or are to be made pursuant to other provisions of this subparagraph 4D, no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

4D(3). Change in Option Price or Conversion Rate. If (1) the purchase price provided for in any Option referred to in subparagraph 4D(1); (2) the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph 4D(1) or 4D(2); or (3) the rate at which any Convertible Securities referred to in subparagraph 4D(1) or 4D(2) are convertible into or exchangeable for Common Stock shall change at any time (in each case other than under or by reason of provisions providing solely for protections of the holders of such Option or Convertible Securities against dilution), then the Conversion Price in effect at the time of such event shall forthwith be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; and on the expiration of any such Option or the termination of any such right to convert or exchange such Convertible Securities, the Conversion Price then in effect hereunder shall forthwith be increased to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding

immediately prior to such expiration or termination never been issued, and the Common Stock issuable thereunder shall no longer be deemed to be outstanding. If the purchase price provided for in any such Option referred to in subparagraph 4D(1) or the rate at which any Convertible Securities referred to in subparagraph 4D(1) or 4D(2) are convertible into or exchangeable for Common Stock shall be reduced at any time under or by reason of provisions with respect thereto providing solely for protection of the holders of such Option or Convertible Securities against dilution, then, in case of the delivery of Common Stock upon the exercise of any such Option or upon conversion or exchange of any such Convertible Securities, the Conversion Price then in effect hereunder shall forthwith be adjusted to such respective amount as would have been obtained had such Option or Convertible Securities never been issued as to such Common Stock and had adjustments been made upon the issuance of the shares of Common Stock delivered as aforesaid, but only if as a result of such adjustment the Conversion Price then in effect hereunder is thereby reduced.

4D(4). Stock Dividends. In case the Company shall declare a dividend or make any other distribution upon any stock of the Company payable in Common Stock, Options or Convertible Securities, any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration and the Conversion Price then in effect immediately prior to such dividend declaration or distribution shall be reduced as if the Company had subdivided its outstanding shares of Common Stock into a greater number of shares as provided in subparagraph 4D(5).

4D(5). Subdivision or Combination of Stock. In case the Company shall at any time subdivide its outstanding shares of Common Stock or Convertible Securities into a greater number of shares or shall declare or pay a dividend on its outstanding shares of Common Stock payable in shares of Common Stock, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and conversely, in case the outstanding shares of Common Stock of the Company shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased.

4D(6). Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received shall be deemed to be the amount received by the Company therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Company in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Company, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Company in connection therewith. The amount of consideration deemed to be received by the Company pursuant to the foregoing provisions of this subparagraph 4D(6) upon any issuance and/or sale of shares of Common Stock, Options or Convertible Securities, pursuant to an established

compensation plan of the Company, to directors, officers or employees of the Company in connection with their employment shall be increased by the amount of any tax benefit realized by the Company as a result of such issuance and/or sale, the amount of any tax benefit being the amount by which the Federal and/or state income or other tax liability of the Company shall be reduced by reason of any deduction or credit in respect of such issuance and/or sale. In case any Options shall be issued in connection with the issue and sale of other securities of the Company, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued without consideration.

4D(7). Record Date. In case the Company shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities, or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

4D(8). If at any time or from time to time after the Original Issuance Date, the Company shall issue or distribute to the holders of shares other than Preferred Shares (the "Dividend Stock") evidences of its indebtedness, any other securities of the Company or any cash, property or other assets (excluding a subdivision, combination or reclassification, or dividend or distribution payable in shares of Common Stock, referred to in Section 4D(4) or 4D(5), or dividends on Common Stock and also excluding cash dividends or cash distributions paid out of net profits legally available therefor in the full amount thereof) (any such non-excluded event being herein called a "Special Dividend"), the Conversion Price shall be adjusted by multiplying the Conversion Price then in effect by a fraction, the numerator of which shall be the then Current Market Price per share of the Dividend Stock in effect on the record date of such issuance or distribution less the fair market value (as determined in good faith by the Company's Board of Directors) of the Special Dividend applicable to one share of Dividend Stock and the denominator of which shall be the then Current Market Price Per Share of the Dividend Stock in effect on the record date of such issuance or distribution. An adjustment made pursuant to this Subsection 4D(8) shall become effective immediately after the record date of any such Special Dividend.

4E. Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the Company shall be effected in such a way (including, without limitation, by way of consolidation or merger, but excluding a consolidation, merger or sale which is treated as a liquidation with respect to holders of Series A Junior Preferred Stock for purposes of Section 3) that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock then, as a condition of such reorganization or reclassification, lawful and adequate provision (in form satisfactory to the holders of at least a majority of the outstanding shares of Series A Junior Preferred Stock, voting together as one class) shall

be made whereby each holder of a share or shares of Series A Junior Preferred Stock shall thereafter have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock of the Company immediately theretofore receivable upon the conversion of such share or shares of the Series A Junior Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of Common Stock equal to the number of shares of such stock immediately theretofore so receivable had such reorganization or reclassification not taken place and in any such case appropriate provision shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights (including an immediate adjustment, by reason of such reorganization or reclassification, of the Conversion Price to the value for the Common Stock reflected by the terms of such reorganization or reclassification if the value so reflected is less than the Conversion Price in effect immediately prior to such reorganization or reclassification). In the event of a merger or consolidation of the Company as a result of which a greater or lesser number of shares of common stock of the surviving corporation are issuable to holders of the Common Stock of the Company outstanding immediately prior to such merger or consolidation, the Conversion Price in effect immediately prior to such merger or consolidation shall be adjusted in the same manner as though there were a subdivision or combination of the outstanding shares of Common Stock of the Company. The Company shall not effect any such consolidation or merger, or any sale of all or substantially all its assets and properties, unless prior to the consummation thereof the successor corporation (if other than the Company) resulting from such consolidation or merger or the corporation purchasing such assets shall assume by written instrument (in form satisfactory to the holders of at least a majority of the outstanding shares of Series A Junior Preferred Stock voting together as one class) executed and mailed or delivered to each holder of shares of Series A Junior Preferred Stock at the last address of such holder appearing on the books of the Company, the obligation to deliver to such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to receive.

4F. Notice of Adjustment. Upon any adjustment of the Conversion Price, then, and in each such case the Company shall give written notice thereof by first class mail, postage prepaid, addressed to each holder of shares of Series A Junior Preferred Stock at the address of such holder as shown on the books of the Company, which notice shall state the Conversion Price resulting from such adjustment, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

4G. Other Notices. In case at any time:

- (1) the Company shall declare any dividend upon its Common Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;
- (2) the Company shall offer for subscription pro rata to the holders of its Common Stock any additional shares of such stock of any class or other rights;
- (3) there shall be any capital reorganization or reclassification of the capital stock of the Company, or a consolidation or merger of the Company with, or a sale of all or substantially all its assets to, another corporation; or
- (4) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in any one or more of said cases, the Company shall give, by first class mail, postage prepaid, addressed to each holder of any shares of Series A Junior Preferred Stock at the address of such holder as shown on the books of the Company, (a) at least 15 days prior written notice of the date on which the books of the Company shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, and (b) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least 15 days prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be.

4H. Mandatory Conversion. Each share of Series A Junior Preferred Stock shall be converted, automatically and without further action on the part of any person or the Company, into that number of shares of Common Stock as is equal to the quotient obtained by dividing (i) the Junior Liquidation Preference per share of the Series A Junior Preferred Stock by (ii) the then applicable Conversion Price (A) no less than 30 days after the Company provides written notice to holders of the Series A Junior Preferred Stock certifying that the minimum closing price (determined on the basis of the average weighted daily trading price) of the Common Stock for 35 consecutive trading days has exceeded three times the original Junior Liquidation Preference of the Series A Junior Preferred Stock, plus accrued and unpaid dividends, and has traded in volumes of at least 100,000 shares per day during such 35-day period; (B) upon receipt of the written notice of holders of a majority of the then-outstanding shares of Series A Junior Preferred Stock of their election to cause an automatic conversion pursuant to this subparagraph 4H; or

(C) upon the closing of an underwritten public offering of at least 15% of the Common Stock outstanding immediately prior to such offering (including a Rule 144A/Regulation S offering) with proceeds of at least \$25,000,000 to the Company, at a price per share of at least six times the Original Purchase Price (appropriately adjusted to reflect the occurrence of any stock split, stock dividend, stock combination, stock subdivision or like occurrences), plus any accrued but unpaid dividends owed to holders of the Series A Junior Preferred Stock on an as-converted basis (a "Qualified Financing"). Any such conversion shall be effected in accordance with the provisions of subparagraphs 4B and 4C hereof

4I. Stock to be Reserved. The Company shall at all times reserve and keep available out of its authorized but unissued Common Stock solely for the purpose of issuance upon the conversion of the Series A Junior Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Series A Junior Preferred Stock. All shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all liens, duties and charges arising out of or by reason of the issue thereof (including, without limitation, in respect of taxes) and, without limiting the generality of the foregoing, the Company covenants that it shall from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all times equal to or less than the effective Conversion Price. The Company shall take all such action within its control as may be necessary on its part to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirements of any national securities exchange upon which the Common Stock of the Company may be listed. The Company shall not take any action which results in any adjustment of the Conversion Price if after such action the total number of shares of Common Stock issued and outstanding and thereafter issuable upon exercise of all options and conversion of Convertible Securities, including upon conversion of the Series A Junior Preferred Stock, would exceed the total number of shares of such class of Common Stock then authorized by the Company's Certificate of Incorporation.

4J. No Reissuance of Series A Junior Preferred Stock. Shares of Series A Junior Preferred Stock that are converted into shares of Common Stock as provided herein shall not be reissued.

4K. Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of the Series A Junior Preferred Stock shall be made without charge to the holders thereof for any issuance tax, stamp tax, transfer tax, duty or charge in respect thereof, provided that the Company shall not be required to pay any tax, duty or charge which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Series A Junior Preferred Stock which is being converted.

4L. Closing of Books. The Company will at no time close its transfer books against the transfer of any Series A Junior Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Series A Junior Preferred

Stock in any manner which interferes with the timely conversion of such Series A Junior Preferred Stock; provided, however, nothing herein shall be construed to prevent the Company from setting record dates for the holders of its securities.

5. Restriction on Employee Shares. All Common Stock held by employees of the Company shall be nontransferable by such employees until the effective date of a registration statement filed by the Company with respect to such shares. In the event that any such employee shares become transferable by operation of law, the Company shall have the right to repurchase such shares at book value, based on the Company's then most current financial statements.

6. Voting - Series A Junior Preferred Stock. In addition to any class voting rights provided by law and this Certificate of Designation, the holders of Series A Junior Preferred Stock shall have the right to vote together with the holders of Common Stock as a single class on any matter on which the holders of Common Stock are entitled to vote. With respect to the voting rights of the holders of the Series A Junior Preferred Stock pursuant to the preceding sentence, each holder of Series A Junior Preferred Stock shall be entitled to one vote for each share of Common Stock that would be issuable to such holder upon the conversion of all the shares of Series A Junior Preferred Stock held by such holder on the record date for the determination of shareholders entitled to vote (including as adjusted after giving effect to a Triggering Event).

7. Restrictions on Transfer. Transfers of the Series A Junior Preferred Stock shall be unrestricted, except (a) as to legal compliance (e.g., that the transaction is not subject to the registration requirements of the Securities Act and any applicable state securities laws); (b) as to transfers to certain persons or entities that are competitors of the Company; and (c) as to transfers to any member of the Proctor Group or any former director or officer of Agate Technologies, Inc. All transferees of the Junior Preferred Stock are required to certify that they are not members of the Proctor Group by completing and furnishing to the Company a transfer certification in substance and form reasonably satisfactory to the Company.

8. No Waiver. Except as otherwise modified or provided for herein, the holders of Series A Junior Preferred Stock shall also be entitled to, and shall not be deemed to have waived, any other applicable rights granted to such holders under the applicable provisions of Delaware law.

9. No Impairment. The Company shall not, through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company but shall at all time in good faith assist in the carrying out of all the provisions of Article Four and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights and liquidation preferences granted hereunder of the holders of the Series A Junior Preferred Stock against impairment.

IN WITNESS WHEREOF, this Certificate of Designation has been executed by the Company by its President as of this 28th day of April, 2004.

POWERHOUSE TECHNOLOGIES GROUP, INC.

By: 
Name: Jay Elliot
Title: Chief Executive Officer