

02-21-2006

FORM PTO-1595

RECOR

U.S. Department of Commerce

2/13/06



103129574

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name and address of conveying party(ies):
 Name: Primera Diagnostics, Inc.
 Street Address: One Richmond Square
 City: Providence
 State: RI ZIP: 02906

2. Name and address of receiving party(ies):
 Name: Primera BioSystems, Inc.
 Internal Address: _____
 Internal Address: _____
 Street Address: One Richmond Square
 City: Providence
 State: RI ZIP: 02906

Additional name(s) of conveying party(ies) attached? Yes No

Additional name(s) and address(es) attached? Yes No

3. Nature of Conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other _____
 Execution Date: May 26, 2005

4. Application number(s) or registration numbers:
If being submitted with New Application, execution date of application is:
 A. Patent Application No.(s) 10/113,034;
10/464,941;
10/387,286;
10/719,185;
10/600,201
60/439,122;
10/752,123;
10/719,746;
60/440,010;
60/550,512; and
60/636,770.

B. Patent No.(s)

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
 Name: Kathleen Williams
 Internal Address: Edwards, Angell, Palmer & Dodge LLP
 Street Address: 111 Huntington Avenue
 City: Boston State: MA ZIP: 02199

6. Total number of application and patents involved: 11
 7. Total fee (37 CFR 3.41) \$ 440.00
 Enclosed
 Authorized to charge deficiencies to deposit account
 8. Deposit account number: 16-0085 Ref. 219781/1
 (Attach duplicate copy of this page if paying by deposit account)

02/21/2006 DBYRNE 00000275 160085 10113034

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9. Statement and signature.
 To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

P.03

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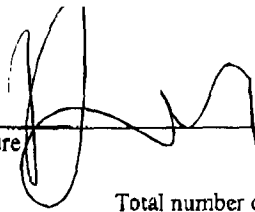
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PATENT

REEL: 017196 FRAME: 0284

Kathleen Williams
Name of Person Signing

Signature



2/13/06
Date

Total number of pages comprising cover sheet
attachment and document: 18

Mail documents to be recorded with required cover sheet information to:
Mail Stop Assignment and Recordation Services, Commissioner of Patents and Trademarks,
P.O. Box 1450, Alexandria, VA 22313-1450

Delaware

PAGE 1

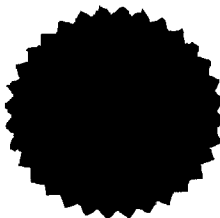
The First State

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 "PRIMERA DIAGNOSTICS, INC.", CHANGING ITS NAME FROM "PRIMERA DIAGNOSTICS, INC." TO "PRIMERA BIOSYSTEMS, INC.", FILED IN THIS OFFICE ON THE TWENTY-SIXTH DAY OF MAY, A.D. 2005, AT 10:48 O'CLOCK A.M.

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

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050437514



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3907237

DATE: 05-26-05

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:55 AM 05/26/2005
FILED 10:48 AM 05/26/2005
SRV 050437514 - 3905043 FILE

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

OF

PRIMERA DIAGNOSTICS, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Primera Diagnostics, Inc., a Delaware corporation, hereby certifies as follows:

1. The name of the corporation is Primera Diagnostics, Inc. (the "Corporation"). The date of filing of the Certificate of Incorporation of the Corporation with the Secretary of State of Delaware was December 30, 2004 (the "Certificate of Incorporation").

2. The Certificate of Incorporation is hereby amended, among other provisions, to amend Article ~~FIRST~~ to change the name of the Corporation to Primera BioSystems, Inc.

3. The Certificate of Incorporation is hereby amended and restated to, among other things, amend Article *FOURTH* to change the capitalization of the Corporation so that:

(a) The new Article *FOURTH* provides that, upon the effectiveness of this Amended and Restated Certificate of Incorporation and after giving effect to the 1.144477-for-1 reverse stock split and the 1.22738897-for-1 reverse stock split described in paragraph 3(b) below, the total number of shares of all classes of stock which the Corporation shall have authority to issue is Thirty-Five Million (35,000,000) shares of Common Stock, Zero Dollars and One-Tenth of One Cent (\$0.001) Par Value per share (the "Common Stock"), and Twenty-Five Million (25,000,000) shares of Preferred Stock, Zero Dollars and One-Tenth of One Cent (\$0.001) Par Value per share (the "Preferred Stock").

(b) The new Article *FOURTH* provides that, effective upon the filing of this Amended and Restated Certificate of Incorporation with the Secretary of State of Delaware and without reducing the Par Value thereof and without regard to the date on which any stockholder of the Corporation shall surrender the certificates representing such shares of capital stock owned by such stockholder, there shall be (i) a 1.144477-for-1 reverse stock split of the issued and outstanding shares of Common Stock, such that immediately upon such filing every 1.144477 shares of Common Stock issued and outstanding immediately prior to such filing shall be converted and reclassified into and exchanged for one share of Common Stock and (ii) a 1.22738897-for-1 reverse stock split of the issued and outstanding shares of Series A Convertible Preferred Stock, Zero Dollars and One-Tenth of One Cent (\$0.001) Par Value per share ("Series A Preferred Stock"), such that immediately upon such filing every 1.22738897 shares of Series A Preferred Stock issued and outstanding immediately prior to such filing shall be converted and reclassified into and exchanged for one share of Series A Preferred Stock.

(c) The new Article *FOURTH* designates a new series of Preferred Stock as Series A-1 Convertible Preferred Stock, Zero Dollars and One-Tenth of One Cent (\$0.001) Par

Value per share, consisting of an aggregate of Eleven Million (11,000,000) shares and sets forth the powers, preferences and rights of such series of Preferred Stock and the qualifications, limitations and restrictions thereof.

(d) Certain other provisions of the Certificate of Incorporation are amended and conformed as required to implement the foregoing and certain other changes.

4. Pursuant to Section 228(a) of the General Corporation Law of the State of Delaware, the holders of outstanding shares of the Corporation having no less than the minimum number of votes that would be necessary to authorize or take such actions at a meeting at which all shares entitled to vote thereon were present and voted, consented to the adoption of the aforesaid amendments without a meeting, without a vote and without prior notice and that written notice of the taking of such actions is being given in accordance with Section 228(e) of the General Corporation Law of the State of Delaware.

5. This Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Certificate of Incorporation of said Corporation and has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

6. The text of the Certificate of Incorporation is hereby amended and restated to read in full as follows:

"RESTATED CERTIFICATE OF INCORPORATION

OF

PRIMERA BIOSYSTEMS, INC.

FIRST: The name of the corporation (hereinafter called the "Corporation") is

PRIMERA BIOSYSTEMS, INC.

SECOND: The address, including street, number, city, and county, of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle; and the name of the registered agent of the Corporation in the State of Delaware is Corporation Service Company.

THIRD: The nature of the business to be conducted and the purposes of the Corporation are:

To purchase or otherwise acquire, invest in, own, lease, mortgage, pledge, sell, assign and transfer or otherwise dispose of, trade and deal in and with real property and personal property of every kind, class and description (including, without limitation, goods, wares and merchandise of every kind, class and description), to manufacture goods, wares and merchandise of every kind, class and description, both on its own account and for others;

To make and perform agreements and contracts of every kind and description; and

Generally to engage in any lawful act or activity or carry on any business for which corporations may be organized under the General Corporation Law of the State of Delaware or any successor statute.

FOURTH: At the time the filing of this Restated Certificate of Incorporation with the Secretary of State of Delaware becomes effective, there shall be (i) a 1.144477-for-1 reverse stock split of the issued and outstanding shares of Common Stock (as defined below), such that immediately upon such filing every 1.144477 shares of Common Stock issued and outstanding immediately prior to such filing shall be converted and reclassified into and exchanged for one share of Common Stock and (ii) a 1.22738897-for-1 reverse stock split of the issued and outstanding shares of Series A Preferred Stock (as defined below), such that immediately upon such filing every 1.22738897 shares of Series A Preferred Stock issued and outstanding immediately prior to such filing shall be converted and reclassified into and exchanged for one share of Series A Preferred Stock (collectively, the "Reverse Stock Splits").

The foregoing shall occur automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares issuable upon such conversion, reclassification and exchange unless certificates evidencing such shares which have been so converted, reclassified and exchanged are either delivered to the Corporation as hereinafter provided or the holder notifies the Corporation that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith.

Upon the occurrence of such conversion, reclassification and exchange, the holders of the shares so converted, reclassified and exchanged shall surrender the certificates representing such shares at the office of the Corporation. Thereupon there shall be issued and delivered to such holder at such office and in the name shown on such surrendered certificate or certificate(s), a certificate for the number of shares of Common Stock or Series A Preferred Stock, as the case may be, for which the surrendered shares have been converted, reclassified and exchanged, dated as of the date on which such automatic conversion, reclassification and exchange occurs.

No fractional shares of Common Stock or Series A Preferred Stock to which any stockholder would otherwise be entitled resulting from such conversion, reclassification and exchange shall be issued, but in lieu thereof, each stockholder of the Corporation who otherwise would be entitled to a fraction of a share of Common Stock or Series A Preferred Stock upon such conversion, reclassification and exchange (except those stockholders who have agreed to waive such payment) shall be entitled to receive a cash payment equal to the product of such fractional interest multiplied by the Common Stock's or Series A Preferred Stock's, as the case may be, fair market value as determined in good faith by the Board of Directors of the Corporation as of the date of such conversion, reclassification and exchange.

A. Authorization of Stock. After giving effect to the Reverse Stock Splits, the total number of shares of all classes of stock which the Corporation shall have authority to issue is Sixty

Million (60,000,000), consisting of:

(i) Thirty-Five Million (35,000,000) shares of Common Stock, Zero Dollars and One-Tenth of One Cent (\$0.001) Par Value per share (the "Common Stock"); and

(ii) Twenty-Five Million (25,000,000) shares of Preferred Stock, Zero Dollars and One-Tenth of One Cent (\$0.001) Par Value per share (the "Preferred Stock").

B. Common Stock.

1. **General.** The voting, dividend and liquidation and other rights of the holders of the Common Stock are expressly made subject to and qualified by the rights of the holders of any series of Preferred Stock.

2. **Voting Rights.** The holders of record of the Common Stock are entitled to one vote per share on all matters to be voted on by the Corporation's stockholders.

The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

3. **Dividends.** Dividends may be declared and paid on the Common Stock from funds lawfully available therefor if, as and when determined by the Board of Directors of the Corporation in their sole discretion, subject to provisions of law, any provision of this Restated Certificate of Incorporation, as amended from time to time, and subject to the relative rights and preferences of any shares of Preferred Stock authorized, issued and outstanding hereunder.

4. **Liquidation.** Upon the dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, holders of record of the Common Stock will be entitled to receive *pro rata* all assets of the Corporation available for distribution to its stockholders, subject, however, to the liquidation rights of the holders of Preferred Stock authorized, issued and outstanding hereunder.

C. Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation is authorized, subject to any limitations prescribed by law, to provide for the issuance of shares of Preferred Stock in series, and by filing a certificate pursuant to the applicable law of the State of Delaware (such certificate being hereafter referred to as a "Preferred Stock Designation"), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and any qualifications, limitations or restrictions thereof. In the event that at any time the Board of Directors of the Corporation shall have established and designated one or more series of Preferred Stock consisting of a number of shares less than all of the authorized number of shares of Preferred Stock, the remaining authorized shares of Preferred Stock shall be deemed to be shares of an undesignated series of Preferred Stock unless and until designated by the Board of Directors of the Corporation as being part of a series previously established or a new series then being established by the Board of Directors of the Corporation. Notwithstanding the fixing of the number of shares constituting a particular series, the Board of

Directors of the Corporation may at any time thereafter authorize an increase or decrease in the number of shares of any such series except as set forth in the Preferred Stock Designation for such series. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status of authorized undesignated Preferred Stock unless and until designated by the Board of Directors of the Corporation as being part of a series previously established or a new series then being established by the Board of Directors of the Corporation. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of the capital stock of the Corporation entitled to vote thereon, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware, without a vote of the holders of the Preferred Stock or of any series thereof, voting as a separate class, unless a vote of any such holders is required pursuant to the terms of any Preferred Stock Designation or the Restated Certificate of Incorporation.

D. Series A Convertible Preferred Stock and Series A-1 Convertible Preferred Stock.
After giving effect to the Reverse Stock Splits, Seven Million Six Hundred Sixty Thousand Seven Hundred Seventy-Eight (7,660,778) shares of Preferred Stock of the Corporation are hereby designated "Series A Convertible Preferred Stock" (the "Series A Preferred Stock") and Eleven Million (11,000,000) shares of Preferred Stock of the Corporation are hereby designated "Series A-1 Convertible Preferred Stock" (the "Series A-1 Preferred Stock," together with the Series A Preferred Stock, the "Designated Preferred Stock").

The Designated Preferred Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations:

1. Dividends.

(a) The holders of shares of Designated Preferred Stock shall be entitled to receive, out of funds legally available therefor, dividends equal to 5% of the Principal Amount of such series of Designated Preferred Stock, as defined below, per share per annum, payable when, if and as declared by the Board of Directors of the Corporation. Such dividends shall not be cumulative and, therefore, if not declared in any year, the right to such dividend shall terminate and shall not carry forward to the next year. The "Series A Principal Amount" per share shall equal \$1.00 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares, other than the Reverse Stock Splits) and the "Series A-1 Principal Amount" per share shall equal \$1.00 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares, other than the Reverse Stock Splits).

(b) The Corporation shall not declare or pay any cash dividends on shares of Common Stock or any class or series of stock ranking on liquidation junior to the Designated Preferred Stock until the holders of the Designated Preferred Stock then outstanding shall have first received a dividend at the rate specified in paragraph (a) of this Section 1.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) (i) In the event of any voluntary or involuntary liquidation, dissolution

or winding up of the Corporation, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, on the same terms and conditions as the holders of Series A-1 Preferred Stock, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Series A Preferred Stock by reason of their ownership thereof, an amount equal to \$1.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares, other than the Reverse Stock Splits) (the "Series A Preference Amount") plus an amount equal to any declared but unpaid dividends thereon.

(ii) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A-1 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, on the same terms and conditions as the holders of Series A Preferred Stock, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Series A-1 Preferred Stock by reason of their ownership thereof, an amount equal to \$1.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares, other than the Reverse Stock Splits) (the "Series A-1 Preference Amount") plus an amount equal to any declared but unpaid dividends thereon.

(iii) If upon any such liquidation, dissolution or winding up of the Corporation the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Designated Preferred Stock the full amount to which they shall be entitled under this Section 2(a), the holders of shares of Designated Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Designated Preferred Stock shall share ratably in any distribution of the assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares of Designated Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid the full amount they would have been entitled to prior to the distribution of any assets to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Designated Preferred Stock.

(b) After the payment of all preferential amounts required to be paid to the holders of Designated Preferred Stock or any other class or series of stock ranking on liquidation prior to and in preference to the Common Stock, upon the dissolution, liquidation or winding up of the Corporation, the remaining assets and funds of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock and any other class or series of stock entitled to participate in liquidation distributions with the holders of Common Stock, *pro rata* based on the number of shares of Common Stock held by each.

(c) Notwithstanding anything to the contrary in Section 2(a), upon any liquidation, dissolution or winding up of the Corporation, each holder of Designated Preferred Stock shall be entitled to an amount per share of Designated Preferred Stock then held equal to the greater of (i) the amount determined pursuant to Section 2(a) or (ii) the amount that such holder would have received with respect to each such share of Designated Preferred Stock if each such share of Designated Preferred Stock had been converted into the number of shares of Common Stock issuable upon conversion thereof immediately prior to such liquidation,

dissolution or winding up.

(d) Any (1) merger or consolidation in which (A) the Corporation is a constituent party or (B) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation (except any such merger or consolidation involving the Corporation or a subsidiary in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold immediately following such merger or consolidation at least 51% by voting power of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation), or (ii) sale or other disposition of all or substantially all of the capital stock or assets of the Corporation, shall be deemed to be a liquidation for purposes of this Section 2. The amount deemed distributed to the holders of Designated Preferred Stock upon any such merger, consolidation or sale shall be the cash or the value of the property, rights or securities distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or other securities shall be determined in good faith by the Board of Directors of the Corporation.

3. Voting. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written action of stockholders in lieu of meeting), each holder of outstanding shares of Designated Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Designated Preferred Stock held by such holder is then convertible in accordance with Section 4(a) hereof, determined as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the provisions establishing any other series of Preferred Stock, holders of Designated Preferred Stock shall vote together with the holders of Common Stock as a single class.

4. Optional Conversion and Conversion Price Adjustment. The holders of Designated Preferred Stock shall have conversion rights as follows:

(a) Right to Convert.

(i) Optional Conversion.

(A) Each share of Designated Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Preference Amount of such series of Designated Preferred Stock by the Conversion Price (as defined below) in effect at the time of conversion (the "Conversion Rate"). The "Conversion Price" shall (i) initially be \$1.00 with respect to the Series A Preferred Stock and (ii) initially be \$1.00 with respect to the Series A-1 Preferred Stock. The Conversion Price shall be subject to adjustment as provided below.

(B) In order for a holder of Designated Preferred Stock to convert shares of Designated Preferred Stock into shares of Common Stock pursuant to this Section 4(a)(i), such holder shall surrender the certificate or certificates for such shares of Designated Preferred Stock, at the office of the transfer agent for the Designated Preferred Stock

(or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Designated Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver to such holder of Designated Preferred Stock, or to his or its nominee, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled and cash as provided in Section 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(ii) Mandatory Conversion.

(A) Upon (i) the closing of an underwritten public offering on a firm commitment basis pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation in which the aggregate gross proceeds to the Corporation exceed \$15,000,000, or (ii) the date or event specified in a written election of the holders of at least two-thirds of the outstanding shares of Designated Preferred Stock (the "Mandatory Conversion Date"), each outstanding share of Designated Preferred Stock shall automatically be converted without the payment of additional consideration by the holder thereof, into shares of Common Stock at the applicable Conversion Rate.

(B) All holders of record of shares of Designated Preferred Stock shall be given written notice by the Corporation at least ten (10) days prior to the Mandatory Conversion Date, which notice shall inform them of the place designated for mandatory conversion of all such shares of Designated Preferred Stock pursuant to this Section 4(a)(ii). Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Designated Preferred Stock at such holder's address last shown on the records of the transfer agent for the Designated Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). Each holder of shares of Designated Preferred Stock shall surrender his or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 4(a)(ii). On the Mandatory Conversion Date, all outstanding shares of Designated Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Designated Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock) will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Designated Preferred Stock has been converted. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of

transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Designated Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Designated Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock as determined in good faith by the Board of Directors of the Corporation.

(c) Reservation of Common Stock. The Corporation shall at all times when the Designated Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Designated Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Designated Preferred Stock. Before taking any action which would cause an adjustment reducing the applicable Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Designated Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(d) Treatment of Designated Preferred Stock. All shares of Designated Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date or the Mandatory Conversion Date, as applicable, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Designated Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Designated Preferred Stock accordingly.

(e) Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Designated Preferred Stock. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Designated Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(f) Adjustment for Stock Splits and Combinations.

(i) If the Corporation shall at any time or from time to time after the effective date of this Restated Certificate of Incorporation effect a subdivision of the outstanding Common Stock without at the same time effecting a subdivision of the outstanding shares of Designated Preferred Stock, the Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the effective date of this Restated Certificate of Incorporation combine the outstanding shares of Common Stock without at the same effecting a combination of the outstanding shares of Designated Preferred Stock, the Conversion Price then in effect immediately before the combination shall be proportionately increased.

(ii) If the Corporation shall at any time after the effective date of this Restated Certificate of Incorporation effect a subdivision of the outstanding shares of Designated Preferred Stock into a greater number of shares of Designated Preferred Stock without at the same time effecting a subdivision of the outstanding shares of Common Stock, the Conversion Price in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such event, be proportionately increased, and, conversely, in case the outstanding shares of Designated Preferred Stock shall be combined into a smaller number of shares of Designated Preferred Stock, the Conversion Price in effect immediately prior to such combination shall, concurrently with the effectiveness of such event, be proportionately reduced.

Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after effective date of this Restated Certificate of Incorporation shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Conversion Price then in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided, further, however, that no such adjustment shall be made if the holders of Designated Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Designated Preferred Stock had

been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Designated Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(h) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the effective date of this Restated Certificate of Incorporation shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than shares of Common Stock) or in cash or other property (other than cash out of earnings or earned surplus, determined in accordance with generally accepted accounting principles), then and in each such event provision shall be made so that the holders of Designated Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the kind and amount of securities of the Corporation, cash or other property which they would have been entitled to receive had the Designated Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of Designated Preferred Stock; provided, however, that no such adjustment shall be made if the holders of Designated Preferred Stock simultaneously receive a dividend or other distribution of such securities, cash or other property in an amount equal to the amount of such securities as they would have received if all outstanding shares of Designated Preferred Stock had been converted into Common Stock on the date of such event.

(i) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 2(c), if there shall occur any reorganization, recapitalization, consolidation or merger involving the Corporation in which the Common Stock (but not Designated Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Sections 4(f), (g) or (h)), then, following any such reorganization, recapitalization, consolidation or merger, each share of Designated Preferred Stock shall be convertible into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Designated Preferred Stock immediately prior to such reorganization, recapitalization, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of Designated Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Designated Preferred Stock.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price in an amount greater than \$0.01 pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Designated Preferred Stock a

certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Designated Preferred Stock, furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of the Designated Preferred Stock.

(k) **Notice of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend which is the same as cash dividends paid in previous quarters) or other distribution, the Corporation shall mail to each holder of Designated Preferred Stock at least ten (10) days prior to such record date a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

5. **Waiver.** Any of the rights of the holders of Designated Preferred Stock set forth herein may be waived by the affirmative consent or vote of the holders of at least two-thirds of the shares of Designated Preferred Stock then outstanding.

FIFTH: [Intentionally omitted.]

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: For the management of the business and for the conduct of the affairs of the Corporation, and in further definition and not in limitation of the powers of the Corporation and of its directors and of its stockholders or any class thereof, as the case may be, conferred by the State of Delaware, it is further provided that:

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors of the Corporation shall be fixed by, or in the manner provided in, the By-Laws. The phrase "whole Board" and the phrase "total number of directors" shall be deemed to have the same meaning, to wit, the total number of directors which the Corporation would have if there were no vacancies. No election of directors need be by written ballot.

B. After the original or other By-Laws of the Corporation have been adopted, amended or repealed, as the case may be, in accordance with the provisions of Section 109 of the General Corporation Law of the State of Delaware, and, after the Corporation has received any payment for any of its stock, the power to adopt, amend, or repeal the By-Laws of the Corporation may be exercised by the Board of Directors of the Corporation.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the By-Laws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

EIGHTH: The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented from time to time, indemnify and advance expenses to, (i) its directors and officers, and (ii) any person who at the request of the Corporation is or was serving as a director, officer, employee or

agent of another corporation, partnership, joint venture, trust or other enterprise, from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section as amended or supplemented (or any successor), provided, however, that except with respect to proceedings to enforce rights to indemnification, the By-Laws of the Corporation may provide that the Corporation shall indemnify any director, officer or such person in connection with a proceeding (or part thereof) initiated by such director, officer or such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The Corporation, by action of its Board of Directors, may provide indemnification or advance expenses to employees and agents of the Corporation or other persons only on such terms and conditions and to the extent determined by the Board of Directors of the Corporation in its sole and absolute discretion. The indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-Law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall 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.

NINTH: No director of this Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except to the extent that exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as in effect at the time such liability or limitation thereof is determined. No amendment, modification or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment, modification or repeal. If the General Corporation Law of the State of Delaware is amended after approval by the stockholders of this Article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

TENTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court in which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

ELEVENTH: From time to time any of the provisions of this Restated Certificate of

Incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the Corporation by this Restated Certificate of Incorporation are granted subject to the provisions of this Article."

5. Pursuant to Section 228(a) of the General Corporation Law of the State of Delaware, the holders of outstanding shares of the Corporation having no less than the minimum number of votes that would be necessary to authorize or take such actions at a meeting at which all shares entitled to vote thereon were present and voted, consented to the adoption of this Amended and Restated Certificate of Incorporation without a meeting, without a vote and without prior notice and that written notice of the taking of such actions is being given in accordance with Section 228(e) of the General Corporation Law of the State of Delaware.

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NINTZ LEVIN

NO. 6483 P. 17/17

IN WITNESS WHEREOF, Primera Diagnostics, Inc. has caused this Restated Certificate of Incorporation to be signed by its duly authorized officer this 26th day of May, 2005.

PRIMERA DIAGNOSTICS, INC.

/s/ Kazomi Shiozaki
Name: Kazomi Shiozaki
Title: President & Chief Executive Officer

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