

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME
CONVEYING PARTY DATA	
Name	Execution Date
AnaMed, Inc.	02/28/2005
RECEIVING PARTY DATA	
Name:	Intralens Vision, Inc.
Street Address:	25651 Atlantic Ocean Drive, Suite A-1
City:	Lake Forest
State/Country:	CALIFORNIA
Postal Code:	92630
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	13443696
CORRESPONDENCE DATA	
Fax Number:	(650)212-7562
Phone:	650-212-1700
Email:	info@shayglenn.com
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>	
Correspondent Name:	Thomas M. Zlogar
Address Line 1:	Shay Glenn LLP
Address Line 2:	2755 Campus Drive, Suite 210
Address Line 4:	San Mateo, CALIFORNIA 94403
ATTORNEY DOCKET NUMBER:	10547-701.304
NAME OF SUBMITTER:	Thomas M. Zlogar, Reg. No. 55,760
Total Attachments: 18 source=10547-701-304-Asn-Anamed-Intralens#page1.tif source=10547-701-304-Asn-Anamed-Intralens#page2.tif source=10547-701-304-Asn-Anamed-Intralens#page3.tif	

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RECORDATION FORM COVER SHEET PATENTS ONLY

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

TO THE HONORABLE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE. PLEASE RECORD THE ATTACHED ORIGINAL DOCUMENTS OR COPY THEREOF.

<p>1. Name of conveying party(ies):</p> <p>AnaMed, Inc. (02/28/2005)</p> <p>Additional name(s) of conveying party(ies) attached?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies):</p> <p>Name: Intralens Vision, Inc. 25651 Atlantic Ocean Drive Suite A-1 Lake Forest, CA 92630</p>
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<p>3. Nature of Conveyance:</p> <div> <input type="checkbox"/> Assignment <input type="checkbox"/> Merger </div> <div> <input type="checkbox"/> Security Agreement <input checked="" type="checkbox"/> Change of Name </div> <div> <input type="checkbox"/> Other </div>	<p>Name and address of receiving party(ies):</p> <p>Name:</p> <p>Street Address:</p> <p>City: State: Zip:</p> <p>Country:</p> <p>Additional name(s) & address(es) attached?</p> <div> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div>
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4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

<p>A. Patent Application No.(s) – 13/443,696</p> <p>Title: SYSTEM FOR PACKAGING AND HANDLING AN IMPLANT AND METHOD OF USE</p>	<p>B. Patent No.(s)</p>
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Additional numbers attached? ☐ Yes ☒ No


<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Thomas M. Zlogar Shay Glenn LLP 2755 Campus Drive, Suite 210 San Mateo, CA 94403</p>	<p>6. Total number of applications and patents involved: <u>1</u></p>
	<p>7. Total fee (37 CFR 3.41): \$40.00</p> <p><input type="checkbox"/> A check is enclosed that includes the total fee.</p> <p><input checked="" type="checkbox"/> Charge the \$40 fee to Deposit Account 50-4050.</p>

DO NOT USE THIS SPACE

8. 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.

James R. Shay, Reg. No. 32,062
Name of Person Signing


Signature

June 21, 2012
Date

Total number of pages including cover sheet, attachments, and documents: **18**

Delaware

PAGE 1

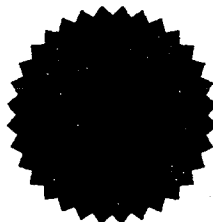
The First State

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 "ANAMED, INC.", CHANGING ITS NAME FROM "ANAMED, INC." TO "INTRALENS VISION, INC.", FILED IN THIS OFFICE ON THE THIRD DAY OF MARCH, A.D. 2005, AT 3:06 O'CLOCK P.M.

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

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050183175



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3722509

DATE: 03-04-05

PATENT
REEL: 028422 FRAME: 0608

THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ANAMED, INC.

Randy Alexander hereby certifies as follows:

1. He is the Chief Executive Officer of AnaMed, Inc., a Delaware corporation (the "Corporation").
2. That the Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on January 25, 1996.
3. That a Certificate of Correction to the Corporation's Certificate of Incorporation was filed on February 14, 1996.
4. That a Certificate of Correction to the Corporation's Certificate of Incorporation was filed on April 2, 1996.
5. That a Certificate of Amendment to the Certificate of Incorporation was filed on November 13, 2002.
6. That an Amended and Restated Certificate of Incorporation was filed on June 5, 2003.
7. That a Second Amended and Restated Certificate of Incorporation was filed on November 30, 2004.
8. This Third Amended and Restated Certificate of Incorporation restates and amends the Certificate of Incorporation, as amended to date.

* * *

ARTICLE 1

The name of this corporation (the "Corporation") is as follows:

Intralens Vision, Inc.

ARTICLE 2

The address of the Corporation's registered office in the State of Delaware is 3500 South Dupont Highway, Dover, Kent County, Delaware 19901. The name of the registered agent at that address is PARACORP INCORPORATED.

ARTICLE 3

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law other than the banking

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business, the trust company business or the practice of a profession permitted to be incorporated by the Delaware Code.

ARTICLE 4

A. Upon the effectiveness of this Third Amended and Restated Certificate of Incorporation of the Corporation, every six (6) shares of the Corporation's issued and outstanding capital stock shall, automatically and without any action on the part of the holder thereof, be reclassified and changed into one (1) share of the same class or series of the Corporation's capital stock, par value \$0.0001 per share (the "Reverse Split"). Any fractional share resulting from the Reverse Split shall, in the case of fractional shares equal to one-half share or greater, be rounded up to one whole share and, in the case of fractional shares that are less than one-half share, be rounded down to zero. For clarity, the Reverse Split shall not (1) result in any adjustment of the Conversion Price whether pursuant to Section 4(d)(iv) hereof or (2) be deemed a stock split, combination, stock dividend, recapitalization or the like, for the purposes of any section of this Certificate of Incorporation.

This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 16,850,160 shares, 10,833,333 shares of which shall be Common Stock, \$0.0001 par value per share, and 6,016,827 shares of which shall be Preferred Stock, \$0.0001 par value per share, of which 269,500 shall be designated "Series A Preferred Stock," 247,327 of which shall be designated "Series B Preferred Stock" and 5,500,000 of which shall be designated "Series C Preferred Stock."

B. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting together as a single class on an as-if-converted basis).

C. The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock are as set forth below in this Article 4(C).

1. Dividends.

The holders of shares of Series C Preferred Stock shall be entitled to receive noncumulative dividends, out of any assets legally available therefore, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock) on the Series B Preferred Stock, Series A Preferred Stock or Common Stock of this Corporation, and pari passu with each other, at the rate of \$0.1815 per annum per share (as adjusted for stock splits, combinations, stock dividends, recapitalizations and the like), following the date of issuance of such shares, payable when, as and if declared by the Board of Directors. In the event that any dividend is declared on Series C Preferred Stock at less than the full rates provided herein, then such dividend shall be paid on all outstanding shares of Series C Preferred Stock pro rata up to the extent such dividend has been declared. After the dividend payable to holders of Series C Preferred Stock, if any, has been paid in full, the holders of shares of Series B Preferred Stock shall be entitled to receive noncumulative dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock) on the Series A Preferred Stock or Common Stock

of this Corporation, and pari passu with each other, at the rate of \$0.8976 per annum per share (as adjusted for stock splits, combinations, stock dividends, recapitalizations and the like), following the date of issuance, payable when, as and if declared by the Board of Directors. In the event that any dividend is declared on Series B Preferred Stock at less than the full rates provided herein, then such dividend shall be paid on all outstanding shares of Series B Preferred Stock pro rata up to the extent such dividend has been declared. In the event dividends are paid on any shares of Common Stock (payable other than in Common Stock, as described in Section 4(d)(iii) below), which dividends shall not be paid until the dividends on the Series C Preferred Stock and Series B Preferred Stock set forth above have been paid in full, the holders of Series C Preferred Stock will be entitled to receive an additional dividend pro rata, based on the number of shares of Common Stock held by each holder of Series C Preferred Stock, as determined on an as-if converted to Common Stock basis. The holders of shares of Series A Preferred Stock shall not be entitled to receive dividends.

2. **Liquidation Preference.**

(a) In the event of any Liquidation (as defined below) of the Corporation, either voluntary or involuntary, the holders of Series C Preferred Stock shall be entitled to receive out of assets or surplus funds of the Corporation legally available for distribution, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock, Series A Preferred Stock or Series B Preferred Stock by reason of their ownership thereof, a preference amount per share consisting of the sum of (A) \$2.26848 (as adjusted for any stock splits, combinations, stock dividends, recapitalizations and the like) for each outstanding share of Series C Preferred Stock (the "Original Series C Purchase Price") and (B) an amount equal to declared but unpaid dividends on each such share, if any (collectively with the Original Series C Purchase Price, the "Series C Liquidation Preference"), before any sums shall be paid or any assets distributed among the holders of shares of Series B Preferred Stock, Series A Preferred Stock or Common Stock. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed among such holders in proportion to the full preferential amount each such holder is otherwise entitled to receive.

(b) After the Series C Liquidation Preference has been paid in full, the holders of Series B Preferred Stock shall be entitled to receive out of assets or surplus funds of the Corporation legally available for distribution, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock or Series A Preferred Stock by reason of their ownership thereof, a preference amount per share consisting of the sum of (A) \$11.22 (as adjusted for any stock splits, combinations, stock dividends, recapitalizations and the like) for each outstanding share of Series B Preferred Stock (the "Original Series B Purchase Price") and (B) an amount equal to declared but unpaid dividends on each such share, if any (collectively with the Original Purchase Price, the "Series B Liquidation Preference"), before any sums shall be paid or any assets distributed among the holders of shares of Series A Preferred Stock or Common Stock. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution, after the distributions pursuant to Section 2(a) above, shall be distributed among such holders in proportion to the full preferential amount each such holder is otherwise entitled to receive.

(c) After the Series B Liquidation Preference has been paid in full, the holders of each share of Series A Preferred Stock shall be entitled to receive out of the assets or surplus funds of the Corporation legally available for distribution, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership thereof, a preference amount per share of \$9.0912 (the "Original Series A Issue Price") (as adjusted for any stock splits, combinations, stock dividends, recapitalizations and the like) for each outstanding share of Series A Preferred Stock (the "Series A Liquidation Preference"), before any sums shall be paid or any assets distributed among the holders of shares of Common Stock or other shares ranking junior on liquidation to the Series A Preferred Stock. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution, after the distributions pursuant to Sections 2(a) and 2(b) above, shall be distributed among such holders in proportion to the full preferential amount each such holder is otherwise entitled to receive.

(d) After distribution to the holders of the Preferred Stock of the amounts set forth in subparagraphs (a), (b), and (c), the remaining assets and surplus funds of the Corporation legally available for distribution shall be distributed to the holders of Common Stock and Series C Preferred Stock pro-rata, on an as-if converted to Common Stock basis, until the holders of Series C Preferred Stock shall have received an additional amount equal to \$4.53696 per share (adjusted for any stock splits, stock dividends, recapitalizations and the like affecting the Series C Preferred Stock) of Series C Preferred Stock.

(e) *Provided, however,* that if the aggregate amount which the holders of Series C Preferred Stock are entitled to receive under Sections 2(a) and 2(d) shall be less than the aggregate amount which the holders of Series C Preferred Stock would have received with respect to such shares if such holders had converted their shares of Series C Preferred Stock into Common Stock immediately prior to such Liquidation of the Corporation, each holder of Series C Preferred Stock shall be entitled to receive upon such Liquidation of the Corporation the greater of (i) the aggregate amount which the holders of Series C Preferred Stock are entitled to receive under Sections 2(a) and 2(d) and (ii) the amount such holder would have received with respect to his, her or its shares of Series C Preferred Stock if such holder had converted his, her or its shares of Series C Preferred Stock into Common Stock immediately prior to such Liquidation of the Corporation; *provided, further, however* that if the holder shall be paid the amounts set forth in clause (ii) above, no holder of Series C Preferred Stock shall be entitled to receive any amounts pursuant to Sections 2(a) or (d) and the Series C Preferred Stock then held by such holder then shall automatically convert into and thereafter have rights, preferences and privileges *pari passu* with the Common Stock of the Corporation. Thereafter, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed ratably solely among the holders of Common Stock.

(f) For purposes of this Section 2, a "Liquidation" shall be deemed to be occasioned by, or to include, each of the following: (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions, including, without limitation, any reorganization, merger or consolidation in which the stockholders of the Corporation, prior to such transaction or transactions, do not continue to hold more than 50% of the voting power of the surviving or acquiring entity (or if the surviving or acquiring entity is a wholly-owned subsidiary, its parent) (but, excluding (A) any merger effected exclusively for the purpose of changing the domicile of the Corporation and (B) any transaction or series of transactions for principally bona fide equity financing purposes), (ii) a transaction or series of related transactions in which stockholders transfer

more than 50% of the voting power of the Corporation, (iii) a sale or other disposition of all or substantially all of the assets of the Corporation or (iv) any liquidation, dissolution or winding up of the Corporation. In any of such events, if the consideration received by the Corporation received is other than cash, its value will be deemed its fair market value, as determined in good faith by the Board of Directors on the date of determination.

3. Voting Rights.

(a) Except as otherwise expressly provided herein or as required by law, the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted and shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law), voting together with the Common Stock as a single class, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted, and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) The Board of Directors of the Corporation shall consist of five (5) members. Notwithstanding the provisions of Section 3(a) above, at each annual or special meeting called, or pursuant to each written consent, for the purpose of electing directors (i) the holders of the Series C Preferred Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors, (ii) the holders of Series A Preferred Stock and Series B Preferred Stock, voting together as a single class on an as-if converted to Common Stock basis, shall be entitled to elect one (1) member of the Board of Directors, (iii) the holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board of Directors and (iv) the remaining one (1) director shall be elected jointly by the holders of the Preferred Stock and the holders of the Common Stock voting together as a single class on an as-if converted to Common Stock basis. The provisions of this Section 3(b) shall expire and be of no further force or effect upon conversion of all outstanding shares of Preferred Stock into Common Stock pursuant to the provisions of Section 4 hereof. In the case of any vacancy in the office of a director elected by a specified group of stockholders, a successor shall be elected to hold office for the unexpired term of such director by the affirmative vote of a majority (or as otherwise provided by applicable law) of the shares of such specified group given at a special meeting of such stockholders duly called or by an action by written consent for that purpose. Any director who shall have been elected by a specified group of stockholders may be removed during the aforesaid term of office, either for or without cause, by, and only by, the affirmative vote of the holders of a majority (or as otherwise provided by applicable law) of the shares of such specified group, given at a special meeting of such stockholders duly called or by an action by written consent for that purpose, and any such vacancy thereby created may be filled by the vote of the holders of a majority of the shares of such specified group represented at such meeting or in such consent.

No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the Corporation is subject to Section 2115 of the California General Corporation Law ("CGCL"). During such time or times that the Corporation is subject to Section 2115(b) of the CGCL, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's

shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

During such time or times that the Corporation is subject to Section 2115(b) of the CGCL, one or more directors may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote for that director as provided above; *provided, however*, that unless the entire Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

4. **Conversion.** The holders of the Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) **Right to Convert.** Each share of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of filing of this Third Amended and Restated Certificate of Incorporation, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by the then applicable Conversion Price, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share of Series C Preferred Stock, Series B Preferred Stock, and Series A Preferred Stock (the "Series C Conversion Price," "Series B Conversion Price" and "Series A Conversion Price, respectively) initially shall be the Original Series C Purchase Price, Series B Original Purchase Price or Original Series A Issue Price, respectively. Such initial Conversion Price shall be adjusted as hereinafter provided.

(b) **Automatic Conversion.** Each share of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock shall automatically be converted into shares of Common Stock at the then effective and applicable Conversion Price as provided in Section 4(a) above, immediately upon (i) the closing of a firm commitment underwritten public offering of the Corporation's Common Stock registered under the Securities Act of 1933 (the "Securities Act") but not including any registration relating solely to a transaction under Rule 145 or to an employee benefit plan of the Corporation, with aggregate gross proceeds of at least \$25,000,000 (before deduction of underwriters commissions and expenses) and a per share price equal to at least \$6.80544 (three (3) times the Original Series C Purchase Price) (as adjusted for stock splits, combinations, stock dividends, recapitalizations and the like) (a "Qualified IPO"), or (ii) upon the election of the holders of a majority of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, voting together as a single class on an as-if converted to Common Stock basis.

(c) **Mechanics of Conversion.** Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates thereof, duly endorsed (or an affidavit of loss reasonably acceptable to the Corporation), at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that it elects to convert the same and shall state therein the name or names in which it wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which it shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date and shall pay in cash, or to the extent sufficient funds are not legally available therefore, in Common Stock (at the fair market value as determined by the Board of Directors in good faith), any declared and unpaid dividends on the shares being converted. If the conversion is in connection with a Qualified IPO, the conversion, if designated by the holder, will be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such Qualified IPO.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations and Recapitalizations.**

(i) The Conversion Price of Series C Preferred Stock and Series B Preferred Stock shall be subject to adjustment from time to time as follows:

(A) Upon each issuance by this Corporation of any Additional Stock (as defined below) after the original filing date of this Third Amended and Restated Certificate of Incorporation (the "Filing Date"), without consideration or for a consideration per share less than the Series C Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Series C Conversion Price and the Series B Conversion Price in effect immediately prior to each issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at the Series C Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of such Additional Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock deemed outstanding immediately prior to such issuance of Additional Stock shall be calculated as if all shares of all series of Preferred Stock had been fully converted into shares of Common Stock immediately prior to such issuance, and the number of shares of Common Stock which could be obtained through the exercise or conversion of all vested options, warrants or other rights for the purchase of shares of stock or convertible securities outstanding immediately prior to such issuance. In the event that the number of shares of Additional Stock or the consideration per share cannot be determined at the time of issuance, such Additional Stock shall be deemed issued immediately upon the occurrence of the first event that makes such number of shares or the consideration, as applicable, determinable.

(B) No adjustment of the Conversion Price for Preferred Stock shall be made in an amount less than one cent (\$0.01) per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward, and upon such adjustment the Conversion Price for such Preferred Stock shall be rounded up or down to the nearest cent. Except to the limited extent provided for in subsections 4(d)(i) (E)(3) and (E)(4), no adjustment of such Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefore before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 4(d)(i) and subsection 4(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (whether or not then exercisable) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (whether or not then convertible or exchangeable) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or declared dividends), plus the minimum additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)); *provided* that if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (other than the provisions of this Section 4(d)), the Conversion Price of the Series C Preferred Stock or the Series B Preferred Stock, as applicable, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series C Preferred Stock or the Series B Preferred Stock, as applicable, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefore pursuant to subsections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by this Corporation after the Filing Date other than Common Stock (or securities convertible or exercisable into Common Stock) issued or issuable:

(A) pursuant to a transaction described in Sections 4(e) or 4(f) hereof;

(B) to employees, independent contractors, consultants, officers, directors, advisors, vendors, customers or other service providers of the Corporation or any subsidiary of the Corporation, bonuses, awards, arrangements, warrants or agreements pursuant to stock incentive plans approved by the Board of Directors and the stockholders of this Corporation, including any such shares issued pursuant to options or subject to options issued on or prior to the Filing Date;

(C) upon conversion of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock,

(D) upon conversion or exercise of securities outstanding as of the Filing Date;

(E) in connection with the acquisition of a business entity or business segment of any such entity by the Corporation by merger, purchase, consolidation or other similar business combination, as approved by the Board of Directors;

(F) in connection with equipment leases, real property leases, bank financings or similar transactions, as approved by the Board of Directors, provided that such transactions do not have equity financing as a substantial component;

(G) in connection with strategic alliances, as approved by the Board of Directors, provided that such transactions do not have equity financing as a substantial component; or

(H) in a public offering in connection with which all outstanding shares of Preferred Stock are converted into Common Stock.

(iii) In the event the Corporation should at any time or from time to time after the Filing Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock, without a corresponding adjustment to the outstanding Preferred Stock, or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each of the Series C Preferred Stock, Series B Preferred Stock and the Series A Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(iv) If the number of shares of Common Stock outstanding at any time after the Filing Date is decreased by a combination of the outstanding shares of Common Stock, without a corresponding adjustment to the outstanding shares of Preferred Stock, then, following the record date of such combination, the Conversion Price for the Series C Preferred Stock, Series B Preferred Stock and the Series A Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) **Other Distributions.** Subject to Section 2, in the event this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends) or options or rights, then, in each such case for other purposes of this subsection 4(e), the holders of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision or combination of stock provided for elsewhere in this Section 4), provision shall be made so that the holders of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock shall thereafter be entitled to receive upon

conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) **No Impairment.** The Corporation will not, without the requisite vote of the stockholders required by Section 6 hereunder, by amendment of this Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, 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 Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series C Preferred Stock, Series B Preferred Stock and the Series A Preferred Stock against impairment.

(h) **Certificates as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and cause independent public accountants selected by the Corporation to verify such computation and prepare and furnish to each holder of Series C Preferred Stock, Series B Preferred Stock or Series A 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 Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(i) **Notices 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) or other distribution, any security or right convertible into or entitling the holder thereof to receive or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution, security or right, and the amount and character of such dividend, distribution, security or right.

(j) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series

C Preferred Stock, Series B Preferred Stock and the Series A Preferred Stock and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series C Preferred Stock, Series B Preferred Stock and the Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(k) **Fractional Shares.** No fractional share shall be issued upon the conversion of any share or shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors of the Corporation).

(l) **Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

(m) **Payment of Taxes.** The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Preferred Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered.

5. **Redemption.** The shares of Preferred Stock shall not be redeemable.

6. **Protective Provisions.** So long as any shares of Preferred Stock are outstanding the Corporation shall not, by merger, recapitalization or otherwise, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the outstanding shares of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, voting together as a single class, and on an as-if converted to Common Stock basis:

(a) Amend or waive any provision of the Corporation's Certificate of Incorporation or Bylaws as in effect at that time if such amendment or waiver would adversely affect any series of Preferred Stock;

- (b) alter or change the rights, preferences or privileges of any series of Preferred Stock;
- (c) increase or decrease the number of authorized shares of Common Stock or Preferred Stock;
- (d) reclassify the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock or create or authorize the creation of any new securities having rights, preferences or privileges senior to or pari passu with the Series C Preferred Stock;
- (e) declare or pay a dividend on any shares of Common Stock or Preferred Stock;
- (f) redeem or repurchase any shares of Common Stock (excluding share repurchases (i) upon termination of an employee's employment or a service provider's service to the Corporation or (ii) upon exercise of the Corporation's right of first refusal to purchase such shares);
- (g) liquidate, dissolve, wind up, reorganize, merge or sell all or substantially all of the Corporation's assets; or
- (h) increase or decrease the size of the Board of Directors.

7. No Reissuances of Preferred Stock.

No share or shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued, and all such shares shall be returned to the status of undesignated shares of Preferred Stock.

D. The rights, preferences, privileges, restrictions and other matters relating to the Common Stock are as follows:

1. **Dividends.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Division (B) of this Article 4.

3. **Redemption.** The Common Stock is not redeemable at the option of the holder.

4. **Voting Rights.** The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of this Corporation, and shall be entitled to vote upon such manners and in such manner as may be provided by law and this Certificate of Incorporation.

ARTICLE 5

A. The liability of the directors of this Corporation for monetary damages shall be eliminated to the fullest extent permissible under Delaware law.

B. To the maximum extent permitted by law, the Corporation shall indemnify fully 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) by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or on such person's behalf in connection with such action, suit or proceeding and any appeal therefrom.

The Corporation may, if so requested by a director or officer, advance expenses (including attorneys' fees) incurred by a director or officer in advance of the final disposition of such action, suit or proceeding upon the receipt of an undertaking by and on behalf of the director or officer to repay such amount if it shall ultimately be determined that such director or officer is not entitled to indemnification.

Any repeal or modification of this Article 5 shall only be prospective and shall not affect the rights to indemnification under this Article 5 in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

C. This Corporation is authorized to provide indemnification of agents (as defined in Section 145 of the Delaware General Corporation Law) through bylaw provisions, agreements with the agents, vote of stockholders or disinterested directors, or otherwise in excess of the indemnification otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to applicable limits set forth in Section 145 of the Delaware General Corporation Law with respect to actions for breach of duty to the Corporation and its stockholders. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the CGCL) for breach of duty to the Corporation and its stockholders through bylaw provisions or through agreements with the agents, or through stockholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the CGCL, subject, at any time or times that the Corporation is subject to Section 2115(b) of the CGCL, to the limits on such excess indemnification set forth in Section 204 of the CGCL.

D. In furtherance and not in limitation of the powers enforced by the laws of the State of Delaware, elections of directors need not be written by ballot unless the bylaws of the Corporation shall so provide, and the books of the Corporation may be kept at such place within or without the State of Delaware as the bylaws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

E. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Third Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute (subject to the protective provisions of Article 4), and all rights conferred in a stockholder herein are granted subject to this reservation.

F. Meetings of stockholders may be held within or without the State of Delaware, as the bylaws of the Corporation may provide. Stockholders may act by written consent in lieu of a meeting pursuant to Section 228 of the General Corporation Law of Delaware.

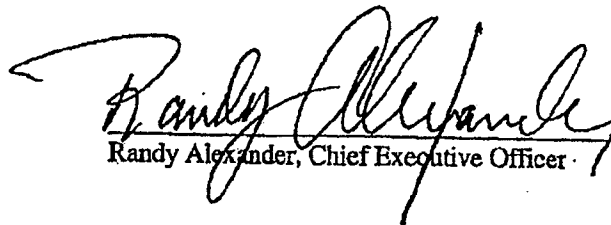
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8. The foregoing Third Amended and Restated Certificate of Incorporation has been approved by the Board of Directors by written consent in accordance with Section 141(f) of the General Corporation Law of the State of Delaware.

9. The foregoing Third Amended and Restated Certificate of Incorporation has been approved by the stockholders of the Corporation by written consent in accordance with Section 228 of the General Corporation Law of the State of Delaware.

10. The foregoing Third Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

I further declare under penalty of perjury under the laws of the State of Delaware that the matters set forth in this certificate, which is executed at Lake Forest, California, on February 28th, 2005, are true and correct of my own knowledge.


Randy Alexander, Chief Executive Officer