

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
 Stylesheet Version v1.2

EPAS ID: PAT4277067

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME
<b>CONVEYING PARTY DATA</b>	
<b>Name</b>	<b>Execution Date</b>
TOKALAS, INC.	05/27/2016
<b>RECEIVING PARTY DATA</b>	
<b>Name:</b>	ONCTERNAL THERAPEUTICS, INC.
<b>Street Address:</b>	3525 DEL MAR HEIGHTS ROAD
<b>Internal Address:</b>	#821
<b>City:</b>	SAN DIEGO
<b>State/Country:</b>	CALIFORNIA
<b>Postal Code:</b>	92130
<b>PROPERTY NUMBERS Total: 6</b>	
<b>Property Type</b>	<b>Number</b>
Application Number:	14877708
Application Number:	62062086
Application Number:	62316156
PCT Number:	US2015054533
Application Number:	15357876
Application Number:	15357933
<b>CORRESPONDENCE DATA</b>	
<b>Fax Number:</b>	(949)760-9502
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
<b>Phone:</b>	8587074000
<b>Email:</b>	efiling@knobbe.com
<b>Correspondent Name:</b>	KNOBBE MARTENS OLSON & BEAR, LLP
<b>Address Line 1:</b>	2040 MAIN STREET
<b>Address Line 2:</b>	14TH FLOOR
<b>Address Line 4:</b>	IRVINE, CALIFORNIA 92614
<b>ATTORNEY DOCKET NUMBER:</b>	ONCT.000GEN
<b>NAME OF SUBMITTER:</b>	ROSE M. THIESSEN
<b>SIGNATURE:</b>	/Rose M. Thiessen/
<b>DATE SIGNED:</b>	02/15/2017

PATENT

**Total Attachments: 19**

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# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "TOKALAS, INC.", CHANGING ITS NAME FROM "TOKALAS, INC." TO "ONCTERNAL THERAPEUTICS, INC.", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF MAY, A.D. 2016, AT 6:40 O`CLOCK P.M.

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



Jeffrey W. Bullock, Secretary of State

5434032 8100  
SR# 20163963457

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 202400112  
Date: 05-27-16

**PATENT**  
**REEL: 041730 FRAME: 0651**

State of Delaware - Division of Corporations  
DOCUMENT FILING SHEET

FAX

☐

Priority 1  
(One hr)

☐

Priority 2  
(Two Hr.)

☐

Priority 3  
(Same Day)

☒

Priority 4  
(24 Hour)

☐

Priority 5  
(Must Approval)

☐

Priority 6  
(Reg. Approval)

☐

Priority 7  
(Reg. Work)

DATE SUBMITTED

REQUESTOR NAME CORPORATION SERVICE COMPANY

FILE DATE 5/27/2016

ADDRESS 2711 Centerville Road, Suite 400  
Wilmington, DE 19808

FILE TIME

ATTN. Jason Griffith

PHONE (302) 636-5401 x63324

NAME of COMPANY/ENTITY TOKALAS, INC.

Amend to: ONCTERNAL THERAPEUTICS, INC.

5434032

9000014 E-MAIL

SRV NUMBER

FILE NUMBER

FILER'S NUMBER

RESERVATION NO.

TYPE OF DOCUMENT

RESTATED

DOCUMENT CODE 242/245

CHANGE of NAME



CHANGE of AGENT/OFFICE

CHANGE OF STOCK

CORPORATIONS

FRANCHISE TAX - YEAR \$

FILING FEE \$

CERTIFIED COPIES - NO. 1 \$

EXPEDITED FEES \$

RECORDER FEES - add \$9.00 per \$

page after 1st page

APOSTILLES \$

country TOTAL \$

METHOD of RETURN

MESSSENGER/PICKUP

FED. EXPRESS Acct.#

REGULAR MAIL

FAX No.

OTHER

COMMENTS/FILING INSTRUCTIONS

Part 2 of 3, please file one minute apart

CREDIT CARD CHARGES

You have my authorization to charge my credit card for this service:

Exp. Date

Signature

Printed Name

AGENT USE ONLY

158675 005

INSTRUCTIONS

1. Fully shade in the required Priority square using a dark pencil or marker, staying within the square.
2. Each request must be submitted as a separate item, with its own Filing sheet as the FIRST PAGE.

9000014  
PATENT

REEL: 041730 FRAME: 0652

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
TOKALAS, INC.**

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

Tokalas, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”),

**DOES HEREBY CERTIFY:**

**FIRST:** That the name of this corporation is Tokalas, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on November 18, 2013 under the name Tokalas, Inc.

**SECOND:** That the Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

**RESOLVED,** that the Certificate of Incorporation of this corporation be amended and restated in its entirety as follows:

**ARTICLE I**

The name of this corporation is Oncternal Therapeutics, Inc. (referred to herein as the “*Corporation*”).

**ARTICLE II**

The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE III**

The nature of the business and purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

**ARTICLE IV**

**A. Authorization of Stock.** The Corporation is authorized to issue two classes of stock designated, Common Stock, par value \$0.0001 per share (“*Common Stock*”) and Preferred Stock, par value \$0.0001 per share (“*Preferred Stock*”). The Preferred Stock shall consist of two series, one of which shall be designated “*Series A Preferred Stock*” and one of which shall be designated “*Series B Preferred Stock*”. The number of shares of Common Stock which this Corporation is authorized to issue is 112,000,000. The number of shares of Preferred Stock which this Corporation is authorized to issue is 58,060,000, of which 44,500,000 shares shall be designated Series B Preferred Stock and 13,560,000 of which shares shall be designated Series A Preferred Stock.

**B. Preferred Stock.** The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each series of Preferred Stock of this Corporation. Unless otherwise indicated, references to "Sections" or "subsections" in this Part B of Article IV refer to sections and subsections of Part B of this Article IV.

1. Dividends. In the event dividends are paid on any share of Common Stock, the Corporation shall pay an additional dividend on all outstanding shares of Preferred Stock in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. Such dividends shall be payable only when, as and if declared by the Board of Directors of the Corporation.

2. Liquidation.

(a) Preferences.

i. In the event of any voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation (a "***Liquidation Event***"), after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of each share of Series B Preferred Stock shall be entitled to receive on a pro rata basis out of the assets of the Corporation, whether such assets are capital, surplus or earnings, an amount equal to the Liquidation Value (as set forth in Section 2(e)) of such share, which amount shall be paid prior to and in preference of any payment made or assets distributed on the Series A Preferred Stock, the Common Stock or any other class or series of capital stock of the Corporation.

ii. In the event of a Liquidation Event, after payment to the holders of Series B Preferred Stock of the full amounts specified in Section 2(a)(i) above, the holders of each share of Series A Preferred Stock shall be entitled to receive on a pro rata basis out of the assets of the Corporation, whether such assets are capital, surplus or earnings, an amount equal to the Liquidation Value (as set forth in Section 2(e)) of such share, which amount shall be paid prior to and in preference of any payment made or assets distributed on the Common Stock or any other class or series of capital stock of the Corporation.

(b) Partial Payment. If upon any Liquidation Event the assets of the Corporation distributable as aforesaid among the holders of the Series B Preferred Stock and/or Series A Preferred Stock, as applicable, shall be insufficient to permit the payment to them of the full preferential amounts to which they are entitled, then the entire assets of the Corporation so to be distributed shall be distributed ratably among the holders of the Series B Preferred Stock and/or Series A Preferred Stock, as applicable, in proportion to the sum of their respective per share Liquidation Value, until payment in full of such amount per share.

(c) Remaining Assets. After payment to the holders of Preferred Stock of the amounts set forth in Section 2(a) above, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed ratably among the holders of the Common Stock and the holders of the Preferred Stock on an as-converted to Common Stock basis at the then applicable conversion rate, until such time as each share of Preferred Stock has received an aggregate distribution of three times (3x) the applicable Liquidation Value for such share of Preferred Stock (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations) (which aggregate distribution amount shall include (i) distributions made pursuant to Section 2(a) above and (ii) distributions made pursuant to this Section 2(c)), at which point no further payments shall be made to holders of the Preferred Stock by reason thereof and any remaining assets of the Corporation shall be distributed ratably among the holders of the Common Stock.

(d) Deemed Conversion. Notwithstanding the above Sections 2(a), (b) and (c), for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Event, each such holder of shares of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of Preferred Stock into shares of Common Stock immediately prior to the Liquidation Event if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of Preferred Stock into Common Stock pursuant to this Section 2(d), then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Preferred Stock.

(e) Liquidation Value. The "Liquidation Value" per share of Series A Preferred Stock as of any particular date shall be the sum of (A) \$0.25 (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations) plus (B) all declared but unpaid dividends as of the date the Liquidation Value of such share is determined. The Liquidation Value per share of Series B Preferred Stock as of any particular date shall be the sum of (A) \$0.45 (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations) plus (B) all declared but unpaid dividends as of the date the Liquidation Value of such share is determined. The Liquidation Value as it applies to each series of Preferred Stock is sometimes referred to herein as the "***Liquidation Value.***"

(f) Deemed Liquidation Events.

(i) Definition. For purposes of this Section 2, a Liquidation Event shall be deemed to be occasioned by, or to include, the following (each, a "***Deemed Liquidation Event***") unless the Requisite Holders elect otherwise:

(a) a merger or consolidation in which

(i) the Corporation is a constituent party, or

(ii) 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 shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, 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 (provided that, for the purpose of this Section 2(f)(i)(a), all shares of Common Stock issuable upon exercise of stock options of the Corporation outstanding immediately prior to such merger or consolidation or upon conversion of convertible securities of the Corporation outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged); provided, that the preceding exception shall not apply (and such merger or consolidation shall be a Deemed Liquidation Event) to a merger or consolidation involving the Corporation or a Subsidiary where such transaction is entered into with an entity that has its securities registered under the Securities Act of 1933, as amended, listed on a nationally recognized stock exchange or market system, including without limitation The NASDAQ Global Select

Market, The NASDAQ Global Market or The NASDAQ Capital Market, or quoted on an automated quotation system (including the Pink Sheets and the OTC Bulletin Board) or by a recognized securities dealer; or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any Subsidiary of the Corporation of all or substantially all the assets of the Corporation and its Subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more Subsidiaries of the Corporation if substantially all of the assets of the Corporation and its Subsidiaries taken as a whole are held by such Subsidiary or Subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned Subsidiary of the Corporation.

(ii) Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Section 2(f)(i)(a) unless the agreement or plan of merger or consolidation for such transaction provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2(a), (b), (c) and (d).

(b) In the event of a Deemed Liquidation Event referred to in Section 2(f)(i)(a)(ii) or 2(f)(i)(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 90 days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Preferred Stock no later than the 90th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Preferred Stock, and (iii) if the holders of at least a majority of the then outstanding shares of Preferred Stock so request in a written instrument delivered to the Corporation not later than 120 days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders (the "**Available Proceeds**"), to the extent legally available therefor, on the 150th day after such Deemed Liquidation Event, to redeem all outstanding shares of Preferred Stock at a price per share equal to the applicable Liquidation Value. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, the Corporation shall first redeem a pro rata portion of shares of Series A Preferred Stock and Series B Preferred Stock in accordance with the liquidation preferences set forth in Sections 2(a) and (b) to the fullest extent of such Available Proceeds, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. Prior to the distribution or redemption provided for in this Section 2(f)(ii)(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

(iii) Notice. The Corporation shall give each holder of record of Preferred Stock written notice of such impending event described in Section 2(f)(i) not later than twenty (20) calendar days prior to the stockholders meeting called to approve such transaction, or twenty (20) calendar days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction



shall in no event take place sooner than twenty (20) calendar days after the Corporation has given the first notice provided for herein or sooner than ten (10) calendar days after the Corporation has given notice of any material changes provided for herein. Notwithstanding anything to the contrary in subsection 2(f)(ii) or 2(f)(iii), the periods set forth in subsection 2(f)(ii) and 2(f)(iii) may be shortened and/or notice may be waived upon the Corporation's receipt of written consent of the Requisite Holders.

3. Redemption. The Corporation shall not be obligated to, and shall not have the right to, call or redeem any shares of the Preferred Stock, except in accordance with Section 2(f)(ii)(b) above.

4. Voting Rights; Directors.

(a) Generally. On all matters to come before the stockholders, the Preferred Stock shall have that number of votes per share (rounded up to the nearest whole share) equivalent to the number of shares of Common Stock into which such share of Preferred Stock is then convertible determined by reference to the applicable Conversion Price in effect at the record date of the determination of the holders of the shares entitled to vote or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is first solicited. Each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held. Except as otherwise provided by law or this Amended and Restated Certificate of Incorporation, the holders of Preferred Stock shall vote together with the holders of the outstanding shares of Common Stock, and not as a separate class or series.

(b) Directors.

(i) The authorized number of directors shall be five (5) until this provision is amended in accordance with the terms of this Amended and Restated Certificate of Incorporation. The holders of the outstanding shares of Series A Preferred Stock, voting as a separate class and to the exclusion of all other classes of capital stock of the Corporation, shall be entitled to elect one (1) member of the Board of Directors (the "**Series A Director**"). The holders of the outstanding shares of Series B Preferred Stock, voting as a separate class and to the exclusion of all other classes of capital stock of the Corporation, shall be entitled to elect one (1) member of the Board of Directors (the "**Series B Director**", together with the Series A preferred Director, the "**Preferred Directors**"). The holders of the outstanding shares of Common Stock, voting as a separate class and to the exclusion of all other classes of capital stock of the Corporation, shall be entitled to elect two (2) members of the Board of Directors (the "**Common Directors**"). The holders of the outstanding shares of Preferred Stock and Common Stock, voting together as a single class, shall be entitled to elect the remaining member of the Board of Directors (the "**General Director**").

(ii) In the case of any vacancy in the office of a director occurring among the Preferred Directors or the Common Directors, by the affirmative vote of the holders of a majority of the shares of the class or classes entitled to vote on the election of the Preferred Directors or Common Directors, as the case may be, such holders shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. In the case of any vacancy in the office of a General Director, by the affirmative vote of the holders of a majority of the shares of Preferred Stock and Common Stock, voting together as a single class, such holders shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any director may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a majority of the shares eligible to vote in an election for the seat occupied by that director (e.g., in order to remove a Series A Director, the holders of a majority of the shares of Series A Preferred Stock, voting as a separate class and to the exclusion of all other classes of capital stock of the Corporation, must so vote).

(c) Protective Provisions. In addition to voting rights provided by law, so long as any shares of Preferred Stock shall be outstanding (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations), the Corporation shall not, without the consent of the holders of at least a majority of the outstanding shares of Preferred Stock, given in person or by proxy, either in writing or by vote at a meeting called for that purpose at which the holders of the Preferred Stock shall vote together as a separate class and to the exclusion of all other classes of capital stock of the Corporation:

- (i) declare or pay any dividends on any capital stock of the Corporation;
- (ii) redeem or repurchase capital stock of the Corporation except in connection with the repurchase of shares of Common Stock issued to or held by employees, consultants, officers and directors upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, which agreements were authorized by the Board of Directors;
- (iii) take any action which would result in a Liquidation Event or a Deemed Liquidation Event;
- (iv) increase or decrease the total number of authorized members of the Board of Directors;
- (v) authorize, create or issue (whether by merger, consolidation, reclassification, amendment of this Amended and Restated Certificate of Incorporation, sale or otherwise) shares of any class or series of stock not authorized herein having rights, preferences or privileges superior to or on parity with the Series B Preferred Stock; or
- (vi) take any action to amend or waive any provision of this Amended and Restated Certificate of Incorporation or the Company's Bylaws.

5. Conversion. The rights of the holders of shares of Preferred Stock to convert such shares into shares of Common Stock (as defined in Section 5(h) below) of the Corporation (the "**Conversion Rights**"), and the terms and conditions of such conversion, shall be as follows:

- (a) Right to Convert; Automatic Conversion.
  - (i) Each share of the Preferred Stock shall be convertible, at the option of the holder, in each case at the office of the Corporation or any transfer agent for the Preferred Stock or the Common Stock, into that number of the fully paid and nonassessable shares of Common Stock determined in accordance with the provisions of Section 5(b) below.
  - (ii) Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, the holder shall surrender the certificate(s) therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock and shall give written notice to the Corporation at such office that the holder elects to convert the same (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to Section 5(a)(iv) hereof). The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock certificate(s) for the number of shares of Common Stock to which such holder 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 such surrender of the shares of Preferred Stock to be converted; except that in the case of an automatic conversion pursuant to Section 5(a)(iv)(A) hereof such conversion shall be deemed to have been made immediately prior to the closing of the offering

referred to in Section 5(a)(iv)(A) or in the case of an automatic conversion pursuant to Section 5(a)(iv)(B) hereof, immediately prior to the close of business on the date of the election referred to in Section 5(a)(iv)(B) 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. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event any Persons entitled to receive Common Stock upon conversion of Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(iii) The Corporation shall, as soon as practicable after the surrender of the certificate or certificates evidencing shares of Preferred Stock for conversion at the office of the Corporation or the transfer agent for the Preferred Stock or the Common Stock, issue to each holder of such shares, or its nominee or nominees, a certificate or certificates evidencing the number of shares of Common Stock (and any other securities and property) to which it shall be entitled and, in the event that only a part of the shares evidenced by such certificate or certificates are converted, a certificate evidencing the number of shares of Preferred Stock which are not converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, except that in the case of an automatic conversion pursuant to Section 5(a)(iv)(A) hereof such conversion shall be deemed to have been made immediately prior to the closing of the offering referred to in Section 5(a)(iv)(A) or in the case of an automatic conversion pursuant to Section 5(a)(iv)(B) hereof, immediately prior to the close of business on the date of the election referred to in Section 5(a)(iv)(B), 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 at such date and shall, with respect to such shares, have only those rights of a holder of Common Stock of the Corporation.

(iv) Each share of Series A Preferred Stock then outstanding shall be automatically converted into that number of fully paid and nonassessable shares of Common Stock determined in accordance with the provisions of Section 5(b) below upon the earlier of (A) the close of business of the day immediately preceding the effective date of the Corporation's registration statement filed in connection with a Qualified Public Offering (as defined in Section 6 below) or (B) the consent of the holders of at least a majority of the outstanding shares of Series A Preferred Stock voting or consenting together as a separate class, given in person or by proxy, either in writing or by vote at a meeting called for that purpose at which the holders of Series A Preferred Stock shall vote together as a separate class.

(v) Each share of Series B Preferred Stock then outstanding shall be automatically converted into that number of fully paid and nonassessable shares of Common Stock determined in accordance with the provisions of Section 5(b) below upon the earlier of (A) the close of business of the day immediately preceding the effective date of the Corporation's registration statement filed in connection with a Qualified Public Offering (as defined in Section 6 below) or (B) the consent of the holders of at least a majority of the outstanding shares of Series B Preferred Stock voting or consenting together as a separate class, given in person or by proxy, either in writing or by vote at a meeting called for that purpose at which the holders of Series B Preferred Stock shall vote together as a separate class.

(vi) No fractional shares of Common Stock shall be issued upon conversion of the 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 a share of

Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

(b) Conversion of Preferred Stock. The Series A Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing the Conversion Price (as defined herein) per share in effect at the time into \$0.25 per share of Series A Preferred Stock being converted. The Series B Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing the Conversion Price per share in effect at the time into \$0.45 per share of Series B Preferred Stock being converted.

(c) Conversion Price. The conversion price per share for the Series A Preferred Stock shall initially be \$0.25 (the "***Series A Conversion Price***") and shall be subject to adjustment from time to time as provided herein. The conversion price per share for the Series B Preferred Stock shall initially be \$0.45 (the "***Series B Conversion Price***") and shall be subject to adjustment from time to time as provided herein. Each of the Series A Conversion Price and the Series B Conversion Price are sometimes referred to herein as the "***Conversion Price***".

(d) Adjustment for Stock Splits and Combinations. If outstanding shares of the Common Stock of the Corporation shall be subdivided into a greater number of shares, or a dividend in Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock, shall be paid in respect to the Common Stock of the Corporation, the applicable Conversion Price in effect immediately prior to such subdivision or at the record date of such dividend shall be proportionately reduced, and conversely, if outstanding shares of the Common Stock of the Corporation shall be combined into a smaller number of shares, the applicable Conversion Price in effect immediately prior to such combination shall be proportionately increased.

Any adjustment to a Conversion Price under this Section 5(d) shall become effective at the close of business on the date the subdivision or combination referred to herein becomes effective.

(e) Reorganizations, Mergers, Consolidations or Reclassifications. In the event of any capital reorganization, any reclassification of the Common Stock (other than a change in par value or as a result of a stock dividend, subdivision, split-up or combination of shares), the consolidation or merger of the Corporation with or into another Person (excluding a consolidation or merger described in Section 2(f)(i)(a) of this Article IV) (collectively referred to hereinafter as "***Reorganizations***"), the holders of the Preferred Stock shall thereafter be entitled to receive, and provision shall be made therefor in any agreement relating to a Reorganization, upon conversion of the Preferred Stock the kind and number of shares of Common Stock or other securities or property (including cash) of the Corporation, or other corporation resulting from such consolidation or surviving such merger to which a holder of the number of shares of the Common Stock of the Corporation which the applicable series of Preferred Stock entitled the holder thereof to convert to immediately prior to such Reorganization would have been entitled to receive with respect to such Reorganization; and in any such case appropriate adjustment shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of the Preferred Stock to the end that the provisions set forth herein (including the specified changes and other adjustments to the applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares, other securities or property thereafter receivable upon conversion of the Preferred Stock. The provisions of this Section 5(e) shall similarly apply to successive Reorganizations.

(f) Sale of Additional Shares.

(i) If at any time or from time to time following the date of the initial issuance of shares of Series B Preferred Stock, the Corporation shall issue or sell (or is deemed to have issued or sold) Additional Shares of Common Stock other than as a dividend or other distribution on any class of stock and other than as a subdivision or combination of shares of Common Stock as provided in Section 5(d) above, for a consideration per share less than the then existing Conversion Price, then, and in each such case, the then existing applicable Conversion Price shall be reduced, as of the opening of business on the date of such issuance or sale, to a price determined by multiplying the applicable Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock issuable upon conversion of the applicable series of Preferred Stock and the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the date 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 then existing applicable Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock issuable upon conversion of the applicable series of Preferred Stock and the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the date immediately prior to such issuance) plus the number of shares of Additional Shares of Common Stock actually issued in such issuance.

(ii) For the purpose of making any adjustment in the applicable Conversion Price, or number of shares of Common Stock issuable upon conversion of the applicable series of Preferred Stock, as provided above, the consideration received by the Corporation for any issue or sale of securities shall:

(a) To the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any expenses payable directly or indirectly by the Corporation and any underwriting or similar commissions, compensations, discounts or concessions paid or allowed by the Corporation in connection with such issue or sale;

(b) To the extent it consists of property other than cash, the consideration other than cash shall be computed at the fair market value thereof as determined in good faith by the Board of Directors, at or about, but as of, the date of the adoption of the resolution specifically authorizing such issuance or sale, irrespective of any accounting treatment thereof; provided, however, that such fair market value as determined by the Board of Directors, when added to any cash consideration received in connection with such issuance or sale, shall not exceed the aggregate market price of the Additional Shares of Common Stock being issued, as of the date of the adoption of such resolution; and

(c) If Additional Shares of Common Stock, Convertible Securities (as defined below) or Rights (as defined below) are issued or sold together with other stock or securities or other assets of the Corporation for consideration which covers both, the consideration received for the Additional Shares of Common Stock, Convertible Securities or Rights shall be computed as that portion of the consideration so received which is reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights.

(iii) For the purpose of making any adjustment in the applicable Conversion Price provided in Section 5(f) hereof, if at any time, or from time to time, the Corporation issues any stock or other securities convertible into Additional Shares of Common Stock (such stock or other securities being hereinafter referred to as "*Convertible Securities*") or issues any rights or options to purchase Additional Shares of Common Stock or Convertible Securities (such rights or options being

hereinafter referred to as “**Rights**”), then, and in each such case, if the Effective Conversion Price (as hereinafter defined) of such Rights or Convertible Securities shall be less than the applicable Conversion Price in effect immediately prior to the issuance of such Rights or Convertible Securities, the Corporation shall be deemed to have issued at the time of the issuance of such Rights or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received in consideration for the issuance of such shares an amount equal to the aggregate Effective Conversion Price of such Rights or Convertible Securities. For the purposes of this Section 5(f)(iii), “**Effective Conversion Price**” shall mean an amount equal to the sum of the lowest amount of consideration, if any, received or receivable by the Corporation with respect to any one (1) Additional Share of Common Stock upon issuance of the Rights or Convertible Securities and upon their exercise or conversion, respectively. No further adjustment of the applicable Conversion Price adjusted upon the issuance of such Rights or Convertible Securities shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such Rights or the conversion of any such Convertible Securities. If any such Rights or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, such applicable Conversion Price, as applicable, as adjusted upon the issuance of such Rights or Convertible Securities shall be readjusted to the Conversion Price, as applicable, which would have been in effect had such adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such Rights or on the conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such Rights, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities. No readjustment pursuant to this subsection (f)(iii) shall have the effect of increasing the applicable Conversion Price to an amount which exceeds the lower of (a) the applicable Conversion Price on the original adjustment date and (b) the applicable Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(g) Additional Shares of Common Stock. “**Additional Shares of Common Stock**” as used in this Section 5 shall mean all shares of Common Stock issued or deemed to be issued by the Corporation, whether or not subsequently reacquired or retired by the Corporation, other than:

(i) shares of Common Stock issued upon the conversion of, or as a dividend or distribution on, any shares of the Corporation’s Preferred Stock;

(ii) shares of Common Stock issued or issuable to employees or officers or directors or outside consultants or contractors of the Corporation or any Subsidiary pursuant the exercise or conversion of options, warrants or other Convertible Securities issued pursuant to a plan, agreement or arrangement duly approved by the Board of Directors;

(iii) shares of Common Stock issued or issuable pursuant to the exercise or conversion of options, warrants or other Convertible Securities outstanding as of the date hereof;

(iv) shares of Common Stock issued pursuant to a Qualified Public Offering;

(v) shares of Common Stock issued to effect any stock split, stock dividend or recapitalization of the Corporation;

(vi) shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued in connection with the Corporation obtaining lease financing, whether issued to a lessor, guarantor or other Person, provided that such issuance is pursuant to an agreement or arrangement duly approved by the Board of Directors;

(vii) shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued in connection with any borrowings, direct or indirect, from a bank or other financial institution by the Corporation, provided that such issuance is pursuant to an agreement or arrangement duly approved by the Board of Directors;

(viii) shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued in connection with the acquisition of all or a substantial portion of the assets or the business of another entity by the Corporation, provided that such issuance is pursuant to an agreement or arrangement duly approved by the Board of Directors; and

(ix) shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued in connection with any corporate partnering transaction, strategic alliance, technology transfer or similar transaction between the Corporation and any other Person, provided that such issuance is pursuant to an agreement or arrangement duly approved by the Board of Directors.

(h) Common Stock. “*Common Stock*” as used in this Section 5 shall mean any shares of any class of the Corporation’s capital stock other than the Preferred Stock. The Common Stock issuable upon conversion of the Preferred Stock, however, shall be the Common Stock of the Corporation as constituted on the date hereof, except as otherwise provided in this Section 5.

(i) Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price or the number of shares of Common Stock or other securities issuable upon conversion of any series of Preferred Stock, the Corporation, at its expense, shall cause the Chief Financial Officer or Treasurer of the Corporation to compute such adjustment or readjustment in accordance with this Amended and Restated Certificate of Incorporation and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first-class mail, postage prepaid, to each registered holder of such Preferred Stock at the holder’s address as shown on the Corporation’s stock transfer books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold; (ii) the applicable Conversion Price at the time in effect for such Preferred Stock; and (iii) the number of Additional Shares of Common Stock and the type and amount, if any, of other property which at the time would be received upon conversion of such Preferred Stock. Such notice may be given in advance of such adjustment or readjustment and may be included as part of a notice required to be given pursuant to Section 5(j) below.

(j) Notices of Record Date. In the event the Corporation shall propose to take any action of the type or types requiring an adjustment to the Conversion Price of any series of Preferred Stock, or the number or character of such Preferred Stock as set forth herein, the Corporation shall give notice to the holders of such Preferred Stock as applicable in the manner set forth in Section 5(i) above, which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable upon the occurrence of such action or deliverable upon the conversion of the Preferred Stock. In the case of any action which would require the fixing of a record date, such

notice shall be given at least ten (10) days prior to the date so fixed, and in case of all other action, such notice shall be given at least twenty (20) days prior to the taking of such proposed action. Notwithstanding the requirements of this Section 5(j), this Section 5(j) shall not be applicable and no such notice shall be required with respect to any action that is, or has been, approved by the Requisite Holders.

(k) 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 Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect a conversion of all outstanding shares of 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 Preferred Stock, the Corporation shall promptly seek 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. In the event of the consolidation or merger of the Corporation with another corporation where the Corporation is not the surviving corporation, effective provisions shall be made in the certificate or articles of incorporation, merger or consolidation, or otherwise of the surviving corporation so that such corporation will at all times reserve and keep available a sufficient number of shares of Common Stock or other securities or property to provide for the conversion of Preferred Stock in accordance with the provisions of this Section 5.

(l) Payment of Taxes. The Corporation shall pay all taxes and other governmental charges (other than any income or other taxes imposed upon the profits realized by the recipient) that may be imposed in respect of the issue or delivery of shares of Common Stock or other securities or property 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 or other securities in a name other than that in which the shares of Preferred Stock so converted were registered.

(m) Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 5 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation, and this Amended and Restated Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(n) No Impairment. Subject to the right of this Corporation to amend its Certificate of Incorporation or take any other corporate action upon obtaining the necessary approvals required by its Certificate of Incorporation and applicable law, the Corporation shall not amend this Amended and Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith use its best efforts, and assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against dilution or other impairment.

6. Miscellaneous.

(a) Definitions.

(i) *"Additional Shares of Common Stock"* shall have that meaning set forth in Section 5(g) hereof.

(ii) *"Common Stock"* shall have that meaning set forth in Section 5(h) hereof.



(iii) “**Conversion Price**” shall have that meaning set forth in Section 5(c) hereof.

(iv) “**Conversion Rights**” shall have that meaning set forth in Section 5 hereof.

(v) “**Convertible Securities**” shall have that meaning set forth in Section 5(f)(iii) hereof.

(vi) “**Effective Conversion Price**” shall have that meaning set forth in Section 5(f)(iii) hereof.

(vii) “**Liquidation Value**” shall have that meaning set forth in Section 2(e) hereof.

(viii) “**Person**” shall mean an individual, a corporation, a partnership, a trust or unincorporated organization or any other entity or organization.

(ix) “**Preferred Stock**” shall have that meaning set forth in the first paragraph of this Article IV.

(x) “**Qualified Public Offering**” means a firmly underwritten public offering of the Corporation’s Common Stock on a Form S-1 Registration Statement, or any similar form of registration statement, adopted by the Securities and Exchange Commission (the “Commission”) from and after the date hereof, filed with the Commission under the Securities Act of 1933, as amended, with respect to which the Corporation receives gross proceeds of at least \$25,000,000 (prior to deduction for underwriters’ discounts and expenses relating to such public offering, including without limitation, fees of the Corporation’s counsel) and the price to the public is at least \$1.35 per share (equitably adjusted for all stock splits, sub-divisions, stock dividends, combinations and the like with respect to such shares).

(xi) “**Requisite Holders**” shall mean the holders of at least (i) a majority of the then outstanding shares of Series A Preferred Stock, voting or acting by written consent together as a separate class, and (ii) a majority of the then outstanding shares of Series B Preferred Stock, voting or acting by written consent together as a separate class.

(xii) “**Series A Conversion Price**” shall have that meaning set forth in Section 5(c) hereof.

(xiii) “**Series A Preferred Stock**” shall have that meaning set forth in the first paragraph of this Article IV.

(xiv) “**Series B Conversion Price**” shall have that meaning set forth in Section 5(c) hereof.

(xv) “**Series B Preferred Stock**” shall have that meaning set forth in the first paragraph of this Article IV.

(xvi) “**Subsidiary**” means any corporation of which equity securities possessing a majority of the ordinary voting power in electing the board of directors are, at the time as of which such determination is being made, owned by the Corporation either directly or indirectly through one or more Subsidiaries.

(b) Notices. All notices referred to herein, except as otherwise expressly provided, shall be made by registered or certified mail, return receipt requested, postage prepaid and shall be deemed to have been given when so mailed.

(c) Conflicts. So long as any of the Preferred Stock is outstanding, in the event of any conflict between the provisions of this Article IV and the remainder of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation (both as presently existing or hereafter amended and supplemented), the provisions of this Article IV shall be and remain controlling.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Article IV C.

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 this Corporation legally available therefor, any 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 this Corporation, the assets of this Corporation shall be distributed as provided in Section 2 of Article IV B hereof.

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 (1) vote for each such share, 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 matters and in such manner as may be provided by this Amended and Restated Certificate of Incorporation and law; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Restated Certificate that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Restated Certificate or pursuant to the General Corporation Law. 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 this Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

5. Directors. The holders of outstanding Common Stock shall be entitled to elect directors as provided in subsection 4(b) of Article IV B.

## ARTICLE V

Except as otherwise provided in this Amended and Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of this Corporation.

## ARTICLE VI

Subject to any additional vote required by this Amended and Restated Certificate of Incorporation, the number of directors of this Corporation shall be determined in the manner set forth in the Bylaws of this Corporation.

## ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of this Corporation shall so provide.

## ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of this Corporation may provide. The books of this Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws of this Corporation.

## ARTICLE IX

To the fullest extent permitted by the General Corporation Law, a director of this Corporation shall not be personally liable to this Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law is amended after approval by the stockholders of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of this Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any amendment, repeal or modification of the foregoing provisions of this Article IX by the stockholders of this Corporation shall not adversely affect any right or protection of a director of this Corporation existing at the time of, or increase the liability of any director of this Corporation with respect to any acts or omissions of such director occurring prior to, such amendment, repeal or modification.

## ARTICLE X

This Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

## ARTICLE XI

This Corporation shall have the power to indemnify (and advance expenses to), to the fullest extent permitted by the General Corporation Law, as it presently exists or may hereafter be amended from time to time, 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 (a "*Proceeding*") by reason of the fact that he or she is or was a director, officer, employee or agent of this Corporation or is or was serving at the request of this Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding, including in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

Any amendment, repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, employee, agent or other person

existing at the time of, or increase the liability of any such person with respect to any acts or omissions of such person occurring prior to, such amendment, repeal or modification.

## ARTICLE XII

To the fullest extent permitted by applicable law, this Corporation renounces any interest or expectancy of this Corporation in, or in being offered an opportunity to participate in, an Excluded Opportunity; provided, that nothing herein is intended to diminish the fiduciary duties of any director of this Corporation. An “**Excluded Opportunity**” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of this Corporation who is not an employee of this Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock, any Affiliate of such holder, or any partner, member, director, stockholder, employee or agent of any such holder or Affiliate, in each case other than someone who is an employee of this Corporation or any of its subsidiaries (collectively, “**Covered Persons**”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of this Corporation.

## ARTICLE XIII

In connection with repurchases by this Corporation of its Common Stock from employees, officers, directors, advisors, consultants or other persons performing services for this Corporation or any subsidiary pursuant to agreements under which this corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, Section 500 of the California Corporations Code shall not apply in all or in part with respect to such repurchases. In the case of any such repurchases, distributions by this Corporation may be made without regard to the “preferential dividends arrears amount” or any “preferential rights amount,” as such terms are defined in Section 500(b) of the California Corporations Code.

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**THIRD:** The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

**FOURTH:** That said Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this corporation’s Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

**IN WITNESS WHEREOF**, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 27th day of May, 2016.

By: /s/ James B. Breitmeyer

Name: James B. Breitmeyer, M.D., Ph.D.

Title: President and CEO