

ANTIPODEAN PHARMACEUTICALS, INC.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

Antipodean Pharmaceuticals, Inc., a corporation organized and existing under the Delaware General Corporation Law, hereby certifies as follows:

A. The name of this corporation is Antipodean Pharmaceuticals, Inc. and the original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on August 9, 2005 and an Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on August 23, 2005.

B. The Amended and Restated Certificate of Incorporation in the form of Exhibit A attached hereto has been duly adopted in accordance with the provisions of Sections 141, 228, 242 and 245 of the General Corporation Law of the State of Delaware ("Delaware Corporate Law"). and prompt written notice will be duly given pursuant to Section 228 of Delaware Corporate Law.

C. The text of the Amended and Restated Certificate of Incorporation as heretofore amended or supplemented is hereby restated and further amended to read in its entirety as set forth in Exhibit A attached hereto.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been signed this 29th day of November, 2007.

ANTIPODEAN PHARMACEUTICALS, INC.

By: /s/ Dr. Kenneth Taylor
Dr. Kenneth Taylor,
President and Chief Executive Officer

EXHIBIT A

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

ANTIPODEAN PHARMACEUTICALS, INC.

FIRST

The name of this corporation is Antipodean Pharmaceuticals, Inc. (the "**Company**").

SECOND

The address of this Company's registered office in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD

The purpose of this Company is to engage in the lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware.

FOURTH

A. This Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is 84,701,600 shares, 44,695,800 shares of which shall be Common Stock (the "**Common Stock**") with a par value of \$0.001 and 40,005,800 shares of which shall be Preferred Stock (the "**Preferred Stock**") with a par value of \$0.001. The Preferred Stock shall be divided into series. The first series shall consist of Fifty Thousand (50,000) shares, par value \$0.001 per share, and shall be designated "**Series A Preferred Stock**." The second series shall consist of Thirteen Million Six Hundred Eighty Thousand (13,680,000) shares, par value \$0.001 per share, and shall be designated "**Series A-1 Preferred Stock**." The third series shall consist of Twenty-Two Million Fifty Thousand (22,050,000) shares, par value \$0.001 per share, and shall be designated "**Series A-2 Preferred Stock**." The fourth series shall consist of Four Million Two Hundred Twenty Five Thousand Eight Hundred (4,225,800) shares, par value \$0.001 per share, and shall be designated "**Series A-3 Preferred Stock**." The Series A Preferred Stock, the Series A-1 Preferred Stock, the Series A-2 Preferred Stock and Series A-3 Preferred Stock are referred to herein as the "**Preferred Stock**."

B. The rights, preferences, privileges, restrictions and other matters relating to the Preferred Stock are as follows; provided, however, that the holders of a majority of the then outstanding shares of the Series A Preferred Stock may waive any of the following rights, powers, preferences, or privileges applicable to all shares of the Series A Preferred Stock in any given instance without prejudice to such rights, powers, preferences, or privileges in any other

instance, and any such waiver shall bind all future holders of the shares of Series A Preferred Stock; provided, further, that the holders of an aggregate of more than seventy percent (70%) of the then outstanding shares of the Series A-1 Preferred Stock may waive any of the following rights, powers, preferences, or privileges applicable to all shares of the Series A-1 Preferred Stock in any given instance without prejudice to such rights, powers, preferences, or privileges in any other instance, and any such waiver shall bind all future holders of the shares of Series A-1 Preferred Stock; provided, further, that the holders of an aggregate of more than seventy percent (70%) of the then outstanding shares of the Series A-2 Preferred Stock may waive any of the following rights, powers, preferences, or privileges applicable to all shares of the Series A-2 Preferred Stock in any given instance without prejudice to such rights, powers, preferences, or privileges in any other instance, and any such waiver shall bind all future holders of the shares of Series A-2 Preferred Stock; provided, further, that the holders of an aggregate of more than seventy percent (70%) of the then outstanding shares of the Series A-3 Preferred Stock may waive any of the following rights, powers, preferences or privileges applicable to all shares of the Series A-3 Preferred Stock in any given instance without prejudice to such rights, powers, preferences or privileges in any other instance, and any such waiver shall bind all future holders of the shares of Series A-3 Preferred Stock; provided, further, that the holders of an aggregate of more than seventy percent (70%) of the then outstanding shares of Preferred Stock may waive any of the following rights, powers, preferences or privileges applicable to all shares of the Preferred Stock in any given instance, and any such waiver shall bind future holders of shares of such Preferred Stock.

1. Dividends.

(a) The Series A-3 Preferred Stock, Series A-2 Preferred Stock and the Series A-1 Preferred Stock shall be entitled to receive dividends of \$0.08, \$0.08 per share and \$0.04519 per share, respectively (as adjusted for stock splits, combinations, reorganizations and the like) per annum, on a pari passu basis, out of any assets at the time legally available therefore, when, as and if declared by the Board of Directors, prior and in preference to the Series A Preferred Stock and the Common Stock. The Series A Preferred Stock shall be entitled to receive dividends of \$0.04 per share as adjusted for stock splits, combinations, reorganizations and the like) per annum, out of any assets at the time legally available therefore, when, as and if declared by the Board of Directors, prior and in preference to the Common Stock. No dividends other than those payable solely in Common Stock shall be paid on any Common Stock unless and until (i) the aforementioned dividends are paid on each outstanding share of Preferred Stock and (ii) an additional dividend is paid with respect to all outstanding shares of Preferred Stock, respectively, in an amount equal to or greater than the aggregate amount of dividends which would be payable on each share of Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock, if, immediately prior to such dividend payment on Common Stock, it had been converted into Common Stock at the then applicable conversion rate. The Board of Directors is under no obligation to declare dividends, no rights shall accrue to the holders of Preferred Stock if dividends are not declared, and any dividends declared shall be noncumulative. The Company shall make no Distribution (as defined below) to the holders of shares of Common Stock except in accordance with this Section 1(a).

(b) Distribution. “Distribution” means the transfer of cash or property without consideration, whether by way of dividend or otherwise, or the purchase of

shares of the Company (other than in connection with the repurchase of shares of Common Stock issued to or held by employees, consultants, officers and directors at a price not greater than the amount paid by such persons for such shares upon termination of their employment or services pursuant to agreements providing for the right of said repurchase or upon the exercise of the Company's right of first refusal) for cash or property.

(c) Consent to Certain Repurchases. As authorized by Section 402.5(c) of the General Corporation Law of California, Sections 502 and 503 of the General Corporation Law of California, to the extent otherwise applicable, shall not apply with respect to Distributions made by the Company in connection with the repurchase of shares of Common Stock issued to or held by employees, consultants, officers and directors at a price not greater than the amount paid by such person for such shares upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, which agreements were authorized by the approval of the Company's Board of Directors.

2. Liquidation Rights.

(a) Liquidation Preference. In the event of any Liquidation (as defined below), the holders of the Preferred Stock shall be entitled to receive, out of the assets of the Company, the Liquidation Preference specified for each share of Preferred Stock then held by them, in the manner set forth below, before any payment shall be made or any assets distributed to the holders of Common Stock. "Liquidation Preference" shall mean, with respect to a share of Series A Preferred Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock, \$0.50 (the "Series A Liquidation Preference") per share, \$0.56486 (the "Series A-1 Liquidation Preference"), \$1.00 (the "Series A-2 Liquidation Preference") and \$1.00 (the "Series A-3 Liquidation Preference") per share respectively (each as adjusted for stock splits, combinations, reorganizations and the like), plus in each case, declared but unpaid dividends on such share.

(b) Series A-3 Special Liquidation Preference. Upon a Liquidation, prior and in preference to any distribution of any of the assets of the Company to the holders of Series A-2 Preferred Stock, Series A-1 Preferred Stock, Series A Preferred Stock and Common Stock by reason of their ownership of such stock, holders of the Series A-3 Preferred Stock shall be entitled to receive, in aggregate, the amount of funds received from the issuance of the Series A-3 Preferred Stock or such lesser amount of such funds that are then held by the Company at the time of the consummation of such Liquidation (the "Series A-3 Special Liquidation Preference"), to be distributed with equal priority and pro rata among the holders of the Series A-3 Preferred Stock.

(c) Series A-2 Special Liquidation Preference. Upon a Liquidation, after the payment in full of the Series A-3 Special Liquidation Preference pursuant to Section 2(b) above, if any, prior and in preference to any distribution of any of the assets of the Company to the holders of Series A-1 Preferred Stock, Series A Preferred Stock and Common Stock by reason of their ownership of such stock, holders of the Series A-2 Preferred Stock shall be entitled to receive an aggregate \$14,550,000 or such lesser amount of funds received from the issuance of the Series A-2 Preferred Stock that are then held by the Company at the time of the consummation of such Liquidation (the "Series A-2 Special Liquidation

Preference”), to be distributed with equal priority and pro rata among the holders of the Series A-2 Preferred Stock.

(d) Series A-2 and Series A-1 Liquidation Preference. Upon a Liquidation, after the payment in full of the Series A-3 Special Liquidation Preference pursuant to Section 2(b) above, if any, and Series A-2 Special Liquidation Preference pursuant to Section 2(c) above, if any, prior and in preference to any distribution of any of the assets of the Company to the holders of Series A Preferred Stock and Common Stock by reason of their ownership of such stock, holders of the Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock shall be entitled to receive their respective Liquidation Preference on a pari passu basis; provided that the Series A-3 Liquidation Preference shall be reduced by the amount of the Series A-3 Special Liquidation Preference received by the holders of the Series A-3 Preferred Stock pursuant to Section 2(b) above, such that the aggregate amount received by the Series A-3 Preferred Stock pursuant to Section 2(b) above and this Section 2(d) does not exceed the Series A-3 Liquidation Preference; provided further that the Series A-2 Liquidation Preference shall be reduced by the amount of the Series A-2 Special Liquidation Preference received by the holders of the Series A-2 Preferred Stock pursuant to Section 2(c) above, such that the aggregate amount received by the Series A-2 Preferred Stock pursuant to Section 2(c) above and this Section 2(d) does not exceed the Series A-2 Liquidation Preference. If upon the Liquidation, the assets to be distributed among the holders of the Series A-3 Preferred Stock, Series A-2 and Series A-1 Preferred Stock are insufficient to permit the payment to such holders of the full respective Liquidation Preference for their shares, then the entire assets of the Company legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock in proportion to the preferential amount each such holder would otherwise be entitled to receive pursuant to this Section 2(d). For the avoidance of doubt, any reduction in the A-3 Liquidation Preference or A-2 Liquidation Preference made under this Section 2(d) shall in no way affect the calculation of the pro rata amount of assets which the holders of the Series A-3 Preferred Stock or Series A-2 Preferred Stock, as applicable, are entitled to receive out of any remaining assets that may be available to be distributed under Section 2(g) below.

(e) Series A-1 Special Liquidation Preference. Upon a Liquidation, after the payment in full of the Series A-3 Special Liquidation Preference pursuant to Section 2(b) above and the Series A-2 Special Liquidation Preference pursuant to Section 2(c) above, if any, and the respective Liquidation Preferences to the holders of the Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock pursuant to Section 2(d) above, prior and in preference to any distribution of any of the assets of the Company to the holders of Series A Preferred Stock and Common Stock by reason of their ownership of such stock, holders of the Series A-1 Preferred Stock shall be entitled to receive \$0.43514 per share (the “Series A-1 Special Liquidation Preference”). If upon the Liquidation, the assets to be distributed among the holders of the Series A-1 Preferred Stock are insufficient to permit the payment to such holders of the full Series A-1 Special Liquidation Preference for their shares, then the entire assets of the Company legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Series A-1 Preferred Stock in proportion to the preferential amount each such holder would otherwise be entitled to receive pursuant to this Section 2(d).

(f) Series A Liquidation Preference. Upon a Liquidation, after the payment to the holders of Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock of their respective full preferential amounts specified above, if there are any remaining assets of the Company, then, prior and in preference to any distribution of any of such assets of the Company to the holders of Common Stock by reason of their ownership of such stock, the Series A Preferred Stock shall be entitled to receive the Series A Liquidation Preference. If upon the Liquidation, the assets to be distributed among the holders of the Series A Preferred Stock are insufficient to permit the payment to such holders of the full Liquidation Preference for their shares, then the entirety of such assets of the Company legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Series A Preferred Stock.

(g) Remaining Assets. After the payment to the holders of Series A-3 Preferred Stock, Series A-2 Preferred Stock, Series A-1 Preferred Stock and Series A Preferred Stock of their respective full preferential amounts specified above, any remaining assets of the Company shall be distributed with equal priority and pro rata among the holders of the Company's Preferred Stock and Common Stock in proportion to the number of shares of Common Stock held by them, with the shares of Preferred Stock being treated for this purpose as if they had been converted into shares of Common Stock at the then applicable conversion rate.

(h) Liquidation. A "Liquidation" shall be deemed to be occasioned by, or to include, (i) the acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any stock acquisition, reorganization, merger or consolidation of the Company with or into any entity, but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction continue to hold (either by voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity) at least fifty percent (50%) of the total voting securities of the Company or such surviving entity outstanding immediately after such transaction or series of transactions; (ii) a sale of all or substantially all of the assets of the Company; (iii) any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary; or (iv) the grant of an exclusive license to all or substantially all of the Company's intellectual property.

(i) Valuation of Non-Cash Consideration. If any assets of the Company distributed to stockholders in connection with any Liquidation are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board of Directors, provided, however, that any publicly-traded securities to be distributed to stockholders in a Liquidation shall be valued as follows:

(i) If the securities are then traded on a national securities exchange or the Nasdaq Stock Market (or a similar national quotation system), then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange or system over the ten (10) trading day period ending five (5) trading days prior to the Liquidation; and

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Liquidation.

3. Conversion. The Preferred Stock shall have conversion rights as follows:

(a) Right to Convert. Each share of Series A-3 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share into that number of fully-paid and nonassessable shares of Common Stock that is equal to \$1.00 divided by the Series A-3 Conversion Price (as hereinafter defined). The "Series A-3 Conversion Price" shall initially be \$1.00, and shall be subject to adjustment as provided herein. Each share of Series A-2 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share into that number of fully-paid and nonassessable shares of Common Stock that is equal to \$1.00 divided by the Series A-2 Conversion Price (as hereinafter defined). The "Series A-2 Conversion Price" shall initially be \$1.00, and shall be subject to adjustment as provided herein. Each share of Series A-1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share into that number of fully-paid and nonassessable shares of Common Stock that is equal to \$0.56486 divided by the Series A-1 Conversion Price (as hereinafter defined). The "Series A-1 Conversion Price" shall initially be \$0.56486, and shall be subject to adjustment as provided herein. Shares of Series A Preferred Stock shall not be convertible at the option of the holder thereof.

(b) Automatic Conversion. All shares of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price for such series of Preferred Stock immediately upon the date upon which the Company receives the affirmative vote or consent of the holders of more than 70% of the then outstanding Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock, voting together as a single class. All shares of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price for such series of Preferred Stock immediately upon the consummation of a firmly underwritten public offering pursuant to a registration statement (other than a registration statement relating solely to a transaction under Rule 145 of the Securities Act or to an employee benefit plan of the Company) covering the offer and sale of the Common Stock and declared effective by the Securities and Exchange Commission, the Securities Act of 1933, as amended (the "Securities Act"), provided, however, that (a) the per share price offered to the public is not less than \$5.00 (as adjusted for any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event) and (b) the aggregate gross proceeds (prior to underwriting discounts, commissions and expenses) to the Company are not less than \$40,000,000. The "Series A Conversion Price" shall initially be \$0.50, and shall be subject to adjustment as provided herein.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay the fair market

value cash equivalent of such fractional share as determined by the Board of Directors of the Company. For such purpose, all shares of Preferred Stock held by each holder shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, he shall either (A) surrender the Preferred Stock certificate or certificates therefor, duly endorsed, at the office of the Company or of any transfer agent for the Preferred Stock or (B) notify the Company or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates, and shall give written notice to the Company at such office that such holder elects to convert such shares; provided, however, that in the event of an automatic conversion pursuant to Section 3(b) above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided further, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless either the certificates evidencing such shares of Preferred Stock are delivered to the Company or its transfer agent as provided above, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. On the date of the occurrence of an automatic conversion, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Company, that notice from the Company shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Company shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared but unpaid dividends on the converted Preferred Stock. 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, 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; provided, however, that if the conversion is in connection with an underwritten offer 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 of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of the sale of such securities.

(d) Adjustments to Conversion Price.

(i) Adjustments for Subdivisions, Dividends or Combinations. After the date of the filing of this Amended and Restated Certificate of Incorporation, if the Company shall declare or pay without any consideration any dividends on the Common Stock payable in Common Stock or in any right to acquire Common Stock, or if the outstanding shares of Common Stock shall be subdivided (by stock split, stock dividend or otherwise), into a greater number of shares of Common Stock, the applicable Conversion Price in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. After the date of the filing of this Amended and Restated Certificate of Incorporation, if the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the applicable Conversion Price in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(ii) Adjustments for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a stock split, dividend or combination of shares provided for in Section 3(d)(i) above), the applicable Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Preferred Stock immediately before that change.

(iii) Adjustments for Dilutive Issuances.

(A) After the date of the filing of this Amended and Restated Certificate of Incorporation, if the Company shall issue or sell any Additional Shares of Common (as actually issued or, pursuant to paragraph (C) below, deemed to be issued) for a consideration per share less than the Conversion Price with respect to the Series A-3 Preferred Stock, the Series A-2 Preferred Stock or the Series A-1 Preferred Stock in effect immediately prior to such issue or sale, then immediately upon such issue or sale the respective Conversion Price for such series of Preferred Stock shall be reduced to a price (calculated to the nearest hundredth of a cent) determined by multiplying such prior respective Conversion Price by a fraction, the numerator of which shall be the number of shares of "Calculated Securities" (defined below) outstanding immediately prior to such issue or sale plus the number of Additional Shares of Common which the aggregate consideration received by the Company for the total number of Additional Shares of Common so issued or sold would purchase at such prior Conversion Price, and the denominator of which shall be the number of shares of Calculated Securities outstanding immediately prior to such issue or sale plus the number of Additional Shares of Common so issued or sold. "Calculated Securities" means: (i) all shares of Common Stock actually outstanding; (ii) all shares of Common Stock issuable upon conversion of the then outstanding Preferred Stock (without giving effect to any adjustments to the conversion price of any series of Preferred Stock as a result of such issuance); (iii) and all shares of Common Stock

issuable upon exercise and/or conversion of outstanding options, warrants or other rights for the purchase of shares of Common Stock or Preferred Stock; and (iv) all shares of Common Stock reserved for future issuance pursuant to employee stock option or incentive equity plans (not including those shares already subject to inclusion in the definition of Calculated Securities pursuant to the foregoing clause (iii) above).

(B) For the purposes of paragraph (A) above, **“Additional Shares of Common”** shall mean all shares of Common Stock issued (or, pursuant to paragraph (C) below, deemed issued) by the Company after the date of the filing of this Amended and Restated Certificate of Incorporation, other than issuances or deemed issuances of:

(1) shares of Common Stock or Convertible Securities issued or issuable to employees, officer or directors of, consultants or advisors to the Company or any subsidiary pursuant to restricted stock purchase agreements, stock option plans, incentive plans or similar arrangements approved by the Board of Directors;

(2) securities issued or issuable pursuant to the exercise or conversion of any Convertible Securities;

(3) securities issued or issuable as a result of a subdivisions, dividends or combinations or pursuant to reclassifications, exchanges or substitutions for which adjustment is made pursuant to Section 4(d)(i) or (ii);

(4) the issuance of any Common Stock or Convertible Securities as a dividend on the Company’s capital stock;

(5) shares of Common Stock or Convertible Securities issued or issuable to equipment or real estate lessors in connection with a bona fide leasing transaction approved by the Company’s Board of Directors;

(6) shares of Common Stock or Convertible Securities issued or issuable to financial institutions, banks, commercial lenders in connection with a bona fide borrowing transaction approved by the Company’s Board of Directors;

(7) shares of Common Stock or Convertible Securities issued or issuable pursuant to the acquisition of another entity by the Company whether by merger, consolidation, purchase of all or substantially all of the assets or shares or other reorganization approved by the Company’s Board of Directors;

(8) shares of Common Stock or Convertible Securities issued or issuable in connection with the acquisition of intellectual property or technology by purchase or license, strategic partnerships, drug development or collaborative agreements, distribution, marketing or other similar agreements or arrangements approved by the Company’s Board of Directors;

(9) shares of Common Stock or Convertible Securities issued or issuable in connection with any settlement of any action, suit, proceeding or litigation approved by the Company's Board of Directors; and

(10) shares of Common Stock or Convertible Securities issued or issuable to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Company's Board of Directors.

(C) For the purposes of paragraph (A) above, the following subparagraphs 1 to 4, inclusive, shall also be applicable:

(1) "**Convertible Securities**" shall mean any bonds, debentures, notes or other evidences of indebtedness, any securities convertible into, exercisable for or exchangeable for Common Stock and any options, warrants or other rights exercisable for Common Stock or any other securities convertible into, exercisable for, or exchangeable for Common Stock. In case at any time the Company shall grant any rights to subscribe for, or any rights or options to purchase, Convertible Securities, whether or not such rights or options or the right to convert or exchange any such Convertible Securities are immediately exercisable, the price per share for which Additional Shares of Common are deemed issuable upon the exercise of such rights or options or upon conversion or exchange of such Convertible Securities shall be determined by dividing (x) the total amount, if any, received or receivable by the Company as consideration for the granting of such rights or options, plus the minimum aggregate amount of additional consideration payable to the Company upon the exercise of such rights or options, plus, in the case of any such rights or options which relate to such Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (y) the total maximum number of Additional Shares of Common issuable upon the exercise of such rights or options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such rights or options. If the price per share for such Additional Shares of Common shall be less than the Series A-3 Conversion Price, the Series A-2 Conversion Price or the Series A-1 Conversion Price in effect immediately prior to the time of the granting of such rights or options, then the total maximum number of shares of Common Stock issuable upon the exercise of such rights or options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such rights or options shall (as of the date of granting of such rights or options) be deemed to be outstanding Additional Shares of Common and to have been issued for such price per share,

(2) In case at any time the Company shall issue or sell any Convertible Securities, whether or not the rights to exchange or convert thereunder are immediately exercisable, the price per share for which Additional Shares of Common are issuable upon such conversion or exchange shall be determined by dividing (x) the total amount received or receivable by the Company as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof, by (y) the total maximum number of Additional Shares of Common issuable upon the conversion or exchange of all such Convertible Securities. If the price per share for such Additional Shares of Common shall be

less than the Series A-3 Conversion Price, the Series A-2 Conversion Price or the Series A-1 Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of Common Stock issuable upon conversion or exchange of such Convertible Securities shall (as of the date of the issue or sale of such Convertible Securities) be deemed to be outstanding Additional Shares of Common and to have been issued for such price per share, provided that if any such issue or sale of such Convertible Securities is made upon exercise of any rights to subscribe for or to purchase or any option to purchase any such Convertible Securities for which adjustments of the conversion price have been or are to be made pursuant to other provisions of this paragraph (C), no further adjustment of the conversion price shall be made by reason of such issue or sale.

(3) upon the expiration of any such Convertible Securities or any rights of conversion or exchange under such Convertible Securities, which shall not have been exercised, the Series A-3 Conversion Price, the Series A-2 Conversion Price or the Series A-1 Conversion Price, as applicable, computed upon the original issue thereof (or deemed issuance thereof or the record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Convertible Securities or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Company for the issue of such exercised Convertible Securities or rights to subscribe for, or any rights or options to purchase Convertible Securities, plus the consideration actually received by the Company upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Company upon such conversion or exchange, and

(4) In case at any time any shares of Common Stock or Convertible Securities or any rights or options to purchase any such Common Stock, or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Company therefor. In case any shares of Common Stock or Convertible Securities or any rights or options to purchase any such Common Stock or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the fair value of such consideration as determined by the Board of Directors. In case any shares of Common Stock or Convertible Securities or any rights or options to purchase any such Common Stock or Convertible Securities shall be issued in connection with any merger of another corporation into the Company, the amount of consideration therefor shall be deemed to be the fair value of the assets of such merged corporation as determined by the Board of Directors after deducting therefrom all cash and other consideration (if any) paid by the Company in connection with such merger.

(e) No Impairment. The Company will not, by amendment of its Amended and Restated 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 Company, but will at all times in good faith assist in carrying out of all the provision of this Section 3 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 Preferred Stock against impairment. Notwithstanding the foregoing, nothing in this Section 3(e) shall prohibit the Company from amending its certificate of incorporation with the requisite consent of the stockholders and the Board of Directors.

(f) Certificate of Adjustments. Upon the occurrence of each adjustment or readjustment of the applicable Conversion Price pursuant to this Section 3, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of 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 Company shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments or readjustments made to the Preferred Stock, (ii) the applicable 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.

(g) Notices of Record Date. In the event that the Company shall propose at any time (i) to declare any dividend; (ii) to offer for subscription to the holders of any class or series of its stock any additional shares of stock or other rights; or (iii) to effect any reclassification or recapitalization; then, in connection with each such event, the Company shall send to the holders of the Preferred Stock at least 15 days' prior written notice of the date on which a record shall be taken for such dividend, or subscription rights (and specifying the date on which the holders of stock shall be entitled thereto) or for determining rights to vote in respect of reclassification or recapitalization.

(h) Reservation of Stock Issuable Upon Conversion. The Company 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 Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the 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 Preferred Stock, the Company 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.

4. Voting.

(a) Except as otherwise expressly provided herein or as required by law, the holders of Series A-3 Preferred Stock, Series A-2 Preferred Stock, Series A-1 Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) Preferred Stock. Each holder of shares of Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of

Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock, respectively, held by such holder of Preferred Stock could then be converted. The holders of shares of the Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. The holders of the Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company. 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 Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock, respectively, held by each holder could be converted), shall be disregarded. Holders of shares of Series A Preferred Stock shall not be entitled to vote.

(c) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Company entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of Delaware.

(d) Election of Directors. The holders of the Series A-2 Preferred Stock, voting separately as a single class, shall be entitled to elect four (4) directors. The holders of the Series A-1 Preferred Stock, voting separately as a single class, shall be entitled to elect three (3) directors. All other members of the Board of Directors shall be elected by the holders of the outstanding Common Stock and outstanding Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock, voting together as a single class. Any vacancies on the Board of Directors shall be filled by vote of the holders of the class or series that elected the director whose absence created such vacancy. There shall be no cumulative voting, except to the extent the Company is subject to Section 2115 of the California General Corporation Law, and such section is deemed to make Section 708(a), (b) and (c) of the California General Corporation Law applicable to the Company, in which case the stockholders of the Company shall have the right to cumulate votes in connection with the election of directors as provided by Section 708(a), (b) and (c) of the California General Corporation Law.

5. Amendments and Changes.

(a) Approval by Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock. Notwithstanding Section 4 above, as long as an aggregate 10,000,000 shares (as adjusted for stock splits, combinations, reorganizations and the like) of Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock shall be issued and outstanding, the Company shall not, without first obtaining the approval (by vote or written consent as provided by law) of more than 70% of the Series A-3 Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock then outstanding, voting together as a single class:

(i) amend, alter or change any provision of this Amended and Restated Certificate of Incorporation if such action would materially affect the rights, preferences or privileges of the Preferred Stock, whether by merger, consolidation, recapitalization or otherwise (other than for decreases resulting from conversion of the Preferred Stock, redemption or repurchase of the Preferred Stock) unless such action is approved by at least 5 members of the Board of Directors;

(ii) increase or decrease the number of shares of Preferred Stock that the Company shall have the authority to issue;

(iii) authorize any new class or series of shares having rights, preferences or privileges with respect to dividends, payments upon liquidation or voting rights which are senior to the rights of the Preferred Stock;

(iv) increase the authorized number of the Board of Directors;

(v) declare or pay any dividend or other Distribution on any of the Company's stock;

(vi) authorize an acquisition that is material to the Company unless such acquisition is approved by at least 5 members of the Board of Directors;

(vii) incur any material indebtedness unless approved by at least five members of the Board of Directors; provided, however, that this restriction shall not apply to indebtedness outstanding as of the date of filing of this Amended and Restated Certificate of Incorporation and indebtedness not in excess of \$100,000 in the aggregate;

(viii) redeem or repurchase any share or shares of Common Stock except in connection with the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Company or any subsidiary pursuant to agreements under which this corporation has the option to repurchase such shares at or below their original purchase price or such fair market value as approved by the Board of Directors in good faith upon the occurrence of certain events, such as the termination of employment or service, or pursuant to a right of first refusal or other similar right of repurchase;

(ix) increase the aggregate number of shares (other than pursuant to any stock split or similar subdivision) available for issuance under the Company's stock option or incentive plans, whether such increase is effected by an amendment to an existing plan, the creation of a new plan or otherwise, unless approved by at least five members of the Board of Directors; and

(x) authorize any Liquidation of the Company.

6. Redemption. The Preferred Stock is not redeemable.

FIFTH

The Board of Directors shall have the power to adopt, amend and repeal the bylaws of the Company (except insofar as the bylaws of the Company as adopted by action of the stockholders of the Company shall otherwise provide). Any bylaws made by the directors under the powers conferred hereby may be amended or repealed by the directors or by the stockholders, and the powers conferred in this Article Fifth shall not abrogate the right of the stockholders to adopt, amend and repeal bylaws.

SIXTH

Election of directors need not be by written ballot unless the bylaws of the Company shall so provide.

SEVENTH

Subject to the limitations set forth herein, the Company reserves the right to amend the provisions in this Certificate of Incorporation and in any certificate amendatory hereof in the manner now or hereafter prescribed by law, and all rights conferred on stockholders or others hereunder or thereunder are granted subject to such reservation.

EIGHTH

(a) To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, no director of the Company shall be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article Eighth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended.

(b) The Company shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer or employee of the Company or any predecessor of the Company or serves or served at any other enterprise as a director, officer or employee at the request of the Company or any predecessor to the Company to the same extent as permitted under subparagraph (a) above.

(c) Neither any amendment nor repeal of this Article EIGHTH, nor the adoption of any provision of the Company's Certificate of Incorporation inconsistent with this Article EIGHTH, shall eliminate or reduce the effect of this Article EIGHTH in respect of any matter occurring or any action or proceeding accruing or arising or that, but for this Article EIGHTH, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

(d) The Company may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Company or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.