
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

Form 8-A

**FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES
PURSUANT TO SECTION 12(b) OR 12(g) OF THE
THE SECURITIES EXCHANGE ACT OF 1934**

OPKO HEALTH, INC.

(Exact name of Registrant as specified in Its Charter)

Delaware

(State or other jurisdiction
of incorporation or organization)

4400 Biscayne Blvd.
Suite 900

Miami, Florida

Address of principal executive office)

75-2402409

(I.R.S. Employer
Identification No.)

33137

(Zip Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Common Stock, par value \$0.01 per share

Name of each exchange
on which registered

American Stock Exchange

If this form relates to the registration of a class of securities pursuant to Section 12 (b) of the Exchange Act and is effective pursuant to General Instruction A. (c), please check the following box. ☒

If this form relates to the registration of a class of securities pursuant to Section 12 (g) of the Exchange Act and is effective pursuant to General Instruction A. (d), please check the following box. ☐

Securities Act registration statement file number to which this form relates:
(if applicable)

Securities to be registered pursuant to Section 12 (g) of the Act:

(Title of Class)

(Title of Class)

INFORMATION REQUIRED IN
REGISTRATION STATEMENT

Item 1. Description of Registrant's Securities to be Registered.

Our authorized capital stock consists of 500,000,000 shares of common stock, par value \$0.01 per share, and 10,000,000 shares of preferred stock, \$0.01 par value per share.

The following summary of provisions of our common stock and preferred stock is not complete and a full understanding requires a review of our amended and restated certificate of incorporation and amended and restated bylaws that are included as exhibits to this registration statement and the provisions of applicable law.

Common Stock

As of June 7, 2007, 36,605,954 shares of our common stock were outstanding and held by approximately 156 record holders. Subject to the prior rights of the holders of any shares of preferred stock currently outstanding or which may be issued in the future, the holders of the common stock are entitled to receive dividends from our funds legally available therefor when, as and if declared by our board of directors, and are entitled to share ratably in all of our assets available for distribution to holders of common stock upon the liquidation, dissolution or winding-up of our affairs subject to the liquidation preference, if any, of any then outstanding shares of preferred stock. Holders of our common stock do not have any preemptive, subscription, redemption or conversion rights. Holders of our common stock are entitled to one vote per share on all matters which they are entitled to vote upon at meetings of stockholders or upon actions taken by written consent pursuant to Delaware corporate law. The holders of our common stock do not have cumulative voting rights, which means that the holders of a plurality of the outstanding shares can elect all of our directors. All of the shares of our common stock currently issued and outstanding are fully-paid and nonassessable. No dividends have been paid to holders of our common stock since our incorporation, and no cash dividends are anticipated to be declared or paid in the reasonably foreseeable future.

Preferred Stock

Our board of directors has the authority, without further action by the holders of the outstanding common stock, to issue preferred stock from time to time in one or more classes or series, to fix the number of shares constituting any class or series and the stated value thereof, if different from the par value, as to fix the terms of any such series or class, including dividend rights, dividend rates, conversion or exchange rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price and the liquidation preference of such class or series. We presently have two series of preferred stock outstanding, designated as Series A convertible preferred stock (the "Series A preferred stock") and Series C convertible preferred stock (the "Series C preferred stock"). We have no present plans to issue any other series or class of preferred stock. The designations, rights and preferences of the Series A preferred stock and the Series C Preferred Stock are set forth in the certificate of designations of Series A convertible preferred stock and the certificate of designations of Series C convertible preferred stock, each of which has been filed with the Secretary of State of the State of Delaware.

Series A Preferred Stock

Of the authorized preferred stock, 4,000,000 shares have been designated Series A preferred stock, 982,819 of which are currently issued and outstanding and held by 66 stockholders. Dividends are payable on the Series A preferred stock in the amount of \$.25 per share, payable annually in arrears. At the option of our board of directors, dividends will be paid either (i) wholly or partially in cash or (ii) in newly issued shares of Series A preferred stock valued at \$2.50 per share to the extent cash dividend is not paid.

Holders of Series A preferred stock have the right to convert their shares, at their option exercisable at any time, into shares of our common stock on a one-for-one basis subject to anti-dilution adjustments. These anti-dilution adjustments are triggered in the event of any subdivision or combination of our outstanding common stock, any payment by us of a stock dividend to holders of our common stock or other occurrences specified in the certificate of designations relating to the Series A preferred stock. We may elect to convert the Series A preferred stock into common stock or a substantially equivalent preferred stock in the case of a merger or consolidation in which we do not survive, a sale of all or substantially all of our assets or a substantial reorganization of us.

Each share of Series A preferred stock is entitled to one vote on all matters on which the common stock has the right to vote. Holders of Series A preferred stock are also entitled to vote as a separate class on any proposed adverse change in the rights, preferences or privileges of the Series A preferred stock and any increase in the number of authorized shares of Series A preferred stock. In the event of any liquidation or winding up of the Company, the holders of the Series A preferred stock will be entitled to receive \$2.50 per share plus any accrued and unpaid dividends before any distribution to the holders of the common stock and any other class of series of preferred stock ranking junior to it.

We may redeem the outstanding shares of Series A preferred stock for \$2.50 per share (plus accrued and unpaid dividends), at any time.

Series C Preferred Stock

Of the authorized preferred stock, 500,000 shares have been designated Series C preferred stock, of which 457,584 are currently issued and outstanding and held by 30 stockholders. Cumulative dividends are payable on the Series C preferred stock in the amount of \$1.54 per share when declared by the board of directors.

Holders of our Series C preferred stock have the right to convert their shares, at their option exercisable at any time, into shares of our common stock on a one hundred-for-one basis subject to anti-dilution adjustments. These anti-dilution adjustments are triggered in the event of any subdivision or combination of our outstanding common stock, any payment by us of a stock dividend to holders of our common stock or other occurrences specified in the certificate of designations relating to the Series C preferred stock.

The shares of Series C preferred stock will automatically convert into shares of common stock, on a one-hundred-for-one basis (subject to adjustment as noted above), if (a) our common stock trades above \$3.83 per share on any of the specified exchanges for ten consecutive days, (b) we raise at least \$30,000,000 in proceeds at a per share valuation of at least \$1.92, or (c) at least 60% of the holders of the Series C preferred stock so elect.

Each share of Series C preferred stock is entitled to 100 votes on all matters on which the common stock has the right to vote. Holders of Series C preferred stock are also entitled to vote as a separate class on any proposed adverse change in the rights, preferences or privileges of the Series C preferred stock and any increase in the number of authorized shares of Series C preferred stock. In the event of any liquidation or winding up of the Company or any change of control transaction (including certain mergers and sales of stock or assets), the holders of our Series C preferred stock will be entitled to receive \$77.00 per share plus any accrued and unpaid dividends before any distribution to the holders of the other classes of preferred stock or common stock. The Series C preferred stock will be entitled hereafter (and after the payment of any other liquidation preference on any other class or series of preferred stock) to share in our remaining assets on a pro-rata basis with the holders of common stock and any other series or class of participating preferred stock.

Each holder of Series C preferred stock has a pre-emptive right to purchase a pro rata share of any equity securities offered for sale by us in a private placement transaction for a period of 18 months following the Mergers subject to customary exceptions set forth in the certificate of designations relating to the Series C preferred stock.

Anti-Takeover Effects of Certain Provisions of our Certificate of Incorporation, our By-Laws and Delaware Law

Delaware Statute.

We are subject to Section 203 of the Delaware General Corporation law, which prohibits a publicly held Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- prior to such date, our board of directors approves either the business combination or the transaction that resulted in the stockholder’s becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owns at least 85% of our outstanding voting stock, excluding shares held by directors, officers and certain employee stock plans; or
- on or after the consummation date, the business combination is approved by our board of directors and by the affirmative vote at an annual or special meeting of stockholders holding of at least two-thirds of our outstanding voting stock that is not owned by the interested stockholder.

For purposes of Section 203, a “business combination” includes, among other things, a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an “interested stockholder” is generally a person who, together with affiliates and associates of such person:

- owns 15% or more of outstanding voting stock; or
- is an affiliate or associate of ours and was the owner of 15% or more of our outstanding voting stock at any time within the prior three years.

Certificate of Incorporation and Bylaw Provisions.

Our amended and restated certificate of incorporation and amended and restated bylaws include provisions that, among others, could have the effect of delaying, deferring, or discouraging potential acquisition proposals and could delay or prevent a change of control of us. The provisions in our amended and restated certificate of incorporation and amended and restated bylaws that may have such effect include:

- *Preferred Stock.* As noted above, our board of directors, without stockholder approval, has the authority under our certificate of incorporation to issue preferred stock with rights superior to the rights of the holders of common stock. As a result, we could issue preferred stock quickly and easily, which could adversely affect the rights of holders of our common stock and could be issued with terms calculated to delay or prevent a change of control or make removal of management more difficult.
- *Election and Removal of Directors.* Directors may be removed by the affirmative vote of the holders of at least a majority of the voting power of all of the outstanding shares of capital stock of the corporation entitled to vote thereon, voting together as a single class.
- *Stockholder Meetings.* Under our certificate of incorporation and bylaws, special meetings of our stockholders may be called only by the vote of a majority of the entire board. Our stockholders may not call a special meeting of the stockholders.
- *Requirements for Advance Notification of Stockholder Nominations and Proposals.* Our bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of our board of directors or a committee thereof.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, New York, New York.

American Stock Exchange Listing

Our common stock has been approved for listing on the American Stock Exchange under the trading symbol “OPK.”

Item 2. Exhibits.

The following exhibits are filed herewith or incorporated by reference as indicated below:

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Method of Filing</u>
3.1	Amended and Restated Certificate of Incorporation of the Company.	Filed herewith.
3.2	Amended and Restated Bylaws of the Company, as amended.	Filed herewith.

SIGNATURES

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

OPKO HEALTH, INC.
(Registrant)

By: /s/ Adam Logal

Name: Adam Logal

Title: Executive Director of
Finance, Chief Accounting
Officer and Treasurer

Date: June 8, 2007

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF

EXEGENICS, INC.

eXegenics, Inc. (the “Corporation”), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (“DGCL”), does hereby certify as follows:

1. The present name of the Corporation is eXegenics Inc. The Corporation was originally incorporated in the State of Delaware under the name of Cytoclonal Pharmaceuticals, Inc.

2. The date of filing of the original Certificate of Incorporation of the Corporation with the Secretary of the State of Delaware was November 18, 1991.

3. This Amended and Restated Certificate of Incorporation, which amends and restates in its entirety the Corporation’s Certificate of Incorporation, has been duly adopted pursuant to the provisions of Sections 242 and 245 of the DGCL, and the stockholders of the Corporation have given their written consent hereto in accordance with Section 228 of the DGCL. The provisions of the Amended and Restated Certificate of Incorporation are as follows:

ARTICLE I
NAME

The name of the corporation is Opko Health, Inc. (the “Corporation”).

ARTICLE II
REGISTERED OFFICE; REGISTERED AGENT

The address of the Corporation’s registered office in the State of Delaware is 2711 Centerville Road, Suite 400, New Castle County, Wilmington, Delaware 19808. The name of the registered agent at such address is The Prentice-Hall Corporation Systems, Inc.

ARTICLE III
PURPOSE

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

ARTICLE IV
AUTHORIZED CAPITAL

4.1. Total Authorized Capital. The total number of shares of capital stock which the Corporation shall have authority to issue is Five Hundred and Ten Million (510,000,000) shares, consisting of: Five Hundred Million (500,000,000) shares of common stock, par value \$0.01 per share (the “Common Stock”), and Ten Million (10,000,000) shares of preferred stock, par value \$0.01 per share (the “Preferred Stock”). The Common Stock and Preferred Stock shall have the rights, preferences and limitations set forth below.

4.2. Designation of Preferred Stock. The Preferred Stock may be divided into such number of series as the Corporation’s Board of Directors (the “Board of Directors”) may determine. The Board of Directors is authorized to determine and alter the rights, preferences, privileges and restrictions granted to and imposed upon any wholly unissued series of Preferred Stock, and to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. Without limiting the generality of the foregoing, the authority of the Board of Directors with respect to such designation of a series of Preferred Stock shall include, but not be limited to, determination of the following:

4.2.1. the number of shares constituting such series and the distinctive designation of such series;

4.2.2. the dividend rights of the shares of such series, including whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of such series;

4.2.3. whether such series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

4.2.4. whether such series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;

4.2.5. whether or not the shares of such series shall be redeemable, and, if so, the term and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

4.2.6. whether such series shall have a sinking fund for the redemption or purchase of shares of such series, and, if so, the terms and amount of such sinking fund;

4.2.7. the rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of such series; and

4.2.8. any other relative rights, preferences and limitations of such series.

Dividends on outstanding shares of Preferred Stock shall be paid or declared and set apart for payment before any dividends shall be paid or declared and set apart for payment of the Common Stock with respect to the same dividend period.

If upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the assets available for distribution to the holders of shares of all series of Preferred Stock shall be insufficient to pay such holders the full preferential amount to which they are entitled, then such assets shall be distributed ratably among the shares of all series of Preferred Stock in accordance with the respective preferential amounts (including unpaid cumulative dividends, if any) payable with respect thereto.

ARTICLE V

COMMON STOCK

5.1. General. All shares of Common Stock shall be identical in all respects and shall entitle the holder thereof to the same rights and privileges, subject to the same qualifications, limitations and restrictions. The rights, powers and privileges of the holders of the Common Stock are subject to and qualified by the rights of holders of the Preferred Stock.

5.2. Dividends; Stock Splits. Subject to (a) any preferential dividend rights of holders of any then outstanding shares of Preferred Stock, and (b) any other provisions of this Certificate of Incorporation, as it may be amended from time to time, the holders of Common Stock shall be entitled to receive, on a pro rata basis, such dividends and other distributions in cash, stock or property of the Corporation when, as and if declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefore.

5.3. Liquidation Rights. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Common Stock shall be entitled to receive the assets and funds of the Corporation available for distribution after payments to creditors and to the holders of any class or series of stock having preference over the Common Stock as to the distribution of assets upon liquidation, dissolution or winding up of the Corporation, ratably in proportion to the number of shares held by them.

5.4. Voting. At every meeting of the stockholders of the Corporation in connection with the election of directors and all other matters submitted to a vote of stockholders, each holder of Common Stock is entitled to one vote in person or by proxy for each share of Common Stock registered in the name of such holder on the transfer books of the Corporation. Except as otherwise required by law, the holders of Common Stock and Special Voting Stock shall vote together as a single class, subject to any right that may be conferred upon holders of Preferred Stock to vote together with holders of Common Stock on all matters submitted to a vote of stockholders of the Corporation.

5.5. No Cumulative Voting. The holders of shares of Common Stock shall not have cumulative voting rights.

ARTICLE VI
SERIES A PREFERRED STOCK

6.1. Designation. A total of Four Million (4,000,000) shares of the Preferred Stock shall be designated the “Series A Convertible Preferred Stock.” As used herein, the term “Preferred Stock” used without reference to the Series A Convertible Preferred Stock shall mean the shares of Preferred Stock, without distinction as to series, except as otherwise expressly provided for herein. The rights, preferences, privileges and restrictions granted to and imposed upon the Series A Preferred are as follows:

6.2. Dividends.

6.2.1. The holders of record of the Series A Preferred, as of a date fixed by the Corporation’s Board of Directors, shall be entitled to receive dividends in an amount equal to \$.25 per share payable annually in arrears on or about January 15 in each year commencing January 15, 1996. If the dividend payment date is not a business day, then the dividend shall be payable on the next succeeding business day. Such dividends shall be cumulative and shall accrue on each share of Series A Preferred from the date of the filing of this Amendment to the Corporation’s Certificate of Incorporation with the Secretary of State of the State of Delaware. Dividends payable for any partial dividend period shall be computed on the basis of a 360-day year or twelve 30-day months.

6.2.2. Dividends shall be payable to the extent lawfully permitted, at the option of the Board of Directors, either (i) wholly or partially in cash or (ii) in newly issued additional shares of Series A Preferred (the “Additional Shares”) valued at \$2.50 per share and in an aggregate face amount equal to the difference between the total amount of the dividend then payable and the amount, if any, of such dividend then being paid in cash, rounded to the next highest whole number.

6.2.3. No dividends or other distributions, other than dividends payable solely in shares of Common Stock of the Corporation or other capital stock of the corporation ranking junior as to dividends or rights upon dissolution or liquidation to the Series A Preferred (the “Junior Dividend Stock”) shall be paid or set apart for payment on, and no purchase, redemption or other acquisition shall be made by the Corporation of, any shares of Common Stock or Junior Dividend Stock unless and until all accrued and unpaid dividends on the Series A Preferred shall have been paid or set apart for payment.

6.2.4. Any reference to “distribution” contained in this Section 6.2 shall not be deemed to include any stock dividend or distributions made in connection with any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary.

6.2.5. The amount of the dividends specified in Section 6.2.1 and the valuation of the Additional Shares specified in Section 6.2.2 shall be subject to proportional adjustment in accordance with changes in the outstanding number of shares of Series A Preferred resulting from reclassifications or capital reorganizations (including reclassifications in connection with consolidations or mergers in which the Corporation is the continuing corporation), but excluding instances of Additional Shares pursuant to Section 6.3.2.

6.3. Liquidation Preference.

6.3.1. In the event of a liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, the holders of record of the Series A Preferred shall be entitled to receive ratably in full, out of lawfully available assets of the Corporation, whether such assets are stated capital or surplus of any nature, an amount in cash per outstanding share of Series A Preferred equal to the sum of \$2.50 and all dividends (whether or not declared) accrued and unpaid thereon as of the date of final distribution to such holders, without interest, before any payment shall be made or any assets distributed to the holders of common Stock ("Common Stockholders") or any other class or series of the Corporation's capital stock ranking junior as to liquidation rights to the Series A Preferred; provided, however, that such rights shall accrue to the holders of the Series A Preferred only in the event the Corporation's payments with respect to the liquidation preferences of any holders of capital stock of the Corporation ranking senior as to liquidation rights to the Series A Preferred (the "Senior Liquidation Stock") are fully met. If, upon any liquidation, dissolution and winding-up, the amount available for such payment to the holders of Series A Preferred shall not be sufficient to pay in full the amounts payable on the Series A Preferred, the holders of the Series A Preferred and any other class or series of the Corporation's capital stock which may hereafter be created having parity as to liquidation rights with the Series A preferred shall share in the distribution of the amount available in proportion to the respective preferential amounts to which each is entitled. None of a consolidation or merger of the Corporation with another corporation, a sale or transfer of all or part of the Corporation's assets for cash, securities or other property, or a reorganization of the Corporation shall be considered a liquidation, dissolution or winding-up of a Corporation.

6.3.2. The liquidation preference specified in subsection 6.3.1 shall be subject to proportional adjustment in accordance with changes in the outstanding number of shares of Series A Preferred resulting from reclassifications or capital reorganizations (including reclassifications in connection with consolidations or mergers in which the Corporation is the continuing corporation), but excluding issuances of Additional Shares pursuant to subsection 6.2.2.

6.4. Voting Rights. The holders of record of the Series A Preferred shall be entitled to notice of, and to vote on or consent to, all actions on which Common Stockholders are required or permitted to act upon, including, without limitation, the election of directors. On all matters requiring or permitting a vote or consent of the Corporation's Common Stockholders, each share of Series A Preferred shall be equivalent to one share of Common Stock and all shares of Series A Preferred shall vote together with the shares of Common Stock as a single class, except as otherwise provided by the Certificate of Incorporation or By laws of the Corporation or by law. So long as shares of Series A Preferred are outstanding, without the approval (by vote or written consent, as provided by law) of the holders of record of at least a majority of the then outstanding shares of Series A Preferred, voting separately as a class, the Corporation shall not:

6.4.1. alter or change the rights, preferences, privileges or restrictions of shares of Series A Preferred so as to affect them adversely;
or

6.4.2. increase the authorized number of shares of Series A Preferred.

6.5. Conversion Rights.

6.5.1. Each share of Series A Preferred shall be convertible, at the option of the holder of record thereof, into fully paid and nonassessable shares of the Corporation's Common Stock. Shares of Series A Preferred shall be convertible into the number of shares of Common Stock determined by dividing (x) the number of shares of Series A Preferred (including additional shares) held by a holder by (y) a divisor equal to \$2.50, subject to adjustment as provided in Section 6.5.5 (such divisor as so adjusted being, the "Conversion Price"). No payment or adjustment shall be made in respect of dividends on the Common Stock or the Series A Preferred upon conversion of shares of Series A Preferred.

6.5.2. In order to exercise the conversion rights set forth herein, a holder of record of shares of Series A Preferred shall surrender the certificate or certificates representing such shares, duly endorsed to the Corporation or in blank, at the principal office of the Corporation, or at such other office as the Corporation may designate, and shall give written notice to the Corporation, in form reasonably satisfactory to the Corporation, that states such holder elects to convert the Series A Preferred or a specified portion thereof and sets forth the name or names in which the certificate or certificates for shares of Common Stock are to be issued (the "Conversion Notice"); provided, however, nothing herein contained shall be deemed to permit any holder of Series A Preferred to designate another person to be the holder of Common Stock issuable upon conversion of the Series A Preferred if the issuance to such other person would violate federal or state securities laws or any agreement a holder of Series A Preferred has with the Corporation regarding restrictions on transferability of any securities of the Corporation held by such holder. As promptly as practicable after receipt of the Conversion Notice, surrender of the certificate or certificates representing the Series A Preferred, and payment by the holder of any applicable transfer or similar taxes, the Corporation shall issue and deliver (i) a certificate or certificates for the number of full shares of Common Stock issuable upon conversion, in the name or names and to the address or addresses specified in the Conversion Notice, subject to any such restrictions on transferability, and (ii) a check in payment for any fractional shares pursuant to Section 6.8. The Corporation shall cancel the certificate or certificates for Series A Preferred upon the surrender thereof and shall execute and deliver a new certificate for Series A Preferred, representing the balance, if any, of the number of shares evidenced by such certificate or certificates not so converted. Each Conversion Notice pursuant hereto shall constitute a contract between the holder of shares of Series A Preferred and the Corporation, whereby the holder of such shares shall be deemed to subscribe for the amount of Common Stock which he shall be entitled to receive upon such conversion and whereby the Corporation shall be deemed to agree that the surrender of the certificate or certificates therefore shall constitute full payment of such subscription for Common Stock to be issued upon such conversion.

6.5.3. A conversion shall be deemed to have been effected at the close of business on the date on which the Conversion Notice shall have been received by the Corporation and the certificate or certificates for Series A Preferred shall have been surrendered; whereupon the holder thereof shall cease to be a stockholder with respect thereto and all rights whatsoever with respect to such shares shall terminate (except the rights of the holder to receive shares of Common Stock and cash in respect of fractional shares), and the person or persons in whose name any certificate or certificates for Common Stock are issuable upon such conversion shall be deemed to have become the holder of record of the shares represented thereby on such date.

6.5.4. The Corporation shall not sell or issue shares of Common Stock, or rights, options, warrants or convertible securities containing the right to subscribe for or purchase shares of Common Stock, at a price per share of Common Stock (determined in the case of such rights, options, warrants or convertible securities, by dividing (x) the total amount received or receivable by the Corporation in consideration of the sale and issuance of such rights, options, warrants or convertible securities, plus the total consideration payable to the Corporation upon exercise or conversion thereof, by (y) the total number of shares of Common Stock covered by such rights, options, warrants or convertible securities) that is lower than the fair market value thereof as determined by the Board of Directors (the "Fair Value") immediately prior to such sale or issuance, unless the Board of Directors determines that such sale or issuance is in the best interest of the Corporation.

6.5.5. The Conversion Price shall be subject to adjustment from time to time as follows:

(a) In the event the Corporation (1) declares a dividend on the Common Stock in shares of its capital stock, (2) subdivides the outstanding shares of the Common Stock into a larger number of shares, (3) combines the outstanding shares of the Common Stock into a smaller number of shares, or (4) issues by reclassification of the Common Stock any shares of its capital stock (including any reclassification in connection with a consolidation or merger in which the Corporation is the continuing corporation), then the Conversion Price in effect on the record date for such dividend or on the effective date of such subdivision, combination or reclassification shall be proportionately adjusted so that the holder of any shares of Series A Preferred surrendered for conversion after such date shall be entitled to receive the kind and amount of shares which such holder would have owned or have been entitled to receive had such shares of Series A Preferred been converted immediately prior to such date. Such adjustment shall be made successively whenever any event listed above shall occur. If, as a result of an adjustment made pursuant to this Section 6.5.5(a) the holder of any shares of Series A Preferred thereafter surrendered for conversion shall become entitled to receive shares of two or more classes of capital stock or shares of Common Stock and other capital stock of the Corporation, the Board of Directors shall determine the allocation of the adjusted Conversion Price between shares of such classes of capital stock or shares of Common Stock and other capital stock.

(b) In the event the Corporation distributes to its Common Stockholders any of its assets (excluding cash dividends or distributions out of earnings subsequent to the date hereof) or debt securities or any rights, warrants or options to purchase securities of the Corporation, the Conversion Price shall be adjusted, effective at the opening of business on the date following the record date for the distribution, in accordance with the following formula:

$$c^1 - c + \frac{M}{M-F}$$

where

- c¹ - the adjusted Conversion Price.
- c - the Conversion Price in effect on the data immediately preceding the record date for the distribution.
- M - the Fair Value per share of Common Stock on the record date for the distribution.
- F - the Fair Value on the record date for the distribution of the portion of the assets, debt securities, rights, warrants or options not distributed applicable to one share of Common Stock.

(c) The Corporation shall have the right, at any time, voluntarily to decrease the Conversion Price then in effect by such amount and for such period or periods of time as the Board of Directors shall determine. In each such event the Corporation shall prepare and deliver to each holder of Series A Preferred a certificate of an executive officer to decrease the conversion Price in accordance with this Section 6.5.5(c) and the amount of such decrease, (2) the period during which such decreased Conversion Price shall be in effect, and (3) that such election is irrevocable during such period. No decrease in the Conversion Price pursuant to the provisions of this subsection shall be deemed to alter or adjust the conversion Price for the purposes of any other subsection of this Section 6.5.

(d) No adjustment in the Conversion Price shall be required unless such adjustment will require a change of any adjustment which, by reasons of this subsection will require a change of any adjustment which, by reasons of this subsection 6.5.5(d) is not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under Section 6.5 shall be made to the nearest cent or to the nearest 100th of a share, as the case may be.

(e) Whenever any adjustment is made in the Conversion Price, the Corporation shall, as soon as reasonably practicable thereafter, prepare a written statement, signed by an executive officer of the Corporation setting forth the adjusted Conversion Price, determined as provided herein, and, in reasonable detail, the facts requiring such adjustment. The Corporation shall mail such statement to all holders of record of outstanding shares of Series A Preferred.

(f) In case of any consolidation or merger of the Corporation in which the Corporation does not survive or any sale of all or substantially all of the Corporation's assets or a substantial reorganization of the Corporation (each, an "Election Event"), there shall be no adjustment of the Conversion Price, but any record holder of Series A preferred may elect, by following the procedures set forth in Section 6.5.2 during such period in the Board of Directors shall determine, to convert such holder's shares of Series A Preferred into

the kind and amount of shares of stock and other securities and property which such holder would have been entitled to receive upon such Election Event if such holder had held the Common Stock issuable upon the conversion of such holder's shares of Series A Preferred immediately prior to such Election Event, provided, however, an exercise of conversion under this subsection 6.5.5(f) shall be ineffective in the event the Corporation shall exercise any of its conversion rights under Section 6.5.6.

6.5.6. In case of any Election Event, the Corporation may elect, by giving written notice to the holders of record of the Series A Preferred (the "Election Notice"), to convert all the outstanding Series A preferred into Common Stock effective immediately prior to the consummation of the Election Event, without any action on the part of the stockholders of the Series A Preferred. Upon any such election, each share of Series A Preferred shall be converted into a number of shares of Common Stock equal to the greater of (i) the number of shares of Common Preferred been converted into Common Stock at the Conversion Price in effect pursuant to subsection 6.5.1 immediately prior to the Election Event, or (ii) the number of shares of Common Stock determined by dividing (x) the liquidation preference a share of Series A Preferred would then have been entitled to receive pursuant to Section 6.3 upon a liquidation of the Corporation, by (y) the Fair Value of a share of Common Stock on the day preceding the effective date of the Election Event. Alternatively, upon the occurrence of an Election Event, the Board of Directors may elect to have the Series A Preferred converted into preferred stock of the surviving corporation of substantially equivalent value to such Series A Preferred ("Equivalent Preferred"), as the Board of Directors shall determine, taking into account the Fair Value, liquidation preference and other attributes of the Series A Preferred. Each holder of shares of Series A Preferred shall cease to be a holder of Series A Preferred for any purpose as of the date specified in the Election Notice, notwithstanding a certificate or certificates for Series A Preferred shall not have been surrendered for cancellation, and all rights whatsoever with respect to such shares shall terminate, except the rights of the holder to receive Common Stock or Equivalent Preferred upon compliance with the procedures specified in the Election Notice.

6.5.7. The Corporation shall at all times reserve and keep available out of authorized Common Stock, solely for the purpose of effecting the conversion of the Series A Preferred, the full number of shares of Common Stock issuable upon conversion or all Series A preferred at any time outstanding.

6.6. Optional Redemption.

6.6.1. Shares of Series A Preferred shall be redeemable, at the Corporation's option, in whole or in part, at any time and from time to time in the event either (i) the Corporation completed an initial public offering of the Common Stock at a price to the public of at least \$2.50 per share or (ii) after completing an initial public offering of the common Stock at a price to the public of less than \$2.50 per share, the average closing bid price of the Common Stock is at least \$3.75 per share for any 30 consecutive trading days ending within 15 days prior to the date on which the Corporation gives notice or redemption of shares of Series A Preferred (the "Redemption Notice"). The redemption price shall be \$2.50 per share plus a sum equal to the accrued but unpaid dividends on the Series A Preferred (the "Redemption Price").

6.6.2. In the event that at any time less than all of the Series A Preferred outstanding is to be redeemed, the Board of Directors shall determine the shares to be redeemed by lot or pro rata or by any other means the Board of Directors deems equitable.

6.6.3. The Redemption Notice shall be given by the Corporation to the holders of record of the shares to be redeemed, at their respective addresses on the books of the Corporation, not less than 15 nor more than 75 days prior to the date fixed for redemption by the Board of Directors (the "Redemption Date"). Redemption Data may be fixed as of the date of, the completion of an initial public offering of Common Stock under clause (i) of Section 6.6.1. If less than all the shares of Series A Preferred owned by any holder are then to be redeemed, the Redemption Notice shall also specify the number of shares thereof which are to be redeemed and the numbers of the certificates representing such shares. If the Redemption Notice shall have been duly mailed and if, on or before the Redemption Date, all funds necessary for such redemption shall have been set aside by the Corporation in trust for the account of the holders of the Series A Preferred to be redeemed, so as to be available therefore, then, from and after the mailing of the Redemption Notice, notwithstanding that any certificate for shares of Series A Preferred so called for redemption shall not have been surrendered for cancellation, all rights in or with respect to such shares shall terminate except the right of the holder to (i) receive the Redemption Price, without interest, upon compliance with the procedures specified in the Redemption Notice, or (ii) convert such shares of Series A Preferred into Common Stock pursuant to Section 6.5, not later than the fourth business day preceding the Redemption Date.

6.6.4. The prices per share of Common Stock referred to in Section 6.6.1 shall be subject to proportional adjustment in accordance with changes in the outstanding shares of Common Stock resulting from any of the events listed in Section 6.5.5.

6.6.5. The Redemption Price specified in subsection 6.6.1 shall be subject to proportional adjustment in accordance with changes in the outstanding number of shares of Series A Preferred resulting from reclassifications or capital reorganizations (including reclassifications in connection with consolidations or mergers in which the Corporation is the continuing corporation), but excluding issuances of Additional Shares pursuant to subsection 6.2.2.

6.7. Status of Reacquired Shares. The shares of Series A Preferred which have been issued and reacquired in any manner by the Corporation shall have the status of authorized and unissued shares of Preferred Stock and may be reclassified and reissued as a part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors.

6.8. No Fractional Shares. The Corporation shall not be required to issue fractional shares of Common Stock upon any conversion of Series A Preferred but shall pay in lieu thereof, as soon as practicable after the date the Series A Preferred is surrendered for conversion in accordance with the provisions hereof, an amount in cash equal to the same fraction of the Fair Value of a full share of Common Stock.

6.9. Determination of the Board of Directors. Whenever this Certificate of Incorporation requires a determination to be made by the Board of Directors, such determination shall be conclusive and shall be set forth in a Board of Directors resolution.

6.10. Notices. Any notice required by these provisions to be given to the holders of Series A Preferred shall be deemed given on the second business day after mailing, first class mail postage prepaid, or on the day of delivery if sent by overnight courier, in each instance in an envelope addressed to each holder of record of Series A Preferred at such holder's address appearing on the books of the Corporation.

ARTICLE VII

SERIES C PREFERRED STOCK

7.1. Designation. A total of Five Hundred Thousand (500,000) shares of the Preferred Stock shall be designated the "Series C Convertible Preferred Stock." As used herein, the term "Preferred Stock" used without reference to the Series C Convertible Preferred Stock shall mean the shares of Preferred Stock, without distinction as to series, except as otherwise expressly provided for herein. All other capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in Section 7.10 hereof.

7.2. Dividends.

7.2.1. Accrual and Payment of Dividends. The holders of shares of Series C Convertible Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Company, out of the assets of the Company legally available therefor, prior and in preference to any declaration or payment of any dividend on the Common Stock or any other class or series of capital stock of the Company ranking junior to the Series C Convertible Preferred Stock with respect to the payment of dividends, and subject to the rights to dividends of any class or series of Preferred Stock ranking senior or on parity with the Series C Convertible Preferred Stock with respect to dividends, cumulative cash dividends at the rate per share equal to two percent (2%) per annum of the Original Series C Purchase Price (subject to equitable adjustment in the event of any stock split, stock dividend, combination, recapitalization, reorganization, reclassification or other similar event) of each share of Series C Convertible Preferred Stock then outstanding. Such dividends shall accrue from day to day, whether or not earned or declared until paid. Such dividends shall be cumulative so that if such dividends in respect of any dividend period shall not have been paid or declared and set apart for all shares of Series C Convertible Preferred Stock at the time outstanding, the deficiency shall be fully paid on or declared and set apart for such shares before the Company makes any distribution to the holders of the Common Stock or any other class or series of capital stock of the Company ranking junior to the Series C Convertible Preferred Stock with respect to the payment of dividends.

7.2.2. Other Dividends. Whenever the Company declares a dividend on its Common Stock, the holders of the Series C Convertible Preferred Stock shall be entitled to receive dividends in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

7.3. Liquidation Rights.

7.3.1. Treatment at Liquidation, Dissolution or Winding Up. In the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, or in the event of its insolvency, distributions to the stockholders of the Company shall be made in the following manner:

(a) First, before any distribution or payment is made to any holders of Common Stock or any other class or series of capital stock of the Company, the holders of Series C Convertible Preferred Stock shall be entitled to be paid first out of the assets of the Company available for distribution to holders of the Company's capital stock of all classes and series, whether such assets are capital, surplus or earnings (collectively, "Available Assets"), an amount per share equal to the Series C Preferential Amount.

(b) After payment of the Series C Preferential Amount to all holders of the Series C Convertible Preferred Stock and payment of any other preference amounts to the holders of any other class or series of Preferred Stock entitled to a liquidation preference, the entire remaining Available Assets, if any, shall be distributed among the holders of Common Stock, Series C Convertible Preferred Stock and any other class or series of Preferred Stock entitled to participate with the Common Stock in a liquidating distribution, pro rata in proportion to the shares of Common Stock then held by them and the shares of Common Stock which they then have the right to acquire upon conversion of such shares of Preferred Stock held by them (such participation amount per share to be received by the holders of the Series C Convertible Preferred Stock, together with the Series C Preferential Amount, the "Series C Liquidation Amount").

(c) Written notice of any liquidation, dissolution or winding up of the Company, stating the payment date, the amount of the Series C Preferential Amount, the amount of the Series C Liquidation Amount and the place where said Series C Liquidation Amount shall be payable, shall be given to the holders of record of Series C Convertible Preferred Stock not less than 5 days prior to the consummation of such liquidation, dissolution or winding up, in accordance with the provisions of Section 7.7.

7.3.2. Treatment of Reorganization, Consolidation, Merger or Sale of Assets. Any Change of Control Event, shall be deemed, for the purposes of this Section 7.3.2, to be a liquidation, dissolution and winding up of the Company, in which event the Series C Liquidation Amount to which each such holder is entitled shall be calculated based upon the fair market value (as reasonably determined in good faith by the Board of Directors of the Company) of whatever property (including any securities) is to be received by the Company or its stockholders in respect of such Change of Control Event.

7.3.3. Distributions Other than Cash. Whenever the distribution provided for in this Section 7.3 shall be payable in whole or in part in property other than cash, the value of any property distributed shall be the fair market value of such property as reasonably determined in good faith by the Board of Directors of the Company. All distributions of property other than cash made hereunder shall be made, to the maximum extent possible, pro rata with respect to each series and class of Preferred Stock and Common Stock in accordance with the liquidation amounts payable with respect to each such series and class.

7.4. Voting Power.

7.4.1. General. Except as otherwise expressly provided elsewhere in the Certificate of Incorporation (as in existence on the date hereof or as amended with the requisite approval of the holders of Series C Convertible Preferred Stock) or as otherwise required by law, (a) each holder of Series C Convertible Preferred Stock shall be entitled to vote on all matters submitted to a vote of the stockholders of the Company and shall be entitled to that number of votes equal to the largest number of whole shares of Common Stock into which such holder's shares of Series C Convertible Preferred Stock could be converted, pursuant to the provisions of Section 7.5 hereof, at the record date for the determination of stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, and (b) the holders of shares of Preferred Stock and Common Stock shall vote together (or tender written consents in lieu of a vote) as a single class on all matters submitted to the stockholders of the Company.

7.4.2. Majority Holders. Whenever in this Article VII, the vote, approval or written consent of the Majority Holders (or the holders of any other specified percentage of the shares of Series C Convertible Preferred Stock) is required, such vote shall be taken, any approval shall be given or any written consent shall be tendered by the holders of the Series C Convertible Preferred Stock voting, approving or consenting together as a single class, with each share of Series C Convertible Preferred Stock being entitled to one vote in each instance.

7.4.3. Restriction and Limitation on Company Action. As long as any of the Series C Convertible Preferred Stock is outstanding, the holders of Series C Convertible Preferred Stock shall vote as a separate voting group on, and the affirmative vote of the Majority Holders shall be required to authorize, any action by the Company which would:

(a) In any manner authorize, create, amend or issue any class or series of capital stock of the Company ranking, either as to payment of dividends, distribution of assets upon liquidation or otherwise, or redemption, prior to or on parity with the Series C Convertible Preferred Stock.

(b) Increase the authorized number of shares of Series C Convertible Preferred Stock or issue additional shares of Series C Convertible Preferred Stock.

(c) In any manner adversely alter or change the designations or the powers, preferences or rights or qualifications, limitations or restrictions of the Series C Convertible Preferred Stock (including, without limitation, liquidation preference provisions).

(d) Reclassify the Common Stock, or any other class or series of capital stock of the Company junior to the Series C Convertible Preferred Stock into capital stock of the Company of any class or series ranking, either as to payment of dividends, distribution of assets upon liquidation or otherwise, or redemption, prior to or on a parity with the Series C Convertible Preferred Stock.

7.5. Conversion Rights. The holders of the Series C Convertible Preferred Stock shall have the following rights with respect to the conversion of such shares into shares of Common Stock:

7.5.1. Voluntary Conversion.

(a) Subject to and in compliance with the provisions of this Section 7.5, each and any outstanding share of the Series C Convertible Preferred Stock (together with all accrued but unpaid dividends thereon) shall be convertible, at the option of the holder thereof, at any time and from time to time, into such number of fully-paid and non-assessable shares of Common Stock as is determined pursuant to Section 7.5.3 below.

(b) To exercise this conversion right, a holder of Series C Convertible Preferred Stock shall surrender the certificate or certificates representing the shares being converted at the principal office of the Company, together with written notice to the Company that such holder elects to convert such shares (the "Conversion Notice"); provided, however, that in the event such certificate or certificates have been lost, stolen or destroyed, then the holder electing to effect such a conversion shall so certify to the Company in its Conversion Notice, and shall further execute an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. The Conversion Notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock issuable upon such conversion shall be issued. The certificate or certificates for shares of Series C Convertible Preferred Stock surrendered for conversion shall be accompanied by proper assignment thereof to the Company or in blank. As promptly as practicable after the Series C Conversion Date, the Company shall issue and deliver to the holder of the shares of Series C Convertible Preferred Stock being converted, or on its written order, at the expense of the Company: (i) a certificate or certificates, as such holder may request, representing the number of whole shares of Common Stock issuable upon the conversion of such shares of Series C Convertible Preferred Stock in accordance with the provisions of this Section 7.5, (ii) if some but not all of the shares of Series C Convertible Preferred Stock represented by a certificate surrendered by such holder are converted, a new certificate or certificates representing the number of shares of Series C Convertible Preferred Stock which were not converted, and (iii) if necessary pursuant to the provisions of Section 7.5.4, cash in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion. Such conversion shall be deemed to have been effected immediately prior to the close of business on the Series C Conversion Date, and at such time the rights of the holder as holder of the converted shares of Series C Convertible Preferred Stock shall cease and the person(s) in whose name(s) any certificate(s) for shares of Common Stock shall be issuable upon such conversion (subject to compliance with the applicable federal and state securities laws) shall be deemed to have become the holder(s) of record of the shares of Common Stock represented thereby.

7.5.2. Automatic Conversion.

(a) Immediately upon the earlier to occur of (i) the consummation of the Company's first Qualified Offering (ii) the satisfaction of the Price Condition or (iii) the approval, set forth in a written notice to the Company, of the holders of at least sixty percent (60%) of the outstanding shares of Series C Convertible Preferred Stock of an

election to convert all outstanding shares of Series C Convertible Preferred Stock to Common Stock (as the case may be, the “Conversion Event”), all outstanding shares of Series C Convertible Preferred Stock (together with any accrued but unpaid dividends thereon) shall be converted automatically into the number of fully-paid, non-assessable shares of Common Stock as is determined pursuant to Section 7.5.3 below as of the date of the Conversion Event, without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company.

(b) Promptly upon the occurrence of the Conversion Event, the Company shall deliver written notice thereof to the holders of the Series C Convertible Preferred Stock in accordance with the provisions of Section 7.6.2, and such holders shall surrender the certificates representing such shares at the principal office of the Company, which certificates shall be accompanied by proper assignment thereof to the Company or in blank. As promptly as practicable after the Series C Conversion Date, the Company shall issue and deliver to each holder of shares of Series C Convertible Preferred Stock so converted, at the expense of the Company: (i) a certificate representing the number of whole shares of Common Stock issuable upon the conversion of such shares of Series C Convertible Preferred Stock in accordance with the provisions of this Section 7.5, and (ii) if necessary pursuant to the provisions of Section 7.5.4, cash in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion; provided, however, that the Company shall not be obligated to issue and deliver the foregoing unless certificates evidencing the shares of Series C Convertible Preferred Stock so converted are either delivered to the Company or the holder thereof certifies to the Company 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 therewith. Notwithstanding the failure by any holder of the Series C Convertible Preferred Stock to deliver the certificates representing such holder’s shares as required by this Section 7.5.2(b), such conversion shall be deemed to have been effected immediately prior to the close of business on the Series C Conversion Date, and at such time the rights of each holder as holder of the Series C Convertible Preferred Stock shall cease and such holder shall be deemed to have become the holder of record of the shares of Common Stock issuable upon the conversion of such holder’s shares of Series C Convertible Preferred Stock.

7.5.3. Series C Conversion Rate. The number of shares of Common Stock that a holder of Series C Convertible Preferred Stock shall be entitled to receive upon conversion pursuant to this Section 7.5 shall be the product obtained by multiplying (a) the number of shares of Series C Convertible Preferred Stock being converted by such holder at any time, by (b) the quotient obtained by dividing (i) the Original Series C Purchase Price (subject to adjustment in the event of any stock split, stock dividend, combination, recapitalization, reorganization, reclassification or other similar event) by (ii) the Series C Conversion Value then in effect.

7.5.4. Cash in Lieu of Fractional Shares. No fractional shares of Common Stock or scrip representing fractional shares shall be issued upon the conversion of shares of Series C Convertible Preferred Stock. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of Series C Convertible Preferred Stock, the Company shall pay to the holder of the shares of Series C Convertible Preferred Stock which were converted a cash adjustment in respect of such fractional shares in an amount equal

to the same fraction of the market price per share of the Common Stock at the close of business on the Series C Conversion Date. The determination as to whether or not any fractional shares are issuable shall be based upon the aggregate number of shares or fractional shares of Series C Convertible Preferred Stock being converted at any one time by any holder thereof, not upon each share or fractional share of Series C Convertible Preferred Stock being converted.

7.5.5. Reservation of Common Stock. 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 Series C Convertible Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series C Convertible Preferred Stock (including any shares of Series C Convertible Preferred Stock issuable upon the exercise, conversion or exchange of any options, warrants, purchase rights or convertible securities), and, if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series C Convertible Preferred Stock (including any shares of Series C Convertible Preferred Stock issuable upon the exercise, conversion or exchange of any options, warrants, purchase rights or convertible securities), the Company shall take all commercially reasonable actions as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

7.5.6. Issue Taxes. The Company shall pay all issue taxes (other than any taxes measured by the income of any person other than the Company), if any, incurred in respect of the issuance of shares of Common Stock upon a conversion of shares of Series C Convertible Preferred Stock. If a holder of shares surrendered for conversion specifies that the shares of Common Stock to be issued upon conversion are to be issued in a name or names other than the name or names in which such surrendered shares stand (which shall be subject to compliance with the applicable provisions of federal and state securities laws), the Company shall not be required to pay any transfer or other taxes incurred by reason of the issuance of such shares of Common Stock to the name of another, and if the appropriate transfer taxes shall not have been paid to the Company or the transfer agent for the Series C Convertible Preferred Stock at the time of surrender of the shares involved, the shares of Common Stock issued upon conversion thereof may be registered in the name or names in which the surrendered shares were registered without any liability to the Company, despite the instructions to the contrary.

7.6. Notices.

7.6.1. Notices of Record Date. In the event of (a) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividends or other distribution, or any right to subscribe for, purchase or otherwise acquire any Equity Securities or other property; (b) any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company, or any sale or disposition of all or substantially all of the assets of the Company to any other person or persons; or (c) any voluntary or involuntary dissolution, liquidation, winding up or bankruptcy of the Company (each, a "Record Event"), then and in each such Record Event the Company shall give each holder of Series C Convertible Preferred Stock a notice specifying (i) the date on which any such record is

to be taken for the purpose of such dividend, distribution or right and a description of such dividend, distribution or right; (ii) the date on which any such reorganization, reclassification, recapitalization, sale, disposition, merger, consolidation, dissolution, liquidation, winding up or bankruptcy is expected to become effective; and (iii) the time, if any, that is to be fixed as to when the holders of record of Common Stock or other Equity Securities shall be entitled to exchange their shares of Common Stock or other Equity Securities for cash, securities or other property deliverable upon such reorganization, reclassification, recapitalization, sale, disposition, merger, consolidation, dissolution, liquidation, winding up or bankruptcy. In each such Record Event, the notice required by this Section 7.6.1 shall be delivered at least 10 days prior to the date specified in such notice.

7.7. Notices in General. Whenever a notice is required to be given to a holder of shares of Series C Convertible Preferred Stock pursuant to this Article VII (including, without limitation, any notice required by Section 7.6.1 above), such notice shall be delivered in person, sent by nationally recognized overnight delivery service specifying next day delivery, mailed by certified or registered mail, postage prepaid and return receipt requested, or sent by telecopier, telex, facsimile or similar transmission, to such holder's address of record as shown on the books of the Company.

7.8. Cancellation of Series C Convertible Preferred Stock. Any shares of Series C Convertible Preferred Stock that are acquired by the Company by reason of redemption, repurchase or otherwise or are converted shall be cancelled and returned to the status of authorized but unissued shares of undesignated Preferred Stock and all rights to receive dividends thereon shall cease to accrue.

7.9. Preemptive Rights.

7.9.1. Pro Rata Share. Solely during the period commencing on the Original Series C Issuance Date and terminating on the eighteen month anniversary thereof (the "Preemptive Period"), each holder of Series C Convertible Preferred Stock is hereby expressly granted a preemptive right to purchase up to such holder's pro rata share of all Equity Securities that the Company may from time to time propose to sell, issue or exchange, other than the Excluded Securities. The pro rata share of each holder of Series C Convertible Preferred Stock is equal to the ratio of (a) the number of Equity Securities then held by such holder to (b) the total amount of Equity Securities then issued (determined on an Fully-Diluted Basis).

7.9.2. Notice and Purchase Right. If the Company proposes, agrees or obligates itself to issue, sell or exchange any Equity Securities, other than the Excluded Securities, during the Preemptive Period, it will give each holder of Series C Convertible Preferred Stock written notice of its intention, describing the Equity Securities, the price and the other terms and conditions, if any, upon which the Company proposes, agrees or obligates itself to issue, sell or exchange the same. Each holder of Series C Convertible Preferred Stock will have 10 business days from the giving of such notice to agree to purchase its pro rata share of the Equity Securities for the price and upon the terms and subject to the conditions specified in the notice by giving written notice to the Company and stating therein the quantity of Equity Securities to be purchased.

7.9.3. Company Right to Sell. If any holder of Series C Convertible Preferred Stock shall fail to exercise in full the foregoing preemptive right, the Company will have 90 days thereafter to sell the Equity Securities that were not purchased by such holder of Series C Convertible Preferred Stock pursuant hereto, at a price and upon terms and conditions no more favorable to the purchasers thereof than specified in the Company's notice to the holder of Series C Convertible Preferred Stock pursuant to Section 8.2.

7.10. Definitions and Constructions. As used in this Article VII, the following terms shall have the following respective meanings:

7.10.1. "Affiliates" shall mean any person directly or indirectly controlled by, controlling or under common control with another person, where the term "control," for purposes of this definition, means the power to direct the management of the person in question.

7.10.2. "Certificate of Incorporation" shall mean this Amended and Restated Certificate of Incorporation, as amended from time to time.

7.10.3. "Change of Control Event" shall mean (a) a consolidation or merger of the Company with or into any person that results in the holders of the voting securities of the Company immediately following the issuance of the Series C Convertible Preferred Stock on the Original Series C Issuance Date (together with their respective Affiliates) holding or having the right to direct the voting of fifty percent (50%) or less of the total outstanding voting securities of the Company or such other surviving entity immediately following such Change of Control Event, (b) a sale or other disposition, in one transaction or a series of related transactions, of all or substantially all of the assets of the Company, or (c) the sale or issuance, in one transaction or a series of related transactions, by the Company or any of its stockholders of any Equity Securities to any person such that, following the consummation of such transaction(s), such person (together with its Affiliates) would own or have the right to acquire greater than fifty percent (50%) of the outstanding shares of Common Stock (calculated on a Fully-Diluted Basis). However, a bona fide arms-length equity financing for cash in which the Company issues securities to investors to provide additional capital to the Company for its operations shall not be considered a Change of Control Event no matter the level of ownership interest of such investors after such financing.

7.10.4. "Equity Securities" shall mean (a) any Common Stock or other capital stock of the Company, (b) any security convertible, with or without consideration, into any Common Stock or other capital stock of the Company (including any option, warrant or other right to subscribe for or purchase such a security), (c) any security carrying any option, warrant or other right to subscribe for or purchase any Common Stock or other capital stock of the Company, or (d) any such option, warrant or other right.

7.10.5. "Excluded Securities" shall mean (a) Equity Securities that are issued to employees, officers, directors or consultants of the Company or any subsidiary thereof which are outstanding as of the first Original Series C Issuance Date or which may be approved by the Company's board of directors or pursuant to any incentive plan (including any incentive compensation or stock option plan) which is approved by the board of directors of the Company;

(b) Equity Securities issued in connection with any stock split, stock dividend or recapitalization by the Company which is approved by the board of directors of the Company; (c) Equity Securities issued upon conversion of Equity Securities; (d) Equity Securities issued pursuant to any equipment leasing arrangement or a bona fide debt financing which is approved by the board of directors of the Company; (e) Equity Securities issued pursuant to a merger or consolidation of the Company or any of its subsidiaries with or into another person or other acquisition by the Company or any of its subsidiaries of all or part of the assets, business or capital stock of another person, which transaction is approved by the board of directors of the Company; (f) the issuance of Equity Securities in transactions with third parties unrelated to the Company, upon reasonable commercial terms and relating to the manufacture, supply or distribution of products to or by the Company, technology licensing, research and development and other transactions that are for a purpose other than raising capital which transaction is approved by the board of directors of the Company, or (g) Equity Securities that are issued in connection with any registered public offering of the Company.

7.10.6. “Fully-Diluted Basis” shall include, when used to refer to the number of shares of Common Stock then outstanding, (i) all shares of Common Stock that are issued and outstanding at such time, (ii) all shares of Common Stock that are issuable upon the conversion, exercise or exchange of all other Equity Securities that are issued and outstanding at such time and that are, directly or indirectly, convertible into or exercisable or exchangeable for shares of Common Stock, regardless of whether such Equity Securities are then convertible, exercisable or exchangeable, plus (iii) all Equity Securities that have been reserved by the Company for issuance under any incentive compensation or stock option plan of the Company which are authorized but not yet issued.

7.10.7. “Majority Holders” shall mean the holders of a majority of the outstanding shares of the Series C Convertible Preferred Stock.

7.10.8. “Original Series C Issuance Date” shall mean with respect to each share of Series C Convertible Preferred Stock, the date upon which such share was originally issued by the Company.

7.10.9. “Original Series C Purchase Price” shall mean \$77.00.

7.10.10. “Parent Per Share Stock Valuation” shall mean \$0.4984.

7.10.11. “Person” shall mean any individual, partnership, limited liability company, corporation, business trust, trust, unincorporated association, joint venture or other entity of whatever nature.

7.10.12. “Price Condition” shall be satisfied if the price at which one share of the Company’s Common Stock trades on the American Stock Exchange, the New York Stock Exchange or the NASDAQ National Market, whichever is applicable, as published in the Eastern Edition of The Wall Street Journal, for ten (10) consecutive trading days equals or exceeds 7.69 times the Parent Per Share Stock Valuation (subject to adjustment in the event of any stock split, stock dividend, combination, recapitalization, reorganization, reclassification or other similar event).

7.10.13. "Qualified Offering" shall mean a sale by the Company of Equity Securities, in any six-month period, in which (i) the aggregate proceeds to the Company equal or exceed \$30,000,000, net of underwriting discounts, offering expenses and commissions, and (ii) the price per share of such Common Stock, net of underwriting discounts, offering expenses and commissions, equals or exceeds 3.85 times the Parent Per Share Stock Valuation (subject to equitable adjustment in the event of any stock split, stock dividend, combination, recapitalization, reorganization, reclassification or other similar event).

7.10.14. "Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

7.10.15. "Series C Conversion Date" shall mean, as the case may be, (a) with respect to any shares of Series C Convertible Preferred Stock voluntarily converted into Common Stock pursuant to Section 7.5.1, the date on which the Company receives a Conversion Notice relating to such shares, together with the certificate or certificates representing such shares, or (b) with respect to all shares of Series C Convertible Preferred Stock automatically converted into Common Stock pursuant to Section 7.5.2, the date of the Conversion Event.

7.10.16. "Series C Conversion Value" shall initially equal the Original Series C Purchase Price divided by one hundred (100), but shall be subject to adjustment in the event of any stock split, stock dividend, combination, recapitalization, reorganization, reclassification or other similar event.

7.10.17. "Series C Preferential Amount" shall mean, as of any given date, the Original Series C Purchase Price (subject to equitable adjustment in the event of any stock split, stock dividend, combination, recapitalization, reorganization, reclassification or other similar event) plus any accrued but unpaid dividends on each such share of Series C Convertible Preferred Stock as of such date.

7.11. Construction. Whenever the context requires, the gender of any word used in this Article VIII includes the masculine, feminine or neuter, and the number of any word includes the singular or plural. Unless the context otherwise requires, all references to sections refer to sections of this Article VIII, and all references to schedules are to schedules attached hereto, each of which is made a part hereof for all purposes.

ARTICLE VIII

BOARD OF DIRECTORS

8.1. Management. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by statute or this Amended and Restated Certificate of Incorporation directed or required to be exercised or done by the stockholders.

8.2. Number of Directors. The number of directors which shall constitute the Board of Directors shall be fixed from time to time by resolution adopted by the affirmative vote a majority of the total number of directors then in office.

8.3. Newly-Created Directorships and Vacancies. Newly created directorships resulting from any increase in the number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or any other cause may be filled, so long as there is at least one remaining director, only by the Board of Directors, provided that a quorum is then in office and present, or by a majority of the directors then in office, if less than a quorum is then in office, or by the sole remaining director. Directors elected to fill a newly created directorship or other vacancies shall hold office until such director's successor has been duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

8.4. Removal of Directors. Any director or the entire board of directors may be removed from the office by the affirmative vote of the holders of least a majority of the voting power of the then outstanding capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

8.5. Written Ballot Not Required. Elections of directors need not be by written ballot unless the Amended and Restated Bylaws of the Corporation shall otherwise provide.

ARTICLE IX

EXCULPATION AND INDEMNIFICATION

9.1. Exculpation. To the fullest extent permitted by the DGCL, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL, or (d) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended after the filing of the Certificate of Incorporation of which this Section 9.1 is a part to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Any repeal or modification of this Section 9.1 by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

9.2. Indemnification. The Corporation shall indemnify, in the manner and to the fullest extent permitted by the DGCL, any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise. The Corporation may indemnify, in the manner and to the fullest extent permitted by the DGCL, any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Corporation and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was an employee or agent of the

Corporation, or is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise. To the fullest extent permitted by the DGCL, the indemnification provided herein shall include expenses (including, without limitation, attorneys' fees), judgments, fines and amounts paid in settlement and, in the manner provided by the DGCL, any such expenses may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding. The indemnification provided herein shall not be deemed to limit the right of the Corporation to indemnify any other person for any such expenses to the fullest extent permitted by the DGCL. Expenses incurred by any such director, officer, employee or agent in defending any such action, suit or proceeding may be advanced by the Corporation prior to the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director, officer, employee or agent to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified as authorized by the DGCL and this Article IX.

9.3. Insurance. The Corporation may, to the fullest extent permitted by the DGCL, purchase and maintain insurance on behalf of any director, officer, employee or agent against any liability which may be asserted against such person.

9.4. Non-Exclusivity. The indemnification provided herein shall not be deemed exclusive of any other rights to which any person seeking indemnification from the Corporation may be entitled under the Corporation's Bylaws, any agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

ARTICLE X

INSOLVENCY, RECEIVERS AND TRUSTEES

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

ARTICLE XI
CONSIDERATION FOR SHARES; ASSESSABILITY

The Corporation is authorized to sell and issue, from time to time, all or any portion of the capital stock of the Corporation which may have been authorized but not issued, to such persons and for such lawful consideration (not less than the par value thereof), and upon such terms and in such manner as it may determine. Any and all shares so issued, the full consideration for which shall have been paid or delivered, shall be fully paid and non-assessable, and the holders thereof shall not be liable to the Corporation or its creditors for any further payment thereon.

ARTICLE XII
RIGHT TO AMEND

12.1.1. General. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed herein and by the laws of the State of Delaware, and all rights conferred upon stockholders herein are granted subject to this reservation.

12.2. Amendment of Specified Provisions. Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of the capital stock required by law or this Certificate of Incorporation, the affirmative vote of the holders of at least two-thirds (66 2/3%) of the voting power of the then outstanding capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Article IX hereof or this Article XII, or any provisions thereof or hereof, or to adopt any provision inconsistent with Article IX hereof or this Article XII, unless such alteration, amendment, repeal or adoption shall be approved by a majority of the directors then in office.

THE UNDERSIGNED, being the Chief Executive Officer of the Corporation, for purpose of amended and restating the Corporation's Certificate of Incorporation pursuant to the DGCL, has executed this certificate this 8th day of June 2007.

Opko Health, Inc.

By: /s/ Phillip Frost, M.D.

Name: Phillip Frost, M.D.

Title: Chief Executive Officer

AMENDED AND RESTATED BYLAWS

OF

EXEGENICS INC.

(TO BE RENAMED OPKO HEALTH, INC.)

(A DELAWARE CORPORATION)

Effective: April 25, 2007

ARTICLE I

OFFICES

Section 1.1 Registered Office. The registered office of Opko Health, Inc. (the "Corporation") shall be in the City of Wilmington, County of New Castle, State of Delaware. Notwithstanding the foregoing, the registered office may be changed at any time upon a resolution adopted by the Corporation's Board of Directors (the "Board").

Section 1.2 Other Offices. The Corporation may also have offices at such other places within or without the State of Delaware as the Board may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.1 Place. All meetings of the stockholders shall be held at such place within or without the State of Delaware as shall be designated from time to time by the Board and stated in the notice of the meeting or in a duly executed waiver thereof.

Section 2.2 Annual Meetings. An annual meeting of the stockholders shall be held in each calendar year within five months after the end of the fiscal year of the Corporation on such day and at such time and place (within the State of Delaware) as the Board shall fix, at which time the stockholders shall elect a Board and transact such other business as may properly be brought before the meeting. Any business may be transacted at the meeting, irrespective of whether the notice of such meeting contains a reference thereto, except as otherwise provided in these Bylaws, or by statute.

Section 2.3 Special Meetings. Special meetings of stockholders may be called at any time, but only by the chairman of the Board (the "Chairman of the Board"), the Chief Executive Officer of the Corporation (the "CEO"), or upon a resolution adopted upon the affirmative vote of a majority of the whole Board, and not by the stockholders.

Section 2.4 Notice Of Meetings. Notice of all stockholders' meetings stating the time, place and the objects for which such meetings are called shall be given by the Chairman of the Board, the CEO, the President or any vice-president (a "Vice-President") or the Secretary (the "Secretary") or any assistant secretary (an "Assistant Secretary") of the Corporation to each

stockholder of record entitled to vote at such meeting not less than ten (10) days or more than sixty (60) days prior to the date of the meeting by written notice delivered personally, by electronic transmission, mailed or delivered via overnight courier to each stockholder. If delivered personally, such notice shall be deemed to be delivered when received. If mailed or delivered via overnight courier service, such notice shall be deemed to be delivered when deposited in the United States Mail in a sealed envelope with postage thereon prepaid, or deposited with the overnight courier service, as the case may be, addressed to the stockholder at his address as it appears on the stock record books of the Corporation, unless he shall have filed with the Secretary a written request that notice intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request. If delivered by electronic transmission, such notice shall be sent consistent with Article X hereof.

Any meeting at which all stockholders entitled to vote have waived or at any time shall waive notice shall be a legal meeting for the transaction of business, notwithstanding that notice has not been given as herein before provided. The waiver must be in writing, signed by the stockholder entitled to the notice, and be delivered to the Corporation for inclusion in the minutes or filing with the corporate records.

Section 2.5 Notice for Nominations and Proposals.

2.5.1 Annual Meetings.

(a) Nominations for the election of directors and proposals for any new business to be taken up at any annual meeting of stockholders may be made by the Board or, as provided in this Section 2.5, by any stockholder of the Corporation entitled to vote generally in the election of directors, subject to the rights of the holders of preferred stock, if applicable. For nominations or other business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice with respect to any annual meeting must be received by the Secretary at the principal executive offices of the Corporation not later than the 60th day nor earlier than the 90th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than sixty (60) days before or more than sixty (60) days after such anniversary date, notice by the stockholder must be so received not earlier than the 90th day prior to the annual meeting and not later than the later of the 60th day prior to the annual meeting or the 15th day following the day on which public announcement of the date of the meeting is first made by the Corporation; provided further that with respect to the annual meeting to be held in 2008, notice by the stockholder must be so received not earlier than March 31, 2008 and not later than the later of April 30, 2008 or the 15th day following the day on which public announcement of the date of the meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. A stockholder's notice shall set forth:

(i) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (A) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, (B) a description of all relationships between the proposed nominee and the recommending stockholder and any agreements or understandings between the recommending stockholder and the nominee regarding the nomination, and (C) a description of all relationships between the proposed nominee and any of the Corporation's competitors, customers, suppliers, labor unions (if any) and any other persons with special interests regarding the Corporation;

(ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and

(iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, (A) the name and address of such stockholder, as they appear on the Corporation's books, the telephone number of such stockholder, and the name, address and telephone number of such beneficial owner, (B) the class and number of shares of the Corporation which are owned of record by such stockholder and beneficially by such beneficial owner and the time period such shares have been held, (C) a representation that such stockholder and beneficial owner intend to appear in person or by proxy at the meeting, and (D) a representation that such stockholder and such beneficial owner intend to continue to hold the reported shares through the date of the Corporation's next annual meeting of stockholders. For purposes of satisfying the requirements of clause (B) of this paragraph with respect to a beneficial owner, the beneficial owner shall supply to the Corporation either (1) a statement from the record holder of the shares verifying the holdings of the beneficial owner and indicating the length of time the shares have been held by such beneficial owner, or (2) a current Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 filed with the Securities and Exchange Commission reflecting the holdings of the beneficial owner, together with a statement of the length of time that the shares have been held.

(iv) If a recommendation is submitted by a group of two or more stockholders, the information regarding the recommending stockholders and beneficial owners, if any, must be submitted with respect to each stockholder in the group and any beneficial owners.

(b) Notwithstanding anything in paragraph (a) of this Section 2.5.1 to the contrary, in the event that the number of directors to be elected to the Board at the annual meeting is increased pursuant to an act of the Board and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board on or before the date which is 15 days before the latest date by which a stockholder may timely notify the Corporation of nominations or other business to be brought by a stockholder in accordance with paragraph (a) of this Section 2.5.1, a stockholder's notice required by this Section 2.5.1 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the 15th day following the day on which such public announcement is first made by the Corporation.

2.5.2 Special Meetings. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting may be made (i) by or at the direction of the Board or (ii) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Section 2.5, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.5. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting for inclusion in the stockholder's notice required by Section 2.5.1 of these Bylaws if such nomination shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 90th day prior to such special meeting and not later than the close of business on the later of the 60th day prior to such special meeting or the 15th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

2.5.3 General. Only such persons who are nominated in accordance with the procedures set forth in this Section 2.5 shall be eligible to stand for election to the Board at a meeting of stockholders, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.5. Except as otherwise provided by law, the Certificate of Incorporation of the Corporation as amended and restated (the "Certificate of Incorporation") or these Bylaws, the Chairman of the Board shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this bylaw and, if any proposed nomination or business is not in compliance with this Section 2.5, to declare that such defective proposal or nomination shall be disregarded.

2.5.4 Public Announcement. For purposes of this Section 2.5, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Securities Exchange Act of 1934 as amended (the "Exchange Act").

2.5.5 Non-Exclusivity. If the Corporation is required under Rule 14a-8 under the Exchange Act to include a stockholder's proposal in its proxy statement, such stockholder shall be deemed to have given timely notice for purposes of this Section 2.5 with respect to such proposal. Nothing in this Section 2.5 shall be deemed to affect any rights of the holders of any series of preferred stock of the Corporation to elect directors.

Section 2.6 Quorum. Except as may be otherwise provided by law, a majority of the voting power of all the outstanding shares of the Corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders. In the event that the voting power of all a majority of the outstanding shares are represented at any meeting, action on a matter is approved if the votes cast favoring the action exceed the votes cast opposing the action, unless the question is one upon which by express provision of law or of the Certificate of Incorporation or of these Bylaws a larger or different vote is required, in which case such express provision shall govern and control the decision of each question. If a quorum of the shares entitled to vote shall fail to be obtained at any meeting, or in the event of any other proper business purpose, the chair of the meeting or the holders of a majority of the shares present, in person or by proxy, may adjourn the meeting to another place, date or time by announcement to stockholders present in person at the meeting and no other notice of such place, date or time need be given.

Section 2.7 Organization. At every meeting of the stockholders the Chairman of the Board, or, in his absence, the CEO, or in the absence of the Chairman of the Board and the CEO, a director or an officer of the Corporation designated by the Board shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary, shall act as secretary at all meetings of the stockholders. In the absence from any such meeting of the Secretary and any Assistant Secretary, the chairman may appoint any person to act as secretary of the meeting.

Section 2.8 Closing of Transfer Books or Fixing of Record Date. For the purpose of determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix in advance a date as the record date for any such determination of stockholders, such date in any case to be not more than sixty (60) days and not less than ten (10) days prior to the date on which the particular action requiring such determination of stockholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders, or stockholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the Board declaring such dividend is adopted, as the case may be, shall be the record date for such determination of stockholders. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this Section 2.8, such determination shall apply to any adjournment thereof.

Section 2.9 Voting Lists. The officer or agent having charge of the stock transfer books for common shares of the Corporation shall make available, within two (2) business days after notice of a meeting is given, a complete list of the stockholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each stockholder, which list, for a period beginning within two (2) business days after notice of such meeting is given, shall be subject to inspection by any stockholder at any time either (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. In the event of any challenge to the right of any person to vote at the meeting, the presiding officer at such meeting may rely on said list as proper evidence of the right of parties to vote at such meeting.

Section 2.10 Proxies. Stockholders of record who are entitled to vote may vote at any meeting either in person or by written proxy, which shall be filed with the secretary of the meeting before being voted. Such proxy shall entitle the holders thereof to vote at any adjournment of such meeting, but shall not be valid after the final adjournment thereof. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless the stockholder executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. A proxy is revocable by the stockholder unless it conspicuously states that it is irrevocable and the appointment of the proxy is coupled with an interest.

Section 2.11 Voting of Shares. Except as otherwise provided in the Certificate of Incorporation or these Bylaws, each share of Common Stock shall have all voting rights accorded to holders of Common Stock pursuant to the Delaware General Corporation Law (“DGCL”), at the rate of one vote per share.

Section 2.12 Business and Order of Business. At each meeting of the stockholders such business may be transacted as may properly be brought before such meeting, except as otherwise provided by law or in these Bylaws. The order of business at all meetings of the stockholders shall be as determined by the Chairman of the Board, unless otherwise determined by a majority in interest of the stockholders present in person or by proxy at such meeting and entitled to vote thereat.

ARTICLE III BOARD OF DIRECTORS

Section 3.1 Number. The number of directors of the Corporation shall be such number, neither fewer than three (3) nor more than fifteen (15) (exclusive of directors, if any, to be elected by holders of any class or series of preferred stock of the Corporation, voting separately as a class), as determined from time to time by the Board. The Board has the power to fix or change the number of directors, including an increase or decrease in the number of directors, from time to time as established by the Board. A director need not be a stockholder or a resident of the State of Delaware.

Section 3.2 Powers of Directors. The Board shall have the entire management of the business of the Corporation. In the management and control of the property, business and affairs of the Corporation, the Board is hereby vested with all the powers possessed by the Corporation itself, so far as this delegation of authority is not inconsistent with the laws of the State of Delaware, the Certificate of Incorporation, or these Bylaws. The Board shall have the power to determine what constitutes net earnings, profits, and surplus, respectively, what amount shall be reserved for working capital and to establish reserves for any other proper purpose, and what amount shall be declared as dividends, and such determination by the Board shall be final and conclusive. The Board shall have the power to declare dividends for and on behalf of the Corporation, which dividends may include or consist of stock dividends.

Section 3.3 Regular Meetings of the Board. Immediately after the annual election of directors, the newly elected directors may meet at the same place for the purpose of organization, the election of corporate officers and the transaction of other business; if a quorum of the directors is then present no prior notice of such meeting shall be required. Other regular meetings of the Board shall be held at such times and places as the Board by resolution may determine and specify, and if so determined no notice thereof need be given, provided that, unless all the directors are present at the meeting at which said resolution is passed, the first meeting held pursuant to said resolution shall not be held for at least five (5) days following the date on which the resolution is passed.

Section 3.4 Special Meetings. Special meetings of the Board may be held at any time or place whenever called by the Chairman of the Board, the CEO, the President, the Chief Financial Officer or the Secretary, or by written request of at least two directors, notice thereof being given to each director by the Secretary or other officer calling the meeting, or they may be held at any time without formal notice provided all of the directors are present or those not present shall at any time waive or have waived notice thereof.

Section 3.5 Notice. Notice of any special meetings shall be given at least two (2) days previously thereto by written notice delivered personally, by telegram, by overnight courier service, by facsimile communication or by electronic transmission, or at least five (5) days previously thereto by written notice sent by mail. The time when such notice is received, if delivered personally, or when such notice is dispatched, if delivered through the mail, by overnight courier service, by facsimile telecommunication or by electronic transmission, shall be the time of the giving of the notice.

Section 3.6 Quorum. A majority of the members of the Board, as constituted for the time being, shall constitute a quorum for the transaction of business, but a lesser number may adjourn any meeting and the meeting may be held as adjourned without further notice. If a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present is the act of the Board, except as otherwise provided by law or by these Bylaws. The fact that a director has an interest in a matter to be voted on by the meeting shall not prevent his being counted for purposes of a quorum.

Section 3.7 Informal Action by Directors. Any action required to be taken at a meeting of the Board, or any other action which may be taken at a meeting of the Board, may be taken without a meeting if all directors consent to taking such action without a meeting. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and shall be included in the minutes or filed with the corporate records reflecting the action taken.

Section 3.8 Meetings by any Form of Communication. The Board shall have the power to permit any and all directors to participate in a regular or special meeting by, or conduct the meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 3.9 Organization. At each meeting of the Board, the Chairman of the Board, or in the absence of the Chairman of the Board, a director designated by the Board shall act as chairman. The Secretary, or, in the Secretary's absence, any person appointed by the chairman, shall act as secretary of the meeting.

Section 3.10 Resignations. A director may resign at any time by delivering written notice to the Board, the Chairman of the Board, the CEO, or the President. Resignation is effective when the notice is delivered, unless the notice specifies a later effective date.

Section 3.11 Removal of Directors. Subject to the rights of the holders of one or more series of Preferred Stock, any director or the entire board of directors may be removed from the office by the affirmative vote of the holders of least a majority of the voting power of the then outstanding capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

Section 3.12 Vacancies. Any vacancy occurring in the Board, including vacancies resulting from an increase in the number of directors, may be filled solely by the affirmative vote of a majority of the remaining directors, though less than a quorum, and unless the Board of Directors determines otherwise (and subject to the rights of the holders of any series of preferred stock), vacancies shall not be filled by stockholders. A director elected to fill any vacancy shall hold office for a term expiring at the annual meeting of stockholders at which the term of the class to which he or she has been elected expires, and until such director's successor shall have been duly elected and qualifies or until his or her earlier death, resignation or removal.

Section 3.13 Compensation. By resolution of the Board, the directors may be paid their expenses, if any, of attendance at each meeting of the Board. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

ARTICLE IV COMMITTEES

Section 4.1 Appointment and Powers. The Board may create one or more committees, each committee to consist of two or more directors of the Corporation, which, to the extent provided in said resolution or in these Bylaws and not inconsistent with the DGCL, shall have and may exercise the powers of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. The Board may abolish any such committee at any time.

Section 4.2 Term of Office and Vacancies. Each member of a committee shall continue in office until a director to succeed him shall have been elected and shall have qualified, or until he ceases to be a director or until he shall have resigned or shall have been removed in the manner hereinafter provided. Any vacancy in a committee shall be filled by the Board.

Section 4.3 Organization. Unless otherwise provided by the Board, each committee shall appoint a chairman. Each committee shall keep a record of its acts and proceedings and report the same from time to time to the Board as the Board may require.

Section 4.4 Resignations. Any member of a committee may resign from the committee at any time by giving written notice to the Chairman of the Board, the CEO, the President or the Secretary. Such resignation shall take effect at the time of the receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.5 Removal. Any member of a committee may be removed from the committee with or without cause at any time by resolution of the Board.

Section 4.6 Meetings. Regular meetings of each committee, of which no notice shall be required, shall be held on such days and at such places as the chairman of the committee shall determine or as shall be fixed by a resolution passed by a majority of all the members of such committee. Special meetings of each committee will be called by the Secretary at the request of any two (2) members of such committee, or in such other manner as may be determined by the committee. Notice of any special meetings shall be given at least two (2) days previously thereto by written notice delivered personally, by telegram, by overnight courier service, by facsimile communication or by electronic transmission, or at least five (5) days previously thereto by written notice sent by mail. Every such notice shall state the date, time and place of the meeting, but need not state the purposes of the meeting. No notice of any meeting of a committee shall be required to be given to any alternate. The time when such notice is received, if delivered personally, or when such notice is dispatched, if delivered through the mail, by overnight courier service, by facsimile telecommunication or by electronic transmission, shall be the time of the giving of the notice.

Section 4.7 Quorum and Manner of Acting. Unless otherwise provided by resolution of the Board, a majority of a committee shall constitute a quorum for the transaction of business and the act of a majority of those present at a meeting at which a quorum is present shall be the act of such committee, except as otherwise provided by law or by these Bylaws. The members of each committee shall act only as a committee and the individual members shall have no power as such. Actions taken at a meeting of any committee shall be reported to the Board at its next meeting following such committee meeting; provided that, when the meeting of the Board is held within two (2) days after the committee meeting, such report may be made to the Board at its second meeting following such committee meeting.

Section 4.8 Compensation. Each member of a committee shall be paid such compensation, if any, as shall be fixed by the Board.

ARTICLE V
WAIVER OF NOTICE

Whenever any notice is required to be given by these Bylaws, the Certificate of Incorporation, or any laws of the State of Delaware, a waiver thereof in writing signed by the person or persons entitled to such notice and filed with the minutes or corporate records, whether before or after the time stated therein, shall be deemed equivalent thereto. Where the person or persons entitled to such notice sign the minutes of any stockholders' or directors' meeting, which minutes contain the statement that said person or persons have waived notice of the meeting, then such person or persons are deemed to have waived notice in writing. A stockholder's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the stockholder at the beginning of the meeting (or promptly upon the stockholder's arrival) objects to holding the meeting or transacting business at the meeting, and also waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the stockholder objects to considering the matter when it is presented. A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting (or promptly upon the director's arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

ARTICLE VI
OFFICERS

Section 6.1 Number. The officers of the Corporation shall be a Chairman of the Board, CEO, President, Chief Financial Officer, a Chief Operating Officer, one or more Vice-Presidents (the number thereof to be determined by the Board), a Secretary, and a Treasurer, each of whom shall be elected by the Board. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board. Any two or more offices may be held by the same person, except the offices of CEO and Secretary.

Section 6.2 Election and Term of Office. The officers of the Corporation to be elected by the Board shall be elected annually by the Board at the first meeting of the Board held after each annual meeting of the stockholders. If the election of officers shall not be held in such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor is duly elected and is qualified or until his death or until he resigns or is removed in the manner hereinafter provided.

Section 6.3 Removal. Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 6.4 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board for the unexpired portion of the term.

Section 6.5 Chairman of the Board. The Chairman of the Board shall preside at all meetings of the stockholders and the directors. The Chairman of the Board shall represent the Corporation in all matters involving the stockholders of the Corporation. He shall also perform such other duties the Board may assign to him from time to time.

Section 6.6 Chief Executive Officer. The CEO shall in general supervise and control all of the business and affairs of the Corporation. He shall, in the absence of the Chairman of the Board, preside at all meetings of the stockholders and shall enforce the observance of the Bylaws and the rules of order for the meetings of the Board and the stockholders. He shall keep the Board appropriately informed on the business and affairs of the Corporation. He may sign, either alone or with the Secretary, an Assistant Secretary or any other proper officer of the Corporation thereunto authorized by the Board, certificates for shares of the Corporation, any deed, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed, and in general shall perform all duties incident to the office of CEO and such other duties as may be prescribed by the Board from time to time.

Section 6.7 President. The President shall see that all orders and resolutions of the Board are carried into effect and shall have general and active management of the business of the Corporation. He or she shall have the authority to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Corporation. If, for any reason, the Corporation does not have a Chairman or CEO, or such officers are unable to act, the President shall assume the duties of those officers as well.

Section 6.8 Chief Financial Officer or Chief Accounting Officer and Treasurer. The Chief Financial Officer or Chief Accounting Officer, as the case may be, shall also serve as the Treasurer of the Corporation and shall arrange for the keeping of adequate records of all assets, liabilities and transactions of the corporation. He shall provide for the establishment of internal controls and see that adequate audits are currently and regularly made. He shall submit to the CEO, the President, the Chief Operating Officer, the Chairman of the Board and the Board timely statements of the accounts of the corporation and the financial results of the operations thereof.

Section 6.9 Assistant Treasurers. The Assistant Treasurer or if there shall be more than one, the Assistant Treasurers in the order determined by the Board (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

Section 6.10 Chief Operating Officer. If a Chief Operating Officer is elected, the Chief Operating Officer shall supervise the operation of the Corporation, subject to the policies and directions of the Board. He shall provide for the proper operation of the Corporation and oversee the internal interrelationship amongst any and all departments of the Corporation. He shall submit to the CEO, the President and the Board timely reports on the operations of the Corporation.

Section 6.11 The Vice-Presidents. In the absence of the CEO and the President or in the event of their death, inability or refusal to act, the Vice-President (or in the event there be more than one Vice-President, the Vice-Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the CEO and the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the CEO and the President. Any Vice-President may sign, either alone or with the Secretary or an Assistant Secretary, certificates for shares of the Corporation any deed, mortgages, bonds, contracts or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed, and shall perform such other duties as from time to time may be assigned to him by the CEO, the President or by the Board.

Section 6.12 The Secretary. The Secretary shall: (a) prepare and keep the minutes of the stockholders' and of the Boards' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (c) be custodian of the corporate records and of the seal (if any) of the Corporation and see that said seal is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized; (d) keep a register of the post office address of each stockholder which shall be furnished to the Secretary by such stockholder; (e) sign with the CEO, the President or a Vice-President certificates for shares of the Corporation, the issuance of which shall have been authorized by resolution of the Board; (f) have general charge of the stock transfer books of the Corporation; and (g) in general perform all duties as from time to time may be assigned to him by the CEO, the President or by the Board.

Section 6.13 Assistant Secretaries. The Assistant Secretaries, when authorized by the Board, may sign with the CEO, the President or a Vice-President certificates for shares of the Corporation the issuance of which shall have been authorized by a resolution of the Board. The Assistant Secretaries, in general, shall perform such duties as shall be assigned to them by the Secretary, or by the CEO, the President or the Board.

Section 6.14 Registered Agent. The Board shall appoint a Registered Agent for the Corporation in accordance with the DGCL and may pay the agent such compensation from time to time as it may deem appropriate.

ARTICLE VII INDEMNIFICATION AND INSURANCE

Section 7.1 Indemnification by Corporation. The Corporation shall indemnify to the fullest extent permitted by applicable law as the same exists or may hereafter be in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, against expenses including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the

Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 7.2 Suit by or in the Right of the Corporation. The Corporation shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.3 Success on the Merits. To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.1 or Section 7.2 of this Article, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 7.4 Determination that Indemnification is Proper. Any indemnification under Section 7.1 or Section 7.2 of this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in such section. Such determination shall be made:

- (a) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or
- (b) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or
- (c) by the stockholders.

Section 7.5 Expenses. Expenses (including attorneys' fees) incurred by an officer or director in defending a civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Section 7.6 Non-Exclusivity of Indemnification Rights. The indemnification and advancement of expenses provided by or granted pursuant to the other sections of this Article VII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

Section 7.7 Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article VII.

Section 7.8 Continuance of Indemnification. The indemnification and advancement of expenses provided by or granted pursuant to this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article VII shall constitute a contract between the Corporation and each director, officer, employee or agent of the Corporation in each circumstance, and each such person shall have all rights available in law or equity to enforce such contract rights against the Corporation. Any repeal or modification of any provision of this Article VII shall not adversely affect or deprive any director, officer, employee or agent of any right or protection offered by such provision prior to such repeal or modification.

Section 7.9 Definition of "the Corporation". For purposes of this Article VII, references to "the Corporation" shall include, in addition to the resulting Corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer employee or agent of such constituent Corporation, or is or was serving at the request of such constituent Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article VII with respect to the resulting or surviving Corporation as he or she would have with respect to such constituent Corporation of its separate existence had continued.

Section 7.10 Definition of “Other Enterprises”. For purposes of this Article VII, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Article VII.

ARTICLE VIII CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 8.1 Contracts. The Board may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 8.2 Loans. The Corporation shall not make any loan other than a sale on credit in the ordinary course of business or a life insurance policy loan, either directly or indirectly, to any director or officer of the Corporation except with the consent of the holders of a majority of all the outstanding shares owned or controlled by stockholders other than a stockholder for whose benefit such action is being taken, or if the Board determines that the loan benefits the Corporation and approves the transaction.

Section 8.3 Checks, Drafts, etc. All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board.

Section 8.4 Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select.

ARTICLE IX CERTIFICATES OF STOCK

Section 9.1 Right to Certificate. Every holder of stock in the Corporation shall be entitled to have a certificate, signed by or in the name of the Corporation by the Chairman or Vice-Chairman of the Board, or the CEO, or the President, or a Vice-President and the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by him in the Corporation.

Section 9.2 Statements Setting Forth Rights. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and rights shall be set forth in full or summarized on the face or back of the certificate which the

Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and rights.

Section 9.3 Facsimile Signature. Where a certificate is countersigned (a) by a transfer agent other than the Corporation or its employee, or, (b) by a registrar other than the Corporation or its employee, the signatures of the officers of the Corporation may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer at the date of issue.

Section 9.4 Lost Certificates. The Board may delegate to its transfer agent the authority to issue without further action or approval of the Board, a new certificate or certificates in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the receipt by the transfer agent of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed, and upon the receipt from the owner of such lost, stolen or destroyed certificate, or certificates, or his legal representative of a bond as indemnity against any claim that may be made with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 9.5 Transfers of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, and if such shares are not restricted as to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 9.6 Transfer Agents and Registrars. The Board may appoint one or more corporate transfer agents and registrars.

Section 9.7 Registered Ownership of Shares. The Corporation shall be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the Corporation shall have notice thereof, except as expressly provided by applicable law.

ARTICLE X NOTICE BY ELECTRONIC TRANSMISSION

Section 10.1 Notice by Electronic Transmission. Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the Certificate of Incorporation or these Bylaws, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom

the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if: (a) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices given by the Corporation in accordance with such consent; and (b) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Any notice given pursuant to Section 10.1 shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Section 10.2 Definition of Electronic Transmission. An “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any requirement in these Bylaws for a written or signed document from any person shall be deemed to be satisfied by an electronic transmission from such person.

ARTICLE XI GENERAL PROVISIONS

Section 11.1 Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board, subject to applicable legal requirements. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 11.2 Reserves. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors shall think conclusive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 11.3 Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board.

Section 11.4 Seal. This Corporation may or may not have a seal and in any event the failure to affix a corporate seal to any instrument executed by the Corporation shall not affect the validity thereof. If a seal is adopted, the seal of this Corporation shall include the following letters cut or engraved thereon: OPKO HEALTH, INC.

ARTICLE XII
AMENDMENTS

Section 12.1 Amendments. The Board is expressly authorized to repeal, alter, amend or rescind these Bylaws. Notwithstanding any other provision of these Bylaws (and notwithstanding some lesser percentage that may be specified by law), the Bylaws may be repealed, altered, amended or rescinded by the stockholders of the Corporation as described in the Certificate of Incorporation or in accordance with the DGCL only upon the affirmative vote of at least sixty-six and two thirds percent (66 $\frac{2}{3}$ %) of the voting power of the then outstanding capital stock of the Corporation entitled to vote thereon, voting together as a single class.