

03-25-2002

Form PTO-1594

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

Tab settings ⇨ ⇨ ⇨ ▼

REC:

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S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

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

1. Name of conveying party(ies):

Direct Corporation

3-7-02

- Individual(s)
- General Partnership
- Corporation-State California
- Other _____
- Association
- Limited Partnership

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Correction to state of incorporation
- Merger
- Change of Name

Execution Date: incorporation

2. Name and address of receiving party(ies)

Name: Direct Corporation

Internal

Address: _____

Street Address: 10240 Bubb Road

City: Cupertino State: CA Zip: 95014

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Delaware
- Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) _____

DIRECT 75/625,710

DIRECT 76/137,001 Additional number(s) attached Yes No

B. Trademark Registration No.(s) _____

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Kerry Medd

Internal Address: _____

McCutchen, Doyle, Brown & Enersen LLP

Street Address: Three Embarcadero Center

Suite 1800

San Francisco

City: _____ State: CA Zip: 94111

6. Total number of applications and registrations involved: _____

2

7. Total fee (37 CFR 3.41).....\$ 65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

50-1193

OFFICE OF PUBLIC RECORDS
2002 MAR -7 AM 10:40
FINANCE SECTION

DO NOT USE THIS SPACE

9. Signature.

Kerry Medd

Name of Person Signing

Signature

02/22/02

Date

Total number of pages including cover sheet, attachments, and document: _____

Main documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

03/22/2002 TDIAZ1 00000050 75625710

01 FC:481
02 FC:482

40.00 OP
25.00 OP

TRADEMARK
REEL: 002468 FRAME: 0001

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "DURECT CORPORATION" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE SIXTH DAY OF FEBRUARY, A.D. 1998, AT 9 O'CLOCK A.M.

RESTATED CERTIFICATE, FILED THE SEVENTEENTH DAY OF JUNE, A.D. 1998, AT 9 O'CLOCK A.M.

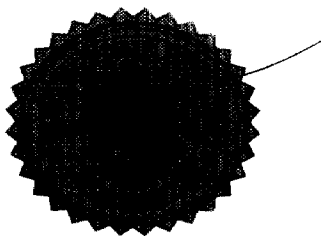
CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "DURECT THERAPEUTICS CORPORATION" TO "DURECT CORPORATION", FILED THE TWENTY-SIXTH DAY OF AUGUST, A.D. 1998, AT 9 O'CLOCK A.M.

RESTATED CERTIFICATE, FILED THE SIXTEENTH DAY OF JULY, A.D. 1999, AT 6 O'CLOCK P.M.

CERTIFICATE OF CORRECTION, FILED THE TWENTIETH DAY OF JULY, A.D. 1999, AT 1 O'CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE FIRST DAY OF OCTOBER, A.D. 1999, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-FOURTH DAY OF MARCH, A.D. 2000, AT 1:30 O'CLOCK P.M.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 1595354

2856267 8100H

020073443

DATE: 02-04-02

TRADEMARK
REEL: 002468 FRAME: 0002

Delaware

PAGE 2

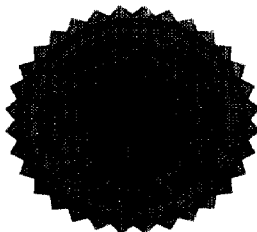
The First State

CERTIFICATE OF DESIGNATION, FILED THE TWENTY-FOURTH DAY OF MARCH, A.D. 2000, AT 2 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE THIRD DAY OF OCTOBER, A.D. 2000, AT 10:30 O'CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE NINTH DAY OF JULY, A.D. 2001, AT 4:30 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

2856267 8100H

AUTHENTICATION: 1595354

020073443

DATE: 07/11/2001

REEL: 002468 FRAME: 0003

CERTIFICATE OF INCORPORATION
OF
DURECT THERAPEUTICS CORPORATION

ARTICLE I

The name of the corporation is Durect Therapeutics Corporation (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is Corporation Service Company, 1013 Centre Road, Wilmington, Delaware 19805, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III

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

ARTICLE IV

The aggregate number of shares which the Corporation shall have authority to issue is 10,000,000 shares of capital stock all of which shall be designated "Common Stock" and have a par value of \$0.001 per share.

ARTICLE V

The Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

ARTICLE VII

(A) To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, 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.

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

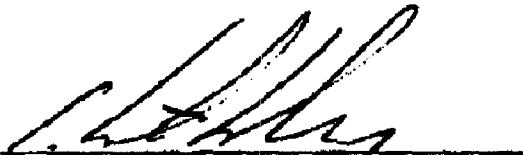
(C) Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing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

ARTICLE VIII

The name and mailing address of the incorporator are as follows:

C. Keith Mosley
Venture Law Group
2800 Sand Hill Road
Menlo Park, CA 94025

Executed this 6th day of February, 1998.


C. Keith Mosley, Incorporator

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION**

OF

DURECT THERAPEUTICS CORPORATION

The undersigned, Thomas A. Schreck and Tae Hea Nahm, hereby certify that:

1. They are the duly elected and acting President and Secretary, respectively, of Durect Therapeutics Corporation, a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on February 6, 1998.
3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

ARTICLE I

"The name of this corporation is Durect Therapeutics Corporation (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is Corporation Service Company, 1013 Centre Road, Wilmington, Delaware 19805, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III

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

ARTICLE IV

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is forty million (40,000,000) shares, each with a par value of \$0.0001 per share. Twenty five million two hundred thousand (25,200,000) shares shall be Common Stock and fourteen million eight hundred thousand (14,800,000) shares shall be Preferred Stock.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by this Second Amended and Restated Certificate of Incorporation has been designated herein in two series. The first series of Preferred Stock is designated "**Series A-1 Preferred Stock**" and consists of five million six hundred thousand (5,600,000) shares. The second series of Preferred Stock is designated "**Series A-2 Preferred Stock**" and consists of nine million two hundred thousand (9,200,000) shares. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A-1 and Series A-2 Preferred Stock are as set forth below in this Article IV(B).

1. **Dividend Provisions.** The holders of shares of Series A-1 or Series A-2 Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of \$0.05 per share per annum on each outstanding share of Series A-1 or Series A-2 Preferred Stock, payable quarterly when, as and if declared by the Board of Directors. Such dividends shall not be cumulative.

2. **Liquidation.**

(a) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A-2 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Series A-1 Preferred Stock and Common Stock by reason of their ownership thereof, an amount per share equal to \$1.00 per share for each share of Series A-2 Preferred Stock then held by them (the "Series A-2 Liquidation Price"), plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A-2 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A-2 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** Upon the completion of the distribution required by Section 2(a) above, if assets remain in the Corporation, the holders of the Series A-1 Preferred Stock and the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation pro rata based on number of shares of Common Stock held by each (on an as-converted basis).

(c) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to occur if the Corporation shall sell, convey, or otherwise dispose of or encumber all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation) pursuant to which more than fifty percent (50%) of the

voting power of the Corporation is disposed of or effect any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of, provided that this Section 2(c)(i) shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Corporation.

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(c)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to "investment letter" restrictions (e.g., federal or state securities laws restrictions) or other similar restrictions on free marketability:

(1) If traded on a securities exchange or the Nasdaq Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board of Directors and the holders of at least a majority of the voting power of all then outstanding shares of Series A-2 Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(c)(ii)(A) to reflect the approximate fair market value thereof, as mutually determined by the Board of Directors and the holders of at least a majority of the voting power of all then outstanding shares of Series A-2 Preferred Stock.

(iii) **Notice of Transaction.** The Corporation shall give each holder of record of Series A-1 or Series A-2 Preferred Stock written notice of such impending transaction not later than ten (10) days prior to the stockholders' meeting called to approve such transaction, or ten (10) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of

Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(iv) **Effect of Noncompliance.** In the event the requirements of this Section 2(c) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A-1 and Series A-2 Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(c)(iii) hereof.

3. **Redemption.** The Preferred Stock is not redeemable.

4. **Conversion.** The holders of the Series A-1 and Series A-2 Preferred Stock shall have conversion rights as follows (the "**Conversion Rights**"):

(a) **Right to Convert.** Subject to Section 4(c), each share of Series A-1 and Series A-2 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) \$1.00 in the case of the Series A-1 Preferred Stock and (ii) \$1.00 in the case of the Series A-2 Preferred Stock by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share shall be \$1.00 for shares of Series A-1 Preferred Stock and \$1.00 for shares of Series A-2 Preferred Stock. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4(d) below.

(b) **Automatic Conversion.** Each share of Series A-1 or Series A-2 Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 4(c), immediately prior to the consummation of the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "**Securities Act**") which results in gross proceeds to the Company of at least \$25 million, (ii) the date specified by written consent or agreement of the holders of at least a majority of the then outstanding shares of Series A-1 and Series A-2 Preferred Stock, voting together as a class.

(c) **Mechanics of Conversion.** Before any holder of Series A-1 or Series A-2 Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such

holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act the conversion shall (unless the holder specifies otherwise) be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Price of the Series A-1 and Series A-2 Preferred Stock shall be subject to adjustment from time to time as follows:

(i) **Issuance of Additional Stock below Purchase Price.** If the Corporation shall issue, after the date upon which any shares of Series A-1 or Series A-2 Preferred Stock were first issued (the "Purchase Date" with respect to such series), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.** Whenever the Conversion Price is adjusted pursuant to this Section 4(d)(i), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(B) **Definition of "Additional Stock".** For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Purchase Date) other than

(1) Common Stock issued pursuant to a transaction described in Section 4(d)(ii) hereof,

(2) Shares of Common Stock issuable or issued to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation.

(3) Capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions approved by the Board of Directors,

(4) Capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation,

(5) Shares of Common Stock issued or issuable upon conversion of the Series A-1 or Series A-2 Preferred Stock, and

(6) Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Series A-1 and Series A-2 Preferred Stock will be converted to Common Stock.

(C) **No Fractional Adjustments.** No adjustment of the Conversion Price for the Series A-1 or Series A-2 Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) **Determination of Consideration.** In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(E) **Deemed Issuances of Common Stock.** In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to

exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of each of the Series A-1 and Series A-2 Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each of the Series A-1 and Series A-2 Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(d)(i)(E)(1) and

4(d)(i)(E)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(3) or 4(d)(i)(E)(4).

(F) **No Increased Conversion Price.** Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) **Stock Splits and Dividends.** In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "**Common Stock Equivalents**") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each of the Series A-1 and Series A-2 Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iii) **Reverse Stock Splits.** If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for each of the Series A-1 and Series A-2 Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) **Other Distributions.** In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of Series A-1 and Series A-2 Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A-1 and Series A-2 Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Impairment.** The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

(h) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A-1 or Series A-2 Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series A-1 or Series A-2 Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A-1 or Series A-2 Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A-1 or Series A-2 Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(i) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining

the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A-1 or Series A-2 Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) **Reservation of Stock Issuable Upon Conversion.** The

Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A-1 and Series A-2 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 such series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(k) **Notices.** Any notice required by the provisions of this Section 4 to

be given to the holders of shares of Series A-1 or Series A-2 Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

5. **Voting Rights.** Except as provided in Section 6, the Holder of each share

of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted and shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A-1 or Series A-2 Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

6. **Protective Provisions.**

(a) In any vote of the Preferred Stock as a single class, whether under

law or pursuant to this Restated Certificate or otherwise, the holders of the Preferred Stock shall vote on an as-converted basis except that until the earliest of (i) the date of the consummation of the Optional Closing, as defined in the Series A-1 and Series A-2 Purchase Agreement between

the Corporation and the purchasers named therein, (ii) the second anniversary of the date on which shares of Series A-2 Preferred Stock are first issued or (iii) the date that the Company issues a minimum of 3,500,000 shares of Preferred Stock for consideration of at least \$2.00 per share (the "Voting Adjustment Date"), each holder of a share of Series A-1 Preferred Stock shall have the right to 0.75 votes for each share of Common Stock into which such Series A-1 Preferred Stock could then be converted and thereafter the holder of each share of Series A-1 Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series A-1 Preferred Stock could then be converted.

(b) So long as at least two million (2,000,000) shares of Preferred Stock are outstanding (as adjusted for stock splits, stock dividends or recapitalizations), the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a class:

(i) effect a transaction described in Section 2(c)(i) above;

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A-1 or Series A-2 Preferred Stock;

(iii) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series A-1 or Series A-2 Preferred Stock with respect to voting, dividends, conversion or upon liquidation.

(iv) Amend the Bylaws or the Certificate of Incorporation to increase or decrease the number of authorized directors above or below seven (7).

7. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. The Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) Common Stock.

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

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

3. **Redemption.** The Common Stock is not redeemable.

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

ARTICLE V

The Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

ARTICLE VII

(A) To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, 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.

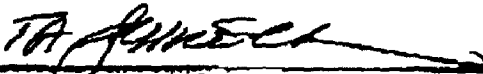
(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of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

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

* * *

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at Menlo Park, California, on June 17, 1998.



Thomas A. Schock, President



Tho Hoa Nahn, Secretary

**CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION**

OF

DURECT THERAPEUTICS CORPORATION

The undersigned hereby certifies that:

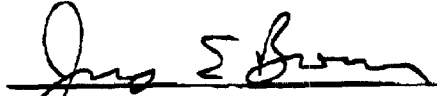
1. He is the duly elected and acting President and Chief Executive Officer of Durect Therapeutics Corporation, a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on February 6, 1998.
3. Pursuant to Section 242 of the General Corporation Law of the State of Delaware, this Certificate of Amendment of Certificate of Incorporation amends Article I of this corporation's Certificate of Incorporation to read in its entirety as follows:

ARTICLE I

"The name of this corporation is Durect Corporation (the "Corporation")."

4. The foregoing Certificate of Amendment has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

Executed at Palo Alto, California, August 25, 1998.


James E. Brown,
President and Chief Executive Officer

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
DURECT CORPORATION**

The undersigned, James E. Brown and Mark B. Weeks, hereby certify that:

1. They are the duly elected and acting President and Secretary, respectively, of Durect Corporation, a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on February 6, 1998 under the name of "Durect Therapeutics Corporation."
3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

"ARTICLE I

The name of this corporation is Durect Corporation (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is Corporation Service Company, 1013 Centre Road, Wilmington, Delaware 19805, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III

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

ARTICLE IV

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is sixty-five million six hundred eight-three thousand seven hundred thirty-four (65,683,734) shares, each with a par value of \$0.0001 per share. Forty-one million five hundred forty-one thousand eight hundred sixty-seven (41,541,867) shares shall be Common Stock and twenty-four million two hundred and forty-one thousand eight hundred and sixty-seven (24,241,867) shares shall be Preferred Stock.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation has been designated herein in three series. The first series of Preferred Stock is designated "Series A-1 Preferred Stock" and consists of five million six hundred thousand (5,600,000) shares. The second series of Preferred

Stock is designated "Series A-2 Preferred Stock" and consists of eight million six hundred and forty-one thousand eight hundred sixty-seven (8,641,867) shares. The third series of Preferred Stock is designated "Series B Preferred Stock" and consists of nine million three hundred ninety-five thousand three hundred forty-nine (9,378,140) shares. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A-1, Series A-2 and Series B Preferred Stock are as set forth below in this Article IV(B). The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or of any of them. Subject to compliance with applicable protective voting rights which have been or may be granted to the Preferred Stock or series thereof in Certificates of Designations or the Corporation's Certificate of Incorporation ("Protective Provisions"), but notwithstanding any other rights of the Preferred Stock or any series thereof, the rights, privileges, preferences and restrictions of any such additional series may be subordinated to, *pari passu* with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of any series (other than the Series A-1, Series A-2 and Series B Preferred Stock), prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

1. Dividend Provisions. Subject to the rights of the series of Preferred Stock that may from time to time come into existence:

(a) Series A-1 and Series A-2 Preferred. the holders of shares of Series A-1 or Series A-2 Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor prior and in preference to any declaration or payment of any dividend on the Common Stock of the Corporation, at the rate of \$0.05 per share per annum on each outstanding share of Series A-1 or Series A-2 Preferred Stock, payable quarterly when, as and if declared by the Board of Directors. Such dividends shall not be cumulative.

(b) Series B Preferred. the holders of shares of Series B Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor prior and in preference to any declaration or payment of any dividend on the Common Stock of the Corporation, at the rate of \$0.13975 per share per annum on each outstanding share of Series B Preferred Stock, payable quarterly when, as and if declared by the Board of Directors. Such dividends shall accrue on each share from July 16, 1999, and shall accrue from day to day, whether or not declared. Such dividends shall be cumulative so that, except as provided below, if such dividends in respect of any previous or current annual dividend period, at the annual rate specified above, shall not have been paid the deficiency shall first be fully paid before any dividend or other distribution shall be paid on or declared and set apart for the Common Stock. Accumulation of dividends on the Series B Preferred Stock shall not bear interest. Cumulative dividends with respect to a share of Series B Preferred Stock which are accrued and/or in arrears shall be forgiven upon conversion (a "Specified Conversion") of such share to Common Stock

pursuant to either Section 4(a) below or Section 4(b) below so long as any conversion pursuant to either section is in connection with a registered offering of the Corporation's Common Stock under the Securities Act (defined below). Cumulative dividends with respect to a share of Series B Preferred Stock which are accrued and/or in arrears shall be paid upon any conversion of such share into Common Stock other than a Specified Conversion either in cash or, at the discretion of the Board of Directors, in Common Stock valued at the fair market value of such Common Stock as determined in good faith by the Board of Directors; provided, however, if the holders of a majority of the then outstanding shares of the Series B Preferred Stock (the "Contesting Holders") notify the Board of Directors of the Corporation within ten (10) days after receiving written notification of such determination of the fair market value that they disagree with such determination, then the fair market value of the Common Stock shall be mutually agreed upon by the Board of Directors and the holders of a majority of the Series B Preferred Stock within thirty (30) days after the receipt of notice by the Board of Directors from the Contesting Holders.

(c) **Parity of Preferred Series Dividends.** To the extent that dividends have been declared and are payable on the Series A-1 or Series A-2 Preferred Stock, such dividends shall be paid on a pari passu basis with the dividends of the Series B Preferred Stock pro rata in accordance with the then unpaid amounts of the dividends then payable on the respective Series of Preferred Stock. To the extent that assets are not legally available for the payment of such dividends on the Series A-1, Series A-2 or Series B Preferred Stock, such dividends shall be paid pro rata as provided in the immediately preceding sentence at such time as assets become legally available for such purpose. Any dividends on the Preferred Stock shall be paid before payment of the Liquidation Preferences on the Preferred Stock provided for under Section 2 below.

2. **Liquidation.**

(a) **Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of any series of Preferred Stock that may from time to time come into existence, the holders of the Series A-2 and Series B Preferred Stock, unless such stock has been converted into Common Stock in accordance with Section 4 below, shall be entitled to receive in addition to any dividends then payable as provided under Section 1 above, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Series A-1 Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to (i) \$1.087 per share for each share of Series A-2 Preferred Stock then held by them (the "Series A-2 Liquidation Preference") and (ii) \$2.15 per share for each share of Series B Preferred Stock then held by them (the "Series B Liquidation Preference"); provided, however, that in the event of any transaction described in Section 2(c)(i) below that (x) is not approved (by vote or written consent, as provided by law) by the holders of a majority of the Series B Preferred Stock then outstanding and (y) results in aggregate consideration to be received by the stockholders of the Corporation of less than \$115 million (a "Non-Approved Merger"), the Series B Liquidation Preference shall instead be an amount per share ("Non-Approved Merger Preference") calculated as follows:

$$\text{Non-Approved Merger Preference} = \$2.15 - \frac{(\$0.1075)(Y)}{1,000,000}$$

where Y is the amount equal to the excess, if any, of the aggregate consideration to be received in the Non-Approved Merger over \$95,000,000. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A-2 and Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid Liquidation Preferences, then, subject to the rights of any series of Preferred Stock that may from time to time come into existence, the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series A-2 and Series B Preferred Stock pro rata in proportion to the Liquidation Preference each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** Upon the completion of the distribution required by Section 2(a) above and any other distribution that may be required with respect to any series of Preferred Stock that come into existence from time to time, if assets remain in the Corporation, the holders of the Series A-1 Preferred Stock and the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation pro rata based on the number of shares of Common Stock held by each (on an as-converted basis); provided, however, that notwithstanding the foregoing, in the event of a Non-Approved Merger, upon the completion of the distribution required by Section 2(a) above, if assets remain in the Corporation, the holders of the Series A-1 Preferred Stock and Series B Preferred Stock and the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation pro rata based on the number of shares of Common Stock that are or would be held by each on an as-converted basis.

(c) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to occur if the Corporation (or a secured party receiver or other person or entity legally entitled to act on behalf of the Corporation) shall sell, convey, or otherwise dispose of all or substantially all of its assets or business or if the Corporation shall merge into or consolidate with any other corporation or effect any other transaction or series of related transactions and the result thereof is that more than fifty percent (50%) of the combined voting power of the Corporation is held by persons or entities that were not stockholders immediately prior to such merger, consolidation or other transaction.

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(c)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to "investment letter" restrictions (e.g., federal or state securities laws restrictions) or other similar restrictions on free marketability:

(1) If traded on a securities exchange or the Nasdaq Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined in good faith by the Board of Directors and the holders of at least a majority of all then outstanding shares of Series A-2 and Series B Preferred Stock, voting together as a single class.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the fair market value determined as above in Section 2(c)(ii)(A) to reflect such restriction on marketability, as mutually determined in good faith by the Board of Directors and the holders of at least a majority of all then outstanding shares of Series A-2 and Series B Preferred Stock, voting together as a single class.

(iii) Notice of Transaction. The Corporation shall give each holder of record of Series A-1, Series A-2 and Series B Preferred Stock written notice of a deemed liquidation as described in Section 2(c)(i) above not later than ten (10) days prior to the stockholders' meeting called to approve such transaction, or ten (10) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Series A-1, Series A-2 and Series B Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of all then outstanding shares of such Preferred Stock.

(iv) Effect of Noncompliance. In the event the requirements of this Section 2(c) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A-1, Series A-2 and Series B Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(c)(iii) hereof.

3. Redemption. The Series A-1, Series A-2 and Series B Preferred Stock is not redeemable.

4. Conversion. The holders of the Series A-1, Series A-2 and Series B Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) **Right to Convert.** Subject to Section 4(c), each share of Series A-1, Series A-2 and Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) \$1.00 in the case of the Series A-1 Preferred Stock, (ii) \$1.087 in the case of the Series A-2 Preferred Stock and (iii) \$2.15 in the case of Series B Preferred Stock by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share shall be \$1.00 for shares of Series A-1 Preferred Stock, \$1.087 for shares of Series A-2 Preferred Stock and \$2.15 for shares of Series B Preferred Stock. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4(d) below.

(b) **Automatic Conversion.** Each share of Series A-1, Series A-2 or Series B Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 4(c), the date immediately prior to the consummation of the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act") with a per share public offering price of at least \$7.00 and which results in gross proceeds to the Corporation of at least \$25 million, (ii) the date specified by vote or written consent, as provided by law, of the holders of at least a majority of the then outstanding shares of Series A-1, Series A-2 and Series B Preferred Stock, voting together as a single class; provided, however, that any such conversion pursuant to this Section 4(b)(ii) where the fair market value of the Corporation, as determined in good faith by the Board of Directors, is less than \$115 million shall require the vote or written consent, as provided by law, of the holders of a majority of the Series B Preferred Stock, unless: (A) such conversion is in connection with a transaction described in Section 2(c)(i) above; and (B) the aggregate consideration to be received by the stockholders of the Corporation as a result of such transaction is less than \$115 million, in which event, the vote or written consent of the holders of a majority of the Series B Preferred Stock shall not be required provided that: (x) each holder of the Series B Preferred Stock shall receive, prior and in preference to any distribution of any assets of the Corporation to the holders of the Series A-1 Preferred Stock, Series A-2 Preferred Stock and Common Stock, any dividends then payable as provided under Section 1(b) above plus the Non-Approved Merger Preference (as calculated in accordance with Section 2(a) above) per share of Series B Preferred Stock then held by such holder, and (y) the holders of the Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series B Preferred Stock and Common Stock shall receive all of the remaining consideration received from such transaction pro rata based on the number of shares of Common Stock that are or would be held by each on an as-converted basis.

(c) **Mechanics of Conversion.** Before any holder of Series A-1, Series A-2 or Series B Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable

thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act the conversion shall (unless the holder specifies otherwise) be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Price of each of the Series A-1, Series A-2 and Series B Preferred Stock shall be subject to adjustment from time to time as follows:

(i) **Issuance of Additional Stock below Conversion Price.**

If the Corporation shall issue, after the date upon which any shares of Series A-1, Series A-2 or Series B Preferred Stock were first issued (the "Purchase Date" with respect to such series), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.** Whenever the Conversion Price is adjusted pursuant to this Section 4(d)(i), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(B) **Definition of "Additional Stock".** For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Purchase Date other than

(1) Common Stock issued pursuant to a transaction described in Section 4(d)(ii) hereof,

(2) Not more than 2,000,000 shares of Common Stock issuable or issued prior to, on or after the Purchase Date to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation,

(3) Not more than 500,000 shares of capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions approved by the Board of Directors,

(4) Capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers, partnering transactions or similar transactions ("Transactions"), the terms of which are approved by the Board of Directors, unless the Director designated by the Series B Preferred Stock reasonably determines in good faith, in his or her capacity as Director of the Corporation, that the value of the assets, consideration or rights received by the Corporation in such Transaction, when taken as a whole, would not contribute to increasing the value of the Corporation so as to justify issuance of such capital stock or warrants or options to purchase capital stock in such Transaction,

(5) Shares of Common Stock issued or issuable upon conversion of the Series A-1, Series A-2 or Series B Preferred Stock, and

(6) Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Series A-1, Series A-2 and Series B Preferred Stock will be converted into shares of Common Stock.

(C) No Fractional Adjustments. No adjustment of the Conversion Price for the Series A-1, Series A-2 or Series B Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to the earlier of three years from the date of the event giving rise to the adjustment being carried forward or the conversion of such shares into Common Stock in accordance with the terms hereof, or shall be made on the earlier of the end of three years from the date of the event giving rise to the adjustment being carried forward or such conversion.

(D) Determination of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors; provided, however, if the holders of a majority of the then outstanding shares of the Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series B Preferred Stock (the "Contesting Holders") notify the Board of Directors of the Corporation within ten (10) business days after receiving written notification of such determination of the fair market value that they disagree

with such determination, then the fair market value of the consideration shall be mutually agreed upon by the Board of Directors and the holders of a majority of the Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series B Preferred Stock within thirty (30) days after the receipt of notice by the Board of Directors from the Contesting Holders.

(E) **Deemed Issuances of Common Stock.** In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of each of the Series A-1, Series A-2 and Series B Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each of the Series A-1, Series A-2 and Series B Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

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

(F) No Increased Conversion Price. Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) Stock Splits and Dividends. In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each of the Series A-1, Series A-2 and Series B Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series of Preferred Stock shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iii) Reverse Stock Splits. In the event the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, immediately following the record date of such combination, the Conversion Price of each of the Series A-1, Series A-2 and Series B Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) **Other Distributions.** In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of Series A-1, Series A-2 and Series B Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A-1, Series A-2 and Series B Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the kind and number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Impairment.** The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Series A-1, Series A-2 and Series B Preferred Stock against impairment.

(h) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A-1, Series A-2 or Series B Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share with one-half being rounded upward. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series A-1, Series A-2 or Series B Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A-1, Series A-2 or Series B Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail

the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A-1, Series A-2 or Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(i) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A-1, Series A-2 and Series B Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A-1, Series A-2 and Series B 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 such series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(k) **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A-1, Series A-2 or Series B Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

5. **Voting Rights.** Except as provided in Section 6, the holder of each share of Series A-1, Series A-2 or Series B Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted and shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into

which shares of Series A-1, Series A-2 or Series B Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

6. Protective Provisions.

(a) Subject to the rights of any series of Preferred Stock that may from time to time come into existence, so long as at least three million five hundred thousand (3,500,000) shares of Series A-1, Series A-2 and Series B Preferred Stock are outstanding (as adjusted for stock splits, stock dividends or recapitalizations), the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A-1, Series A-2 and Series B Preferred Stock, voting together as a single class:

(i) effect a transaction described in Section 2(c)(i) above or, except pursuant to the terms of the Amended and Restated Development and Commercialization Agreement between the Corporation and Alza Corporation effective April 28, 1999 ("Alza Agreement"), effect, in any transaction or series of related transactions, an irrevocable sale, transfer, license or other disposition of: (x) all significant rights associated with the CNS Field (as defined in the Alza Agreement), (y) all rights associated with one-third or more of the total number of Durect Fields then in existence (as defined in the Alza Agreement); or (z) more than 35% of the fair market value of the consolidated assets of the Corporation;

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Preferred Stock;

(iii) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series A-1, Series A-2 or Series B Preferred Stock with respect to voting, dividends, conversion or upon liquidation;

(iv) amend the Bylaws or the Certificate of Incorporation to increase or decrease the number of authorized directors above or below eight (8);

(v) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;

(vi) declare or pay any dividend or other distribution on Common Stock, provided that the Corporation shall not declare or pay any dividend on Common Stock so long as any dividends on Series B Preferred Stock pursuant to Section 1(b) above are accrued or declared and unpaid;

(vii) except for transactions which are contemplated in the Alza Agreement, engage in any transactions with Alza Corporation or its successors or any person or

entity who directly or indirectly controls the Corporation or directly or indirectly owns beneficially at least 10% of the outstanding capital stock of the Corporation.

(b) So long as at least two million (2,000,000) shares of Series B Preferred Stock are outstanding (as adjusted for stock splits, stock dividends or recapitalizations), the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds of the then outstanding shares of Series B Preferred Stock, voting together as a class: (i) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock; (ii) amend the Certificate of Incorporation or the Bylaw of the Corporation so as to affect adversely the shares of Series B Preferred Stock; or (iii) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over the Series B Preferred Stock with respect to voting, dividends, conversion or upon liquidation.

7. **Status of Converted Stock.** In the event any shares of Series A-1, Series A-2 or Series B Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. The Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) **Common Stock.**

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, and the provisions of Section 6(a)(vi), the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

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

3. **Redemption.** The Common Stock is not redeemable.

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

ARTICLE V

The Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

ARTICLE VII

(A) To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, 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.

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

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

* * *

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at Cupertino, California, on July 15, 1999

James E. Brown
James E. Brown, President

Mark B. Weeks
Mark B. Weeks, Secretary

**CERTIFICATE OF CORRECTION
FILED TO CORRECT
CERTAIN ERRORS IN THE AMENDED AND RESTATED CERTIFICATE OF
INCORPORATION
OF DURECT CORPORATION
FILED IN THE OFFICE OF THE SECRETARY OF STATE
OF DELAWARE ON JULY 16, 1999**

Direct Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

1. The name of the corporation is Direct Corporation.
2. That an Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of State of Delaware on July 16, 1999 and that said Amended and Restated Certificate of Incorporation requires correction as permitted by Section 103 of the General Corporation Law of the State of Delaware.
3. The inaccuracy or defect of said Amended and Restated Certificate of Incorporation is as follows: The third sentence of Section A of Article IV of the Amended and Restated Certificate of Incorporation previously read as follows:

"Forty-one million five hundred forty-one thousand eight hundred sixty-seven (41,541,867) shares shall be Common Stock and twenty-four million two hundred and forty-one thousand eight hundred and sixty-seven (24,241,867) shares shall be Preferred Stock."

and should be corrected to read as follows:

"Forty-one million five hundred forty-one thousand eight hundred sixty-seven (41,541,867) shares shall be Common Stock and twenty-four million one hundred and forty-one thousand eight hundred and sixty-seven (24,141,867) shares shall be Preferred Stock."

IN WITNESS WHEREOF, said corporation has caused this Certificate to be signed by Mark B. Weeks, its Secretary, this 19th day of July, 1999.

Direct Corporation

By: 

Mark B. Weeks, Secretary

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 01:00 PM 07/20/1999
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TRADEMARK
REEL: 002468 FRAME: 0036

**CERTIFICATE OF DESIGNATION OF RIGHTS, PREFERENCES
AND PRIVILEGES OF
SERIES B-1 PREFERRED STOCK
OF
DURECT CORPORATION**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

We, James E. Brown and Mark B. Weeks, the Chief Executive Officer and the Secretary, respectively, of Durect Corporation, a Delaware corporation (the "Corporation"), in accordance with the provisions of Section 103 thereof, DO HEREBY CERTIFY:

That pursuant to the authority conferred upon the Board of Directors by the Amended and Restated Certificate of Incorporation of the said Corporation (the "Restated Certificate"), the Board of Directors on September 17, 1999 adopted the following resolution creating a series of shares of Preferred Stock designated as Series B-1 Preferred Stock:

"RESOLVED, that pursuant to the authority vested in the Board of Directors of the corporation by the Restated Certificate, the Board of Directors does hereby provide for the issue of a Series of Preferred Stock, \$0.0001 par value, of the Corporation, to be designated "Series B-1 Preferred Stock", initially consisting of Four Hundred and Fifty Thousand (450,000) shares, and to the extent that the designations, powers, preferences and relative and other special rights and the qualifications, limitations and restrictions of the Series B-1 Preferred Stock are not stated and expressed in the Restated Certificate, does hereby fix and herein state and express such designations, powers, preferences and relative and other special rights and the qualifications, limitations and restrictions thereof, as follows (all terms used herein which are defined in the Restated Certificate shall be deemed to have the meanings provided therein):

Section 1. Designation and Amount. The shares of such series shall be designated as "Series B-1 Preferred Stock", par value \$0.0001 per share, and the number of shares constituting such series shall be Four Hundred and Fifty Thousand (450,000).

Section 2. Dividend Provisions. Subject to the rights of series of Preferred Stock which may from time to time come into existence, the holders of shares of Series B-1 Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of \$0.13975 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series B-1

Preferred Stock, payable quarterly when, as and if declared by the Board of Directors; provided, however, that no dividend shall be declared or paid on the shares of Series B-1 Preferred Stock unless dividends have been declared and paid in full to the holders of Series A, Series A-1 and Series B Preferred Stock. Such dividends shall not be cumulative.

Section 3. Liquidation.

(a) Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence, the holders of the Series B-1 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Series A-1 Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to \$2.15 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series B-1 Preferred Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A-2, Series B and Series B-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amounts due to such holders pursuant to the foregoing and pursuant to the Corporation's Amended and Restated Certificate of Incorporation, then, subject to the rights of series of Preferred Stock that may from time to time come into existence, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A-2, Series B and Series B-1 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive

(b) Remaining Assets. Upon the completion of the distribution required by Section 3(a) above and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence, if assets remain in the Corporation, such assets will be distributed as set forth in Article IV, Section 2(b) of the Restated Certificate.

(c) Certain Acquisitions.

(i) Deemed Liquidation. For purposes of this Section 3, a liquidation, dissolution or winding up of the Corporation shall be deemed to occur as set forth in Article IV, Section 2(c)(i) of the Restated Certificate.

(ii) Notice of Transaction. The Corporation shall give each holder of record of Series B-1 Preferred Stock written notice of a deemed liquidation as described in Section 3(c)(i) hereof according to the same terms and subject to the same provisions with respect to the shortening of such notice periods as set forth in Article IV, Section 2(c)(iii) of the Restated Certificate with respect to holders of Series A-1, Series A-2 and Series B Preferred Stock.

Section 4. Redemption. The Series B-1 Preferred Stock is not redeemable.

Section 5. Conversion. The holders of the Series B-1 Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Subject to Section 5(c), each share of Series B-1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$2.15 by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share of Series B-1 Preferred Stock shall be \$2.15. Such initial Conversion Price shall be subject to adjustment as set forth in Section 5(d).

(b) Automatic Conversion. Each share of Series B-1 Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 5(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), with a per share public offering price of at least \$7.00 and which results in gross proceeds to the Corporation of \$25 million or (ii) the date specified by vote or written consent, as provided by law, of the holders of at least a majority of the then outstanding shares of Series A-1, Series A-2, Series B and Series B-1 Preferred Stock, voting together as a single class, provided that all shares of Series A-1, Series A-2, Series B and Series B-1 Preferred Stock are converted at such time.

(c) Mechanics of Conversion. Before any holder of Series B-1 Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Series B-1 Preferred Stock shall be subject to adjustment from time to time as follows:

(i) Issuance of Additional Stock below Conversion Price. If the Corporation shall issue, after the date upon which any shares of Series B-1 Preferred Stock were first issued (the "Purchase Date" with respect to such series), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 5(d)(i), unless otherwise provided in this Section 5(d)(i).

(A) Adjustment Formula. Whenever the Conversion Price is adjusted pursuant to this Section 5(d)(i), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 5(d)(i)(E) below.

(B) Definition of "Additional Stock". For purposes of this Section 5(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 5(d)(i)(E)) by the Corporation after the Purchase Date other than

(1) Common Stock issued pursuant to a transaction described in Section 5(d)(ii) hereof,

(2) Not more than 2,000,000 shares of Common Stock issuable or issued prior to, on or after the Purchase Date to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation,

(3) Not more than 500,000 shares of capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions approved by the Board of Directors,

(4) Capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers, partnering transactions or similar transactions ("Transactions"), the terms of which are approved by the Board of Directors, unless the Director designated by the Series B Preferred Stock reasonably

determines in good faith, in his or her capacity as Director of the Corporation, that the value of the assets, consideration or rights received by the Corporation in such Transaction, when taken as a whole, would not contribute to increasing the value of the Corporation so as to justify issuance of such capital stock or warrants or options to purchase capital stock in such Transaction,

(5) Shares of Common Stock issued or issuable upon conversion of the Series A-1, Series A-2, Series B or Series B-1 Preferred Stock, and

(6) Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Series A-1, Series A-2, Series B and Series B-1 Preferred Stock will be converted into shares of Common Stock.

(C) No Fractional Adjustments. No adjustment of the Conversion Price for the Series B-1 Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to the earlier of three years from the date of the event giving rise to the adjustment being carried forward or the conversion of such shares into Common Stock in accordance with the terms hereof, or shall be made on the earlier of the end of three years from the date of the event giving rise to the adjustment being carried forward or such conversion.

(D) Determination of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors; provided, however, if the holders of a majority of the then outstanding shares of the Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series B Preferred Stock (the "Contesting Holders") notify the Board of Directors of the Corporation within ten (10) business days after receiving written notification of such determination of the fair market value that they disagree with such determination, then the fair market value of the consideration shall be mutually agreed upon by the Board of Directors and the holders of a majority of the Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series B Preferred Stock within thirty (30) days after the receipt of notice by the Board of Directors from the Contesting Holders.

(E) Deemed Issuances of Common Stock. In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 5(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section 5(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 5(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of each of the Series A-1, Series A-2, Series B and Series B-1 Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each of the Series A-1, Series A-2, Series B and Series B-1 Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

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

(F) No Increased Conversion Price. Notwithstanding any other provisions of this Section (5)(d)(i), except to the limited extent provided for in Sections 5(d)(i)(E)(3) and 5(d)(i)(E)(4), no adjustment of the Conversion Price pursuant to this Section 5(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) Stock Splits and Dividends. In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series B-1 Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series of Preferred Stock shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 5(d)(i)(E).

(iii) Reverse Stock Splits. In the event the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, immediately following the record date of such combination, the Conversion Price of the Series B-1 Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 5(d)(ii), then, in each such case for the purpose of this Section 5(e), the holders of Series B-1 Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 5 or Section 3) provision shall be made so that the holders of the Series B-1, Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the kind and number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 5 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Series B-1 Preferred Stock against impairment.

(h) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series B-1 Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share with one-half being rounded upward. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series B-1 Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series B-1 Preferred Stock pursuant to this Section 5, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B-1 Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(i) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series B-1 Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A-1, Series A-2, Series B and Series B-1 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 such series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(k) Notices. Any notice required by the provisions of this Section 5 to be given to the holders of shares of Series B-1 Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

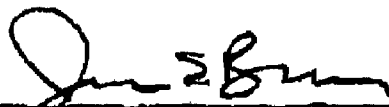
Section 6. Voting Rights. The holder of each share of Series B-1 Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series B-1 Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

Section 7. Protective Provisions. So long as 200,000 shares of Series B-1 Preferred Stock are outstanding (as adjusted for stock splits, stock dividends or recapitalizations), the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series B-1

Preferred Stock, voting together as a class: (i) alter or change the rights, preferences or privileges of the shares of Series B-1 Preferred Stock or (ii) amend the Certificate of Incorporation or the Bylaw of the Corporation so as to affect adversely the shares of Series B-1 Preferred Stock in a manner materially different from any other series of Preferred Stock.

Section 8. Status of Converted Stock. In the event any shares of Series B-1 Preferred Stock shall be converted pursuant to Section 5 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. The Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

IN WITNESS WHEREOF, we have executed and subscribed this Certificate and do affirm the foregoing as true under the penalties of perjury this 22nd day of September, 1999.



James E. Brown
Chief Executive Officer

ATTEST:

Mark B. Weeks, Secretary

0388702.01

TRADEMARK
REEL: 002468 FRAME: 0047

IN WITNESS WHEREOF, we have executed and subscribed this Certificate and do affirm the foregoing as true under the penalties of perjury this 10th day of September, 1999.

James E. Brown
Chief Executive Officer

ATTEST:



Mark B. Weeks, Secretary

0388502.02

TRADEMARK
REEL: 002468 FRAME: 0048

**CERTIFICATE OF AMENDMENT OF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

OF

DURECT CORPORATION

The undersigned hereby certifies that:

1. He is the duly elected and acting Secretary of Durect Corporation, a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on February 6, 1998 under the name of "Durect Therapeutics Corporation."
3. Pursuant to Section 242 of the General Corporation Law of the State of Delaware, this Certificate of Amendment of Amended and Restated Certificate of Incorporation amends Article IV(A) of this corporation's Certificate of Incorporation to read in its entirety as follows:

"(A) Classes of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is seventy-seven million six hundred forty-one thousand four hundred thirty six (77,641,436) shares, each with a par value of \$0.0001 per share. Fifty million (50,000,000) shares shall be Common Stock and twenty-seven million six hundred forty-one thousand four hundred thirty six (27,641,436) shares shall be Preferred Stock."
4. The foregoing Certificate of Amendment has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

Executed at Cupertino, California, March 24, 2000.



Mark B. Weeks, Secretary

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 01:30 PM 03/24/2000
001150591 - 2856267

**CERTIFICATE OF DESIGNATION OF RIGHTS, PREFERENCES
AND PRIVILEGES OF
SERIES C PREFERRED STOCK
OF
DURECT CORPORATION**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

I, James E. Brown, the Chief Executive Officer of Durect Corporation, a Delaware corporation (the "Corporation"), in accordance with the provisions of Section 103 thereof, DO HEREBY CERTIFY:

That pursuant to the authority conferred upon the Board of Directors by the Amended and Restated Certificate of Incorporation of the said Corporation (the "Restated Certificate"), the Board of Directors on March 13, 2000 adopted the following resolution creating a series of shares of Preferred Stock designated as Series C Preferred Stock:

"RESOLVED, that pursuant to the authority vested in the Board of Directors of the corporation by the Restated Certificate, the Board of Directors does hereby create and provide for the issuance of a series of Preferred Stock, \$0.0001 par value, of the Corporation, to be designated "Series C Preferred Stock", initially consisting of three million five hundred seventy one thousand, four hundred twenty nine (3,571,429) shares, and to the extent that the designations, powers, preferences and relative and other special rights and the qualifications, limitations and restrictions of the Series C Preferred Stock are not stated and expressed in the Restated Certificate, does hereby fix and herein state and express such designations, powers, preferences and relative and other special rights and the qualifications, limitations and restrictions thereof, as follows (all terms used herein which are defined in the Restated Certificate shall be deemed to have the meanings provided therein):

Section 1. Designation and Amount. The shares of such series shall be designated as "Series C Preferred Stock", par value \$0.0001 per share, and the number of shares constituting such series shall be three million five hundred seventy one thousand, four hundred twenty nine (3,571,429).

Section 2. Dividend Provisions. The holders of shares of Series C Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior to and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Series B-1 Preferred Stock and on the Common Stock of the Corporation, at the rate of \$0.35 per share (as adjusted

for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series C Preferred Stock payable quarterly when, as and if declared by the Board of Directors; provided, however, that dividends declared or paid on the shares of Series C Preferred stock shall be paid on a pari passu basis with the dividends of the Series A-1, Series A-2 and Series B Preferred Stock pro rata in accordance with the then unpaid amounts of the dividends then payable on the respective series of Preferred Stock. To the extent that assets are not legally available for the payment of such dividends on the Series A-1, Series A-2, Series B or Series C Preferred Stock, such dividends shall be paid pro rata as provided in the immediately preceding sentence at such time as assets become legally available for such purpose. The dividends on the Series C Preferred Stock shall not be cumulative.

Section 3. Liquidation.

(a) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Series A-1 Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to \$7.00 (as adjusted for stock splits, stock dividends, reclassifications and the like) for each share of Series C Preferred Stock then held by them, plus declared but unpaid dividends, if any. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A-2, Series B, Series B-1 and Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amounts due to such holders pursuant to the foregoing and pursuant to the Corporation's Amended and Restated Certificate of Incorporation, then, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A-2, Series B, Series B-1 and Series C Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** Upon the completion of the distribution required by Section 3(a) above and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence, if assets remain in the Corporation, such assets will be distributed as set forth in Article IV, Section 2(b) of the Restated Certificate.

(c) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 3, a liquidation, dissolution or winding up of the Corporation shall be deemed to occur as set forth in Article IV, Section 2(c)(i) of the Restated Certificate.

(ii) **Notice of Transaction.** The Corporation shall give each holder of record of Series C Preferred Stock written notice of a deemed liquidation as described in Section 3(c)(i) hereof according to the same terms and subject to the same provisions with respect to the shortening of such notice periods as set forth in Article IV, Section 2(c)(iii) of the Restated Certificate with respect to holders of Series A-1, Series A-2, Series B and Series B-1 Preferred Stock.

Section 4. Redemption. The Series C Preferred Stock is not redeemable.

Section 5. Conversion. The holders of the Series C Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Subject to Section 5(c), each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$7.00 by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share of Series C Preferred Stock shall be \$7.00. Such initial Conversion Price shall be subject to adjustment as set forth in Section 5(d), Section 5(e) and Section 5(f) below.

(b) Automatic Conversion. Each share of Series C Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 5(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), with a per share public offering price of at least \$7.00 and which results in gross proceeds to the Corporation of at least \$25 million (a "Qualified IPO") or (ii) the date specified by vote or written consent, as provided by law, of the holders of at least a majority of the then outstanding shares of Series A-1, Series A-2, Series B, Series B-1 and Series C Preferred Stock, voting together as a single class.

(c) Mechanics of Conversion. Before any holder of Series C Preferred Stock shall be entitled to convert the same into shares of Common Stock, he or she shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be

deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Series C Preferred Stock shall be subject to adjustment from time to time as follows:

(i) Issuance of Additional Stock below Conversion Price. If the Corporation shall issue, after the date upon which any shares of Series C Preferred Stock were first issued (the "Purchase Date" with respect to such series), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 5(d)(i), unless otherwise provided in this Section 5(d)(i) or in Sections 5(e) and 5(f) below.

(A) Adjustment Formula. Whenever the Conversion Price is adjusted pursuant to this Section 5(d)(i), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 5(d)(i)(E) below.

(B) Definition of "Additional Stock". For purposes of this Section 5(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 5(d)(i)(E)) by the Corporation after the Purchase Date other than

- (1) Common Stock issued pursuant to a transaction described in Section 5(d)(ii) hereof,
- (2) Not more than 3,000,000 shares of Common Stock issuable or issued prior to, on or after the Purchase Date to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation,
- (3) Capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions approved by the Board of Directors,

(4) Capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers, partnering transactions or similar transactions ("Transactions"), the terms of which are approved by the Board of Directors,

(5) Shares of Common Stock issued or issuable upon conversion of the Series A-1, Series A-2, Series B, Series B-1 or Series C Preferred Stock,

(6) Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Series A-1, Series A-2, Series B, Series B-1 and Series C Preferred Stock will be converted into shares of Common Stock, subject to the anti-dilution rights set forth in Sections 5(e) and 5(f) below, and

(7) Capital stock issuable or issued upon exercise or conversion of warrants, options, notes or other rights to acquire securities outstanding as of the date of this Certificate of Designation.

(C) No Fractional Adjustments. No adjustment of the Conversion Price for the Series C Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to the earlier of three years from the date of the event giving rise to the adjustment being carried forward or the conversion of such shares into Common Stock in accordance with the terms hereof, or shall be made on the earlier of the end of three years from the date of the event giving rise to the adjustment being carried forward or such conversion.

(D) Determination of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors; provided, however, if the holders of a majority of the then outstanding shares of the Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (the "Contesting Holders") notify the Board of Directors of the Corporation within ten (10) business days after receiving written notification of such determination of the fair market value that they disagree with such determination, then the fair market value of the consideration shall be mutually agreed upon by the Board of Directors and the holders of a majority of the Contesting Holders within thirty (30) days after the receipt of notice by the Board of Directors from the Contesting Holders. If, after the passage of such time, the Contesting Holders and the Board cannot agree, any Contesting Holder or the Board may, no later than thirty (30) calendar days after such time put the matter to binding arbitration, subject to lawful judicial review. The matter submitted to arbitration shall be submitted under the Commercial Rules then in effect for the American Arbitration Association, and the parties shall request the American Arbitration Association to: (i)

appoint a single arbitrator mutually agreeable to the parties and experienced and knowledgeable concerning the nature of the matter in dispute; (ii) require that all testimony in front of such arbitrator be transcribed; (iii) require that the award, if any, be accompanied by findings of fact and a statement of the reasons for the decision; and (iv) handle the matter with the expedited procedures. The provision for the resolution of the matter provided by this Section 5(d)(i)(D) constitutes a complete defense to, and may be asserted or pleaded successfully as such, in any motion to a court of competent jurisdiction for a stay of any action or proceeding commenced contrary to the intent hereof.

(E) Deemed Issuances of Common Stock. In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 5(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section 5(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 5(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution

provisions thereof, the Conversion Price of each of the Series A-1, Series A-2, Series B, Series B-1 and Series C Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each of the Series A-1, Series A-2, Series B, Series B-1 and Series C Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

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

(F) No Increased Conversion Price. Notwithstanding any other provisions of this Section 5(d)(i), except to the limited extent provided for in Sections 5(d)(i)(E)(3) and 5(d)(i)(E)(4), no adjustment of the Conversion Price pursuant to this Section 5(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) Stock Splits and Dividends. In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series C Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series of Preferred Stock shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 5(d)(i)(E).

(iii) **Reverse Stock Splits.** In the event the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, immediately following the record date of such combination, the Conversion Price of the Series C Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) **Special Conversion Price Adjustments of Series C Preferred Stock for Initial Public Offerings.** If, after the Purchase Date, the Corporation shall issue in connection with an underwritten initial public offering pursuant to a registration statement under the Securities Act ("IPO") any Additional Stock without consideration or for a consideration per share less than the Conversion Price for the Series C Preferred Stock in effect immediately prior to the issuance of such Additional Stock, each holder of Series C Preferred Stock shall have the right, at the option of such holder, concurrently with the consummation of the IPO, to convert such holder's shares of Series C Preferred Stock into such number of shares of Common Stock derived by multiplying a fraction, the numerator of which shall be the Conversion Price then in effect for the Series C Preferred Stock (after taking into account any adjustments to such Conversion Price pursuant to Section 5(d)(i) above) and the denominator of which shall be the price at which shares of Common Stock are sold to the public in the IPO, by the number of shares of Series C Preferred Stock the holder elects to convert into Common Stock. The foregoing conversion right shall terminate after the closing of an IPO.

(f) **Special Conversion Price Adjustments of Series C Preferred Stock for Certain Mergers and Acquisitions.** In the event of a transaction described in Article IV, Section 2(c)(i) of the Restated Certificate that occurs after the Purchase Date, each holder of Series C Preferred Stock shall have the right, prior to the consummation of such transaction, to convert all of such holder's shares of Series C Preferred Stock into such number of shares of Common Stock derived by multiplying a fraction, the numerator of which shall be the Conversion Price then in effect for the Series C Preferred Stock (after taking into account any adjustments to such Conversion Price pursuant to Section 5(d)(i) above) and the denominator of which shall be the quotient obtained by dividing the value of the aggregate consideration received by the Corporation or its stockholders in such transaction calculated pursuant to Article IV, Section 2(c)(ii) of the Restated Certificate by the aggregate number of shares of Outstanding Common (including for this purpose, any Common Stock deemed issued pursuant to Section 5(d)(i)(B) above), by the number of shares of Series C Preferred Stock the holder elects to convert into Common Stock. The foregoing conversion rights shall terminate upon the closing of an IPO.

(g) **Other Distributions.** In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 5(d)(ii), then, in each such case for the purpose of this Section 5(g), the holders of Series C Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the

determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(h) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 5 or Section 3) provision shall be made so that the holders of the Series C, Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the kind and number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 5 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(i) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Series C Preferred Stock against impairment.

(j) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series C Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share with one-half being rounded upward. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series C Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series C Preferred Stock pursuant to this Section 5, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series C Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(k) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series C Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(l) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A-1, Series A-2, Series B, Series B-1 and Series C 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 such series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock, in addition to any other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Corporation's Certificate of Incorporation.

(m) Notices. Any notice required by the provisions of this Section 5 to be given to the holders of shares of Series C Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his or her address appearing on the books of the Corporation.

Section 6. Voting Rights. The holder of each share of Series C Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series C Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

Section 7. Protective Provisions. So long as at least 5,000,000 shares of Series A-1, Series A-2, Series B and Series C Preferred Stock are outstanding (as adjusted for stock splits, stock dividends or recapitalizations), the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of

the then outstanding shares of Series A-1, Series A-2, Series B and Series C Preferred Stock, voting together as a class:

- Certificate;
- (a) effect a transaction described in Section 2(c)(i) of the Restated Certificate;
 - (b) alter, reclassify or change the rights, preferences or privileges of the shares of the Series C Preferred Stock so as to materially and adversely affect such shares in a manner differently than the shares of the Series A-1, Series A-2 and Series B Preferred Stock;
 - (c) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Preferred Stock;
 - (d) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security having a preference over, or being on a parity with, the Series A-1, Series A-2, Series B or Series C Preferred Stock;
 - (e) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of capital stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;
 - (f) amend the Bylaws or the Certificate of Incorporation to increase or decrease the number of authorized directors above or below eight (8);
 - (g) liquidate, dissolve or wind up the Corporation; or
 - (h) enter into any transactions with any officers, directors or holders of greater than 5% of the outstanding capital stock of the Corporation, unless such transaction is at arms' length and shall have been approved by the Board of Directors.

Section 8. Status of Converted Stock. In the event any shares of Series C Preferred Stock shall be converted pursuant to Section 5 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. The Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

FURTHER RESOLVED, that the statements contained in the foregoing resolution creating and designating the Series C Preferred Stock and fixing the powers, designations, preferences and relative, optional, participating and other special rights and the qualifications, limitations, restrictions, and other distinguishing characteristics thereof shall, upon the effective

date of said series, be deemed to be included in and be part of the Restated Certificate pursuant to the provisions of Sections 104 and 151 of the General Corporation Law of the State of Delaware.

No shares of Series C Preferred Stock have previously been issued.

Sent By: Durect Corporation;

408 777 3577;

Mar-23-00 4:02PM;

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IN WITNESS WHEREOF, the undersigned has executed and subscribed this Certificate as the act and deed of the Corporation and does affirm the foregoing as true under the penalties of perjury this 24th day of March, 2000.



James E. Brown
Chief Executive Officer

ATTEST:



Mark B. Weeks, Secretary

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
DURECT CORPORATION**

The undersigned, James E. Brown and Mark B. Weeks, hereby certify that:

1. They are the duly elected and acting President and Secretary, respectively, of Durect Corporation, a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on February 6, 1998 under the name "Durect Therapeutics Corporation."
3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

"ARTICLE I

The name of this corporation is Durect Corporation (the "Corporation").

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

(A) The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is One Hundred and Twenty Million (120,000,000) shares, each with a par value of \$0.0001 per share. One Hundred and Ten Million (110,000,000) shares shall be Common Stock and Ten Million (10,000,000) shares shall be Preferred Stock.

(B) The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, by filing a certificate pursuant to the applicable law of the state of Delaware and within the limitations and restrictions stated in this Certificate of Incorporation, to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and the number of shares constituting any such series and the designation thereof, or any of them; and to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series,

but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

ARTICLE V

The number of directors of the Corporation shall be fixed from time to time by a bylaw or amendment thereof duly adopted by the Board of Directors.

ARTICLE VI

The following paragraph shall become effective only after such time as the Corporation meets the criteria set forth in Subdivisions (i), (ii) or (iii) of Section 2115(c) of the California Corporations Code (the "Effective Time").

On or prior to the date on which the Corporation first provides notice of an annual meeting of the stockholders following the Effective Time, the Board of Directors of the Corporation shall divide the directors into three classes, as nearly equal in number as reasonably possible, designated Class I, Class II and Class III, respectively. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by the Board of Directors. At the first annual meeting of stockholders or any special meeting in lieu thereof following the Effective Time, the terms of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders or any special meeting in lieu thereof following the Effective Time, the terms of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders or any special meeting in lieu thereof following the Effective Time, the terms of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders or special meeting in lieu thereof, directors elected to succeed the directors of the class whose terms expire at such meeting shall be elected for a full term of three years. In addition to the requirements of law and any other provisions hereof (and notwithstanding the fact that approval by a lesser vote may be permitted by law or any other provision hereof), the affirmative vote of the holders of at least 66 2/3 percent of the voting power of the then-outstanding shares of voting stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class, shall be required to amend, alter, repeal, or adopt any provision inconsistent with this paragraph.

Prior to the Effective Time, the provisions of the preceding paragraph shall not apply, and all directors shall be elected at each annual meeting of stockholders or any special meeting in lieu thereof to hold office until the next annual meeting or special meeting in lieu thereof.

Notwithstanding the foregoing provisions of this Article VI, each director shall serve until his or her successor is duly elected and qualified or until his or her death, resignation, or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal, or other causes shall be filled by either (i) the affirmative vote of the holders of a majority of the Voting Stock voting together as a single class; or (ii) by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Subject to the rights of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such newly created directorship shall be filled by the stockholders, be filled only by the affirmative vote of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified. Any director, or the entire Board of Directors, may be removed from office at any time (i) with cause by the affirmative vote of the holders of at least a majority of the voting power of the then-outstanding shares of the Voting Stock, voting together as a single class; or (ii) without cause by the affirmative vote of the holders of at least 66 2/3% of the voting power of the then-outstanding shares of the Voting Stock, voting together as a single class.

ARTICLE VII

In the election of directors, each holder of shares of any class or series of capital stock of the Corporation shall be entitled to one vote for each share held. No stockholder will be permitted to cumulate votes at any election of directors.

ARTICLE VIII

No action shall be taken by the stockholders of the Corporation other than at an annual or special meeting of the stockholders, upon due notice and in accordance with the provisions of the Bylaws of the Corporation (the "Bylaws"), and no action shall be taken by the stockholders by written consent.

ARTICLE IX

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 by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE X

(A) Except as otherwise provided in the Bylaws, the Bylaws may be altered or amended or new Bylaws adopted by the affirmative vote of at least 66 2/3% of the voting power of all of the then-outstanding shares of the voting stock of the Corporation entitled to vote. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal Bylaws.

(B) The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

(C) Advance notice of stockholder nominations for the election of directors or of business to be brought by the stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

ARTICLE XI

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

ARTICLE XII

The Corporation shall have perpetual existence.

ARTICLE XIII

(A) To the fullest extent permitted by the General Corporation Law of Delaware, as the same may be amended from time to time, 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. If the General Corporation Law of Delaware is hereafter amended to authorize, with the approval of a corporation's stockholders, further reductions in the liability of a corporation's directors for breach of fiduciary duty, then a director of the Corporation shall not be liable for any such breach to the fullest extent permitted by the General Corporation Law of Delaware, as so amended.

(B) Any repeal or modification of the foregoing provisions of this Article XIII shall not adversely affect any right or protection of a director of the Corporation with respect to any acts or omissions of such director occurring prior to such repeal or modification.

ARTICLE XIV

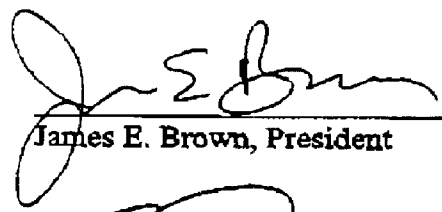
(A) To the fullest extent permitted by applicable law, the Corporation is also authorized to provide indemnification of (and advancement of expenses to) such agents (and any other persons to which Delaware law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law of Delaware, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to a corporation, its stockholders, and others.

(B) Any repeal or modification of any of the foregoing provisions of this Article XIV shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to such repeal or modification."


* * *

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this Corporation's Board of Directors and stockholders in accordance with the applicable provisions of Section 228, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at Mentlo Park, on the 3rd day of October, 2000.



James E. Brown, President



Mark B. Weeks, Secretary

**CERTIFICATE OF DESIGNATION
OF RIGHTS, PREFERENCES AND PRIVILEGES OF
SERIES A PARTICIPATING PREFERRED STOCK
OF
DURECT CORPORATION**

Pursuant to Section 151(g) and Section 103 of the General Corporation Law of the State of Delaware, I, James E. Brown, the President and Chief Executive Officer of DURECT Corporation (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware hereby certify:

That pursuant to the authority conferred upon the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors, on July 6, 2001 adopted the following resolution creating a series of shares of Preferred Stock designated as Series A Participating Preferred Stock:

"RESOLVED: that pursuant to the authority vested in the Board of Directors of the Corporation by the Amended and Restated Certificate of Incorporation, the Board of Directors does hereby provide for the issue of a series of Preferred Shares, \$0.0001 par value, of the Corporation, to be designated "Series A Participating Preferred Stock", initially consisting of One Hundred Thousand (100,000) shares and to the extent that the designations, powers, preferences and relative and other special rights and the qualifications, limitations and restrictions of the Series A Participating Preferred Stock are not stated and expressed in the Amended and Restated Certificate of Incorporation, does hereby fix and herein state and express such designations, powers, preferences and relative and other special rights and the qualifications, limitations and restrictions thereof, as follows (all terms used herein which are defined in the Amended and Restated Certificate of Incorporation shall be deemed to have the meanings provided therein):

1. **Designation and Amount.** The shares of such series shall be designated as "Series A Participating Preferred Stock", par value \$0.0001 per share, and the number of shares constituting such series shall be One Hundred Thousand (100,000).

2. **Dividends and Distributions.**

(A) Subject to the prior and superior right of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Participating Preferred Stock with respect to dividends, the holders of shares of Series A Participating Preferred Stock shall be entitled to receive when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the last day of March, June, September and December in each year (each such date being referred to herein as a

"Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to, subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock of the Corporation (the "Common Stock") since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Participating Preferred Stock. In the event the Corporation shall at any time after July 6, 2001 (the "Rights Declaration Date") (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Participating Preferred Stock were entitled immediately prior to such event under the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Participating Preferred Stock as provided in paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock).

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Participating Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Participating Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

3. Voting Rights. The holders of shares of Series A Participating Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Participating Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series A Participating Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of shares of Series A Participating Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) Except as required by law, holders of Series A Participating Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

4. Certain Restrictions.

(A) The Corporation shall not declare any dividend on, make any distribution on, or redeem or purchase or otherwise acquire for consideration any shares of Common Stock after the first issuance of a share or fraction of a share of Series A Participating Preferred Stock unless concurrently therewith it shall declare a dividend on the Series A Participating Preferred Stock as required by Section 2 hereof.

(B) Whenever quarterly dividends or other dividends or distributions payable on the Series A Participating Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Participating Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Participating Preferred Stock;

(ii) declare or pay dividends on, make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with Series A Participating Preferred Stock, except dividends paid ratably on the Series A Participating Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Participating Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Participating Preferred Stock;

(iv) purchase or otherwise acquire for consideration any shares of Series A Participating Preferred Stock, or any shares of stock ranking on a parity with the Series A Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(C) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

5. **Reacquired Shares.** Any shares of Series A Participating Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

6. **Liquidation, Dissolution or Winding Up.**

(A) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Participating Preferred Stock unless, prior thereto, the holders of shares of Series A Participating Preferred Stock shall have received an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, plus an amount equal to the greater of (1) \$1,000 per share, provided that in the event the Corporation does not have sufficient assets, after payment of its liabilities and distribution to holders of Preferred Stock ranking prior to the Series A Participating Preferred Stock, available to permit payment in full of the \$1,000 per share amount, the amount required to be paid under this Section 6(A)(1) shall, subject to Section 6(B) hereof, equal the value of the amount of available assets divided by the number of outstanding shares of Series A Participating Preferred Stock or (2) subject to the provisions for adjustment hereinafter set forth, 1,000 times the aggregate per share amount to be distributed to the holders of Common Stock (the greater of (1) or (2), the "Series A Liquidation Preference"). In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide

the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Participating Preferred Stock were entitled immediately prior to such event under clause (2) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock that were outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other series of Preferred Stock, if any, which rank on a parity with the Series A Participating Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences.

7. **Consolidation, Merger, etc.** In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series A Participating Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Participating Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of common Stock that were outstanding immediately prior to such event.

8. **No Redemption.** The shares of Series A Participating Preferred Stock shall not be redeemable.

9. **Ranking.** The Series A Participating Preferred Stock shall rank junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets, unless the terms of any such series shall provide otherwise.

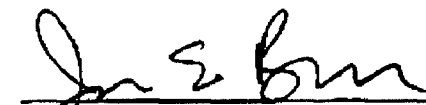
10. **Amendment.** The Certificate of Incorporation of the Corporation shall not be further amended in any manner which would materially alter or change the powers, preference or special rights of the Series A Participating Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding shares of Series A Participating Preferred Stock, voting separately as a class.

11. **Fractional Shares.** Series A Participating Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares,

to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Participating Preferred Stock.”

[Signature Page Follows]

Executed this 6th day of July, 2001.



James E. Brown
President and Chief Executive Officer