

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Vitruvian Orthopaedics, Inc.		10/03/2008	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Orthalign, Inc.		
<b>Street Address:</b>	384 Forest Avenue, Suite 21		
<b>City:</b>	Laguna Beach		
<b>State/Country:</b>	CALIFORNIA		
<b>Postal Code:</b>	92651		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 3</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	77514891	ORTHALIGN	
<b>Serial Number:</b>	77556377	KNEEALIGN	
<b>Serial Number:</b>	77556379	HIPALIGN	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(949)760-9502		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	949-760-0404		
<b>Email:</b>	efiling@kmob.com		
<b>Correspondent Name:</b>	Knobbe, Martens, Olson & Bear, LLP		
<b>Address Line 1:</b>	2040 Main Street, 14th Floor		
<b>Address Line 4:</b>	Irvine, CALIFORNIA 92614		
<b>ATTORNEY DOCKET NUMBER:</b>	OAINC.011T/012T/013T		
<b>NAME OF SUBMITTER:</b>	Stacey R. Halpern		
<b>Signature:</b>	/Stacey R. Halpern/		

CH \$90.00 77514891

Date:

12/16/2008

**Total Attachments: 14**

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# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "VITRUVIAN ORTHOPAEDICS, INC.", CHANGING ITS NAME FROM "VITRUVIAN ORTHOPAEDICS, INC." TO "ORTHALIGN, INC.", FILED IN THIS OFFICE ON THE THIRD DAY OF OCTOBER, A.D. 2008, AT 1:47 O'CLOCK P.M.

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



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

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6893002

DATE: 10-03-08

TRADEMARK  
REEL: 003905 FRAME: 0121

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 01:52 PM 10/03/2008  
FILED 01:47 PM 10/03/2008  
SRV 081011222 - 3897841 FILE

**STATE OF DELAWARE  
CERTIFICATE OF AMENDMENT  
OF CERTIFICATE OF INCORPORATION**

The corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware does hereby certify:

**FIRST:** That at a meeting of the Board of Directors of Vitruvian Orthopaedics, Inc. resolutions were duly adopted setting forth a proposed amendment of the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and calling a meeting of the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

**RESOLVED,** that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered "FIRST" so that, as amended said Article shall be and read as follows:

**FIRST.** The name of the corporation is OrthAlign, Inc. (the "Corporation") effective as of the date of filing.

**RESOLVED,** that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered and "FOURTH" so that, as amended, said Article shall be and read as follows:

**FOURTH.** The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 6,980,000 shares, consisting of 4,500,000 shares of Common Stock with a par value of One Tenth of One Cent (\$.001) per share (the "Common Stock"), 480,000 shares of Series-A Preferred Stock with a par value of One Tenth of One Cent (\$.001) per share 2,000,000 shares of Series A-1 Preferred Stock with a par value of One Tenth of One Cent (\$.001) per share (the "Preferred Stock").

The following is a statement of the voting powers and the designations, preferences, and other special rights, and the qualifications, limitations, or restrictions, in respect of each class of capital stock of the Corporation.

**A. TERMS OF THE COMMON STOCK**

1. **General.** All preferences, voting powers, relative, participating, optional, or other special rights and privileges, and qualifications, limitations, or restrictions of the Common Stock are expressly made subject to those that have been or may be fixed with respect to any shares of the Preferred Stock.

2. Voting. The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

3. Dividends. Subject to Paragraph B.3 hereof, dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.

4. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

5. Changes in Number of Authorized Shares. Subject to compliance with applicable protective, conversion and voting rights provisions that have been granted to the Series Preferred Stock in this Certificate of Amendment of Certificate of Incorporation, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting together on an as-if-converted basis).

**B. TERMS OF THE PREFERRED STOCK**

1. Number of Shares.

1A The series of Preferred Stock designated and known as "Series A Convertible Preferred Stock" shall consist of 480,000 shares (the "Series A Preferred Stock").

1B The series of Preferred Stock designated and known as "Series A-1 Convertible Preferred Stock" shall consist of 2,000,000 shares (the "Series A-1 Preferred Stock").

Together the Series A Preferred Stock and Series A-1 Preferred Stock shall be referred to as the "Series Preferred" Stock.

2. Voting.

2A. General. Except as may be otherwise provided in these terms of the Series A Preferred Stock or by law, the Series Preferred Stock and all other classes and series of stock of the Corporation shall vote together as a single class on all actions to be taken by the stockholders of the Corporation. Each share of Series A Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of

shares of Common Stock (including fractions of a share) into which each share of Series A Preferred Stock is then convertible.

2B. Board Size. The Corporation shall not, without the written consent or affirmative vote of the holders of two thirds of the then outstanding shares of Series Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a series, increase or decrease the number of directors constituting the Board of Directors to a number less than or in excess of 5.

2C. Board Seats. The holders of the Series A Preferred Stock, voting as a separate class, shall be entitled to elect two directors of the Corporation and to remove from office such director and to fill any vacancy caused by resignation, death, or removal of such director. The holders of the Series A-1 Preferred Stock, voting as a separate class, shall be entitled to elect two directors of the Corporation and to remove from office such director and to fill any vacancy caused by resignation, death, or removal of such director. The holders of the Common Stock, voting as a separate class, shall be entitled to elect one director of the Corporation and to remove from office such director and to fill any vacancy caused by resignation, death, or removal of such directors. At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of Series A Preferred Stock then outstanding shall constitute a quorum of the Series A Preferred Stock for the election of directors to be elected solely by the holders of the Series A Preferred Stock, the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of Series A-1 Preferred Stock then outstanding shall constitute a quorum of the Series A-1 Preferred Stock for the election of directors to be elected solely by the holders of the Series A-1 Preferred Stock, and the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of Common Stock then outstanding shall constitute a quorum of the Common Stock for the election of directors to be elected solely by the holders of the Common Stock.

3. Dividends. The holders of the Series Preferred Stock shall be entitled to receive, in preference to the holders of any other stock of the Corporation, out of funds legally available therefor, when and if declared by the Board of Directors, cash dividends at the rate per annum of \$0.089 per share for Series A Preferred and \$1.05 for Series A-1 Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like so as to remain equal to eight percent (8%) of the original purchase price of the Series Preferred Stock (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, on each share of the Series Preferred Stock from the date of original issuance of such share, when and as declared by the Board of Directors, but shall not be cumulative. Upon any conversion of the Series Preferred Stock under Section 5 hereof, any and all unpaid Accruing Dividends to and until the

date of such conversion shall be forfeited and shall not be due and payable.

The holders of the Series Preferred Stock shall also be entitled to receive in preference to the holders of any other stock of the Corporation, out of funds legally available therefor, dividends at the same rate as dividends (other than dividends paid in additional shares of Common Stock) are paid with respect to the Common Stock (treating each share of Series Preferred Stock as being equal to the number of shares of Common Stock (including fractions of a share) into which each share of Series Preferred Stock is then convertible).

4. Liquidation.

4A. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the shares of Series A Preferred Stock and Series A-1 Preferred Stock shall first be entitled, with equal priority a per share amount equal to the original purchase prices of \$1.05 and \$0.89 for the Series A-1 Preferred and Series A Preferred, respectively (as adjusted for stock dividends, splits, combinations and the like), plus accrued but unpaid dividends. before any distribution or payment is made upon any stock ranking on liquidation junior to the Series Preferred Stock, such amount payable with respect to one share of Series Preferred Stock being sometimes referred to as the "Liquidation Preference Payment" and with respect to all shares of Series Preferred Stock being sometimes referred to as the "Liquidation Preference Payments". If upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed among the holders of Series Preferred Stock shall be insufficient to permit payment in full to the holders of Series Preferred Stock of the Liquidation Preference Payments, then the entire assets of the Corporation to be so distributed shall be distributed ratably among the holders of Series A Preferred Stock.

4B. After payment in full of the Liquidation Preference Payments, the remaining net assets of the Corporation, if any, available for distribution shall be distributed ratably among the holders of the Common Stock.

4C. Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of the Liquidation Preference Payments and the place where said Liquidation Preference Payments shall be payable, shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by telecopier or telex, not less than 20 days prior to the payment date stated therein, to the holders of record of Series A Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation. Such notice shall also state the current Conversion Price, the method of conversion, and the date by which the Corporation must receive requests for conversion prior to payment of the Liquidation Preference Payments.

4D. For purposes hereof, the Common Stock shall rank on

liquidation junior to the Series A Preferred Stock.

4E. In addition to the events constituting liquidation, dissolution or winding up under the Delaware General Corporation law, the following events shall be considered a liquidation under this paragraph and Paragraph (4)A:

(i) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than 50% of the Corporation's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions to which the Corporation is a party in which in excess of fifty percent (50%) of the Corporation's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Corporation (an "Acquisition"); or

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation (an "Asset Transfer").

For purposes of this Certificate of Incorporation, "person" shall include any natural person and any corporation, limited liability company, partnership, joint venture, trust, unincorporated organization and any other entity or organization.

5. Restrictions. So long as any shares of the Series Preferred are outstanding of the originally issued shares of Series Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by the Certificate of Incorporation, and in addition to any other vote required by law or the Certificate of Incorporation, without the approval of the holders of at least two thirds (2/3's) of the then outstanding shares of Series Preferred Stock, given in writing or by a vote at a meeting, consenting or voting (as the case may be) separately as a class, the Corporation will not (whether by amendment or restatement of the Certificate of Incorporation, by agreement of merger, consolidation, business combination, recapitalization, reincorporation or other corporate transaction or series of transactions):

**5A Liquidate, dissolve or wind-up the affairs of the Company, or effect any Deemed Liquidation Event;**

**5B Amend, alter, or repeal any provision of the Certificate of Incorporation or Bylaws;**

**5C Create or authorize the creation of or issue any other equity security or security convertible or exchangeable into or exercisable for any equity security, having rights, preferences or privileges senior to or on parity with the Series Preferred, or increase the authorized number of**



shares of Series Preferred;

5D purchase or redeem, or pay any dividend on, any capital stock prior to the Series Preferred;

5E create or authorize the creation of any debt security; (vi) increase or decrease the size of the Board of Directors; (vii) authorize any public offering other than a Qualified IPO; or

5F sell, license or otherwise dispose of any material product line or intellectual property.

6. Conversions. The holders of shares of Series Preferred Stock shall have the following conversion rights:

**6A. Right to Convert. The Series Preferred initially converts 1:1 to Common Stock at any time at the option of holder, subject to adjustments for stock dividends, splits, combinations and similar events and as described below under "Anti-dilution Provisions."**

6B Anti-dilution Provisions. In the event that the Company issues additional securities at a purchase price less than the current Series A-1 Preferred conversion price and/or Series A Preferred conversion price, such conversion price and/or prices shall be adjusted in accordance with the following formula:

"Typical" weighted average:

$$CP_2 = CP_1 * (A+B) / (A+C)$$

CP<sub>2</sub> = New Series Conversion Price

CP<sub>1</sub> = Series Conversion Price in effect immediately prior to new issue

A = Number of shares of Common Stock deemed to be outstanding immediately prior to new issue (includes all shares of outstanding common stock, all shares of outstanding preferred stock on an as-converted basis; and does not include any outstanding options or convertible securities converting into this round of financing)

B = Aggregate consideration received by the Corporation with respect to the new issue divided by CP<sub>1</sub>

**C = Number of shares of stock issued in the subject transaction**

The following issuances shall not trigger anti-dilution adjustment:

- (i) securities issued upon conversion of any of the Series Preferred, or as a dividend or distribution on the Series Preferred;
- (ii) securities issued upon the exercise of any warrant or option or conversion of any convertible security;
- (iii) Common Stock issued upon a stock split, stock dividend, or any subdivision

of shares of Common Stock; and (iv) shares of Common Stock (or options to purchase such shares of Common Stock) issued or issuable to employees or directors of, or consultants to, the Company pursuant to any plan approved by the Company's Board of Directors, including the Series A-1 Directors; (v) shares of Common Stock issued or issuable to banks, equipment lessors pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation, including the Series A-1 Directors; or (vi) the issuance of Common Stock in any transaction in which exemption from the anti-dilution provisions is approved by the affirmative vote of the holders of at least 67% of the then outstanding shares of Series A-1 Preferred.

**6C. Issuance of Certificates; Time Conversion Effected.**

Promptly after the receipt of written notice referred to in subparagraph 6A and surrender of the certificate or certificates for the share or shares of Series Preferred Stock to be converted, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct (subject to applicable transfer restrictions), a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Series Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected and the Series Preferred Conversion Price shall be determined as of the close of business on the date on which such written notice shall have been received by the Corporation and the certificate or certificates for such share or shares shall have been surrendered as aforesaid, and at such time the rights of the holder of such share or shares of Series Preferred Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

**6D. Fractional Shares; Dividends; Partial Conversion.**

No fractional shares shall be issued upon conversion of Series A Preferred Stock into Common Stock and no payment or adjustment shall be made upon any conversion on account of any cash dividends on the Common Stock issued upon such conversion. At the time of each conversion, the Corporation shall pay in cash an amount equal to all dividends, excluding Accruing Dividends, declared and unpaid on the shares of Series A Preferred Stock surrendered for conversion to the date upon which such conversion is deemed to take place as provided in subparagraph 6C. In case the number of shares of Series A Preferred Stock represented by the certificate or certificates surrendered pursuant to subparagraph 6A exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of shares of Series A Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Common Stock would, except for the provisions of the first sentence of this subparagraph

6D, be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Series A Preferred Stock for conversion an amount in cash equal to the current market price of such fractional share as determined in good faith by the Board of Directors of the Corporation.

6E. Subdivision or Combination of Common Stock. In case the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, in case the outstanding shares of Common Stock shall be combined into a smaller number of shares, the Series Conversion Price in effect immediately prior to such combination shall be proportionately increased. In the case of any subdivision, no further adjustment shall be made pursuant to subparagraph 6D(4) by reason thereof.

6F. Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the Corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of a share or shares of Series Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of Series Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of Common Stock immediately theretofore receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the Series Preferred Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

6G. Notice of Adjustment. Upon any adjustment of the Series Conversion Price, then and in each such case the Corporation shall give written notice thereof, by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, addressed to each holder of shares of Series Preferred Stock at the address of such holder as shown on the books of the Corporation, which notice shall state the Series Conversion Price resulting from such adjustment, setting forth in reasonable detail the method upon which such

calculation is based.

6H. Other Notices. In case at any time:

(1) the Corporation shall declare any dividend upon its Common Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;

(2) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights;

(3) there shall be any Acquisition, Asset Transfer, capital reorganization or reclassification of the capital stock of the Corporation; or

(4) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in any one or more of said cases, the Corporation shall give, by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, addressed to each holder of any shares of Series Preferred Stock at the address of such holder as shown on the books of the Corporation, (a) at least 20 days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such Acquisition, Asset Transfer, reorganization or reclassification of the capital stock of the Corporation, and (b) in the case of any such Acquisition, Asset Transfer, reorganization or reclassification of the capital stock of the Corporation, at least 20 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of the Common Stock shall be entitled thereto and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such Acquisition, Asset Transfer, reorganization or reclassification of the capital stock of the Corporation, as the case may be.

6I. Stock to be Reserved. The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Series Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable

upon the conversion of all outstanding shares of Series Preferred Stock. The Corporation covenants that all shares of Common Stock which shall so be issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, and, without limiting the generality of the foregoing, the Corporation covenants that it will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all time equal to or less than the Series Conversion Price in effect at that time. The Corporation will take all such action as may be necessary to assure that all such shares of Common Stock may so be issued without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Common Stock may be listed. The Corporation will not take any action which results in any adjustment of the Series Conversion Price if the total number of shares of Common Stock issued and issuable after such action upon conversion of the Series Preferred Stock would exceed the total number of shares of Common Stock then authorized by the Certificate of Incorporation; provided that, without limitation to other remedies which the holders of the Series Preferred Stock may have with respect to the Corporation's failure to make Conversion Price adjustments or provide for sufficient reserved shares of Common Stock to effect conversion at such reduced Conversion Price in accordance with the terms hereof (which other remedies shall not be limited by the first clause of this sentence), the Corporation in such event shall forthwith take such corporate actions as is necessary in order to provide for sufficient authorized shares of Common Stock to permit conversion of all of the Series Preferred Stock at such adjusted Conversion Price, including if necessary seeking approval of its Stockholders to amend the Certificate of Incorporation, after which the Corporation shall promptly effect such adjustment to the Conversion Price.

6J. No Reissuance of Series Preferred Stock. Shares of Series Preferred Stock which are converted into shares of Common Stock as provided herein shall not be reissued.

6K. Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of Series Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Series Preferred Stock which is being converted.

6L. Closing of Books. The Corporation will at no time close its transfer books against the transfer of any Series Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Series Preferred Stock in any manner which interferes with the timely conversion of such Series Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

6M. Definition of Common Stock. As used in this paragraph 6, the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, par value \$.001 per share as constituted on the date of filing of these terms of the Series Preferred Stock, and shall also include any capital stock of any class of the Corporation thereafter authorized which shall not be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided that the shares of Common Stock receivable upon conversion of shares of Series Preferred Stock shall include only shares designated as Common Stock of the Corporation on the date of filing of this instrument, or in case of any reorganization or reclassification of the outstanding shares thereof, the stock, securities or assets provided for in subparagraph 6F.

6N. Mandatory Conversion. Each share of Series Preferred will automatically be converted into Common Stock at the then applicable conversion rate in the event of the closing of a firm commitment underwritten public offering pursuant to a Registration Statement under the Securities Act of 1933, as amended, with a price of at least five times the original purchase price of the Series A-1 Preferred (subject to adjustments for stock dividends, splits, combinations and similar events) and gross proceeds to the Company of not less than \$50,000,000 (a "QPO"), or (ii) upon the written consent of the holders of 67% of the Series A-1 Preferred.

Holders of shares of Series Preferred Stock so converted may deliver to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to such holders) during its usual business hours, the certificate or certificates for the shares so converted. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder a certificate or certificates for the number of whole shares of Common Stock to which such holder is entitled, together with payment in lieu of fractional shares to which such holder may be entitled pursuant to subparagraph 6C. Until such time as a holder of shares of Series Preferred Stock shall surrender his or its certificates therefor as provided above, such certificates shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof.

7. Redemption.

7A. Mandatory Redemption. The holders of at least 67% of the outstanding Series Preferred, voting separately as a class, can require the Company to redeem the Series Preferred by paying in cash the original purchase prices of the Series A-1 Preferred and Series A Preferred (as adjusted for stock dividends, splits, combinations and the like), plus any accrued but unpaid dividends. Such redemption will occur at the rate of 33.33% per year over 3

years with the redemption period beginning 60 days following notice by the holders of Series Preferred to the Company of the election to be redeemed. Such notice may not be given prior to December 31, 2013. The first redemption payment to the holders of Series Preferred shall be paid within 10 days after the 60-day notice period has expired. Each of the subsequent two redemption payments shall be paid to the holders of Series Preferred on or before the anniversary date of the first redemption payment.

**7B Redeemed or Otherwise Acquired Shares to be Retired.**

Any shares of Series Preferred stock redeemed pursuant to this Paragraph 7 or otherwise acquired by the Corporation in any manner whatsoever shall be canceled and shall not under any circumstances be reissued; and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Series Preferred Stock.

**8. Amendments.** No provision of these terms of the Series A Preferred Stock or Series A-1 Preferred Stock may be amended, modified or waived without the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of such Series of Preferred Stock.

**RESOLVED**, that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered and "NINTH" so that, as amended, said Article shall be and read as follows:

**NINTH.** The mailing address of the executive offices of the Corporation is as follows:

384 Forest Avenue, Suite 21, Laguna Beach, CA 92651

**SECOND:** That thereafter, pursuant to resolution of its Board of Directors, a special meeting of the stockholders of said corporation was duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.

**THIRD:** That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

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SIGNATURE PAGE TO FOLLOW

**IN WITNESS WHEREOF**, said corporation has caused this certificate to be signed this 3<sup>rd</sup> day of October, 2008.

By: 

Title: President/CEO

Name: Pieter Wolters