

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

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FORM 8-K

CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of report: June 20, 1996

NEOPROBE CORPORATION

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(Exact Name of Registrant as Specified in Charter)

Delaware                      0-20676                      31-1080091

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(State of Other Jurisdiction (Commission File Number) (I.R.S. Employer  
of Incorporation)                      Identification No.)

425 Metro Place North, Suite 400, Dublin, Ohio                      43017-1367

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(Address of Principal Executive Offices)                      (Zip Code)

Registrant's telephone number, including area code: (614) 793-7500

ITEM 5. OTHER EVENTS.

SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

(a) An annual meeting of the stockholders of the registrant was held on May 30, 1996.

(b) The matters voted upon at the annual meeting and the results of the voting are set forth below.

(i) Proposal No. 1 to amend the By-laws to divide the Board of Directors into three classes having staggered terms of three years: 10,322,805 shares for, 2,114,404 shares against, and 27,979 abstentions. The amendment was approved.

(ii) Proposal No. 2 to amend the Certificate of Incorporation to divide the Board of Directors into three classes having staggered terms of three years: 10,324,634 shares for, 2,115,546 shares against, and 26,008 abstentions. The amendment was approved.

(iii) Election of Jerry K. Mueller, Jr. as a director to serve for a term of one year: 16,089,874 shares for, and 535,612 shares withheld authority. Mr. Mueller was elected.

(iv) Election of Zwi Vromen as a director to serve for a term of one year: 15,301,450 shares for and 1,324,036 shares withheld authority. Mr. Vromen was elected.

(v) Election of J. Frank Whitley, Jr. as a director to serve for a term of one year: 16,090,474 shares for and 535,012 shares withheld authority. Mr. Whitley was elected.

(vi) Election of David C. Bupp as a director to serve for a term of two years: 16,089,974 shares for and 535,512 shares withheld authority. Mr. Bupp was elected.

(vii) Election of Julius R. Krevans as a director to serve for a term of two years: 16,092,624 shares for and 532,862 shares withheld authority. Dr. Krevans was elected.

(viii) Election of James F. Zid as a director to serve for a term of two years: 16,091,774 shares for and 533,712 shares withheld authority. Mr. Zid was elected.

(ix) Election of C. Michael Hazard as a director to serve for a term of three years: 16,090,474 shares for and 535,012 shares withheld authority. Mr. Hazard was elected.

(x) Election of Michael P. Moore as a director to serve for a term of three years: 16,621,104 shares for and 1,004,382 shares withheld authority. Mr. Moore was elected.

(xi) Election of John L. Ridihalgh as a director to serve for a term of three years: 16,090,974 shares for and 534,512 shares withheld authority. Dr. Ridihalgh was elected.

(xii) Proposal No. 6 to approve the 1996 Stock Incentive Plan: 10,970,440 shares for, 1,634,458 shares against, and 70,074 abstentions. The Plan was approved.

#### CHANGES IN SECURITIES.

Classified Board. The above described Proposals No. 1 and 2 to amend the Certificate of Incorporation and By-laws of the Company (the "Amendments") to divide the Board into three classes with staggered three year terms were on the agenda for the Company's annual meeting of stockholders which was held on May 30, 1996. Under the By-laws prior to adoption of the Amendments, the number of directors constituting the entire Board was nine and they were elected for one year terms. Upon approval of the Amendments, the Board was divided into three classes, of three members each. The directors in the first class were elected for a term of one year; the

directors in the second class were elected for a term of two years and the directors in the third class were elected for a term of three years. At each subsequent annual meeting of stockholders, the terms of one class of directors will expire and the newly nominated directors of that class will be elected for a term of three years. The Board will be able to determine the total number of directors constituting the full Board and the number of directors in each class, but the total number of directors may not exceed 17 nor may the number of directors in any class exceed six. Subject to these rules, the classes of directors need not have equal numbers of members. No reduction in the total number of directors or in the number of directors in a given class will have the effect of removing a director from office or reducing the term of any then sitting director. If the Board increases the number of directors in a class, it will be able to fill the vacancies created for the full remaining term of a director in that class even though the term may extend beyond the next annual meeting. The directors will also be able to fill any other vacancies for the full remaining term of the director whose death, resignation or removal caused the vacancy. Prior to adoption of the Amendments, under the General Corporation Law of the State of Delaware, any director of the Company or the entire Board could have been removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. However, after adoption of the Amendments and division of the Board into classes, the stockholders may only remove directors for cause.

Before the adoption of the Amendments, stockholders possessing a majority of the Company's voting power could replace the entire Board at any annual meeting since the entire Board was elected at each annual meeting for a one-year

term. After adoption of the Amendments, holders of a majority of the voting power at a given meeting will not in any one year be able to replace a majority of the directors since only one class of the directors will stand for election in any one year. As a result, at least two annual meeting elections will be required to change the majority of the directors by the requisite vote of stockholders. The purpose of classifying the Board is to provide for a continuing body, even in the face of a person who accumulates a sufficient amount of voting power, whether by ownership or proxy or a combination, to have a majority of the voting power at a given meeting and who may seek to take control of the Company without paying a fair premium for control to all the holders of Common Stock. This will allow the Board time to negotiate with such a person and to protect the interests of the other stockholders who may constitute a majority of the shares not actually owned by such person. However, it may also have the effect of deterring third parties from making takeover bids for control of the Company or may be used to hinder or delay a takeover bid thereby decreasing the chance of the stockholders of the Company realizing a premium over market price for their shares of Common Stock as a result of such bids. The Amendments, as adopted, will affect every election of directors, will be applicable even when no change of control is pending or threatened and will make it more difficult for stockholders to change the majority of directors even when the only reason for the change may be the performance of the present directors.

ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS.

<TABLE>

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Exhibit Number	Description
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<S>	<C>
99.1	Certificate of Amendment to Restated Certificate of Incorporation filed with the Delaware Secretary of State on June 3, 1996
99.2	Restated Certificate of Incorporation of the Registrant (as corrected February 18, 1994 and as amended June 27, 1994, July 25, 1995 and June 3, 1996)
99.3	Amendment to the Amended and Restated By-laws of Registrant adopted May 30, 1996
99.4	Amended and Restated By-laws of the Registrant dated July 21, 1993 (as amended July 18, 1995 and May 30, 1996)

</TABLE>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on behalf of the undersigned hereunto duly authorized.

NEOPROBE CORPORATION

Date: June 17, 1996

By: /s/ David C. Bupp

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 Name: David C. Bupp  
 Title: President

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Exhibit 99.1

CERTIFICATE OF AMENDMENT  
TO  
RESTATED CERTIFICATE OF INCORPORATION  
OF  
NEOPROBE CORPORATION

NEOPROBE CORPORATION, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify:

1. That the Board of Directors of the Corporation, in a meeting duly called and held on the 18th day of January, 1996, adopted the following resolution:

RESOLVED, that Article Eight of the Certificate of Incorporation of the Company be amended in its entirety to read as follows:

Notwithstanding any other provision set forth in the Certificate of Incorporation of the Company or its By-laws, the board of directors shall be divided into three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; of the third class two years thereafter; and at each annual election held after the initial classification of the board of directors and election of directors to such classes, directors shall be chosen for a full term of three years, as the case may be, to succeed those whose terms expire. The total number of directors constituting the full board of directors and the number of directors in each class shall be fixed by, or in the manner provided in the By-laws, but the total number of directors shall not exceed seventeen (17) nor shall the number of directors in any class exceed six (6). Subject to the foregoing, the classes of directors need not have the same number of members. No reduction in the total number of directors or in the number of directors in any class shall be effective to remove any director or to reduce the term of any director. If the board of directors increases the number of directors in a class, it may fill the vacancy created thereby for the full remaining term of a director in that class even though such term may extend beyond the next annual election. The board of directors may fill any vacancy occurring for any other reason for the full remaining term of the director whose death, resignation or removal caused the vacancy, even though such term may extend beyond the next annual election.

2. That a majority of the holders of the only class of outstanding stock entitled to vote thereon, in a meeting duly called and held on the 30th day of May, 1996, in accordance with Section 242 of the General Corporation Law of the State of Delaware, duly adopted said amendment.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by David C. Bupp, its President, and attested by Jerry K. Mueller, Jr., its Secretary, who hereby declare and certify, under penalty of perjury, that this instrument is their act and deed and the facts herein stated are true, this 30th day of May, 1996.

NEOPROBE CORPORATION

By /s/ David C. Bupp

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David C. Bupp, President

Attest:

/s/ Jerry K. Mueller, Jr.

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Jerry K. Mueller, Jr., Secretary

Exhibit 99.2  
RESTATED CERTIFICATE OF INCORPORATION  
OF  
NEOPROBE CORPORATION

(as corrected February 18, 1994 and as amended June 27, 1994,  
July 25, 1995 and June 3, 1996)

ARTICLE ONE

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The name of the corporation is Neoprobe Corporation.

ARTICLE TWO

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

ARTICLE THREE

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The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

(Article Four was amended to increase the total number of shares authorized to be outstanding from 22,000,000 to 55,000,000 , the total number of shares of Common Stock from 20,000,000 to 50,000,000 and the total number of shares of Preferred Stock from 2,000,000 to 5,000,000 by a resolution adopted by the Board of Directors on March 3, 1994 and approved by the stockholders on May 26, 1994).

ARTICLE FOUR

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4.1 AUTHORIZED SHARES. The total number of shares of capital stock which the Corporation has authority to issue is 55,000,000 shares, consisting of:

(a) 50,000,000 shares of Common Stock, par value \$.001 per share (the "Common Stock");

(b) 5,000,000 shares of Preferred Stock, par value \$.001 per share (the "Preferred Stock").

4.2 COMMON STOCK.

(a) Subject to such voting rights of any other class or series of securities as may be granted from time to time pursuant to this certificate of incorporation, any amendment thereto, or the provisions of the laws of the State of Delaware governing corporations, voting rights shall be vested exclusively in the holders of Common Stock. Each holder of Common Stock shall have one vote in respect of each share of such stock held.

(b) Subject to the rights of any other class or series of stock, the holders of shares of Common Stock shall be entitled to receive, when and as declared by the board of directors, out of the assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the board of directors.

(c) Subject to such rights of any other class or series of securities as may be granted from time to time, the holders of shares of Common Stock shall be entitled to receive all the assets of the Corporation available for distribution to shareholders in the event of the voluntary or involuntary liquidation, dissolution, or winding up of the

Corporation, ratably, in proportion to the number of shares of Common Stock held by them. Neither the merger or consolidation of the Corporation into or with any other corporation, nor the merger or consolidation of any other corporation into or with the Corporation, nor the sale, lease, exchange or other disposition (for cash, shares of stock, securities, or other consideration) of all or substantially all the assets of the Corporation, shall be deemed to be a dissolution, liquidation, or winding up, voluntary or involuntary, of the Corporation.

4.3 PREFERRED STOCK. Shares of Preferred Stock may be issued from time to time in one or more series. The board of directors of the Corporation is hereby authorized to determine and alter all rights, preferences, and privileges and qualifications, limitations, and restrictions thereof (including, without limitation, voting rights and the limitation and exclusion thereof) 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, and to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series subsequent to the issue of shares of that series then outstanding. In case the number of shares of any series is so decreased, the shares constituting such reduction shall resume the status which such shares had prior to the adoption of the resolution originally fixing the number of shares of such series.

#### ARTICLE FIVE

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The business and affairs of the Corporation shall be managed by or under the direction of the board of directors, and the directors need not be elected by ballot unless required by the by-laws of the Corporation. In furtherance and not in limitation of the powers conferred by statute, the board of directors of the Corporation is expressly authorized to adopt, amend, or repeal the by-laws of the Corporation.

#### ARTICLE SIX

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Action shall be taken by the stockholders of the Corporation only at annual or special meetings of stockholders, and stockholders may not act by written consent. Special meetings of the Corporation may be called only as provided in the by-laws.

#### ARTICLE SEVEN

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Meetings of the stockholders may be held within or without the State of Delaware, as the by-laws of the Corporation may provide. The books of the Corporation may be kept 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 by-laws of the Corporation. The board of directors shall from time to time decide whether and to what extent and at what times and under what conditions and requirements the accounts and books of the Corporation, or any of them, except the stock book, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any books or documents of the Corporation except as conferred by the laws of the State of Delaware or as authorized by the board of directors.

(Article Eight was amended in its entirety by a resolution adopted by the stockholders at the Annual Meeting of Stockholders held on May 30, 1996).

#### ARTICLE EIGHT

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Notwithstanding any other provision set forth in the Certificate of Incorporation of the Corporation or its By-laws, the board of directors shall be divided into three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year

thereafter; of the third class two years thereafter; and at each annual election held after the initial classification of the board of directors and election of directors to such classes, directors shall be chosen for a full term of three years, as the case may be, to succeed those whose terms expire. The total number of directors constituting the full board of directors and the number of directors in each class shall be fixed by, or in the manner provided in the by-laws, but the total number of directors

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shall not exceed seventeen (17) nor shall the number of directors in any class exceed six (6). Subject to the foregoing, the classes of directors need not have the same number of members. No reduction in the total number of directors or in the number of directors in any class shall be effective to remove any director or to reduce the term of any director. If the board of directors increases the number of directors in a class, it may fill the vacancy created thereby for the full remaining term of a director in that class even though such term may extend beyond the next annual election. The board of directors may fill any vacancy occurring for any other reason for the full remaining term of the director whose death, resignation or removal caused the vacancy, even though such term may extend beyond the next annual election.

#### ARTICLE NINE

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(a) The Corporation shall, to the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, indemnify all persons whom it may indemnify pursuant hereto.

(b) To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, a director of this Corporation shall not be personally liable for the Corporation or its Stockholders for monetary damages for breach of fiduciary duty as a director. The modification or repeal of this Article Nine shall not affect the restriction hereunder of a director's personal liability for any breach, act, or omission occurring prior to such modification or repeal.

#### ARTICLE TEN

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The Corporation is to have perpetual existence.

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(A Certificate of Correction was filed to correct a failure to set forth in the Restated Certificate of Incorporation filed with the Secretary of State of Delaware on November 9, 1992, the following resolutions duly adopted by the Board and duly approved by the stockholders):

WHEREAS, the Board of Directors of the Corporation deems it to be advisable and in the best interests of the Corporation that the Corporation effectuates a reverse split of its common stock, par value \$0.001 per share (the "Common Stock"), to cause the total number of issued and outstanding shares of Common Stock to be 5,162,762 prior to a contemplated public offering of the securities of the Corporation; it is therefore:

RESOLVED, that, subject to approval by the Corporation's stockholders, there is hereby declared a one-for-two reverse split of the issued and outstanding shares of Common Stock, effective immediately prior to the effective time of the contemplated public offering (the "Conversion Time"), pursuant to which each issued and outstanding share of Common Stock shall automatically be converted into one-half of the one share of Common Stock, and each stockholder of record at the Conversion Time shall receive one or more certificates representing the number of fully-paid and nonassessable shares of Common Stock equal to the number of shares held after the Conversion Time as a result of the foregoing reverse split;

RESOLVED, FURTHER, that the shares of Common Stock that cease to be outstanding as a result of the reverse stock split shall be authorized but unissued shares;



RESOLVED, FURTHER, that fractions of a share existing after the reverse stock split shall not be issued to the stockholders, and that such fractions shall be paid in cash at their pro rata fair value, which the Board of Directors hereby determines, after due consideration, to be \$6.00 per share as of the Conversion Time;

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RESOLVED, FURTHER, that appropriate adjustment shall be made to the applicable conversion or other ratios of the Corporation's outstanding warrants, options or other convertible securities to take account of the change in the outstanding Common Stock resulting from the reverse stock split; and

RESOLVED, FURTHER, that the Conversion Time for the one-for-two reverse split of the issued and outstanding shares of Common Stock as authorized on July 22, 1992, and approved by the Corporation's stockholders, shall be at the close of business on Monday, November 9, 1992.

\* \* \*

(The Board of Directors provided for a series of Preferred Stock on July 18, 1995 by the addition to the Certificate of Incorporation of the following paragraphs which were incorporated in a Certificate of Designations, Preferences and Rights of Series A Junior Participating Preferred Stock filed on July 25, 1995):

RESOLVED, that pursuant to the authority vested in the Board of Directors of this Corporation in accordance with the provisions of its Restated Certificate of Incorporation, a series of Preferred Stock of the Corporation be and it hereby is created, and that the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof are as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock" and the number of shares constituting such series shall be 500,000.

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Junior Participating Preferred Stock with respect to dividends, the holders of shares of Series A Junior 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 first 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 Junior Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$.05 or (b) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 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, par value \$.001 per share, 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 Junior Participating Preferred Stock. In the event the Corporation shall at any time after August 28, 1995 (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 Junior Participating Preferred Stock were entitled immediately prior to such event under clause (b) 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 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 Junior 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); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$.05 per share

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on the Series A Junior Participating Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Junior Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Junior 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 Junior 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 Junior 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 Junior 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.

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

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Junior Participating Preferred Stock shall entitle the holder thereof to 100 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 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 to which holders of Class A Junior 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 outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of shares of Series A Junior 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) (i) If at any time dividends on any Series A Junior Participating Preferred Stock shall be in arrears in an amount equal to six (6) quarterly dividends thereon, the occurrence of such contingency shall mark the beginning of a period (herein called a "default period") which shall extend until such time when all accrued and unpaid dividends for all previous quarterly dividend periods and for the current quarterly dividend period on all shares of Series A Junior Participating Preferred Stock then outstanding shall have been declared and paid or set apart for payment. During each default period, all holders of Preferred Stock (including holders of the Series A Junior Participating Preferred Stock) with dividends in arrears in an amount equal to six (6) quarterly dividends thereon, voting as a class, irrespective of series, shall have the right to elect two (2) Directors.

(ii) During any default period, such voting right of the holders of Series A Junior Participating Preferred Stock may be exercised initially at a

special meeting called pursuant to subparagraph (iii) of this Section 3(C) or at any annual meeting of stockholders, and thereafter at annual meetings of stockholders, provided that neither such voting right nor the right of the holders of any other series of Preferred Stock, if any, to increase, in certain cases, the authorized number of Directors shall be exercised unless the holders of ten percent (10%) in number of shares of Preferred Stock outstanding shall be present in person or by proxy. The absence of a quorum of the holders of Common Stock shall not affect the exercise by the holders of Preferred Stock of such voting right. At any meeting at which the holders of Preferred Stock shall exercise such voting right initially during an existing default period, they shall have the right, voting as a class, to elect Directors to fill such vacancies, if any, in the Board of Directors as may then exist up to two (2) Directors or, if such right is exercised at an annual meeting, to

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elect two (2) Directors. If the number which may be so elected at any special meeting does not amount to the required number, the holders of the Preferred Stock shall have the right to make such increase in the number of Directors as shall be necessary to permit the election by them of the required number. After the holders of the Preferred Stock shall have exercised their right to elect Directors in any default period and during the continuance of such period, the number of Directors shall not be increased or decreased except by vote of the holders of Preferred Stock as herein provided or pursuant to the rights of any equity securities ranking senior to or pari passu with the Series A Junior Participating Preferred Stock.

(iii) Unless the holders of Preferred Stock shall, during an existing default period, have previously exercised their right to elect Directors, the Board of Directors may order, or any stockholder or stockholders owning in the aggregate not less than ten percent (10%) of the total number of shares of Preferred Stock outstanding, irrespective of series, may request, the calling of a special meeting of the holders of Preferred Stock, which meeting shall thereupon be called by the Chairman of the Board, President or the Secretary of the Corporation. Notice of such meeting and of any annual meeting at which holders of Preferred Stock are entitled to vote pursuant to this paragraph (C)(iii) shall be given to each holder of record of Preferred Stock by mailing a copy of such notice to him at his last address as the same appears on the books of the Corporation. Such meeting shall be called for a time not earlier than 20 days and not later than 60 days after such order or request or in default of the calling of such meeting within 60 days after such order or request, such meeting may be called on similar notice by any stockholder or stockholders owning in the aggregate not less than ten percent (10%) of the total number of shares of Preferred Stock outstanding. Notwithstanding the provisions of this paragraph (C)(iii), no such special meeting shall be called during the period within 60 days immediately preceding the date fixed for the next annual meeting of the stockholders.

(iv) In any default period, the holders of Common Stock, and other classes of stock of the Corporation if applicable, shall continue to be entitled to elect the whole number of Directors until the holders of Preferred Stock shall have exercised their right to elect two (2) Directors voting as a class, after the exercise of which right (x) the Directors so elected by the holders of Preferred Stock shall continue in office until their successors shall have been elected by such holders or until the expiration of the default period, and (y) any vacancy in the Board of Directors may (except as provided in paragraph (C)(ii) of this Section 3) be filled by vote of a majority of the remaining Directors theretofore elected by the holders of the class of stock which elected the Director whose office shall have become vacant. References in this paragraph (C) to Directors elected by the holders of a particular class of stock shall include Directors elected by such Directors to fill vacancies as provided in clause (y) of the foregoing sentence.

(v) Immediately upon the expiration of a default period, (x) the right of the holders of Preferred Stock as a class to elect Directors shall cease, (y) the term of any Directors elected by the holders of Preferred Stock as a class shall terminate, and (z) the number of Directors shall be such number as may be provided for in the certificate of incorporation or by-laws irrespective of any increase made pursuant to the provisions of paragraph (C)(ii) of this Section 3 (such number being subject, however, to change thereafter in any manner provided by law or in the certificate of incorporation or by-laws). Any vacancies in the Board of Directors effected by the provisions

of clauses (y) and (z) in the preceding sentence may be filled by a majority of the remaining Directors.

(D) Except as set forth herein, holders of Series A Junior 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.

#### Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Junior 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 Junior Participating Preferred Stock outstanding shall have been paid in full, the Corporation shall not

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(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 Junior Participating Preferred Stock;

(ii) declare or pay dividends on or 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 the Series A Junior Participating Preferred Stock, except dividends paid ratably on the Series A Junior 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 Junior 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 Junior Participating Preferred Stock;

(iv) purchase or otherwise acquire for consideration any shares of Series A Junior Participating Preferred Stock, or any shares of stock ranking on a parity with the Series A Junior 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.

(B) 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.

Section 5. Reacquired Shares. Any shares of Series A Junior Participating Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled 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.

#### Section 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 Junior Participating Preferred Stock

unless, prior thereto, the holders of shares of Series A Junior Participating Preferred Stock shall have received [\$.10] per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Series A Liquidation Preference"). Following the payment of the full amount of the Series A Liquidation Preference, no additional distributions shall be made to the holders of shares of Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series A Liquidation Preference by (ii) 100 (as appropriately adjusted as set forth in subparagraph C below to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii), the "Adjustment Number"). Following the payment of the full amount of the Series A Liquidation Preference and the Common Adjustment in respect to all outstanding shares of Series A Junior Participating Preferred Stock and Common Stock, respectively, holders of Series A Junior Participating Preferred Stock and holders of shares of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Preferred Stock and Common Stock, on a per share basis, respectively.

(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

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rank on a parity with the Series A Junior 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. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

(C) 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 Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment 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.

Section 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 Junior 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 100 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 Junior 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.

#### Section 8. Optional Redemption.

(A) The Corporation shall have the option to redeem the whole or any part of the Series A Junior Participating Preferred Stock at any time at a redemption price equal to, subject to the provisions for adjustment hereinafter set forth, 100 times the "current per share market price" of the Common Stock on the date of the mailing of the notice of redemption, together with unpaid accumulated dividends to the date of such redemption. 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 Junior Participating Preferred Stock were otherwise 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. The "current per share market price" on any date shall be deemed to be the average of the closing price per share of such Common Stock for the 10 consecutive Trading Days (as such term is hereinafter defined) immediately prior to such date. The closing price for each day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the Common Stock is not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the principal national securities exchange on which the Common Stock is listed or admitted to trading or, if the Common Stock is not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ") or such other system then in use or, if on any such date the Common Stock is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the

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Common Stock selected by the Board of Directors of the Corporation. If on such date no such market maker is making a market in the Common Stock, the fair value of the Common Stock on such date as determined in good faith by the Board of Directors of the Corporation shall be used. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the Common Stock is listed or admitted to trading is open for the transaction of business or, if the Common Stock is not listed or admitted to trading on any national securities exchange, a Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions in the State of New York are not authorized or obligated by law or executive order to close.

(B) Notice of any such redemption shall be given by mailing to the holders of the Series A Junior Participating Preferred Stock a notice of such redemption, first class postage prepaid, not later than the thirtieth day and not earlier than the sixtieth day before the date fixed for redemption, at their last address as the same shall appear upon the books of the Corporation. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the stockholder received such notice, and failure duly to give such notice by mail, or any defect in such notice, to any holder of Series A Junior Participating Preferred Stock shall not affect the validity of the proceedings for the redemption of such Series A Junior Participating Preferred Stock are to be redeemed, the redemption shall be made by lot as determined by the Board of Directors.

(C) If any such notice of redemption shall have been duly given or if the Corporation shall have given to the bank or trust company hereinafter referred to irrevocable written authorization promptly to give or complete such notice, and if on or before the redemption date specified therein the funds necessary for such redemption shall have been deposited by the Corporation with the bank or trust company designated in such notice, doing business in the United States of America and having a capital, surplus and undivided profits aggregating at least \$25,000,000 according to its last published statement of condition, in trust for the benefit of the holders of Series A Junior Participating Preferred Stock called for redemption, then, notwithstanding that any certificate for such shares so called for redemption shall not have been surrendered for cancellation, from and after the time of such deposit all such shares called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith cease and terminate, except the right of the holders thereof to receive from such bank or trust company at any time after the time of such deposit the funds so deposited, without

interest, and the right to exercise, up to the close of business on the fifth day before the date fixed for redemption, all privileges of conversion or exchange if any. In case less than all the shares represented by any surrendered certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of six years from such redemption date shall be repaid to the Corporation, after which the holders of shares of Series A Junior Participating Preferred Stock called for redemption shall look only to the Corporation for payment thereof; provided that any funds so deposited which shall not be required for redemption because of the exercise of any privilege of conversion or exchange subsequent to the date of deposit shall be repaid to the Corporation forthwith.

Section 9. Ranking. The Series A Junior 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.

Section 10. Amendment. So long as any shares of Series A Junior Participating Preferred Stock are outstanding, the Restated Certificate of Incorporation of the Corporation shall not be further amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Junior 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 Junior Participating Preferred Stock, voting separately as a class.

Section 11. Fractional Shares. Series A Junior Participating Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holders 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 Junior Participating Preferred Stock.

Exhibit 99.3

NEOPROBE CORPORATION  
AMENDMENT TO  
AMENDED AND RESTATED BY-LAWS  
ADOPTED MAY 30, 1996

Section 2 of Article III of the By-laws of the Corporation was amended by adding the following paragraph at the end thereof:

Notwithstanding any other provision set forth in the By-laws of the Corporation, the board of directors shall be divided into three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; of the third class two years thereafter; and at each annual election held after the initial adoption of this by-law by the stockholders and the election of directors held at the meeting at which this by-law is adopted, directors shall be chosen for a full term of three years, as the case may be, to succeed those whose terms expire. When this by-law is initially adopted by the stockholders, the board of directors shall consist of nine members and each class shall consist of three members. Thereafter, the board of directors may fix the total number of directors constituting the full board of directors and the number of directors in each class, but the total number of directors shall not exceed seventeen (17) nor shall the number of directors in any class exceed six (6). Subject to the foregoing, the classes of directors need not have the same number of members. No reduction in the total number of directors or in the number of directors in any class shall be effective to remove any director or to reduce the term of any director. If the board of directors increases the number of directors in a class, it may fill the vacancy created thereby for the full remaining term of a director in that class even though such term may extend beyond the next annual election. The board of directors may fill any vacancy occurring for any other reason for the full remaining term of the director whose death, resignation or removal caused the vacancy, even though such term may extend beyond the next annual election.



Exhibit 99.4

NEOPROBE CORPORATION

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AMENDED AND RESTATED BY-LAWS

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AS AMENDED JULY 18, 1995 AND MAY 30, 1996

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ARTICLE I

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OFFICES

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SECTION 1. REGISTERED OFFICE. The registered office of the corporation in the state of Delaware shall be located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, County of New Castle. The name of the corporation's registered agent at such address shall be the Corporation Trust Company. The registered office and/or registered agent of the corporation may be changed from time to time by action of the board of directors.

SECTION 2. OTHER OFFICES. The corporation may also have offices at such other places, both within and without the state of Delaware, as the board of directors may from time to time determine or the business of the corporation may require.

ARTICLE II

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MEETINGS OF STOCKHOLDERS

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SECTION 1. PLACE AND TIME OF MEETINGS. An annual meeting of the stockholders shall be held each year within 13 months after the last annual meeting for the purpose of electing directors and conducting such other proper business as may come before the meeting. The date, time, and place of the annual meeting shall be determined by the chairman of the board; provided, that if the chairman of the board does not make such determination within 12 months after the last annual meeting, the board of directors shall determine the date, time and place of such meeting.

(The following section was amended by the Board of Directors on July 18, 1995)

SECTION 2. SPECIAL MEETINGS. The board of directors may call a special meeting of the stockholders for any purpose or purposes and such meeting may be held at such time and place, within or without the State of Delaware, as may be determined by the board of directors.

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Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice of meeting as required by Section 3 of this Article II. No officer, director nor stockholder shall have the power to call a meeting of stockholders without the authorization of the board of directors.

SECTION 3. NOTICE. Whenever stockholders are required or permitted to take action at a meeting, written notice stating the place, date, time and, in the case of special meetings, the purpose or purposes of such meeting, shall be given to each stockholder entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting; except that where the matter to be acted on is a merger of the corporation or a sale of all or substantially all of its assets, such notice shall be given not less than 20 nor more than 60

days before the date of the meeting. All such notices shall be delivered, either personally or by mail, by or at the direction of the board of directors, the chief executive officer, or the secretary and, if mailed, such notice shall be deemed to be delivered when deposited with the United States mail, postage prepaid, addressed to the stockholder at the address of the stockholder as the same appears on the records of the corporation.

SECTION 4. STOCKHOLDERS LIST. The officer having charge of the stock ledger of the corporation shall make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting or, if not so specified, at the place where the meeting is to be held. The list also shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

SECTION 5. QUORUM. The holders of a majority of the outstanding shares of capital stock entitled to vote at a meeting, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders, except as otherwise provided by statute or by the certificate of incorporation. A quorum that is present to organize a meeting shall not be broken by the subsequent withdrawal of one or more stockholders. If a quorum is not present, the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time and/or place.

SECTION 6. ADJOURNED MEETINGS. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may

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transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

SECTION 7. VOTE REQUIRED. When a quorum is present, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the question is one upon which by express provisions of an applicable law, certificate of incorporation or these by-laws a different vote is required, in which case such express provision shall govern and control the decision of such question.

SECTION 8. VOTING RIGHTS. Except as otherwise provided by the General Corporation Law of the state of Delaware or by the certificate of incorporation of the corporation or any amendments thereto and subject to Section 10 of this Article II, every stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of common stock held by such stockholder.

SECTION 9. PROXIES. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy. Each proxy shall be in writing executed by the stockholder giving the proxy or the stockholder's duly authorized attorney. No proxy shall be valid after the expiration of 3 years from its date, unless the proxy provides for a longer period. Unless and until voted, every proxy shall be revocable at the pleasure of the stockholder who executed it or the stockholder's legal representatives or assigns, except in those cases where an irrevocable proxy permitted by statute has been given.

SECTION 10. FIXING A RECORD DATE FOR STOCKHOLDER MEETINGS. In order that the corporation may determine the stockholders entitled to notice of or to

vote at any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

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(The following section was added by the Board of Directors on July 18, 1995)

SECTION 11. CONDUCT OF MEETINGS. The board of directors shall establish the agenda of each meeting of the stockholders, annual or special, at or prior to the calling thereof. No proposal of any corporate action by any stockholder shall be considered at any meeting of stockholders unless the stockholder who intends to propose such action has delivered a timely written notice of his intention to put such proposal before the meeting to the executive offices of the Corporation. A notice of proposal will be deemed to not be timely unless it has been received by the Corporation within the time limits prescribed by paragraph (a)(iii) of Rule 14a-8 of the Proxy Rules of the Securities and Exchange Commission. The board of directors may determine that a proposal submitted by a stockholder pursuant to this section has insufficient relationship to the business of the Corporation to justify delay, disruption or other interference with the meeting process or that implementation of such proposal would be contrary to applicable law, and upon making such determination, exclude such proposal from consideration at the meeting of stockholders with respect to which such proposal was submitted. Except as otherwise determined by the board of directors in advance of a meeting of stockholders, the order of business at all meetings of the stockholders and all matters relating to the manner of conducting the meeting shall be determined by the chairman of the meeting, whose decisions may be overruled only by the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the matter. Meetings shall be conducted in a manner designed to accomplish the business of the meeting in a prompt and orderly fashion and to be fair and equitable to all stockholders, but it shall not be necessary to follow any manual of parliamentary procedure.

ARTICLE III  
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DIRECTORS  
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SECTION 1. GENERAL POWERS. The business and affairs of the corporation shall be managed by or under the direction of the board of directors.

SECTION 2. NUMBER, ELECTION AND TERM OF OFFICE. The number of directors which shall constitute the whole board initially shall be 9. Thereafter, the number of directors shall be established from time to time by resolution of the board. The directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote in the election of directors. The directors shall be elected in this manner at the annual meeting of the stockholders, except as provided in Section 4 of this Article III. Each director elected shall hold office until a successor is duly elected and qualified, or until his or her earlier death, resignation, or removal, as hereinafter provided.

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(The following paragraph was added by the Board of Directors on July 18, 1995)

At a meeting of stockholders at which directors are to be elected, only persons nominated as candidates shall be eligible for election as directors. Persons may be nominated as candidates by the board of directors or a duly constituted committee thereof, or by any stockholder entitled to vote for the election of directors. Such nominations, if not made by the board of directors or a duly constituted committee thereof, shall be made only by a written notice (a) setting forth (i) the name, age, business address and residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of each such nominee, and (iii) the number of shares of capital stock of the Corporation beneficially owned by each such nominee; (b) signed and verified by the stockholder making such nomination; and (c) delivered to the secretary of the Corporation, together with each such nominee's written acceptance of such nomination and agreement to serve if elected, not less than one hundred twenty (120) days before the first anniversary of the date of the mailing of the notice of the most recently concluded annual meeting, if such nomination is for an election to be held at an annual meeting; provided, however, that if the date of such annual meeting is more than thirty (30) days before or after the first anniversary of the most recently concluded annual meeting, or if such election is to be held at a special meeting, such notice shall be delivered to the Corporation not more than seven (7) days after the date of the notice of such annual or special meeting.

(At the 1996 Annual Meeting of Stockholders, held May 30, 1996 the Stockholders duly adopted a resolution amending these By-laws by adding the following paragraph to the end of this Section 2 of Article III:)

Notwithstanding any other provision set forth in the By-laws of the Company, the board of directors shall be divided into three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; of the third class two years thereafter; and at each annual election held after the initial adoption of this by-law by the stockholders and the election of directors held at the meeting at which this by-law is adopted, directors shall be chosen for a full term of three years, as the case may be, to succeed those whose terms expire. When this by-law is initially adopted by the stockholders, the board of directors shall consist of nine members and each class shall consist of three members. Thereafter, the board of directors may fix the total number of directors constituting the full board of directors and the number of directors in each class, but the total number of directors shall not exceed seventeen (17) nor shall the number of directors in any class exceed six (6). Subject to the foregoing, the classes of directors need not have the same number of members. No reduction in the total number of directors or in the number of directors in any class shall be effective to remove any director or to reduce the term of any director. If the board of directors increases the number

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of directors in a class, it may fill the vacancy created thereby for the full remaining term of a director in that class even though such term may extend beyond the next annual election. The board of directors may fill any vacancy occurring for any other reason for the full remaining term of the director whose death, resignation or removal caused the vacancy, even though such term may extend beyond the next annual election.

**SECTION 3. REMOVAL AND RESIGNATION.** Any director or the entire board of directors may be removed at any time by the holders of a majority of the shares then entitled to vote at an election of directors. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the corporation's certificate of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole. Any director may resign at any time upon written notice to the corporation.

**SECTION 4. VACANCIES.** Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director. Each director so chosen shall hold office until a successor is duly elected and qualified, or until his or her earlier death, resignation, or removal, as herein provided.

SECTION 5. COMPENSATION. The board of directors may from time to time fix the compensation of directors for their services in that capacity. The compensation of a director may consist of an annual fee, or a fee for attendance at each regular or special meeting of the board, or any meeting of any committee of the board of which such director is a member, or a combination of fees of both types; provided, that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor. The board also may provide for the reimbursement to any director of expenses incurred in attending any meeting of the board or any committee of the board of which such director is a member.

SECTION 6. ANNUAL MEETINGS. The annual meeting of each newly elected board of directors shall be held without notice immediately after, and at the same place as, the annual meeting of stockholders.

SECTION 7. OTHER MEETINGS AND NOTICE. Regular meetings, other than the annual meeting, of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by resolution of the board. Special meetings of the board of directors may be called by or at the request of any director on at least 24 hours notice to each director, either personally, by telephone, by mail, by telegraph, or by facsimile transmission.

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SECTION 8. QUORUM, REQUIRED VOTE, AND ADJOURNMENT. A majority of the total number of directors shall constitute a quorum for the transaction of business. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the board of directors. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

SECTION 9. COMMITTEES. The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation, which to the extent provided in such resolution or these by-laws, shall have and may exercise the powers of the board of directors in the management and affairs of the corporation, except as otherwise limited by law. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors. Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

SECTION 10. COMMITTEE RULES. Each committee of the board of directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the board of directors designating such committee. In the event that a member and that member's alternate, if alternates are designated by the board of directors as provided in Section 9 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in place of any such absent or disqualified member.

SECTION 11. COMMUNICATIONS EQUIPMENT. Members of the board of directors or any committee thereof may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this section shall constitute presence in person at the meeting.

SECTION 12. WAIVER OF NOTICE. Any member of the board of directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting, except when such member attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 13. ACTION BY WRITTEN CONSENT. Unless otherwise restricted by the certificate of incorporation, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting, if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

ARTICLE IV  
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OFFICERS  
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SECTION 1. NUMBER. The executive officers of the corporation shall be chosen by the board of directors and shall consist of: a chairman of the board, a president, one or more vice-presidents, a secretary, and a treasurer. The board of directors may also choose such other officers and assistant officers as it may deem necessary or desirable. The chairman of the board shall be selected among the directors, but no other executive officer need be a member of the board. Any number of offices may be held by the same person. In its discretion, the board of directors may choose not to fill any office for any period as it may deem advisable.

SECTION 2. ELECTION AND TERM OF OFFICE. The officers of the corporation shall be elected by the board of directors, and each officer shall hold office until a successor is duly elected and qualified, or until his or her earlier death, resignation, or removal, as hereinafter provided.

SECTION 3. REMOVAL. Any officer or agent elected by the board of directors may be removed for cause or without cause by the board of directors, or by the chairman of the board or the president acting under authority delegated to him by the board, provided that any such removal shall be without prejudice to the contract rights, if any, of the person so removed.

SECTION 4. VACANCIES. Any vacancy occurring in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors.

SECTION 5. COMPENSATION. Compensation of all officers shall be fixed by the board of directors and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the corporation.

SECTION 6. CHAIRMAN OF THE BOARD. The chairman of the board shall be the chief executive officer of the corporation, shall be selected from among the directors of the corporation, and shall be in the general and active charge of the entire business and affairs of the corporation, subject to the powers of the board of directors, and shall be its chief policy making officer. He or she shall preside at all meetings of the board of directors and stockholders, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or provided in these by-laws.

SECTION 7. PRESIDENT. The president shall be the chief operating officer and shall have all operating responsibility for the day to day business of the corporation, and all corporate functions shall report to the president. In the absence of a chairman of the board, the president shall preside at all meetings of the stockholders and of the board of directors. The president shall have such other powers and perform such other duties as may be prescribed by the chairman of the board or the board of directors or as may be provided in these by-laws.

SECTION 8. VICE-PRESIDENTS. The vice-president, or if there shall be more than one, the vice-presidents in the order determined by the board of directors shall, in the absence or disability of the president, act with all of the powers and be subject to all restrictions of the president. The

vice-presidents also shall perform such other duties and have such other powers as the board of directors, the chairman of the board, the president, or these by-laws may, from time to time, prescribe.

SECTION 9. SECRETARY AND ASSISTANT SECRETARIES. The secretary shall attend all meetings of the board of directors, all meetings of the committees thereof, and all meetings of the stockholders, and record all such proceedings of such meetings in a book to be kept for that purpose. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the chairman of the board, shall, in the absence or disability of the secretary, perform the duties of the secretary.

SECTION 10. TREASURER AND ASSISTANT TREASURERS. The treasurer shall have the custody of the corporate funds and securities; shall keep full and accurate accounts of receipts and disbursements thereof; shall deposit all moneys and other valuable effects in the name of the corporation; shall cause the funds of the corporation to be disbursed when such disbursements have been duly authorized. If required by the board of directors, the treasurer and each assistant treasurer shall give the corporation a bond for such term, in such sums and with such sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of the office of treasurer. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the chairman of the board, shall in the absence or disability of the treasurer, perform the duties of the treasurer.

SECTION 11. OTHER OFFICERS, ASSISTANT OFFICERS, AND AGENTS. Officers, assistant officers and agents, if any, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the board of directors.

SECTION 12. ABSENCE OR DISABILITY OF OFFICERS. In the case of the absence or disability of any officer of the corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the chairman of the board or the president may delegate the powers and duties of such officer to any other officer.

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## ARTICLE V

### INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

SECTION 1. INDEMNIFICATION. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to:

(a) any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful; or

(b) any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a

director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

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To the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

SECTION 2. STANDARD OF CONDUCT. Any indemnification under subsections (a) and (b) of Section 1 of this Article V (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in said subsections (a) and (b). Such determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

SECTION 3. PAYMENT OF EXPENSES. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative, or investigative action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this Article V. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

SECTION 4. NOT EXCLUSIVE. The indemnification and advancement of expenses provided by, or granted pursuant to, the provisions of this Article V shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation, or any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

SECTION 5. INSURANCE. The corporation may purchase and maintain insurance on behalf of any person who is a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

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SECTION 6. DEFINITIONS.



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

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

SECTION 7. CONTRACTUAL NATURE. This Article V shall be deemed to be a contract between the corporation and each director and officer who serves as such at any time while this Article V is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon such state of facts. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

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## ARTICLE VI

### CERTIFICATES OF STOCK

SECTION 1. FORM. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, the chairman of the board of directors or the president or a vice-president, and the secretary or an assistant secretary, or the treasurer or an assistant treasurer of the corporation, certifying the number of shares owned by such holder of the corporation. If such a certificate is countersigned (1) by a transfer agent or an assistant transfer agent other than the corporation or one of its employees or (2) by a registrar, other than the corporation or one of its employees, the signature of any such chairman of the board of directors, president, vice-president, secretary, assistant secretary, treasurer or assistant treasurer may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificate, shall cease to be such officer or officers of the corporation whether because of death, resignation, or otherwise before such certificate or certificates have been delivered by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the corporation. The board of directors may appoint a bank or trust company organized under the laws of the United States or any state thereof to act as its transfer agent or registrar, or both in connection with the transfer of any class or series of securities of the corporation.

SECTION 2. LOST CERTIFICATES. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. When authorizing such issue of a new certificate or as a condition precedent to the issuance thereof, the board of directors may require the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against the corporation on account of the loss, theft, or destruction of any such certificate or the issuance of such new certificate.

SECTION 3. FIXING A RECORD DATE FOR PURPOSES OTHER THAN FOR STOCKHOLDER MEETINGS. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion, or exchange of stock, or for the purposes of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record

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date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

ARTICLE VII  
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GENERAL PROVISIONS  
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SECTION 1. FISCAL YEAR. The fiscal year of the corporation shall end on December 31 unless otherwise fixed by resolution of the board of directors.

SECTION 2. CORPORATE SEAL. The board of directors shall provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

SECTION 3. VOTING SECURITIES OWNED BY THE CORPORATION. Voting securities in any other corporation held by the corporation shall be voted by the chairman of the board or the president, unless the board of directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

SECTION 4. INSPECTION OF BOOKS AND RECORDS. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean any purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its principal place of business.

SECTION 5. SECTION HEADINGS. Section headings in these by-laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

SECTION 6. INCONSISTENT PROVISIONS. In the event that any provision of these by-laws is or becomes inconsistent with any provision of the certificate

of incorporation, the General Corporation Law of the state of Delaware, or any other applicable law, the provision of these by-

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laws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE VIII

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AMENDMENTS

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These by-laws may be amended, altered or repealed and new by-laws adopted at any meeting of the board of directors by a majority vote. The fact that the power to adopt, amend, alter or repeal the by-laws has been conferred upon the board of directors shall not divest the stockholders of the same powers.

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