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

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**Form S-3  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

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**NEOPROBE CORPORATION**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation or organization)

31-1080091  
(I.R.S. Employer  
Identification Number)

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425 Metro Place North  
Dublin, Ohio 43017-1367  
(614) 793-7500  
(Address, including zip code, and telephone number, including  
area code, of registrant's principal executive offices)

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Brent L. Larson  
Senior Vice President and Chief Financial Officer  
Neoprobe Corporation  
425 Metro Place North  
Dublin, Ohio 43017-1367  
(614) 822-2330  
(Name, address, including zip code, and telephone number,  
including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: From time to time after this Registration Statement becomes effective as permitted by market conditions.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller  
reporting company)

Smaller reporting company

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## Calculation of Registration Fee

| Title of each class of securities to be registered | Amount to be registered (1)(2)(3) | Proposed maximum offering price per share(5) | Proposed maximum aggregate offering price (1)(2)(3)(5) | Amount of registration fee |
|--|-----------------------------------|--|--|----------------------------|
| <b>Primary Offering:</b>                           |                                   |  |  |                            |
| Common Stock, \$0.001 par value                    |                                   |  |  |                            |
| Warrants to Purchase Common Stock                  |                                   |  |  |                            |
| Units of the Registrant's Securities               |                                   |  |  |                            |
|  |                                   |  | \$ 20,000,000 <sup>(4)</sup>                           | \$ 1,426.00                |
| <b>Secondary Offering:</b>                         |                                   |  |  |                            |
| Common Stock, \$0.001 par value                    | 15,000,000                        | \$ 2.06                                      | \$ 30,900,000  | \$ 2,203.17                |
| <b>Total</b>                                       |                                   |  |  | <b>\$ 3,629.17</b>         |

- (1) Not specified as to each class of securities to be registered in connection with the primary offering pursuant to General Instruction II.D of Form S-3 under the Securities Act of 1933, as amended. Securities registered in connection with the primary offering hereby may be sold separately, together or in units with other securities registered hereby.
- (2) This registration statement covers: (i) such an indeterminate amount of common stock (with accompanying warrants, if any), as may be sold, from time to time, at indeterminate prices, by the registrant; (ii) such an indeterminate amount of warrants, representing rights to purchase common stock, as may be sold from time to time at indeterminate prices by the registrant; (iii) such an indeterminate amount of common stock as may be issued upon conversion, exercise or exchange of warrants that provide for such conversion into, exercise for or exchange into shares of common stock; and (iv) pursuant to Rule 416 under the Securities Act of 1933, as amended, such an indeterminate number of shares of common stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends, or similar transactions.
- (3) The proposed maximum offering price per class of security will be determined from time to time by the registrant in connection with, and at the time of, the issuance by the registrant of the securities registered hereunder in connection with the primary offering.
- (4) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o). The maximum aggregate offering price of the securities to be registered in connection with the primary offering will not exceed \$20,000,000.
- (5) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) of the Securities Act of 1933. The price per share and aggregate offering price are based upon the average high and low prices of the registrant's common stock on July 30, 2010, as reported on the OTC Bulletin Board. It is not known how many shares will be purchased under this Registration Statement or at what price such shares will be purchased.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

The information in this prospectus is not complete and may be changed. We may not sell these securities until the Registration Statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

**Subject to completion, dated August 3, 2010**

PROSPECTUS  
**NEOPROBE CORPORATION**

\$20,000,000

Common Stock  
Common Stock Warrants  
Units

15,000,000 Shares of Common Stock  
Offered by Selling Stockholders

- 
- We may offer from time to time to sell, separately or together as units: (1) shares of our common stock; and (2) warrants to purchase our common stock. The aggregate offering price of shares of common stock and warrants to purchase common stock sold by us under this prospectus will not exceed \$20,000,000. In addition, this prospectus covers resales of 15,000,000 shares our common stock owned by Platinum-Montaur Life Sciences, LLC and its transferees, in the circumstances we describe (the “*selling stockholder*”). We will not receive any proceeds from the sale, if any, of common stock by the selling stockholder.
  - This prospectus provides a general description of the securities we or the selling stockholders may offer. Each time we or the selling stockholders sell securities, we will provide specific terms of the securities offered in a supplement to this prospectus. The prospectus supplement may also add, update or change information contained in this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest in any securities. This prospectus may not be used to consummate a sale of securities unless accompanied by the applicable prospectus supplement.
  - We or the selling stockholders will sell these securities directly to purchasers or through agents on our behalf or through underwriters or dealers as designated from time to time. If any agents or underwriters are involved in the sale of any of these securities, the applicable prospectus supplement will provide the names of the agents or underwriters and any applicable fees, commissions or discounts.
  - The last reported sale price of our common stock on August 2, 2010 was \$2.01 per share.
  - Trading symbol: OTC Bulletin Board – NEOP.

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**Investing in our securities involves a high degree of risk. Before investing in our securities, we recommend that you carefully read this entire prospectus, including the “Risk Factors” section beginning on page 4, any applicable supplements to this prospectus and the documents we file with the Securities and Exchange Commission from time to time.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved of anyone’s investment in these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**Neoprobe Corporation**  
425 Metro Place North, Suite 300  
Dublin, OH 43017-1367  
(614) 793-7500

The date of this prospectus is August \_\_, 2010

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## ABOUT THIS PROSPECTUS

This prospectus is a part of a registration statement that we filed with the Securities and Exchange Commission, or the Commission, utilizing a “shelf” registration process. Under this shelf registration process, we may offer to sell the securities described in this prospectus in one or more offerings up to a total dollar amount of \$20,000,000. This prospectus also relates to the offer and sale from time to time of up to 15,000,000 shares of our common stock in one or more offerings by the selling stockholder identified in this prospectus. This prospectus provides you with a general description of the securities we or the selling stockholders may offer. We may add to or modify in a prospectus supplement any of the information contained in this prospectus or in the documents that we have incorporated into this prospectus by reference. To the extent that any statement made in a prospectus supplement conflicts with statements made in this prospectus, the statements made in the prospectus supplement will be deemed to modify or supersede those made in this prospectus. Each time we sell securities under this shelf registration, we will provide a prospectus supplement that will contain specific information about the terms of that offering. You should read both this prospectus and any prospectus supplement, including all documents incorporated herein or therein by reference, together with additional information described under “Where You Can Find More Information and Incorporation by Reference.”

We have not authorized any dealer, salesman or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus and the accompanying prospectus supplement. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus or the accompanying prospectus supplement. This prospectus and the accompanying prospectus supplement do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor does this prospectus and the accompanying prospectus supplement constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus and the accompanying prospectus supplement is accurate on any date subsequent to the date set forth on the front of the document or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus and any accompanying prospectus supplement is delivered or securities are sold on a later date.

In this prospectus, “we,” “us,” “our” and “Neoprobe” refer to Neoprobe Corporation and its subsidiaries.

## ABOUT NEOPROBE CORPORATION

Neoprobe Corporation is a biomedical technology company that provides innovative surgical and diagnostic oncology products that enhance patient care and improve patient outcome. We currently market a line of medical devices, our neoprobe<sup>®</sup> GDS gamma detection systems, that are used in a cancer staging procedure called intraoperative lymphatic mapping. In addition to our medical device products, we have two radiopharmaceutical products, Lymphoseek<sup>®</sup> and RIGScan<sup>™</sup> CR, in advanced phases of clinical development. We are also exploring the development of our activated cellular therapy (ACT) technology for patient-specific disease treatment through our majority-owned subsidiary, Cira Biosciences, Inc. (Cira Bio).

We were originally incorporated in Ohio in 1983 and reincorporated in Delaware in 1988. Our executive offices are located at 425 Metro Place North, Suite 300, Dublin, Ohio 43017. Our telephone number is (614) 793-7500. Our corporate website is [www.neoprobe.com](http://www.neoprobe.com). This reference to our website is a textual reference only. We do not incorporate the information on our website into this prospectus and you should not consider any information on, or that can be accessed through, our website as part of this prospectus.

## RISK FACTORS

An investment in our common stock involves a high degree of risk. You should carefully consider the risks described below, together with all of the other information included in this prospectus, before making an investment decision. If any of the following risks actually occurs, our business, financial condition or results of operations could suffer. In that case, the trading price of our common stock could decline, and you may lose all or part of your investment.

*We have suffered significant operating losses for several years in our history and we may not be able to again achieve profitability.*

We had an accumulated deficit of approximately \$195 million and had an overall deficit in stockholders' equity as of March 31, 2010. Although we were profitable in 2000 and 2001, we incurred substantial losses in the years prior to that, and again in subsequent years. The deficit resulted because we expended more money in the course of researching, developing and enhancing our technology and products and establishing our marketing and administrative organizations than we generated in revenues, and because of the significant non-cash losses we have recognized related to accounting for certain of the complex financial instruments we have issued in recent years to fund our business. We expect to continue to incur significant expenses in the foreseeable future, primarily related to the completion of development and commercialization of Lymphoseek, but also potentially related to RIGS and our device product lines. As a result, we are sustaining substantial operating and net losses, and it is possible that we will never be able to sustain or develop the revenue levels necessary to again attain profitability.

*Our products and product candidates may not achieve the broad market acceptance they need in order to be a commercial success.*

Widespread use of our handheld gamma detection devices is currently limited to one surgical procedure, sentinel lymph node biopsy (SLNB), used in the diagnosis and treatment of two primary types of cancer: melanoma and breast cancer. While the adoption of SLNB within the breast and melanoma indications appears to be widespread, we believe expansion of SLNB to other indications such as head and neck, colorectal and prostate cancers is likely dependent on a better lymphatic tissue targeting agent than is currently available. Without expanded indications in which to apply SLNB, it is likely that gamma detection devices will eventually reach market saturation. Our efforts and those of our marketing and distribution partners may not result in significant demand for our products, and the current demand for our products may decline.

Our radiopharmaceutical product candidates, Lymphoseek and RIGScan CR, are still in the process of development, and even if we are successful in commercializing them, we cannot assure you that they will obtain significant market acceptance.

*We may have difficulty raising additional capital, which could deprive us of necessary resources.*

We expect to continue to devote significant capital resources to fund research and development and to maintain existing and secure new manufacturing capacity. In order to support the initiatives envisioned in our business plan, we may need to raise additional funds through the sale of assets, public or private debt or equity financing, collaborative relationships or other arrangements. Our ability to raise additional financing depends on many factors beyond our control, including the state of capital markets, the market price of our common stock and the development or prospects for development of competitive technology by others. Because our common stock is not listed on a major stock market, many investors may not be willing or allowed to purchase it or may demand steep discounts. Sufficient additional financing may not be available to us or may be available only on terms that would result in further dilution to the current owners of our common stock.

We believe that we have access to sufficient financial resources with which to fund our operations or those of our subsidiaries for the foreseeable future. Depending on market conditions and/or changes in our business plans, we may raise capital in coming quarters under this registration statement or we may consider other funding vehicles. The continuation of the depressed worldwide financial conditions and stock market valuations may adversely affect our ability to raise additional capital, either under facilities in place or from new sources of capital. If we are unsuccessful in raising additional capital, closing on financing under already agreed to terms, or the terms of raising such capital are unacceptable, we may have to modify our business plan and/or significantly curtail our planned development activities and other operations.

In December 2006, we entered into a common stock purchase agreement with Fusion Capital, an Illinois limited liability company, to sell \$6.0 million of our common stock over a 24-month period which ended on November 21, 2008. Through November 21, 2008, we sold to Fusion Capital under the agreement 7,568,671 shares for proceeds of \$1.9 million. In December 2008, we entered into an amendment to the agreement which gave us a right to sell an additional \$6.0 million of our common stock to Fusion Capital before March 1, 2011, along with the \$4.1 million of the unsold balance of the \$6.0 million we originally had the right to sell to Fusion Capital under the original agreement. In March 2010, we sold to Fusion Capital under the amended agreement 540,541 shares for proceeds of \$1.0 million. Subsequent to this sale, the remaining aggregate amount of our common stock we can sell to Fusion Capital is \$9.1 million, and we have reserved a total of 10,113,459 shares of our common stock for sale under the amended agreement. Our right to make sales under the amended agreement is limited to \$50,000 every two business days, unless our stock price equals or exceeds \$0.30 per share, in which case we can sell greater amounts to Fusion Capital as the price of our common stock increases. Fusion Capital does not have the right or any obligation to purchase any shares on any business day that the market price of our common stock is less than \$0.20 per share. Assuming all 10,113,459 shares are sold, the selling price per share would have to average approximately \$0.90 for us to receive the full \$9.1 million remaining proceeds under the agreement as amended. Assuming we sell to Fusion Capital all 10,113,459 shares at a sale price of \$2.09 per share (the closing sale price of the common stock on July 30, 2010), we would receive the full remaining \$9.1 million under the agreement. Under the agreement, we have the right but not the obligation to sell more than the 10,113,459 shares to Fusion Capital. As of the date hereof, we do not currently have any plans or intent to sell to Fusion Capital any shares beyond the 10,113,459 shares. However, if we elect to sell more than the 10,113,459 shares, we must first register any additional shares we may elect to sell to Fusion Capital under the Securities Act before we can sell such additional shares.

The extent to which we rely on Fusion Capital as a source of funding will depend on a number of factors, including the prevailing market price of our common stock and the extent to which we are able to secure working capital from other sources, such as through the sale of our products. To the extent that we are unable to make sales to Fusion Capital to meet our capital needs, or to the extent that we decide not to make such sales because of excessive dilution or other reasons, and if we are unable to generate sufficient revenues from sales of our products, we will need to secure another source of funding in order to satisfy our working capital needs. Even if we are able to access the full \$9.1 million potentially remaining under the agreement with Fusion Capital, we may still need additional capital to fully implement our business, operating and development plans. Should the financing we require to sustain our working capital needs be unavailable or prohibitively expensive when we require it, the consequences could be a material adverse effect on our business, operating results, financial condition and prospects.

*Clinical trials for our radiopharmaceutical product candidates will be lengthy and expensive and their outcome is uncertain.*

Before obtaining regulatory approval for the commercial sale of any product candidates, we must demonstrate through preclinical testing and clinical trials that our product candidates are safe and effective for use in humans. Conducting clinical trials is a time consuming, expensive and uncertain process and may take years to complete. During 2009, we successfully completed a Phase 3 clinical trial in patients with breast cancer or melanoma for our most advanced radiopharmaceutical product candidate, Lymphoseek. We began enrolling clinical subjects in a second Phase 3 trial for Lymphoseek in patients with head and neck squamous cell carcinoma in the third quarter of 2009 and in a third Phase 3 trial in subjects with breast cancer and melanoma in the third quarter of 2010. While neither the second or third trials are required to be completed in order to file our new drug application (NDA) for Lymphoseek, these trials are intended to contribute additional data for safety evaluation purposes and to support expanded post-marketing product labeling for Lymphoseek. In late 2008, we obtained approval from the European Medicines Agency (EMA) for a Phase 3 clinical protocol for our next radiopharmaceutical candidate, RIGScan CR, and we are preparing to approach FDA to obtain similar clearance. Historically, the results from preclinical testing and early clinical trials have often not been predictive of results obtained in later clinical trials. Frequently, drugs that have shown promising results in preclinical or early clinical trials subsequently fail to establish sufficient safety and efficacy data necessary to obtain regulatory approval. At any time during the clinical trials, we, the participating institutions, FDA or EMA might delay or halt any clinical trials for our product candidates for various reasons, including:



- ineffectiveness of the product candidate;
- discovery of unacceptable toxicities or side effects;
- development of disease resistance or other physiological factors;
- delays in patient enrollment; or
- other reasons that are internal to the businesses of our potential collaborative partners, which reasons they may not share with us.

While we have achieved some level of success in our recent Phase 2 and Phase 3 clinical trials for Lymphoseek, the results of these clinical trials, as well as pending and future trials, are subject to review and interpretation by various regulatory bodies during the regulatory review process and may ultimately fail to demonstrate the safety or effectiveness of our product candidates to the extent necessary to obtain regulatory approval or such that commercialization of our product candidates is worthwhile. Any failure or substantial delay in successfully completing clinical trials and obtaining regulatory approval for our product candidates could severely harm our business.

*If we fail to obtain collaborative partners, or those we obtain fail to perform their obligations or discontinue clinical trials for particular product candidates, our ability to develop and market potential products could be severely limited.*

Our strategy for the development and commercialization of our product candidates depends, in large part, upon the formation of collaborative arrangements. Collaborations may allow us to:

- generate cash flow and revenue;
- offset some of the costs associated with our internal research and development, preclinical testing, clinical trials and manufacturing;
- seek and obtain regulatory approvals faster than we could on our own; and
- successfully commercialize existing and future product candidates.

We have an agreement in place with Cardinal Health for the distribution of Lymphoseek in the United States. We do not currently have collaborative agreements covering Lymphoseek in other areas of the world or for RIGScan CR or ACT. We cannot assure you that we will be successful in securing collaborative partners for other markets or radiopharmaceutical products, or that we will be able to negotiate acceptable terms for such arrangements. The development, regulatory approval and commercialization of our product candidates will depend substantially on the efforts of collaborative partners, and if we fail to secure or maintain successful collaborative arrangements, or if our partners fail to perform their obligations, our development, regulatory, manufacturing and marketing activities may be delayed, scaled back or suspended.

*We rely on third parties for the worldwide marketing and distribution of our gamma detection devices, who may not be successful in selling our products.*

We currently distribute our gamma detection devices in most global markets through partners who are solely responsible for marketing and distributing these products. The partners assume direct responsibility for business risks related to credit, currency exchange, foreign tax laws or tariff and trade regulation. For the past ten years, our primary marketing and distribution partner for our gamma detection devices has been Ethicon Endo-Surgery, Inc. (EES), a Johnson & Johnson company. Recently, EES sold its breast care franchise, the group that is responsible for selling our gamma detection devices, to Devicor Medical Products, Inc. (Devicor). While we believe that Devicor as our distribution partner intends to aggressively market our products, we cannot assure you that the distribution partner will succeed in marketing our products on a global basis. We may not be able to maintain satisfactory arrangements with our marketing and distribution partners, who may not devote adequate resources to selling our products. If this happens, we may not be able to successfully market our products, which would decrease our revenues.

*Our radiopharmaceutical product candidates are subject to extensive government regulations and we may not be able to obtain necessary regulatory approvals.*

We may not receive the regulatory approvals necessary to commercialize our Lymphoseek and RIGScan product candidates, which could cause our business to be severely harmed. Our product candidates are subject to extensive and rigorous government regulation. FDA regulates, among other things, the development, testing, manufacture, safety, record-keeping, labeling, storage, approval, advertising, promotion, sale and distribution of pharmaceutical products. If our potential products are marketed abroad, they will also be subject to extensive regulation by foreign governments. None of our radiopharmaceutical product candidates have been approved for sale in the United States or in any foreign market. The regulatory review and approval process, which includes preclinical studies and clinical trials of each product candidate, is lengthy, complex, expensive and uncertain. Securing FDA clearance to market requires the submission of extensive preclinical and clinical data and supporting information to FDA for each indication to establish the product candidate's safety and efficacy. Data obtained from preclinical and clinical trials are susceptible to varying interpretation, which may delay, limit or prevent regulatory approval. The approval process may take many years to complete and may involve ongoing requirements for post-marketing studies. In light of the limited regulatory history of monoclonal antibody-based therapeutics, regulatory approvals for our products may not be obtained without lengthy delays, if at all. Any FDA or other regulatory approvals of our product candidates, once obtained, may be withdrawn. The effect of government regulation may be to:

- delay marketing of potential products for a considerable period of time;
- limit the indicated uses for which potential products may be marketed;
- impose costly requirements on our activities; and
- provide competitive advantage to other pharmaceutical and biotechnology companies.

We may encounter delays or rejections in the regulatory approval process because of additional government regulation from future legislation or administrative action or changes in FDA policy during the period of product development, clinical trials and FDA regulatory review. Failure to comply with applicable FDA or other regulatory requirements may result in criminal prosecution, civil penalties, recall or seizure of products, total or partial suspension of production or injunction, as well as other regulatory action against our product candidates or us. Outside the United States, our ability to market a product is contingent upon receiving clearances from the appropriate regulatory authorities. This foreign regulatory approval process includes risks similar to those associated with FDA approval process.

*Our radiopharmaceutical product candidates will remain subject to ongoing regulatory review even if they receive marketing approval. If we fail to comply with continuing regulations, we could lose these approvals and the sale of our products could be suspended.*

Even if we receive regulatory clearance to market a particular product candidate, the approval could be conditioned on us conducting additional costly post-approval studies or could limit the indicated uses included in our labeling. Moreover, the product may later cause adverse effects that limit or prevent its widespread use, force us to withdraw it from the market or impede or delay our ability to obtain regulatory approvals in additional countries. In addition, the manufacturer of the product and its facilities will continue to be subject to FDA review and periodic inspections to ensure adherence to applicable regulations. After receiving marketing clearance, the manufacturing, labeling, packaging, adverse event reporting, storage, advertising, promotion and record-keeping related to the product will remain subject to extensive regulatory requirements. We may be slow to adapt, or we may never adapt, to changes in existing regulatory requirements or adoption of new regulatory requirements.

If we fail to comply with the regulatory requirements of FDA and other applicable U.S. and foreign regulatory authorities or previously unknown problems with our products, manufacturers or manufacturing processes are discovered, we could be subject to administrative or judicially imposed sanctions, including:

- restrictions on the products, manufacturers or manufacturing processes;
- warning letters;
- civil or criminal penalties;
- fines;
- injunctions;
- product seizures or detentions;
- import bans;
- voluntary or mandatory product recalls and publicity requirements;
- suspension or withdrawal of regulatory approvals;
- total or partial suspension of production; and
- refusal to approve pending applications for marketing approval of new drugs or supplements to approved applications.

*Our existing products are highly regulated and we could face severe problems if we do not comply with all regulatory requirements in the global markets in which these products are sold.*

FDA regulates our gamma detection products in the United States. Foreign countries also subject these products to varying government regulations. In addition, these regulatory authorities may impose limitations on the use of our products. FDA enforcement policy strictly prohibits the marketing of FDA cleared medical devices for unapproved uses. Within the European Union, our products are required to display the CE Mark in order to be sold. We have obtained FDA clearance to market and European certification to display the CE Mark on our current line of gamma detection systems. We may not be able to obtain clearance to market any new products in a timely manner, or at all. Failure to comply with these and other current and emerging regulatory requirements in the global markets in which our products are sold could result in, among other things, warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, refusal of the government to grant pre-market clearance for devices, withdrawal of clearances, and criminal prosecution.

*We rely on third parties to manufacture our medical device products and our business will suffer if they do not perform.*

We rely on independent contract manufacturers for the manufacture of our current neoprobe GDS line of gamma detection systems. Our business will suffer if our contract manufacturers have production delays or quality problems. Furthermore, medical device manufacturers are subject to the quality system regulations of FDA, international quality standards, and other regulatory requirements. If our contractors do not operate in accordance with regulatory requirements and quality standards, our business will suffer. We use or rely on components and services used in our devices that are provided by sole source suppliers. The qualification of additional or replacement vendors is time consuming and costly. If a sole source supplier has significant problems supplying our products, our sales and revenues will be hurt until we find a new source of supply. In addition, our distribution agreement with Devicor for our gamma detection devices contains failure to supply provisions, which, if triggered, could have a significant negative impact on our business.

*We may be unable to establish the pharmaceutical manufacturing capabilities necessary to develop and commercialize our potential products.*

We do not have our own manufacturing facility for the manufacture of the radiopharmaceutical compounds necessary for clinical testing or commercial sale. We intend to rely on third-party contract manufacturers to produce sufficiently large quantities of drug materials that are and will be needed for clinical trials and commercialization of our potential products. Third-party manufacturers may not be able to meet our needs with respect to timing, quantity or quality of materials. We have completed a supply agreement with Reliable Biopharmaceuticals covering the manufacturing of the active pharmaceutical ingredient in Lymphoseek and we are in the process of finalizing supply contracts with another third-party manufacturer for the lyophilization, vialing and filling of the finished Lymphoseek product. However, if we are unable to contract for a sufficient supply of needed materials on acceptable terms, or if we should encounter delays or difficulties in our relationships with manufacturers, our clinical trials may be delayed, thereby delaying the submission of product candidates for regulatory approval and the market introduction and subsequent commercialization of our potential products. Any such delays may lower our revenues and potential profitability.

We and any third-party manufacturers that we may use must continually adhere to current Good Manufacturing Practices regulations enforced by FDA through its facilities inspection program. If our facilities or the facilities of third-party manufacturers cannot pass a pre-approval plant inspection, FDA will not grant approval to our product candidates. In complying with these regulations and foreign regulatory requirements, we and any of our third-party manufacturers will be obligated to expend time, money and effort on production, record-keeping and quality control to assure that our potential products meet applicable specifications and other requirements. If we or any third-party manufacturer with whom we may contract fail to maintain regulatory compliance, we or the third party may be subject to fines and/or manufacturing operations may be suspended.

*Unfavorable pricing regulations, third-party reimbursement practices or healthcare reform initiatives applicable to our radiopharmaceutical products and product candidates could limit our potential product revenue and adversely affect our business.*

The regulations governing drug pricing and reimbursement vary widely from country to country. Some countries require approval of the sale price of a drug before it can be marketed and, in many of these countries, the pricing review period begins only after approval is granted. In some countries, prescription pharmaceutical pricing remains subject to continuing governmental control even after initial approval is granted. Although we monitor these regulations, our product candidates are currently in the development stage and we will not be able to assess the impact of price regulations for at least several years. As a result, we may obtain regulatory approval for a product in a particular country, but then be subject to price regulations that may delay the commercial launch of the product and may negatively impact the revenues we are able to derive from sales in that country.

The healthcare industry is undergoing fundamental changes resulting from political, economic and regulatory influences. In the United States, comprehensive programs have been proposed that seek to increase access to healthcare for the uninsured, to control the escalation of healthcare expenditures within the economy and to use healthcare reimbursement policies to balance the federal budget. On March 23, 2010, health reform legislation was approved by Congress and has been signed into law. The reform legislation provides that most individuals must have health insurance, will establish new regulations on health plans, create insurance pooling mechanisms and other expanded public health care measures, and impose new taxes on sales of medical devices and pharmaceuticals. Since this legislation was recently enacted and will require the adoption of implementing regulations, we cannot predict the effect, if any, that it will have on our business, but this legislation and similar federal and state initiatives may have the effect of lowering reimbursements for our products, reducing medical procedure volumes, increasing our taxes and otherwise adversely affect our business, possibly materially.

We expect that Congress and state legislatures will continue to review and assess healthcare proposals, and public debate of these issues will likely continue. We cannot predict which, if any, of such reform proposals will be adopted and when they might be adopted. Other countries also are considering healthcare reform. Significant changes in healthcare systems could have a substantial impact on the manner in which we conduct our business and could require us to revise our strategies.

*The sale of our common stock to Fusion may cause dilution and the sale of common stock acquired by Fusion could cause the price of our common stock to decline.*

In connection with our agreement with Fusion Capital, we have authorized the sale of up to 18,222,671 shares of our common stock and the issuance of 1,800,000 shares in commitment fees, and we have filed a registration statement with the SEC for the sale to the public of 11,500,000 shares issuable to Fusion Capital pursuant to the agreement. Through July 30, 2010, we have sold Fusion Capital 8,109,212 shares of common stock and issued 1,434,000 shares of stock as commitment fees to Fusion Capital. The number of shares ultimately offered for sale to the public will be dependent upon the number of shares purchased by Fusion Capital under the agreement. It is anticipated that these shares will be sold over a period of up to 26 months from the date of the December 24, 2008 amendment to the agreement, at prices that will fluctuate based on changes in the market price of our common stock over that period. Depending upon market liquidity at the times sales are made, these sales could cause the market price of our common stock to decline. Consequently, sales to Fusion Capital may result in substantial dilution to the interests of other holders of our common stock. The sale of a substantial number of shares of our common stock by Fusion Capital, or anticipation of such sales, could make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise wish to effect sales. However, we have the right to control the timing and amount of any sales of our shares to Fusion Capital and the agreement may be terminated by us at any time at our discretion without any cost to us.

*The sale of the shares of common stock acquired in private placements could cause the price of our common stock to decline.*

Over the past few years, we completed various financings in which we issued common stock, convertible notes, warrants and other securities convertible into common stock to certain private investors. The terms of these transactions require that we file registration statements with the Securities and Exchange Commission under which the investors may resell to the public common stock acquired in these transactions, as well as common stock acquired on the exercise of the warrants and convertible securities held by them. Further, some or all of the common stock sold in these transactions may become eligible for resale without registration under the provisions of Rule 144, upon satisfaction of the holding period and other requirements of the Rule.

As required by our financing arrangements with Fusion Capital, we have filed a registration statement registering for resale a total of 11,500,000 common shares, consisting of (i) 10,654,000 shares which we may sell to Fusion Capital pursuant to the amended common stock purchase agreement, (ii) 360,000 shares issued to Fusion Capital in consideration for its agreement to the amendment; and (iii) 486,000 commitment fee shares to be issued pro rata as we sell the first \$4.1 million of common stock under the amended agreement. The number of shares ultimately sold under the registration statement will be dependent upon the number of shares purchased by Fusion Capital under the amended agreement. It is anticipated that these shares will be sold from time to time over a period ending on March 1, 2011, at prices that will fluctuate based on changes in the market price of our common stock over that period. We have the right to control the timing and amount of any sales of our shares to Fusion Capital and the agreement may be terminated by us at any time at our discretion without any cost to us.

On December 26, 2007, we entered into a Securities Purchase Agreement (SPA) with Platinum-Montaur Life Sciences, LLC (Montaur), pursuant to which we issued Montaur a 10% Series A Convertible Senior Secured Promissory Note in the principal amount of \$7,000,000, due December 26, 2011 (the Series A Note) and a five-year Series W Warrant to purchase 6,000,000 shares of our common stock at an exercise price of \$0.32 per share. On April 16, 2008, following receipt by the Company of clearance by the FDA to commence a Phase 3 clinical trial for Lymphoseek in patients with breast cancer or melanoma, we amended the SPA and issued Montaur a 10% Series B Convertible Senior Secured Promissory Note in the principal amount of \$3,000,000, also due December 26, 2011 (the Series B Note, and hereinafter referred to collectively with the Series A Note as the Montaur Notes), and a five-year Series X Warrant to purchase 8,333,333 shares of our common stock at an exercise price of \$0.46 per share. On December 5, 2008, after the Company had obtained 135 vital blue dye lymph nodes from patients who had completed surgery and the injection of the drug in the Phase 3 clinical trial of Lymphoseek in patients with breast cancer or melanoma, we issued Montaur 3,000 shares of our 8% Series A Cumulative Convertible Preferred Stock (the Series A Preferred Stock) and a five-year Series Y Warrant (hereinafter referred to collectively with the Series W Warrant and Series X Warrant as the Montaur Warrants) to purchase 6,000,000 shares of our common stock, at an exercise price of \$0.575 per share, also for an aggregate purchase price of \$3,000,000. On July 24, 2009, we entered into a Securities Amendment and Exchange Agreement (Amendment Agreement) with Montaur, pursuant to which Montaur agreed to the amendment and restatement of the terms of the Montaur Notes, the Montaur Warrants and the Preferred Stock, to remove price-based anti-dilution adjustment provisions that had created a significant non-cash derivative liability on the Company's balance sheet, and upon the surrender of the Montaur Notes and the Montaur Warrants we issued Montaur an Amended and Restated 10% Series A Convertible Senior Secured Promissory Note in the principal amount of \$7,000,000, due December 26, 2011 (the Amended Series A Note), an Amended and Restated 10% Series B Convertible Senior Secured Promissory Note in the principal amount of \$3,000,000, due December 26, 2011 (the Amended Series B Note, and together with the Amended Series A Note the Amended Montaur Notes), an Amended and Restated Series W Warrant (the Amended Series W Warrant), an Amended and Restated Series X Warrant (the Amended Series X Warrant), an Amended and Restated Series Y Warrant (the Amended Series Y Warrant), and in consideration for the agreement of Montaur to enter into the Amendment Agreement, a Series AA Warrant to purchase 2,400,000 shares of our common stock at an exercise price of \$0.97 per share (the Series AA Warrant, and together with the Amended Series W Warrant, Amended Series X Warrant and Amended Series Y Warrant, the Amended Montaur Warrants). On June 22, 2010, we entered into a Securities Exchange Agreement (the Exchange Agreement) with Montaur, pursuant to which Montaur delivered to the Company for cancellation and retirement: (1) the Amended Montaur Notes; and (2) the Series A Preferred Stock, in exchange for 10,000 shares of our Series B Convertible Preferred Stock (Series B Preferred Stock). Pursuant to the provisions of the Certificate of Designations, Voting Powers, Preferences, Limitations, Restrictions, and Relative Rights of the Series B Convertible Preferred Stock, Montaur may convert all or any portion of the shares of the Series B Preferred Stock into an aggregate 32,700,000 shares of our common stock, subject to adjustment as described in the Certificate of Designations.

Montaur may sell none, some or all of the shares of common stock acquired from us, as well as common stock acquired on the exercise of the warrants and convertible securities held by them. We have no way of knowing whether or when Montaur will sell these shares. Depending upon market liquidity at the time, a sale of these shares at any given time could cause the trading price of our common stock to decline. The sale of a substantial number of shares of our common stock, or anticipation of such sales, could make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise wish to effect sales.

*We may lose out to larger and better-established competitors.*

The medical device and biotechnology industries are intensely competitive. Some of our competitors have significantly greater financial, technical, manufacturing, marketing and distribution resources as well as greater experience in the medical device industry than we have. The particular medical conditions our product lines address can also be addressed by other medical devices, procedures or drugs. Many of these alternatives are widely accepted by physicians and have a long history of use. Physicians may use our competitors' products and/or our products may not be competitive with other technologies. If these things happen, our sales and revenues will decline. In addition, our current and potential competitors may establish cooperative relationships with large medical equipment companies to gain access to greater research and development or marketing resources. Competition may result in price reductions, reduced gross margins and loss of market share.

*Our products may be displaced by newer technology.*

The medical device and biotechnology industries are undergoing rapid and significant technological change. Third parties may succeed in developing or marketing technologies and products that are more effective than those developed or marketed by us, or that would make our technology and products obsolete or non-competitive. Additionally, researchers could develop new surgical procedures and medications that replace or reduce the importance of the procedures that use our products. Accordingly, our success will depend, in part, on our ability to respond quickly to medical and technological changes through the development and introduction of new products. We may not have the resources to do this. If our products become obsolete and our efforts to develop new products do not result in any commercially successful products, our sales and revenues will decline.

*We may not have sufficient legal protection against infringement or loss of our intellectual property, and we may lose rights to our licensed intellectual property if diligence requirements are not met.*

Our success depends, in part, on our ability to secure and maintain patent protection, to preserve our trade secrets, and to operate without infringing on the patents of third parties. While we seek to protect our proprietary positions by filing United States and foreign patent applications for our important inventions and improvements, domestic and foreign patent offices may not issue these patents. Third parties may challenge, invalidate, or circumvent our patents or patent applications in the future. Competitors, many of which have significantly more resources than we have and have made substantial investments in competing technologies, may apply for and obtain patents that will prevent, limit, or interfere with our ability to make, use, or sell our products either in the United States or abroad.

In the United States, patent applications are secret until patents are issued, and in foreign countries, patent applications are secret for a time after filing. Publications of discoveries tend to significantly lag the actual discoveries and the filing of related patent applications. Third parties may have already filed applications for patents for products or processes that will make our products obsolete or will limit our patents or invalidate our patent applications.

We typically require our employees, consultants, advisers and suppliers to execute confidentiality and assignment of invention agreements in connection with their employment, consulting, advisory, or supply relationships with us. They may breach these agreements and we may not obtain an adequate remedy for breach. Further, third parties may gain access to our trade secrets or independently develop or acquire the same or equivalent information.

Agencies of the United States government conducted some of the research activities that led to the development of antibody technology that some of our proposed antibody-based surgical cancer detection products use. When the United States government participates in research activities, it retains rights that include the right to use the technology for governmental purposes under a royalty-free license, as well as rights to use and disclose technical data that could preclude us from asserting trade secret rights in that data and software.

*We may lose the license rights to certain in-licensed products if we do not exercise adequate diligence.*

Our license agreements for Lymphoseek, RIGS, and ACT contain provisions that require that we demonstrate ongoing diligence in the continuing research and development of these potential products. Cira Bio's rights to certain applications of the ACT technology may be affected by its failure to achieve certain capital raising milestones although no such notices to that effect have been received to date. We have provided information, as required or requested, to the licensors of our technology indicating the steps we have taken to demonstrate our diligence and believe we are adequately doing so to meet the terms and/or intent of our license agreements. However, it is possible that the licensors may not consider our actions adequate in demonstrating such diligence. Should we fail to demonstrate the requisite diligence required by any such agreements or as interpreted by the respective licensors, we may lose our development and commercialization rights for the associated product.

*We could be damaged by product liability claims.*

Our products are used or intended to be used in various clinical or surgical procedures. If one of our products malfunctions or a physician misuses it and injury results to a patient or operator, the injured party could assert a product liability claim against our Company. We currently have product liability insurance with a \$10 million per occurrence limit, which we believe is adequate for our current activities. However, we may not be able to continue to obtain insurance at a reasonable cost. Furthermore, insurance may not be sufficient to cover all of the liabilities resulting from a product liability claim, and we might not have sufficient funds available to pay any claims over the limits of our insurance. Because personal injury claims based on product liability in a medical setting may be very large, an underinsured or an uninsured claim could financially damage our Company.

*We may have difficulty attracting and retaining qualified personnel and our business may suffer if we do not.*

Our business has experienced a number of successes and faced several challenges in recent years that have resulted in several significant changes in our strategy and business plan, including the shifting of resources to support our current product initiatives. Our management will need to remain flexible to support our business model over the next few years. However, losing members of the Neoprobe management team could have an adverse effect on our operations. Our success depends on our ability to attract and retain technical and management personnel with expertise and experience in the medical device business. The competition for qualified personnel in the biotechnology industry is intense and we may not be successful in hiring or retaining the requisite personnel. If we are unable to attract and retain qualified technical and management personnel, we will suffer diminished chances of future success.

*Our common stock is traded over the counter, which may deprive stockholders of the full value of their shares.*

Our common stock is quoted via the OTC Bulletin Board (OTCBB). As such, our common stock may have fewer market makers, lower trading volumes and larger spreads between bid and ask prices than securities listed on an exchange such as the New York Stock Exchange or the NASDAQ Stock Market. These factors may result in higher price volatility and less market liquidity for the common stock.

*A low market price may severely limit the potential market for our common stock.*

Our common stock is currently trading at a price substantially below \$5.00 per share, subjecting trading in the stock to certain SEC rules requiring additional disclosures by broker-dealers. These rules generally apply to any non-NASDAQ equity security that has a market price share of less than \$5.00 per share, subject to certain exceptions (a "penny stock"). Such rules require the delivery, prior to any penny stock transaction, of a disclosure schedule explaining the penny stock market and the risks associated therewith and impose various sales practice requirements on broker-dealers who sell penny stocks to persons other than established customers and institutional or wealthy investors. For these types of transactions, the broker-dealer must make a special suitability determination for the purchaser and have received the purchaser's written consent to the transaction prior to the sale. The broker-dealer also must disclose the commissions payable to the broker-dealer, current bid and offer quotations for the penny stock and, if the broker-dealer is the sole market maker, the broker-dealer must disclose this fact and the broker-dealer's presumed control over the market. Such information must be provided to the customer orally or in writing before or with the written confirmation of trade sent to the customer. Monthly statements must be sent disclosing recent price information for the penny stock held in the account and information on the limited market in penny stocks. The additional burdens imposed upon broker-dealers by such requirements could discourage broker-dealers from effecting transactions in our common stock.

*The price of our common stock has been highly volatile due to several factors that will continue to affect the price of our stock.*

Our common stock traded as low as \$0.95 per share and as high as \$2.30 per share during the 12-month period ended July 31, 2010. The market price of our common stock has been and is expected to continue to be highly volatile. Factors, including announcements of technological innovations by us or other companies, regulatory matters, new or existing products or procedures, concerns about our financial position, operating results, litigation, government regulation, developments or disputes relating to agreements, patents or proprietary rights, may have a significant impact on the market price of our stock. In addition, potential dilutive effects of future sales of shares of common stock by the Company and by stockholders, and subsequent sale of common stock by the holders of warrants and options could have an adverse effect on the market price of our shares.

Some additional factors which could lead to the volatility of our common stock include:

- price and volume fluctuations in the stock market at large which do not relate to our operating performance;
- financing arrangements we may enter that require the issuance of a significant number of shares in relation to the number of shares currently outstanding;
- public concern as to the safety of products that we or others develop; and
- fluctuations in market demand for and supply of our products.

*An investor's ability to trade our common stock may be limited by trading volume.*

Generally, the trading volume for our common stock has been relatively limited. A consistently active trading market for our common stock may not occur on the OTCBB. The average daily trading volume for our common stock on the OTCBB for the 12-month period ended July 31, 2010 was approximately 125,000 shares.



*Some provisions of our organizational and governing documents may have the effect of deterring third parties from making takeover bids for control of our Company or may be used to hinder or delay a takeover bid.*

Our certificate of incorporation authorizes the creation and issuance of “blank check” preferred stock. Our Board of Directors may divide this stock into one or more series and set their rights. The Board of Directors may, without prior stockholder approval, issue any of the shares of “blank check” preferred stock with dividend, liquidation, conversion, voting or other rights, which could adversely affect the relative voting power or other rights of the common stock. Preferred stock could be used as a method of discouraging, delaying, or preventing a take-over of our Company. If we issue “blank check” preferred stock, it could have a dilutive effect upon our common stock. This would decrease the chance that our stockholders would realize a premium over market price for their shares of common stock as a result of a takeover bid.

*Because we will not pay dividends in the foreseeable future, stockholders will only benefit from owning common stock if it appreciates.*

We have never paid dividends on our common stock and we do not intend to do so in the foreseeable future. We intend to retain any future earnings to finance our growth. Accordingly, any potential investor who anticipates the need for current dividends from his investment should not purchase our common stock.

#### **SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus and the information incorporated by reference in this prospectus contain forward-looking statements. We sometimes use words such as “anticipate,” “believe,” “continue,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “will” and similar expressions, as they relate to us, our management and our industry, to identify forward-looking statements. Forward-looking statements relate to our expectations, beliefs, plans, strategies, prospects, future performance, anticipated trends and other future events. Specifically, this prospectus and the information incorporated by reference in this prospectus contain forward-looking statements relating to, among other things:

- our revenue;
- our primary operating costs and expenses;
- capital expenditures;
- evaluation of possible acquisitions of, or investments in business, products and technologies; and
- sufficiency of existing cash to meet operating requirements.

These statements involve known and unknown risks, uncertainties, and other factors that may cause our or our industry’s past results, levels of activity, performance, or achievements to be materially different from any future results, levels of activity, performance, or achievements expressed or implied by such forward-looking statements. Actual results may differ materially. Some of the risks, uncertainties and assumptions that may cause actual results to differ from these forward-looking statements are described in “Risk Factors” and elsewhere in this prospectus, and may also be found in an accompanying prospectus supplement and in information incorporated by reference.

You should read this prospectus, the documents that we filed as exhibits to the registration statement of which this prospectus is a part and the documents that we incorporate by reference in this prospectus completely and with the understanding that our future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements, and we assume no obligation to update these forward-looking statements publicly for any reason.

## CAPITALIZATION

The following table sets forth our other long-term assets, debt and capitalization as of March 31, 2010, as follows:

- on an actual basis; and
- on a pro forma basis to give effect to the exchange of the Montaur Notes and the Series A Preferred Stock for Series B Preferred Stock, and the exchange of the Amended 10% Convertible Note in the principal amount of \$1,000,000, due December 31, 2011, executed by the Company in favor of David C. Bupp, our President and CEO, and certain members of his family (the Bupp Note), for Series C Preferred Stock.

The table does not include the effect of the shares registered in this Registration Statement as the shares registered are: (1) for a secondary offering by selling shareholders; and (2) the sale of an undetermined number and amount of primary shares.

|  | March 31, 2010<br><u>Actual (Unaudited)</u> | <u>Adjustments</u> |           | March 31, 2010<br><u>Pro Forma</u> |
|--|---|--------------------|-----------|------------------------------------|
| Other assets                           | 22,534                                      | (13,061)           | (1)       | 9,473                              |
| Current liabilities                    | 3,422,520                                   | -                  |           | 3,422,520                          |
| Long-term liabilities                  | 13,882,180                                  | (11,923,791)       | (1)(2)(3) | 1,958,389                          |
| Preferred stock                        | 3,000,000                                   | (3,000,000)        | (2)       | -                                  |
| <b>Stockholders' (deficit) equity:</b> |   |                    |           |                                    |
| Preferred stock                        | -   | 11                 | (1)(2)(3) | 11                                 |
| Common stock                           | 81,892                                      |                    |           | 81,892                             |
| Additional paid-in capital             | 184,096,762                                 | 64,666,789         | (1)(2)(3) | 248,763,551                        |
| Accumulated deficit                    | (195,218,800)                               | (49,756,070)       | (1)(2)(3) | (244,974,870)                      |
| Total stockholders' (deficit) equity   | (11,040,146)                                | 14,910,730         |           | 3,870,584                          |
| <b>Total capitalization</b>            | <b>\$ 9,264,554</b>                         |                    |           | <b>\$ 9,251,493</b>                |

- (1) As a result of exchanging the Montaur Notes for Series B Preferred Stock, the Company decreased other assets by \$13,061 and long-term liabilities by \$10,750,000, and increased preferred stock by \$8 and additional paid-in capital by \$47,605,302. The Company also increased accumulated deficit by recognizing a loss on the extinguishment of the Montaur Notes of \$36,868,371.
- (2) As a result of exchanging the Series A Preferred Stock for Series B Preferred Stock, the Company decreased mezzanine preferred stock by \$3,000,000 and long-term liabilities by \$216,000, and increased preferred stock by \$2 and additional paid-in capital by \$11,254,688. The Company also increased accumulated deficit by recognizing a deemed dividend on the Series A Preferred Stock of \$8,038,690.
- (3) As a result of exchanging the Bupp Note for Series C Preferred Stock, the Company decreased long-term liabilities by \$957,791 and increased preferred stock by \$1 and additional paid-in capital by \$5,806,799. The Company also increased accumulated deficit by recognizing a loss on the extinguishment of the Bupp Note of \$4,849,009.

## WHERE YOU CAN FIND MORE INFORMATION AND INCORPORATION BY REFERENCE

We have filed a registration statement on Form S-3 with the Securities and Exchange Commission. This prospectus does not contain all of the information in the registration statement. In addition, we file annual, quarterly and special reports, proxy statements and other information with the Commission. Our Commission filings are available to the public over the Internet at the Commission's web site at <http://www.sec.gov>. You may also read and copy any document we file with the Commission at its public reference facilities at 100 F Street, N.E., Washington, DC 20549. You can also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the Commission at 100 F Street, N.E., Washington, DC 20549. Please call the Commission at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

We "incorporate by reference" into this prospectus the information we file with the Commission (Commission file number 0-26520), which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus. Information that we file with the Commission after the date of this prospectus will automatically update this prospectus. We incorporate by reference the documents listed below, and any filings we make with the Commission under Sections 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934 after the initial filing of the registration statement that contains this prospectus (except for information furnished and not filed with the Commission in a Current Report on Form 8-K):

- our Annual Report on Form 10-K for the year ended December 31, 2009, filed with the Commission on March 31, 2010;
- our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2010, filed with the Commission on May 14, 2010;
- our Current Reports on Form 8-K, dated January 11, 2010 (filed January 11, 2010), dated January 26, 2010 (filed January 28, 2010), dated February 24, 2010 (filed February 26, 2010), dated March 11, 2010 (filed March 12, 2010), dated May 26, 2010 (filed May 27, 2010), dated June 22, 2010 (filed June 28, 2010) and dated July 16, 2010 (filed July 20, 2010); and
- the description of our common stock which is contained in our Form 8-A filed with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, as updated in any amendment or report filed for the purpose of updating such description.

Information furnished by us in Current Reports on Form 8-K under Items 2.02 and 9.01 is expressly not incorporated by reference in this prospectus.

We will provide to each person, including any beneficial owner, to whom a prospectus is delivered, without charge, upon written or oral request, a copy of any or all of the documents that are incorporated by reference into this prospectus but not delivered with the prospectus, including exhibits that are specifically incorporated by reference into such documents. You may request a copy of these filings at no cost, by writing to or telephoning us at:

Neoprobe Corporation  
Attn: Brent L. Larson  
425 Metro Place North  
Dublin, Ohio 43017-1367  
(614) 822-2330

## USE OF PROCEEDS

Unless otherwise indicated in the prospectus supplement, we intend to use the net proceeds from the sale of securities under this prospectus for general corporate purposes, which may include additions to working capital, repayment or redemption of existing indebtedness and financing capital expenditures and acquisitions. The prospectus supplement relating to a particular offering of securities by us will identify the use of proceeds for that offering. We will receive no proceeds from the sale of securities by the selling stockholders.

## DESCRIPTION OF CAPITAL STOCK

The following description of our capital stock is only a summary and is subject to the provisions of our amended and restated certificate of incorporation, or certificate of incorporation, and our amended and restated by-laws, or by-laws, which are included as exhibits to the registration statement of which this prospectus forms a part, and provisions of applicable law.

Our articles of incorporation authorize our board of directors to issue 200,000,000 shares of common stock and 5,000,000 shares of preferred stock. As of July 31, 2010, 82,280,755 shares of common stock were issued outstanding, and 11,000 shares of preferred stock were issued and outstanding.

### **Common Stock**

#### *Dividends*

Each share of common stock is entitled to receive an equal dividend, if one is declared, which is unlikely. We have never paid dividends on our common stock and do not intend to do so in the foreseeable future. We intend to retain any future earnings to finance our growth. See Risk Factors.

#### *Liquidation*

If our company is liquidated, any assets that remain after the creditors are paid, and the owners of preferred stock receive any liquidation preferences, will be distributed to the owners of our common stock pro-rata.

#### *Voting Rights*

Each share of our common stock entitles the owner to one vote. There is no cumulative voting. A simple majority can elect all of the directors at a given meeting and the minority would not be able to elect any directors at that meeting.

#### *Preemptive Rights*

Owners of our common stock have no preemptive rights. We may sell shares of our common stock to third parties without first offering it to current stockholders.

#### *Redemption Rights*

We do not have the right to buy back shares of our common stock except in extraordinary transactions such as mergers and court approved bankruptcy reorganizations. Owners of our common stock do not ordinarily have the right to require us to buy their common stock. We do not have a sinking fund to provide assets for any buy back.

#### *Conversion Rights*

Shares of our common stock can not be converted into any other kind of stock except in extraordinary transactions, such as mergers and court approved bankruptcy reorganizations.

## Preferred Stock

Our certificate of incorporation authorizes our board of directors to issue "blank check" preferred stock. The board of directors may divide this stock into series and set their rights. On December 26, 2007, the board of directors designated 3,000 shares of preferred stock as Series A 8% Cumulative Convertible Preferred Stock. On December 5, 2008, we issued 3,000 shares of Series A 8% Cumulative Convertible Preferred Stock (Series A Preferred Stock) to Montaur. On June 22, 2010, the board of directors designated 10,000 shares of preferred stock as Series B Convertible Preferred Stock (Series B Preferred Stock), and 1,000 shares of preferred stock as Series C Convertible Preferred Stock (Series C Preferred Stock). Also, on June 22, 2010: (1) Montaur surrendered the Amended Series A Note and all 3,000 shares of Series A Preferred Stock issued to it on December 5, 2008, in exchange for 10,000 shares of Series B Preferred Stock; and (2) we issued 1,000 shares of Series C Preferred Stock to David C. Bupp, the Company's President and Chief Executive Officer, and Cynthia B. Gochoco, both individually and as co-executors of the Estate of Walter H. Bupp (the Bupp Investors). Montaur may convert all or any portion of the shares of Series B Preferred Stock into an aggregate 32,700,000 shares of our common stock, and the Bupp Investors may convert all or any portion of the shares of Series C Preferred Stock into an aggregate 3,226,000 shares of our common stock.

The board of directors may, without prior stockholder approval, issue any of the remaining 4,989,000 shares of authorized preferred stock with dividend, liquidation, conversion, voting or other rights which could adversely affect the relative voting power or other rights of the common stock. Preferred stock could be used as a method of discouraging, delaying, or preventing a take-over of our Company. If we do issue preferred stock in the future, it could have a dilutive effect upon the common stock. See Risk Factors.

## DESCRIPTION OF WARRANTS

We may issue warrants for the purchase of common stock in one or more series. We may issue warrants independently or together with common stock, and the warrants may be traded separate and apart from our common stock. Each series of warrants will be issued under a warrant agreement, as described in the applicable prospectus supplement. We urge you to read any applicable warrant agreements, because those documents, and not these descriptions, define your rights as a holder of warrants. A copy of the form of warrant agreement reflecting the provisions of the warrants in a particular offering will be filed as an exhibit to a Current Report on Form 8-K, to be incorporated into the registration statement of which this prospectus constitutes a part prior to the issuance of any warrants.

The applicable prospectus supplement will describe the terms of the warrants offered thereby and the warrant agreement relating to such warrants, including but not limited to the following:

- the offering price or prices;
- the aggregate amount of common stock that may be purchased upon exercise of such warrants and minimum number of warrants that are exercisable;
- the currency or currency units in which the offering price, if any, and the exercise price are payable;
- the number of securities, if any, with which such warrants are being offered and the number of such warrants being offered with each security;
- the date on and after which such warrants and the related securities, if any, will be transferrable separately;
- the amount of securities purchasable upon exercise of each warrant and the price at which the securities may be purchased upon such exercise, and events or conditions under which the amount of securities may be subject to adjustment;
- the date on which the right to exercise such warrants shall commence and the date on which such right shall expire;
- the circumstances, if any, which will cause the warrants to be deemed to be automatically exercised;
- any material risk factors, if any, relating to such warrants;
- the identity of any warrant agent; and
- any other terms of such warrants (which shall not be inconsistent with the provisions of the warrant agreement).

The terms of the warrants that we offer may or may not have the same material terms as our currently outstanding warrants.

Prior to the exercise of any warrants, holders of such warrants will not have any rights of holders of the securities purchasable upon such exercise, including the right to receive payments of dividends, if any, on the securities purchasable upon such exercise, statutory appraisal rights or the right to vote such underlying securities. Prospective purchasers of warrants should be aware that material U.S. federal income tax, accounting and other considerations may be applicable to instruments such as warrants.

#### **DESCRIPTION OF UNITS**

We may issue units comprised of one or more of the other securities described in this prospectus in any combination. Each unit will be issued so that the holder of the unit is also the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security. A unit agreement under which a unit is issued may provide that the securities included in the unit may not be held or transferred separately, at any time or at any time before a specified date.

The applicable prospectus supplement may describe:

- the designation and terms of the units and of the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;
- any provisions for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units; and
- any additional terms of the governing unit agreement.

The applicable prospectus supplement will describe the terms of any units. The preceding description and any description of units in the applicable prospectus supplement does not purport to be complete and is subject to and is qualified in its entirety by reference to the unit agreement and, if applicable, collateral arrangements and depositary arrangements relating to such units.

#### **ANTI-TAKEOVER CHARTER PROVISIONS AND LAWS**

Some features of our certificate of incorporation and by-laws and the Delaware General Corporation Law (DGCL), which are further described below, may have the effect of deterring third parties from making takeover bids for control of our company or may be used to hinder or delay a takeover bid. This would decrease the chance that our stockholders would realize a premium over market price for their shares of common stock as a result of a takeover bid. See Risk Factors.

##### ***Limitations on Stockholder Actions***

Our certificate of incorporation provides that stockholder action may only be taken at a meeting of the stockholders. Thus, an owner of a majority of the voting power could not take action to replace the board of directors, or any class of directors, without a meeting of the stockholders, nor could he amend the by-laws without presenting the amendment to a meeting of the stockholders. Furthermore, under the provisions of the certificate of incorporation and by-laws, only the board of directors has the power to call a special meeting of stockholders. Therefore, a stockholder, even one who owns a majority of the voting power, may neither replace sitting board of directors members nor amend the by-laws before the next annual meeting of stockholders.

##### ***Advance Notice Provisions***

Our by-laws establish advance notice procedures for the nomination of candidates for election as directors by stockholders, as well as for other stockholder proposals to be considered at annual meetings. Generally, we must receive a notice of intent to nominate a director or raise any other matter at a stockholder meeting not less than 120 days before the first anniversary of the mailing of our proxy statement for the previous year's annual meeting. The notice must contain required information concerning the person to be nominated or the matters to be brought before the meeting and concerning the stockholder submitting the proposal.

### ***Delaware Law***

We are incorporated in Delaware, and as such are subject to Section 203 of the DGCL, which provides that a corporation may not engage in any business combination with an interested stockholder during the three years after he becomes an interested stockholder unless:

- the corporation's board of directors approved in advance either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- the interested stockholder owned at least 85 percent of the corporation's voting stock at the time the transaction commenced; or
- the business combination is approved by the corporation's board of directors and the affirmative vote of at least two-thirds of the voting stock which is not owned by the interested stockholder.

An interested stockholder is anyone who owns 15 percent or more of a corporation's voting stock, or who is an affiliate or associate of the corporation and was the owner of 15 percent or more of the corporation's voting stock at any time within the previous three years; and the affiliates and associates of any those persons. Section 203 of the DGCL makes it more difficult for an interested stockholder to implement various business combinations with our Company for a three-year period, although our stockholders may vote to exclude it from the law's restrictions.

### ***Classified Board***

Our certificate of incorporation and by-laws divide our board of directors into three classes with staggered three year terms. There are currently eight directors, two in one class and three in each of two additional classes. At each 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 of directors will be able to determine 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 may not exceed 9 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. Stockholders may only remove directors for cause. If the board of directors 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.

A person who has 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 of directors 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 our Company without paying a fair premium for control to all of the owners of our common stock. This will allow the board of directors 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 that person. However, it may also have the effect of deterring third parties from making takeover bids for control of our Company or may be used to hinder or delay a takeover bid.

### **Transfer Agent and Registrar**

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

## SELLING STOCKHOLDERS

Under this prospectus and any applicable supplements, the selling stockholder may sell shares of our common stock. These shares may be acquired by the selling stockholder upon the exercise of the Montaur Warrants, and/or upon conversion of outstanding shares of our Series B Preferred Stock, which were issued in June 2010 in exchange for the Montaur Notes and the Series A Preferred Stock. The selling stockholder may also sell shares of common stock that were issued to them as interest on the Montaur Notes prior to the June 2010 exchange, or as preferred dividends on the Series A Preferred Stock prior to the June 2010 exchange. As used in this prospectus, “selling stockholder” will refer to the selling stockholder along with any pledgees, assignees, donees, transferees or successors in interest.

The following table presents information regarding the selling stockholder and the shares that may be sold by it pursuant to this prospectus.

| Selling<br>Stockholder                     | Shares Owned<br>Before<br>Offering (1) | Percentage of<br>Outstanding<br>Shares Owned<br>Before Offering (1) | Shares to be<br>Sold in the<br>Offering | Percentage of<br>Outstanding<br>Shares Owned<br>After Offering (1) |
|--|--|---|---|--|
| Platinum-Montaur Life Sciences, LLC (2)(3) | 7,671,621                              | 9.3%  | 15,000,000                              | 9.3%   |

(1) The ownership percentages listed in these columns include only shares beneficially owned by the listed selling stockholder. Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission. In computing the percentage of shares beneficially owned by a selling stockholder, shares of common stock subject to warrants or preferred stock convertible into common stock held by that selling stockholder that were exercisable on or within 60 days after August 2, 2010, were deemed outstanding for the purpose of computing the percentage ownership of that selling stockholder. The ownership percentages are calculated assuming that 82,280,755 shares of common stock were outstanding on August 2, 2010. Of the 7,671,621 shares set forth in the table above, 7,463,985 are held by Platinum Partners Value Arbitrage Fund, LP, a Cayman Island exempt partnership (“PPVAF”). PPVAF’s address is 152 West 57<sup>th</sup> Street, 54<sup>th</sup> Floor, New York, NY. None of the shares held by PPVAF are being offered hereby.

(2) Prior to giving effect to the offering, Platinum-Montaur Life Sciences, LLC (“Montaur”), 152 W. 57<sup>th</sup> Street, 54<sup>th</sup> Floor, New York, NY 10019, holds: (a) 10,000 shares of our Series B Preferred Stock convertible into 32,700,000 shares of our common stock; and (b) warrants to purchase 16,733,333 shares of our common stock. Each of our shares of preferred stock and warrants held by Montaur provide that Montaur may not convert any of the preferred stock, or exercise any of the warrants, to the extent that such conversion or exercise would result in the holder and its affiliates together beneficially owning more than 4.99% or 9.99% of the outstanding shares of our common stock, except on 61 days’ prior written notice to us that Montaur waives such limitation. Following the offering, assuming the sale of all shares of our common stock offered hereby, Montaur will still hold 7,671,621 shares of our common stock.

(3) Marc Nordlicht has the voting and dispositive power over the shares to be sold in the offering. Mr. Nordlicht disclaims beneficial ownership of such shares except to the extent of his pecuniary interest in the selling stockholder.



For each sale of common stock by a selling stockholder, we will file a prospectus supplement setting forth, with respect to each selling stockholder:

- the name of the selling stockholder;
- the nature of any position, office or other material relationship which the selling stockholder will have had during the prior three years with us or any of our predecessors or affiliates;
- the number of common shares owned by the selling stockholder prior to the offering;
- the number of common shares to be offered for the selling stockholder's account; and
- the number of shares and (if one percent or more) the percentage of our common shares to be owned by the selling stockholder after completion of the offering.

#### **PLAN OF DISTRIBUTION**

We and the selling stockholders may sell the securities from time to time pursuant to underwritten public offerings, negotiated transactions, block trades or a combination of these methods. We and the selling stockholders may sell the securities separately or together:

- through one or more underwriters or dealers in a public offering and sale by them;
- through agents; and/or
- directly to one or more purchasers.

The securities may be distributed from time to time in one or more transactions:

- at a fixed price or prices, which may be changed;
- at market prices prevailing at the time of sale;
- at prices related to such prevailing market prices; or
- at negotiated prices.

We or the selling stockholders may solicit directly offers to purchase the securities being offered by this prospectus, and may also designate agents to solicit offers to purchase the securities from time to time. We will name in a prospectus supplement any agent involved in the offer or sale of the securities.

If we utilize a dealer in the sale of the securities being offered by this prospectus, we will sell the securities to the dealer, as principal. The dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale.

If we or the selling stockholders utilize an underwriter in the sale of the securities being offered by this prospectus, we and/or the selling stockholders will execute an underwriting agreement with the underwriter at the time of sale and we will provide the name of any underwriter in the prospectus supplement that the underwriter will use to make resales of the securities to the public. In connection with the sale of the securities, we or the purchasers of securities for whom the underwriter may act as agent may compensate the underwriter in the form of underwriting discounts or commissions. The underwriter may sell the securities to or through dealers, and the underwriter may compensate those dealers in the form of discounts, concessions or commissions.

In compliance with guidelines of the Financial Industry Regulatory Authority, or FINRA, the maximum consideration or discount to be received by any FINRA member or independent broker dealer may not exceed 8.0% of the aggregate amount of the securities offered pursuant to this prospectus and any applicable prospectus supplement.

We will provide in the applicable prospectus supplement any compensation we will pay to underwriters, dealers or agents in connection with the offering of the securities, and any discounts, concessions or commissions allowed by underwriters to participating dealers. Underwriters, dealers and agents participating in the distribution of the securities may be deemed to be underwriters within the meaning of the Securities Act of 1933, as amended, and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions. We may enter into agreements to indemnify underwriters, dealers and agents against civil liabilities, including liabilities under the Securities Act or to contribute to payments they may be required to make in respect thereof.

The securities may or may not be listed on a national securities exchange. To facilitate the offering of securities, certain persons participating in the offering may engage in transactions that stabilize, maintain or otherwise affect the price of the securities. This may include over-allotments or short sales of the securities, which involves the sale by persons participating in the offering of more securities than we sold to them. In these circumstances, these persons would cover such over-allotments or short positions by making purchases in the open market or by exercising their over-allotment option. In addition, these persons may stabilize or maintain the price of the securities by bidding for or purchasing securities in the open market or by imposing penalty bids, whereby selling concessions allowed to dealers participating in the offering may be reclaimed if securities sold by them are repurchased in connection with stabilization transactions. The effect of these transactions may be to stabilize or maintain the market price of the securities at a level above that which might otherwise prevail in the open market. These transactions may be discontinued at any time.

We may enter into derivative transactions with third parties, or sell securities not covered by this prospectus to third parties in privately negotiated transactions. If the applicable prospectus supplement indicates, in connection with any derivative transaction, the third parties may sell securities covered by this prospectus and the applicable prospectus supplement, including in short sale transactions. If so, the third party may use securities pledged by us or borrowed from us or others to settle those sales or to close out any related open borrowings of stock, and may use securities received from us in settlement of those derivatives to close out any related open borrowings of stock. The third party in such sale transactions will be an underwriter and, if not identified in this prospectus, will be identified in the applicable prospectus supplement or a post-effective amendment to the registration statement of which this prospectus is a part. In addition, we may otherwise loan or pledge securities to a financial institution or other third party that in turn may sell the securities short using this prospectus. Such financial institution or other third party may transfer its economic short position to investors in our securities or in connection with a concurrent offering of other securities.

The selling stockholders may also sell our common stock in one or more privately negotiated transactions exempt from the registration requirements of the Securities Act pursuant to Rule 144 under the Securities Act, Section 4(1) of the Securities Act or other applicable exemptions, regardless of whether the securities are covered by the registration statement of which this prospectus forms a part. Such sales, if any, will not form part of the plan of distribution described in this prospectus. The selling stockholders will act independently of us in making decisions with respect to the timing, manner and size of each such sale.

The underwriters, dealers and agents may engage in transactions with us, or perform services for us, in the ordinary course of business.

#### **LEGAL MATTERS**

The validity of the shares offered hereby has been passed upon for us by Porter, Wright, Morris & Arthur LLP, 41 South High Street, Columbus, Ohio 43215.

#### **EXPERTS**

The financial statements as of December 31, 2009 and 2008 and for each of the years then ended incorporated by reference in this Prospectus have been so incorporated in reliance on the report of BDO Seidman, LLP, an independent registered public accounting firm, incorporated herein by reference, given on the authority of said firm as experts in auditing and accounting.

## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth the expenses expected to be incurred by our company in connection with the issuance and distribution of the securities being registered.

|                         |                           |
|-------------------------|---------------------------|
| SEC registration fee    | \$ 3,565.00               |
| Legal fees and expenses | **                        |
| Accounting fees         | \$ 8,500.00               |
| Printing expenses       | **                        |
| Miscellaneous           | \$ 2,074.00               |
| <b>Total</b>            | <b><u>\$14,139.00</u></b> |

\*\* Estimated expenses are presently not known and cannot be estimated.

#### Item 15. Indemnification of Directors and Officers.

Section 145 of the General Corporation Law of the State of Delaware (Section 145) provides that directors and officers of Delaware corporations may, under certain circumstances, be indemnified against expenses (including attorneys' fees) and other liabilities actually and reasonably incurred by them as a result of any suit brought against them in their capacity as a director or officer, if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, if they had no reasonable cause to believe their conduct was unlawful. Section 145 also provides that directors and officers may also be indemnified against expenses (including attorneys' fees) incurred by them in connection with a derivative suit if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made without court approval if such person was adjudged liable to the corporation.

Article V of the Company's By-laws contains provisions which require that the Company indemnify its officers, directors, employees and agents, in substantially the same language as Section 145.

Article Nine, section (b), of the Company's Certificate of Incorporation further provides that no director will be personally liable to the Company or its stockholders for monetary damages or for any breach of fiduciary duty except for breach of the director's duty of loyalty to the Company or its stockholders, for acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law, pursuant to Section 174 of the Delaware General Corporation Law (which imposes liability in connection with the payment of certain unlawful dividends, stock purchases or redemptions), or any amendment or successor provision thereto, or for any transaction from which a director derived an improper personal benefit.

**Item 16. Exhibits.**

| <b>Exhibit Number</b> | <b>Footnote</b> | <b>Exhibit Description</b>  |
|-----------------------|-----------------|---|
| 4.1                   | *               | Amended and Restated Certificate of Incorporation of Neoprobe Corporation as corrected February 18, 1994 and amended June 27, 1994, June 3, 1996, March 17, 1999, May 9, 2000, June 13, 2003, July 27, 2004, June 22, 2005 and November 20, 2006. |
| 4.2                   | (a)             | Amended and Restated By-Laws dated July 21, 1993, as amended July 18, 1995, May 30, 1996 and July 26, 2007.   |
| 5.1                   | *               | Opinion of Porter, Wright, Morris & Arthur LLP.   |
| 23.1                  | *               | Consent of Porter, Wright, Morris & Arthur LLP (included in Exhibit 5).   |
| 23.2                  | *               | Consent of Independent Registered Public Accounting Firm.   |
| 24.1                  | *               | Power of Attorney.  |

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\* Filed herewith.

(a) Incorporated by reference to Exhibit 3.2 previously filed on August 3, 2007, with Neoprobe's Current Report on Form 8-K.

**Item 17. Undertakings.**

(a) The undersigned hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high and of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

*Provided, however*, that paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) If the registrant is relying on Rule 430B:

(A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

(ii) If the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
  - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
  - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
  - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to the directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.
- (d) The undersigned hereby undertakes that:
- (1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b) (1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dublin, State of Ohio, on August 3, 2010.

### NEOPROBE CORPORATION

/s/ Brent L. Larson

Brent L. Larson, Senior Vice President, Chief Financial Officer, Treasurer and Secretary

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

| <b>Signature</b>   | <b>Title</b>  | <b>Date</b>    |
|--|---|----------------|
| <u>* David C. Bupp</u><br>David C. Bupp  | President, Chief Executive Officer<br>and Director<br>(principal executive officer)   | August 3, 2010 |
| <u>/s/ Brent L. Larson</u><br>Brent L. Larson  | Senior Vice President, Chief<br>Financial Officer, Treasurer and<br>Secretary (principal financial officer<br>and principal accounting officer) | August 3, 2010 |
| <u>* Carl J. Aschinger, Jr.</u><br>Carl J. Aschinger, Jr.  | Chairman of the Board of<br>Directors   | August 3, 2010 |
| <u>* Gordon A. Troup</u><br>Gordon A. Troup  | Vice Chairman of the Board of<br>Directors  | August 3, 2010 |
| <u>Kirby I. Bland, M.D.</u><br>Kirby I. Bland, M.D.  | Director  |                |
| <u>* Brendan A. Ford</u><br>Brendan A. Ford  | Director  | August 3, 2010 |
| <u>Owen E. Johnson, M.D.</u><br>Owen E. Johnson, M.D.  | Director  |                |
| <u>* Fred B. Miller</u><br>Fred B. Miller  | Director  | August 3, 2010 |
| <u>* Eric K. Rowinsky, M.D.</u><br>Eric K. Rowinsky, M.D.  | Director  | August 3, 2010 |
| * By: <u>/s/ Brent L. Larson</u><br>Brent L. Larson, attorney-in-fact<br>for each of the persons indicated |   |                |



Exhibit Index

| <b>Exhibit Number</b> | <b>Footnote</b> | <b>Exhibit Description</b>  |
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\* Filed herewith.

(a) Incorporated by reference to Exhibit 3.2 previously filed on August 3, 2007, with Neoprobe's Current Report on Form 8-K.

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**RESTATED CERTIFICATE OF INCORPORATION  
OF  
NEOPROBE CORPORATION**

*(as corrected February 18, 1994 and as amended June 27, 1994,  
July 25, 1995, June 3, 1996, March 17, 1999, May 9, 2000, June 13, 2003, July 29, 2004, June 22, 2005, November 20, 2006; December 26,  
2007; April 30 2009; July 27,2009 and August 2, 2010)*

**ARTICLE ONE**

The name of the corporation is Neoprobe Corporation.

**ARTICLE TWO**

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**

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 authorized shares 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 duly adopted by the Board of Directors on March 3, 1994 and duly adopted by the stockholders on May 26, 1994. It was again amended to increase the number of authorized shares to 80,000,000, consisting of 75,000,000 shares of Common Stock and 5,000,000 shares of Preferred Stock, by resolution duly adopted by the Board of Directors on April 15, 2003, and duly adopted by the stockholders on June 12, 2003. It was further amended to increase the number of authorized shares to 105,000,000, consisting of 100,000,000 shares of Common Stock and 5,000,000 shares of Preferred Stock, by resolution duly adopted by the Board of Directors on April 16, 2004, and duly adopted by the stockholders on July 27, 2004. Article Four was again amended to increase the number of authorized shares to 155,000,000, consisting of 150,000,000 shares of Common Stock and 5,000,000 shares of Preferred Stock, by resolution duly adopted by the Board of Directors on March 15, 2005, and duly adopted by the Stockholders on June 13, 2005, and was further amended to increase the number of authorized shares to 205,000,000, consisting of 200,000,000 shares of Common Stock and 5,000,000 shares of Preferred Stock, by resolution duly adopted by the Board of Directors on May 12, 2010, and duly adopted by the Stockholders on July 16, 200 .*

**ARTICLE FOUR**

4.1 Authorized Shares. The total number of shares of capital stock which the Corporation has authority to issue is 205,000,000 shares, consisting of:

- (a) 200,000,000 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**

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**

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**

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 duly adopted by the Board of Directors on January 18, 1996 and duly adopted by the stockholders at the Annual Meeting of Stockholders held on May 30, 1996).*

#### **ARTICLE EIGHT**

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 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**

(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**

The Corporation is to have perpetual existence.

\* \* \*

*(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;

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 provisions which were incorporated in a Certificate of Designations, Preferences and Rights of Series A Junior Participating Preferred Stock filed on July 25, 1995, which were later removed by a Certificate of Elimination filed on November 20, 2006):*

\* \* \*

*(The Board of Directors provided for a series of Preferred Stock on December 21, 2007 by the addition to the Certificate of Incorporation of the following provisions which were incorporated in a Certificate of Designations, Voting Powers, Preferences, Limitations, Restrictions and Relative Rights of Series A 8% Cumulative Convertible Preferred Stock filed on December 26, 2007, which were later amended and restated by a Certificate of Amendment filed on April 30 2009, and further amended and restated by a Certificate of Amendment filed July 27, 2009. These provisions were later removed by a Certificate of Elimination filed on August 2, 2010 )*

\* \* \*

*(The Board of Directors provided for an additional series of Preferred Stock on June 18, 2010 by the addition to the Certificate of Incorporation of the following provisions which were incorporated in a Certificates of Designations, Voting Powers, Preferences, Limitations, Restrictions and Relative Rights of Series B Convertible Preferred Stock filed on June 22, 2010.)*

1. Designation and Rank.

(a) Designation. The designation of such series of the Preferred Stock shall be the Series B Convertible Preferred Stock, par value \$.001 per share (the "Series B Preferred Stock"). The maximum number of shares of Series B Preferred Stock shall be Ten Thousand (10,000) Shares.

(b) Rank. The Series B Preferred Stock shall rank prior to the common stock, par value \$.001 per share (the "Common Stock"), and to all other classes and series of equity securities of the Company which by their terms do not rank on a parity with or senior to the Series B Preferred Stock ("Junior Stock"). The Series C Convertible Preferred Stock shall rank senior to the Series B Preferred Stock as to rights to cash dividends, and on a parity with the Series B Preferred Stock as to distributions on liquidation, dissolution or winding up. The Series B Preferred Stock shall be subordinate to and rank junior to all indebtedness of the Company now or hereafter outstanding.

2. Dividends. Whenever the Board of Directors declares a dividend on the Common Stock each holder of record of a share of Series B Preferred Stock, or any fraction of a share of Series B Preferred Stock, on the date set by the Board of Directors to determine the owners of the Common Stock of record entitled to receive such dividend (the "Record Date") shall be entitled to receive, out of any assets at the time legally available therefore, an amount equal to such dividend declared on one share of Common Stock multiplied by the number of shares of Common Stock into which such share, or such fraction of a share, of Series B Preferred Stock could be converted on the Record Date, without regard to Section 7 hereof.

3. Voting Rights.

(a) Class Voting Rights. The Series B Preferred Stock shall have the following class voting rights. The Company shall not, without the affirmative vote or consent of the holders of at least a majority of the shares of the Series B Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting, in which the holders of the Series B Preferred Stock vote separately as a class, amend, alter or repeal the provisions of the Series B Preferred Stock so as to adversely affect any right, preference, privilege or voting power of the Series B Preferred Stock. So long as at least 25% of the shares of the Series B Preferred Stock remain outstanding, the Company shall not, without the affirmative vote or consent of the holders of at least a majority of the shares of the Series B Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting, in which the holders of the Series B Preferred Stock vote separately as a class: (i) repurchase, redeem or pay dividends on (whether in cash, in kind, or otherwise), shares of the Company's Junior Stock; (ii) at any time prior to December 31, 2011, issue or permit to exist any indebtedness for borrowed money, except for (x) obligations under conditional sale or other title retention agreements relating to capital assets acquired by the Company, (y) borrowings from a bank or other financial institution under a working capital line or revolving line of credit in an aggregate principal amount of less than \$2,000,000, or (z) indebtedness of the Subsidiaries (as such term is defined in the Securities Purchase Agreement, dated as of December 26, 2007 between the Company and Platinum-Montaur Life Sciences, LLC) of the Company in an aggregate principal amount not to exceed \$1,000,000; (iii) effect any distribution with respect to any Junior Stock, or (iv) issue any Common Stock or Common Stock equivalent for a per Common Stock share effective price less than \$1.35, other than (i) issuances of securities upon the exercise or exchange of or conversion of any securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the Issuance Date, provided that such securities have not been amended since the Issuance Date to increase the number of such securities or to decrease the exercise, exchange or conversion price of any such securities; (ii) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors, but not including a transaction with an entity whose primary business is investing in securities or a transaction, the primary purpose of which is to raise capital; or (iii) issuances, pursuant to employee stock option plans approved by the Company's shareholders, of options to employees, officers or directors of the Company, approved by a majority of the non-employee members of the Board of Directors of the Company or a majority of the members of a committee of nonemployee directors established for such purpose. For purposes of clause (iv) above, the "per Common Stock share effective price" in the case of any Common Stock equivalent shall be determined by dividing (X) the total amount received or receivable by the Company as consideration for the issue or sale of such Common Stock equivalents, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exercise thereof, by (B) the total maximum number of shares of Common Stock issuable upon the conversion or exercise of all such Common Stock equivalents.

(b) General Voting Rights. Except with respect to transactions upon which the Series B Preferred Stock shall be entitled to vote separately as a class pursuant to Section 3(a) above, the Series B Preferred Stock shall have no voting rights. The Common Stock into which the Series B Preferred Stock is convertible shall, upon issuance, have all of the same voting rights as other issued and outstanding Common Stock of the Company.

4. Liquidation Preference.

(a) In the event of the liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Company, the holders of shares of the Series B Preferred Stock then outstanding shall be entitled to receive, out of the assets of the Company, whether such assets are capital or surplus of any nature, before any payment shall be made or any assets distributed to the holders of the Common Stock or any other Junior Stock (but *pari passu* with any payment to holders of Series C Convertible Preferred Stock), an amount per share of Series B Preferred Stock calculated by taking the total amount available for distribution to holders of all the Company's outstanding Common Stock before deduction of any preference payments for the Series B Preferred Stock or Series C Convertible Preferred Stock, divided by the total of (x) all of the then outstanding shares of the Company's Common Stock, plus (y) all of the shares of the Company's Common Stock into which all of the outstanding shares of the Series B Preferred Stock and Series C Convertible Preferred Stock can be converted, and then (z) multiplying the sum so obtained by the number of shares of Common Stock into which such share of Series B Preferred Stock could then be converted (the "Liquidation Preference Amount"). The liquidation payment with respect to each outstanding fractional share of Series B Preferred Stock shall be equal to a ratably proportionate amount of the liquidation payment with respect to each outstanding share of Series B Preferred Stock. All payments for which this Section 4(a) provides shall be in cash, property (valued at its fair market value as determined by an independent appraiser reasonably acceptable to the holders of a majority of the Series B Preferred Stock), or a combination thereof; provided, however, that no cash shall be paid to holders of Junior Stock unless each holder of the outstanding shares of Series B Preferred Stock has been paid in cash the full Liquidation Preference Amount to which such holder is entitled as provided herein. After payment of the full Liquidation Preference Amount to which each holder is entitled, such holders of shares of Series B Preferred Stock will not be entitled to any further participation as such in any distribution of the assets of the Company.

(b) A consolidation or merger of the Company with or into any other corporation or corporations, or a sale of all or substantially all of the assets of the Company, or the effectuation by the Company of a transaction or series of transactions in which more than 50% of the voting shares of the Company is disposed of or conveyed, shall be, at the election of the holders of a majority of the Series B Preferred Stock, deemed to be a liquidation, dissolution, or winding up within the meaning of this Section 4; *provided, however*, that any such transaction shall not be deemed to be a liquidation, dissolution or winding up unless such transaction is approved by the Board of Directors of the Company and the holders of the Series B Preferred Stock do not control the Board of Directors. In the event of the merger or consolidation of the Company with or into another corporation that is not treated as a liquidation pursuant to this Section 4(b), the Series B Preferred Stock shall maintain its relative powers, designations and preferences provided for herein (including any adjustment required under Section 5(c)(v) hereof) and no merger shall result inconsistent therewith.

(c) Written notice of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, stating a payment date and the place where the distributable amounts shall be payable, shall be given by mail, postage prepaid, no less than forty-five (45) days prior to the payment date stated therein, to the holders of record of the Series B Preferred Stock at their respective addresses as the same shall appear on the books of the Company.

5. Conversion. The holders of Series B Preferred Stock shall have the following conversion rights (the "Conversion Rights"):

(a) Right to Convert. At any time on or after the date of issuance of the Series B Preferred Stock (the "Issuance Date"), the holder of any such shares of Series B Preferred Stock may, at such holder's option, subject to the limitations set forth in Section 7 herein, elect to convert (a "Voluntary Conversion") all or any portion of the shares of Series B Preferred Stock held by such person into a number of fully paid and nonassessable shares of Common Stock at a conversion rate of Three Thousand Two Hundred Seventy (3,270) shares of Common Stock for each share of Preferred Stock (subject to adjustments set forth in Section 5(c) herein, the "Conversion Rate"). The Company shall keep written records of the conversion of the shares of Series B Preferred Stock converted by each holder. A holder shall be required to deliver the original certificates representing the shares of Series B Preferred Stock upon any conversion of the Series B Preferred Stock as provided in Section 5(b) below.

(b) Mechanics of Voluntary Conversion. The Voluntary Conversion of Series B Preferred Stock shall be conducted in the following manner:

(i) *Holder's Delivery Requirements*. To convert Series B Preferred Stock into full shares of Common Stock on any date (the "Voluntary Conversion Date"), the holder thereof shall (A) transmit by facsimile (or otherwise deliver), for receipt on or prior to 5:00 p.m., Eastern Time on such date, a copy of a fully executed notice of conversion in the form attached hereto as Exhibit I (the "Conversion Notice"), to the Company, and (B) with respect to the final conversion of shares of Series B Preferred Stock held by any holder, such holder shall surrender to a common carrier for delivery to the Company as soon as practicable following such Conversion Date but in no event later than six (6) business days after such date the original certificates representing the shares of Series B Preferred Stock being converted (or an indemnification undertaking with respect to such shares in the case of their loss, theft or destruction) (the "Preferred Stock Certificates").

(ii) *Company's Response*. Upon receipt by the Company of a facsimile copy of a Conversion Notice, the Company shall immediately send, via facsimile, a confirmation of receipt of such Conversion Notice to such holder and the Company or its designated transfer agent (the "Transfer Agent"), as applicable, shall, within five (5) business days following the date of receipt by the Company of the certificate representing the shares of Series B Preferred Stock being converted, (x) issue and deliver to the Depository Trust Company ("DTC") account on the holder's behalf via the Deposit Withdrawal Agent Commission System ("DWAC") as specified in the Conversion Notice, registered in the name of the holder or its designee, for the number of shares of Common Stock to which the holder shall be entitled, and (y) if the certificate so surrendered represents more shares of Series B Preferred Stock than those being converted, issue and deliver to the holder a new certificate for such number of shares of Series B Preferred Stock represented by the surrendered certificate which were not converted.

(iii) *Record Holder*. The person or persons entitled to receive the shares of Common Stock issuable upon a conversion of the Series B Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.



(iv) *Company's Failure to Timely Convert.* If within five (5) business days of the Company's receipt of the Conversion Notice (the "Share Delivery Period") the Company shall fail to issue and deliver to a holder the number of shares of Common Stock to which such holder is entitled upon such holder's conversion of the Series B Preferred Stock (a "Conversion Failure"), in addition to all other available remedies which such holder may pursue hereunder, the Company shall pay additional damages to such holder on each business day after such fifth (5th) business day that such conversion is not timely effected in an amount equal to 0.5% of the product of (A) the sum of the number of shares of Common Stock not so issued to the holder on a timely basis pursuant to Section 5(b)(ii) and to which such holder is entitled and (B) the closing bid price of the Common Stock on the last possible date which the Company could have issued such Common Stock to such holder without violating Section 5(b)(ii). If the Company fails to pay the additional damages set forth in this Section 5(b)(iv) within five (5) business days of the date incurred, then such payment shall bear interest at the rate of 2% per month (pro rated for partial months) until such payments are made.

(c) Adjustments of Conversion Rate.

(i) *Adjustments for Stock Splits and Combinations.* If the Company shall at any time or from time to time after the Issuance Date, effect a stock split of the outstanding Common Stock, the Conversion Rate shall be proportionately increased. If the Company shall at any time or from time to time after the Issuance Date, combine the outstanding shares of Common Stock, the Conversion Rate shall be proportionately decreased. Any adjustments under this Section 5(e)(i) shall be effective at the close of business on the date the stock split or combination occurs.

(ii) *Adjustments for Certain Dividends and Distributions.* If the Company shall at any time or from time to time after the Issuance Date, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in shares of Common Stock, then, and in each event, the Conversion Rate shall be increased as of the time of such issuance or, in the event such record date shall have been fixed, as of the close of business on such record date, by multiplying, as applicable, the Conversion Rate then in effect by a fraction:

(A) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately following the time of such issuance or the close of business on such record date; and

(B) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance.

(iii) *Adjustment for Other Dividends and Distributions.* If the Company shall at any time or from time to time after the Issuance Date, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in securities of the Company other than shares of Common Stock, then, and in each event, an appropriate revision to the applicable Conversion Rate shall be made and provision shall be made (by adjustments of the Conversion Rate or otherwise) so that the holders of Series B Preferred Stock shall receive upon conversions thereof, in addition to the number of shares of Common Stock receivable thereon, the number of securities of the Company which they would have received had their Series B Preferred Stock been converted into Common Stock on the date of such event (without regard to Section 7 hereof) and had thereafter, during the period from the date of such event to and including the Conversion Date, retained such securities (together with any distributions payable thereon during such period), giving application to all adjustments called for during such period under this Section 5(c)(iii) with respect to the rights of the holders of the Series B Preferred Stock.

(iv) *Adjustments for Reclassification, Exchange or Substitution.* If the Common Stock issuable upon conversion of the Series B Preferred Stock at any time or from time to time after the Issuance Date shall be changed to the same or different number of shares of any class or classes of stock, whether by reclassification, exchange, substitution or otherwise (other than by way of a stock split or combination of shares or stock dividends provided for in Sections 5(c)(i), (ii) and (iii), or a reorganization, merger, consolidation, or sale of assets provided for in Section 5(c)(v)), then, and in each event, an appropriate revision to the Conversion Rate shall be made and provisions shall be made so that the holder of each share of Series B Preferred Stock shall have the right thereafter to convert such share of Series B Preferred Stock into the kind and amount of shares of stock and other securities receivable upon reclassification, exchange, substitution or other change, by holders of the number of shares of Common Stock into which such share of Series B Preferred Stock might have been converted immediately prior to such reclassification, exchange, substitution or other change (without giving effect to the limitations set forth in Section 7 hereof), all subject to further adjustment as provided herein.

(v) *Adjustments for Reorganization, Merger, Consolidation or Sales of Assets.* If at any time or from time to time after the Issuance Date there shall be a capital reorganization of the Company (other than by way of a stock split or combination of shares or stock dividends or distributions provided for in Section 5(c)(i), (ii) and (iii), or a reclassification, exchange or substitution of shares provided for in Section 5(c)(iv)), or a merger or consolidation of the Company with or into another corporation, or the sale of all or substantially all of the Company's properties or assets to any other person that is not deemed a liquidation pursuant to Section 4(b) (an "Organic Change"), then as a part of such Organic Change an appropriate revision to the Conversion Rate shall be made and provision shall be made so that the holder of each share of Series B Preferred Stock shall have the right thereafter to convert such share of Series B Preferred Stock into the kind and amount of shares of stock and other securities or property of the Company or any successor corporation resulting from the Organic Change as the holder would have received as a result of the Organic Change and if the holder had converted its Series B Preferred Stock (without regard to Section 7 hereof) into the Company's Common Stock prior to the Organic Change.

(vi) *Record Date.* In case the Company shall take record of the holders of its Common Stock or any other Preferred Stock for the purpose of entitling them to subscribe for or purchase Common Stock or Convertible Securities, then the date of the issue or sale of the shares of Common Stock shall be deemed to be such record date.

(d) No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith, assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series B Preferred Stock against impairment. In the event a holder shall elect to convert any shares of Series B Preferred Stock as provided herein, the Company cannot refuse conversion based on any claim that such holder or anyone associated or affiliated with such holder has been engaged in any violation of law, unless an injunction from a court, on notice, restraining and/or adjoining conversion of all or of said shares of Series B Preferred Stock shall have been issued.

(e) Certificates as to Adjustments. Upon occurrence of each adjustment or readjustment of the Conversion Rate or number of shares of Common Stock issuable upon conversion of the Series B Preferred Stock pursuant to this Section 5, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such Series B Preferred Stock a certificate setting forth such adjustment and readjustment, showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon written request of the holder of such affected Series B Preferred Stock, at any time, furnish or cause to be furnished to such holder a like certificate setting forth such adjustments and readjustments, the Conversion Rate in effect at the time, and the number of shares of Common Stock and the amount, if any, of other securities or property which at the time would be received upon the conversion of a share of such Series B Preferred Stock. Notwithstanding the foregoing, the Company shall not be obligated to deliver a certificate unless such certificate would reflect an increase or decrease of at least one percent (1%) of such adjusted amount.

(f) Issue Taxes. The Company shall pay any and all issue and other taxes, excluding federal, state or local income taxes, that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Series B Preferred Stock pursuant thereto; *provided, however*, that the Company shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(g) Notices. Any notice, demand, request, waiver or other communication required or permitted to be given hereunder shall be in writing and shall be effective (i) upon hand delivery, telecopy or facsimile at the address or number designated in the Exchange Agreement (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received) or (ii) on the second business day following the date of mailing by express overnight courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur. The Company will give written notice each holder of Series B Preferred Stock at least ten (10) days prior to the date on which the Company takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Organic Change, dissolution, liquidation or winding-up and in no event shall such notice be provided to such holder prior to such information being made known to the public. Subject to Section 4(c), the Company will also give written notice to each holder of Series B Preferred Stock at least ten (10) days prior to the date on which any Organic Change will take place and in no event shall such notice be provided to such holder prior to such information being made known to the public

(h) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series B Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall at its option either (i) pay cash equal to the product of such fraction multiplied by the average of the closing bid prices of the Common Stock for the five (5) consecutive trading days immediately preceding the Voluntary Conversion Date, as applicable, or (ii) in lieu of issuing such fractional shares issue one additional whole share to the holder.

(i) Reservation of Common Stock. The Company shall, so long as any shares of Series B Preferred Stock are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series B Preferred Stock, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series B Preferred Stock then outstanding (without regard to the limitations on conversion set forth in Section 7 hereof).

(j) Retirement of Series B Preferred Stock. Conversion of Series B Preferred Stock shall be deemed to have been effected on the applicable Voluntary Conversion Date. The Company shall keep written records of the conversion of the shares of Series B Preferred Stock converted by each holder. A holder shall be required to deliver the original certificates representing the shares of Series B Preferred Stock upon complete conversion of the Series B Preferred Stock represented by such certificates. A delivery of original certificates pursuant to Section 5(b)(i) shall be deemed to comply with the requirements of this Section 5(j).

(k) Regulatory Compliance. If any shares of Common Stock to be reserved for the purpose of conversion of Series B Preferred Stock require registration or listing with or approval of any governmental authority, stock exchange or other regulatory body under any federal or state law or regulation or otherwise before such shares may be validly issued or delivered upon conversion, the Company shall, at its sole cost and expense, in good faith and as expeditiously as possible, endeavor to secure such registration, listing or approval, as the case may be.

6. No Preemptive Rights. Except as provided in Section 5 hereof, no holder of the Series B Preferred Stock shall be entitled to rights to subscribe for, purchase or receive any part of any new or additional shares of any class, whether now or hereinafter authorized, or of bonds or debentures, or other evidences of indebtedness convertible into or exchangeable for shares of any class, but all such new or additional shares of any class, or any bond, debentures or other evidences of indebtedness convertible into or exchangeable for shares, may be issued and disposed of by the Board of Directors on such terms and for such consideration (to the extent permitted by law), and to such person or persons as the Board of Directors in their absolute discretion may deem advisable.

7. Conversion Restriction. Notwithstanding anything to the contrary set forth in Section 5 of this Certificate of Designation, at no time may a holder of shares of Series B Preferred Stock convert shares of the Series B Preferred Stock if the number of shares of Common Stock to be issued pursuant to such conversion would exceed, when aggregated with all other shares of Common Stock owned by such holder at such time, the number of shares of Common Stock which would result in such holder owning (as determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules thereunder) more than 9.99% of all of the Common Stock outstanding at such time; *provided, however*, that upon a holder of Series B Preferred Stock providing the Company with sixty-one (61) days notice (pursuant to Section 5(g) hereof) (the "Waiver Notice") that such holder would like to waive Section 7 of this Certificate of Designation with regard to any or all shares of Common Stock issuable upon conversion of Series B Preferred Stock, this Section 7 shall be of no force or effect with regard to those shares of Series B Preferred Stock referenced in the Waiver Notice.

8. Inability to Fully Convert.

(a) Holder's Option if Company Cannot Fully Convert. If, upon the Company's receipt of a Conversion Notice, the Company cannot issue shares of Common Stock for any reason, including, without limitation, because the Company (i) does not have a sufficient number of shares of Common Stock authorized and available, or (ii) is otherwise prohibited by applicable law or by the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Company or its securities from issuing all of the Common Stock which is to be issued to a holder of Series B Preferred Stock pursuant to a Conversion Notice, then the Company shall issue as many shares of Common Stock as it is able to issue in accordance with such holder's Conversion Notice, and with respect to the unconverted Series B Preferred Stock (the "Unconverted Preferred Stock"), the holder, solely at such holder's option, can elect to, at any time after receipt of notice from the Company that there is Unconverted Preferred Stock, to void the holder's Conversion Notice as to the number of shares of Common Stock the Company is unable to issue and retain or have returned, as the case may be, the certificates for the shares of the Unconverted Preferred Stock.

(b) Mechanics of Fulfilling Holder's Election. The Company shall immediately send via facsimile to a holder of Series B Preferred Stock, upon receipt of a facsimile copy of a Conversion Notice from such holder which cannot be fully satisfied as described in Section 8(a) above, a notice of the Company's inability to fully satisfy such holder's Conversion Notice (the "Inability to Fully Convert Notice"). Such Inability to Fully Convert Notice shall indicate (i) the reason why the Company is unable to fully satisfy such holder's Conversion Notice, and (ii) the number of shares of Series B Preferred Stock which cannot be converted.

9. Automatic Conversion.

(a) Automatic Conversion Events. All outstanding shares of Series B Preferred Stock shall be automatically converted into Common Stock at the Conversion Rate upon the earlier to occur of (i) the closing of a firm commitment underwritten public offering of Common Stock of the Company pursuant to an effective registration statement under Section 5 of the Securities Act in which the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) from such public offering are at least \$10,000,000, or (ii) December 31, 2012 (each, an "Automatic Conversion Event").

(b) Mechanics of Automatic Conversion. Upon the occurrence of an Automatic Conversion Event, the outstanding Series B Preferred Stock shall be converted into Common Stock automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the Common Stock issuable upon such conversion unless the certificates evidencing such Series B Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder certifies to the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon surrender by any holder of the certificates formerly representing shares of Series B Preferred Stock to the Company or the transfer agent, there shall be issued and delivered to such holder promptly in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series B Preferred Stock surrendered were converted on the date on which such automatic conversion occurred, and the Company shall promptly pay in cash (at the fair market value per share of Common Stock determined by the Board of Directors as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of shares of Series B Preferred Stock being converted. Until surrendered as provided above, each certificate formerly representing Series B Preferred Stock shall be deemed for all corporate purposes to represent the number of shares of Common Stock resulting from such automatic conversion.

(c) Inability to Convert. Notwithstanding the provisions of Section 9(a) if, upon the occurrence of an Automatic Conversion Event, the Company cannot issue shares of Common Stock to fully effect the conversion for any reason, including, without limitation, because the Company (i) does not have a sufficient number of shares of Common Stock authorized and available, (ii) is otherwise prohibited by applicable law or by the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Company or its securities from issuing all of the Common Stock which is to be issued to a holder of Series B Preferred Stock, or (iii) the conversion would be prohibited by the provisions of Section 7 hereof and such prohibition has not been waived by the holder, then the Company shall issue as many shares of Common Stock as it is able to issue, and with respect to the unconverted Series B Preferred Stock (the "Unconverted Preferred Stock"), deliver to the holder a certificate for the shares of the Unconverted Preferred Stock. In the event that the Company is thereafter able to convert the Unconverted Preferred Stock, it shall so notify the holder in writing, and such notice shall be deemed to be an Automatic Conversion Event for purposes of this Section 9.

10. Vote to Change the Terms of Preferred Stock. The affirmative vote at a meeting duly called for such purpose, or the written consent without a meeting, of the holders of not less than a majority of the then outstanding shares of Series B Preferred Stock, shall be required for any change to this Certificate of Designation or the Company's Certificate of Incorporation that would amend, alter, change or repeal any of the powers, designations, preferences and rights of the Series B Preferred Stock.

11. Lost or Stolen Certificates. Upon receipt by the Company of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of any certificates representing the shares of Series B Preferred Stock, and, in the case of loss, theft or destruction, of any indemnification undertaking by the holder to the Company and, in the case of mutilation, upon surrender and cancellation of such certificate(s), the Company shall execute and deliver new preferred stock certificate(s) of like tenor and date.

12. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation, at law or in equity (including a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit a holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Certificate of Designation. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of the Series B Preferred Stock and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holders of the Series B Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

13. Specific Shall Not Limit General; Construction. No specific provision contained in this Certificate of Designation shall limit or modify any more general provision contained herein.

14. Failure or Indulgence Not Waiver. No failure or delay on the part of a holder of Series B Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

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*(The Board of Directors provided for an additional series of Preferred Stock on June 18, 2010 by the addition to the Certificate of Incorporation of the following provisions which were incorporated in a Certificates of Designations, Voting Powers, Preferences, Limitations, Restrictions and Relative Rights of Series C Convertible Preferred Stock filed on June 22, 2010.)*

1. Designation and Rank.

(a) Designation. The designation of such series of the Preferred Stock shall be the Series C Convertible Preferred Stock, par value \$.001 per share (the "Series C Preferred Stock"). The maximum number of shares of Series C Preferred Stock shall be One Thousand (1,000) Shares.

(b) Rank. The Series C Preferred Stock shall rank prior to the common stock, par value \$.001 per share (the "Common Stock"), and to all other classes and series of equity securities of the Company which by their terms do not rank on a parity with or senior to the Series C Preferred Stock ("Junior Stock"). The Series C Preferred Stock shall rank senior to the Series B Convertible Preferred Stock as to rights to cash dividends, and on a parity with the Series B Convertible Preferred Stock as to distributions on liquidation, dissolution or winding up. The Series C Preferred Stock shall be subordinate to and rank junior to all indebtedness of the Company now or hereafter outstanding.

2. Dividends.

(a) Quarterly Dividends. The holders of shares of the Series C Preferred Stock shall be entitled to receive, out of funds legally available therefor, dividends at an annual rate equal to 10% of the Liquidation Preference Amount (as defined below), whether or not declared. Accrued and unpaid dividends shall compound on a quarterly basis, and shall be, except as set forth in Section 2(b) below, payable in cash. The Board of Directors may fix a record date for the determination of holders of shares of Series C Preferred Stock entitled to receive payment of such dividends, which record date shall not be more than sixty (60) days prior to the applicable dividend payment date. The first such dividend payment shall be due and payable on September 30, 2010, with payments due and payable thereafter on June 30, September 30, December 31 and March 31 of each year. All accrued and unpaid dividends, if any, shall be mandatorily paid immediately prior to the earlier to occur of (i) a liquidation, dissolution or winding up (or deemed liquidation, dissolution or winding up under Section 4(b) hereof) of the Company (a "Liquidation"), or (ii) a Voluntary Conversion pursuant to Section 5 hereof.

(b) Payment of Dividends. At the option of the Company in compliance with this Section 2(b), the Company may pay dividends on the Series C Preferred Stock in registered shares of Common Stock, with each share of Common Stock being valued for this purpose at 90% of the average VWAP for the five (5) trading days immediately preceding the date on which such dividend is due and payable. Notwithstanding the above, no dividend shall be paid in Common Stock (i) in connection with a Liquidation, or, (ii) unless the shares of Common Stock received upon such payment shall be freely salable by the recipient pursuant to a then effective registration statement under the Securities Act of 1933. Certificates evidencing shares of Common Stock delivered as a payment of dividends pursuant to this Section 2(b) shall be delivered to the holders via no later than five (5) business days following the relevant dividend payment date. "VWAP" means, for any date, (i) the daily volume weighted average price of the Common Stock for such date on the OTC Bulletin Board (or national securities exchange, if applicable) as reported by Bloomberg Financial L.P. (based on a trading day from 9:30 a.m. Eastern Time to 4:02 p.m. Eastern Time); (ii) if the Common Stock is not then listed or quoted on the OTC Bulletin Board (or national securities exchange, if applicable) and if prices for the Common Stock are then reported in the "Pink Sheets" published by the Pink Sheets, LLC (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported; or (iii) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holder and reasonably acceptable to the Company.

(c) Junior Stock Dividends. The Company shall not declare or pay any cash dividends on, or make any other distributions with respect to or redeem, purchase or otherwise acquire for consideration, any shares of Junior Stock unless and until all accrued and unpaid dividends on the Series C Preferred Stock have been paid in full; *provided* that the foregoing prohibition shall not apply to the repurchase, redemption or payment of dividends or distributions on or with respect to the Series B Convertible Preferred Stock in conformity with the designation of the powers, preferences, limitations, restrictions, and relative rights thereof. In all events, Junior Stock dividends shall be subject to the restrictions set forth in Section 3(a) below

3. Voting Rights.

(a) Class Voting Rights. The Series C Preferred Stock shall have the following class voting rights. The Company shall not, without the affirmative vote or consent of the holders of at least a majority of the shares of the Series C Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting, in which the holders of the Series C Preferred Stock vote separately as a class, amend, alter or repeal the provisions of the Series C Preferred Stock so as to adversely affect any right, preference, privilege or voting power of the Series C Preferred Stock. So long as at least 25% of the shares of the Series C Preferred Stock remain outstanding, the Company shall not, without the affirmative vote or consent of the holders of at least a majority of the shares of the Series C Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting, in which the holders of the Series C Preferred Stock vote separately as a class: (i) repurchase, redeem or pay dividends on (whether in cash, in kind, or otherwise), shares of the Company's Junior Stock; or (ii) effect any distribution with respect to Junior Stock; *provided* that the foregoing prohibition shall not apply to the repurchase, redemption or payment of dividends or distributions on or with respect to the Series B Convertible Preferred Stock in conformity with the designation of the powers, preferences, limitations, restrictions, and relative rights thereof.

(b) General Voting Rights. Except with respect to transactions upon which the Series C Preferred Stock shall be entitled to vote separately as a class pursuant to Section 3(a) above, the Series C Preferred Stock shall have no voting rights. The Common Stock into which the Series C Preferred Stock is convertible shall, upon issuance, have all of the same voting rights as other issued and outstanding Common Stock of the Company.

4. Liquidation Preference.

(a) In the event of the liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Company, the holders of shares of the Series C Preferred Stock then outstanding shall be entitled to receive, out of the assets of the Company, whether such assets are capital or surplus of any nature, before any payment shall be made or any assets distributed to the holders of the Common Stock or any other Junior Stock (but *pari passu* with any payment to holders of Series B Convertible Preferred Stock), an amount per share of Series C Preferred Stock calculated by taking the total amount available for distribution to holders of all the Company's outstanding Common Stock before deduction of any preference payments for the Series B Convertible Preferred Stock or Series C Preferred Stock, divided by the total of (x) all of the then outstanding shares of the Company's Common Stock, plus (y) all of the shares of the Company's Common Stock into which all of the outstanding shares of the Series B Convertible Preferred Stock and Series C Preferred Stock can be converted, and then (z) multiplying the sum so obtained by the number of shares of Common Stock into which such share of Series C Preferred Stock could then be converted (the "Liquidation Preference Amount"). The liquidation payment with respect to each outstanding fractional share of Series C Preferred Stock shall be equal to a ratably proportionate amount of the liquidation payment with respect to each outstanding share of Series C Preferred Stock. All payments for which this Section 4(a) provides shall be in cash, property (valued at its fair market value as determined by an independent appraiser reasonably acceptable to the holders of a majority of the Series C Preferred Stock), or a combination thereof; provided, however, that no cash shall be paid to holders of Junior Stock unless each holder of the outstanding shares of Series C Preferred Stock has been paid in cash the full Liquidation Preference Amount to which such holder is entitled as provided herein. After payment of the full Liquidation Preference Amount to which each holder is entitled, such holders of shares of Series C Preferred Stock will not be entitled to any further participation as such in any distribution of the assets of the Company.



(b) A consolidation or merger of the Company with or into any other corporation or corporations, or a sale of all or substantially all of the assets of the Company, or the effectuation by the Company of a transaction or series of transactions in which more than 50% of the voting shares of the Company is disposed of or conveyed, shall be, at the election of the holders of a majority of the Series C Preferred Stock, deemed to be a liquidation, dissolution, or winding up within the meaning of this Section 4; *provided, however*, that any such transaction shall not be deemed to be a liquidation, dissolution or winding up unless such transaction is approved by the Board of Directors of the Company and the holders of the Series C Preferred Stock do not control the Board of Directors. In the event of the merger or consolidation of the Company with or into another corporation that is not treated as a liquidation pursuant to this Section 4(b), the Series C Preferred Stock shall maintain its relative powers, designations and preferences provided for herein (including any adjustment required under Section 5(c)(v) hereof) and no merger shall result inconsistent therewith.

(c) Written notice of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, stating a payment date and the place where the distributable amounts shall be payable, shall be given by mail, postage prepaid, no less than forty-five (45) days prior to the payment date stated therein, to the holders of record of the Series C Preferred Stock at their respective addresses as the same shall appear on the books of the Company.

5. Conversion. The holders of Series C Preferred Stock shall have the following conversion rights (the “Conversion Rights”):

(a) Right to Convert. At any time on or after the date of issuance of the Series C Preferred Stock (the “Issuance Date”), the holder of any such shares of Series C Preferred Stock may, at such holder’s option, elect to convert (a “Voluntary Conversion”) all or any portion of the shares of Series C Preferred Stock held by such person into a number of fully paid and nonassessable shares of Common Stock at a conversion rate of 3,226 shares of Common Stock for each share of Preferred Stock (subject to adjustments set forth in Section 5(c) herein, the “Conversion Rate”). The Company shall keep written records of the conversion of the shares of Series C Preferred Stock converted by each holder. A holder shall be required to deliver the original certificates representing the shares of Series C Preferred Stock upon any conversion of the Series C Preferred Stock as provided in Section 5(b) below.

(b) Mechanics of Voluntary Conversion. The Voluntary Conversion of Series C Preferred Stock shall be conducted in the following manner:

(i) *Holder's Delivery Requirements*. To convert Series C Preferred Stock into full shares of Common Stock on any date (the “Voluntary Conversion Date”), the holder thereof shall (A) transmit by facsimile (or otherwise deliver), for receipt on or prior to 5:00 p.m., Eastern Time on such date, a copy of a fully executed notice of conversion in the form attached hereto as Exhibit I (the “Conversion Notice”), to the Company, and (B) with respect to the final conversion of shares of Series C Preferred Stock held by any holder, such holder shall surrender to a common carrier for delivery to the Company as soon as practicable following such Conversion Date but in no event later than six (6) business days after such date the original certificates representing the shares of Series C Preferred Stock being converted (or an indemnification undertaking with respect to such shares in the case of their loss, theft or destruction) (the “Preferred Stock Certificates”).

(ii) *Company's Response*. Upon receipt by the Company of a facsimile copy of a Conversion Notice, the Company shall immediately send, via facsimile, a confirmation of receipt of such Conversion Notice to such holder and the Company or its designated transfer agent (the "Transfer Agent"), as applicable, shall, within five (5) business days following the date of receipt by the Company of the certificate representing the shares of Series C Preferred Stock being converted, (x) issue and deliver to the Depository Trust Company ("DTC") account on the holder's behalf via the Deposit Withdrawal Agent Commission System ("DWAC") as specified in the Conversion Notice, registered in the name of the holder or its designee, for the number of shares of Common Stock to which the holder shall be entitled, and (y) if the certificate so surrendered represents more shares of Series C Preferred Stock than those being converted, issue and deliver to the holder a new certificate for such number of shares of Series C Preferred Stock represented by the surrendered certificate which were not converted. Simultaneously, the Company will pay the holder any dividends that are accrued and unpaid as of the Voluntary Conversion Date on the shares of Series C Preferred Stock being converted, either in cash, or at the option of the Company in shares of Common Stock as provided in Section 2(b) hereof.

(iii) *Record Holder*. The person or persons entitled to receive the shares of Common Stock issuable upon a conversion of the Series C Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(iv) *Company's Failure to Timely Convert*. If within five (5) business days of the Company's receipt of the Conversion Notice (the "Share Delivery Period") the Company shall fail to issue and deliver to a holder the number of shares of Common Stock to which such holder is entitled upon such holder's conversion of the Series C Preferred Stock (a "Conversion Failure"), in addition to all other available remedies which such holder may pursue hereunder, the Company shall pay additional damages to such holder on each business day after such fifth (5th) business day that such conversion is not timely effected in an amount equal to 0.5% of the product of (A) the sum of the number of shares of Common Stock not so issued to the holder on a timely basis pursuant to Section 5(b)(ii) and to which such holder is entitled and (B) the closing bid price of the Common Stock on the last possible date which the Company could have issued such Common Stock to such holder without violating Section 5(b)(ii). If the Company fails to pay the additional damages set forth in this Section 5(b)(iv) within five (5) business days of the date incurred, then such payment shall bear interest at the rate of 2% per month (pro rated for partial months) until such payments are made.

(c) Adjustments of Conversion Rate.

(i) *Adjustments for Stock Splits and Combinations*. If the Company shall at any time or from time to time after the Issuance Date, effect a stock split of the outstanding Common Stock, the Conversion Rate shall be proportionately increased. If the Company shall at any time or from time to time after the Issuance Date, combine the outstanding shares of Common Stock, the Conversion Rate shall be proportionately decreased. Any adjustments under this Section 5(e)(i) shall be effective at the close of business on the date the stock split or combination occurs.

(ii) *Adjustments for Certain Dividends and Distributions*. If the Company shall at any time or from time to time after the Issuance Date, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in shares of Common Stock, then, and in each event, the Conversion Rate shall be increased as of the time of such issuance or, in the event such record date shall have been fixed, as of the close of business on such record date, by multiplying, as applicable, the Conversion Rate then in effect by a fraction:

(C) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately following the time of such issuance or the close of business on such record date; and

(D) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance.

(iii) *Adjustment for Other Dividends and Distributions.* If the Company shall at any time or from time to time after the Issuance Date, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in securities of the Company other than shares of Common Stock, then, and in each event, an appropriate revision to the applicable Conversion Rate shall be made and provision shall be made (by adjustments of the Conversion Rate or otherwise) so that the holders of Series C Preferred Stock shall receive upon conversions thereof, in addition to the number of shares of Common Stock receivable thereon, the number of securities of the Company which they would have received had their Series C Preferred Stock been converted into Common Stock on the date of such event and had thereafter, during the period from the date of such event to and including the Conversion Date, retained such securities (together with any distributions payable thereon during such period), giving application to all adjustments called for during such period under this Section 5(c)(iii) with respect to the rights of the holders of the Series C Preferred Stock.

(iv) *Adjustments for Reclassification, Exchange or Substitution.* If the Common Stock issuable upon conversion of the Series C Preferred Stock at any time or from time to time after the Issuance Date shall be changed to the same or different number of shares of any class or classes of stock, whether by reclassification, exchange, substitution or otherwise (other than by way of a stock split or combination of shares or stock dividends provided for in Sections 5(c)(i), (ii) and (iii), or a reorganization, merger, consolidation, or sale of assets provided for in Section 5(c)(v)), then, and in each event, an appropriate revision to the Conversion Rate shall be made and provisions shall be made so that the holder of each share of Series C Preferred Stock shall have the right thereafter to convert such share of Series C Preferred Stock into the kind and amount of shares of stock and other securities receivable upon reclassification, exchange, substitution or other change, by holders of the number of shares of Common Stock into which such share of Series C Preferred Stock might have been converted immediately prior to such reclassification, exchange, substitution or other change, all subject to further adjustment as provided herein.

(v) *Adjustments for Reorganization, Merger, Consolidation or Sales of Assets.* If at any time or from time to time after the Issuance Date there shall be a capital reorganization of the Company (other than by way of a stock split or combination of shares or stock dividends or distributions provided for in Section 5(c)(i), (ii) and (iii), or a reclassification, exchange or substitution of shares provided for in Section 5(c)(iv)), or a merger or consolidation of the Company with or into another corporation, or the sale of all or substantially all of the Company's properties or assets to any other person that is not deemed a liquidation pursuant to Section 4(b) (an "Organic Change"), then as a part of such Organic Change an appropriate revision to the Conversion Rate shall be made and provision shall be made so that the holder of each share of Series C Preferred Stock shall have the right thereafter to convert such share of Series C Preferred Stock into the kind and amount of shares of stock and other securities or property of the Company or any successor corporation resulting from the Organic Change as the holder would have received as a result of the Organic Change and if the holder had converted its Series C Preferred Stock into the Company's Common Stock prior to the Organic Change.

(vi) Record Date. In case the Company shall take record of the holders of its Common Stock or any other Preferred Stock for the purpose of entitling them to subscribe for or purchase Common Stock or Convertible Securities, then the date of the issue or sale of the shares of Common Stock shall be deemed to be such record date.

(d) No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith, assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series C Preferred Stock against impairment. In the event a holder shall elect to convert any shares of Series C Preferred Stock as provided herein, the Company cannot refuse conversion based on any claim that such holder or anyone associated or affiliated with such holder has been engaged in any violation of law, unless an injunction from a court, on notice, restraining and/or adjoining conversion of all or of said shares of Series C Preferred Stock shall have been issued.

(e) Certificates as to Adjustments. Upon occurrence of each adjustment or readjustment of the Conversion Rate or number of shares of Common Stock issuable upon conversion of the Series C Preferred Stock pursuant to this Section 5, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such Series C Preferred Stock a certificate setting forth such adjustment and readjustment, showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon written request of the holder of such affected Series C Preferred Stock, at any time, furnish or cause to be furnished to such holder a like certificate setting forth such adjustments and readjustments, the Conversion Rate in effect at the time, and the number of shares of Common Stock and the amount, if any, of other securities or property which at the time would be received upon the conversion of a share of such Series C Preferred Stock. Notwithstanding the foregoing, the Company shall not be obligated to deliver a certificate unless such certificate would reflect an increase or decrease of at least one percent (1%) of such adjusted amount.

(f) Issue Taxes. The Company shall pay any and all issue and other taxes, excluding federal, state or local income taxes, that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Series C Preferred Stock pursuant thereto; *provided, however*, that the Company shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(g) Notices. Any notice, demand, request, waiver or other communication required or permitted to be given hereunder shall be in writing and shall be effective (i) upon hand delivery, telecopy or facsimile at the address or number designated in the Exchange Agreement (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received) or (ii) on the second business day following the date of mailing by express overnight courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur. The Company will give written notice each holder of Series C Preferred Stock at least ten (10) days prior to the date on which the Company takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Organic Change, dissolution, liquidation or winding-up and in no event shall such notice be provided to such holder prior to such information being made known to the public. Subject to Section 4(c), the Company will also give written notice to each holder of Series C Preferred Stock at least ten (10) days prior to the date on which any Organic Change will take place and in no event shall such notice be provided to such holder prior to such information being made known to the public

(h) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series C Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall at its option either (i) pay cash equal to the product of such fraction multiplied by the average of the closing bid prices of the Common Stock for the five (5) consecutive trading days immediately preceding the Voluntary Conversion Date, as applicable, or (ii) in lieu of issuing such fractional shares issue one additional whole share to the holder.

(i) Reservation of Common Stock. The Company shall, so long as any shares of Series C Preferred Stock are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series C Preferred Stock, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series C Preferred Stock then outstanding.

(j) Retirement of Series C Preferred Stock. Conversion of Series C Preferred Stock shall be deemed to have been effected on the applicable Voluntary Conversion Date. The Company shall keep written records of the conversion of the shares of Series C Preferred Stock converted by each holder. A holder shall be required to deliver the original certificates representing the shares of Series C Preferred Stock upon complete conversion of the Series C Preferred Stock represented by such certificates. A delivery of original certificates pursuant to Section 5(b)(i) shall be deemed to comply with the requirements of this Section 5(j).

(k) Regulatory Compliance. If any shares of Common Stock to be reserved for the purpose of conversion of Series C Preferred Stock require registration or listing with or approval of any governmental authority, stock exchange or other regulatory body under any federal or state law or regulation or otherwise before such shares may be validly issued or delivered upon conversion, the Company shall, at its sole cost and expense, in good faith and as expeditiously as possible, endeavor to secure such registration, listing or approval, as the case may be.

6. No Preemptive Rights. Except as provided in Section 5 hereof, no holder of the Series C Preferred Stock shall be entitled to rights to subscribe for, purchase or receive any part of any new or additional shares of any class, whether now or hereinafter authorized, or of bonds or debentures, or other evidences of indebtedness convertible into or exchangeable for shares of any class, but all such new or additional shares of any class, or any bond, debentures or other evidences of indebtedness convertible into or exchangeable for shares, may be issued and disposed of by the Board of Directors on such terms and for such consideration (to the extent permitted by law), and to such person or persons as the Board of Directors in their absolute discretion may deem advisable.

## 7. Inability to Fully Convert.

(a) Holder's Option if Company Cannot Fully Convert. If, upon the Company's receipt of a Conversion Notice, the Company cannot issue shares of Common Stock for any reason, including, without limitation, because the Company (i) does not have a sufficient number of shares of Common Stock authorized and available, or (ii) is otherwise prohibited by applicable law or by the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Company or its securities from issuing all of the Common Stock which is to be issued to a holder of Series C Preferred Stock pursuant to a Conversion Notice, then the Company shall issue as many shares of Common Stock as it is able to issue in accordance with such holder's Conversion Notice, and with respect to the unconverted Series C Preferred Stock (the "Unconverted Preferred Stock"), the holder, solely at such holder's option, can elect to, at any time after receipt of notice from the Company that there is Unconverted Preferred Stock, to void the holder's Conversion Notice as to the number of shares of Common Stock the Company is unable to issue and retain or have returned, as the case may be, the certificates for the shares of the Unconverted Preferred Stock.

(b) Mechanics of Fulfilling Holder's Election. The Company shall immediately send via facsimile to a holder of Series C Preferred Stock, upon receipt of a facsimile copy of a Conversion Notice from such holder which cannot be fully satisfied as described in Section 7(a) above, a notice of the Company's inability to fully satisfy such holder's Conversion Notice (the "Inability to Fully Convert Notice"). Such Inability to Fully Convert Notice shall indicate (i) the reason why the Company is unable to fully satisfy such holder's Conversion Notice, and (ii) the number of shares of Series C Preferred Stock which cannot be converted.

## 8. Automatic Conversion.

(a) Automatic Conversion Events. All outstanding shares of Series C Preferred Stock shall be automatically converted into Common Stock at the Conversion Rate upon the earlier to occur of (i) the closing of a firm commitment underwritten public offering of Common Stock of the Company pursuant to an effective registration statement under Section 5 of the Securities Act in which the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) from such public offering are at least \$10,000,000, or (ii) December 31, 2012 (each, an "Automatic Conversion Event").

(b) Mechanics of Automatic Conversion. Upon the occurrence of an Automatic Conversion Event, the outstanding Series C Preferred Stock shall be converted into Common Stock automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the Common Stock issuable upon such conversion unless the certificates evidencing such Series C Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder certifies to the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon surrender by any holder of the certificates formerly representing shares of Series C Preferred Stock to the Company or the transfer agent, there shall be issued and delivered to such holder promptly in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series C Preferred Stock surrendered were converted on the date on which such automatic conversion occurred, and the Company shall promptly pay in cash (at the fair market value per share of Common Stock determined by the Board of Directors as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of shares of Series C Preferred Stock being converted. Until surrendered as provided above, each certificate formerly representing Series C Preferred Stock shall be deemed for all corporate purposes to represent the number of shares of Common Stock resulting from such automatic conversion.

(c) Inability to Convert. Notwithstanding the provisions of Section 8(a) if, upon the occurrence of an Automatic Conversion Event, the Company cannot issue shares of Common Stock to fully effect the conversion for any reason, including, without limitation, because the Company (i) does not have a sufficient number of shares of Common Stock authorized and available, or (ii) is otherwise prohibited by applicable law or by the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Company or its securities from issuing all of the Common Stock which is to be issued to a holder of Series C Preferred Stock, then the Company shall issue as many shares of Common Stock as it is able to issue, and with respect to the unconverted Series C Preferred Stock (the “Unconverted Preferred Stock”), deliver to the holder a certificate for the shares of the Unconverted Preferred Stock. In the event that the Company is thereafter able to convert the Unconverted Preferred Stock, it shall so notify the holder in writing, and such notice shall be deemed to be an Automatic Conversion Event for purposes of this Section 8.

9. Vote to Change the Terms of Preferred Stock. The affirmative vote at a meeting duly called for such purpose, or the written consent without a meeting, of the holders of not less than a majority of the then outstanding shares of Series C Preferred Stock, shall be required for any change to this Certificate of Designation or the Company’s Certificate of Incorporation that would amend, alter, change or repeal any of the powers, designations, preferences and rights of the Series C Preferred Stock.

10. Lost or Stolen Certificates. Upon receipt by the Company of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of any certificates representing the shares of Series C Preferred Stock, and, in the case of loss, theft or destruction, of any indemnification undertaking by the holder to the Company and, in the case of mutilation, upon surrender and cancellation of such certificate(s), the Company shall execute and deliver new preferred stock certificate(s) of like tenor and date.

11. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation, at law or in equity (including a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit a holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Certificate of Designation. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of the Series C Preferred Stock and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holders of the Series C Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

12. Specific Shall Not Limit General; Construction. No specific provision contained in this Certificate of Designation shall limit or modify any more general provision contained herein.

13. Failure or Indulgence Not Waiver. No failure or delay on the part of a holder of Series C Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

**PORTER, WRIGHT, MORRIS & ARTHUR LLP**

41 South High Street  
Columbus, Ohio 43215-6194  
Telephone: 614/227-2000  
Facsimile: 614/227-2100

August 3, 2010

Neoprobe Corporation  
425 Metro Place North, Suite 300  
Dublin, Ohio 43017

Ladies and Gentlemen:

We have acted as counsel to Neoprobe Corporation, an Ohio corporation (the "Company"), in connection with the Registration Statement on Form S-3 (the "Registration Statement") filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"). The Registration Statement relates to: (1) the issuance and sale by the Company from time to time pursuant to Rule 415 promulgated under the Act ("Rule 415") of shares of the Company's common stock, \$0.001 par value ("Common Stock"), warrants to purchase shares of Common Stock, and units comprised of shares of Common Stock and Warrants (the "Primary Securities"), having an aggregate initial offering price of up to \$19,100,000; and (2) the sale from time to time pursuant to Rule 415 of up to 15,000,000 shares of Common Stock, by certain shareholders of the Company (the "Secondary Shares").

In connection with rendering the opinions set forth below, we have examined (i) the Registration Statement, including the exhibits filed therewith; (ii) the Amended and Restated Certificate of Incorporation of the Company; (iii) the Amended and Restated Bylaws of the Company; and (iv) authorizing resolutions and other actions of the Company that authorize and provide for the issuance of the Primary Shares and have authorized and provided for the issuance of the Secondary Shares covered by this opinion letter. We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates of public officials, certificates of officers or other representatives of the Company and others, and such other documents, and have considered such matters of law and fact, in each case as we have deemed appropriate to render the opinions contained herein. With respect to certain facts, we have considered it appropriate to rely upon certificates or other comparable documents of public officials and officers or other appropriate representatives of the Company without investigation or analysis of any underlying data contained therein.

For the purposes of this opinion letter, we have assumed that (i) each document submitted to us is accurate and complete; (ii) each such document that is an original is authentic; (iii) each such document that is a copy conforms to an authentic original; and (iv) all signatures (other than signatures on behalf of the Company) on each such document are genuine. We have further assumed the legal capacity of natural persons, and we have assumed that each party to the documents we have examined or relied on (other than the Company) has the legal capacity or authority and has satisfied all legal requirements that are applicable to that party to the extent necessary to make such documents enforceable against that party. We have not verified any of the foregoing assumptions.

Our examination of law relevant to the matters covered by this opinion is limited to the State of Ohio and the corporate laws of the State of Delaware, and we express no opinion as to the effect on the matters covered by this opinion of the laws of any other jurisdiction. We are not opining on, and we assume no responsibility for, the applicability to or effect on any of the matters covered herein of (i) any other laws, including the laws of the State of Delaware (except for its corporate laws); (ii) the laws of any other jurisdiction; or (iii) the law of any county, municipality or other political subdivision or local governmental agency or authority. To the extent that laws other than those of the State of Ohio and the corporate laws of the State of Delaware govern, we have rendered our opinion with respect solely to the laws of the State of Ohio and/or the corporate laws of the State of Delaware, as applicable.

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Assuming that (i) the Registration Statement will be effective and will comply with all applicable laws at the time the Primary Securities and Secondary Shares are offered or issued as contemplated by the Registration Statement; (ii) a prospectus supplement will have been prepared and filed with the Commission describing the Primary Securities or Secondary Shares offered thereby and will comply with all applicable laws; (iii) all Primary Securities and Secondary Shares will be issued and sold in compliance with applicable federal and state securities laws and in the manner stated in the Registration Statement and the applicable prospectus supplement; (iv) the Company shall not have rescinded or otherwise modified any authorization of any such issuance of Primary Securities or Secondary Shares; (v) the Company shall remain at all times a corporation incorporated under the laws of the State of Delaware; (vi) the Company shall have reserved a sufficient number of shares of its duly authorized, but unissued, Common Stock as is necessary to provide for the issuance of the Primary Securities directly pursuant to the Registration Statement; and (vii) the additional qualifications and other matters set forth below, it is our opinion that:

(1) When (i) the terms of an issuance and sale of the Primary Securities have been duly authorized and approved by all necessary action of the Company so as not to violate any applicable law, rule or regulation or result in a default under or a breach of any agreement or instrument binding upon the Company and so as to comply with any applicable requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; and (ii) certificates for the Primary Securities have been duly executed, authenticated (if required), issued and delivered either (x) in accordance with any agreement or instrument binding upon the Company, upon payment of the consideration fixed therefore in accordance with the applicable definitive purchase, underwriting or similar agreement approved by all necessary action of the Company, or (y) upon conversion, exchange or exercise of any warrant instrument in accordance with the terms of such instrument providing for the conversion, exchange or exercise as approved by all necessary action of the Company, for consideration approved by all necessary action of the Company, the Primary Securities will be validly issued, fully paid and nonassessable.

(2) With respect to the Secondary Shares that are offered pursuant to the Registration Statement, such Secondary Shares are validly issued, fully paid and nonassessable. With respect to the shares of common stock issuable upon the exercise of warrants or the conversion of preferred stock, upon the conversion of such preferred stock, or the exercise and payment of the exercise price of the warrants in accordance with the terms thereof, such Secondary Shares will be validly issued, fully paid and non-assessable.

We assume no obligation to update or supplement any of our opinions to reflect any changes of law or fact that may occur.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement and to the reference to this firm under the heading "Counsel" in the Prospectus forming a part thereof.

Very truly yours,

/s/ Porter, Wright, Morris & Arthur LLP

PORTER, WRIGHT, MORRIS & ARTHUR LLP

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Consent of Independent Registered Public Accounting Firm

Neoprobe Corporation  
Dublin, Ohio

We hereby consent to the incorporation by reference in the Prospectus constituting a part of this Registration Statement of our report dated March 29, 2010, relating to the consolidated financial statements of Neoprobe Corporation appearing in the Company's Annual Report on Form 10-K for the year ended December 31, 2009.

We also consent to the reference to us under the caption "Experts" in the Prospectus.

/s/ BDO USA, LLP

BDO USA, LLP  
(formerly known as BDO Seidman, LLP)

Chicago, Illinois  
August 2, 2010

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**POWER OF ATTORNEY**

Each of the undersigned officers and directors of Neoprobe Corporation, a Delaware corporation (the "Company"), hereby appoints David C. Bupp and Brent L. Larson as his true and lawful attorneys-in-fact, or either of them, with power to act without the other, as his true and lawful attorney-in-fact, in his name and on his behalf, and in any and all capacities stated below, to sign and to cause to be filed with the Securities and Exchange Commission (the "Commission"), the Company's Registration Statement on Form S-3, including exhibits thereto and all documents in connection therewith (the "Registration Statement") and any and all amendments, including post-effective amendments, to the Registration Statement, hereby granting unto such attorneys-in-fact, and to each of them, full power and authority to do and perform in the name of and on behalf of the undersigned, in any and all such capacities, every act and thing whatsoever necessary to be done in and about the premises as fully as the undersigned could or might do in person, hereby granting to each such attorney-in-fact full power of substitution and revocation, and hereby ratifying all that any such attorney-in-fact or his substitute may do by virtue hereof.

IN WITNESS WHEREOF, the undersigned have signed these presents this 2nd day of August, 2010.

| <u>Signature</u>  | <u>Title</u>  |
|---|---|
| <u>/s/ David C. Bupp</u><br>David C. Bupp                   | President, Chief Executive Officer<br>and Director<br>(principal executive officer)   |
| <u>/s/ Brent L. Larson</u><br>Brent L. Larson               | Senior Vice President, Chief<br>Financial Officer, Treasurer and<br>Secretary (principal financial officer<br>and principal accounting officer) |
| <u>/s/ Carl J. Aschinger, Jr.</u><br>Carl J. Aschinger, Jr. | Chairman of the Board of<br>Directors   |
| <u>/s/ Gordon A. Troup</u><br>Gordon A. Troup               | Vice Chairman of the Board of<br>Directors  |
| <u>Kirby I. Bland, M.D.</u>                                 | Director  |
| <u>/s/ Brendan A. Ford</u><br>Brendan A. Ford               | Director  |
| <u>Owen E. Johnson, M.D.</u>                                | Director  |
| <u>/s/ Fred B. Miller</u><br>Fred B. Miller                 | Director  |
| <u>/s/ Eric K. Rowinsky</u><br>Eric K. Rowinsky, M.D.       | Director  |