

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BEAM, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Beam, Inc., a Delaware corporation, hereby certifies as follows:

1. The name of the corporation is Beam, Inc. (the "Corporation"). The date of filing of the Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware was December 29, 2005.
2. The Certificate of Incorporation of the Corporation filed on December 29, 2005 is hereby amended, among other provisions, to amend Article First to change the name of the Corporation to The Beam, Inc. and to amend Article Fourth to change the capitalization of the Corporation by substituting in lieu of said Article Fourth as set forth in the Restated Certificate of Incorporation below.
3. This Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Certificate of Incorporation of said Corporation and has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.
4. The text of the Certificate of Incorporation is hereby amended and restated to read in full as follows:

RESTATED CERTIFICATE OF INCORPORATION

OF

THE BEAM, INC.

FIRST: The name of the corporation (hereinafter called the "Corporation") is

THE BEAM, INC.

SECOND: The address, including street, number, city, and county, of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle; and the name of the registered agent of the Corporation in the State of Delaware is Corporation Service Company.

THIRD: The nature of the business to be conducted and the purposes of the Corporation are to engage in any lawful act or activity or carry on any business for which corporations may be organized under the General Corporation Law of the State of Delaware or any successor statute.

FOURTH:

A. DESIGNATION AND NUMBER OF SHARES.

The total number of shares of all classes of stock which the Corporation shall have the authority to issue is Sixteen Million Fifty Two Thousand Seven Hundred Ninety Seven (16,052,797) shares, which shall consist of two classes of stock as follows:

Common Stock, \$.001 par value ("Common Stock")	11,000,000
Preferred Stock, \$.001 par value ("Preferred Stock")	5,052,797

The Preferred Stock shall consist of one series as follows:

Series A Preferred Stock, \$.001 par value ("Series A Preferred Stock")	5,052,797
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B. COMMON STOCK. The powers, preferences, rights, qualifications, limitations and restrictions of the shares of the Common Stock are as follows:

1. General. The voting, dividend, liquidation and other rights of the holders of the Common Stock are expressly made subject to and qualified by the rights of the holders of the Series A Preferred Stock.

2. **Voting Rights.** The holders of record of the Common Stock are entitled to one vote per share on all matters to be voted on by the Corporation's stockholders. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof outstanding) by the affirmative vote of the holders of a majority of the capital stock of this Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

3. **Dividends.** Dividends may be declared and paid on the Common Stock from funds lawfully available therefor if, as and when determined by the Board of Directors in their sole discretion, subject to provisions of law, the provisions of this Restated Certificate of Incorporation, as amended from time to time and the relative rights and preferences of any shares of Series A Preferred Stock authorized, issued and outstanding hereunder.

4. **Liquidation.** Upon the dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, holders of record of the Common Stock will be entitled to receive assets of the Corporation available for distribution to its stockholders subject to and in accordance with the provisions of Section 2 of Article IV(C) hereof.

C. SERIES A PREFERRED STOCK.

The powers, preferences, rights, qualifications, limitations and restrictions of the shares of Series A Preferred Stock are as follows:

1. Dividends.

(a) **Dividends and Payments.** The holders of shares of Series A Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior to and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of seven percent (7%) of the Original Issue Price (as defined in Section 1(b) below) per share of the Series A Preferred Stock per annum, payable only when, as and if declared by the Board of Directors of the Corporation. The right to receive dividends on Preferred Stock shall not be cumulative. The Corporation shall not declare or pay any cash dividends on shares of Common Stock until holders of Series A Preferred Stock then outstanding shall have first received a dividend at the rate specified in this Section 1. Further, no dividend or other distribution (other than a stock dividend giving rise to an adjustment under Section 5 hereof) will be paid, declared or set apart for payment in respect of any share of Common Stock unless a dividend is declared and paid in respect of each outstanding share of Series A Preferred Stock in an amount at least equal to the product of (i) the amount of dividends to be paid, declared or set apart for each share of Common Stock multiplied by (ii) the number of shares of Common Stock into which the Series A Preferred Stock is then convertible pursuant to Section 5. The holders of the outstanding shares of Series A Preferred Stock can waive any dividend preference that such holders shall be entitled to receive under this Section 1(a) upon the affirmative vote or written consent of the holders of at least a majority of the shares of Series A

Preferred Stock then outstanding. Notwithstanding the foregoing provisions, upon conversion of the Series A Preferred Stock pursuant to Section 5, all accrued and unpaid dividends on such shares of Series A Preferred Stock to and until the date of conversion shall be forfeited and shall not be due and payable.

(b) **Original Issue Price.** The applicable "Original Issue Price" for the Series A Preferred Stock shall be \$1.0280 (such amount to be subject to proportionate adjustment in the event of any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event affecting the Series A Preferred Stock).

2. Liquidation, Dissolution, or Winding-Up.

(a) **Distributions to Holders of Preferred Stock.** In the event of any liquidation, dissolution, or winding-up of the Corporation, whether voluntary or involuntary (each such event being hereinafter referred to as a "Liquidation Event") or a Deemed Liquidation Event (as defined below), the holders of outstanding shares of Series A Preferred Stock will be entitled to receive, prior to and in preference to any distribution of the proceeds of such Liquidation Event or Deemed Liquidation Event to the holders of Common Stock by reason of their ownership thereof, an amount per share of Series A Preferred Stock (its "Liquidation Value") equal to the sum of (A) the Original Issue Price of such share (such amount to be subject to proportionate adjustment in the event of any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event affecting the Series A Preferred Stock and occurring after the date of filing of this Restated Certificate of Incorporation), plus (B) an amount equal to the aggregate of all dividends declared but unpaid in respect of such share of Series A Preferred Stock.

If, upon the occurrence of a Liquidation Event or a Deemed Liquidation Event, the assets and funds to be distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full Liquidation Value, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of Series A Preferred Stock in proportion to the full Liquidation Value that each such holder is otherwise entitled to receive under this Section 2(a).

(b) **Remaining Distributions.** After payment in accordance with the foregoing has been made in full to the holders of the Series A Preferred Stock or funds necessary for such payment have been set aside by the Corporation in trust for the exclusive benefit of such holders so as to be available for such payment, the holders of outstanding shares of Common Stock will be entitled to receive an amount equal to the aggregate of all dividends declared but unpaid in respect of such shares of Common Stock. After such payment of dividends to the holders of Common Stock, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of the Series A Preferred Stock and the Common Stock pro rata based on the number of shares of Common Stock held by each (assuming full conversion of all such Series A Preferred Stock into Common Stock) until such time as the aggregate amount which the holders of Series A Preferred Stock are entitled to receive under Sections 2(a) and 2(b) shall be equal to \$4.11 per share of Series A Preferred Stock (subject to appropriate adjustment in the event of a stock split, stock dividend, combination,

reclassification, or similar event affecting the Series A Preferred Stock). Thereafter, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

(c) **Deemed Liquidations.** For purposes of this Section 2, unless waived by the holders of a majority of the Series A Preferred Stock then outstanding, a liquidation, dissolution or winding up of the Corporation shall be deemed to include: (i) the consummation of the merger or consolidation of the Corporation into or with another entity (other than a merger or consolidation in which the holders of capital stock of this Corporation immediately prior to such merger or consolidation continue to hold at least 50% of the voting power of the capital stock of this Corporation or the surviving or acquiring entity); (ii) the closing of the sale, lease, exchange, license (other than a non-exclusive license made in the ordinary course of business that does not prevent the Corporation from continuing its business as conducted or as proposed to be conducted) or other conveyance of all or substantially all of the assets of the Corporation or of all or substantially all of the material intellectual property assets of the Corporation; or (iii) the closing of the transfer of this Corporation's securities, whether by merger, consolidation or otherwise, in one transaction or series of related transactions, to a person or group of affiliated persons (other than an underwriter of this Corporation's securities), if, after such closing, such person or group of affiliated persons would hold 50% or more of the outstanding voting securities of this Corporation (or the surviving or acquiring entity) (each such transaction under clauses (i) through (iii), a "Deemed Liquidation Event").

(d) **Non-Cash Distributions.** In the event of a Liquidation Event or Deemed Liquidation Event resulting in the availability of assets other than cash, the holders of Series A Preferred Stock will be entitled to a distribution of cash and, in the event there is insufficient cash available to satisfy the liquidation preferences and other distribution rights stated in this Section 2, other assets equal in value to the Liquidation Value and other distribution rights stated in this Section 2. In the event that such distribution to the holders of shares of Series A Preferred Stock will include any assets other than cash, the Board of Directors (including at least one director elected solely by the holders of the Series A Preferred Stock) will first determine in good faith and with due care the value of such assets for such purpose, except that, any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution or winding up of the Corporation shall be valued as follows: (i) if the securities are then traded on a national securities exchange or the Nasdaq Global Market (or a similar national quotation system), then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange or system over the twenty (20) trading day period ending three (3) trading days prior to the distribution; (ii) if the securities are actively traded over-the counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the twenty (20) trading day period ending three (3) trading days prior to the distribution; or (iii) if there is no public market, the value shall be the fair market value thereof, as mutually determined by this Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Series A Preferred Stock. The method of valuation of such securities subject to investment letter or other restrictions on free marketability shall include making an appropriate discount from the market value determined as above to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors

(including at least one director elected solely by the holders of the Series A Preferred Stock). The foregoing methods for valuing non-cash consideration to be distributed in connection with a Liquidation Event or Deemed Liquidation Event shall, upon approval by the stockholders of the definitive agreements governing a Liquidation Event or Deemed Liquidation Event, be superseded by any determination of such value set forth in the definitive agreements governing such Liquidation Event or Deemed Liquidation Event.

For the purposes of this Section 2(d), "trading day" shall mean any day on which the exchange or system on which the securities to be distributed are traded is open and "closing prices" or "closing bid prices" shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or Nasdaq, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the "regular hours" trading period that is generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

(e) **Non-Compliance.** In the event the requirements of this Section 2 are not complied with, the Corporation shall forthwith either:

(i) cause the closing of such Liquidation Event or Deemed Liquidation Event to be postponed until such time as the requirements of this Section 2 have been complied with; or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 7 hereof.

3. Voting Rights.

(a) **Restricted Class Voting.** Except as otherwise expressly provided herein or as required by law, the holders of Series A Preferred Stock and the holders of Common Stock shall vote together (on an as-converted basis) and not as separate classes.

(b) **No Series Voting.** Other than as provided herein or required by law, there shall be no series voting.

(c) **Series A Preferred Stock.** Each holder of Series A Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Series A Preferred Stock held by such holder could be converted as of the record date. The holders of shares of the Series A Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Series A Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation and applicable law. Fractional votes shall not, however, be permitted and any fractional voting

rights resulting from the above formula (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted) shall be disregarded.

(d) Election of Directors.

(i) The Board of Directors shall consist of five (5) members. The holders of a majority of the then outstanding Series A Preferred Stock, voting together as a separate class, shall be entitled to elect two (2) members of the Corporation's Board of Directors (collectively, the "Preferred Directors") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors (and to remove from office each such director and to fill any vacancy caused by the resignation, death or removal of any such director). The holders of a majority of the then outstanding Common Stock, voting together as a separate class, shall be entitled to elect two (2) members of the Corporation's Board of Directors (collectively, the "Common Directors") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors (and to remove from office each such director and to fill any vacancy caused by the resignation, death or removal of any such director). The holders of the Series A Preferred Stock and the holders of the Common Stock, voting together as a single class (and not as separate series or classes) and on an as-converted basis, shall be entitled to elect any remaining directors of the Corporation at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors (and to remove from office each such director and to fill any vacancy caused by the resignation, death or removal of any such director).

(ii) At any meeting held for the purpose of electing directors, the presence in person or by proxy (A) of the holders of a majority of the shares of the Series A Preferred Stock or Common Stock then outstanding, respectively, shall constitute a quorum for the election of directors to be elected solely by the holders of the Series A Preferred Stock or Common Stock, respectively, and (B) of holders of a majority of the voting power of all the then outstanding shares of Series A Preferred Stock and Common Stock shall constitute a quorum for the election of the directors to be elected jointly by the holders of the Series A Preferred Stock and the Common Stock voting together as a single class.

4. **Redemption.** The Series A Preferred Stock shall not be redeemable.

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

(a) **Right to Convert.** Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series A Preferred Stock, into that number of fully-paid, non-assessable shares of Common Stock as is determined by dividing the Original Issue Price by the Conversion Price (the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock is hereinafter referred to as the "Conversion Rate"). Upon any decrease or increase in the Conversion Price, as described in this Section 5, the Conversion Rate shall be appropriately increased or decreased. The initial Conversion Price of

the Series A Preferred Stock is \$1.0280; provided, however, that the Conversion Price for the Series A Preferred Stock shall be subject to adjustment as set forth in Section 5(e) below.

(b) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share immediately upon the earlier of: (i) the consummation of the Corporation's sale of its Common Stock in a firm commitment underwritten initial public offering pursuant to an effective registration statement on Form S-1 or Form SB-2 (or any successor form) filed under the Securities Act of 1933, as amended (the "Securities Act"), the public offering price of which is not less than \$4.11 per share (as adjusted for any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar events), and which generates aggregate gross proceeds to the Corporation of at least \$30,000,000 (a "Qualifying Initial Public Offering"); or (ii) the date specified by written consent or agreement of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock (each of the events referred to in (i) and (ii) are referred to herein as an "Automatic Conversion Event").

(c) Mechanics of Conversion.

(i) Before any holder of Series A Preferred Stock shall be entitled to voluntarily convert the same into shares of Common Stock, it shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver to such holder of Series A Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with a Qualifying Initial Public Offering, the conversion may, at the option of any holder tendering Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities. If the conversion is in connection with the Automatic Conversion Event described in subsection 5(b)(ii) above, such conversion shall be deemed to have been made on the conversion date described in the stockholder consent approving such conversion, and the persons entitled to receive shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holders of such shares of Common Stock as of such date.

(ii) No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by

the then fair market value of a share of Common Stock as determined by the Board of Directors. For such purpose, all shares of the Series A Preferred Stock held by each holder of Series A Preferred Stock that are then being converted shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash.

(d) Certain Definitions.

(i) Convertible Securities. For purposes of Section 5(e), "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding options and warrants.

(ii) Additional Stock Definition. For purposes of Section 5(e) below, "Additional Stock" shall mean all shares of Common Stock issued by the Corporation on or after the filing date of this Restated Certificate of Incorporation (the "Filing Date"), other than:

(1) up to 2,134,000 shares of Common Stock (excluding shares repurchased at cost by the Corporation in connection with the termination of service) issued to employees, officers or directors, of, or consultants or advisors to the Corporation pursuant to stock grants, option plans, purchase plans, agreements or other employee stock incentive programs or arrangements, in each case as approved by the Board of Directors of the Corporation (including at least one Preferred Director), or upon exercise of options or warrants granted to such parties pursuant to any such plan or arrangement;

(2) shares of Common Stock issued upon the exercise and/or conversion of Convertible Securities, options or warrants outstanding as of the Filing Date;

(3) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to subsections 5(e)(iv), 5(e)(v) and 5(e)(vi) below;

(4) shares of Common Stock issued pursuant to a Qualifying Initial Public Offering;

(5) shares of Common Stock issued or issuable pursuant to the bona fide acquisition of or by the Corporation, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise;

(6) shares of Common Stock and/or warrants issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing, equipment lease, bank credit arrangement or commercial leasing transaction entered into for primarily non-equity financing purposes and as approved by the Board of Directors of the Corporation (including at least one Preferred Director);

(7) shares of Series A Preferred Stock issued pursuant to the Series A Preferred Stock Purchase Agreement by and among the Corporation and the

Investors (as defined therein) dated October 27, 2006, as may be amended from time to time (the "Purchase Agreement") or the Convertible Promissory Notes dated as of July 28, 2006 and as of September 28, 2006, each as amended, in the aggregate principal amount of \$600,000 (the "Notes"); or

(8) shares of Common Stock issued or issuable upon conversion of the shares of Series A Preferred Stock issued pursuant to the Purchase Agreement and the Notes.

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

(i) Adjustment of Conversion Price Upon Issuance of Additional Stock. In the event the Corporation shall issue Additional Stock without consideration or for a consideration per share less than the applicable Conversion Price for the Series A Preferred Stock in effect on the date of and immediately prior to the issuance of such Additional Stock, the Conversion Price shall be adjusted, concurrently with such issuance, to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus the number of shares which the aggregate consideration received by the Corporation for the total number of shares of Additional Stock would purchase at the Conversion Price, and the denominator of which shall be the number of shares of Common Stock Outstanding immediately prior to such issuance plus the number of shares of Additional Stock so issued. For purposes of this subsection 5(e)(i), the term "Common Stock Outstanding" shall mean and include the following: (1) outstanding Common Stock; (2) Common Stock exercisable upon conversion of outstanding Series A Preferred Stock; (3) Common Stock issuable upon exercise of outstanding stock options; (4) Common Stock issuable upon exercise (and, in the case of warrants to purchase Series A Preferred Stock, conversion) of outstanding warrants; (5) Common Stock issuable upon conversion of Convertible Securities. Shares described in (1) through (5) above shall be included whether vested or unvested, whether contingent or non-contingent and whether exercisable or not yet exercisable.

(ii) De Minimis Adjustments. No adjustment to the Conversion Price of the Series A Preferred Stock shall be made in an amount less than \$0.01 per share, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amount so carried forward, equal \$0.01 per share or more in the aggregate.

(iii) Determination of Consideration. For purposes of this subsection 5(e), the consideration received by the Corporation for the issuance of any Additional Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(a) insofar as it consists of cash, be deemed to be the aggregate amount of cash received by the Corporation before deducting any reasonable discounts,

commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance and sale thereof;

(b) insofar as it consists of property other than cash, be deemed to be the fair market value thereof at the time of such issuance, as determined in good faith by the Board of Directors (including at least one Preferred Director) irrespective of any accounting treatment; and

(c) in the event Additional Stock is issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be deemed to be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as reasonably determined in good faith by the Board of Directors (including at least one Preferred Director) irrespective of any accounting treatment.

(2) Issuance of Options or Rights to Purchase Common Stock. In the case of the grant or issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for purposes of determining the number of shares of Additional Stock issued and the consideration paid therefor:

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

(b) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 5(e)(iii)(1)(a) and 5(e)(iii)(1)(b)).

(c) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, the Conversion Price of the Series A Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

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

(e) The number of shares of Additional Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 5(e)(iii)(2)(a) and 5(e)(iii)(2)(b) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 5(e)(iii)(2)(c) or subsection 5(e)(iii)(2)(d).

(iv) **Adjustments to Conversion Price Relating to Stock Splits.** In the event that the Corporation should at any time or from time to time after the Filing Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred Stock shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents, with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 5(e)(iii)(2).

(v) **Adjustments for Combinations of Common Stock.** In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Price of the Series A Preferred Stock in effect immediately prior to such combination shall, concurrently with the effective date

of such combination, be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred Stock shall be decreased in proportion to such decrease in the outstanding shares of Common Stock.

(vi) Adjustments for Reclassification, Exchange and Substitution.

Subject to Section 2 above, if the Common Stock issuable upon conversion of the Series A Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, each holder of Series A Preferred Stock shall have the right thereafter to convert such shares of Series A Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of the Series A Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(f) No Impairment. The Corporation will not, through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Series A Preferred Stock against impairment. Notwithstanding the foregoing, nothing in this Section 5(f) shall prohibit the Corporation from amending this Restated Certificate of Incorporation with the requisite consent of its stockholders and the board of directors.

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

(h) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, in addition to

such other remedies as shall be available to the holder of such Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate of Incorporation.

(i) **Waiver of Adjustment of Conversion Price.** Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of the Series A Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the written consent or vote of the holders of the majority of the Series A Preferred Stock. Any such waiver shall bind all future holders of shares of Series A Preferred Stock. A copy of any such waiver shall be provided to the holders of shares of Series A Preferred Stock upon request to the Secretary of the Corporation. Prompt notice of any such waiver by the holders of less than all the shares of Series A Preferred Stock shall be given to those holders of shares of Series A Preferred Stock who have not consented to such waiver.

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

6. **Covenants.** So long as at least 642,023 shares of the Series A Preferred Stock (as adjusted for any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event) are issued and outstanding, the Corporation shall not (whether by amendment, merger or otherwise) without first obtaining approval (by vote or written consent as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock:

(a) amend or repeal any provision of, or addition of any provision to, the Restated Certificate of Incorporation or Bylaws of the Corporation;

(b) increase or decrease the authorized number of shares of Series A Preferred Stock;

(c) authorize, issue or reclassify shares of any class of stock or equity security (including any other security convertible into such stock or such equity security) having any preferences or privileges as to voting, conversion, dividends, liquidation or any other rights or privileges that are senior to or on parity with the Series A Preferred Stock;

(d) incur indebtedness in an aggregate amount exceeding \$500,000;

(e) declare or pay any dividend or make other distributions to the holders of shares of Common Stock (other than a dividend or distribution payable solely in shares of Common Stock);

- (f) consummate a Liquidation Event or Deemed Liquidation Event;
- (g) increase or decrease the number of authorized directors;
- (h) redeem, repurchase or acquire (or pay into or set aside funds for a sinking fund for such purpose) any shares of Common Stock or Series A Preferred Stock; provided, however, that this restriction shall not apply to repurchases of Common Stock by the Corporation from employees, officers, consultants, advisors, suppliers and representatives of the Corporation pursuant to agreements which permit the Corporation to repurchase such shares at no greater than cost upon termination of service to the Corporation;
- (i) increase the number of shares issuable pursuant to the Corporation's stock option plan; or
- (j) enter into any transaction with any affiliate of the Corporation or any stockholder of the Corporation.

7. **Notices of Record Dates, Etc.** In the event (i) the Corporation establishes a record date to determine the holders of any class or series of securities who are entitled to receive any dividend or other distribution or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or series of any other securities or property, or to receive any other right or (ii) there is to occur any Liquidation Event or Deemed Liquidation Event, the Corporation will deliver to each holder of Series A Preferred Stock, in accordance with Section 8(a) hereof, and at least twenty (20) days prior to such record date or the proposed effective date of the transaction specified therein (or, if earlier, twenty (20) days prior to any stockholders' meeting called to approve such transaction), as the case may be, a notice specifying (a) the date of such record date for the purpose of such dividend, distribution or right and a description (including the amount and character) of such dividend, distribution or right, (b) the date on which any such transaction is expected to become effective and the material terms and conditions thereof, and (c) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) will be entitled to exchange their shares of Common Stock (or other securities), for cash, securities, and/or other property deliverable upon such transaction. The Corporation shall thereafter give each holder of Series A Preferred Stock, in accordance with Section 8(a) hereof, prompt notice of any material changes. Such transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes as provided for herein; provided that such periods may be shortened upon the written consent of the holders of the Series A Preferred Stock that are entitled to such notice rights or similar notice rights and that represent a majority of the voting power of all then outstanding shares of the Series A Preferred Stock, voting together as a single class on an as-converted basis.

8. **Miscellaneous.**

(a) **Notices.** All notices, requests, payments, instructions or other documents to be given hereunder will be in writing or by written telecommunication, and will be deemed to have been duly given if (i) delivered personally (effective upon delivery), (ii) mailed by certified mail, return receipt requested, postage prepaid (effective five business days after dispatch), (iii)

sent by a reputable, established courier service that provides evidence of delivery and that guarantees next business day delivery (effective the next business day), or (iv) sent by facsimile followed within twenty-four (24) hours by confirmation by one of the foregoing methods (effective upon receipt of the facsimile in complete, readable form), sent to the intended recipient at the recipient's address or facsimile number as it appears on the books of the Corporation.

(b) **Transfer Taxes, Etc.** The Corporation will pay any and all stock transfer, documentary stamp taxes, and the like that may be payable in respect of any issuance or delivery of shares of Series A Preferred Stock or shares of Common Stock or other securities issued in respect of shares of Series A Preferred Stock pursuant hereto or certificates representing such shares or securities. The Corporation will not, however, be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Series A Preferred Stock or shares of Common Stock or other securities in a name other than that in which such shares were registered, or in respect of any payment to any person other than the registered holder thereof with respect to any such shares.

(c) **Transfer Agents.** The Corporation may appoint, and from time to time discharge and change, a transfer agent for the Series A Preferred Stock. Upon any such appointment or discharge of a transfer agent, the Corporation will reasonably promptly send written notice thereof to each holder of record of the Series A Preferred Stock.

FIFTH: The Corporation is to have perpetual existence.

SIXTH: For the management of the business and for the conduct of the affairs of the Corporation, and in further definition and not in limitation of the powers of the Corporation and of its directors and of its stockholders or any class thereof, as the case may be, conferred by the State of Delaware, it is further provided that:

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. No election of directors need be by written ballot.

B. After the original or other Bylaws of the Corporation have been adopted, amended or repealed, as the case may be, in accordance with the provisions of Section 109 of the General Corporation Law of the State of Delaware, and, after the Corporation has received any payment for any of its stock, the power to adopt, amend, or repeal the Bylaws of the Corporation may be exercised by the Board of Directors of the Corporation.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the Bylaws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

D. Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide.

SEVENTH: The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented

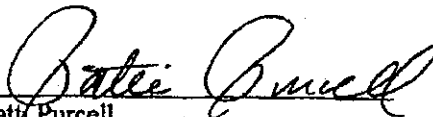
from time to time, indemnify and advance expenses to, (i) its directors and officers, and (ii) any person who at the request of the Corporation is or was serving as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section as amended or supplemented (or any successor), provided, however, that except with respect to proceedings to enforce rights to indemnification, the Bylaws of the Corporation may provide that the Corporation shall indemnify any director, officer or such person in connection with a proceeding (or part thereof) initiated by such director, officer or such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The Corporation, by action of its Board of Directors, may provide indemnification or advance expenses to employees and agents of the Corporation or other persons only on such terms and conditions and to the extent determined by the Board of Directors in its sole and absolute discretion. The indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

EIGHTH: No director of this Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except to the extent that exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as in effect at the time such liability or limitation thereof is determined. No amendment, modification or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment, modification or repeal. If the General Corporation Law of the State of Delaware is amended after approval by the stockholders of this Article VIII to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

NINTH: Subject to the provisions set forth elsewhere in this Restated Certificate of Incorporation (including, without limitation, Article IV, Section 6 hereof), the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the Corporation has caused this Restated Certificate of Incorporation, which restates, integrates and amends the provisions of the Certificate of Incorporation of the Corporation, as amended, to be signed this 21st day of October 2006.

BEAM, INC.


Pat Purcell
President and Chief Executive Officer