

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
ATHLETES' PERFORMANCE, INC.

Pursuant to Section 242
of the General Corporation Law
of the State of Delaware

Athletes' Performance, Inc. (hereinafter called the "Corporation"), organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

A resolution was duly adopted by written consent of the Board of Directors of the Corporation, pursuant to Section 242 of the General Corporation Law of the State of Delaware, setting forth amendments to the Certificate of Incorporation of the Corporation and declaring said amendments to be advisable. The stockholders of the Corporation duly approved said proposed amendments by written consent in accordance with Sections 228 and 242 of the General Corporation Law of the State of Delaware, and written notice of such action has been provided to those stockholders who did not consent in writing to such action. The resolution setting forth the amendments is as follows:

RESOLVED: That Article Fourth of the Certificate of Incorporation of the Corporation be and hereby is deleted in its entirety and the following Article Fourth is inserted in lieu thereof:

FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue shall be One Hundred Forty-Seven Thousand Two Hundred (147,200) shares consisting solely of: (i) Twelve Thousand Two Hundred (12,200) shares of Series A Convertible Preferred Stock, par value \$0.001 per share (the "Preferred Stock"), and (ii) One Hundred Thirty-Five Thousand (135,000) shares of Common Stock, par value \$0.001 per share (the "Common Stock").

A description of the respective classes of stock and a statement of the designations, preferences, voting powers, relative, participating, optional or other special rights and privileges and the qualifications, limitations and restrictions of the Preferred Stock and Common Stock are as follows:

A. Common Stock.

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

2. Voting Rights. Except as otherwise required by law or this Certificate of Incorporation, the holders of Common Stock will be entitled to one vote per share on all matters to be voted on by the stockholders of the Corporation.

3. Increase/Decrease of Common Stock. Notwithstanding the provisions of Section 242(b)(2) of the Delaware General Corporation Law, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation, voting as a single class, with each such share being entitled to such number of votes per share as is provided in this Article FOURTH.

4. Dividends. Dividends may be paid on the Common Stock out of funds legally available therefor if, as and when determined by the Board of Directors of the Corporation subject to the restrictions of Section B(1) below.

5. Dissolution, Liquidation or Winding-Up. In the event of any dissolution, liquidation or winding-up of the affairs of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of the Preferred Stock, holders of Common Stock shall be entitled, unless otherwise provided by law or this Certificate of Incorporation, to receive all of the remaining assets of the Corporation of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them.

B. Preferred Stock.

1. Dividends.

(a) The holders of the Preferred Stock shall be entitled to receive, out of funds legally available therefor, dividends at the same rate as dividends (other than dividends paid in additional shares of Common Stock) are paid with respect to the Common Stock (treating each share of Preferred Stock as being equal to the number of shares of Common Stock (including fractions of a share) into which each share of Preferred Stock is then convertible). Subject to the foregoing restrictions, dividends may be declared and paid on Preferred Stock from funds lawfully available therefor if, as and when, determined by the Board of Directors of the Corporation.

(b) The holders of the Preferred Stock shall be entitled to receive out of any funds legally available therefor, preferential dividends in cash at the rate of fifteen percent (15%) per share per annum of the stated value thereof only pursuant to Section 2 hereof (the "Accruing Dividend"). For such purposes, the "stated value" of each share of Preferred Stock shall be \$123.7864 (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend stock split, combination of shares, reclassification or similar event with respect to the Preferred Stock). Such dividends shall be cumulative and shall accrue monthly and

compound annually to the extent unpaid from the respective date of issuance of the Preferred Stock, whether or not earned or declared and whether or not in any fiscal year there shall be net profits or surplus available for the payment of dividends in such fiscal year, so that if in any fiscal year or years, such dividends are not paid in whole or in part upon the Preferred Stock, the portion of such dividends as shall be unpaid shall accumulate as against the holders of the Common Stock. Before any dividends may be declared and paid on the Common Stock, the holders of the Preferred Stock shall be paid the Accruing Dividends that shall have accrued and not been paid as of the date of declaration of such dividends on the Common Stock.

(c) At the time of conversion of any shares of Preferred Stock pursuant to Section 4, any dividend accrued but unpaid (including for avoidance of doubt any dividends under paragraph (b) above) on such Preferred Stock shall not be paid by the Corporation and shall be deemed forfeited as of the effective date of such conversion.

2. Liquidation, Dissolution or Winding-Up; Certain Mergers, Consolidations and Asset Sales.

(a) Payment Upon Liquidation.

(i) Preferred Stock. Upon any liquidation, dissolution or winding-up of the Corporation (a "Liquidation"), whether voluntary or involuntary, the holders of each share of Preferred Stock shall be entitled to receive an amount, to be paid first out of the assets of the Corporation available for distribution to holders of the capital stock of all classes, equal to the greater of the following:

(1) \$123.7864 per share (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, distribution, combination of shares, reclassification or other similar event with respect to the Preferred Stock) plus any accrued or declared and unpaid dividends thereon, including without limitation the Accruing Dividend, to and including the date full payment shall be tendered to the holders of Preferred Stock with respect to such Liquidation (the "Liquidation Preference"), subject to the adjustment set forth below; or

(2) such amount per share of Preferred Stock as would have been payable had all shares of Preferred Stock been converted to Common Stock immediately prior to such Liquidation pursuant to the provisions of Section 4.

If the value of the Corporation's assets in the event of a Liquidation, or the cash or the value of the property, rights or securities distributed to the Corporation's stockholders in the event of a Deemed Liquidation (in either case, the "Value"), shall be:

(A) greater than \$15,000,000 but less than \$30,000,000, the Liquidation Preference shall be reduced to the Liquidation Preference calculated using an Accruing Dividend of 12%, but the Liquidation Preference shall not be less than the Liquidation Preference calculated on the basis of a Value of \$15,000,000 without such reduction of the Accruing Dividend;

(B) greater than \$30,000,000 but less than \$50,000,000, the Liquidation Preference shall be reduced to the Liquidation Preference calculated using an Accruing Dividend of 10%, but the Liquidation Preference shall not be less than the Liquidation Preference calculated on the basis of a Value of \$30,000,000 without such reduction of the Accruing Dividend;

(C) greater than \$50,000,000 but less than \$70,000,000, the Liquidation Preference shall be reduced to the Liquidation Preference calculated using an Accruing Dividend of 8%, but the Liquidation Preference shall not be less than the Liquidation Preference calculated on the basis of a Value of \$50,000,000 without such reduction of the Accruing Dividend; and

(D) greater than \$70,000,000, the Liquidation Preference shall be reduced to the Liquidation Preference calculated using an Accruing Dividend of 6%, but the Liquidation Preference shall not be less than the Liquidation Preference calculated on the basis of a Value of \$70,000,000 without such reduction of the Accruing Dividend.

If the assets of the Corporation shall be insufficient to permit the payment in full to the holders of the Preferred Stock of all amounts distributable to them under the foregoing sentence, then the entire assets of the Corporation available for such distribution shall be distributed ratably among the holders of the Preferred Stock on a pari passu basis in proportion to the full preferential amount each such holder is otherwise entitled to receive.

(ii) Common Stock. After such payments shall have been made in full to the holders of the Preferred Stock or funds necessary for such payments shall have been set aside by the Corporation in trust for the account of holders of Preferred Stock so as to be available for such payments, the remaining assets available for distribution shall be distributed among the holders of the Common Stock ratably in proportion to the number of shares of Common Stock held by them.

Upon conversion of shares of Preferred Stock into shares of Common Stock pursuant to Section 4 below, the holder of such Common Stock shall not be entitled to any preferential payment or distribution in case of any liquidation, dissolution or winding-up of the Corporation, but shall share ratably in any distribution of the assets of the Corporation to all the holders of Common Stock.

(b) Distributions Other than Cash. Whenever the distribution provided for in this Section 2 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation.

(c) Merger as Liquidation, etc. The holders of the Preferred Stock at the time of (i) a consolidation or merger of the Corporation into or with any other entity or entities that results in the exchange of outstanding shares of the Corporation for securities or other consideration issued or paid or caused to be issued or paid by any such entity or affiliate thereof (except a consolidation or merger into a wholly owned subsidiary or merger in which the Corporation is the surviving Corporation and, in either case, the holders of the Corporation's voting stock outstanding immediately prior to the transaction constitute a majority of the holders of voting stock outstanding immediately following the transaction), (ii) the sale or transfer by the

Corporation of all or substantially all its assets, or (iii) the sale or transfer by the Corporation's stockholders of capital stock representing a majority of the voting power at elections of directors of the Corporation (each, an "Event"), may deem such Event to be a liquidation within the meaning of the provisions of this Section 2 by a vote of a majority of the then outstanding shares of all series of Preferred Stock (voting as a single class on an as-converted basis) and by giving written notice thereof to the Corporation at least seven days before the effective date of the Event (a "Deemed Liquidation"). The amount deemed distributed to the holders of Preferred Stock upon any such Event shall be the cash or the value of the property, rights or securities distributed to such holders by the acquiring person, firm or other entity. The value of such property, rights or other securities shall be determined in good faith by the Board of Directors of the Corporation.

(d) Notice and Opportunity to Exercise Conversion Rights. Notwithstanding anything to the contrary that may be inferred from the provisions of this Section 2, each holder of shares of Preferred Stock shall be entitled to receive notice from the Corporation pursuant to Section 4(k) hereof of any proposed Event or liquidation, dissolution or winding-up of the Corporation at least ten (10) days prior to the date on which any such liquidation, dissolution or winding-up of the Corporation is scheduled to occur and, at any time prior to any such liquidation, dissolution or winding-up of the Corporation, to convert any or all of such holder's shares of Preferred Stock into shares of Common Stock pursuant to Section 4 hereof.

3. Voting

(a) Each holder of outstanding shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are then convertible (as adjusted from time to time pursuant to Section 4 hereof), at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law, by the provisions of Section 3(b) below or by the provisions establishing any other series of Preferred Stock, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class on all actions to be taken by the stockholders of the Corporation, including, but not limited to actions amending the Certificate of Incorporation of the Corporation to increase the number of authorized shares of Common Stock.

(b) Without limiting the generality of the foregoing, and notwithstanding the provisions of Section 242(b)(2) of the Delaware General Corporation Law, the number of authorized shares of Common Stock may be increased by the affirmative vote of the holders of a majority of Preferred Stock and Common Stock, voting as one class and each holder of Preferred Stock having that number of votes per share as is equal to the number of shares of Common Stock into which each such share of Preferred Stock held by such holder could be converted on the date for determination of stockholders entitled to vote on such increase or decrease. Except as expressly set forth herein, with respect to all questions as to which, under law, stockholders are entitled to vote by classes, the Preferred Stock and the Common Stock shall vote separately as single classes.

(c) At all times during which shares of Preferred Stock remain outstanding, the holders of a majority of such outstanding shares of Preferred Stock shall have the exclusive

right, voting separately from the Common Stock, to elect one director of the Corporation (such director being referred to herein as the “Preferred Director”), the designation of such Preferred Director to be governed by any voting agreement or similar arrangement to which the holders of Preferred Stock may from time to time be party. The Preferred Director may be removed, without cause, and a replacement Preferred Director may be elected in his or her stead, at any time only by the affirmative vote of the holders of a majority of the outstanding shares of Preferred Stock. The holders of a majority of Common Stock shall have the exclusive right, voting separately from the Preferred Stock, to elect two directors of the Corporation (such directors being referred to herein as the “Common Director(s)”), the designation of such Common Directors to be governed by any voting agreement or similar arrangement to which the holders of Common Stock may from time to time be party. Each Common Director may be removed, without cause, and a replacement Common Director may be elected in his or her stead, at any time only by the affirmative vote of the holders of a majority of the outstanding shares of Common Stock.

(d) Notwithstanding any provision of the By-laws of the Corporation to the contrary, the number of directors (including the Preferred Director) constituting the entire Board of Directors of the Corporation shall initially be fixed at three and may only be increased by the affirmative vote or written consent of the holders of a majority in voting power of the outstanding shares of the Preferred Stock, voting or consenting, each as the case may be, as a single class or in accordance with the terms of any voting agreement or similar arrangement to which the holders of the Preferred Stock may from time to time be party.

(e) In addition to any other rights provided by law, for so long as any shares of Preferred Stock remain outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise), without first obtaining the affirmative vote or written consent of the holders of a majority of the then outstanding shares of Preferred Stock voting together as a single class:

- (i) amend or repeal any provision of, or add any provision to, the Corporation’s Certificate of Incorporation or By-laws;
- (ii) amend the preferences, rights or privileges of the Preferred Stock;
- (iii) authorize or designate any class or series of capital stock having rights senior to or on a parity with the Preferred Stock as to dividends, liquidation or otherwise;
- (iv) create a new plan or arrangement for the grant of stock options, stock appreciation rights, restricted stock or other similar stock-based compensation or increase the number of shares or other rights available under any existing plan or arrangement unless the number of shares or other rights available under all new and existing plans and arrangements will not exceed the number of shares not deemed to be Additional Shares of Common Stock pursuant to Section 4(d)(i)(D)(IV).

4. Optional Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the “Conversion Rights”):

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$123.7864 by the Conversion Price (as defined below) in effect at the time of conversion. The Conversion Price shall initially be \$123.7864 (the "Conversion Price"). Such initial Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. In the event of a notice of redemption of any shares of Series A Preferred Stock pursuant to Section 6 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the first full day preceding the date fixed for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full.

(b) Fractional Shares. Fractional shares may be issued upon conversion of the Preferred Stock, rounded to the nearest $1/100^{\text{th}}$ (0.01) of a share. However, in the Corporation's discretion, in lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation may pay cash equal to such fraction multiplied by the then effective Conversion Price, rounded to the nearest $1/100^{\text{th}}$ (0.01) of a share.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Stock to convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock, at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when any Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock. Before taking any action which would

cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) Upon any such conversion, no adjustment to the Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(iv) All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues:

(i) Special Definitions. For purposes of this Section 4, the following definitions shall apply:

(A) “Option” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) “Original Issue Date” shall mean the date on which a share of Preferred Stock was first issued.

(C) “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.

(D) “Additional Shares of Common Stock” shall mean all shares of Common Stock issued (or, pursuant to Subsection 4(d)(iii) below, deemed to be issued) by the Corporation after the date hereof other than:

- (I) shares of Common Stock issued or issuable upon conversion of shares of Preferred Stock;
- (II) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock;
- (III) shares of Common Stock issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section 4(e) or 4(f) below;
- (IV) up to 20,267.65 shares (appropriately adjusted to take account of any stock split, stock dividend, combination of shares or similar events with respect to such shares of Common Stock) of Common Stock (or Options or stock appreciation rights with respect thereto) issued or issuable to employees or directors of, or consultants to, the Corporation pursuant to a plan or arrangement in effect prior to or after the issuance of any Preferred Stock; or
- (V) shares of Common Stock (including Options or Convertible Securities) (a) issued solely in consideration for the acquisition (whether by merger or otherwise) by the Corporation of all or substantially all of the capital stock or assets of any other corporation or entity or (b) issued in connection with an equipment financing, line of credit or other lending arrangement or (c) issued in connection with a strategic partnering or joint venture relationship.

(ii) No Adjustment of Conversion Price. No adjustment in the number of shares of Common Stock into which Preferred Stock is convertible shall be made, by adjustment in the Conversion Price: (a) unless the consideration per share (determined pursuant to Section 4(d)(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price in effect immediately prior to the issue of such Additional Shares of Common Stock, or (b) if prior to, or after, such issuance, the Corporation receives written notice from the holders of a majority of the then outstanding shares of Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance of Additional Shares of Common Stock.

(iii) Issue of Securities Deemed Issue of Additional Shares of Common Stock. If the Corporation at any time or from time to time hereafter shall issue any Options or Convertible Securities (excluding Options or Convertible Securities or shares covered by Sections 4(d)(i)(D)(IV) and 4(d)(i)(D)(V) above) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 4(d)(v) hereof) of such Additional Shares of Common Stock would be less than the Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, then upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) Upon the expiration or termination of any Option or any right to convert or exchange any Convertible Securities as to which an adjustment in the Conversion Price pursuant to this Section 4(d)(iv) has previously been made upon the grant or issuance thereof, the Conversion Price then in effect hereunder shall forthwith be increased to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security, including, but not limited to, a

change resulting from the anti-dilution provisions thereof (a "Change"), the Conversion Price immediately prior to such Change shall forthwith be readjusted to such Conversion Price as would have obtained had the Change been effected at the time of the issuance of such Option or Convertible Security; and

(E) No readjustment pursuant to clause (B), (C) or (D) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

In the event the Corporation amends the terms of any such Options or Convertible Securities so as to change the number of securities for which they are exercisable, convertible or exchangeable or the consideration payable thereunder, then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Original Issue Date and the provisions of this Subsection 4(d)(iii) shall apply.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii)), without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issue, then and in such event, the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided that, (i) for the purpose of this Section 4(d)(iv), all shares of Common Stock issuable upon conversion or exchange of Convertible Securities or exercise of the Options outstanding immediately prior to such issue shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon conversion or exchange of such outstanding Convertible Securities shall not give effect to any adjustments to the conversion or exchange price or conversion or exchange rate of such Convertible Securities resulting from the issuance of Additional Shares of Common Stock that is the subject of this calculation.

(v) Determination of Consideration. For purposes of this Section 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

- (I) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest;
- (II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and
- (III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock which are comprised of shares of the same series or class of Preferred Stock, and such issuance dates occur within a period of no more than 120 days, then, upon the final such issuance, the Conversion Price shall be adjusted to give effect to all such issuances as if they occurred on the date of the final such issuance (and without giving effect to any adjustments as a result of such prior issuances within such period).

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the date hereof effect a subdivision of the outstanding Common Stock, the Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the date hereof combine the outstanding shares of Common Stock, the Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after the date hereof shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Conversion Price then in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) 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 or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than shares of Common Stock) or in cash or other property (other than cash out of earnings or earned surplus, determined in accordance with generally accepted accounting principles), then and in each such event provision shall be made so that the holders of the Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon,

the amount of securities of the Corporation that they would have received had the Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Preferred Stock; and provided further, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(h) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 2(c), if there shall occur any reorganization, recapitalization, consolidation or merger involving the Corporation in which the Common Stock is converted into or exchanged for securities, cash or other property (other than a transaction covered by paragraphs (e), (f) or (g) of this Section 4 or a transaction covered by Section 2 hereof), then, following any such reorganization, recapitalization, consolidation or merger, each share of Preferred Stock shall be convertible into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Preferred Stock immediately prior to such reorganization, recapitalization, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock.

(i) No Impairment. The Corporation will not, other than by amendment of its Certificate of Incorporation as permitted by law, 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 Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of any applicable series of 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 Preferred Stock, furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price then in effect, and (ii) the number of shares of Common Stock and the

amount, if any, of other securities, cash or property which then would be received upon the conversion of such series of Preferred Stock.

(k) Notice of Record Date. In the event:

(i) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for a purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, any consolidation or merger of the Corporation with or into another corporation (other than a consolidation or merger in which the Corporation is the surviving entity and its Common Stock is not converted into or exchanged for any other securities or property), or any transfer of all or substantially all of the assets of the Corporation; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will mail or cause to be mailed to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up. Such notice shall be mailed at least 10 days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

(a) Upon the closing of the sale of shares of Common Stock in an underwritten firm commitment public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended in which the price to the public per share is at least \$371.359 (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, distribution, combination of shares, reclassification or other similar event with respect to the Preferred Stock) (the "IPO Mandatory Conversion Date"), (i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate calculated in accordance with rules set forth in Section 4 and (ii) all provisions included under the caption "Preferred Stock", and all references to the Preferred Stock, shall be deleted and shall be of no further force or effect.

(b) Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective conversion rate upon the conversion of a majority in

voting power of the maximum aggregate number of shares of Preferred Stock at any time issued by the Corporation, calculated without regard to whether or not all of such shares are then outstanding (other than any shares of Preferred Stock that have been redeemed or, if a Redemption Election has been made pursuant to Section 6 below, that the Corporation is required to redeem pursuant to such Section 6). Such conversion shall be deemed to have occurred on the date (the "Special Conversion Date"; collectively with the IPO Mandatory Conversion Date, "Mandatory Conversion Dates") upon which the aggregate number of shares of Preferred Stock which have been converted to Common Stock exceeds such majority.

(c) All holders of record of shares of Preferred Stock shall be given written notice of the relevant Mandatory Conversion Date and the place designated for mandatory conversion of all such Preferred Stock pursuant to this Section 5. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Preferred Stock at such holder's address last shown on the records of the transfer agent for the Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 5. On the Mandatory Conversion Date, all outstanding shares of Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock) will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for such Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(d) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. Such converted Preferred Stock may not be reissued, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. Redemption.

(a) At the written election of holders of a majority of the outstanding shares of Preferred Stock made at any time on or after August 2, 2016 (the "Redemption Election"), the Corporation shall be required, to redeem all, but not less than all, of the outstanding shares of Preferred Stock either (i) in three equal annual installments (the "Multiple Installment Method") at a redemption price equal to \$210.4369 per share (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or similar event with respect to the Preferred Stock), or (ii) in one installment (the "Single Installment Method") at a redemption price equal to \$160.9223 per share (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or similar event with respect to the Preferred Stock), as elected by such holders, upon the terms set forth in this Section 6. In the Redemption Election the holders shall specify a date, which shall be not less than 90 days after the date of the Redemption Election (the "Initial Redemption Date"), on which redemption shall occur under the Single Installment Method or begin under the Multiple Installment Method. If the Multiple Installment Method shall be elected, the Corporation shall redeem one-third of the outstanding shares of Preferred Stock held by each holder on the Initial Redemption Date, one-half of the remaining outstanding shares of Preferred Stock held by each holder on the first anniversary thereof and the remaining shares on the second anniversary thereof. On each such redemption date, the holders shall surrender the certificate or certificates for the shares to be redeemed duly endorsed for transfer or with duly executed stock transfer powers sufficient to permit transfer attached, at the offices of the Corporation or of any transfer agent for the Preferred Stock. The Corporation shall, as soon as practicable thereafter, issue and deliver to each holder a certificate or certificates for the balance of the shares not being redeemed.

(b) Notice of redemption shall be sent by first class mail, postage prepaid, to each holder of record of the Preferred Stock, not less than 30 days nor more than 60 days prior to the Initial Redemption Date, at the address of such holder as it appears on the books of the Corporation. Such notice shall set forth (i) the Initial Redemption Date, the dates of the second and third installments of such redemption, if any, and the place of redemption; and (ii) the number of shares to be redeemed on each date of redemption and the redemption price on each such date. The Corporation shall be obligated to redeem the Preferred Stock on the dates and in the amounts set forth in the notice; provided, however, that any holder of Preferred Stock who is not party to a Redemption Election may convert any or all of the shares owned by such holder into Common Stock in accordance with Section 4 at any time prior to the date of redemption of such shares. The Corporation, if advised before the close of business on the relevant redemption date by written notice from any holder of record of Preferred Stock to be redeemed, shall credit against the number of shares of Preferred Stock required to be redeemed from such holder, and shall not redeem, the number of shares of Preferred Stock which had been converted by such holder on or before such date and which had not previously been credited against any redemption.

(c) If, on or before a redemption date, the funds necessary for such redemption shall have been set aside by the Corporation and deposited with a bank or trust company, in trust for the pro rata benefit of the holders of the Preferred Stock that has been called for redemption, then, notwithstanding that any certificates for shares that have been called for redemption shall not have been surrendered for cancellation, the shares represented thereby shall no longer be deemed outstanding from and after such redemption date, and all rights of

holders of such shares so called for redemption shall forthwith, after such redemption date, cease and terminate with respect to such shares, excepting only the right to receive the redemption funds therefor to which they are entitled. Any interest accrued on funds so deposited and unclaimed by stockholders entitled thereto shall be paid to such stockholders at the time their respective shares are redeemed or to the Corporation at the time unclaimed amounts are paid to it. In case the holders of Preferred Stock which shall have been called for redemption shall not, within one year after the final redemption date, claim the amounts so deposited with respect to the redemption thereof, any such bank or trust company shall, upon demand, pay over to the Corporation such unclaimed amounts and thereupon such bank or trust company shall be relieved of all responsibility in respect thereof to such holder and such holder shall look only to the Corporation for the payment thereof. Any funds so deposited with a bank or trust company which shall not be required for such redemption by reason of the exercise subsequent to the date of such deposit of the right of conversion of any shares or otherwise shall be returned to the Corporation forthwith.

(d) If the Corporation for any reason fails to redeem any of the shares of Preferred Stock in accordance with Section 6(a) on or prior to the redemption dates determined in accordance with this Section 6, then, the Corporation shall become obligated to pay, in addition to the redemption price specified in Section 6(a), interest on the unpaid balance of such price, which shall accrue at a rate of one percent (1%) per month until such price is paid in full.

(e) If the funds of the Corporation legally available for redemption of shares of Preferred Stock on a redemption date are insufficient to redeem the total number of shares of Preferred Stock submitted for redemption, those funds which are legally available will be used to redeem the maximum possible number of whole shares ratably among the holders of such shares. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its President this 2nd day of August, 2006.

ATHLETES' PERFORMANCE, INC.

By: 

Mark Verstegen, President