

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

ARTIFICIAL MUSCLE, INC.

Artificial Muscle, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "DGCL"), does hereby certify that:

FIRST: The name of the Corporation is Artificial Muscle, Inc. and the Corporation was originally incorporated on February 16, 2001 pursuant to the DGCL under such name.

SECOND: That the Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of the Corporation, declaring said amendment and restatement to be advisable and in the best interests of the Corporation and its stockholders, and authorizing the appropriate officers of the Corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Certificate of Incorporation of the Corporation be amended and restated in its entirety as follows:

ARTICLE I

The name of the Corporation is Artificial Muscle, Inc.

ARTICLE II

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

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which Corporations may be organized under the DGCL. The private property of the stockholders of the Corporation shall not be subject to the payment of corporate debts to any extent whatsoever.

ARTICLE IV

The Corporation will have a perpetual existence.

ARTICLE V

A. Authorized Capital Stock. The Corporation is authorized to issue two classes of shares to be designated respectively "Preferred Stock" and "Common Stock," both of which have

a par value of \$0.001 per share. The total number of shares of Common Stock authorized is Thirty Million (30,000,000). The total number of shares of Preferred Stock authorized is Twenty One Million Five Hundred Thousand (21,500,000), of which Eleven Million Five Hundred Thousand (11,500,000) shall be designated as "Series A Preferred" and Ten Million (10,000,000) shall be designated as "Series B Preferred." Subject to the provisions of Section 6 of Article V(B) hereof, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote (voting together on an as-if-converted basis), irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

B. Rights, Preferences and Restrictions of Preferred Stock. The rights, preferences, privileges, and restrictions granted to and imposed upon the Preferred Stock are as set forth below in this Article V(B).

1. Dividend Provisions.

(a) The holders of the outstanding Series B Preferred shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets legally available therefor, dividends at the rate of \$0.1648 (as adjusted for any stock splits, stock dividends, stock combinations, reorganizations, recapitalizations and the like (each a "Recapitalization Event") per share per annum for the Series B Preferred payable in preference and priority to any payment or declaration and setting aside of any dividend on the Series A Preferred or Common Stock of the Corporation. The right to such dividends on the Series B Preferred shall not be cumulative.

(b) Subject to the rights of the holders of Series B Preferred contained in this Section 1, the holders of the outstanding Series A Preferred shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets legally available therefor, dividends at the rate of \$0.08 (as adjusted for any Recapitalization Event) per share per annum for the Series A Preferred payable in preference and priority to any payment of any dividend on the Common Stock of the Corporation. The right to such dividends on the Series A Preferred shall not be cumulative.

(c) No dividends or other distributions shall be made or declared and set aside with respect to the Common Stock other than dividends payable solely in Common Stock, (provided that an adjustment has been made to the applicable Conversion Price (as defined below)) while any shares of Series A Preferred or Series B Preferred are outstanding without first obtaining the approval of the holders of at least a majority of the then outstanding Series A Preferred and Series B Preferred voting together as a single class.

(d) As used in clauses (a), (b), and (c) above, the term distribution shall not include to any repurchases by the Corporation of shares of Common Stock issued to or held by employees, directors or consultants pursuant to agreements providing for such repurchase at the original purchase or issuance price in connection with termination of employment or services as a director or consultant, and none of the foregoing shall be deemed to be distributions on the Common Stock.

2. Preference on Liquidation. In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary (including as set forth in Section 2(d) below and in any such case a "Liquidation"), distributions to the stockholders of the Corporation shall be made in the following manner:

(a) First, the holders of the Series B Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A Preferred or the Common Stock by reason of their ownership of such stock, an amount per share equal to \$2.06 per share for each share of Series B Preferred then held by them (as adjusted for any Recapitalization Event) (the "Series B Original Issue Price") plus an amount equal to all declared but unpaid dividends on the Series B Preferred. If the assets and funds thus distributed among the holders of the Series B Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred in proportion to the full aforesaid preferential amounts to which each such holder is otherwise entitled to receive.

(b) After payment has been made to the holders of the Series B Preferred of the full amounts to which they shall be entitled as set forth in Section 2(a) above, the holders of the Series A Preferred shall be entitled to receive, prior and in preference to any distribution of any of assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share equal to \$1.00 for each share of Series A Preferred then held by them (as adjusted for any Recapitalization Event) (the "Series A Original Issue Price") plus an amount equal to all declared but unpaid dividends on the Series A Preferred. If the assets and funds thus distributed among the holders of the Series A Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred in proportion to the full aforesaid preferential amounts to which each such holder is otherwise entitled to receive.

(c) After payment has been made to the holders of the Preferred Stock of the full amounts to which they shall be entitled as set forth in Sections 2(a) and 2(b) above, the remaining assets of the Corporation legally available for distribution to its stockholders, if any, shall be distributed to the holders of Common Stock and Preferred Stock ratably in proportion to the number of shares of Common Stock then held, or issuable upon conversion of the shares of Preferred Stock then held, by each holder, until with respect to the Series B Preferred, such holders have received an aggregate of 3.75 times the Series B Original Issue Price (including amounts received pursuant to Section 2(a)); thereafter, any remaining assets of the Corporation available for distribution to its holders shall be distributed ratably to the holders of Common Stock and Series A Preferred, on an as-converted to Common Stock basis.

(d) (i) A merger or consolidation of the Corporation into or with another corporation (except into or with a wholly-owned subsidiary) or any other reorganization, acquisition in whatever manner structured, in each case in which the stockholders of the Corporation immediately prior to such merger, consolidation or other transaction shall own immediately following such event, less than fifty percent (50%) of the voting power of the surviving corporation or (ii) the sale, transfer or other disposition of all or substantially all of the

assets of the Corporation in one transaction or a series of transactions shall be deemed to be a Liquidation as such term is used herein.

(e) In the event the Corporation shall propose a Liquidation, the Corporation shall, within ten (10) days after the date the Board of Directors approves such action, or twenty (20) days prior to any stockholders' meeting called to approve such action, or twenty (20) days after the commencement of any involuntary proceeding, whichever is earlier, give each holder of shares of Preferred Stock initial written notice of the proposed action. Such initial written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of shares of Preferred Stock and by the holders of shares of Common Stock upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Corporation shall promptly give written notice to each holder of shares of Preferred Stock of such material change. By giving notice to the Corporation prior to any Liquidation, the holders of Preferred Stock may elect to forego the liquidation preference provided for in this Section 2 and instead convert their shares of Preferred Stock into Common Stock pursuant to Section 4 immediately prior to such event.

(f) The Corporation shall not consummate any Liquidation before the expiration of twenty (20) days after the mailing of the initial written notice or ten (10) days after the mailing of any subsequent written notice, whichever is later; provided, however, that any such 20-day or 10-day period may be shortened upon the written consent of the holders of at least a majority of the outstanding shares of Preferred Stock.

(g) Whenever the distribution provided for in this Section 2 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined by the Board of Directors in good faith, including any Series A Designees then serving and any Series B Designee then serving (as such term is defined herein). Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restriction on free marketability:

(A) If traded on a securities exchange or on the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the fifteen (15) day period ending three (3) days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the fifteen (15) day period ending three (3) days prior to the closing; and

(C) If there is no active market, the value shall be the fair market value thereof, as determined by the Board of Directors of the Corporation, including any Series A Designees then serving and any Series B Designee then serving.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of

a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in 2(f)(i)(A), (B) or (C) to reflect the approximate fair market value thereof, as determined by the Board of Directors of the Corporation in good faith, including any Series A Designees then serving and any Series B Designee then serving.

(h) In the event the requirements of this Section 2 are not complied with, this Corporation shall forthwith either:

(i) cause such closing to be postponed until such time as the requirements of 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 as set forth herein.

3. Voting Rights.

(a) General. Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted on the record date for the vote or consent of stockholders or, if no record date is established, at the date such vote is taken of any consent of stockholders solicited, and shall have voting rights and powers equal to the voting rights and powers of the Common Stock. The holder of each share of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation and shall vote with holders of the Common Stock upon any matter submitted to a vote of stockholders, except those matters required by law or this Certificate of Incorporation to be submitted to a class vote. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded down to the nearest whole number with one-half and above being rounded upward.

(b) Voting for the Election of Directors. The holders of the then outstanding Series B Preferred, voting together as a separate class, shall be entitled to elect one (1) director of the Corporation (the "Series B Designee") at each annual or special election of directors or pursuant to each written consent of the stockholders for the election of directors. The holders of outstanding Series A Preferred, voting together as a separate class, shall be entitled to elect three (3) directors of the Corporation (each a "Series A Designee") at each annual or special election of directors or pursuant to such written consent of the stockholders for the election of directors. The holders of outstanding Common Stock, voting together as a separate class, shall be entitled to elect one (1) director of the Corporation at each annual or special election of directors or pursuant to each written consent of the stockholders for the election of directors. The holders of the Preferred Stock and Common Stock, voting together as a single class and on an as-converted basis, shall be entitled to elect any remaining directors of the Corporation.

In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected by the holders of a class or series of stock

pursuant to this Section 3(b), the remaining directors so elected by that class or series may by affirmative vote of a majority thereof (or the remaining director so elected if there be but one, or if there are no such directors remaining, by the affirmative vote of the holders of a majority of the shares of that class or series), elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of a class or series of stock, or by any directors so elected as provided in the immediately preceding sentence, hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to unanimous written consent.

4. Conversion Rights. The holders of Preferred Stock shall have conversion rights as follows:

(a) Each share of Series A Preferred and Series B Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such shares, at the office of the Corporation or any transfer agent for the Series A Preferred or Series B Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Original Issue Price or the Series B Original Issue Price, as applicable, by the Conversion Price applicable to such series, determined as hereinafter provided, in effect at the time of conversion. The initial Conversion Price per share for shares of Series A Preferred shall be the Series A Original Issue Price and the initial Conversion Price per share for shares of Series B Preferred shall be the Series B Original Issue Price; provided, however, that the Conversion Price for the Series A Preferred and Series B Preferred shall be subject to adjustment as set forth in this Section 4.

(b) Each share of Series A Preferred and Series B Preferred shall automatically be converted into shares of Common Stock at the then effective Conversion Price applicable to such series upon the earlier of (i) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, from which the Corporation receives net proceeds of not less than \$30,000,000 and where the offering price per share (prior to the deduction of underwriting commissions and expenses) is at least \$7.21 (as adjusted for any Recapitalization Event), (ii) with respect to Series B Preferred, the consent of the holders of at least a majority of the then outstanding shares of Series B Preferred or (iii) with respect to Series A Preferred, consent of holders of at least majority of Series A Preferred.

(c) Before any holder of shares of Preferred Stock shall be entitled to convert the same into Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed in blank or accompanied by proper instruments of transfer, at the principal office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state in writing therein the name or names in which such holder wishes the certificate or certificates for Common Stock to be issued; provided, however, that in the event of an automatic conversion pursuant to subparagraph 4(b), the outstanding shares of all Preferred Stock shall be

converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided further, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. As soon as practicable thereafter, the Corporation shall issue and deliver at such office to such holder's nominee or nominees, certificates for the number of whole shares of Common Stock to which such holder shall be entitled. A conversion pursuant to Section 4(a) shall be deemed to have been made as of the date of such surrender of the Preferred Stock to be converted, and the person or persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock on said date. A conversion pursuant to Section 4(b) shall be deemed to have been made as of the date of the applicable event specified in Section 4(b) and the person entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock on said date.

(d) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded downward to the nearest whole share. In lieu of issuing any fractional shares, the Corporation shall pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion as determined by the Board of Directors. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(e) The Corporation shall at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of Preferred Stock, the number of shares of Common Stock deliverable upon the conversion of all shares of Preferred Stock from time to time outstanding. The Corporation shall from time to time (subject to obtaining necessary Board of Directors and stockholder approvals), in accordance with the laws of the State of Delaware, increase the authorized amount of its Common Stock if at any time the authorized number of shares of Common Stock remaining unissued shall not be sufficient to permit the conversion of all of the shares of Preferred Stock at the time outstanding.

(f) In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

5. Adjustment of Conversion Prices for Certain Dilutive Issuances. The Conversion Price of the Series A Preferred and the Series B Preferred from time to time in effect shall be subject to adjustment as follows:

(a) In case the Corporation shall at any time (i) subdivide the outstanding Common Stock or (ii) issue a stock dividend in shares of Common Stock on its outstanding Common Stock, the number of shares of Common Stock issuable upon conversion of the Preferred Stock immediately prior thereto shall be proportionately increased by the same ratio as the subdivision or dividend (with appropriate adjustments in the Conversion Price). In case the Corporation shall at any time combine its outstanding Common Stock into a smaller number of shares, the number of shares of Common Stock issuable upon conversion of the Preferred Stock immediately prior to such combination shall be proportionately decreased by the same ratio as the combination (with appropriate adjustments in the Conversion Price). All such adjustments described herein shall be effective at the close of business on the date of such subdivision, stock dividend or combination, as the case may be.

(b) In case of any capital reorganization, any consolidation or merger that is not a Liquidation or any reclassification of the Common Stock of the Corporation (including a binding share exchange which reclassifies or changes the outstanding capital stock), the Preferred Stock shall thereafter be convertible into that number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of the Preferred Stock immediately prior to such reorganization, consolidation, merger or recapitalization would have been entitled upon such reorganization, consolidation, merger or reclassification.

(c) Upon the issuance or sale by the Corporation on or after the date on which the Corporation first issues shares of Series B Preferred, of any Equity Securities (as defined below) at a consideration per share less than the applicable Conversion Price for a series of Preferred Stock in effect on the date of and immediately prior to such issuance, then and in each such event, the applicable Conversion Price for such series shall automatically be reduced, concurrently with such issue, to a price (calculated to the nearest tenth of a cent) determined by dividing:

(i) an amount equal to the sum of (x) the number of shares of Common Stock outstanding immediately prior to such issue or sale multiplied by the then existing Conversion Price, (y) the number of shares of Common Stock issuable upon conversion or exchange of any obligation, option, warrant or share of stock or other security of the Corporation convertible into or exercisable or exchangeable for Common Stock of the Corporation outstanding immediately prior to such issue or sale multiplied by the then existing Conversion Price for such series, and (z) an amount equal to the aggregate "consideration actually received" by the Corporation upon such issue or sale, by

(ii) an amount equal to the sum of the number of shares of Common Stock outstanding immediately prior to such issue or sale and the number of shares of Common Stock issuable upon conversion or exchange of any obligations or of any shares of stock of the Corporation outstanding immediately prior to such issue or sale and the additional

shares of Common Stock issued as and/or issuable upon conversion or exchange of the Equity Securities issued in such issuance or sale.

(d) For purposes of this Section 5, the following provisions shall be applicable:

(i) The term "Equity Securities" as used in this Section 5 shall mean any shares of Common Stock, or any obligation, option, warrant or share of stock or other security of the Corporation convertible into or exercisable or exchangeable for Common Stock issued or issuable after the date of the first issuance of Series B Preferred except for (A) shares of Common Stock or options to purchase Common Stock issued or issuable to officers, directors, employees or consultants of the Corporation pursuant to any agreement, plan or arrangement approved by the Corporation's Board of Directors; (B) securities issued pursuant to a transaction described in Section 5(a) or (b) hereof; (C) securities issued in connection with an equipment lease, bank line financing or corporate partnering transaction approved by the Board of Directors; (D) Common Stock issued upon conversion of Preferred Stock; and (E) securities issued in connection with an acquisition of another company by merger, purchase of substantially all of the assets or other reorganization in a transaction approved by the Board of Directors.

(ii) In the case of an issue or sale for cash of shares of Common Stock, the "consideration actually received" by the Corporation therefor shall be deemed to be the amount of cash received, before deducting therefrom any commissions or expenses actually paid by the Corporation.

(iii) In case of the issuance (otherwise than upon conversion or exchange of obligations or shares of stock of the Corporation) of Common Stock for a consideration other than cash or a consideration partly other than cash, the amount of the consideration other than cash received by the Corporation for such shares shall be deemed to be the fair value of such consideration as determined in good faith by the Corporation's Board of Directors irrespective of any accounting treatment.

(iv) In case of the issuance by the Corporation in any manner of any rights to subscribe for or to purchase shares of Common Stock, or any options for the purchase of shares of Common Stock or stock convertible into Common Stock, all shares of Common Stock or stock convertible into Common Stock to which the holders of such rights or options shall be entitled to subscribe for or purchase pursuant to such rights or options shall be deemed "outstanding" as of the date of the offering of such rights or the granting of such options, as the case may be, and the minimum aggregate consideration named in such rights or options for the acquisition of the shares of Common Stock or stock convertible into Common Stock covered thereby, plus the consideration, if any, received by the Corporation for such rights or options, shall be deemed to be the "consideration actually received" by the Corporation (as of the date of the offering of such rights or the granting of such options, as the case may be) for the issuance of such shares.

(v) In case of the issuance or issuances by the Corporation in any manner of any obligations or of any shares of stock of the Corporation that shall be

convertible into or exchangeable for Common Stock, all shares of Common Stock issuable upon the conversion or exchange of such obligations or shares shall be deemed issued as of the date such obligations or shares are issued, and the amount of the "consideration actually received" by the Corporation for such additional shares of Common Stock shall be deemed to be the total of (x) the amount of consideration received by the Corporation upon the issuance of such obligations or shares, plus (y) the minimum aggregate consideration, if any, other than such obligations or shares, receivable by the Corporation upon such conversion or exchange.

(vi) The amount of the "consideration actually received" by the Corporation upon the issuance of any rights or options referred to in subsection (iv) above or upon the issuance of any obligations or shares which are convertible or exchangeable as described in subsection (v) above, and the amount of the consideration, if any, other than such obligations or shares so convertible or exchangeable, receivable by the Corporation upon the exercise, conversion or exchange thereof shall be determined in the same manner provided in subsections (ii) and (iii) above with respect to the consideration received by the Corporation in case of the issuance of additional shares of Common Stock. On the expiration of any rights or options referred to in subsection (iv), or the termination of any right of conversion or exchange referred to in subsection (v), or any change in the number of shares of Common Stock deliverable upon exercise of such options or rights or upon conversion of or exchange of such convertible or exchangeable securities, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustments made upon the issuance of such option, right or convertible or exchangeable securities been made upon the basis of the delivery of only the number of shares of Common Stock actually delivered or to be delivered upon the exercise of such rights or options or upon the conversion or exchange of such securities.

(vii) In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons or options or rights not referred to in this Section 5(d), then, in each such case, the holders of the Preferred Stock shall be entitled to the distributions provided for in Section 1 above, and no adjustment to the Conversion Price provided for in this Section 5 shall be applicable.

(e) Subject to the right of the Corporation to amend its Certificate of Incorporation upon obtaining necessary approvals required by its Certificate of Incorporation and applicable law, this Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this 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 Preferred Stock against impairment. In the event that at any time as a result of an adjustment made, the holder of any share of Preferred Stock thereafter converted shall become entitled to receive any shares of the Corporation other than Common Stock, thereafter the conversion price of such other shares shall be subject to readjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained herein.

(f) Upon the occurrence of each adjustment or readjustment of the Conversion Price or the securities or other property to be received upon conversion of the Preferred Stock pursuant to this Section 5, this Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof, and shall prepare and furnish to each holder of Preferred Stock affected thereby a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of shares of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment or readjustment, (B) the Conversion Price at the time in effect and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares.

(g) No adjustment in the Conversion Price need be made if such adjustment would result in a change in the Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in the Conversion Price.

(h) The Corporation will pay any and all documentary, stamp or similar issue or transfer taxes payable in respect of the issue and delivery of Common Stock or other securities or properties on conversion of any shares of the Preferred Stock other than any such taxes payable by reason of the issuance of such Common Stock, or other securities or properties in names other than those in which the shares of Preferred Stock to be converted stand.

6. Changes.

(a) Series B Preferred. The Corporation shall not, whether by merger, reorganization or otherwise, without first obtaining the approval, by vote or written consent, in the manner provided by law, of the holders of at least a majority of the total number of shares of Series B Preferred then outstanding, voting as a separate class:

(i) undertake or effect any merger, consolidation or reorganization, including any Liquidation;

(ii) amend the Certificate of Incorporation or Bylaws of the Corporation;

(iii) authorize or issue any other series of Preferred Stock having rights, preferences or privileges preferential to or on a parity with the Series B Preferred;

(iv) redeem or repurchase any shares of Common Stock or Preferred Stock, except for repurchases of Common Stock from employees, directors or consultants in connection with termination of employment or services;

(v) pay or declare a dividend on any security of the Corporation; or

(vi) increase or decrease the authorized number of directors.

(b) Series A Preferred. The Corporation shall not, whether by merger, reorganization or otherwise, without first obtaining the approval, by vote or written consent, in the manner provided by law, of the holders of at least seventy-one percent (71%) of the total number of shares of Series A Preferred then outstanding, voting as a separate class:

(i) amend the Certificate of Incorporation or Bylaws of the Corporation;

(ii) undertake or effect any merger, consolidation or reorganization, including any Liquidation;

(iii) authorize or issue any other security having rights preferential to or on a parity with the Series A Preferred as to voting, dividend, redemption or liquidation preferences or convertible into such a security or which amends the terms of or reclassifies any class of equity securities with the same effect;

(iv) increase the authorized number of shares of Common Stock, Preferred Stock, or Series A Preferred;

(v) redeem or repurchase any shares of Common Stock or Preferred Stock, except for repurchases of Common Stock from employees, directors or consultants in connection with termination of employment or services;

(vi) pay or declare a dividend on any security of the Corporation; or

(vii) increase or decrease the authorized number of directors.

7. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 5 hereof, the shares so converted shall be canceled and shall not be issuable by this Corporation. The Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below:

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon a Liquidation, the assets of this Corporation shall be distributed as provided in Section 2 of Division B of Article V hereof.

3. Redemption. The Common Stock is not redeemable.

ARTICLE VI

Except as otherwise provided in this Amended and Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

ARTICLE VII

Except as otherwise provided in this Amended and Restated Certificate of Incorporation, the number of directors of the Corporation shall be fixed from time to time by, or in the manner provided in, the Bylaws or amendment thereof duly adopted by the Board of Directors or by the stockholders.

ARTICLE VIII

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE IX

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE X

To the fullest extent permitted by law, no director of the Corporation shall be personally liable for monetary damages for breach of fiduciary duty as a director. Without limiting the effect of the preceding sentence, if the Delaware General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

The Corporation is authorized, through Bylaw provisions, contractual agreements, vote of stockholders or disinterested directors or otherwise, to indemnify to the fullest extent permitted by law, and to advance expenses to, any person made or threatened to be made a party to an action or proceeding, by reason of the fact that he or she, his or her testator or intestate is or was a director, officer, employee or agent of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

Neither any amendment nor repeal of this Article X, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article X, shall eliminate or reduce the effect of this Article X in respect of any matter occurring, or any action or proceeding

accruing or arising or that, but for this Article X, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

As used herein, the term "proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such action, suit or proceeding.

ARTICLE XI

Except as provided by law and subject to the voting rights granted to the stockholders herein, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute.

* * *

THIRD: The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said Corporation in accordance with Section 228 of the DGCL.

FOURTH: That said amendment and restatement was duly adopted in accordance with the provisions of Section 242 and 245 of the DGCL.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by the Chief Executive Officer of this Corporation on this 5th day of April, 2007.

/s/ Art Goldberg

Art Goldberg
Chief Executive Officer