

SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
APPLIED GENETIC TECHNOLOGIES CORPORATION

Susan B. Washer hereby certifies that:

**ONE:** The date of filing the original Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was October 24, 2003.

**TWO:** She is the duly elected and acting President and Chief Executive Officer of Applied Genetic Technologies Corporation, a Delaware corporation.

**THREE:** The Amended and Restated Certificate of Incorporation of this company is hereby amended and restated to read as follows:

I.

The name of this company is Applied Genetic Technologies Corporation (the "Company" or the "Corporation").

II.

The address of the registered office of this Company in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Zip Code 19808, and the name of the registered agent of this Corporation in the State of Delaware at such address is Corporation Service Company.

III.

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law ("DGCL").

IV.

A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is Fifty-One Million One Hundred Fifteen Thousand Four Hundred Eighty-Nine (51,115,489) shares, Thirty Million (30,000,000) shares of which shall be Common Stock (the "Common Stock") and Twenty-One Million One Hundred Fifteen Thousand Four Hundred Eighty-Nine (21,115,489) shares of which shall be Preferred Stock (the "Preferred Stock"). The Preferred Stock shall have a par value of One Tenth of One Cent (\$0.001) per share and the Common Stock shall have a par value of One Tenth of One Cent (\$0.001) per share.

B. 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 Company (voting together as a single class on an as-if-converted basis).

C. Twenty Million Four Hundred Fifty-Five Thousand Seventy-Eight (20,455,078) of the authorized shares of Preferred Stock are hereby designated "Series A-1 Preferred Stock" (the "Series A-1 Preferred") and Six Hundred Sixty Thousand Four Hundred Eleven (660,411) of the authorized shares of Preferred Stock are hereby designated "Series A-1A Non-Voting Preferred Stock" (the "Series A-1A Preferred").

D. The rights, preferences, privileges, restrictions and other matters relating to the Preferred Stock are as follows:

1. **DIVIDEND RIGHTS.**

(a) Holders of shares of each of the Series A-1 Preferred and the Series A-1A Preferred, in preference to the holders of Common Stock, shall be entitled to receive *pari passu*, when, as and if, and as declared by the Board of Directors (the "Board"), but only out of funds that are legally available therefor, cash dividends at the rate of eight percent (8%) of the Original Issue Price (as defined below) per annum on each outstanding share of Series A-1 Preferred and Series A-1A Preferred. Such dividends shall be payable only when, as and if declared by the Board and shall be non-cumulative.

(b) The "Original Issue Price" of each of the Series A-1 Preferred and the Series A-1A Preferred shall be \$0.9658 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof).

(c) So long as any shares of either Series A-1 Preferred or Series A-1A Preferred are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock until all dividends as set forth in Section 1(a) above on the Series A-1 Preferred and the Series A-1A Preferred shall have been paid or declared and set apart, except for:

(i) acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost (or the lesser of cost or fair market value) upon termination of services to the Company;

(ii) acquisitions of Common Stock in exercise of the Company's right of first refusal to repurchase such shares; or

(iii) acquisitions of Common Stock approved by the Board and the Series A-1 Preferred as may be required by this Certificate of Incorporation.

(d) In the event dividends are paid on any share of Common Stock, the Company shall pay an additional dividend on all outstanding shares of the Series A-1 Preferred

and the Series A-1A Preferred in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(e) The provisions of Sections 1(c) and 1(d) shall not apply to a dividend payable solely in Common Stock that results in an adjustment pursuant to Section 5(f) hereof, or any repurchase of any outstanding securities of the Company that is approved by (i) the Board and (ii) the Series A-1 Preferred as may be required by this Certificate of Incorporation.

## **2. VOTING RIGHTS.**

(a) **General Rights.** Each holder of shares of the Series A-1 Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series A-1 Preferred could be converted (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Company. Except as otherwise provided herein or as required by law, the Series A-1 Preferred shall vote together with the Common Stock at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the Common Stock. Except as otherwise required by applicable law, the holders of the Series A-1A Preferred shall not be entitled to vote.

(b) **Separate Vote of Series A-1 Preferred.** For so long as at least 1,000,000 shares of Series A-1 Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series A-1 Preferred after the filing date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least sixty percent (60%) of the outstanding Series A-1 Preferred shall be necessary for effecting or validating the following actions (whether by merger, recapitalization or otherwise):

(i) Any change to the rights, preferences and privileges of the Series A-1 Preferred, including any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation), that alters or changes the voting or other powers, preferences, or other special rights, privileges or restrictions of the Series A-1 Preferred;

(ii) Any increase or decrease in the authorized number of shares of Common Stock or Preferred Stock;

(iii) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Series A-1 Preferred in right of redemption, liquidation preference, voting or dividend rights or any increase in the authorized or designated number of any such class or series;

(iv) Any redemption, repurchase, payment or declaration of dividends or other distributions with respect to Common Stock or Preferred Stock (except for acquisitions of Common Stock by the Company permitted by Section 1(c)(i) and (ii) hereof);

(v) Any agreement by the Company or its stockholders regarding an Asset Transfer or Acquisition (each as defined in Section 4 hereof);

(vi) Any voluntary dissolution or liquidation of the Company;  
or

(vii) Any increase or decrease in the authorized number of members of the Company's Board.

### (c) Election of Board of Directors.

(i) For so long as at least 4,000,000 shares of Series A-1 Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series A-1 Preferred after the filing date hereof) the holders of Series A-1 Preferred, voting as a separate class, shall be entitled to elect four (4) members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(ii) The holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(iii) The holders of Common Stock and Series A-1 Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

## 3. LIQUIDATION RIGHTS.

(a) Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary (a "Liquidation Event"), before any distribution or payment shall be made to the holders of any Common Stock, the holders of each of the Series A-1 Preferred and the Series A-1A Preferred shall be entitled to be paid, *pari passu*, out of the assets of the Company legally available for distribution, or the consideration received in such transaction, for each share of Series A-1 Preferred and each share of Series A-1A Preferred held by them, an amount per share of Series A-1 Preferred and an amount per share of Series A-1A Preferred equal to the Original Issue Price plus all declared and unpaid dividends on the Series A-1 Preferred and Series A-1A Preferred, as the case may be. If, upon any such Liquidation

Event, the assets of the Company (or the consideration received in the Acquisition or Asset Transfer (as such terms are defined in Section 4 below) shall be insufficient to make payment in full to all holders of Series A-1 Preferred and Series A-1A Preferred of the liquidation preference set forth in this Section 3(a), then such assets (or consideration) shall be distributed, *pari passu*, among the holders of Series A-1 Preferred and Series A-1A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) After the payment of the full liquidation preference of the Series A-1 Preferred and the Series A-1A Preferred as set forth in Section 3(a) above, the assets of the Company legally available for distribution in such Liquidation Event (or the consideration received by the Company or its stockholders in such Acquisition or Asset Transfer), if any, shall be distributed ratably to the holders of the Common Stock, the Series A-1 Preferred and the Series A-1A Preferred on an as-if-converted to Common Stock basis.

#### 4. ASSET TRANSFER OR ACQUISITION RIGHTS.

(a) In the event that the Company is a party to an Acquisition or Asset Transfer (as hereinafter defined), then each holder of Series A-1 Preferred and Series A-1A Preferred shall be entitled to receive, for each share of Series A-1 Preferred and/or Series A-1A Preferred then held, out of the proceeds of such Acquisition or Asset Transfer, the amount of cash, securities or other property to which such holder would be entitled to receive in a Liquidation Event pursuant to Section 3(a) and 3(b) above.

(b) For the purposes of this Section 4: (i) "Acquisition" shall mean any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the capital stock of the Company immediately prior to such consolidation, merger or reorganization, represents less than 50% of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred; provided that an Acquisition shall not include (x) any consolidation or merger effected exclusively to change the domicile of the Company, or (y) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; and (ii) "Asset Transfer" shall mean a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company.

(c) In any Acquisition or Asset Transfer, if the consideration to be received is securities of a corporation or other property other than cash, its value will be deemed its fair market value as determined in good faith by the Board on the date such determination is made.

## 5. CONVERSION RIGHTS.

The holders of the Series A-1 Preferred and the Series A-1A Preferred shall have the following rights with respect to the conversion of the Series A-1 Preferred and the Series A-1A Preferred into shares of Common Stock (the "Conversion Rights"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5, any shares of Series A-1 Preferred or Series A-1A Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A-1 Preferred or Series A-1A Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series A-1/A-1A Preferred Conversion Rate" then in effect (determined as provided in Section 5(b)) by the number of shares of Series A-1 Preferred or Series A-1A Preferred, as the case may be, being converted.

(b) **Series A-1/A-1A Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of either the Series A-1 Preferred or the Series A-1A Preferred (the "Series A-1/A-1A Preferred Conversion Rate") shall be the quotient obtained by dividing the Original Issue Price of the Series A-1 Preferred or the Series A-1A Preferred, as the case may be, by the "Series A-1/A-1A Preferred Conversion Price," calculated as provided in Section 5(c).

(c) **Series A-1/A-1A Preferred Conversion Price.** The conversion price for either the Series A-1 Preferred or the Series A-1A Preferred shall initially be the Original Issue Price of either the Series A-1 Preferred or the Series A-1A Preferred, as the case may be (the "Series A-1/A-1A Preferred Conversion Price"). Such initial Series A-1/A-1A Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series A-1/A-1A Preferred Conversion Price herein shall mean the Series A-1/A-1A Preferred Conversion Price as so adjusted.

(d) **Mechanics of Conversion.** Each holder of Series A-1 Preferred or Series A-1A Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series A-1 Preferred or the Series A-1A Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series A-1 Preferred and/or Series A-1A Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any declared and unpaid dividends on the shares of Series A-1 Preferred and Series A-1A Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series A-1 Preferred or Series A-1A Preferred, as the case may be. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series A-1 Preferred and Series A-1A Preferred to be

converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

**(e) Adjustment for Stock Splits and Combinations.** If at any time or from time to time after the date that the first share of either Series A-1 Preferred or Series A-1A Preferred is issued (as applicable, the “Original Issue Date”) the Company effects a subdivision of the outstanding Common Stock, the Series A-1/A-1A Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Original Issue Date the Company combines the outstanding shares of Common Stock into a smaller number of shares, the Series A-1/A-1A Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

**(f) Adjustment for Common Stock Dividends and Distributions.** If at any time or from time to time after the Original Issue Date the Company pays to holders of Common Stock a dividend or other distribution in additional shares of Common Stock, the Series A-1/A-1A Preferred Conversion Price then in effect shall be decreased as of the time of such issuance, as provided below:

**(i)** The Series A-1/A-1A Preferred Conversion Price shall be adjusted by multiplying the Series A-1/A-1A Preferred Conversion Price then in effect by a fraction equal to:

**(A)** the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

**(B)** the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

**(ii)** If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the Series A-1/A-1A Preferred Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

**(iii)** If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A-1/A-1A Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A-1/A-1A Preferred Conversion Price shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

**(g) Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation.** If at any time or from time to time after the

Original Issue Date, the Common Stock issuable upon the conversion of the Series A-1 Preferred or the Series A-1A Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than an Acquisition or Asset Transfer as defined in Section 4 or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), in any such event each holder of Series A-1 Preferred and Series A-1A Preferred shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock into which such shares of Series A-1 Preferred or Series A-1A Preferred could have been converted immediately prior to such recapitalization, reclassification, merger, consolidation or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of each of the Series A-1 Preferred and the Series A-1A Preferred after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Series A-1/A-1A Preferred Conversion Price then in effect and the number of shares issuable upon conversion of either the Series A-1 Preferred or the Series A-1A Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

**(h) Sale of Shares Below Series A-1/A-1A Preferred Conversion Price.**

(i) If at any time or from time to time after the Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this Section 5(h) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as provided in Section 5(f) or 5(g) above, for an Effective Price (as defined below) less than the then effective Series A-1/A-1A Preferred Conversion Price (a "Qualifying Dilutive Issuance"), then and in each such case, the then existing Series A-1/A-1A Preferred Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series A-1/A-1A Preferred Conversion Price in effect immediately prior to such issuance or sale by a fraction equal to:

(A) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the Aggregate Consideration (as defined below) received or deemed received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such then-existing Series A-1/A-1A Preferred Conversion Price, and

(B) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock outstanding, (B) the number of shares of Common Stock into which the then



outstanding shares of Series A-1 Preferred could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock into which the then outstanding shares of Series A-1A Preferred could be converted if fully converted on the day immediately preceding the given date.

(ii) No adjustment shall be made to the Series A-1/A-1A Preferred Conversion Price in an amount less than one cent per share. Any adjustment otherwise required by this Section 5(h) that is not required to be made due to the preceding sentence shall be included in any subsequent adjustment to the Series A-1/A-1A Preferred Conversion Price.

(iii) For the purpose of making any adjustment required under this Section 5(h), the aggregate consideration received by the Company for any issue or sale of securities (the "**Aggregate Consideration**") shall be defined as: (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iv) For the purpose of the adjustment required under this Section 5(h), if the Company issues or sells (x) Preferred Stock or other stock, options, warrants, purchase rights or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "**Convertible Securities**") or (y) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Series A-1/A-1A Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities plus:

(A) in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options; and

(B) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); *provided* that if the minimum amounts of such consideration cannot be ascertained, but are a

function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses.

(C) If the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided further*, that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities.

(D) No further adjustment of the Series A-1/A-1A Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series A-1/A-1A Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series A-1/A-1A Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of either Series A-1 Preferred or Series A-1A Preferred.

(v) For the purpose of making any adjustment to the Conversion Price of either the Series A-1 Preferred or the Series A-1A Preferred required under this Section 5(h), "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(h) (including shares of Common Stock subsequently reacquired or retired by the Company) on or after the Original Issue Date, other than:

(A) shares of Common Stock issued upon conversion of either the Series A-1 Preferred or the Series A-1A Preferred;

(B) shares of Common Stock or Convertible Securities issued after the Original Issue Date to employees, officers or directors of, or consultants or

advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board;

(C) shares of Common Stock issued pursuant to the exercise of Convertible Securities outstanding as of the Original Issue Date;

(D) shares of Common Stock or Convertible Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition, strategic alliance or similar business combination approved by the Board;

(E) shares of Common Stock or Convertible Securities issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board; and

(F) any Common Stock or Convertible Securities issued in connection with strategic transactions involving the Company and other entities, including (i) joint ventures, manufacturing, marketing or distribution arrangements or (ii) technology transfer or development arrangements; *provided* that the issuance of shares therein has been approved by the Company's Board and is not substantially for equity financing purposes.

References to Common Stock in the subsections of this clause (v) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(h). The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 5(h), into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Section 5(h), for such Additional Shares of Common Stock. In the event that the number of shares of Additional Shares of Common Stock or the Effective Price cannot be ascertained at the time of issuance, such Additional Shares of Common Stock shall be deemed issued immediately upon the occurrence of the first event that makes such number of shares or the Effective Price, as applicable, determinable.

(vi) In the event that the Company issues or sells, or is deemed to have issued or sold, Additional shares of Common Stock in a Qualifying Dilutive Issuance (the "First Dilutive Issuance"), then in the event that the Company issues or sells, or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance other than the First Dilutive Issuance as a part of the same transaction or series of related transactions as the First Dilutive Issuance (a "Subsequent Dilutive Issuance"), then and in each such case upon a Subsequent Dilutive Issuance the Series A-1/A-1A Preferred Conversion Price shall be reduced to the Series A-1/A-1A Preferred Conversion Price that would have been in effect had the First Dilutive Issuance and each Subsequent Dilutive Issuance all occurred on the closing date of the First Dilutive Issuance.

(i) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series A-1/A-1A Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of either the Series A-1 Preferred or

the Series A-1A Preferred, if the Series A-1 Preferred or the Series A-1A Preferred, as applicable, is then convertible pursuant to this Section 5, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and shall, upon request, prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series A-1 Preferred and Series A-1A Preferred, as the case may be, so requesting at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series A-1/A-1A Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A-1 Preferred or the Series A-1A Preferred, as applicable. Failure to request or provide such notice shall have no effect on any such adjustment.

(j) **Notices of Record Date.** Upon (i) any taking by the Company 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 or other distribution, or (ii) any Acquisition (as defined in Section 4) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 4), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series A-1 Preferred and Series A-1A Preferred at least ten (10) days prior to the record date specified therein (or such shorter period approved by the holders of sixty percent (60%) of the outstanding Series A-1 Preferred) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(k) **Special Mandatory Conversion.**

(i) If, at any time following the Original Issue Date:

(A) the Company has given at least ten (10) business days prior written notice to each holder of Series A-1 Preferred of its intention to consummate the Second Closing (the "Second Closing") or Third Closing (the "Third Closing"), as defined in that certain Series A-1 Preferred Stock Purchase Agreement dated November 25, 2003, by and among the Company and certain purchasers of Series A-1 Preferred (the "Purchase Agreement"); and

(B) the Company thereafter proceeds to consummate the Second Closing or Third Closing (a transaction that satisfies the foregoing clause (A) and this clause (B) of this subsection (i) shall be referred to herein as a "**Mandatory Offering**"), then with respect to any holder of Series A-1 Preferred who, together with such holder's affiliates, does not acquire his, her or its Pro Rata Share (as defined below) offered to such holder (a "**Non-Participating Holder**") in such Mandatory Offering, all of such Non-Participating Holder's shares of Series A-1 Preferred shall automatically and without further action on the part of such holder be converted effective upon, subject to, and immediately prior to, the consummation of the Mandatory Offering (the "**Mandatory Offering Date**") into Common Stock at the Conversion Price in effect for the Series A-1 Preferred immediately prior to the Mandatory Offering Date. Upon conversion pursuant to this Section 4(k), the certificate representing the shares of Series A-1 Preferred so converted shall be canceled, and the shares of Series A-1 Preferred shall not be subject to reissuance by the Company.

(ii) For purposes of this Section 4(k), a holder's "**Pro Rata Share**" shall be equal to the total number of shares set forth opposite such holder's name on Exhibit A of the Purchase Agreement applicable to such Second Closing or Third Closing, as the case may be.

(iii) The holder of any shares of Series A-1 Preferred converted pursuant to this Section 4(k) shall deliver to this Company during regular business hours at the office of any transfer agent of the Company for the Preferred Stock, or at such other place as may be designated by the Company, the certificate or certificates for the shares so converted, duly endorsed or assigned in blank or to this Company. As promptly as practicable thereafter, this Company shall issue and deliver to such holder, at the place designated by such holder, a certificate or certificates for the number of full shares of the Common Stock to be issued and such holder shall be deemed to have become a shareholder of record of Common Stock on the Mandatory Offering Date unless the transfer books of this Company are closed on that date, in which event he, she or it shall be deemed to have become a shareholder of record of Common Stock on the next succeeding date on which the transfer books are open.

#### **(l) Automatic Conversion.**

(i) Each share of Series A-1 Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series A-1/A-1A Preferred Conversion Price, (A) at any time upon the affirmative election of the holders of at least sixty percent (60%) of the outstanding shares of the Series A-1 Preferred, or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least three (3) times the Original Issue Price (as adjusted for stock splits, dividends, recapitalizations and the like after the filing date hereof), and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$25,000,000. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

(ii) Upon the occurrence of either of the events specified in Section 5(l)(i) above, the outstanding shares of Series A-1 Preferred 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 Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A-1 Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series A-1 Preferred, the holders of Series A-1 Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series A-1 Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A-1 Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

(m) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series A-1 Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A-1 Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value of one share of Common Stock (as determined by the Board) on the date of conversion.

(n) **Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A-1 Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A-1 Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A-1 Preferred, the Company will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(o) **Notices.** Any notice required by the provisions of this Section 5 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with

verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(p) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series A-1 Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series A-1 Preferred so converted were registered.

**6. NO REISSUANCE OF SERIES A-1 PREFERRED OR SERIES A-1A PREFERRED.**

No shares or shares of Series A-1 Preferred or Series A-1A Preferred acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued.

**V.**

**A.** The liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent under applicable law.

**B.** Any repeal or modification of this Article V shall only be prospective and shall not affect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

**VI.**

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further *provided* that:

**A.** The management of the business and the conduct of the affairs of the Company shall be vested in its Board. The number of directors which shall constitute the whole Board shall be fixed by the Board in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Restated Certificate.

**B.** The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Company; provided however, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Certificate of Incorporation, if the stockholders exercise such power, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Company.

**C.** The directors of the Company need not be elected by written ballot unless the Bylaws so provide.

\* \* \* \*

**FOUR:** This Second Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Company.

**FIVE:** This Second Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the DGCL. This Second Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of the Company.



IN WITNESS WHEREOF, Applied Genetic Technologies Corporation has caused this Second Amended and Restated Certificate of Incorporation to be signed by its President and Chief Executive Officer this 3rd day of February, 2006.

**APPLIED GENETIC TECHNOLOGIES CORPORATION**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Susan B. Washer*  
Susan B. Washer  
President and CEO

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