

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

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|------------------------|----------------|----------------|-----------------------|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | CHANGE OF NAME | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| Muze Acquisition Corp. | | 05/09/2005 | CORPORATION: DELAWARE |

| | |
|----------------------|-----------------------|
| RECEIVING PARTY DATA | |
| Name: | Muze Inc. |
| Street Address: | 304 Hudson Street |
| City: | New York |
| State/Country: | NEW YORK |
| Postal Code: | 10013 |
| Entity Type: | CORPORATION: DELAWARE |

PROPERTY NUMBERS Total: 8

| Property Type | Number | Word Mark |
|----------------------|---------|--------------------------------------|
| Registration Number: | 1758885 | MUZE |
| Registration Number: | 2955328 | MUZE STORE-PLUS FOR BODY MIND SPIRIT |
| Registration Number: | 2674561 | MUZE VIEWS |
| Registration Number: | 2614527 | MUZEGAMES |
| Registration Number: | 2703726 | MUZETUNES |
| Registration Number: | 2544258 | PHONOLOG |
| Registration Number: | 2267273 | THE ENCYCLOPEDIA OF POPULAR MUSIC |
| Registration Number: | 1287905 | VIDEOLOG |

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| CORRESPONDENCE DATA | |
| Fax Number: | (212)775-8824 |
| <i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i> | |
| Phone: | 212 775 8744 |
| Email: | dctrademarks@kilpatrickstockton.com |
| Correspondent Name: | Amanda L. McCoy |
| Address Line 1: | 31 West 52nd Street |

OP \$215.00 1758885

Address Line 2: 14th Floor
Address Line 4: New York, NEW YORK 10019

| | |
|--------------------|-----------------|
| NAME OF SUBMITTER: | Amanda L. McCoy |
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| | |
|------------|-------------------|
| Signature: | /Amanda L. McCoy/ |
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| Date: | 09/10/2007 |
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Total Attachments: 16
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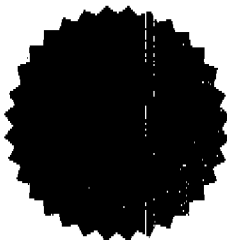
Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "MUZE ACQUISITION CORP.", FILED IN THIS OFFICE ON THE TENTH DAY OF MAY, A.D. 2005, AT 8:15 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



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050381688

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State
AUTHENTICATION: 3871253

DATE: 05-11-05

State of Delaware
Secretary of State
Division of Corporations
Delivered 08:54 PM 05/10/2005
FILED 08:15 PM 05/10/2005
SRV 050381688 - 3958971 FILE

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF MUZE ACQUISITION CORP.,
a Delaware corporation**

Muze Acquisition Corp., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is Muze Acquisition Corp. The original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 27, 2005.
2. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation was adopted by the Corporation's Board of Directors (the "Board of Directors") and stockholders.
3. The text of the Corporation's Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:

ARTICLE I

The name of the Corporation is Muze Inc.

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is The Corporation Trust Center, 1209 Orange Street, New Castle County, Wilmington, Delaware, 19801. The name of the Corporation's registered agent at said address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

A. Classes of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is Ten Million (10,000,000) shares. Six Million (6,000,000) shares shall be Common Stock, \$0.001 par value per share and Four Million (4,000,000) shares shall be Preferred Stock, \$0.001 par value per share. The Preferred Stock authorized by this Certificate of Incorporation shall be issued by series as set forth herein. The

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first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of Four Million (4,000,000) shares.

B. Rights, Preferences and Restrictions of Preferred Stock. The rights, preferences, privileges, restrictions and other matters relating to the Preferred Stock are as follows:

1. Dividend Provisions.

(a) Subject to the rights of series of Preferred Stock which may from time to time come into existence, the holders of shares of Series A Preferred Stock shall be entitled to receive cash dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any cash dividend on the Common Stock, at the rate of \$0.80 per share of Series A Preferred Stock (subject to appropriate adjustments for stock splits, dividends, combinations or other recapitalizations on such shares) per annum, payable out of funds legally available therefor. Such cash dividends shall be payable only when, as and if declared by the Board of Directors and shall not be cumulative.

(b) In the event the Corporation shall declare a distribution or dividend on the Common Stock (following payment in full of the amounts contemplated by paragraph (a) above) or declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets or options or rights to purchase any such securities or evidences of indebtedness, then, in each case the holders of the Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though such holders were the holders of the number of shares of Common Stock into which their respective shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock entitled to receive such distribution.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, prior to and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the sum of (i) the Original Series A Issue Price for each outstanding share of Series A Preferred Stock and (ii) an amount equal to all declared and unpaid dividends on such share. If upon the occurrence of such event the assets and funds thus distributed among the holders of Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of Series A Preferred Stock in proportion to the preferential amount each such holder would otherwise be entitled to receive. For purposes of this Certificate of Incorporation, the term "Original Series A Issue Price" shall mean \$10.00 for each outstanding share of Series A Preferred Stock (subject to appropriate adjustments for stock splits, dividends, combinations or other recapitalizations with respect to such shares).

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(b) After the distribution described in subsection 2(a) above has been paid, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of Series A Preferred Stock and Common Stock pro rata on an as-if-converted to Common Stock basis.

(c) A consolidation or merger of the Corporation with or into any other corporation, corporations or other entity (other than any merger effected solely for the purpose of changing the domicile of the Corporation), or a sale, conveyance or disposition of all or substantially all of the assets of the Corporation or the effectuation by the Corporation of a transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of (other than pursuant to an equity financing) (a "Change of Control Transaction"), shall be deemed to be a liquidation, dissolution or winding up within the meaning of this Section 2 unless the holders of a majority of the then-outstanding Series A Preferred Stock agree not to treat such Change of Control Transaction as a liquidation, dissolution or winding up.

(d) If any distribution made pursuant to this Section 2 is paid other than in cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

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

(A) If traded on a securities exchange or through the Nasdaq National Market System, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) business 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 thirty (30) day period ending three (3) business days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof as determined in good faith by the Board of Directors.

(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(d)(i)(A), (B) or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the Corporation shall give, by mailing notice by United States Postal Service via certified or registered mail, return receipt requested, addressed to each holder of any shares of Series A Preferred Stock, at the address of such holder as shown on the books of the Corporation, (A) at least ten (10) days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for

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determining rights to vote in respect of any such liquidation, dissolution or winding up, and (B) in the case of any such liquidation, dissolution or winding up, at least ten (10) days' prior written notice of the date when the same shall take place. Any notice required by the provisions of this Section 2 to be given to the holders of shares of Series A Preferred Stock shall be deemed given when deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation. The foregoing notice provisions may be waived by holders of a majority of the then-outstanding Series A Preferred Stock.

(e) The provisions of this Section 2 are in addition to the protective provisions of Section 5 hereof.

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

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series A Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series A Issue Price by the Conversion Price at the time in effect for such share. The initial "Conversion Price" shall be the Original Series A Issue Price; provided, however, that the Conversion Price for the Series A Preferred Stock shall be subject to adjustment as set forth in subsection 3(d) below.

(b) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price then in effect immediately and without further action by the Corporation or the holder of such shares upon the earlier of (i) the consummation of the Corporation's sale of its Common Stock in a bona fide, firm commitment underwriting pursuant to a registration statement under the Securities Act of 1933, as amended (the "1933 Act"), the public offering price of which is not less than \$30.00 per share (subject to appropriate adjustments for stock splits, dividends, combinations or other recapitalizations with respect to such shares) and the aggregate proceeds to the Corporation and/or any selling stockholders (without deduction for underwriters' discounts and expenses relating to the issuance) of which exceed \$40,000,000 or (ii) the election of the holders of a majority of the then-outstanding shares of Series A Preferred Stock.

(c) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Stock, and shall give written notice by mail, postage prepaid, to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder

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shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offer of securities registered pursuant to the 1933 Act, the conversion may, at the option of any holder tendering Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the holder shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Series A Preferred Stock. The Conversion Price of the Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If the Corporation shall issue, after the date upon which any shares of Series A Preferred Stock were first issued (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Additional Stock (a "Dilutive Issuance"), the Conversion Price shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying the Conversion Price in effect immediately prior to the issuance of such Additional Stock by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (treating any shares of outstanding convertible Preferred Stock on an as-converted basis) plus the number of shares of Additional Stock which the aggregate consideration received by the Corporation for such issuance would purchase at the Conversion Price existing immediately prior to such issuance of Additional Stock; and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such issuance of Additional Stock (treating any shares of outstanding convertible Preferred Stock on an as-converted basis).

(B) No adjustment of the Conversion Price shall be made in an amount less than one cent per share; provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections 3(d)(i)(E)(3) and 3(d)(i)(E)(4), no adjustment of the Conversion Price pursuant to this subsection 3(d) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any discounts, commissions or other expenses allowed, paid or incurred by the

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Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of Additional Stock for consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(E) In the case of the issuance (whether before, on or after the Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 3(d)(i) and subsection 3(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 3(d)(i)(C) and 3(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum aggregate exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum aggregate additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 3(d)(i)(C) and 3(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the

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Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities (excluding only a change resulting from the price-based antidilution provisions thereof), the applicable Conversion Price of each series of Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

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

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 3(d)(i)(E)(1) and (E)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 3(d)(i)(E)(3) or (E)(4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 3(d)(i)(E)) by the Corporation after the Purchase Date other than:

(A) shares of Common Stock issued pursuant to a transaction described in subsection 3(d)(iii) hereof;

(B) shares of Common Stock issued upon conversion of the Series A Preferred Stock;

(C) shares of capital stock (or options, warrants or other rights to purchase such capital stock) issuable or issued to employees, officers, consultants or directors of the Corporation, as approved by the Board of Directors,

(D) shares of capital stock (or options, warrants or other rights to purchase such capital stock) issued in connection with equipment lease financing arrangements, credit agreements, debt financings or other commercial transactions approved by the Board of Directors;

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(E) shares of capital stock subject to outstanding options, warrants or convertible securities as of the date of filing of this Certificate of Incorporation;

(F) shares of Common Stock issued or issuable (I) in a public offering before or in connection with which all outstanding shares of Preferred Stock will be converted to Common Stock or (II) upon exercise of warrants or rights granted to underwriters in connection with such a public offering; or

(G) shares of Common Stock in a transaction where (and to the extent that) the holders of a majority of the outstanding shares of Series A Preferred Stock agree to waive (in whole or in part) adjustment of the Conversion Price(s) in connection with such issuance.

(iii) Stock Splits. In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Conversion Prices shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(iv) Combinations. If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(v) Common Stock Dividends and Distributions.

(A) Without limiting the effect of Section 5 hereof, if at any time or from time to time after the Purchase Date, the Corporation pays a dividend or other distribution in additional shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock, the Conversion Price shall be adjusted by multiplying the Conversion Price then in effect by a fraction:

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(1) 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

(2) 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 (or upon conversion of such convertible securities or the exercise of such rights to receive Common Stock, as applicable);

(E) If the Corporation fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the 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.

(C) 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 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 Section 3(d)(v) to reflect the actual payment of such dividend or distribution.

(vi) Other Distributions. Without limiting the effect of Section 5 hereof, in the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, or assets (excluding cash dividends) or options or rights not referred to in subsection 3(d)(i) through (v), then, in each such case for the purpose of this subsection 3(d), the holders of Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock into which their shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock entitled to receive such distribution.

(e) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 3), provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 3 with respect to the rights of the holders of the Series A Preferred Stock after the recapitalization to the end that the provisions of this Section 3 (including adjustment of the applicable Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

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(f) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, 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 3 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock against impairment.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon conversion of the Series A Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share (after aggregating the total number of shares of Series A 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).

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 3, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock has been made a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and 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 a share of Series A Preferred Stock.

(h) Notices of Record Date. 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 Series A Preferred Stock, at least ten (10) 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.

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

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such Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(j) Notices. Any notice required by the provisions of this Section 3 to be given to the holders of shares of Series A Preferred Stock shall be deemed given when deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

4. Voting Rights. Except as set forth in Section 5 below, the holder of each share of Series A Preferred Stock shall have the right to one vote for each share of Common Stock into which such series of Series A Preferred Stock could then be converted (with any fractional share being rounded to the nearest whole share after aggregating all shares of Series A Preferred Stock held by any holder). With respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Corporation's Bylaws (the "Bylaws"), and shall be entitled to vote, together as a single class with holders of Common Stock, with respect to any matter upon which holders of Common Stock have the right to vote, except as provided in Section 5 below or as otherwise required by law.

5. Protective Provisions.

(a) Series A Preferred Stock. So long as at least 500,000 shares of Series A Preferred Stock remain outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding Series A Preferred Stock, voting together as a separate class:

(i) liquidate, dissolve, wind up its business, recapitalize, reorganize or enter into a Change of Control Transaction; or

(ii) declare or pay any dividend on any shares of the Corporation's capital stock; or

(iii) redeem, retire or purchase any shares of Series A Preferred Stock or Common Stock, other than the repurchase of Common Stock pursuant to agreements with employees, directors or consultants upon the termination of their employment or status as a service provider with the Corporation.

(b) Consent to Creation of Senior or Pari Passu Preferred Stock. The approval of the holders of a majority of the then outstanding Series A Preferred Stock (voting together as a single class on an as-converted basis) shall be required for any action by the Corporation (whether by amendment of this Certificate of Incorporation, amendment or alteration of the Bylaws, the filing of any certificate of designations, merger, recapitalization or otherwise) that (i) creates a class or series of capital stock of the Corporation that has rights senior to or on a parity with the Series A Preferred Stock with respect to dividends, redemptions, other distributions or upon a liquidation or

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Change of Control Transaction (other than by virtue of having a greater original purchase price than the Original Series A Issue Price) or with respect to voting power (other than as to matters relating solely to such class of capital stock and other than by virtue of increased voting power commensurate with differences in original issuance price); (ii) adversely affects any of the rights, privileges or preferences of the Series A Preferred Stock; or (iii) increases or decreases (other than by conversion) the total number of authorized shares of Series A Preferred Stock

6. Status of Converted Stock. In the event any shares of Series A Preferred Stock shall be converted pursuant to Section 3 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation, and this Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

7. Repurchase of Shares. In connection with repurchases by the Corporation of shares of its Common Stock pursuant to agreements with certain of the holders thereof approved by the Board of Directors (and permitted under, or consented to under, Section 5), each holder of Preferred Stock shall be deemed to have waived the application, in whole or in part, of any provisions of the Delaware General Corporation Law or any applicable law of any other state which might limit, prevent or prohibit such repurchases.

C. Common Stock.

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 the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section B(2) hereof.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws, and shall be entitled to vote upon such matters and in such manner as may be provided by law and by subsection B(4) hereof.

ARTICLE V

A. Exculpation. The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent under applicable law. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under

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Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is hereafter amended to further reduce or to authorize, with the approval of the Corporation's stockholders, further reductions in the liability of the Corporation's directors for breach of fiduciary duty, then a director of the Corporation shall not be liable for any such breach to the fullest extent permitted by the Delaware General Corporation Law as so amended.

B. Indemnification. To the extent permitted by applicable law, the Corporation is also authorized to provide indemnification of (and advancement of expenses to) such agents (and any other persons to which Delaware law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders, and others.

C. Effect of Repeal or Modification. Any repeal or modification of any of the foregoing provisions of this Article V shall not adversely affect any right or protection of a director, officer or agent of the Corporation (or any other person to which Delaware law permits this Corporation to provide indemnification) existing at the time of, or increase the liability of any director, officer or agent of the Corporation (or other person) with respect to any acts or omissions of such director, officer or agent (or other person) occurring prior to, such repeal or modification.

ARTICLE VI

The Corporation shall have perpetual existence.

ARTICLE VII

Except as otherwise provided in this 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. The stockholders shall also have the power to adopt, amend or repeal the Bylaws; provided however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation, 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 Corporation 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.

ARTICLE VIII

Elections of directors need not be by written ballot except and to the extent provided in the Bylaws.

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ARTICLE IX

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, and all rights conferred upon stockholders herein are granted subject to this reservation.

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IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed as of this 9th day of May, 2005.



Carl Eibl, Treasurer and Assistant Secretary

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