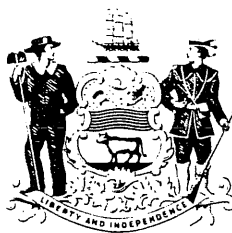


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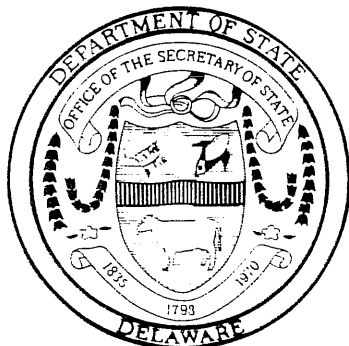
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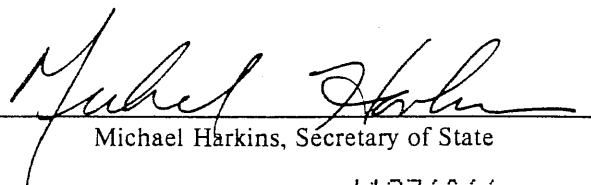
Office of Secretary of State

I, MICHAEL HARKINS, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF ARRHYTHMIA RESEARCH TECHNOLOGY, INC. FILED IN THIS OFFICE ON THE TWELFTH DAY OF JUNE, A.D. 1987, AT 10 O'CLOCK A.M.

| | | | | | | | | |



727163095


Michael Harkins, Secretary of State

AUTHENTICATION:

11274064

DATE:

06/12/1987

727163095

FILED
10AM

JUN 12 1987

CERTIFICATE OF INCORPORATION

OF

ARRHYTHMIA RESEARCH TECHNOLOGY, INC.

I, the undersigned, for the purpose of incorporating and organizing a corporation under the General Corporation Law of the State of Delaware, do hereby certify as follows:

FIRST: The name of the corporation (hereinafter called the "Corporation") is Arrhythmia Research Technology, Inc.

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

THIRD: 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 the State of Delaware.

FOURTH: The number of shares which the Corporation is authorized to have outstanding is 12,000,000 shares, consisting of 2,000,000 shares of Serial Preferred Stock of a par value of \$1.00 per share (hereinafter called "Serial Preferred Stock") and 10,000,000 shares of Common Stock of a par value of \$.01 per share (hereinafter called "Common Stock").

The express terms of the shares of each class are as follows:

DIVISION A

EXPRESS TERMS OF THE SERIAL PREFERRED STOCK

Section 1. The Serial Preferred Stock may be issued from time to time in one or more series. All shares of Serial Preferred Stock shall be of equal rank and shall be identical, except in respect of the matters that may be fixed by the Board of Directors as hereinafter provided, and each share of each series shall be identical with all other shares of such series, except as to the date from which dividends are cumulative. Subject to the provisions of Sections 2 to 9, inclusive, of this Division, which provisions shall apply to all Serial Preferred Stock, the Board of Directors hereby is authorized to cause such shares to be issued in one or more series and with respect to each such series to fix:

(a) The designation of the series, which may be by distinguishing number, letter and/or title.

(b) The number of shares of the series, which number the Board of Directors may (except where otherwise provided in the creation of the series) increase or decrease (but not below the number of shares thereof then outstanding).

(c) The annual dividend rate of the series.

(d) The dates at which dividends, if declared, shall be payable, and the dates from which dividends shall be cumulative.

(e) The redemption rights and price or prices, if any, for shares of the series.

(f) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the series.

(g) The amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(h) Whether the shares of the series shall be convertible into shares of any other class or series of the Corporation, and if so, the specification of such other class or series, the conversion rate or rates, any adjustments thereof, the date or dates as of which such shares shall be convertible, and other terms and conditions upon which such conversion may be made, subject to the provisions of Section 8 of this Division.

(i) Restrictions (in addition to those set forth in Sections 6(b) and 6(c) of this Division) on the issuance of shares of the same series or of any other class or series. The Board of Directors is authorized to adopt from time to time a resolution or resolutions fixing, with respect to each such series, the matters described in clauses (a) to (i), inclusive, of this Section 1.

Section 2. The holders of Serial Preferred Stock of each series, in preference to the holders of Common Stock and of any other class of shares ranking junior to the Serial Preferred Stock, shall be entitled to receive out of any funds legally available for the Serial Preferred Stock and when and as

declared by the Board of Directors dividends in cash at the rate for such series fixed in accordance with the provisions of Section 1 of this Division and no more, payable on the dividend payment dates fixed for such series. Such dividends shall be cumulative, in the case of shares of each particular series, from and after the date or dates fixed with respect to such series. Accumulations of dividends shall not bear interest. No dividend may be paid upon or set apart for any of the Serial Preferred Stock on any dividend payment date unless (i) all dividends upon all Serial Preferred Stock then outstanding for all dividend payment dates prior to such date shall have been paid or funds therefor set apart, and (ii) at the same time a like dividend upon all Serial Preferred Stock then outstanding and having a dividend payment date on such date, ratably in proportion to the respective annual dividend rates, shall be paid or funds therefor set apart.

For the purpose of this Division A, a dividend shall be deemed to have been paid or funds therefor set apart on any date if, on or prior to such date, the Corporation shall have deposited funds sufficient therefor with a bank or trust company and shall have caused checks drawn against such funds in appropriate amounts to be mailed to each holder of record entitled to receive such dividend at his address then appearing on the books of the Corporation.

Section 3. In no event so long as any Serial Preferred Stock shall be outstanding shall any dividends, except a

dividend payable in Common Stock or other shares ranking junior to the Serial Preferred Stock, be paid or declared or any distribution be made except as aforesaid on the Common Stock or any other shares ranking junior to the Serial Preferred Stock, nor shall any Common Stock or any other shares ranking junior to the Serial Preferred Stock be purchased, retired or otherwise acquired by the Corporation, unless (i) all dividends upon all Serial Preferred Stock then outstanding for all dividend payment dates on or prior to the date of such action shall have been paid or funds therefor set apart, and (ii) all mandatory sinking fund obligations pursuant to the terms of any series of Serial Preferred Stock for all sinking fund payments due on or prior to the date of such action shall have been complied with.

Section 4. (a) Subject to the express terms of each series and to the provisions of Section 6(c)(iv) of this Division, the Corporation (i) may from time to time redeem all or any part of the Serial Preferred Stock of any series at the time outstanding at the option of the Board of Directors at the applicable redemption price for such series fixed in accordance with the provisions of Section 1 of this Division, and (ii) shall from time to time make such redemptions of the Serial Preferred Stock as may be required to fulfill the requirements of any sinking fund provided for shares of such series at the applicable sinking fund redemption price, fixed in accordance

with the provisions of Section 1 of this Division, together in each case with (i) all then unpaid dividends upon such shares for all dividend payment dates on or prior to the redemption date and (ii) a proportionate dividend, based on the number of elapsed days, for the period from the day after the most recent such dividend payment date through the redemption date.

(b) Notice of every such redemption shall be mailed, postage prepaid, to the holders of record of the Serial Preferred Stock to be redeemed at their respective addresses then appearing on the books of the Corporation, not less than 30 days nor more than 60 days prior to the date fixed for such redemption. At any time before or after notice has been given as above provided, the Corporation may deposit the aggregate redemption price of the shares of Serial Preferred Stock to be redeemed, together with (i) all then unpaid dividends upon such shares for all dividend payment dates on or prior to the redemption date and (ii) if and only if the dividend payments on such shares are mandatory and cumulative, a proportionate dividend, based on the number of elapsed days, for the period from the day after the most recent such dividend payment date through the redemption date, with any bank or trust company in Austin, Texas, having capital and surplus of more than \$5,000,000, named in such notice, and direct that such deposited amount be paid to the respective holders of the shares of Serial Preferred Stock so to be redeemed upon

surrender of the stock certificate or certificates held by such holders. Upon the giving of such notice and the making of such deposit such holders shall cease to be shareholders with respect to such shares and shall have no interest in or claim against the Corporation with respect to such shares except only the right to receive such money from such bank or trust company without interest or to exercise, before the redemption date, any unexpired privileges of conversion. In case less than all of the outstanding shares of any series of Serial Preferred Stock are to be redeemed, the Corporation shall select, pro rata or by lot, the shares so to be redeemed in such manner as shall be prescribed by its Board of Directors.

If the holders of shares of Serial Preferred Stock which shall have been called for redemption shall not, within six years after such deposit, claim the amount deposited for the redemption thereof, any such bank or trust company shall, upon demand, pay over to the Corporation such unclaimed amounts and thereupon such bank or trust company shall be relieved of all responsibility in respect thereof and to such holders.

(c) Any shares of Serial Preferred Stock which are (i) redeemed by the Corporation pursuant to the provisions of this Section 4, (ii) purchased and delivered in satisfaction of any sinking fund requirements provided for shares of such series, or (iii) converted in accordance with the express terms thereof, shall be cancelled and shall not be reissued.

Section 5. (a) The holders of Serial Preferred Stock of any series shall, in case of voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, be entitled to receive in full out of the assets of the Corporation, including its capital, before any amount shall be paid or distributed among the holders of the Common Stock or any other shares ranking junior to the Serial Preferred Stock, the amounts fixed with respect to shares of such series in accordance with Section 1 of this Division, plus (i) all then unpaid dividends upon such shares for all dividend payment dates on or prior to the date of payment of the amount due pursuant to such liquidation, dissolution or winding up, and (ii) if and only if the dividend payments on such shares are mandatory and cumulative, a proportionate dividend, based on the number of elapsed days, for the period from the day after the most recent such dividend payment date through the date of payment of the amount due pursuant to such liquidation, dissolution or winding up. In case the net assets of the Corporation legally available therefor are insufficient to permit the payment upon all outstanding shares of Serial Preferred Stock of the full preferential amount to which they are respectively entitled, then such net assets shall be distributed ratably upon outstanding shares of Serial Preferred Stock in proportion to the full preferential amount to which each such share is entitled.

After payment to holders of Serial Preferred Stock of the full preferential amounts as aforesaid, holders of Serial Preferred Stock as such shall have no right or claim to any of the remaining assets of the Corporation.

(b) The merger or consolidation of the Corporation into or with any other corporation, or the merger of any other corporation into it, or the sale, lease or conveyance of all or substantially all the property or business of the Corporation, shall not be deemed to be a dissolution, liquidation or winding up for the purposes of this Division.

Section 6. (a) The holders of Serial Preferred Stock shall not be entitled to vote at any meetings of the Corporation's shareholders except as otherwise provided herein or required by law.

If, and so often as the Corporation shall be in default in the payment of dividends in an amount equal to eight full quarterly dividends or the equivalent thereof on any series of Serial Preferred Stock at the time outstanding, whether or not earned or declared, the holders of Serial Preferred Stock of all series, voting separately as a class shall thereafter be entitled to elect, as hereinbelow provided, one additional member of the Board of Directors of the Corporation who shall serve, except as hereinbelow provided, until the next annual meeting of the shareholders and until their successors have been elected and qualified. The special class voting rights

provided for herein when the same shall have become vested shall remain so vested until all dividends on the Serial Preferred Stock of all series then outstanding for all past dividend payment dates shall have been paid or funds therefor set apart, whereupon the terms of Directors elected by the holders of Serial Preferred Stock shall automatically terminate and the holders of Serial Preferred Stock shall be divested of their special class voting rights in respect of subsequent elections of Directors, subject to the revesting of such special class voting rights in the event hereinabove specified in this paragraph.

In the event of default entitling the holders of Serial Preferred Stock to elect a Director as above specified, a special meeting of the holders of Serial Preferred Stock for the purpose of electing such Director shall be called by the Secretary of the Corporation upon written request of, or upon written notice to the Secretary of the Corporation may be called by, the holders of record of at least one third (1/3) of the shares of Serial Preferred Stock of all series at the time outstanding, and notice thereof shall be given in the same manner as that required for the annual meeting of shareholders; provided, however, that the Corporation shall not be required, and the holders of Serial Preferred Stock shall not be entitled, to call such special meeting if the annual meeting of shareholders shall be held within 90 days after the date of

receipt by the Secretary of the Corporation of the foregoing written request or notice from the holders of Serial Preferred Stock. At any annual meeting of shareholders or special meeting called for such purpose at which the holders of Serial Preferred Stock shall be entitled to elect Directors, the holders of a majority of the then outstanding shares of Serial Preferred Stock of all series, present in person or by proxy, shall be sufficient to constitute a quorum for such purpose, and the vote of the holders of at least one third (1/3) of such shares so present at any such meeting at which there shall be such a quorum shall be necessary and sufficient to elect the members of the Board of Directors which the holders of Serial Preferred Stock are entitled to elect as hereinabove provided. If at any such meeting there shall be less than a quorum for such purpose present, the holders of a majority of the shares of Serial Preferred Stock so present may adjourn the meeting for such purpose only, from time to time without notice other than announcement at the meeting, until a quorum shall attend.

The Director who may be elected by the holders of Serial Preferred Stock pursuant to the foregoing provisions shall be in addition to any other Directors then in office or proposed to be elected otherwise than pursuant to such provisions, and nothing in such provisions shall prevent any change otherwise permitted in the total number of Directors of the Corporation or require the resignation of any Director elected otherwise than pursuant to such provisions.

(b) Except as hereinbelow provided, the affirmative vote of the holders of a majority of the shares of Serial Preferred Stock at the time outstanding, given in person or by proxy at a meeting called for the purpose at which the holders of Serial Preferred Stock shall vote separately as a class, shall be necessary to adopt any amendment to the Certificate of Incorporation which:

(i) changes issued shares of Serial Preferred Stock of all series then outstanding into a lesser number of shares of the Corporation of the same class and series or into the same or a different number of shares of the Corporation of any other class or series; or

(ii) changes the express terms of the Serial Preferred Stock in any manner substantially prejudicial to the holders of all series thereof then outstanding; or

(iii) authorizes shares of any class, or any security convertible into shares of any class, or authorizes the conversion of any security into shares of any class, ranking prior to or on a parity with the Serial Preferred Stock; or

(iv) changes the express terms of issued shares of any class ranking prior to the Serial Preferred Stock in any manner substantially prejudicial to the holders of all series of Serial Preferred Stock then outstanding; and, except as hereinbelow provided, the affirmative vote of the holders of a majority of the shares of each affected series

of Serial Preferred Stock at the time outstanding, given in person or by proxy at a meeting called for the purpose at which the holders of each affected series of Serial Preferred Stock shall vote separately as a series, shall be necessary to adopt any amendment to the Certificate of Incorporation which:

(v) changes issued shares of Serial Preferred Stock of one or more but not all series then outstanding into a lesser number of shares of the Corporation of the same series or into the same or a different number of shares of the Corporation of any other class or series; or

(vi) changes the express terms of any series of the Serial Preferred Stock in any manner substantially prejudicial to the holders of one or more but not all series thereof then outstanding; or

(vii) changes the express terms of issued shares of any class ranking prior to the Serial Preferred Stock in any manner substantially prejudicial to the holders of one or more but not all series of Serial Preferred Stock then outstanding; provided, however, that this subsection (b) shall not apply to, and the class or series vote herein specified shall not be required for the approval of, any action of the types described in the preceding clauses (i) through (vii) which is a part of or effected in connection with the consolidation of the Corporation with or its merger into any other corporation, so long as the class

vote specified by subsection (c) of this Section 6 is obtained in any case in which such class vote is required under clause (ii) of said subsection (c).

(c) Except as hereinbelow provided, the affirmative vote of the holders of at least one third (1/3) of the shares of Serial Preferred Stock at the time outstanding, given in person or by proxy at a meeting called for the purpose at which the holders of Serial Preferred Stock shall vote separately as a class, shall be necessary to effect any one or more of the following:

(i) The sale, lease or conveyance by the Corporation of all or substantially all of its property or business; provided, however, that this clause shall not be construed to apply to a mortgage or creation of any security interest in assets of the Corporation; or

(ii) The consolidation of the Corporation with or its merger into any other corporation; provided, however, that no class vote shall be required by this clause if the corporation resulting from such consolidation or merger will have after such consolidation or merger no class of shares either authorized or outstanding ranking prior to or on a parity with the Serial Preferred Stock except the same number of shares ranking prior to or on a parity with the Serial Preferred Stock and having substantially the same rights and preferences as the shares of the Corporation

authorized and outstanding immediately preceding such consolidation or merger, and each holder of Serial Preferred Stock immediately preceding such consolidation or merger shall receive the same number of shares, with substantially the same rights and preferences, of the resulting corporation; or

(iii) The purchase or redemption (for sinking fund purposes or otherwise) of less than all of the Serial Preferred Stock then outstanding except in accordance with a stock purchase offer made to all holders of record of Serial Preferred Stock, unless (A) all dividends upon all Serial Preferred Stock then outstanding for all dividend payment dates on or prior to the date of such purchase or redemption shall have been paid or funds therefore set apart, and (B) all mandatory sinking fund obligations pursuant to the terms of any series of Serial Preferred Stock for all sinking fund payment dates on or prior to the date of such purchase or redemption shall have been complied with.

Section 7. If the shares of any series of Serial Preferred Stock shall be convertible into shares of any other class or series of the Corporation, then upon conversion of shares of such series the stated capital of the shares delivered upon such conversion shall be as provided by a resolution of the Board of Directors of the Corporation.

Section 8. To the extent that there are now or hereafter created series of Serial Preferred Stock which are convertible into shares of Common Stock (hereinafter called "convertible series"), the following terms and provisions shall be applicable to all of such series, except as may be otherwise expressly provided in the terms of any such series.

(a) The holder of each share of a convertible series may exercise the conversion privilege in respect thereof by delivering to any transfer agent for the respective series the certificate for the share to be converted and written notice that the holder elects to convert such share. Conversion shall be deemed to have been effected immediately prior to the close of business on the date when such delivery is made, and such date is referred to in this Section as the "conversion date". On the conversion date or as promptly thereafter as practicable the Corporation shall deliver to the holder of the stock surrendered for conversion, or as otherwise directed by him in writing, a certificate for the number of full shares of Common Stock deliverable upon the conversion of such stock and a check or cash in respect of any fraction of a share as provided in subsection (b) of this Section. The person in whose name the stock certificate is to be registered shall be deemed to have become a holder of Common Stock of record on the conversion date. No adjustment shall be made for any dividends on shares of stock surrendered for conversion or for dividends on shares of Common Stock delivered on conversion.

(b) The Corporation shall not be required to deliver fractional shares of Common Stock upon conversion of shares of a convertible series. If more than one share shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock deliverable upon conversion thereof shall be computed on the basis of the aggregate number of shares so surrendered. If any fractional interest in a share of Common Stock would otherwise be deliverable upon the conversion, the Corporation shall in lieu of delivering a fractional share therefore make an adjustment therefore in cash at the current market value thereof, computed (to the nearest cent) on the basis of the closing price of Common Stock on the last business day before the conversion date.

For the purpose of this Section, the "closing price of Common Stock" on any business day shall be the last reported sales price regular way per share of Common Stock on such day, or, in case no such reported sale takes place on such day, the average of the reported closing bid and asked prices regular way, on the principal national securities exchange on which the shares of Common Stock listed or admitted to trading as determined by the Board of Directors, which determination shall be conclusive, or, if not listed or admitted to trading on any national securities exchange, as quoted by the automated quotation system or the national market system of the National

Association of Securities Dealers, Inc., or, if not so quoted, the mean between the average bid and asked prices per share of Common Stock in the over-the-counter market as furnished by any member of the National Association of Securities Dealers, Inc. selected from time to time by the Board of Directors for that purpose; and "business day" shall be each day on which the New York Stock Exchange or other national securities exchange or automated quotation system or the national market system or the over-the-counter market used for purposes of the above calculation is open for trading.

(c) From and after the date hereof, the conversion rate provided in the terms of each convertible series shall be adjusted from time to time as follows:

(i) In case the Corporation splits or combines the outstanding shares of Common Stock, the conversion rate in effect immediately prior to the effective date thereof shall be proportionately decreased in the case of a split or increased in the case of a combination, so as appropriately to reflect the same, such adjustment to become effective immediately after the opening of business on the day following the effective date of such split or combination. For this purpose, any dividend upon Common Stock payable in shares of Common Stock shall be considered a split of the outstanding shares, and the effective date thereof shall be considered to be the dividend record date.

(ii) In case the Corporation shall issue rights or warrants to holders of shares of Common Stock generally entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the current market price per share of Common Stock at the record date for the determination of shareholders entitled to receive such rights or warrants, the conversion rate in effect immediately prior to such record date shall be reduced to a rate determined by multiplying the conversion rate then in effect by a fraction, of which the numerator shall be the number of shares of Common Stock outstanding on such record date plus the number of shares which the aggregate offering price of the total number of shares so offered would purchase at such market price, and of which the denominator shall be the number of shares of Common Stock outstanding on such record date plus the number of additional shares of Common Stock offered for subscription or purchase, such adjustment to become effective immediately after the opening of business on the day following such record date.

(iii) In case the Corporation shall distribute to holders of shares of Common Stock generally evidences of its indebtedness or securities or assets (excluding cash dividends payable out of consolidated earnings or earned surplus, determined in accordance with generally accepted accounting principles, and excluding shares of Common Stock

and rights and warrants to purchase Common Stock), the conversion rate in effect immediately prior to the record date for the determination of shareholders entitled to receive such distribution shall be reduced to a rate determined by multiplying the conversion rate then in effect by a fraction, of which the numerator shall be the current market price per share of Common Stock on such record date, less the then fair market value (as determined by the Board of Directors of the Corporation, whose determination shall be conclusive) of the portion of the evidences of its indebtedness or securities or assets so distributed to one share of Common Stock, and of which the denominator shall be such current market price per share of Common Stock, such adjustment to become effective immediately after the opening of business on the day following such record date.

For purposes of clauses (ii) and (iii) of this subsection (c), the current market price per share of Common Stock on any day shall be deemed to be the average of the closing prices of Common Stock (as defined in subsection (b) of this section) for the ten business days commencing twenty-five business days before the day in question.

(iv) No adjustments in the conversion rate for any convertible series shall be made if, at the same time as the Corporation shall issue shares of Common Stock as a

dividend on the outstanding shares of Common Stock or shall issue rights or warrants to holders of shares of Common Stock generally, or evidences of its indebtedness or other securities or assets, which, as provided in clauses (i) through (iii) above, would otherwise call for an adjustment in such conversion rate, the Corporation shall issue shares of Common Stock as a dividend on the outstanding shares of such convertible series, or shall issue the same rights or warrants to holders of shares of such convertible series generally as are granted to holders of Common Stock, or shall distribute to holders of such convertible series generally or the same evidences of its indebtedness or other securities or assets as are distributed to holders of Common Stock, in each case in the same proportion as if each share of such series had been converted into shares of Common Stock at the then applicable conversion rate immediately prior to the record date for the determination of shareholders entitled to receive such dividend or rights or warrants or distribution.

(v) Except as provided in clauses (i) through (iii) above, no adjustment in the conversion rate for any convertible series shall be made by reason of the issuance of shares of Common Stock, or any security convertible into shares of Common Stock, in exchange for cash, property, or services which shall have a fair market value equal to such Common Stock.

(vi) No adjustment in the conversion rate for any convertible series shall be required unless such adjustment would require an increase or decrease of at least one hundredth of one percent (.01%) in such rate; provided, however, that any adjustment which by reason of this clause (vi) is not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this subsection (c) shall be made to the nearest one-hundredth of a share and to the nearest percent.

(vii) Whenever the conversion rate for any convertible series is adjusted as herein provided, the Corporation shall forthwith place on file with each transfer agent of such convertible series a statement signed by the President or a Vice President of the Corporation and by its Treasurer or its Secretary or an Assistant Treasurer or an Assistant Secretary showing in detail the facts requiring such adjustment and the conversion rate after such adjustment and shall exhibit the same from time to time to any holder of such series desiring an inspection thereof.

(d) In case of any reclassification or change of outstanding shares of Common Stock (except a split or combination, or a change in par value, or a change from par value to no par value, or a change from no par value to par value), provision shall be made as part of the terms of such reclassification or change that the holder of each share of

each convertible series then outstanding shall have the right to receive upon the conversion of such share, at the conversion rate which otherwise would be in effect at the time of conversion, with the same protection against dilution as herein provided, the same kind and amount of stock and other securities and property as he would have owned or have been entitled to receive upon the happening of any of the events described above had such share been converted immediately prior to the happening of the event.

(e) In case the Corporation shall be consolidated with or shall merge into any other corporation, provision shall be made as a part of the terms of such consolidation or merger whereby the holder of each share of each convertible series outstanding immediately prior to such event shall thereafter be entitled to such conversion rights with respect to securities of the Corporation resulting from such consolidation or merger as shall be substantially equivalent to the conversion rights herein specified; provided, however, that the provisions of this subsection (e) shall be deemed to be satisfied if such consolidation or merger shall be approved by the holders of Serial Preferred Stock in accordance with the provisions of Section 6(c) of this Division.

(f) The issue of stock certificates on conversions of shares of each convertible series shall be without charge to the converting shareholder for any tax in respect of the issue

thereof. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the registration of shares in any name other than that of the holder of the shares converted, and the Corporation shall not be required to deliver any such stock certificate unless and until the person or persons requesting the delivery thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

(g) The Corporation hereby reserves and shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued shares or treasury shares, for the purpose of delivery upon conversion of shares of each convertible series, such number of shares of Common Stock as shall from time to time be sufficient to permit the conversion of all outstanding shares of all convertible series of Serial Preferred Stock.

(h) In case at any time:

(1) the Corporation shall pay in any quarterly, semi-annual or annual period any cash dividends upon its Common Stock which in total amount per share will exceed by 50% or more the total amount per share of the cash dividends paid during the last preceding quarterly, semi-annual or annual period; or

(2) the Corporation shall authorize the issuance or distribution to the holders of shares of Common Stock generally of rights or warrants referred to in subsection (c)(ii), or of evidences of its indebtedness or securities or assets referred to in subsection (c)(iii), of this Section;

then, in each of said cases, the Corporation shall give written notice, by first class mail, postage prepaid, to the transfer agents for each convertible series and to each holder of record of such series, at his address then appearing on the books of the Corporation, of the record date or of the date on which the transfer books of the Corporation shall close with respect to such action. Such notice shall be given at least twenty days prior to the action in question and not less than ten days prior to the record date or the date on which the Corporation's transfer books are closed with respect thereto.

Section 9. For the purpose of this Division:

Whenever reference is made to shares "ranking prior to the Serial Preferred Stock", such reference shall mean and include all shares of the Corporation in respect of which the rights of the holders thereof either as to the payment of dividends or as to distributions in the event of a voluntary or involuntary liquidation, dissolution or winding up of the Corporation are given preference over the rights of the holders of Serial Preferred Stock; whenever reference is made to shares "on a

parity with the Serial Preferred Stock", such reference shall mean and include all shares of the Corporation in respect of which the rights of the holders thereof (i) neither as to the payment of dividends nor as to distributions in the event of a voluntary or involuntary liquidation, dissolution or winding up of the Corporation are given preference over the rights of the holders of Serial Preferred Stock, and (ii) either as to the payment of dividends or as to distributions in the event of a voluntary or involuntary liquidation, dissolution or winding up of the Corporation rank on an equal basis (except as to the amounts fixed therefor) with the rights of the holders of Serial Preferred Stock; and whenever reference is made to shares "ranking junior to the Serial Preferred Stock" such reference shall mean and include all shares of the Corporation in respect of which the rights of the holders thereof both as to the payment of dividends and to distributions in the event of a voluntary or involuntary liquidation, dissolution or winding up of the Corporation are junior and subordinate to the rights of the holders of the Serial Preferred Stock.

DIVISION A-1

EXPRESS TERMS OF 5 1/4% CUMULATIVE CONVERTIBLE PREFERRED STOCK

There is hereby established a first series of Serial Preferred Stock to which the following provisions shall be applicable:

Section 1. Designation of Series. The series shall be designated the "5 1/4% Cumulative Convertible Preferred Stock" (the "5 1/4% Preferred Stock").

Section 2. Number of Shares. The number of shares of the 5 1/4% Preferred Stock shall be 577,500, which number the Board of Directors may increase or decrease (but not below the number of shares of the series then outstanding and the number of shares then reserved for issuance).

Section 3. Dividend Rate. The dividend rate for the 5 1/4% Preferred Stock shall be \$0.0525 per share per annum.

Section 4. Dividend Payment Dates; Cumulation Dates. Dividend payment dates on the 5 1/4% Preferred Stock shall be the last day of June and December of each year; provided, however, that in the event of the consolidation of the Corporation with or its merger into any other corporation, the Directors may select another date for the payment of a proportionate dividend upon the 5 1/4% Preferred Stock to the date of such consolidation or merger. The first dividend payment date on the 5 1/4% Preferred Stock shall be no earlier than December 31, 1987.

Dividends on shares of the 5 1/4% Preferred Stock shall be cumulative as follows:

(a) In the case of the initial issue of shares of the 5 1/4% Preferred Stock dividends shall be cumulative from the date of such initial issue;

(b) In the case of shares of the 5 1/4% Preferred Stock issued during the period commencing immediately after such initial issuance date and terminating at the close of

the record date for the first dividend on shares of the 5 1/4% Preferred Stock, dividends shall be cumulative from such initial issuance date;

(c) In all other cases, dividends shall be cumulative from the dividend payment date next preceding the date of issue of such shares unless the shares are issued during the period commencing at the close of the record date for a dividend on shares of such series and terminating at the close of the payment date for such dividend in which case dividends shall be cumulative from the latter payment date.

Section 5. Redemption Prices. Shares of 5 1/4% Preferred Stock shall not be redeemable by the Corporation unless and until the Corporation's Common Stock trades at a \$2.00 bid price for ten consecutive days (as verified by the closing bid price as reported on a national securities exchange or on the automated quotation system or the national market system of the National Association of Securities Dealers, Inc. ("NASDAQ") or, if the Common Stock is not so listed, by a National Association of Securities Dealers, Inc. registered broker/dealer which regularly makes a market in the Corporation's Common Stock). At any time and from time to time thereafter, the Corporation may at its option redeem the shares of the 5 1/4% Preferred Stock in whole or in part, with ten days notice to the holders of the 5 1/4% Preferred Stock (which notice shall not be delivered until three days after the first date upon which the

5 1/4% Preferred Stock may be redeemed) at the redemption price of \$1.50 per share plus dividends accrued and unpaid thereon.

Section 6. Liquidation Rights. The amount payable on shares of the 5 1/4% Preferred Stock in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation shall be \$1.00 per share, plus all dividends accrued and unpaid to the date payment is made available.

Section 7. Conversion Rights. Subject to and upon compliance with the provisions of Section 8 of Division A, shares of the 5 1/4% Preferred Stock may at the option of the holder, at any time prior to the date fixed for redemption thereof, be converted into shares of Common Stock at the conversion rate in effect on the conversion date. Such right to convert shall expire at the close of business on the third day prior to the date fixed for redemption unless the Corporation shall not have duly provided payment of the redemption price by the date fixed for redemption.

Unless and until an adjusted conversion rate is required as provided in Section 8 of Division A, the conversion rate for shares of the 5 1/4% Preferred Stock shall be one share of Common Stock per share of 5 1/4% Preferred Stock. The number of shares of Common Stock issuable upon conversion of one share of 5 1/4% Preferred Stock shall be determined by multiplying the number of shares of 5 1/4% Preferred Stock to be converted by the conversion rate then in effect.

Section 8. Issuance of Shares. The Board of Directors shall not issue any authorized shares of any class of stock of the Company which shall rank prior to or on parity with the 5 1/4 Preferred Stock as to the payment of dividends or rights upon voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company without the affirmative vote of a majority of the then outstanding shares of the 5 1/4 Preferred Stock.

DIVISION B

EXPRESS TERMS OF THE COMMON STOCK

The Common Stock shall be subject to the prior and superior rights of the Serial Preferred Stock and of any series thereof. Each share of Common Stock shall be equal to every other share of Common Stock. The holders of shares of Common Stock shall be entitled to one vote for each share of such stock upon all matters presented to the shareholders.

FIFTH: The name and mailing address of the incorporator is Ronald Rosenberg, Esq., 5910 Courtyard Drive, Austin, Texas 78731.

SIXTH: A. The names and mailing addresses of the persons who are to serve as directors of the Corporation until the first annual meeting of stockholders or until their successors are elected and qualified are as follows:

<u>NAME</u>	<u>MAILING ADDRESS</u>
Russell C. Chambers, M.D.	5910 Courtyard Drive Austin, Texas 78731

Tom M. Podl 410 Bellevue Way S.E.
Suite 303
Bellevue, Washington 98004

Julius Tabin, Ph.D Fitch, Even, Tabin and
Flannery
135 S. Lasalle St.
Suite 900
Chicago, Illinois 60603

David W. Mortara, Ph.D 7865 North 86th St.
Milwaukee, Wisconsin 53224

Paul F. Walter, M.D. Emory Clinic
1365 Clifton Road, N.E.
Atlanta, Georgia 30322

B. Except as otherwise fixed by or pursuant to the terms of any class or series of capital stock of the Corporation entitled to a preference over the Common Stock as to dividends or upon liquidation, the number, qualification, terms of office, manner of election, time and place of meeting, compensation, powers and duties of the directors shall be fixed from time to time by or pursuant to the By-laws.

C. If the By-laws so provide, the members of the Board (other than those who may be elected by the holders of any class or series of capital stock having a preference over the Common Stock as to dividends or upon liquidation pursuant to the terms of this Certificate of Incorporation or of such class or series of stock) shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, having such terms and being elected in such manner as shall be specified in the By-laws.

SEVENTH: In furtherance and not in limitation of the powers conferred upon it by law, the Board of Directors is expressly authorized to:

A. Adopt any By-laws a majority of the entire Board of Directors may deem necessary or desirable for the efficient conduct of the affairs of the Corporation, including, but not limited to, provisions governing the conduct of, and the matters which may properly be brought before, meetings of the stockholders and provisions specifying the manner and extent to which prior notice shall be given of the submission of proposals to be considered at any such meeting or of nominations for the election of directors to be held at any such meeting; and

B. Repeal, alter or amend the By-laws by the vote of a majority of the entire Board of Directors.

EIGHTH: In addition to any requirements of law and any other provisions of this Certificate of Incorporation or the terms of any series of Preferred Stock or any other securities of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, this Certificate of Incorporation or any such terms), the affirmative vote of the holders of sixty-six and two-thirds percent (66-2/3%) or more of the combined voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in an annual election (the "Voting Stock"), voting together as a single class, shall be required to:

A. Remove a director without cause (for purposes of this Article EIGHTH "cause" shall mean the willful and continuous failure of a director to substantially perform such director's duties to the Corporation, other than any such failure resulting from incapacity due to physical or mental illness, or the willful engaging by a director in misconduct injurious to the Corporation);

B. Except as provided in Subsection B of Article SEVENTH above, adopt, amend, alter or repeal any provision of the By-laws;

C. Amend, alter or repeal or adopt any provision inconsistent with Articles SIXTH, SEVENTH, this Article EIGHTH or Article NINTH; and

D. Amend, alter or repeal or adopt any provisions inconsistent with any provision, other than Articles SIXTH, SEVENTH, this Article EIGHTH or Article NINTH contained in this Certificate of Incorporation, unless otherwise approved by a majority of the entire Board of Directors.

NINTH: The affirmative vote of the holders of sixty-six and two-thirds percent (66-2/3%) of the combined voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in an annual election of directors shall be required prior to:

A. Any merger or consolidation of the Corporation with or into any other corporation except for a corporation of which it shall hold eighty percent (80%) or more of the outstanding capital stock of such corporation;

B. Any sale of all or substantially all of the assets of the Corporation; and

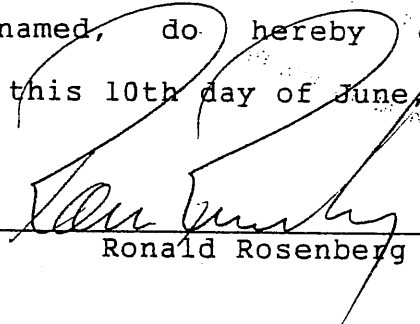
C. The adoption of any plan or proposal for the liquidation or dissolution of the Corporation.

TENTH: The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article.

ELEVENTH: No director shall be personally liable to the Corporation or its stockholder(s) for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law (i) for breach of the 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) pursuant to Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article shall apply to or have

any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

IN WITNESS WHEREOF, I, the undersigned, being the incorporator hereinabove named, do hereby execute this Certificate of Incorporation this 10th day of June, 1987.



Ronald Rosenberg

RECEIVED FOR RECORD
JUN 16 1987
William M. Honey, Recorder