

08-11-1999



8-9-99

101114167

To the Assistant Commissioner for Patents: Please record the attached original documents or copy thereof.

1. Name of Conveying party(ies):

The Salk Institute Biotechnology/
Industrial Associates, Inc.

2. Name and address of receiving Party(ies)

SIBIA Neurosciences, Inc.
505 Coast Blvd. South, Suite 300
La Jolla, CA 92037-4641

Additional name(s) of conveying
party(ies) attached? ☐ Yes ☒ No

Additional name(s) & address(es)
attached? ☐ Yes ☒ No

3. Nature of conveyance:

☐ Assignment ☐ Merger
☐ Security Agreement ☒ Change of name
☐ Other

Execution Date: 3/18/96

08486273

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s): 08/486,273

B. Patent No.:

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Stephanie L. Seidman
HELLER EHRMAN WHITE & McAULIFFE
4250 Executive Square, Suite 700,
La Jolla, CA 92037

6. Total number of Patents involved: 17. Total fee (37 CFR 3.41) \$ 40.00

☒ Enclosed
☒ Authorized to charge any
underpayment to deposit account

8. Deposit account Number: 08-1641

A duplicate of this page is
attached.

08/10/1999 DC0ATES 00000211 08486273

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Stephanie L. Seidman
Name of Person Signing
Registration No. 33,779

Signature

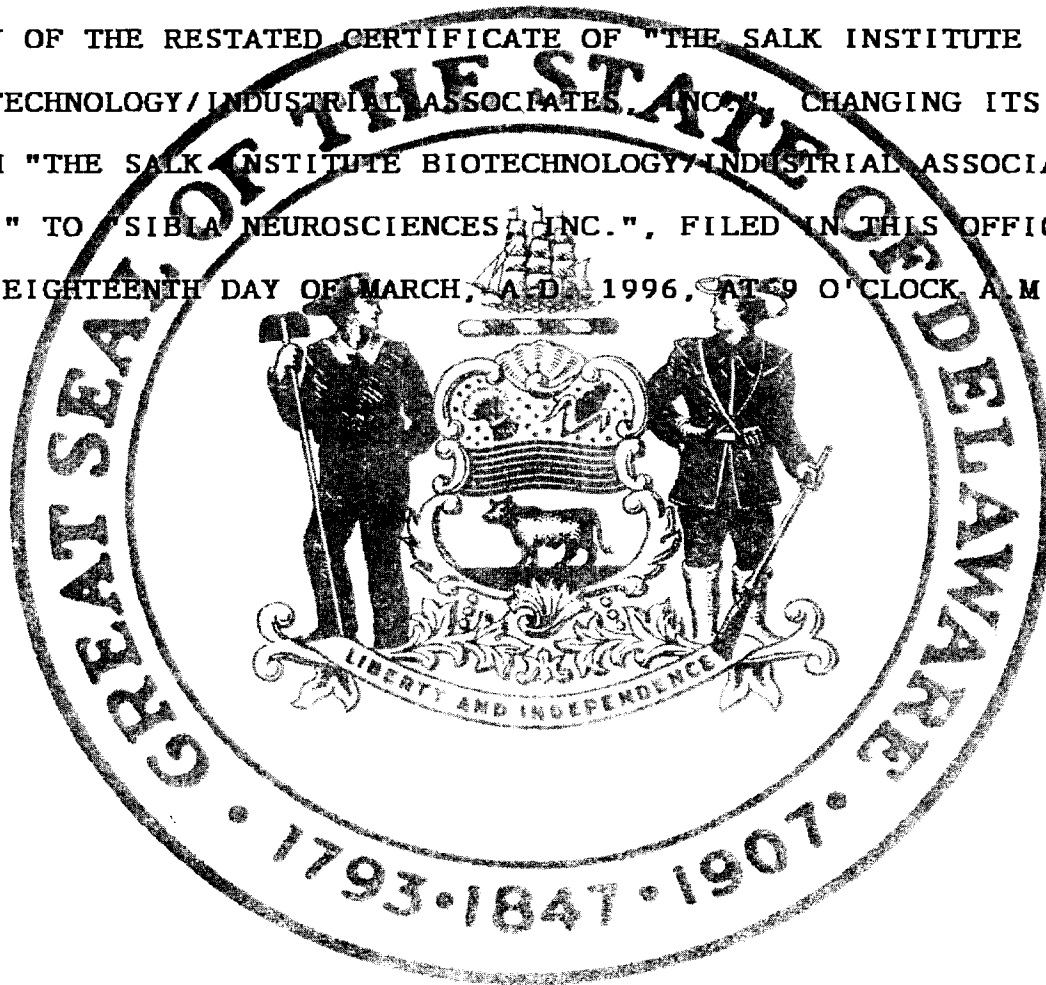
August 6, 1999
Date

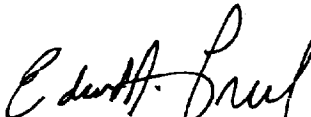
Total number of pages including cover sheet, attachments, and document: 35

State of Delaware
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "THE SALK INSTITUTE BIOTECHNOLOGY/INDUSTRIAL ASSOCIATES, INC." CHANGING ITS NAME FROM "THE SALK INSTITUTE BIOTECHNOLOGY/INDUSTRIAL ASSOCIATES, INC." TO "SIBIA NEUROSCIENCES, INC.", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF MARCH, A.D. 1996, AT 9 O'CLOCK A.M.




Edward J. Freel, Secretary of State

AUTHENTICATION:

0912477 8100

8134916

DATE:

960290203

10-04-96

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
THE SALK INSTITUTE BIOTECHNOLOGY/INDUSTRIAL ASSOCIATES, INC.**

**THE SALK INSTITUTE BIOTECHNOLOGY/INDUSTRIAL ASSOCIATES, INC., a
corporation incorporated in the State of Delaware, hereby certifies as follows:**

1. The original Certificate of Incorporation of this corporation was filed in the Office of the Secretary of State for the State of Delaware on April 15, 1981 under the name of **THE SALK INSTITUTE BIOTECHNOLOGY CORPORATION.**

2. That in lieu of a meeting and vote of stockholders, a majority of the stockholders and a majority of each class entitled to vote have given their written consent to the restatement of the Certificate of Incorporation set forth in paragraph 4 hereof in accordance with the provisions of Section 228 of the General Law of the State of Delaware and the stockholders not consenting have received prompt written notice of such corporate action taken without a meeting as provided in said Section 228.

3. That the restatement set forth in paragraph 4 hereof was duly adopted in accordance with the applicable provisions of Sections 242 and 245 of the General Law of the State of Delaware.

4. That the Board of Directors of said corporation by written consent duly adopted a resolution proposing and declaring advisable the following restatement of the Certificate of Incorporation:

RESOLVED, that the Certificate of Incorporation of this corporation be restated to read in its entirety as follows:

"1. The name of the corporation is **SIBIA Neurosciences, Inc.**

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

3. The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Law of the State of Delaware.

4. This 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 thirty million (30,000,000) shares. Twenty-five million (25,000,000) shares shall be Common Stock, each having a par value of one-tenth of one cent (\$.001). Five million (5,000,000) shares shall be Preferred Stock, each having a par value of one-tenth of one cent (\$.001). Upon the amendment of the Corporation's Amended and Restated Certificate of Incorporation to include this sentence, each then outstanding share of Common Stock, \$.001 par value, shall be converted into 2.35 shares of Common Stock \$.001 par value; provided, however, that any holder of Common Stock that would otherwise become the holder of a fraction of a share of Common Stock as a result of the foregoing conversion shall, in lieu of becoming the holder of such fraction of a share, be entitled to receive an amount of cash equal to the fair market value of such fraction as determined in good faith by the Board of Directors of the Corporation.

5. Rights, Preferences, Privileges and Restrictions of the Series A Preferred Stock. One hundred seventy-three thousand six hundred eleven (173,611) shares of Preferred Stock are hereby designated as Series A Preferred Stock (the "Series A

Preferred"). The relative rights, preferences, privileges and restrictions granted to or imposed upon the Series A Preferred or the holders thereof are as follows:

A. Dividend Rights of Series A Preferred. The holders of the then outstanding shares of Series A Preferred shall be entitled to receive dividends at the rate of \$1.152 per share per annum when, as and if declared by the Board of Directors out of any funds legally available therefor, prior and in preference to any declaration or payment of any dividend on the Series B Preferred Stock of this Corporation (the "Series B Preferred") or on the Common Stock of this corporation ("Common") payable other than in Common or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common. Dividends, if paid, or if declared and set apart for payment, must be paid contemporaneously on the Series A and Series C Preferred Stock for which any shares are issued and outstanding, and, if less than full dividends are paid or declared and set apart for payment, the same percentage of the dividend rate shall be paid on or declared and set apart for payment for the Series A and Series C Preferred Stock for which any shares are issued and outstanding. No dividends or other distributions shall be made with respect to the Series B Preferred or the Common Stock in any year, other than dividends payable solely in shares of Series B Preferred or Common Stock, as the case may be, until all declared dividends on the Series A and Series C Preferred Stock with respect to such year have been paid or declared and set apart for payment. With respect to the Series A Preferred, such dividends shall not be cumulative. No interest (or equivalent) shall be earned or accrued on any unpaid dividends. The Board shall not be obligated to declare dividends, notwithstanding the availability of funds for that purpose.

B. Liquidation Rights of Series A Preferred.

(1) In the event of any liquidation, dissolution or winding up of the corporation, either voluntary or involuntary, the holders of the Series A Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the corporation to the holders of the Common or the holders of Series B Preferred by reason of their ownership thereof, the sum of (i) \$14.40 per share for each share of Series A Preferred then held by them and (ii) an amount equal to all declared but unpaid dividends on the Series A Preferred then held by them. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A and Series C Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred and the Series C Preferred in proportion to the preferential amount each such holder would have been entitled to receive pursuant to this Section 5(B) and Section 7(B) if such distribution had been sufficient to permit the full payment of such preferential amount.

(2) Upon the completion of the distribution provided for in this Section 5(B) and Section 7(B), all of the assets remaining in the corporation, if any, shall be distributed pro rata among the holders of the Common and the Series B Preferred pursuant to Paragraph B of Article 6. A merger or consolidation of the corporation with or into any other corporation or corporations, or the merger of any other corporation or corporations into this corporation, shall not be treated as a liquidation, dissolution or winding up of this corporation for purposes of this Paragraph B.

C. Redemption.

The Series A Preferred shall be non-redeemable.

D. Conversion.

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

(1) Optional and Automatic Conversion.

Each share of Series A Preferred shall be convertible at the option of the holder thereof, without payment of additional consideration, 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, into such number of fully paid and nonassessable shares of Common as is determined by dividing \$14.40 by the Series A Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common shall be deliverable upon conversion (the "Series A Conversion Price") of the Series A Preferred shall initially be \$14.40 per share of Common. Such initial Series A Conversion Price shall be subject to adjustment as hereinafter provided.

Each share of Series A Preferred shall automatically be converted into shares of Common at the then effective Series A Conversion Price upon (i) the closing of a public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Act"), covering the offer and sale of Common (whether for the account of the corporation or for the account of one or more shareholders of the corporation) of the corporation to the public or (ii) the written consent of holders of more than 50% of the then outstanding shares of Series A Preferred voting as a class. In the event of the automatic conversion of the Series A Preferred upon a public offering as aforesaid, the

conversion of Series A Preferred shall be deemed to have occurred automatically at the closing of such public offering.

(2) Mechanics of Conversion. No fractional shares of Common shall be issued upon conversion of Series A Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common. Before any holder of Series A Preferred shall be entitled to convert the same into full shares of Common, it 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, and shall give written notice to the corporation at such office that it elects to convert the same (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to Paragraph D(1)). The corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred a certificate or certificates, registered in such names as specified by the holder, for the number of shares of Common to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common, and any accrued and unpaid dividends on the converted Series A Preferred. 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 to be converted, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date (except that in the event of an automatic conversion pursuant to clause (i) of Paragraph D(1) such

conversion shall be deemed to have been made immediately prior to the closing of the offering referred to in such clause (i) of Paragraph D(1)). If the conversion is in connection with an underwritten offer of securities registered pursuant to the Act, the conversion may, at the option of any holder tendering Series A Preferred for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common issuable upon such conversion of the Series A Preferred shall not be deemed to have converted such Series A Preferred until immediately prior to the closing of such sale of securities.

(a) Adjustments for Subdivisions, Dividends, Combinations or Consolidations of Common.

(1) In the event the outstanding shares of Common shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common, the Series A Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(2) In the event the corporation shall declare or pay any dividend on the Common payable in Common or in the event the outstanding shares of Common shall be subdivided, by reclassification or otherwise than by payment of a dividend in Common, into a greater number of shares of Common, the Series A Conversion Price in effect immediately prior to such dividend or subdivision shall be proportionately decreased:

1) in the case of any such dividend, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend, or

2) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and such dividend shall not have been fully paid on the date fixed therefor, the adjustment previously made in the Series A Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Series A Conversion Price shall be adjusted as of the time of actual payment of such dividend.

(b) Adjustments for Other Reclassifications, Dividends and Distributions. If there occurs any capital reorganization or any reclassification of the capital stock of the Corporation (other than a subdivision, dividend, combination, consolidation or other transaction provided for in Article 5(A) or Article 5(D)(a)), each share of Series A Preferred shall thereafter be convertible into the same kind and amounts of securities or other assets, or both, that were issuable or distributable to the holders of shares of outstanding Common Stock of the Corporation upon such reorganization or reclassification, in respect of that number of shares of Common Stock into which such shares of Series A Preferred might have been converted immediately prior to such reorganization or reclassification; and in any such case, appropriate adjustments (as determined by the Board of Directors) shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the

holders of Series A Preferred to the end that the provisions of these Articles shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other assets thereafter deliverable upon the conversion of the Series A Preferred.

(3) 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, and prior to effecting any merger or consolidation with or into any other corporation, or any sale, lease or conveyance of all or substantially all its property or business, or any liquidation, dissolution or winding up of the Corporation or any reclassification or recapitalization of its Common shares outstanding involving a change in the Common shares, the corporation shall mail to each holder of Series A Preferred at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record or action is to be taken and the amount and character of such dividend, distribution or right or the nature of such action.

(4) 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, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred, 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 the Series A

Preferred, the corporation shall 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 purpose.

E. Voting Rights. Except as otherwise required by law or this Certificate of Incorporation, each share of Common issued and outstanding shall have one vote, each share of Series A Preferred issued and outstanding shall have the number of votes equal to the number of Common shares into which such share of Series A Preferred is convertible as adjusted from time to time pursuant to Paragraph D hereof and the Common and the Preferred Stock shall vote together as a single class. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number.

6. Rights, Preferences, Privileges and Restrictions of the Series B Preferred. 600,000 shares of Preferred Stock are hereby designated Series B Preferred. The relative rights, preferences, privileges and restrictions granted to or imposed upon the Series B Preferred or the holders thereof are as follows:

A. Dividend Rights. The Series B Preferred shall be entitled to receive out of funds legally available therefor, dividends at the rate of \$0.01 per annum per share, and no more, when and as declared by the Board of Directors, payable in preference and priority to any payment of any dividend on Common Stock. The rights to such dividends shall be non-cumulative.

B. Liquidation Rights.

(1) Subject to Paragraph B of Article 6, in the event of any liquidation, dissolution or winding up of the corporation, either voluntary or involuntary, the holders of the Common Stock shall be entitled to receive, prior and in preference to any distribution of the assets of the corporation to the holders of Series B Preferred by reason of their ownership thereof, an amount for each share of Common Stock then held by them equal to ten (10) times the amount which, after such distribution, would remain available for distribution to holders of Series B Preferred for each share of Series B Preferred then held. The assets remaining after such distribution to the holders of Common Stock (and any such series of Preferred Stock) shall be distributed among the holders of Series B Preferred pro rata according to the number of shares held.

(2) A merger or combination of the corporation with or into any other corporation or corporations (as a result of which not less than 50% of the outstanding shares of Preferred Stock and Common Stock shall be held by persons other than the persons who held such shares immediately prior to such merger or combination), or a sale of all or substantially all of the assets of the corporation, shall be treated as a liquidation, dissolution or winding up for purposes of this Paragraph B.

C. Redemption.

The Series B Preferred shall be non-redeemable.

D. Conversion.

The holders of the Series B Preferred shall have conversion rights as follows (the "Series B Conversion Rights"):

(1) Optional and Automatic Conversion. Each outstanding share of the Series B Preferred shall be convertible, on such terms and conditions as set forth below, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.00 by the Series B Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series B Preferred (the "Series B Conversion Price") shall initially be \$1.00 per share of Common Stock. Such initial Series B Conversion Price shall be subject to adjustment as hereinafter provided. No fractional shares of Common Stock shall be issued upon conversion of the Series B Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the corporation shall pay cash equal to such fraction multiplied by the then effective Series B Conversion Price.

Each share of Series B Preferred shall automatically be converted into shares of Common at the then effective Series B Conversion Price upon the closing of a public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Act"), covering the offer and sale of Common (whether for the account of the corporation or for the account of one or more shareholders of the corporation) of the corporation to the public. In the event of the automatic conversion of the Series B Preferred upon a public offering as aforesaid, the conversion of Series B Preferred shall be deemed to have occurred automatically at the closing of such public offering.

The Series B Preferred shall be convertible, at the option of the holder thereof, as follows:

(1) Prior to January 1, 1984, in the event of a merger of the corporation with or into any other corporation or corporations (as a result of which not less than 50% of each class of the outstanding shares of Preferred Stock and Common Stock shall be held by persons other than the persons who held such shares immediately prior to such merger) or a public offering.

(2) On or after January 1, 1984; (i) when royalty revenues exceed One Million Dollars (\$1,000,000) over any four consecutive fiscal quarters, or (ii) when total revenues exceed Seven Million Dollars (\$7,000,000) for any four consecutive fiscal quarters, or (iii) when net income (before taxes and exclusive of interest and investment income) exceeds Seven Hundred Fifty Thousand Dollars (\$750,000) for any period of four consecutive fiscal quarters or (iv) in the event of a merger (as defined above) or a public offering.

(2) Mechanics of Conversion.

Before any holder of the Series B Preferred shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for the Series B Preferred, and shall give written notice to the corporation at such office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series B Preferred, or to his nominee or nominees, a certificate or

certificates for the number of shares of Common Stock to which he 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 Series B Preferred 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 on such date.

(3) Conversion Price Adjustments of Preferred Stock.

The term "Series B Conversion Price" as used herein shall refer to the conversion price for Series B Preferred. The Series B Conversion Price shall be subject to adjustment from time to time as follows:

(a) Should the corporation at any time subdivide the outstanding Common Stock, or issue as a dividend on the Common Stock shares of Common Stock, the Series B Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, or should the corporation at any time combine the outstanding Common Stock, the Series B Conversion Price in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, divided, or combination, as the case may be.

(b) On any merger or reorganization of the corporation, or reclassification of the shares of the corporation, or sale or conveyance of all or substantially all of the assets of the corporation to another corporation, each share of Series B Preferred shall be convertible into the number of shares or other securities or property to which the number of shares of Common Stock of the corporation deliverable

on conversion of such Series B Preferred immediately prior to such merger, reorganization, reclassification, or conveyance would have been entitled. Appropriate adjustment, as determined by the Board of Directors, shall be made in the application of the provisions herein set forth with respect to the rights and interest thereafter of the holders of the Series B Preferred, so that said provisions, including the provisions with respect to changes in, and other adjustments of, the Series B Conversion Price, shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable on conversion of the Series B Preferred.

(4) 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 B Preferred at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or rights, and the amount and character of such dividend, distribution or right.

(5) 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 Series B Preferred such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding

Series B Preferred, 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 Series B Preferred, 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 purpose.

(6) Notices.

Any notices required by the provisions of Article 6 to be given to the holders of Series B Preferred shall be deemed given if 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.

E. Voting Rights. Except as otherwise provided by law or this Certificate of Incorporation, the holders of Series B Preferred shall not be entitled to vote upon the election of directors or any other matters pertaining to the management or affairs of the corporation.

7. Rights, Preferences, Privileges and Restrictions of the Series C Preferred Stock. Two hundred eighty thousand (280,000) shares of Preferred Stock are hereby designated as Series C Preferred Stock (the "Series C Preferred"). The relative rights, preferences, privileges and restrictions granted to or imposed upon the Series C Preferred or the holders thereof are as follows:

A. Dividend Rights of Series C Preferred. The holders of the then outstanding shares of Series C Preferred shall be entitled to receive dividends at the rate of \$2.00 per share per annum when, as and if declared by the Board of Directors out of

any funds legally available therefor, prior and in preference to any declaration or payment of any dividend on the Series B Preferred Stock of this Corporation (the "Series B Preferred") or on the Common Stock of this corporation ("Common") payable other than in Common or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common. Dividends, if paid, or if declared and set apart for payment, must be paid contemporaneously on the Series A and Series C Preferred Stock for which any shares are issued and outstanding, and, if less than full dividends are paid or declared and set apart for payment, the same percentage of the dividend rate shall be paid on or declared and set apart for payment for the Series and Series C Preferred Stock for which any shares are issued and outstanding. No dividends or other distributions shall be made with respect to the Series B Preferred or the Common Stock in any year, other than dividends payable solely in shares of Series B Preferred or Common Stock, as the case may be, until all declared dividends on the Series A and Series C Preferred Stock with respect to such year have been paid or declared and set apart for payment. With respect to the Series C Preferred, such dividends shall not be cumulative. No interest (or equivalent) shall be earned or accrued on any unpaid dividends. The Board shall not be obligated to declare dividends, notwithstanding the availability of funds for that purpose.

B. Liquidation Rights of Series C Preferred.

(1) In the event of any liquidation, dissolution or winding up of the corporation, either voluntary or involuntary, the holders of the Series C Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the corporation to the holders of the Common or the holders of Series

B Preferred by reason of their ownership thereof, the sum of (i) \$25.00 per share for each share of Series C Preferred then held by them and (ii) an amount equal to all declared but unpaid dividends on the Series C Preferred then held by them. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A and Series C Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred and the Series C Preferred in proportion to the preferential amount each such holder would have been entitled to receive pursuant to Section 5(B) and this Section 7(B) if such distribution had been sufficient to permit the full payment of such preferential amount.

(2) Upon the completion of the distribution provided for in Section 5(B) and this Section 7(B), all of the assets remaining in the corporation, if any, shall be distributed pro rata among the holders of the Common and the Series B Preferred pursuant to Paragraph B of Article 6. A merger or consolidation of the corporation with or into any other corporation or corporations, or the merger of any other corporation or corporations into this corporation, shall not be treated as a liquidation, dissolution or winding up of this corporation for purposes of this Paragraph B.

C. Redemption.

The Series C Preferred shall be non-redeemable.

D. Conversion.

The holders of the Series C Preferred shall have conversion rights as follows (the "Series C Conversion Rights"):

(1) Optional and Automatic Conversion.

Each share of Series C Preferred shall be convertible at the option of the holder thereof, without payment of additional consideration, at any time after the date of issuance of such share, at the office of the corporation or any transfer agent for the Series C Preferred, into such number of fully paid and nonassessable shares of Common as is determined by dividing \$25.00 by the Series C Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common shall be deliverable upon conversion (the "Series C Conversion Price") of the Series C Preferred shall initially be \$25.00 per share of Common. Such initial Series C Conversion Price shall be subject to adjustment as hereinafter provided.

Each share of Series C Preferred shall automatically be converted into shares of Common at the then effective Series C Conversion Price upon (i) the closing of a public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Act"), covering the offer and sale of Common (whether for the account of the corporation or for the account of one or more shareholders of the corporation) of the corporation to the public or (ii) the written consent of holders of more than 50% of the then outstanding shares of Series C Preferred voting as a class. In the event of the automatic conversion of the Series C Preferred upon a public offering as aforesaid, the conversion of Series C Preferred shall be deemed to have occurred automatically at the closing of such public offering.

(2) Mechanics of Conversion. No fractional shares of Common shall be issued upon conversion of Series C Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common. Before any holder of Series C Preferred shall be entitled to convert the same into full shares of Common, it shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for the Series C Preferred, and shall give written notice to the corporation at such office that it elects to convert the same (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to Paragraph D(1)). The corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series C Preferred a certificate or certificates, registered in such names as specified by the holder, for the number of shares of Common to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common, and any accrued and unpaid dividends on the converted Series C Preferred. 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 C Preferred to be converted, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date (except that in the event of an automatic conversion pursuant to clause (i) of Paragraph D(1) such conversion shall be deemed to have been made immediately prior to the closing of the offering referred to in such clause (i) of Paragraph D(1)). If the conversion is in

connection with an underwritten offer of securities registered pursuant to the Act, the conversion may, at the option of any holder tendering Series C Preferred for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common issuable upon such conversion of the Series C Preferred shall not be deemed to have converted such Series C Preferred until immediately prior to the closing of such sale of securities.

(a) Adjustments to Series C Conversion Price for Diluting Issues.

(1) Special Definitions. For purposes of this Paragraph D(2)(a), the following definitions shall apply:

(i) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common or Convertible Securities.

(ii) "Series C Original Issue Date" shall mean the date on which a share of Series C Preferred was first issued.

(iii) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common, Series A Preferred, Series B Preferred and Series C Preferred) or other securities directly or indirectly convertible into or exchangeable for Common.

(iv) "Additional Shares of Common" shall mean all shares of Common issued (or, pursuant to Paragraph D(2)(a)(3), deemed to be issued) by the corporation after the Series C Original Issue Date, other than shares of Common issued or issuable:

A) upon conversion of shares of Series A Preferred, Series B Preferred or Series C Preferred authorized herein;

B) to individuals that are officers, directors or employees of, or consultants to, the corporation pursuant to a stock grant or option plan or other employee stock incentive program (collectively, the "Plans") approved by the Board of Directors; provided that the total number of shares issued to such officers, directors or employees of, or consultants to, the corporation under such Plans does not exceed an aggregate of 500,000 shares (as adjusted for any subdivisions, dividends, combinations or consolidations of Common), not including shares issued to, or shares issuable upon exercise of options granted to, officers, directors or employees of, or consultants to, the corporation under such Plans prior to the Series C Original Issue Date;

C) as a dividend or distribution on the Series A Preferred, Series B Preferred or Series C Preferred or any event for which adjustment is made pursuant to Paragraph D(2)(b) or Paragraph D(2)(c) hereof;

D) in consideration of research services provided by or technology rights granted by universities, not for profit research organizations or similar not for profit organizations; provided that the total number of shares issued after the Series C Original Issue Date by the corporation for such purposes does not exceed an aggregate of 100,000 shares (as adjusted for any subdivisions, dividends, combinations or consolidations of Common);

E) by way of dividend or other distribution on shares excluded from the definition of Additional Shares of Common by the foregoing clauses A) through D) or this clause E) or on shares of Common so excluded.

(2) No Adjustment of Conversion Price. No adjustment in the Series C Conversion Price shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share for an Additional Share of Common issued or deemed to be issued by the corporation is less than 80% of the applicable Series C Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Shares. No adjustment in the Series C Conversion Price shall be made in respect of any issuance of Additional Shares of Common after the date that is 24 months after the Series C Original Issue Date, and this Paragraph D(2)(a) shall terminate upon such date.

(3) Issue of Securities Deemed Issue of Additional Shares of Common -- Options and Convertible Securities. In the event the corporation at any time or from time to time after the Series C Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common are deemed to be issued:

(i) no further adjustment in the Series C Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common upon the exercise of such Options or conversion or exchange of such Convertible Securities;

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

(iii) no readjustment pursuant to clause (ii) above shall have the effect of increasing the Series C Conversion Price to an amount which exceeds the lower of (A) such Series C Conversion Price on the original adjustment date with respect to such deemed issuance of Additional Shares of Common, or (B) such Series C Conversion Price that would have resulted from any issuance of Additional Shares of Common between such original adjustment date and such readjustment date; and

(iv) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any decrease in the consideration payable to the corporation upon the exercise, conversion or exchange thereof, the Series C Conversion Price computed upon the original issue thereof (or upon

the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such decrease becoming effective, be recomputed to reflect such decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities.

(4) Adjustment of Series C Conversion Price Upon Issuance of Additional Shares of Common. In the event that, at any time on or before the date that is 24 months after the Series C Original Issue Date, this corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Paragraph D(2)(a)(3)) without consideration or for a consideration per share less than 80% of the applicable Series C Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Shares, then and in such event, such Series C Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Series C Conversion Price by a fraction, the numerator of which shall be the number of shares of Common outstanding immediately prior to such issue plus the number of shares of Common which the aggregate consideration received by the corporation for the total number of Additional Shares of Common so issued would purchase at such Series C Conversion Price in effect immediately prior to such issue; and the denominator of which shall be the number of shares of Common outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued; and provided further that, for the purposes of this Paragraph D(2)(a)(4), all shares of Common issuable upon conversion of outstanding Options, Convertible Securities, Series A Preferred, Series B Preferred and Series C Preferred shall be deemed to be outstanding, and immediately after any Additional Shares

of Common are deemed issued pursuant to Paragraph D(2)(a)(3), such Additional Shares of Common shall be deemed to be outstanding. The Series C Conversion Price shall not be increased except as set forth in Paragraph D(2)(a)(3)(ii) and in Paragraph D(2)(b).

(5) Determination of Consideration. For purposes of this Paragraph D(2)(a), the consideration received by the corporation for the issue of any Additional Shares of Common shall be computed as follows:

(i) Cash and Property. Such consideration shall:

A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the corporation excluding amounts paid or payable for accrued interest or accrued dividends;

B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

C) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses A) and B) above, as reasonably determined in good faith by the Board of Directors.

(ii) Options and Convertible Securities. The consideration per share received by the corporation for Additional Shares of Common deemed to have been issued pursuant to Paragraph D(2)(a)(3), relating to Options and Convertible Securities, shall be determined by dividing:

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

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

(b) Adjustments for Subdivisions, Dividends, Combinations or Consolidations of Common.

(1) In the event the outstanding shares of Common shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common, the Series C Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(2) In the event the corporation shall declare or pay any dividend on the Common payable in Common or in the event the outstanding shares of Common shall be subdivided, by reclassification or otherwise than by payment of a

dividend in Common, into a greater number of shares of Common, the Series C Conversion Price in effect immediately prior to such dividend or subdivision shall be proportionately decreased:

1) in the case of any such dividend, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend, or

2) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and such dividend shall not have been fully paid on the date fixed therefor, the adjustment previously made in the Series C Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Series C Conversion Price shall be adjusted as of the time of actual payment of such dividend.

(c) Adjustments for Other Reclassifications, Dividends and Distributions. If there occurs any capital reorganization or any reclassification of the capital stock of the Corporation (other than a subdivision, dividend, combination, consolidation or other transaction provided for in Article 7(A) or Article 7(D)(b)), each share of Series C Preferred shall thereafter be convertible into the same kind and amounts of securities or other assets, or both, that were issuable or distributable to the holders of shares of outstanding Common Stock of the Corporation upon such reorganization or reclassification, in respect of that number of shares of Common Stock into which such shares of Series C Preferred might have been converted immediately

prior to such reorganization or reclassification; and in any such case, appropriate adjustments (as determined by the Board of Directors) shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of Series C Preferred to the end that the provisions of these Articles shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other assets thereafter deliverable upon the conversion of the Series C Preferred.

(3) 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, and prior to effecting any merger or consolidation with or into any other corporation, or any sale, lease or conveyance of all or substantially all its property or business, or any liquidation, dissolution or winding up of the Corporation or any reclassification or recapitalization of its Common shares outstanding involving a change in the Common shares, the corporation shall mail to each holder of Series C Preferred at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record or action is to be taken and the amount and character of such dividend, distribution or right or the nature of such action.

(4) 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 C Preferred, such number of shares of Common Stock as shall from time to time be

sufficient to effect the conversion of all outstanding shares of the Series C Preferred, 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 the Series C Preferred, the corporation shall 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 purpose.

E. Voting Rights. Except as otherwise required by law or this Certificate of Incorporation, each share of Common issued and outstanding shall have one vote, each share of Series C Preferred issued and outstanding shall have the number of votes equal to the number of Common shares into which such share of Series C Preferred is convertible as adjusted from time to time pursuant to Paragraph D hereof and the Common and the Preferred Stock shall vote together as a single class. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number.

8. The corporation is to have perpetual existence.

9. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter or repeal the By-Laws of the corporation.

10. The management of the business and the conduct of the affairs of the corporation shall be vested in its Board of Directors. The number of directors which

shall constitute the whole Board of Directors shall be fixed exclusively by one or more resolutions adopted by the Board of Directors.

11. At all elections of directors of the corporation, each holder of Preferred Stock or of Common Stock entitled to vote upon the election of directors as provided in this certificate, shall be entitled to as many votes as shall equal the number of which (except for this provision as to cumulative voting) he would be entitled to cast, for the election of directors with respect to his shares of stock multiplied by the number of directors to be elected by him, and that he may cast all of such votes for single director or may distribute them among the number to be voted for, or for any two or more of them as he may see fit, all to the extent permitted by Section 214 of the Delaware General Corporation Law. Elections of directors need not be by written ballot unless the By-Laws of the corporation shall so provide.

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

12. A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for any 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 Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the

director derived an improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director shall be eliminated or limited to the fullest extent permitted by the Delaware General corporation Law, as so amended.

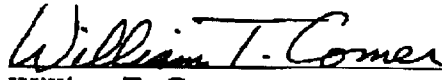
Any repeal or modification of this Section 12 shall be prospective and shall not affect the rights under this Section 12 in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

13. 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 shareholders herein are granted subject to this reservation."

IN WITNESS WHEREOF, THE SALK INSTITUTE BIOTECHNOLOGY/INDUSTRIAL ASSOCIATES, INC. has caused its corporate seal to be hereunto affixed and this Amended and Restated Certificate of Incorporation to be signed by William T. Comer, its President, and attested by Frederick T. Muto, its Secretary, this 15th day of March, 1996.

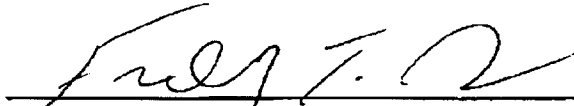
THE SALK INSTITUTE BIOTECHNOLOGY/
INDUSTRIAL ASSOCIATES, INC.

By:


William T. Comer
President

(Corporate Seal)

Attest:


Frederick T. Muto
Secretary