

FORM PTO-1619A

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08-15-2000

U.S. Department of Commerce
Patent and Trademark Office

PATENT

101432053

RECORDATION FORM COVER SHEET
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TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

☒ New☐ Resubmission (Non-Recordation)Document ID # ☐ Correction of PTO ErrorReel # Frame # ☐ Corrective DocumentReel # Frame #

Conveyance Type

☒ Assignment☐ Security Agreement☐ License☒ Change of Name☐ Merger☐ Other

U.S. Government

(For Use ONLY by U.S. Government Agencies)

☐ Departmental File☐ Secret File

Conveying Party

☐ Mark if additional names of conveying parties attached

Name (line 1) Ultraform Medical, Inc.

Effective Date
Month Day Year

04052000

Name (line 2)

Second Party

Name (line 1)

Effective Date
Month Day Year

Name (line 2)

Receiving Party

☐ Mark if additional names of conveying parties attached

Name (line 1) Bioform Inc.

Name (line 2)

Address (line 1) 4133 Courtney Road, #10

Address (line 2)

Address (line 3) Franksville

Wisconsin

53126

City

State/Country

Zip Code

☐ If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

Domestic Representative Name and Address

Enter for the Receiving Party only

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent & Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

PATENT
REEL: 010984 FRAME: 0238

Correspondent Name and Address

Area Code and Telephone Number (312) 755-1900

Name Michael D. Rechtin

Address (line 1) Foley & Lardner

Address (line 2) 330 North Wabash Avenue

Address (line 3) Suite 3300, One IBM Plaza

Address (line 4) Chicago, Illinois 60611-3608

Pages

Enter the total number of pages of the attached conveyance document including any attachments

38

Application Number(s) or Patent Number(s)

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

App. Cont.

Patent Number(s)

07/833,874

08/379,404

09/240,703

60/148,590

5,922,025

07/999,411

09/129,040

09/288,999

08/159,071

09/187,924

09/334,629

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor

Month Day Year

Patent Cooperation Treaty (PCT)

Enter PCT application number
only if a U.S. Application Number
has not been assigned.

PCT

PCT

PCT

PCT

PCT

PCT

Number of Properties

Enter the total number of properties involved.

11

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 440.00

Method of Payment: ☐ Enclosed ☒ Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

06-1450

Authorization to charge additional fees:

Yes ☒

No ☐

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. Charges to deposit account are authorized, as indicated herein.

Michael D. Rechtin

Name of Person Signing
Reg. No. 30,128

Michael D. Rechtin

Signature

June 8, 2000

Date Signed



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 "ULTRAFORM MEDICAL, INC.", CHANGING ITS NAME FROM "ULTRAFORM MEDICAL, INC." TO "BIOFORM INC.", FILED IN THIS OFFICE ON THE FIFTH DAY OF APRIL, A.D. 2000, AT 10 O'CLOCK A.M.



Edward J. Freel, Secretary of State

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001283476

AUTHENTICATION:

0478509

DATE:

06-05-00

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF
ULTRAFORM MEDICAL, INC.**

Pursuant to Sections 242 and 245
of the General Corporation Law of the State of Delaware

UltraForm Medical, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "General Corporation Law") having filed its original Certificate of Incorporation on July 12, 1999 under the name of IntraForm Medical, Inc., as amended by that Certificate of Amendment filed on July 13, 1999, does hereby certify as follows:

That the following resolutions amending and restating the Corporation's Certificate of Incorporation, as amended, were duly adopted by the Corporation's Board of Directors and by the Corporation's stockholders in accordance with the provisions of Sections 242 and 245 of the General Corporation Law by written consent of the Board of Directors and by the holders of a majority of the Corporation's outstanding shares given in accordance with Sections 141 and 228, respectively of the General Corporation Law and by the holders of a majority of the outstanding shares of the shares of Common Stock of the Corporation.

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

ARTICLE I

The name of the corporation (hereinafter called the "Corporation") is BioForm Inc.

ARTICLE II

The address, including street, number, city and county, of the registered office of the Corporation in the State of Delaware is 30 Old Rudnick Lane, Dover, County of Kent, Delaware 19901. The name of the registered agent of the Corporation in the State of Delaware at such address is Lexis Document Services Inc.

ARTICLE III

The nature of the business and the purposes to be conducted and promoted by the Corporation shall be to conduct any lawful business, to promote any lawful purpose, and to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 10:00 AM 04/05/2000
001173586 - 3068591

ARTICLE IV

(A) Classes of Stock. The Corporation is authorized to issue two classes of shares, to be designated respectively Common Stock and Preferred Stock. The total number of shares of all classes of stock that the Corporation is authorized to issue is twenty million (20,000,000), consisting of twelve million (12,000,000) shares of Common Stock, with a par value of \$0.01 per share, and eight million (8,000,000) shares of Preferred Stock, with a par value of \$0.01 per share. Of the shares of Preferred Stock, six million (6,000,000) shares shall be designated as Series A Preferred Stock. Subject to the restrictions contained in these Amended and Restated Articles of Incorporation, the Board of Directors may designate the remaining shares of Preferred Stock in one or more additional series.

(B) Description and Designation of Series A Convertible Preferred Stock.

1. Designation. A total of six million (6,000,000) shares of the Corporation's Preferred Stock shall be designated the Series A Convertible Preferred Stock (the "Series A Preferred Stock"). As used herein, the term "Preferred Stock" used without references to the Series A Preferred Stock means the shares of Series A Preferred Stock and the shares of any series of Preferred Stock of the Corporation issued, authorized and designated from time to time by a resolution or resolutions of the Board of Directors, share for share alike and without distinction as to class, except as otherwise expressly provided for in this Article IV of this Amended and Restated Certificate of Incorporation ("Certificate of Incorporation") or as the context otherwise requires.

2. Dividends. The holders of the outstanding shares of Series A Preferred Stock shall be entitled to receive, out of any funds legally available therefor, non-cumulative dividends at the rate of 8% per annum, payable at the discretion of the Board of Directors of the Corporation.

3. Liquidation, Dissolution or Winding Up.

(a) Treatment at Liquidation, Dissolution or Winding Up. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or in the event of its insolvency, before any distribution or payment is made to any holders of any shares of Common Stock or any other class or series of capital stock of the Corporation designated to be junior to the Series A Preferred Stock, and subject to the liquidation rights and preferences of any class or series of Preferred Stock designated to be senior to, or on a parity with, the Series A Preferred Stock, the holders of each share of Series A Preferred Stock shall be entitled to be paid first out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock of all classes whether such assets are capital, surplus or earnings, an amount in cash (such amount, as so determined, is referred to herein as the "Series A Base Amount") equal to \$1.00 per share of Series A Preferred Stock (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Series A Preferred Stock) plus any dividends declared but unpaid on such shares.

After the payment of all preferential amounts required to be paid to the holders of any class or series of stock of the Corporation ranking on liquidation prior to and in preference to the Common Stock, upon the dissolution, liquidation or winding up of the Corporation, the remaining assets and funds of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock and Series A Preferred Stock, pro rata based upon the number of shares of Common Stock held by each such stockholder (after giving effect to the assumed conversion of all Series A Preferred Stock into Common Stock) (such amount, as so determined, is referred to herein as the "Series A Participating Amount"). For the purposes of this Article IV, the sum of the Series A Base Amount plus the Series A Participating Amount is referred to herein as the "Series A Liquidation Preference."

(b) Insufficient Funds. If upon such liquidation, dissolution or winding up the assets or surplus funds of the Corporation to be distributed to the holders of shares of Series A Preferred Stock and any other then-outstanding shares of the Corporation's capital stock ranking on a parity with respect to the payments on liquidation with the Series A Preferred Stock (such shares, being referred to herein as the "Series A Parity Preferred Stock") shall be insufficient to permit payment to such holders of the full Series A Liquidation Preference and all other preferential amounts payable with respect to the Series A Preferred Stock and such Series A Parity Preferred Stock, then the assets available for payment or distribution to such holders shall be allocated among the holders of the Series A Preferred Stock and such Series A Parity Preferred Stock, pro rata, in proportion to the full respective preferential amounts to which the Series A Preferred Stock and such Series A Parity Preferred Stock are each entitled.

(c) Certain Transactions Treated as Liquidation. For purposes of this Section 3, at the election of a majority of the outstanding holders of Series A Preferred Stock, (A) any acquisition of the Corporation by means of merger or other form of corporate reorganization with or into another corporation in which outstanding shares of the Corporation are exchanged for securities or other consideration issued, or caused to be issued, by the other corporation or its subsidiary, in which transaction this Corporation is not the surviving entity, and, as a result of which transaction, the stockholders of this Corporation own 50% or less of the voting power of the surviving entity (other than a mere reincorporation transaction), or (B) a sale, transfer or lease (other than a pledge or grant of a security interest to a bona fide lender) of all or substantially all of the assets of the Corporation (other than to or by a wholly-owned subsidiary of the Corporation), shall be treated as a liquidation, dissolution or winding up of the Corporation and shall entitle the holders of Series A Preferred Stock to receive at the closing of any such transactions the amount that would be received in a liquidation, dissolution or winding up pursuant to Section 3(a) hereof.

(d) Distributions of Property. Whenever the distribution provided for in this Section 3 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors, unless holders of a majority of the Series A Preferred Stock request, in writing, that an independent appraiser perform such valuation, and then by an independent appraiser selected by

the Board of Directors and reasonably acceptable to holders of a majority of Series A Preferred Stock.

4. Voting Power. Except as otherwise expressly provided in Section 7 hereof or as otherwise required by law, each holder of Series A Preferred Stock shall be entitled to vote on all matters and shall be entitled to that number of votes equal to the largest number of whole shares of Common Stock into which such holder's shares of Series A Preferred Stock could be converted, pursuant to the provisions of Section 5 hereof, at the record date for the determination of stockholders entitled to vote on such matter or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited.

5. Conversion Rights. The holders of the Series A Preferred Stock shall have the following rights with respect to the conversion of such shares into shares of Common Stock:

(a) General. Subject to and in compliance with the provisions of this Section 5, any or all shares of the Series A Preferred Stock may, at the option of the holder thereof (except that upon any liquidation of the Corporation the right of conversion shall terminate at the close of business on the business day fixed for payment of the amounts distributable on the Series A Preferred Stock and except that in the event of a notice of redemption of any shares of Series A Preferred Stock pursuant to Section 6 hereof, the right of conversion of the shares designated for redemption shall terminate at the close of business on the first full day preceding the date fixed for redemption, unless the redemption price is not paid when due, in which case the right of conversion for such shares shall continue until such price is paid in full), be converted at any time into fully-paid and non-assessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred Stock shall be entitled to receive upon conversion shall be the product obtained by multiplying the Series A Applicable Conversion Rate for the Series A Preferred Stock (determined as provided in Section 5(b)) by the number of shares of Series A Preferred Stock being converted at any time.

(b) Applicable Conversion Rate. The conversion rate in effect at any time for the Series A Preferred Stock (the "Series A Applicable Conversion Rate") shall be the quotient obtained by dividing \$1.00 (the "Original Purchase Price") by the Series A Applicable Conversion Value, calculated as provided in Section 5(c). Initially, the Series A Applicable Conversion Rate shall be one (1), and each share of Series A Preferred Stock shall initially be convertible into one (1) share of Common Stock.

(c) Applicable Conversion Value. The Series A Applicable Conversion Value in effect from time to time, except as adjusted in accordance with Section 5(d) hereof, shall be \$1.00 with respect to the Series A Preferred Stock (the "Series A Applicable Conversion Value").

(d) Adjustment to Series A Applicable Conversion Value.

(i)(A) Upon Dilutive Issuances of Common Stock or Convertible Securities. If the Corporation shall, while there are any shares of Series A Preferred Stock outstanding, issue or sell shares of its Common Stock (or Common Stock Equivalents, as defined

below) without consideration or at a price per share less than the Series A Applicable Conversion Value in effect immediately prior to such issuance or sale, then in each such case such Series A Applicable Conversion Value upon each such issuance or sale, except as hereinafter provided, shall be lowered so as to be equal to the lowest Net Consideration Per Share (as defined in Section 5(d)(i)(B)(2) below) received for each additional share upon such issuance.

All calculations shall be rounded to two decimal points. The provisions of this Section 5(d)(i)(A) may be waived in any instance (without the necessity of convening any meeting of stockholders of the Corporation) upon the written consent of the holders of a majority of the outstanding shares of Series A Preferred Stock.

(i)(B) - Upon Other Dilutive Issuances of Warrants, Options and
Purchase Rights to Common Stock or Convertible Securities.

(1) For the purposes of this Section 5(d)(i), the issuance of any warrants, options, subscription or purchase rights with respect to shares of Common Stock and the issuance of any securities convertible into or exercisable or exchangeable for shares of Common Stock, or the issuance or sale of any warrants, options, subscription or purchase rights with respect to such convertible, exercisable or exchangeable securities (collectively, "Common Stock Equivalents"), shall be deemed an issuance of Common Stock with respect to the Series A Preferred Stock if the Net Consideration Per Share (as defined in Section 5(d)(i)(B)(2) below) which may be received by the Corporation for such Common Stock Equivalents shall be less than the Series A Applicable Conversion Value in effect at the time of such issuance or sale. Any obligation, agreement or undertaking to issue or sell Common Stock Equivalents at any time in the future shall be deemed to be an issuance or sale at the time such obligation, agreement or undertaking is made or arises. No adjustment of the Series A Applicable Conversion Value shall be made under this Section 5(d)(i) upon the issuance of any shares of Common Stock which are issued pursuant to the exercise, conversion or exchange of any Common Stock Equivalents if any adjustment shall previously have been made upon the issuance of any such Common Stock Equivalents as above provided.

Should the Net Consideration Per Share of any such Common Stock Equivalents be decreased from time to time, then, upon the effectiveness of each such change, the Series A Applicable Conversion Value will be that which would have been obtained (1) had the adjustments made upon the issuance of such Common Stock Equivalents been made upon the basis of the actual Net Consideration Per Share of such securities, and (2) had adjustments made to the Series A Applicable Conversion Value since the date of issuance of such Common Stock Equivalents been made to such Series A Applicable Conversion Value as adjusted pursuant to (1) above. Any adjustment of the Series A Applicable Conversion Value with respect to this paragraph which relates to Common Stock Equivalents shall be disregarded, in whole or in part, as applicable, if, as, and when all, or such portion, of such Common Stock Equivalents expire or are cancelled without being exercised, so that the Series A Applicable Conversion Value effective immediately upon such cancellation or expiration shall be equal to the Series A Applicable Conversion Value in effect at the time of the issuance of the expired or cancelled Common Stock Equivalents, with such additional adjustments as would have been made to the Series A

Applicable Conversion Value had the expired or cancelled Common Stock Equivalents not been issued. The provisions of this Section 5(d)(i)(B) may be waived in any instance (without the necessity of convening any meeting of stockholders of the Corporation) upon the written consent of the holders of a majority of the outstanding shares of Series A Preferred Stock.

(2) Net Consideration Per Share. For purposes of this paragraph, the "Net Consideration Per Share" which may be received by the Corporation shall be determined as follows:

(a) The "Net Consideration Per Share" shall mean the amount equal to the total amount of consideration, if any, received by the Corporation for the issuance or sale of such Common Stock Equivalents, plus the minimum amount of consideration, if any, payable to the Corporation upon exercise, conversion or exchange thereof, divided by the aggregate number of shares of Common Stock that would be issued if all such Common Stock Equivalents were exercised, exchanged or converted.

(b) The "Net Consideration Per Share" which may be received by the Corporation shall be determined in each instance as of the date of issuance or sale of Common Stock Equivalents without giving effect to any possible future upward price adjustments or rate adjustments which may be applicable with respect to such Common Stock Equivalents.

(i)(C) Stock Dividends for Holders of Capital Stock Other Than Common Stock. In the event that the Corporation shall make or issue, or shall fix a record date for the determination of holders of any capital stock of the Corporation other than holders of Common Stock entitled to receive a dividend or other distribution payable in Common Stock or securities of the Corporation convertible into, exercisable for or otherwise exchangeable for the Common Stock of the Corporation, then, for purposes of determining the Net Consideration Per Share, such Common Stock or other securities issued in payment of such dividend shall be deemed to have been issued for a consideration of \$0.01, except for (i) dividends payable in shares of Common Stock payable pro rata to holders of Series A Preferred Stock and to holders of any other class of stock (whether or not paid to holders of any other class of stock), or (ii) with respect to the Series A Preferred Stock, dividends payable in shares of Series A Preferred Stock, provided, however, that holders of any shares of Series A Preferred Stock shall be entitled to receive such shares of Common Stock for which the shares of Series A Preferred Stock are then convertible.

(i)(D) Consideration Other than Cash. For purposes of this Section 5(d)(i), if a part or all of the consideration received by the Corporation in connection with the issuance of shares of the Common Stock or the issuance of any of the securities described in this Section 5(d)(i) consists of property other than cash, such consideration shall be deemed to have a fair market value as is reasonably determined in good faith by the Board of Directors of the Corporation and holders of a majority of the outstanding Series A Preferred Stock. Notwithstanding the foregoing, in the event the Board of Directors and the holders of Series A Preferred Stock are unable to agree on the fair market value of such consideration, then

the fair market value of such consideration shall be determined by an independent appraisal (the "Appraisal") in accordance with the procedures described in this Section 5(d)(i)(D). To conduct the Appraisal, each of the Board of Directors, on the one hand, and the holders of a majority of the outstanding Series A Preferred Stock, on the other hand, shall, within fifteen (15) days after the written notice by either party of the failure to agree on the fair market value of such consideration, select an independent appraiser, and such two appraisers shall jointly select a third appraiser (each an "Appraiser" and, jointly, the "Appraisers") to act as appraisers. Should any party fail to appoint its Appraiser within such fifteen (15) day period and the parties who made the appointments give written notice of such failure to the failing party and the failing party does not appoint an Appraiser within fifteen (15) days from the date of such notice, then the party who made an appointment shall request the American Arbitration Association to appoint an Appraiser. The Appraisers shall have the right to request, and shall receive upon such request, any and all information regarding the consideration. The fair market value of the consideration shall be based on the average of the two (2) valuations by the Appraisers that are closest in value. Upon such determination, the Appraisers shall give the Board of Directors and the holders of Series A Preferred Stock written notice thereof. All costs of any such appraisal shall be shared equally between by the Corporation and the holders of Series A Preferred Stock.

(i)(E) Exceptions to Anti-dilution. This Section 5(d)(i) shall not apply under any of the circumstances which would constitute an Extraordinary Common Stock Event (as described below). Further, this Section 5(d)(i) shall not apply with respect to:

(1) the issuance of shares of Common Stock upon the conversion of any shares of Series A Preferred Stock;

(2) securities issued upon the conversion of any debenture, warrant, option or other convertible security outstanding at the time of the original issuance of the shares of Series A Preferred Stock;

(3) shares of Common Stock issued or issuable as a dividend or other distribution on Series A Preferred Stock;

(4) up to an aggregate of 1,250,000 shares of Common Stock (or options to purchase such shares of Common Stock) issued or issuable to officers, employees or directors of, or consultants or advisors to, the Corporation pursuant to any stock purchase or option plan or other employee stock bonus arrangement as approved by a majority of the Corporation's Board of Directors;

(5) securities issuable pursuant to a Qualified Public Offering (as defined in Section 5(e)(i) below);

(6) debt securities with no equity feature; or

(7) up to 250,000 shares of Common Stock issued in connection with non-financing transactions.

(d)(ii) Upon Extraordinary Common Stock Event. Upon the happening of an Extraordinary Common Stock Event (as hereinafter defined), the Series A Applicable Conversion Value (and all other conversion values set forth in Section 5(d)(i) above) shall, simultaneously with the happening of such Extraordinary Common Stock Event, be adjusted by multiplying the Series A Applicable Conversion Value by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such Extraordinary Common Stock Event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such Extraordinary Common Stock Event, and the product so obtained shall thereafter be the Series A Applicable Conversion Value. The Series A Applicable Conversion Value, as so adjusted, shall be readjusted in the same manner upon the happening of any successive Extraordinary Common Stock Event or Events.

An "Extraordinary Common Stock Event" shall mean (i) the issue of additional shares of Common Stock as a dividend or other distribution on outstanding shares of Common Stock, (ii) a subdivision of outstanding shares of Common Stock into a greater number of shares of Common Stock, (iii) a combination or reverse stock split of outstanding shares of Common Stock into a smaller number of shares of Common Stock, or (iv) a reclassification of the outstanding shares of Common Stock.

(e) Automatic Conversion.

(i) Mandatory Conversion of Series A Preferred Stock. Immediately upon the closing of an underwritten public offering on a firm commitment basis led by a nationally recognized investment bank pursuant to an effective registration statement filed pursuant to the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation in which the Corporation actually receives net proceeds equal to or greater than \$15 million (calculated after deducting underwriter's discounts or commissions and offering expenses), and in which the price per share of Common Stock equals or exceeds the greater of (A) an amount based upon a \$120 million pre-money valuation of the Corporation, or (B) \$7.50 (such price subject to equitable adjustment in the event of any stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Corporation) (a "Qualified Public Offering"), then all outstanding shares of Series A Preferred Stock shall be converted automatically into the number of shares of Common Stock into which such shares of Series A Preferred Stock are then convertible pursuant to Section 5 hereof as of the effectiveness of such underwritten public offering without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent.

(ii) Surrender of Certificates Upon Mandatory Conversion. Upon the occurrence of the conversion events specified in the preceding paragraph (i), the holders of the Series A Preferred Stock shall, upon notice from the Corporation, surrender the certificates representing such shares at the office of the Corporation or of its transfer agent for the Common Stock. Thereupon, there shall be issued and delivered to such holder a certificate or certificates for the number of shares of Common Stock into which the shares of Series A

Preferred Stock so surrendered were convertible on the date on which such conversion occurred. The Corporation shall not be obligated to issue such certificates unless certificates evidencing the shares of Series A Preferred Stock being converted are either delivered to the Corporation or any such transfer agent, or the holder notifies the Corporation that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. Upon the occurrence of the conversion events specified in the preceding paragraph (i), all rights with respect to the Series A Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock) will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Series A Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon.

(f) Dividends. In the event the Corporation shall make or issue, or shall fix a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution (other than a distribution in liquidation or other distribution otherwise provided for herein) with respect to the Common Stock payable in (i) securities of the Corporation other than shares of Common Stock, or (ii) other assets (excluding cash dividends or distributions), then and in each such event, provision shall be made so that the holders of the Series A Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the number of securities or such other assets of the Corporation which they would have received had their Series A Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the Conversion Date (as that term is hereafter defined in Section 5(j)), retained such securities or such other assets receivable by them during such period, giving application to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Series A Preferred Stock; provided, however, that no such adjustment shall be made if the holders of Series A Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

(g) Capital Reorganization or Reclassification. If the Common Stock issuable upon the conversion of the Series A Preferred Stock shall be changed into the same or different number of shares of any class or classes of capital stock, whether by capital reorganization, recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for elsewhere in this Section 5, or the sale of all or substantially all of the Corporation's capital stock or assets to any other person), then and in each such event the holder of each share of Series A Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of capital stock and other securities and property receivable upon such reorganization, recapitalization, reclassification or other change by the holders of the number of shares of Common Stock into which such shares of Series A Preferred Stock might have been converted immediately prior to such reorganization, recapitalization, reclassification or change, all subject to further adjustment as provided herein.

(h) Merger, Consolidation or Sale of Assets. If at any time or from time to time there shall be a merger or consolidation of the Corporation with or into another corporation (other than a merger or reorganization involving only a change in the state of incorporation of the Corporation or the acquisition by the Corporation of another business where the Corporation survives as a going concern) or the sale of all or substantially all of the Corporation's capital stock or assets to any other person, then, unless the holders of the Series A Preferred Stock shall have exercised their rights under Section 3(c) hereof to treat such reorganization, merger, consolidation or sale as a liquidation, dissolution or winding up of the Corporation, as a part of such reorganization, merger, consolidation or sale, provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock the per share kind and amount of consideration received or receivable (including cash) upon such merger, consolidation or sale, to which such holder would have been entitled if such holder had converted its shares of Series A Preferred Stock immediately prior to such capital reorganization, merger, consolidation or sale. In any such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions of this Section 5 to the end that the provisions of this Section 5 (including adjustment of the Series A Applicable Conversion Value then in effect and the number of shares of Common Stock or other securities issuable upon conversion of such shares of Series A Preferred Stock) shall be applicable after that event in as nearly equivalent a manner as may be practicable in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.

(i) Certificate as to Adjustments; Notice by Corporation. In each case of an adjustment or readjustment of the Series A Applicable Conversion Rate pursuant to this Section 5, the Corporation at its expense will furnish each holder of Series A Preferred Stock with a certificate prepared by the Treasurer or Chief Financial Officer of the Corporation, showing such adjustment or readjustment, and stating in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Series A Applicable Conversion Rate then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of Series A Preferred Stock.

(j) Exercise of Conversion Privilege. To exercise its conversion privilege, a holder of Series A Preferred Stock shall surrender the certificate or certificates representing the shares being converted to the Corporation at its principal office, and shall give written notice to the Corporation at that office that such holder elects to convert such shares. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock issuable upon such conversion shall be issued. The certificate or certificates for shares of Series A Preferred Stock surrendered for conversion shall be accompanied by proper assignment thereof to the Corporation or in blank. The date when such written notice is received by the Corporation, together with the certificate or certificates representing the shares of Series A Preferred Stock being converted, shall be the "Conversion Date." As promptly as practicable after the Conversion Date, the Corporation shall

time take such appropriate corporate action as may be necessary to reduce the authorized number of shares of the Series A Preferred Stock.

6. Reserved.

7. Restrictions and Limitations.

(a) Corporate Action: Amendment. At any time when shares of Series A Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or this Certificate of Incorporation, and in addition to any other vote required by law, the Corporation shall not take any corporate action or otherwise amend its Certificate of Incorporation without the approval by vote or written consent of the holders of a majority of the then outstanding shares of Series A Preferred Stock, voting or consenting separately as a class, each share of Series A Preferred Stock to be entitled to one vote in each instance, if such corporate action or amendment would:

(i) amend any of the rights, preferences, privileges of, or limitations provided for herein for the benefit of, any shares of Series A Preferred Stock, or adversely affect the rights of the Series A Preferred Stock;

(ii) authorize or issue, or obligate the Corporation to authorize or issue, (A) additional shares of Series A Preferred Stock, (B) Series A Parity Preferred Stock (as defined in Section 3(b)), or (C) shares of Preferred Stock senior to the Series A Preferred Stock with respect to liquidation preferences, dividend rights, conversion rights, anti-dilution rights or voting rights;

(iii) increase or decrease (other than by redemption or conversion as expressly provided for in this Article IV of this Certificate of Incorporation) the authorized number of shares of Series A Preferred Stock or reissue shares of Series A Preferred Stock previously converted or redeemed;

(iv) authorize or issue, or obligate the Corporation to authorize or issue more than 250,000 shares of the Corporation's capital stock in the aggregate in connection with a debt financing, lease or consulting agreement with a third party;

(v) declare or pay any dividends, or make other distributions on, or redeem, purchase or otherwise acquire, any shares of Common Stock or any other class of capital stock of the Corporation (other than Series A Preferred Stock as expressly provided for in this Article IV of this Certificate of Incorporation) at a time when any shares of Series A Preferred Stock are still outstanding;

(vi) materially change the Corporation's business strategy;

(vii) merge, consolidate or reorganize the Corporation, or sell all or substantially all of its assets (which shall include any effective transfer of assets regardless of the structure of any such transaction as a lease, license or otherwise) or effect any transaction or

series of transactions in which more than 50% of the voting power of the Corporation is disposed;

(viii) acquire all or substantially all, or a material portion of the assets of any other corporation or entity;

(ix) incur, issue or guaranty indebtedness for borrowed money in an aggregate amount in excess of \$500,000;

(x) increase the number of shares of the Corporation's capital stock available for issuance to officers, employees or directors of, or consultants to, the Corporation pursuant to any stock purchase or option plan or other employee stock bonus arrangement, as approved by the Corporation's Compensation Committee and a majority of the Corporation's Board of Directors, above 1,250,000 shares in the aggregate;

(xi) cause the Corporation to enter into any transaction with an "affiliate" of the Corporation (as defined in Section 501(b) of Regulation D under the Securities Act of 1933, as amended), other than transactions which have been approved by the disinterested members of the Corporation's Board of Directors and the terms of which are comparable to transactions entered into by the Corporation on an arms length basis); or

(xii) liquidate, dissolve or wind-up the Corporation.

8. No Dilution or Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of capital stock or assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of the Series A Preferred Stock set forth herein, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Series A Preferred Stock against dilution or other impairment.

9. Notices of Record Date. In the event of:

(a) 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 or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of capital stock of any class or any other securities or property, or to receive any other right, or

(b) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation, or any transfer of all or substantially all of the assets of the Corporation to any other corporation, or any other entity or person, or

(c) any voluntary or involuntary dissolution, liquidation or winding up of the Corporation,

then and in each such event the Corporation shall mail or cause to be mailed to each holder of Series A Preferred Stock a notice specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and a description of such dividend, distribution or right, (ii) the date on which any such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (iii) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up. Such notice shall be mailed by first class mail, postage prepaid, at least twenty (20) days prior to the earlier of (1) the date specified in such notice on which such record is to be taken and (2) the date specified in such notice on which such action is to be taken.

10. Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of Series A Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Series A Preferred Stock that is being converted.

(C) Common Stock.

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

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

3. Redemption. The Common Stock is not redeemable.

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

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

Whenever a compromise is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court

of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of the General Corporation Law or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of the General Corporation Law order a meeting of the creditors, or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the same compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

ARTICLE VII

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation, and regulation of the powers of the Corporation and of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that 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 by, or in the manner provided in, the Bylaws. The phrase "whole Board" and the phrase "total number of directors" shall be deemed to have the same meaning, to wit, the total number of directors which the Corporation would have if there were no vacancies. No election of directors need be by written ballot.

(A) After the original or other Bylaws of the Corporation have been adopted, amended, or repealed, as the case may be, in accordance with the provisions of Section 109 of the General Corporation Law, and, after the Corporation has received any payment for any of its stock, the power to adopt, amend, or repeal the Bylaws of the Corporation may be exercised by the Board of Directors of the Corporation; provided, however, that any provision for the classification of directors of the Corporation for staggered terms pursuant to the provisions of subsection (d) of Section 141 of the General Corporation Law shall be set forth in an initial Bylaw or in a Bylaw adopted by the stockholders entitled to vote of the Corporation unless provisions for such classification shall be set forth in this Restated Certificate of Incorporation.

(B) Whenever the Corporation shall be authorized to issue only one class of stock, each outstanding share shall entitle the holder thereof to notice of, and the right to vote at, any meeting of stockholders. Whenever the Corporation shall be authorized to issue more than one class of stock, no outstanding share of any class of stock which is denied voting power under the Provisions of this Restated Certificate of Incorporation shall entitle the holder thereof to the right to vote at any meeting of stockholders except as the provisions of paragraph (2) of subsection (b) of Section 242 of the General Corporation Law shall otherwise require; provided, that no share of

any such class which is otherwise denied voting power shall entitle the holder thereof to vote upon the increase or decrease in the number of authorized shares of said class.

ARTICLE VIII

The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by the provisions of paragraph (7) of subsection (b) of Section 102 of the General Corporation Law, as the same may be amended and supplemented.

ARTICLE IX

The Corporation shall, to the fullest extent permitted by the provisions of Section 145 of the General Corporation Law, as the same may be intended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such person.

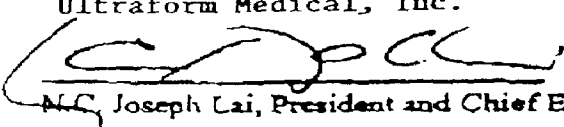
ARTICLE X

From time to time any of the provisions of this Restated Certificate of Incorporation may be amended, altered, or repealed, 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 and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the Corporation by this Restated Certificate of Incorporation are granted subject to the provisions of this Article X.

RESOLVED FURTHER, that the foregoing Amended and Restated Certificate of Incorporation is hereby approved and adopted.

IN WITNESS WHEREOF, Ultraform Medical, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by N.C. Joseph Lai, its President and Chief Executive Officer, this 4th day of April, 2000.

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Ultraform Medical, Inc.


N.C. Joseph Lai, President and Chief Executive Officer