

P0200012322,

Florida Department of State  
Division of Corporations  
Public Access System

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

(((H03000333824 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To: Division of Corporations  
Fax Number : (850)205-0380

From: Account Name : GUNSTER, YOAKLEY, ETAL. (WEST PALM BEACH)  
Account Number : 076117000420  
Phone : (561) 650-0728  
Fax Number : (561) 655-5677

RECEIVED

03 DEC 11 AM 10:31

DIVISION OF CORPORATIONS

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
2003 DEC 11 PM 2:10

BASIC AMENDMENT  
AXOGEN CORPORATION

Certificate of Status	1
Certified Copy	1
Page Count	17
Estimated Charge	\$52.50

Electronic Filing Menu

Corporate Filing

Public Access Help

Restated  
Art.

12/11/03

D

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
2003 DEC 11 PM 2:10

**ARTICLES OF RESTATEMENT  
OF  
AXOGEN CORPORATION**

To the Department of State  
State of Florida

Pursuant to the provisions of the Florida Business Corporation Act, the corporation hereinafter named (the "Corporation"), does hereby amend and restate its Articles of Incorporation.

1. The name of the corporation is Axogen Corporation.
2. The text of the Restated Articles of Incorporation of the corporation, as amended hereby, is annexed hereto and made a part hereof.

\*\*\*\*\*

**CERTIFICATE**

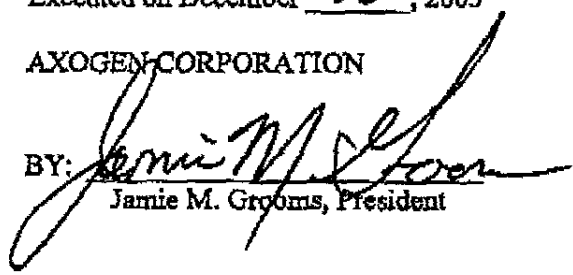
It is hereby certified that:

1. The annexed restatement (Restated Articles of Incorporation) contains amendments to the Articles of Incorporation of the corporation requiring shareholder approval.
2. The date of adoption of the aforesaid amendments was November 20, 2003.
3. Only one voting group of shareholders was entitled to vote on the said amendments and restatement.
4. The number of votes cast for the said amendments and restatement by the said voting group of shareholders was sufficient for the approval thereof.

Executed on December 10, 2003

AXOGEN CORPORATION

BY:



Jamie M. Grooms, President

Pursuant to Section 607.1007 of the Florida Statutes, the Articles of Incorporation of Axogen Corporation hereby are amended and restated as follows:

Article I

*Name.* The name of this corporation is AxoGen Corporation.

Article II

*Principal Office.* The street address of the principal office of the Corporation is 6565 N.W. 81<sup>st</sup> Boulevard, Gainesville, Florida 32653. The mailing address of the Corporation is P.O. Box 357787, Gainesville Florida 32635-7787.

Article III

*Duration.* The period of duration of this Corporation shall be perpetual, commencing on the date of execution and acknowledgment of these articles.

Article IV

*Purpose.* The purpose of this Corporation is to engage in any activities or businesses permitted under the laws of the United States and under the Florida Business Corporation Act.

Article V

The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that the Corporation is authorized to issue is 150,000,000 shares, of which (a) 100,000,000 shares shall be Common Stock (the "Common Stock") and (b) 50,000,000 shares shall be Preferred Stock (the "Preferred Stock"). The Preferred Stock and Common Stock shall each have a par value of \$0.00001).

Of the Corporation's authorized Preferred Stock, 15,000,000 shares shall be designated as Series A Preferred Stock (the "Series A Preferred Stock").

The designations, preferences, powers, qualifications, and special or relative rights or privileges of the Common Stock and the Series A Preferred Stock shall be as set forth below.

1. DIVIDEND RIGHTS.

- (a) Series A Preferred Stock. No dividends will be accrued on the Series A Preferred Stock, except that dividends will be payable at such time as dividends are paid on the Common Stock at a rate per share of the Series A Preferred Stock equal to the amount holders would be entitled to receive if they had converted the Series A Preferred Stock and had been holders of Common Stock on the record date for such Common Stock dividend.

H030003338243

(b) Common Stock. After the payment or declaration and setting aside for payment of the full cumulative dividends for all prior and then current dividend periods on all outstanding shares of Preferred Stock and after setting aside all stock purchase funds or sinking funds heretofore required to be set aside with respect to the Preferred Stock, dividends on the Common Stock may be declared and paid, whether payable in cash, in property or in securities of the Corporation, but only when and as determined by the Board of Directors of the Corporation (the "Board"). The holders of Common Stock shall be entitled to share equally in and to receive such dividends in accordance with the number of shares of Common Stock held by each such holder.

## 2. VOTING RIGHTS.

(a) Series A Preferred Stock. Except as otherwise provided herein or as required by law, each holder of shares of Series A Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which all shares of Series A Preferred Stock held by such holder are then convertible in accordance with Sections 6 and 7 below, at each meeting of shareholders of the Corporation (and written actions of shareholders in lieu of meetings) with respect to any and all matters presented to the shareholders of the Corporation for their action or consideration. Except as otherwise provided herein or as required by law, holders of Series A Preferred Stock shall vote together with the holders of Common Stock as a single class on all actions to be taken by the shareholders of the Corporation.

(b) Common Stock. Except as otherwise provided herein or as required by law, each holder of Common Stock shall be entitled to vote on all matters and shall be entitled to one vote for each share of Common Stock standing in such holder's name on the books of the Corporation.

(c) Record Date. The number of shares of Series A Preferred Stock or Common Stock are, as the case may be, entitled to vote on any matter shall be determined in each case as of the record date for the determination of shareholders 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 shareholders is solicited.

## 3. ELECTION OF DIRECTORS.

(a) Series A Preferred Stock. At such times as the holders of the Series A Preferred Stock own more than 20% of the outstanding stock of the Corporation, calculated as if the holders of Series A Preferred Stock had converted the Series A Preferred Stock and had been

H030003338243

holders of Common Stock on the record date for the election of directors (a "*Fully Converted Basis*"), the holders of a majority of the Series A Preferred Stock shall have the right to elect 1 director to the Board. At such times as the holders of the Series A Preferred Stock, on a Fully Converted Basis, own more than 40% of the outstanding stock of the Corporation, the holders of a majority of the Series A Preferred Stock shall have the right to elect 2 directors to the Board.

- (b) Common Stock. The holders of a majority of the outstanding Common Stock shall have a continuing right to elect 3 directors to the Board.

#### 4. LIQUIDATION RIGHTS.

Upon any dissolution, liquidation or winding-up of the Corporation (as defined in Section 4(d)), either voluntary or involuntary, distributions to the shareholders of the Corporation shall be made in the following manner:

- (a) Series A Preferred Stock Liquidation Preference. The holders of Series A Preferred Stock shall first receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock, an amount equal to \$0.44 per share of Series A Preferred Stock (as adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series A Preferred Stock) then held by them. If the assets of the Corporation legally available for distribution shall be insufficient to permit the payment in full to such holders of the Series A Preferred Stock of the full aforesaid preferential amounts, then the entire assets of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in accordance with the aggregate liquidation preference (as set forth in this Section 4(a)) of the shares of the Series A Preferred Stock held by each of them.
- (b) Common Stock. After there shall have been paid to or set aside for the holders of all outstanding shares of Series A Preferred Stock, the full preferential amount to which they are respectively entitled to receive as set forth in Section 4(a), the holders of Common Stock shall receive an amount equal to \$0.44 per share of Common Stock (as adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock) then held by them. If the assets of the Corporation legally available for distribution shall be insufficient to permit payment in full to such holders of the Common Stock of the full aforesaid amounts, then the entire remaining assets of the Corporation legally available for distribution shall be distributed ratably among the holders of the Common Stock in accordance with the aggregate

H030003338243

liquidation distribution (as set forth in this Section 4(b)) of the shares of the Common Stock held by each of them.

(c) General Liquidation Distributions. After there shall have been paid to or set aside for the holders of all outstanding shares of Series A Preferred Stock and Common Stock, the full amounts to which they are respectively entitled to receive as set forth in Sections 4(a) and (b), all the remaining assets of the Corporation will be available for distribution to its holders of Series A Preferred Stock and Common Stock, pro rata based on the number of shares held by them (calculated as if the holders of Series A Preferred Stock had converted the Series A Preferred Stock and had been holders of Common Stock immediately prior to such dissolution, liquidation or winding-up of the Corporation).

(d) Definition of Dissolution, Liquidation or Winding-Up. With the exception of sales made in accordance with the terms of that certain Shareholders and Registration Rights Agreement dated November 7, 2003, by and among the Corporation and the shareholders named therein, as such agreement may be amended from time to time, the following events shall be considered a dissolution, liquidation, or winding-up of the Corporation under this Section 4:

(i) any consolidation or merger of the Corporation into or with any other entity or entities (other than a consolidation or merger in which the shares of the Corporation outstanding immediately prior to the closing of such merger or consolidation (A) represent or are converted into shares of the surviving or resulting entity that represent no more than 50% of the total number of shares of the surviving or resulting entity that are outstanding or are reserved for issuance immediately after the closing of the merger or consolidation or (B) have the power to elect no more than 50% of the surviving or resulting corporation's directors);

(ii) the acquisition from the Corporation and/or from any shareholders of the Corporation in a single transaction or series of related transactions by any person or group of more than 50% of the Corporation's outstanding Common Stock (assuming that the holders of Series A Preferred Stock had converted the Series A Preferred Stock and had been holders of Common Stock immediately prior to such dissolution, liquidation or winding-up of the Corporation);

(iii) the application by the Corporation or the consenting to the appointment of a receiver, trustee, custodian, intervener, or

H030003338243

liquidator of itself or all or a substantial portion of the Corporation's assets;

(iv) the filing of a voluntary petition in bankruptcy, the Corporation admitting in writing that it is unable to pay its debts as they become due or generally not pay its debts as they become due;

(v) the filing of a petition seeking reorganization or an arrangement with creditors or taking advantage of any bankruptcy or insolvency laws;

(vi) the filing of an answer admitting material allegations of, or consents to, or defaults in answering, a petition filed against the Corporation in any bankruptcy, reorganization or insolvency proceeding; or

(vii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation.

(e) Consideration Received. In any liquidation, dissolution, or winding-up of the Corporation, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value as determined in good faith by the Board. Any securities shall be valued as follows:

(i) Securities not subject to an investment letter or other similar restrictions on free marketability covered by Section 4(e)(ii) below:

(1) If traded on a securities exchange or through the Nasdaq National or SmallCap Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the 30-day period ending three days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the 30-day period ending three days prior to the closing; and

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

(ii) The method of valuation of securities subject to an investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate

discount from the market value determined as above in Section 4(e)(i)(1), (2), or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board.

#### 5. REDEMPTION.

The Corporation shall have no unilaterally exercisable right to repurchase or redeem any Common Stock or Preferred Stock. The holders of Common Stock and Preferred Stock shall have no unilaterally exercisable right to require the Corporation to repurchase or redeem any of their stock. No appraiser shall have the power to expand, modify or delete any of the procedures set forth herein.

#### 6. CONVERSION.

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

(a) Optional Conversion. Each share of Series A Preferred Stock shall be convertible, without the payment of any additional consideration and at the option of the holder thereof, at any time after the date of the first issuance of such shares of Series A Preferred Stock by the Corporation, into shares of Common Stock as more fully described below. The number of fully paid and nonassessable shares of Common Stock into which each share of Series A Preferred may be converted shall be determined by dividing \$0.4421 (the "Purchase Price") by the "Series A Conversion Price" in effect at the time of conversion. The "Series A Conversion Price" shall initially be the Purchase Price, subject to subsequent adjustment as provided in Section 7 below.

(b) Automatic Conversion.

(i) Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock utilizing the then effective Series A Conversion Price for each such share immediately upon:

(1) the closing of the sale of the Corporation's securities pursuant to a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, with aggregate gross proceeds to the Corporation of not less than \$10,000,000, and with a public offering price of not less than \$2.00 per share (as adjusted to reflect subsequent stock splits, stock dividends, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock) (a "Qualified IPO"); or



H030003338243

- (2) the written consent of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock.
- (c) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. If more than one share of Series A Preferred Stock is surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock to be issued upon conversion shall be computed on the basis of the aggregate number of shares of Series A Preferred Stock so surrendered.
- (d) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefore at the office of the Corporation or of any transfer agent for the Series A Preferred Stock and shall give written notice to the Corporation at such office that it elects to convert the same and shall state therein the name or names in which it 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 A Preferred Stock, or to its nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which it shall be entitled as aforesaid, together with cash in lieu of any fraction of a share. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.
- (e) Validly Issued. All shares of Common Stock that may be issued upon conversion of the Series A Preferred Stock will, upon issuance by the Corporation, be validly issued, fully paid, nonassessable and free from all taxes, liens, and charges with respect to the issuance thereof.
- (f) Taxes. The issuance of certificates representing shares of Common Stock upon conversion of any Series A Preferred Stock shall be made to each applicable shareholder without charge for any excise tax in respect of such issuance. However, if any certificate is to be issued in a name other than that of the holder of record of the Series A Preferred Stock, the person or persons requesting the issuance thereof shall pay to the Corporation the amount of any tax which may be payable in respect of any transfer involved in such issuance, or shall

H030003338243

establish to the satisfaction of the Corporation that such tax has been paid or is not due and payable.

- (g) Status of Converted Stock. If any Series A Preferred Stock shall be converted pursuant to this Section 6, the Series A Preferred Stock so converted shall resume the status of authorized but unissued and undesignated Preferred Stock.
- (h) Payment of Dividends. If any Series A Preferred Stock shall be converted pursuant to this Section 6, to the extent it is legally able to do so, the Corporation shall pay to the holder of record any accrued but unpaid dividends.
- (i) Common Stock Reserved. The Corporation shall at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of Series A Preferred Stock, the full number of shares of Common Stock deliverable upon the conversion of all Series A Preferred Stock from time to time outstanding.

## 7. ADJUSTMENT OF CONVERSION PRICE.

- (a) Adjustment of the Series A Conversion Price. The Series A Conversion Price, from time to time in effect, shall be subject to adjustment from time to time as follows:
  - (i) In case the Corporation shall at any time, on or after the date upon which any shares of Series A Preferred Stock were first issued by the Corporation (the "*Effective Date*"), subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Series A Preferred Stock, the Series A Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, without an equivalent combination of the Series A Preferred Stock, the Series A 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, dividend or combination.
  - (ii) Until such time as the Corporation shall have received a cumulative "*consideration actually received*" (defined in Section 7(b) below) for the issuance or sale of Equity Securities (defined in Section 7(b)(i) below) of no less than \$2,500,000, if the Corporation shall issue or sell Equity

H030003338243

Securities, at any time or from time to time on or after the Effective Date, for no consideration or at a consideration per share less than the Series A Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series A Conversion Price of each share of Series A Preferred Stock shall be adjusted to the lowest price at which Equity Securities are sold or issued *determined by dividing the "consideration actually received" by the Corporation from the issuance or sale of Equity Securities by the number of additional shares of Common Stock so issued (or into which such Equity Securities are convertible as of the date of such sale or issuance).*

(iii) In the event the Corporation, on or after the Effective Date, shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 7(b)(i) below, then, in each such case for the purpose of this Section 7(a)(iii), the holders of Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(iv) If at any time or from time to time, on or after the Effective Date, there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 7 or Section 4 above), provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of such Series A Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7 with respect to the rights of the holders of such Series A Preferred Stock after the recapitalization to the end that the provisions of this Section 7 (including adjustment of the Series A Conversion Price then in effect and the number of shares purchasable upon conversion of such Series A Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

H030003338243

(b) Applicable Provisions. In addition, for purposes hereof, the following provisions shall be applicable:

- (i) The term "*Equity Securities*" shall mean any shares of Common Stock, or any obligation or any share of stock or other security of the Corporation convertible into or exchangeable for Common Stock, except for (A) shares of Common Stock issued or issuable to officers, directors, employees or consultants of the Corporation pursuant to a written stock incentive plan approved by the Board and at an exercise price of no less than the fair market value of such Common Stock (collectively, a "*Stock Award*"), and any reissuance thereof upon any expiration, termination, surrender or forfeiture, approved by the Board (as appropriately adjusted to reflect stock splits, stock dividends, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock), or such greater number as may be approved by the Board; (B) shares issued pursuant to transactions described in Section 7(a)(i) above; (C) shares of Common Stock issued to executive officers of the Corporation in lieu of cash compensation, if approved in advance by the Board; (D) shares of Common Stock issued upon conversion of the Series A Preferred Stock; (E) shares of Common Stock issued by the Corporation pursuant to a Qualified IPO; (F) shares issued as a dividend pursuant to Section 1 above; (G) any securities issued pursuant to the acquisition of another partnership, corporation, association, trust, joint venture, unincorporated organization, or other entity by the Corporation by merger, consolidation, amalgamation, exchange of shares, the purchase of substantially all of the assets or otherwise, which has been approved by the Board; (H) shares of Common Stock issuable under the terms of the Corporation's License Agreement with the University of Florida Research Foundation; (I) the issuance of any security that would otherwise be deemed an Equity Security, but which is entitled to a fixed preference in the Corporation's earnings or assets rather than a participation therein; or (J) stock or stock options issued to equipment lessors and bank lenders.
- (ii) In the case of an issue or sale for cash of shares of Common Stock, the "*consideration actually received*" by the Corporation therefore shall be deemed to be the amount of cash received, before deducting therefrom any commissions or expenses paid by the Corporation.
- (iii) In case of the issuance of additional shares of Common Stock for a consideration other than cash or a consideration partly

H030003338243

other than cash, the amount of the consideration other than cash received by the Corporation for such shares shall be deemed to be the value of such consideration as determined in good faith by the Board.

- (iv) In case of the issuance by the Corporation in any manner of any rights to subscribe for or to purchase shares of Common Stock, or any options for the purchase of shares of Common Stock or stock convertible into Common Stock, all shares of Common Stock or stock convertible into Common Stock to which the holders of such rights or options shall be entitled to subscribe for or purchase pursuant to such rights or options shall be deemed outstanding immediately after the issuance or sale of such rights or the granting of such options, as the case may be, and the minimum aggregate consideration named in such rights or options for the shares of Common Stock or stock convertible into Common Stock covered thereby, plus the consideration, if any, received by the Corporation for such rights or options, shall be deemed to be the "*consideration actually received*" by the Corporation (as of the date of the offering of such rights or the granting of such options, as the case may be) for the issuance of such shares.
- (v) In case of the issuance or issuances by the Corporation in any manner of any obligations or of any shares of stock of the Corporation that shall be convertible into or exchangeable for Common Stock, all shares of Common Stock issuable upon the conversion or exchange of such obligations or shares shall be deemed issued immediately after such obligations or shares are issued, and the amount of the "*consideration actually received*" by the Corporation for such additional shares of Common Stock shall be deemed to be that total of (A) the amount of consideration received by the Corporation upon the issuance of such obligations or shares, as the case may be, plus (B) the minimum aggregate consideration, if any, other than such obligations or shares, receivable by the Corporation upon such conversion or exchange.
- (vi) The amount of the "*consideration actually received*" by the Corporation upon the issuance of any rights or options referred to in Section 7(b)(iv) above or upon the issuance of any obligations or shares which are convertible or exchangeable as described in Section 7(b)(v) above, and the amount of consideration, if any, other than such obligations or shares so convertible or exchangeable, received by the Corporation upon the exercise, conversion or exchange thereof shall be determined in the same manner provided in Sections 7(b)(ii)

H030003338243

and (iii) above with respect to the consideration received by the Corporation in case of the issuance of additional shares of Common Stock; provided, however, that if such obligations or shares of stock so convertible or exchangeable are issued in payment or satisfaction of any dividend upon any stock of the Corporation other than Common Stock, the amount of the "*consideration actually received*" by the Corporation upon the original issuance of such obligations or shares or stock so convertible or exchangeable shall be deemed to be the value of such obligations or shares of stock, as of the date of the adoption of the resolution declaring such dividend, as determined by the Board at or as of that date. On the expiration of any rights or options referred to in Section 7(b)(iv) above, or the termination of any right of conversion or exchange referred to in Section 7(b)(v) above, or any change in the number of shares of Common Stock deliverable upon exercise of such options or rights or upon conversion of or exchange of such convertible or exchangeable securities, the Series A Conversion Price then in effect shall forthwith be readjusted to such Series A Conversion Price that would have been obtained had the adjustments made upon the issuance of such option, right or convertible or exchangeable securities been made upon the basis of the delivery of only the number of shares of Common Stock actually delivered or to be delivered upon the exercise of such rights or options or upon the conversion or exchange of such securities.

(c) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment to a Series A Conversion Price pursuant to this Section 7, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof, and shall prepare and furnish to each holder of Series A Preferred Stock affected thereby a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustment or readjustment, (ii) the Series A Conversion Price applicable to such holder of Series A Preferred Stock at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Series A Preferred Stock.

(d) Other Actions. The Corporation will not, by amendment of these Amended and Restated Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution,

issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of Section 6 above and this Section 7.

- (e) Notice. All notices, consents, elections, requests, waivers and other communications required or allowed pursuant to this Article V shall be in writing and shall be deemed to have been duly given or made the second business day after the date of mailing, if delivered by registered or certified mail, postage prepaid; upon delivery, if sent by hand delivery; upon delivery, if sent by prepaid courier, with a record of receipt; or the next day after the date of dispatch, if sent by cable, telegram, facsimile or telecopy (with a copy simultaneously sent by registered or certified mail, postage prepaid, return receipt requested). Each such communication shall be transmitted, if to the Corporation, at its principal business address, and if to a holder of Series A Preferred Stock and/or Common Stock, at the address set forth in the shareholder records as maintained by the Corporation, or to such other address as any such shareholder may have designated by like notice forwarded to the Corporation. Notice of any change in any such address shall also be given in the manner set forth above. Whenever the giving of notice is required, the giving of such notice may be waived by the party entitled to receive such notice.

#### 8. ADDITIONAL PREFERRED STOCK.

The Corporation is authorized to issue an additional 35,000,000 shares of \$.00001 par value Preferred Stock. The Board is expressly vested with the authority to divide any or all of this remaining Preferred Stock into series and to fix and determine the relative rights and preferences of the shares of each series so established, provided, however, that the rights and preferences of various series may vary only with respect to:

- (a) the rate of dividend;
- (b) whether the shares maybe called and, if so, the call price and the terms and conditions of call;
- (c) the amount payable upon the shares in the event of voluntary and involuntary liquidation;
- (d) sinking fund provisions, if any, for the call or redemption of the shares;
- (e) the terms and conditions, if any, on which the shares may be converted;
- (f) voting rights; and

HO30003338243

- (g) whether the shares will be cumulative, noncumulative or partially cumulative as to dividends and the dates from which any cumulative dividends are to accumulate.

The Board shall exercise the foregoing authority by adopting a resolution setting forth the designation of each series and the number of shares therein, and fixing and determining the relative rights and preferences thereof. The Board may make any change in the designation, terms, limitations and relative rights or preferences of any series in the same manner, so long as no shares of such series are outstanding at such time.

Within the limits and restrictions, if any, stated in any resolution of the Board originally fixing the number of shares constituting any series, the Board is authorized to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series subsequent to the issue of shares of such series. In case the number of shares of any series shall be so decreased, the share constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

#### Article VI

*Bylaws.* The power to adopt, alter, amend or repeal Bylaws shall be vested in the Board and Shareholders.

#### Article VII

*Registered Office and Agent.* The street address of the registered office of the Corporation is 6565 N.W. 81<sup>st</sup> Boulevard, Gainesville Florida 32653, and the name of the registered agent of the Corporation is Jamie M. Grooms.

#### Article VIII

*Board of Directors.* The number of directors of the Corporation shall be not less than three, with the exact number of directors to be determined from time to time by resolution adopted by the Board, and subject to Article V, Section 3 herein.

The business and affairs of the Corporation shall be managed by or under the direction of the Board.

#### Article IX

*Indemnification.* Provided the person proposed to be indemnified satisfies the requisite standard of conduct for permissive indemnification by a corporation as specifically set forth in the applicable provisions of the Florida Business Corporation Act (currently, Sections 607.0850(1) and (2) of the Florida Statutes), as the same may be amended from time to time, the Corporation shall indemnify its officers and directors, and may indemnify its employees and agents, to the fullest extent permitted by the provisions of the Florida Business Corporation Act and the Bylaws of the Corporation, as the same may be amended and supplemented, from and against any and all of the expenses or liabilities incurred in defending a civil or criminal



proceeding, or other matters referred to in or covered by said provisions, including advancement of expenses prior to the final disposition of such proceedings and amounts paid in settlement of such proceedings, both as to action in his or her official capacity and as to action in another capacity while an officer, director, employee or other agent. 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 shareholders or Disinterested Directors or otherwise. Such indemnification 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 and personal representatives of such a person. Except as otherwise required by law, an adjudication of liability shall not affect the right to indemnification for those indemnified.

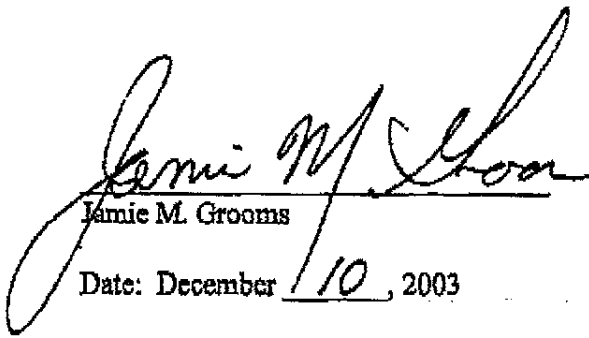
#### Article X

*Amendment.* Subject to Article V, Section 7(d), the Corporation reserves the right to amend or repeal any provision contained in these Amended and Restated Articles of Incorporation in the manner prescribed by the laws of the State of Florida and all rights conferred upon shareholders are granted subject to this reservation.

H030003338243

**ACCEPTANCE OF APPOINTMENT AS REGISTERED AGENT**

Having been named as registered agent and to accept service of process of Axogen Corporation, a Florida corporation, at the place designated in the foregoing Amended and Restated Articles of Incorporation, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

  
Jamie M. GroomsDate: December 10, 2003

WFB 743122.1

H030003338243

TOTAL P.18