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Division of Corporations

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Florida Department of State  
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**BASIC AMENDMENT**  
**SAFETY CAST CORPORATION**

Certificate of Status	0
Certified Copy	0
Page Count	21
Estimated Charge	\$35.00

6/30/03  
Amend  
Sp

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**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
SAFETY CAST CORPORATION**

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TALLAHASSEE, FLORIDA

These Amended and Restated Articles of Incorporation of Safety Cast Corporation, a Florida corporation under the laws of the State of Florida (the "Corporation") and the provisions of Chapter 607, Florida Statutes, are adopted and filed pursuant to the provisions of Sections 607.1001, and 607.1007, Florida Statutes, as amended, have been duly authorized, approved and adopted by the Board of Directors by unanimous written consent, dated as of June 27, 2003, and shall be effective on the date of filing with the Florida Department of State, Division of Corporations.

All amendments included in these amended and restated Articles of Incorporation have been adopted pursuant to Sections 607.1001, and 607.1007, Florida Statutes, and there is no discrepancy between the Articles of Incorporation of Safety Cast Corporation, and the provisions of these amended and restated Articles of Incorporation, other than the inclusion of amendments adopted pursuant to Sections 607.1001, and 607.1007, Florida Statutes, as amended.

**ARTICLE I**

**Name and Duration**

The name of the Corporation is "Safety Cast Corporation." The duration of the Corporation is perpetual. This Corporation shall begin its corporate existence as of February 24, 2003, the date of the original filing of the Articles of Incorporation of the Corporation.

**ARTICLE II**

**Principal Office**

The address of the principal office and mailing address of the Corporation in the State of Florida is 11255 Alumni Way, Suite 201, Jacksonville, Florida 32246.

**ARTICLE III**

**Registered Office and Agent**

The street address of the registered office in the State of Florida is 50 North Laura Street, Suite 2500, Jacksonville, Florida 32202 in the County of Duval. The name of the registered agent at such address is Motolaw, Inc.

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ARTICLE IV

Corporate Purposes, Powers and Rights

1. The nature of the business to be conducted or promoted and the purposes of the Corporation are to engage in any lawful act or activity for which corporations may be organized under the Florida Business Corporation Act.

2. In furtherance of its corporate purposes, the Corporation shall have all of the general and specific powers and rights granted to and conferred on a corporation by the Florida Business Corporation Act.

ARTICLE V

Capital Stock

1. The maximum number of shares of stock which this corporation is authorized to have outstanding at any one time is:

- (a) 300,000,000 shares of common stock having no par value per share; and
- (b) 10,000,000 shares of preferred stock having no par value per share.

2. Except as specifically provided in this Article V, the rights, preferences, powers and privileges of the shares of the preferred stock and the restrictions, limitations and qualifications thereof shall be determined by the Board of Directors in the resolution or resolutions by which it authorizes the issuance of such stock. By way of illustration, and not by way of limitation, the Board of Directors shall have the power to decide on the following terms: (1) whether the shares of preferred stock shall be issued in one or more series at one time, or from time to time; (2) whether and to what extent the shares of any series of preferred stock shall be participating; (3) the dividend rate or rates, if any, on the shares of any series of preferred stock and the relation which dividends on any series of preferred stock shall bear to the dividends payable on any other kind or kinds, or of any other class or classes of any kind or kinds, or of any other series of any class or classes of capital stock of the corporation; (4) the terms and conditions upon which and the periods in respect to which any such dividends shall be payable; (5) whether and upon what conditions any dividends on any series of preferred stock shall be cumulative and, if cumulative, the date or dates from which dividends shall accumulate; (6) whether the shares of any series shall be limited with respect to participation in dividends, if any, or whether they shall participate in dividends over and above the dividend rate, if any, provided for the shares of such series; (7) whether any such dividends shall be payable in cash, in shares of such series, in shares of any other kind or kinds, or of any other class or classes of any kind or kinds, or of any other series of any class or classes of capital stock of the corporation, or in other property, or in more than one of the foregoing; (8) whether the shares of any series of preferred stock shall be redeemable or callable, the limitations and restrictions with respect to such redemptions or calls, the time or times when, the price or prices (which may be greater than par value) at which and the manner in which shares of any series shall be redeemable or callable,

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including the manner of selecting shares of the series for redemptions or calls if less than all such shares are to be redeemed or called; (9) whether the shares of any series of preferred stock shall be subject to the operation of a purchase, retirement or sinking fund, and, if so, whether and upon what conditions the purchase, retirement or sinking fund shall be cumulative or noncumulative, and the extent to which and the manner in which the fund shall be applied to the purchase or redemption of the shares of the series for retirement or to other corporate purposes and the terms and provisions relative to the operation thereof; (10) the terms on which any series of preferred stock shall be convertible into or exchangeable for shares of any other kind or kinds, or any other class or classes of any kind or kinds, or of any other series of any class or classes of capital stock of the corporation, and the price or prices or the rate or rates of conversion or exchange and the method, if any, of adjusting the same, and any other terms and conditions of such conversion or exchange; (11) the matters on which the holders of any series of preferred stock shall be entitled to vote, either together with others or separately as a class; (12) the preferences of any series in respect to the assets of the corporation upon voluntary and involuntary liquidation, dissolution, distribution of assets and winding-up the corporation, including the amount (which may be greater than par value) payable to holders of any series before any amount is payable to the holders of common stock or any other subordinate kind or kinds or any other subordinate class or classes of any kind or kinds of capital stock; (13) any other rights, preferences, power and privileges and relative, participating, optional or other special rights, and qualifications of or limitations or restrictions on any series which the Board of Directors may deem advisable, provided they are not inconsistent with the provisions of these Articles of Incorporation. Notwithstanding anything in this Article III to the contrary, each share of preferred stock of any series shall stand on a parity with each other share of preferred stock of that series and of any other series of preferred stock upon the voluntary or involuntary liquidation, dissolution or distribution of assets, or winding-up of the corporation.

3. Each share of common stock shall have one vote on every matter coming before any meeting of the stockholders or otherwise to be acted upon by stockholders. Notwithstanding anything in this Article V to the contrary, each share of preferred stock of any series with voting rights and privileges shall have the same voting rights and privileges as each other share of that series. Shares of any series of preferred stock shall be entitled to vote as a class on matters specified by the Board of Directors in the resolution or resolutions by which it authorizes the issuance of preferred stock of such series.

4. Unless otherwise provided for herein, no holder of any shares of capital stock of any kind, class or series or of any other securities or obligations of this corporation shall have, as a matter of right, any preemptive, preferential or other right to subscribe for, purchase or receive any shares of the capital stock of any kind, class or series, or any other securities or obligations convertible into or exercisable or exchangeable for shares of stock or other securities or obligations of the same or any other kind, class or series, whether now or hereafter authorized.

5. Pursuant to Article V, Section 2 of these Articles of Incorporation, the Board of Directors does hereby designate, create, authorize and provide for the issuance of a series of preferred stock having no par value per share, with a liquidation preference of 1.5 multiplied by the Preferred Stock Purchase Price (the "Liquidation Preference"), plus declared and unpaid dividends, if any, which shall be designated as Series A Convertible Preferred Stock (the

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"Preferred Stock"), consisting of 5,000,000 shares having the following powers, designations, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions:

(a) *Ranking.* The Preferred Stock shall, with respect to distributions upon the liquidation, winding-up and dissolution of the Corporation, rank (i) senior to all classes of Common Stock of the Corporation and to each other class of capital stock or series of preferred stock established after the Adoption Date, by the Board of Directors, the terms of which do not expressly provide that it ranks senior to or on a parity with the Preferred Stock as to dividend distributions and distributions upon the liquidation, winding-up and dissolution of the Corporation (collectively referred to with the Common Stock of the Corporation as "Junior Securities"); (ii) on parity with any additional shares of Preferred Stock issued by the Corporation in the future and any other class of capital stock or series of preferred stock issued by the Corporation established after the Adoption Date by the Board of Directors, the terms of which expressly provide that such class or series will rank on a parity with the Preferred Stock as to dividend distributions and distributions upon the liquidation, winding-up and dissolution of the Corporation (collectively referred to as "Parity Securities"); and (iii) junior to each class of capital stock or series of preferred stock issued by the Corporation established after the Adoption Date, by the Board of Directors, the terms of which expressly provide that such class or series will rank senior to the Preferred Stock as to dividend distributions and/or distributions upon the liquidation, winding-up and dissolution of the Corporation (collectively referred to as "Senior Securities"). Notwithstanding the foregoing, a security shall not be deemed to be a "Senior Security" solely because such security has a stated dividend or interest coupon.

(b) *Dividends.*

(i) The Corporation shall not declare, make or pay any dividends or other distributions upon any Junior Securities until dividends of at least an equal or greater amount have been paid to the holders of shares of Preferred Stock.

(ii) From and after the Dividend Commencement Date, the holders of shares of Preferred Stock shall be entitled to receive non-cumulative dividends in preference to the holders of Junior Securities payable from legally available funds in cash, securities, rights or other property when, as and if declared by the Board of Directors of the Corporation. The dividends under this Section 5(b)(ii) shall be non-cumulative.

(iii) So long as any shares of Preferred Stock are outstanding, the Corporation shall not pay or set apart for payment any full dividend on any of the Parity Securities or any dividend on any of the Junior Securities (other than dividends in Parity Securities to the holders of Parity Securities or dividends in Junior Securities to the holders of Junior Securities), or make any payment on account of, or set apart for payment money for a sinking or other similar fund for, the purchase, redemption or other retirement of any of the Parity Securities or any of the Junior Securities or any warrants, rights, calls or options exercisable for or

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convertible into any of the Parity Securities or any of the Junior Securities, and shall not permit any Person directly or indirectly controlled by the Corporation to purchase or redeem any of the Parity Securities or any of the Junior Securities or any such warrants, rights, calls or options, unless any full dividend of equal or greater amounts on the Preferred Stock have been or contemporaneously are paid in full.

(iv) If the Corporation desires to make a partial dividend payment with respect to any Parity Securities, it may do so as long as dividends upon shares of the Preferred Stock and upon such Parity Securities are paid on a pro rata basis so that the amount of dividends paid on the Preferred Stock and the amount of dividends paid on the Parity Securities shall in all cases be equal to each other.

(c) *Conversion Rights.*

(i) After approval or ratification by the shareholders of the Corporation of the issuance of the shares of Preferred Stock, a holder of shares of Preferred Stock may convert such shares into Common Stock at any time at the option of the holder thereof. Notwithstanding the foregoing, a holder of shares of Preferred Stock shall be required to convert such shares into Common Stock in the event of (i) the closing of the Corporation's initial public offering pursuant to a registration statement under the Securities Act of 1933 with aggregate proceeds of at least \$20,000,000 at a price per share of at least three (3) times the Preferred Stock Purchase Price, or (ii) the election by holders of at least two-thirds (2/3) of the then outstanding shares of Preferred Stock. Except as set forth in the next sentence, for the purposes of conversion, each share of Preferred Stock shall be valued at Preferred Stock Purchase Price which shall be divided by the Conversion Price in effect on the Conversion Date (defined below) to determine the number of shares issuable upon conversion. If a holder of shares of Preferred Stock gives written notice (a "Dividend Conversion Notice") to the Corporation at least two Business Days but not more than 60 days prior to giving a notice of conversion pursuant to Section 5(c)(ii)(B) that it will be electing to convert a specified number of shares of Preferred Stock and that it elects to have any Accrued Dividends thereon that are payable prior to the Conversion Date but remain unpaid as of the Conversion Date converted into Common Stock on the Conversion Date (thereby affording the Corporation the opportunity to pay such Accrued Dividends in cash prior to the Conversion Date so that they will not be converted into Common Stock), then for the purposes of conversion, each share of Preferred Stock shall be valued at Preferred Stock Purchase Price plus the amount of Accrued Dividends thereon that are payable prior to the Conversion Date but remain unpaid as of the Conversion Date, if any, which shall be divided by the Conversion Price in effect on the Conversion Date to determine the number of shares issuable upon conversion. Immediately following any such conversion, the rights of the holders of converted Preferred Stock shall cease and the persons entitled to receive the Common Stock upon the conversion of Preferred Stock

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shall be treated for all purposes as having become the owners of such Common Stock.

(ii) To voluntarily convert Preferred Stock, a holder must (A) surrender the certificate or certificates evidencing the shares of Preferred Stock to be converted, duly endorsed in a form satisfactory to the Corporation, at the office of the Corporation or transfer agent for the Preferred Stock, (B) notify the Corporation at such office that he elects to convert Preferred Stock and the number of shares he wishes to convert, (C) state in writing the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued, and (D) pay any transfer or similar tax if required by clause (iv) below. In the event that a holder fails to notify the Corporation of the number of shares of Preferred Stock which he wishes to convert, he shall be deemed to have elected to convert all shares represented by the certificate or certificates surrendered for conversion. The date on which the holder satisfies all those requirements or the date on which the Corporation provides notice of an automatic conversion event is the "Conversion Date." As soon as practical following the Conversion Date, the Corporation shall deliver a certificate representing the number of full shares of Common Stock issuable upon the conversion, and a new certificate representing the unconverted portion, if any, of the shares of Preferred Stock represented by the certificate or certificates surrendered for conversion. The person in whose name the Common Stock certificate is registered shall be treated as the stockholder of record on and after the Conversion Date. Except as expressly set forth in Section 5(c)(i) or in the following provisions of this Section 5(c)(ii), no adjustment will be made for accrued and unpaid dividends on shares of Preferred Stock which have been converted. The holder of record of a share of Preferred Stock at the close of business on a record date with respect to the payment of dividends on the Preferred Stock in accordance with Section 5(b)(i) hereof will be entitled to receive such dividends with respect to such share of Preferred Stock on the corresponding dividend payment date, notwithstanding the conversion of such share after such record date and prior to such dividend payment date. If a holder of Preferred Stock converts more than one share at a time, the number of full shares of Common Stock issuable upon conversion shall be based on the total Preferred Stock Purchase Price of all shares of Preferred Stock converted.

(iii) The Corporation shall not issue any fractional shares of Common Stock upon conversion of Preferred Stock. Instead the Corporation shall pay a cash adjustment based upon the fair market value of the Common Stock determined by a qualified business appraiser on the Business Day prior to the Conversion Date.

(iv) If a holder converts shares of Preferred Stock, the Corporation shall pay any documentary stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon the conversion. However, the holder shall pay any such tax that is due because the shares are issued in a name other than the holder's name.

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(v) The Corporation has reserved and shall continue to reserve out of its authorized but unissued Common Stock or its Common Stock held in treasury enough shares of Common Stock to permit the conversion of the Preferred Stock in full. All shares of Common Stock that may be issued upon conversion of Preferred Stock shall be fully paid and nonassessable. The Corporation shall endeavor to comply with all securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Preferred Stock.

(vi) In case the Corporation shall pay or make a dividend or other distribution on any class of capital stock of the Corporation in Common Stock, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such reduction to become effective immediately after the opening of business on the day following the date fixed for the determination of the holders entitled to such dividends and distributions. For the purposes of this Section 5(c)(vi), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation. The Corporation will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Corporation.

(vii) In case the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be reduced, and, conversely, in case the outstanding shares of Common Stock shall each be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be increased, in either case to equal the product of the Conversion Price in effect on such date and a fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such subdivision or combination, as the case may be, and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such subdivision or combination, as the case may be. Such reduction or increase, as the case may be, shall become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(viii) The capital reorganization, reclassification, conversion or exchange of Common Stock into securities, including securities other than Common Stock (other than a reclassification, conversion or exchange in connection with a



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business combination to which Section 5(c)(xiv) below shall apply), shall be deemed to involve (A) a distribution of such securities other than Common Stock to all holders of Common Stock, and (B) a subdivision or combination, as the case may be, of the number of shares of Common Stock outstanding immediately prior to such reclassification, conversion or exchange into the number of shares of Common Stock outstanding immediately thereafter (and the effective date of such reclassification, conversion or exchange shall be deemed to be "the day upon which such subdivision becomes effective" or "the day upon which such combination becomes effective," as the case may be, and "the day upon which such subdivision or combination becomes effective" within the meaning of Section 5(c)(vii) above).

(ix) No adjustment in the Conversion Price need be made until all cumulative adjustments amount to 1% or more of the Conversion Price as last adjusted. Any adjustments that are not made shall be carried forward and taken into account in any subsequent adjustment. Any adjustment to the Conversion Price carried forward and not theretofore made shall be made immediately prior to the conversion of any shares of Preferred Stock pursuant hereto.

(x) For purposes of this Section 5(c), "Common Stock" includes any stock of any class of the Corporation which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation and which is not subject to redemption by the Corporation. However, subject to the provisions of Section 5(c)(xiv) below, shares issuable on conversion of shares of Preferred Stock shall include only shares of the class designated as Common Stock of the Corporation on the Preferred Stock Issue Date or shares of any class or classes resulting from any reclassification, conversion or exchange thereof and which have no preferences in respect of dividends or amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation and which are not subject to redemption by the Corporation, provided that, if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications, conversions or exchanges bears to the total number of shares of all such classes resulting from all such reclassifications, conversions or exchanges.

(xi) Whenever the Conversion Price is adjusted, the Corporation shall promptly mail to holders of Preferred Stock, first class, postage prepaid, a notice of the adjustment. The Corporation shall file with the transfer agent for the Preferred Stock, if any, a certificate from the Corporation's chief financial officer or treasurer briefly stating the facts requiring the adjustment and the manner of computing it.

(xii) Upon a determination by the Board of Directors of the Corporation, the Corporation from time to time may reduce the Conversion Price if the Board

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of Directors of the Corporation considers such reductions to be advisable in order that any event treated for federal income tax purposes as a dividend of stock or stock rights will not be taxable to the holders of Common Stock by any amount.

(xiii) If:

(A) the Corporation enters an agreement to consolidate or merge with, or transfer all or substantially all of its assets to, another Person, and stockholders of the Corporation must approve the transaction; or

(B) the Corporation adopts a plan of dissolution or liquidation of the Corporation;

the Corporation shall mail to holders of the Preferred Stock, first class, postage prepaid, a notice stating the proposed record or effective date, as the case may be. The Corporation shall mail the notice at least 10 days before such date. However, failure to mail the notice or any defect in it shall not affect the validity of any transaction referred to in clause (A) or (B) of this Section 5(c)(xiii).

(xiv) In the case of any

(A) consolidation or merger of the Corporation with or into any other Person in which the Common Stock is converted into securities of another Person, or the right to receive cash or assets,

(B) transaction consisting of a sale or transfer of all or substantially all the assets of the Corporation in exchange for securities of another Person, cash or assets followed by a liquidation, or

(C) capital reorganization or reclassification, conversion or exchange of outstanding shares of Common Stock other than in connection with a business combination,

then, upon consummation of such transaction, each share of Preferred Stock shall automatically become convertible into the kind and amount of securities, or the right to receive cash or other assets, receivable upon the consolidation, merger, liquidation, capital reorganization, conversion, reclassification or exchange by a holder of the number of shares of Common Stock into which such share of Preferred Stock might have been converted immediately prior to such consolidation, merger, liquidation, capital reorganization, conversion, reclassification or exchange (assuming such holder of Common Stock failed to exercise any rights of election and received per share the kind and amount of consideration receivable per share by non-electing shares). Appropriate adjustment (as determined by the Board of Directors of the Corporation) shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of Preferred Stock, to the end that the provisions set forth herein (including provisions with respect to changes in and other adjustment of the Conversion

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Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other securities or property thereafter deliverable upon the conversion of Preferred Stock. If this Section 5(c)(xiv) applies, Sections 5(c)(vi), (vii) and (viii) shall be deemed not to apply. Notwithstanding anything contained herein to the contrary, the Corporation will not effect any transaction of the type referred to in clause (A), (B) or (C) of this Section 5(c)(xiv) unless, prior to the consummation thereof, the Surviving Person (as defined in Section 5(o) thereof, if it is not the Corporation, shall assume, by written instrument mailed to each record holder of Preferred Stock, at such holder's address as it appears on the transfer books of the Corporation, the obligation to deliver to such holder such securities, cash or assets to which, in accordance with the foregoing provisions, such holder is entitled upon conversion. Nothing contained in this Section 5(c)(xiv) shall limit the rights of holders of the Preferred Stock to convert the Preferred Stock in connection with the transaction.

(xv) In any case in which this Section 5(c) shall require that an adjustment as a result of any event become effective from and after a record date, the Corporation may elect to defer until after the occurrence of such event the issuance to the holder of any shares of Preferred Stock converted after such record date and before the occurrence of such event of the additional shares of Common Stock issuable upon such conversion over and above the shares issuable on the basis of the Conversion Price in effect immediately prior to adjustment; provided, however, that if such event shall not have occurred and authorization of such event shall be rescinded by the Corporation, the Conversion Price shall be recomputed immediately upon such rescission to the price that would have been in effect had such event not been authorized, provided that such rescission is permitted by and effective under applicable laws.

(d) *Liquidation Preference.* Upon any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, each holder of shares of the Preferred Stock will be entitled to payment out of the assets of the Corporation available for distribution of an amount equal to the Liquidation Preference per share of Preferred Stock held by such holder, plus declared and unpaid dividends, if any, to the date fixed for liquidation, dissolution or winding-up, before any distribution is made on any Junior Securities, including, without limitation, Common Stock of the Corporation. After payment in full of the Liquidation Preference and all declared and unpaid dividends, if any, to which holders of Preferred Stock are entitled, such holders will be entitled to further participate in any distribution of assets of the Corporation, on a pro rata basis with holders of Junior Securities, until such time as the holders of Preferred Stock shall have received an aggregate amount (including the Liquidation Preference and declared and unpaid dividends, if any), which shall equal the Preferred Stock Purchase Price multiplied by three (3) for each share of Preferred Stock owned by such holder. After payment in full of the above-stated amount, such holders will not be entitled to any further participation in any distribution of assets of the Corporation. If, upon any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the amounts payable with respect to the Preferred Stock and all other Parity Securities are not paid in full, the holders of the Preferred Stock and the Parity Securities will share equally and ratably in any distribution of assets of the Corporation in proportion to the full liquidation

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preference and accrued dividends, if any, to which each is entitled. For purposes of this section (d), the voluntary sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or assets of the Corporation or the consolidation or merger of the Corporation with or into one or more Persons will be deemed to be a voluntary or involuntary liquidation, dissolution or winding-up of the Corporation unless otherwise approved by affirmative vote or consent of the holders of at least two-thirds (2/3) of the Preferred Stock then outstanding voting or consenting as the case may be, as one class.

(e) *Redemption.* The Preferred Stock will not be redeemable.

(f) *Voting Rights.*

(i) The holders of Preferred Stock shall be entitled to notice of all stockholders meetings in accordance with the Corporation's bylaws and the Florida Statutes, and the holders of the Preferred Stock shall be entitled to vote (or act by written consent) on any matters submitted to the stockholders for a vote (or for action) with such votes being equal to the number of shares of Common Stock then issuable upon conversion of such shares of Preferred Stock.

(ii) In the case of any vote otherwise required by law, the affirmative vote or consent of the holders of at least a majority of the shares of Preferred Stock then outstanding voting or consenting as the case may be, as one class, shall be required to constitute the vote or consent as the case may be in favor of the matter under consideration.

(g) *Reclassification of Shares; Issuance of Senior or Parity Securities.* Notwithstanding anything else contained herein to the contrary, without the affirmative vote or consent of the holders of at least two-thirds (2/3) of the Preferred Stock then outstanding voting or consenting as the case may be, as one class, the Corporation will not take any action that: (i) alters or changes the rights, preferences or privileges of the Preferred Stock that adversely affects such shares; (ii) increases or decreases the number of authorized shares of Preferred Stock; (iii) authorizes the issuance of Senior or Parity Securities; (iv) redeems shares of Common Stock (other than redemption from directors or officers of the Corporation pursuant to any equity incentive plan or similar compensation arrangement giving the Corporation a repurchase right upon either termination of services or exercise of its right of first refusal); (v) makes any dividends or distributions on Common Stock; (vi) results in a liquidation, dissolution or winding up of the Corporation, including the sale, conveyance, exchange or transfer of all or substantially all of the property or assets of the Corporation or the consolidation or merger of the Corporation with or into one or more Persons; (vii) changes the number of directors of the Corporation; or (viii) changes the principle line(s) of business of the Corporation.

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(h) *Reports.* The Corporation shall deliver to any Major Holder quarterly financial statements within forty-five (45) days after the end of each fiscal quarter and audited annual financial statements within ninety (90) days of the close of each fiscal year of the Corporation. In addition, the Corporation shall provide to any Major Holder a copy of the Corporation's annual budget within forty-five (45) days of the beginning of each fiscal year. The obligation to furnish such information to the Major Holder will terminate at such time as the Corporation consummates an initial public offering or becomes subject to the reporting provisions of the Securities Exchange Act of 1934. The Corporation will deliver to the holders of the Preferred Stock, promptly upon their becoming available, copies of all financial statements, reports, notices and proxy statements sent or made available generally by the Corporation to its security holders in their capacity as such or by any subsidiary of the Corporation to the Corporation's security holders or as may be required by law.

(i) *Preemptive Rights.*

(i) If the Corporation proposes to issue new shares of Stock including an initial public offering (a "Subsequent Stock Issuance"), the Corporation shall, as a condition of any such Subsequent Stock Issuance, first offer to each holder of Preferred Stock the opportunity to purchase, for the price and on the terms established by the Corporation for all purchasers in such Subsequent Stock Issuance, such portion of shares of stock being offered in such Subsequent Stock Issuance on the basis of their pro rata share of the securities of the Corporation, calculated on a fully diluted basis.

(ii) Such preemptive right shall not apply to options and shares granted or sold to employees, directors and consultants, shares issued in connection with acquisitions of or mergers with other companies, in equipment or bank financings or to vendors, customers or corporate partners, which have been approved by the Board of Directors provided such shares are not issued for the primary purpose of obtaining equity financing for the Corporation.

(iii) In furtherance of the preemptive rights hereby granted, the Corporation agrees to provide the holders of Preferred Stock with not less than fifteen (15) days prior written notice (an "Equity Security Issuance Notice") of its intent to issue any stock. Such notice should specify in reasonable detail the stock to be issued, including class, total number of shares and the applicable rights and preferences associated therewith, including, if applicable, conversion rights, and the purchase price for the stock that holders may purchase pursuant to their preemptive rights hereby granted. The terms and conditions of holders' exercise of their preemptive rights, including the consideration to be paid for such stock, shall be no less favorable to the holders than the most favorable price, terms and

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conditions offered to any other shareholder or prospective shareholder with respect to the stock then being issued.

(iv) In order to exercise their preemptive rights, holders shall deliver written notice thereof to the Corporation within fifteen (15) days following their receipt of the Equity Securities Issuance Notice to which such exercise relates, accompanied by full payment of the purchase price for the stock to be purchased in connection with the exercise of such preemptive rights. Holders may, at their option, exercise such preemptive rights to some or all of the stock to which they have preemptive rights under this Article V.5(i). In the event that any stock is to be issued by the Corporation in return for property (other than cash) or services, in calculating the purchase price of the stock with respect to which holders have preemptive rights pursuant to this Article V.5(i), the purchase price for the stock to be issued in exchange for non-cash property or services shall be equal to the fair market value of such property or services as determined in good faith by the Board of Directors of the Corporation and stated in the Equity Securities Issuance Notice.

(j) *Anti-dilution.*

(i) In the event there shall be any subsequent sales of shares of the Corporation's Common Stock at a price per share less than the Preferred Stock Purchase Price (after adjustment for any stock dividend, stock split, stock issuance, reverse stock split, combination, recapitalization, reclassification, merger, consolidation or otherwise), the shares of Preferred Stock shall be subject to full anti-dilution adjustment, such that the holders thereof will receive such number of additional shares of Preferred Stock at no consideration as will make such holder's Preferred Stock Purchase Price equal to the lower price paid by the subsequent investor(s), after adjustment for any stock dividend, stock split, stock issuance, reverse stock split, combination, recapitalization, reclassification, merger, consolidation or otherwise. In the event that any portion of the consideration consists of property (other than cash) or services, in calculating the purchase price of the stock with respect to which holders have rights pursuant to this section, the consideration consisting of non-cash property or services shall be equal to the fair market value of such property or services as determined in good faith by the Board of Directors of the Corporation. The Conversion Price of the Preferred Stock will also be subject to proportional anti-dilution adjustment for stock splits, stock dividends and the like.

(ii) The provisions of this section (j) shall not apply to (a) the issuance of Common Stock to employees, consultants, officers or directors of the Corporation pursuant to stock purchase or stock option plans approved by the Board of Directors of the Corporation; (b) the issuance of

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securities pursuant to currently outstanding options, warrants, notes or other rights to acquire securities of the Corporation; (c) shares issued in connection with acquisition transactions so long as such issued shares represent less than ten percent (10%) of the Corporation's shares outstanding at the time of the acquisition; (d) the issuance of securities in an initial public offering; (e) shares issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financing or similar transactions approved by the Board of Directors so long as such issued shares represent less than ten percent (10%) of the Corporation's shares outstanding at the time of such financing; (f) stock splits, stock dividends or similar transactions; and (g) shares issued upon the conversion of the Preferred Stock.

(k) *Rights of First and Second Refusal / Co-Sale Rights.* In the event either Mark Foss ("Foss") or Leonard K. Cook ("Cook") (Foss and Cook individually referred to as "Founder" and collectively referred to as the "Founders") proposes to sell, exchange or transfer any Common Stock or Preferred Stock that they own to one or more third parties, the Founder(s) shall give the Corporation and each holder of Preferred Stock written notice of such intention to sell, exchange or transfer such shares of stock (the "Transfer Notice"). The Transfer Notice shall include a description of the stock being sold, the identity of the proposed transferee and the consideration and material terms of the offer. The Corporation shall have the right of first refusal to purchase all or some of such shares described in the Transfer Notice prior to any such sale, exchange or transfer to one or more third parties on the same terms and conditions that are contained in the Transfer Notice. In the event the Corporation shall fail to exercise its right of first refusal, the remaining holders of Preferred Stock (other than the Founders) shall have the second right of first refusal to purchase all or some of such shares prior to any such sale, exchange or transfer to one or more third parties on the same terms and conditions as contained in the Transfer Notice. In addition, the holders of Preferred Stock shall be granted co-sale rights whereby if the right of first refusal is not exercised by the Corporation and the second right of first refusal are not exercised by the holders of Preferred Stock, then the holders of Preferred Stock shall have the right to participate in such sale of Common Stock or Preferred Stock on the same terms and conditions as specified in the Transfer Notice provided by the Founder(s) of the Corporation. The terms of the rights of first and second refusal and co-sale rights shall be set forth in a form of written agreement which shall contain commercially reasonable terms as determined and approved in good faith by the Corporation's Board of Directors in consultation with the Corporation's legal counsel.

(l) *Registration Rights.*

(i) All shares of Common Stock issuable upon the conversion of the Preferred Stock will have such registration rights as shall be set forth together with other terms and conditions in a written registration

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rights agreement having such commercially reasonable terms as shall be determined and approved in good faith by the Corporation's Board of Directors in consultation with the Corporation's legal counsel, consistent with the following:

(ii) Beginning four (4) years after the close of the Preferred Stock financing or six (6) months after an initial public offering, whichever is earlier, the holders of the Preferred Stock and the holders of all preferred stock shall have one demand registration upon initiation. Such demand shall only be delivered to the Corporation if at least two-thirds (2/3) of the holders of the Preferred Stock or the majority of holders of all preferred stock request that at least twenty percent (20%) of their respective registrable securities then outstanding are to be sold and the aggregate offering price of the registration exceeds \$10,000,000.

(iii) The holders of a majority of the Preferred Stock will have the right to require the Corporation to register on Form S-3, if available for use by the Corporation, shares of registrable securities for an aggregate offering price of at least \$500,000. The Corporation will not be obligated to effect such a registration prior to 180 days after an initial public offering.

(iv) Holders of Preferred Stock will be entitled to unlimited piggyback registration rights, subject to pro rata cutback at the underwriter's sole and absolute discretion.

(v) Registration expenses (exclusive of underwriting discounts and commissions, stock transfer taxes and fees of counsel to the selling stockholders) will be borne by the Corporation for all demand, piggyback and Form S-3 registrations. To the extent that Corporation's counsel does not undertake to also represent the selling stockholders in such registration(s), the Corporation will pay reasonable fees and expenses of one special counsel to the selling shareholders, not to exceed \$25,000.00.

(vi) The registration rights may be transferred to a transferee who acquires at least twenty-five percent (25%) of the seller's registrable securities (or all of such transferring holder's shares, if less), provided the Corporation is given prompt notice of the transfer and the transferee agrees to be bound by the same contractual terms as the transferor. Transfer of registration rights to a partner or affiliate of the transferee will be without restrictions as to minimum shareholders.

(vii) The registration obligations of the Corporation will terminate on the earlier of three (3) years after an initial public offering or, with respect to any holder of registration rights, at such time as all



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registrable securities of such holder may be sold within a three (3) month period pursuant to Rule 144 without volume or insider restrictions.

(viii) In connection with the initial public offering, each holder of registration rights will be required not to sell or otherwise dispose of any securities of the Corporation (except for those being registered) for a period of 180 days following the effective date of the registration statement for such offering if so requested by the underwriters of such offering.

(m) *Amendment.* Except as specifically set forth herein, amendments to this Article V, Section 5 of the Articles of Incorporation may be made by the Corporation with the consent of the holders of at least two-thirds (2/3) of the outstanding shares of Preferred Stock and any other approvals required by Florida law.

(n) *Exclusion of Other Rights.* Except as may otherwise be required by law, the shares of Preferred Stock shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in this Section 5 (as may be amended from time to time) and in the Articles of Incorporation, generally. The shares of Preferred Stock shall have no preemptive or subscription rights.

(o) *Headings of Subdivisions.* The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(p) *Severability of Provisions.* If any powers, preferences and relative, participating, optional and other special rights of the Preferred Stock and qualifications, limitations and restrictions thereof set forth in this Section 5 (as may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other powers, preferences and relative, participating, optional and other special rights of Preferred Stock and qualifications, limitations and restrictions thereof set forth in this Article V, Section 5 of these Articles of Incorporation (as so amended) which can be given effect without the invalid, unlawful or unenforceable powers, preferences and relative, participating, optional or other special rights of Preferred Stock and qualifications, limitations and restrictions thereof shall, nevertheless, remain in full force and effect and no powers, preferences and relative, participating, optional or other special rights of Preferred Stock and qualifications, limitations and restrictions thereof herein set forth shall be deemed dependent upon any other such powers, preferences and relative, participating, optional or other special rights of Preferred Stock and qualifications, limitations and restrictions thereof unless so expressed herein.

(q) *Re-issuance of Preferred Stock.* Shares of Preferred Stock that have been issued and reacquired in any manner, including shares purchased or redeemed or exchanged or converted, shall (upon compliance with any applicable provisions of the laws of Florida) have the status of authorized but unissued shares of preferred stock of the

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Corporation undesignated as to series and may be designated or re-designated and issued or reissued, as the case may be, as part of any series of preferred stock of the Corporation, provided that any issuance of such shares as Preferred Stock must be in compliance with the terms hereof.

(r) *Mutilated or Missing Preferred Stock Certificates.* If any of the Preferred Stock certificates shall be mutilated, lost, stolen or destroyed, the Corporation shall issue, in exchange and in substitution for and upon cancellation of the mutilated Preferred Stock certificate, or in lieu of and substitution for the Preferred Stock certificate lost, stolen or destroyed, a new Preferred Stock certificate of like tenor and representing an equivalent amount of shares of Preferred Stock, but only upon receipt of evidence of such loss, theft or destruction of such Preferred Stock certificate and indemnity, if requested, satisfactory to the Corporation and the transfer agent (if other than the Corporation).

(s) *Committees.* A Preferred Stock designee shall be appointed to the Audit, Compensation and Executive Committees if, and when, created.

(t) *Certain Definitions.* As used in this Article V, Section 5 of the Articles of Incorporation, the following terms shall have the following meanings (with terms defined in the singular having comparable meanings when used in the plural and vice versa), unless the context otherwise requires:

"Accrued Dividends" to a particular date (the "Applicable Date") means all dividends or distributions payable pursuant to Section 5(b)(ii) that have been declared which were not paid or made, on or prior to the Applicable Date.

"Adoption Date" means the date these Amended and Restated Articles of Incorporation are filed with the Florida Secretary of State, Division of Corporations.

"Business Day" means any day except a Saturday, a Sunday, or any day on which banking institutions in Jacksonville, Florida are required or authorized by law or other governmental action to be closed.

"Closing Price" shall mean the closing price of a share of Common Stock, as reported in the Wall Street Journal, on the Nasdaq Stock Market or other national quotation system or other national securities exchange on which the Common Stock is then traded or quoted.

"Common Stock" means the Common Stock, no par value per share, of the Corporation as presently constituted.

"Conversion Price" shall initially mean the Preferred Stock Purchase Price per share and thereafter shall be subject to adjustment from time to time pursuant to the terms of Section 5 hereof.

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"Dividend Commencement Date" means, as to each share of Preferred Stock, means the date on which the Preferred Stock is originally issued by the Corporation under this Section 5.

"Dividend Period" means each annual period from a Dividend Payment Date to the next following Dividend Payment Date (but without including such later Dividend Payment Date), provided that the first Dividend Period shall be the period from the Dividend Commencement Date to the next following Dividend Payment Date (but without including such later Dividend Payment Date).

"Major Holder" means an individual or entity investing at least \$500,000 in Preferred Stock.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any Agency or political subdivision thereof or any other entity.

"Preferred Stock Issue Date" means the first and earliest date on which any of the Preferred Stock is originally issued by the Corporation under this Section 5.

"Preferred Stock Purchase Price" means the per share purchase price for each share of Preferred Stock paid by each holder thereof, whether in cash, property or services as determined in good faith by the Board of Directors of the Corporation.

"Surviving Person" shall mean the continuing or surviving Person of a merger, consolidation or other corporate combination, the Person receiving a transfer of all or substantially all of the assets of the Corporation, or the Person consolidating with or merging into the Corporation in a merger, consolidation or other corporate combination in which the Corporation is the continuing or surviving Person, in connection with which the Common Stock of the Corporation is exchanged, converted or reinstated into the securities of any other Person or cash or any other property; provided, however, if such Surviving Person is a direct or indirect subsidiary of a Person, the parent entity also shall be deemed to be a Surviving Person.

## ARTICLE VI

### Board of Directors

1. The number of members of the Board of Directors may be increased or diminished from time to time by the Bylaws; provided, however, there shall never be less than one. Each director shall serve until the next annual meeting of shareholders. Notwithstanding the foregoing, upon the closing of the Preferred Stock financing, the Board of Directors shall consist of up to

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seven (7) members including two (2) designees of the holders of Preferred Stock who shall be reasonably acceptable to the Corporation and the holders of Preferred Stock.

2. If any vacancy occurs in the Board of Directors during a term, the remaining directors, by affirmative vote of a majority thereof, may elect a director to fill the vacancy until the next annual meeting of shareholders.

3. The name and mailing address of the directors of the Corporation as of the date hereof:

<u>Name</u>	<u>Address</u>
Mark Foss	11265 Alumni Way, Suite 201 Jacksonville, Florida 32246
Leonard K. Cook	11265 Alumni Way, Suite 201 Jacksonville, Florida 32246

#### ARTICLE VII

##### Amendment

The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon shareholders herein are granted subject to this reservation.

#### ARTICLE VIII

##### Bylaws

The power to adopt, amend or repeal bylaws for the management of this Corporation shall be vested in the Board of Directors or the shareholders, but the Board of Directors may not amend or repeal any bylaw adopted by the shareholders if the shareholders specifically provide that such bylaw is not subject to amendment or repeal by the Board of Directors.

#### ARTICLE IX

##### Indemnification

The Corporation shall indemnify any incorporator, officer or director, or any former incorporator, officer or director, to the full extent permitted by law.

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IN WITNESS WHEREOF, these Amended and Restated Articles of Incorporation of **Safety Cast Corporation** were executed on behalf of the Corporation by its President this 27th day of June, 2003.

**Safety Cast Corporation**

By: 

Mark Foss

Its: President

(JA130003;5)

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REGISTERED AGENT CERTIFICATE


In pursuance of the Florida Business Corporation Act, the following is submitted, in compliance with said statute:

That **Safety Cast Corporation**, desiring to organize under the laws of the State of Florida, with its registered office, as indicated in the Articles of Incorporation in the City of Jacksonville, County of Duval, State of Florida, has named **MOTOLAW, Inc.**, located at said registered office, as its registered agent to accept service of process and perform such other duties as are required in the State.

**ACKNOWLEDGMENT:**

Having been named to accept service of process and serve as registered agent for the above-stated Corporation, at the place designated in this Certificate, the undersigned, by and through its duly elected officer, hereby accepts to act in this capacity, and agrees to comply with the provision of said statute relative in keeping open said office, and further state that I am familiar with § 607.0501, Florida Statutes.

MOTOLAW Inc., a Florida corporation

By:   
Robert G. Shaffer II  
Its: President

DATED: June 27, 2003