

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION

OF

ADVENT SOLAR, INC.

SW-1

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

The undersigned, Russell R. Schmit, hereby certifies that:

1. He is the duly elected and acting President of Advent Solar, Inc., a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on January 27, 2005.
3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

ARTICLE I

The name of this corporation is Advent Solar, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, County of New Castle, 19808. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III

The purpose of the Corporation is to engage in, promote, conduct and carry on any lawful acts or activities for which corporations may be organized under the Delaware General Corporation Law. In addition to the foregoing, and without limiting the generality of the foregoing, the purposes of the Corporation include research, development, manufacturing and marketing of photovoltaic products.

ARTICLE IV

A. CLASSES OF STOCK; RANK.

1. Designation of Series. The aggregate number of shares of stock that the Corporation shall have the authority to issue shall be 83,714,656 shares, consisting of (a) 45,000,000 shares of Common Stock, par value \$0.0001 per share ("Common Stock"), and (b) 38,714,656 shares of Preferred Stock, par value \$0.0001 per share, of which 958,394 shares shall be designated Series A Convertible Preferred Stock (the "Series A Preferred Stock"), 9,510,291 shares shall be designated Series B Convertible

Preferred Stock (the "Series B Preferred Stock") and 28,245,971 shares shall be designated Series C Convertible Preferred Stock (the "Series C Preferred Stock"). The original issuance price of the Series A Preferred Stock shall be \$0.85 per share (the "Original Series A Issue Price"). The original issuance price of the Series B Preferred Stock shall be \$0.85 per share (the "Original Series B Issue Price"). The original issuance price of the Series C Preferred Stock shall be \$1.0735 (the "Original Series C Issue Price"). The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting together on an as-converted basis).

2. Rank. The Series C Preferred Stock shall rank senior to the Series B Preferred Stock, Series A Preferred Stock, the Common Stock and any other capital stock of the Corporation that is junior to the Series C Preferred Stock (collectively with the Series B Preferred Stock, Series A Preferred Stock and the Common Stock, the "Junior Shares") as to dividends, redemption and upon a Liquidation Event (as defined in Article IV, Division B, Section 2(a) below). The Series B Preferred Stock shall rank junior to the Series C Preferred Stock, but senior to the Series A Preferred Stock, the Common Stock and any other capital stock of the Corporation that is junior to the Series B Preferred Stock (collectively with the Series A Preferred Stock and the Common Stock, the "Junior to Series B Shares") as to dividends, redemption and upon a Liquidation Event. The Series A Preferred Stock shall rank junior to the Series B Preferred Stock but senior to the Common Stock and any other capital stock of the Corporation that is junior to the Series A Preferred Stock (collectively with the Common Stock, the "Junior to Series A Shares") as to dividends, redemption and upon a Liquidation Event.

## B. RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS OF PREFERRED STOCK AND COMMON STOCK.

The rights, preferences, privileges and restrictions granted to and imposed upon the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Common Stock are set forth in this Article IV Division B.

### 1. Dividend Provisions.

(a) Holders of Series C Preferred Stock. The holders of Series C Preferred Stock shall be entitled to receive out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on the Junior Shares, dividends at the annual rate of seven percent (7%) of the Original Series C Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes) based on a 365 day year ("Series C Accruing Dividends"), payable when, as and if declared by the Board of Directors. The Series C Accruing Dividends shall be paid in kind in additional shares of Series C Preferred Stock valued at the Original Series C Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes). Such dividends shall accrue on the Series C Preferred Stock from day to day commencing on the date of issuance thereof, whether or not earned or

declared and whether or not the Corporation's total assets would be less than the sum the Corporation's total liabilities and the maximum amount that then would be payable in any liquidation in respect of all outstanding shares having preferential rights in liquidation, and shall be cumulative. In addition to Series C Accruing Dividends, in the event that dividends are paid on any share of Common Stock (other than dividends paid in additional shares of Common Stock for which an adjustment to the Series C Conversion Price (as defined in Section 3(a)(i) below) is made pursuant to Section 3(g) below), an additional dividend shall be paid with respect to all outstanding shares of Series C Preferred Stock in an amount per share (on an as-if converted to Common Stock basis) equal to the amount paid or set aside for each share of Common Stock. In conjunction with the payment of any Series C Accruing Dividends in kind, the Corporation shall promptly issue and deliver the holders of Series C Preferred Stock, a certificate or certificates for the number of additional shares of Series C Preferred Stock to be so issued.

(b) Holders of Series B Preferred Stock. The holders of Series B Preferred Stock shall be entitled to receive out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on the Junior to Series B Shares, dividends at the annual rate of seven percent (7%) of the Original Series B Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes) based on a 365 day year ("Series B Accruing Dividends"), payable when, as and if declared by the Board of Directors. The Series B Accruing Dividends shall be paid in kind in additional shares of Series B Preferred Stock valued at the Original Series B Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes). Such dividends shall accrue on the Series B Preferred Stock from day to day commencing on the date of issuance thereof, whether or not earned or declared and whether or not the Corporation's total assets would be less than the sum the Corporation's total liabilities and the maximum amount that then would be payable in any liquidation in respect of all outstanding shares having preferential rights in liquidation, and shall be cumulative. In addition to Series B Accruing Dividends, in the event that dividends are paid on any share of Common Stock (other than dividends paid in additional shares of Common Stock for which an adjustment to the Series B Conversion Price (as defined in Section 3(b)(i) below) is made pursuant to Section 3(g) below), an additional dividend shall be paid with respect to all outstanding shares of Series B Preferred Stock in an amount per share (on an as-if converted to Common Stock basis) equal to the amount paid or set aside for each share of Common Stock. In conjunction with the payment of any Series B Accruing Dividends in kind, the Corporation shall promptly issue and deliver the holders of Series B Preferred Stock, a certificate or certificates for the number of additional shares of Series B Preferred Stock to be so issued.

(c) Holders of Series A Preferred Stock. The holders of Series A Preferred Stock shall be entitled to receive out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on the Junior to Series A Shares, dividends at the annual rate of seven percent (7%) of the Original Series A Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock

combinations and other similar capitalization changes) based on a 365 day year ("Series A Accruing Dividends"), payable when, as and if declared by the Board of Directors. The Series A Accruing Dividends shall be paid in kind in additional shares of Series A Preferred Stock valued at the Original Series A Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes). Such dividends shall accrue on the Series A Preferred Stock from day to day commencing on the date of issuance of thereof, whether or not earned or declared and whether or not the Corporation's total assets would be less than the sum the Corporation's total liabilities and the maximum amount that then would be payable in any liquidation in respect of all outstanding shares having preferential rights in liquidation, and shall be cumulative. In addition to Series A Accruing Dividends, in the event that dividends are paid on any share of Common Stock (other than dividends paid in additional shares of Common Stock for which an adjustment to the Series A Conversion Price (as defined in Section 3(c)(i) below) is made pursuant to Section 3(g) below), an additional dividend shall be paid with respect to all outstanding shares of Series A Preferred Stock in an amount per share (on an as-if converted to Common Stock basis) equal to the amount paid or set aside for each share of Common Stock. In conjunction with the payment of any Series A Accruing Dividends in kind, the Corporation shall promptly issue and deliver the holders of Series A Preferred Stock, a certificate or certificates for the number of additional shares of Series A Preferred Stock to be so issued.

(d) Holders of Common Stock. The holders of Common Stock shall be entitled to receive, when, as, and if declared by the Board of Directors, but only out of any assets legally available therefor, such dividends as may be declared from time to time by the Board of Directors; provided, however, no cash dividends shall be declared and/or paid with respect to Common Stock until all Series C Accruing Dividends, Series B Accruing Dividends and Series A Accruing Dividends have been paid in full.

## 2. Liquidation. \*

(a) Preference of Series C Preferred Stock. In the event of any liquidation, dissolution or winding up of the Corporation (each such event, a "Liquidation Event"), either voluntary or involuntary, the holders of Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Junior Shares by reason of their ownership thereof, an amount per share equal to the sum of (i) the Original Series C Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes) and (ii) any accrued but unpaid Series C Accruing Dividends to which such holder is entitled (such sum, the "Series C Liquidation Amount"). If upon the occurrence of a Liquidation Event, the assets and funds legally available for distribution to stockholders shall be insufficient to permit the payment to all holders of Series C Preferred Stock of the full Series C Liquidation Amount, then the entire assets and funds of the Corporation legally available for distribution to stockholders shall be distributed ratably among the holders of Series C Preferred Stock based on the preferential amounts each such holder is otherwise entitled to receive.

(b) Preference of Series B Preferred Stock. Upon a Liquidation Event and after all holders of Series C Preferred Stock have received payment of the full Series C Liquidation Amount, the holders of Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the remaining assets of the Corporation to the holders of Junior to Series B Shares by reason of their ownership thereof, an amount per share equal to the sum of (i) the Original Series B Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes) and (ii) any accrued but unpaid Series B Accruing Dividends to which such holder is entitled (such sum, the "Series B Liquidation Amount"). If upon the occurrence of a Liquidation Event, all holders of Series C Preferred Stock have received payment of the full Series C Liquidation Amount and the remaining assets and funds legally available for distribution to stockholders shall be insufficient to permit the payment to all holders of Series B Preferred Stock of the full Series B Liquidation Amount, then such remaining assets and funds of the Corporation legally available for distribution to stockholders shall be distributed ratably among the holders of Series B Preferred Stock based on the preferential amounts each such holder is otherwise entitled to receive.

(c) Preference of Series A Preferred Stock. Upon a Liquidation Event and after all holders of Series C Preferred Stock have received payment of the full Series C Liquidation Amount and all holders of Series B Preferred Stock have received payment of the full Series B Liquidation Amount, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the remaining assets of the Corporation to the holders of Junior to Series A Shares by reason of their ownership thereof, an amount per share equal to the sum of (i) the Original Series A Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes) and (ii) any accrued but unpaid Series A Accruing Dividends to which such holder is entitled (such sum, the "Series A Liquidation Amount"). If upon the occurrence of a Liquidation Event, all holders of Series C Preferred Stock have received payment of the full Series C Liquidation Amount and all holders of Series B Preferred Stock have received payment of the full Series B Liquidation Amount, and the remaining assets and funds legally available for distribution to stockholders shall be insufficient to permit the payment to all holders of Series A Preferred Stock of the full Series A Liquidation Amount, then such remaining assets and funds of the Corporation legally available for distribution to stockholders shall be distributed ratably among the holders of Series A Preferred Stock based on the preferential amounts each such holder is otherwise entitled to receive.

(d) Other Distributions. After the payment of all preferential amounts required to be paid to the holders of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock upon a Liquidation Event, the assets and funds of the Corporation remaining available for distribution to stockholders, ~~if any, shall be~~ distributed ratably among the holders of Common Stock, Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock on an as-converted to Common Stock basis (assuming for purposes of this calculation that all Series C Accruing Dividends, Series B Accruing Dividends and Series A Accruing Dividends are paid in shares of Common Stock at the then applicable Series C Conversion Price, Series B

Conversion Price and Series A Conversion Price, respectively, until such time as the holders of Series A Preferred Stock have received an amount per share of Series A Preferred Stock (the "Participation Amount") which, when added to the Series A Liquidation Amount, equals, in the aggregate, three times the Original Series A Issue Price. After the holders of Series A Preferred Stock have received the Participation Amount, the holders of Series A Preferred Stock shall be entitled to receive no further distributions and the assets and funds of the Corporation remaining available for distribution to stockholders shall be distributed ratably among the holders of Common Stock, Series C Preferred Stock and Series B Preferred Stock on an as-converted to Common Stock basis (assuming for purposes of this calculation that all Series C Accruing Dividends and Series B Accruing Dividends are paid in shares of Common Stock at the then applicable Series C Conversion Price and Series B Conversion Price, respectively).

(e) Consolidation, Merger, Etc. (i) Any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, do not hold at least a majority of the resulting or surviving corporation's voting power immediately after such consolidation, merger or reorganization (solely in respect of their equity interests in the Corporation), (ii) the sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Corporation or (iii) a Sale of Voting Control (each, a "Change of Control Transaction") shall be deemed to be a Liquidation Event, unless the holders of at least a majority of the Preferred Stock, consenting or voting, as the case may be, together as a single class, determine otherwise; provided, however, that the initial issuance and sale of up to 27,945,971 shares of Series C Preferred Stock to certain investors on or about October 2005 shall not be deemed to be a Liquidation Event or a Change of Control. "Sale of Voting Control" means the transfer by stockholders of the Corporation (in one or a series of related transactions) to one person or group of related persons of shares constituting not less than a majority of the outstanding voting capital stock of the Corporation.

(f) Consideration. If any of the assets of the Corporation are to be distributed under this Section 2 in a form other than cash, the fair market value of such assets shall be determined in good faith by the Corporation and the holders of not less than a majority of the shares of Preferred Stock then outstanding. Any securities shall be valued as follows:

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

(A) If traded on a securities exchange or through the Nasdaq Stock Market ("Nasdaq"), the value shall be deemed to be the average of the closing prices of the securities on such exchange or Nasdaq over the 10 day period ending three days prior to the closing;

(B) 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

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

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i) (A), (B) or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

(iii) The Corporation shall give each holder of record of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock written notice of the transaction which, if effected, will constitute a Liquidation Event or Change of Control Transaction not later than 20 days prior to the stockholders' meeting called to approve such transaction, or 20 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first notice shall describe the material terms and conditions of the pending transaction and the provisions of this Section 2(e). The Corporation shall thereafter give such holders prompt notice of any material changes in the terms of the pending transaction. The transaction shall in no event take place sooner than 20 days after the Corporation has given the first notice or sooner than 10 days after the Corporation has given notice of any material changes in the terms of such transaction. In the event the requirements of this Section 2(c) are not complied with, the Corporation shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section 2(e) have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall continue in effect in accordance with the terms of this Certificate of Incorporation, as the same may be amended from time to time.

### 3. Conversion.

(a) Conversion of Series C Preferred Stock. The holders of Series C Preferred Stock shall have the following conversion rights (the "Series C Conversion Rights"):

(i) Right to Convert. Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series C Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization

changes) by the Series C Conversion Price (as defined below) in effect at the time of conversion. The conversion price of Series C Preferred Stock (the "Series C Conversion Price") shall initially be \$1.0735 per share. The Series C Conversion Price, and the rate at which shares of Series C Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

(ii) Automatic Conversion. All shares of Series C Preferred Stock then outstanding shall automatically be converted into shares of Common Stock, at the then effective Series C Conversion Price, upon (A) the vote or consent in writing of holders of at least a three-fourths (3/4) majority of the shares of Preferred Stock then outstanding (the "Majority Preferred Stockholders") that all of the Preferred Stock shall be converted into shares of Common Stock, or (B) upon the closing of the sale of shares of Common Stock in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), in which (I) the public offering price per share is at least three (3) times the Original Series C Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes), and (II) the net cash proceeds to the Corporation (after deduction of underwriting discount, commissions and expenses of sale) are at least \$25,000,000 (a "Qualified Public Offering").

(iii) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Series C Preferred Stock. In lieu of any fractional shares to which a holder would otherwise be entitled, the Corporation shall pay cash in an amount equal to the product (calculated to the nearest cent) of such fraction and the fair market value of one share of Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series C Preferred Stock that the holder is then converting into Common Stock and the number of shares of Common Stock issuable upon conversion of such shares of Series C Preferred Stock.

(iv) Mechanics of Conversion.

(A) Upon conversion of a share of Series C Preferred Stock pursuant to Section 3(a)(i), any and all accrued but unpaid Series C Accruing Dividends with respect to such share shall be paid, at the holder's option, in shares of Series C Preferred Stock or in shares of Common Stock or any combination thereof. Upon conversion of shares of Series C Preferred Stock pursuant to Section 3(a)(ii), any and all accrued but unpaid Series C Accruing Dividends with respect to all such shares shall be paid in shares of Common Stock. For all purposes hereunder, shares of Common Stock issued in payment of Series C Accruing Dividends shall be valued at the then current Series C Conversion Price.

(B) Except as provided in subparagraph (C) below, in order for a holder of Series C Preferred Stock to convert shares of Series C Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates representing such shares of Series C Preferred Stock, at the office of the transfer agent for the Series C Preferred Stock (or at the principal office of the



Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any portion of the shares of the Series C Preferred Stock represented by such certificate or certificates. Such notice shall state (x) such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued and (y) whether such holder elects to be paid any accrued but unpaid Series C Accruing Dividends with respect to such shares of Series C Preferred Stock in shares of Series C Preferred Stock or in shares of Common Stock or in some combination thereof. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or such holder's attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Series C Conversion Date"). If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act that is not a Qualified Public Offering, the conversion may at the option of any holder tendering Series C Preferred Stock for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of Series C Preferred Stock shall not be deemed to have converted such Series C Preferred Stock until immediately prior to the closing of the sale of securities. The Corporation shall, as soon as practicable after the Series C Conversion Date, issue and deliver to the holder of such Series C Preferred Stock, or to such holder's nominees, a certificate or certificates representing the number of shares of Common Stock to which such holder is entitled upon conversion of such Series C Preferred Stock (including shares of Common Stock issued in payment of Series C Accruing Dividends that a holder has elected to be paid in shares of Common Stock), and a certificate or certificates representing the number of shares of Series C Preferred Stock issued in payment of Series C Accruing Dividends that a holder has elected to be paid in shares of Series C Preferred Stock, together with cash in lieu of any fractional share.

(C) In the event of a conversion pursuant to Section 3(a)(ii) above, the outstanding shares of Series C Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agents. Such automatic conversion shall be deemed to have been made on the effective date of the applicable vote or written consent or immediately prior to the closing of the Qualified Public Offering, as the case may be, 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, which date shall be the "Series C Automatic Conversion Date." Immediately upon such automatic conversion, all shares of Series C Preferred Stock shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate, except only the right of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates representing the number of shares of Common Stock into which such Series C Preferred Stock has been converted, together

with cash in lieu of any fractional share, as provided in Section 3(a)(iii) above. In the event that the automatic conversion of Series C Preferred Stock is pursuant to the vote or consent of the Majority Preferred Stockholders that all of the Preferred Stock be converted into shares of Common Stock, the Majority Preferred Stockholders shall give written notice to the Corporation and to each other holder of Preferred Stock (the "Majority Preferred Conversion Notice") promptly following the vote or consent, as applicable, that all of the Preferred Stock, including shares of Series C Preferred Stock, shall be converted to Common Stock. In the event that the automatic conversion of Series C Preferred Stock is in connection with a Qualified Public Offering, the Corporation shall give the holders of Series C Preferred Stock reasonable notice of, but in no event less than 45 business days prior to, the closing of the Qualified Public Offering. Promptly following the date on which the Majority Preferred Stockholders give the Majority Preferred Conversion Notice or at the closing of the Qualified Public Offering, as the case may be, each holder of Series C Preferred Stock shall surrender to the Corporation or its transfer agent the certificate(s) representing such holder's Series C Preferred Stock together with a notice that states such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or such holder's attorney duly authorized in writing. The Corporation shall not be obligated to issue certificates representing the shares of Common Stock issuable upon such automatic conversion unless and until the certificates representing such shares of Series C Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificate or certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, including an indemnity bond in such amount as the Corporation deems appropriate in its discretion. As soon as practicable following the Series C Automatic Conversion Date and the surrender by the holder of the certificate or certificates representing Series C Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or to such holder's nominees, a certificate or certificates representing the number of shares of Common Stock to which such holder is entitled upon conversion of such Series C Preferred Stock, together with cash in lieu of any fractional share.

(D) The Corporation shall at all times when shares of Series C Preferred Stock are outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of Series C Preferred Stock and the payment of any and all accrued but unpaid Series C Accruing Dividends, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series C Preferred Stock and the payment of any and all accrued but unpaid Series C Accruing Dividends in shares of Common Stock. Before taking any action which would cause an adjustment reducing the Series C Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of Series C Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the

Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series C Conversion Price.

(b) Conversion of Series B Preferred Stock. The holders of Series B Preferred Stock shall have the following conversion rights (the “Series B Conversion Rights”):

(i) Right to Convert. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series B Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes) by the Series B Conversion Price (as defined below) in effect at the time of conversion. The conversion price of Series B Preferred Stock (the “Series B Conversion Price”) shall initially be \$0.85 per share. The Series B Conversion Price, and the rate at which shares of Series B Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

(ii) Automatic Conversion. All shares of Series B Preferred Stock then outstanding shall automatically be converted into shares of Common Stock, at the then effective Series B Conversion Price, upon (A) the vote or consent in writing of the Majority Preferred Stockholders that all of the Preferred Stock shall be converted into shares of Common Stock, or (B) upon the closing of a Qualified Public Offering.

(iii) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Series B Preferred Stock. In lieu of any fractional shares to which a holder would otherwise be entitled, the Corporation shall pay cash in an amount equal to the product (calculated to the nearest cent) of such fraction and the fair market value of one share of Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series B Preferred Stock that the holder is then converting into Common Stock and the number of shares of Common Stock issuable upon conversion of such shares of Series B Preferred Stock.

(iv) Mechanics of Conversion.

(A) Upon conversion of a share of Series B Preferred Stock pursuant to Section 3(b)(i), any and all accrued but unpaid Series B Accruing Dividends with respect to such share shall be paid, at the holder’s option, in shares of Series B Preferred Stock or in shares of Common Stock or any combination thereof. Upon conversion of shares of Series B Preferred Stock pursuant to Section 3(b)(ii), any and all accrued but unpaid Series B Accruing Dividends with respect to all such shares shall be paid in shares of Common Stock. For all purposes hereunder, shares of Common Stock issued in payment of Series B Accruing Dividends shall be valued at the then current Series B Conversion Price.

(B) Except as provided in subparagraph (C) below, in order for a holder of Series B Preferred Stock to convert shares of Series B Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates representing such shares of Series B Preferred Stock, at the office of the transfer agent for the Series B Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any portion of the shares of the Series B Preferred Stock represented by such certificate or certificates. Such notice shall state (x) such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued and (y) whether such holder elects to be paid any accrued but unpaid Series B Accruing Dividends with respect to such shares of Series B Preferred Stock in shares of Series B Preferred Stock or in shares of Common Stock or in some combination thereof. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or such holder's attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Series B Conversion Date"). If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act that is not a Qualified Public Offering, the conversion may at the option of any holder tendering Series B Preferred Stock for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of Series B Preferred Stock shall not be deemed to have converted such Series B Preferred Stock until immediately prior to the closing of the sale of securities. The Corporation shall, as soon as practicable after the Series B Conversion Date, issue and deliver to the holder of such Series B Preferred Stock, or to such holder's nominees, a certificate or certificates representing the number of shares of Common Stock to which such holder is entitled upon conversion of such Series B Preferred Stock (including shares of Common Stock issued in payment of Series B Accruing Dividends that a holder has elected to be paid in shares of Common Stock), and a certificate or certificates representing the number of shares of Series B Preferred Stock issued in payment of Series B Accruing Dividends that a holder has elected to be paid in shares of Series B Preferred Stock, together with cash in lieu of any fractional share.

(C) In the event of a conversion pursuant to Section 3(b)(ii) above, the outstanding shares of Series B Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agents. Such automatic conversion shall be deemed to have been made on the effective date of the applicable vote or written consent or immediately prior to the closing of the Qualified Public Offering, as the case may be, 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, which date shall be the "Series B Automatic Conversion Date." Immediately upon such automatic conversion, all shares of Series B Preferred Stock shall

no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate, except only the right of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates representing the number of shares of Common Stock into which such Series B Preferred Stock has been converted, together with cash in lieu of any fractional share, as provided in Section 3(b)(iii) above. In the event that the automatic conversion of Series B Preferred Stock is pursuant to the vote or consent of the Majority Preferred Stockholders that all of the Preferred Stock be converted into shares of Common Stock, the Majority Preferred Stockholders shall give the Majority Preferred Conversion Notice to the Corporation and to each other holder of Preferred Stock promptly following the vote or consent, as applicable, that all of the Preferred Stock, including shares of Series B Preferred Stock, shall be converted to Common Stock. In the event that the automatic conversion of Series B Preferred Stock is in connection with a Qualified Public Offering, the Corporation shall give the holders of Series B Preferred Stock reasonable notice of, but in no event less than 45 business days prior to, the closing of the Qualified Public Offering. Promptly following the date on which the Majority Preferred Stockholders give the Majority Preferred Conversion Notice or at the closing of the Qualified Public Offering, as the case may be, each holder of Series B Preferred Stock shall surrender to the Corporation or its transfer agent the certificate(s) representing such holder's Series B Preferred Stock together with a notice that states such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or such holder's attorney duly authorized in writing. The Corporation shall not be obligated to issue certificates representing the shares of Common Stock issuable upon such automatic conversion unless and until the certificates representing such shares of Series B Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificate or certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, including an indemnity bond in such amount as the Corporation deems appropriate in its discretion. As soon as practicable following the Series B Automatic Conversion Date and the surrender by the holder of the certificate or certificates representing Series B Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or to such holder's nominees, a certificate or certificates representing the number of shares of Common Stock to which such holder is entitled upon conversion of such Series B Preferred Stock, together with cash in lieu of any fractional share.

(D) The Corporation shall at all times when shares of Series B Preferred Stock are outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of Series B Preferred Stock and the payment of any and all accrued but unpaid Series B Accruing Dividends, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series B Preferred Stock

and the payment of any and all accrued but unpaid Series B Accruing Dividends in shares of Common Stock. Before taking any action which would cause an adjustment reducing the Series B Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of Series B Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series B Conversion Price.

(c) Conversion of Series A Preferred Stock. The holders of Series A Preferred Stock shall have the following conversion rights (the "Series A Conversion Rights"):

(i) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series A Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes) by the Series A Conversion Price (as defined below) in effect at the time of conversion. The conversion price of Series A Preferred Stock (the "Series A Conversion Price") shall initially be \$0.85 per share. The Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided in Section 3(e), (f) and (g) of this Article IV B.

(ii) Automatic Conversion. All shares of Series A Preferred Stock then outstanding shall automatically be converted into shares of Common Stock, at the then effective Series A Conversion Price, upon (A) the vote or consent in writing of the Majority Preferred Stockholders that all of the Preferred Stock shall be converted into shares of Common Stock, or (B) upon the closing of a Qualified Public Offering.

(iii) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred Stock. In lieu of any fractional shares to which a holder would otherwise be entitled, the Corporation shall pay cash in an amount equal to the product (calculated to the nearest cent) of such fraction and the fair market value of one share of Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock that the holder is then converting into Common Stock and the number of shares of Common Stock issuable upon conversion of such shares of Series A Preferred Stock.

(iv) Mechanics of Conversion.

(A) Upon conversion of a share of Series A Preferred Stock pursuant to Section 3(c)(i), any and all accrued but unpaid Series A Accruing Dividends with respect to such share shall be paid, at the holder's option, in shares of Series A Preferred Stock or shares of Common Stock or any combination thereof. Upon conversion of shares of Series A Preferred Stock pursuant to Section 3(c)(ii), any and all

accrued but unpaid Series A Accruing Dividends with respect to all such shares shall be paid in shares of Common Stock. For all purposes hereunder, shares of Common Stock issued in payment of Series A Accruing Dividends shall be valued at the then current Series A Conversion Price.

(B) Except as provided in subparagraph (C) below, in order for a holder of Series A Preferred Stock to convert shares of Series A Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates representing such shares of Series A Preferred Stock, at the office of the transfer agent for the Series A Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any portion of the shares of the Series A Preferred Stock represented by such certificate or certificates. Such notice shall state (x) such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued and (y) whether such holder elects to be paid any accrued but unpaid Series A Accruing Dividends with respect to such shares of Series A Preferred Stock in shares of Series A Preferred Stock or in shares of Common Stock or in some combination thereof. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or such holder's attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Series A Conversion Date"). If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act that is not a Qualified Public Offering, the conversion may at the option of any holder tendering Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of the sale of securities. The Corporation shall, as soon as practicable after the Series A Conversion Date, issue and deliver to the holder of such Series A Preferred Stock, or to such holder's nominees, a certificate or certificates representing the number of shares of Common Stock to which such holder is entitled upon conversion of such Series A Preferred Stock (including shares of Common Stock issued in payment of Series A Accruing Dividends that a holder has elected to be paid in shares of Common Stock), and a certificate or certificates representing the number of shares of Series A Preferred Stock issued in payment of Series A Accruing Dividends that a holder has elected to be paid in shares of Series A Preferred Stock, together with cash in lieu of any fractional share.

(C) In the event of a conversion pursuant to Section 3(c)(ii) above, the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agents. Such automatic conversion shall be deemed to have been made on the effective date of the applicable vote or written consent or immediately prior to the

closing of the Qualified Public Offering, as the case may be, 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 which date shall be the "Series A Automatic Conversion Date." Immediately upon such automatic conversion, all shares of Series A Preferred Stock shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate, except only the right of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates representing the number of shares of Common Stock into which such Series A Preferred Stock has been converted, together with cash in lieu of any fractional share, as provided in Section 3(c)(iii) above. In the event that the automatic conversion of Series A Preferred Stock is pursuant to the vote or consent of the Majority Preferred Stockholders that all of the Preferred Stock be converted into shares of Common Stock, the Majority Preferred Stockholders shall give the Majority Preferred Conversion Notice to the Corporation and to each other holder of Preferred Stock promptly following the vote or consent, as applicable, that all of the Preferred Stock, including shares of Series A Preferred Stock, shall be converted to Common Stock. In the event that the automatic conversion of Series A Preferred Stock is in connection with a Qualified Public Offering, the Corporation shall give the holders of Series A Preferred Stock reasonable notice of, but in no event less than 45 business days prior to, the closing of the Qualified Public Offering. Promptly following the date on which the Majority Preferred Stockholders give the Majority Preferred Conversion Notice or at the closing of the Qualified Public Offering, as the case may be, each holder of Series A Preferred Stock shall surrender to the Corporation or its transfer agent the certificate(s) representing such holder's Series A Preferred Stock together with a notice that states such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or such holder's attorney duly authorized in writing. The Corporation shall not be obligated to issue certificates representing the shares of Common Stock issuable upon such automatic conversion unless and until the certificates representing such shares of Series A Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificate or certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, including an indemnity bond in such amount as the Corporation deems appropriate in its discretion. As soon as practicable following the Series A Automatic Conversion Date and the surrender by the holder of the certificate or certificates representing Series A Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or to such holder's nominees, a certificate or certificates representing the number of shares of Common Stock to which such holder is entitled upon conversion of such Series A Preferred Stock, together with cash in lieu of any fractional share.



(D) The Corporation shall at all times when shares of Series A Preferred Stock are outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of Series A Preferred Stock and the payment of any and all accrued but unpaid Series A Accruing Dividends, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock and the payment of any and all accrued but unpaid Series A Accruing Dividends in shares of Common Stock. Before taking any action which would cause an adjustment reducing the Series A Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of Series A Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series A Conversion Price.

(d) Adjustments to the Series B Conversion Price or Series C Conversion Price for Diluting Issuances.

(i) Special Definitions. For purposes of this Section 3(d), the following definitions shall apply:

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

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

(C) "Convertible Securities" shall mean any evidence of indebtedness, shares or other securities directly or indirectly convertible into, or exercisable or exchangeable for, Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 3(d)(iii) below, deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued (or pursuant to Section 3(d)(iii) below, deemed to be issued) by the Corporation:

(I) upon the conversion of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock or as a dividend or other distribution on Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;

(II) pursuant to an acquisition of another corporation approved by the Board of Directors of the Corporation, including at least one of the Preferred Directors (defined below), whether by merger, consolidation, purchase of substantially all of the assets or equity securities or otherwise;

(III) shares of Common Stock and/or Options, and the Common Stock issued pursuant to such Options, issued after the Original Issue

Date to employees, officers or directors of, or consultants or advisors to, the Corporation pursuant to equity compensation plans or arrangements approved by the Board of Directors of the Corporation, including at least one of the Preferred Directors;

(IV) in connection with leases, lines of credit, bank financing or similar transactions that are primarily of a non-equity financing nature and are approved by the Board of Directors of the Corporation, including at least one of the Preferred Directors;

(V) upon the conversion, exercise or exchange of Options and Convertible Securities outstanding on the Original Issue Date;

(VI) in a transaction described in Section 3(e), (f) or (g) of this Article IV(B); or

(VII) in connection with the Corporation's initial public offering.

(ii) No Adjustment of Series B Conversion Price or Series C Conversion Price. No adjustment in the number of shares of Common Stock into which the Series B Preferred Stock or Series C Preferred Stock is convertible shall be made, by adjustment in the applicable Series B Conversion Price or Series C Conversion Price, respectively, unless the consideration per share (determined pursuant to Section 3(d)(v) below) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series B Conversion Price or Series C Conversion Price, respectively, in effect on the date of, and immediately prior to, the issuance of such Additional Shares of Common Stock.

(iii) Deemed Issuance of Additional Shares of Common Stock. If the Corporation at any time, or from time to time, after the Original Issue Date shall issue any Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein designed to protect against dilution) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issuance, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Series B Conversion Price or Series C Conversion Price, as applicable, shall be made upon the subsequent issuance of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof, the Series B Conversion Price or Series C Conversion Price computed upon the original issuance thereof, and any

subsequent adjustment based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Series B Conversion Price or Series C Conversion Price, as the case may be, computed upon the original issuance thereof, and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if,

(I) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, that were actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issuance of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issuance of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, that were actually issued upon the exercise thereof were issued at the time of issuance of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issuance of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issuance of the Convertible Securities with respect to which such Options were actually exercised;

(D) no readjustment pursuant to clause (C) above shall have the effect of increasing the Series B Conversion Price or Series C Conversion Price to an amount which exceeds the lower of (i) the Series B Conversion Price or the Series C Conversion Price, as the case may be, on the original adjustment date or (ii) the Series B Conversion Price or the Series C Conversion Price, as the case may be, that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date;

(E) in the case of any Options which expire by their terms not more than 90 days after the date of issuance thereof or in the case of any Option or Convertible Securities with respect to which the maximum number of shares of Common Stock issuable upon exercise or conversion or exchange thereof is not determinable, no adjustments of the Series B Conversion Price or Series C Conversion Price shall be made until the expiration or exercise of all such Options issued on the same date, whereupon such adjustment shall be made in the manner provided in clause (C) above, or until such number becomes determinable, as applicable; and

(F) in the event of any change in the number of shares of Common Stock deliverable, in the consideration payable to the Corporation upon exercise of such Options or Convertible Securities or in the conversion rate, including, but not limited to, any changes under or by reason of provisions designed to protect against dilution, the Series B Conversion Price or the Series C Conversion Price in effect at the time of such event shall be readjusted to the Series B Conversion Price and Series C Conversion Price, respectively, which would have been in effect at such time had such Options or Convertible Securities to the extent then outstanding provided for such changed number of shares, consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; provided that no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such Options or Convertible Securities; provided further no readjustment pursuant to this clause (F) shall have the effect of increasing the Series B Conversion Price or the Series C Conversion Price to an amount which exceeds the lower of (i) the Series B Conversion Price or Series C Conversion Price, as the case may be, on the original adjustment date or (ii) the Series B Conversion Price or Series C Conversion Price, as the case may be, that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) Adjustment of Series B Conversion Price or Series C Conversion Price Upon Issuance of Additional Shares of Common Stock. Subject to the provisions of Section 3(d)(ii) above, in the event the Corporation shall at any time issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 3(d)(iii)), without consideration or for a consideration per share less than the Series B Conversion Price or the Series C Conversion Price, as the case may be, in effect on the date of and immediately prior to such issuance, ~~then and in such event such Series B Conversion Price or Series C Conversion Price, as the case may be, shall be reduced, concurrently with such issuance,~~ to a price (calculated to the nearest cent) determined by multiplying such Series B Conversion Price or Series C Conversion Price by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series B Conversion Price or Series C Conversion Price, as applicable, and (y) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of such Additional Shares of Common Stock so issued; provided that for the purposes of this Section 3(d)(iv), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock shall be deemed to be outstanding (excluding for purposes of this calculation any and all unpaid Accruing Dividends). Notwithstanding the foregoing, the applicable Series B Conversion Price or Series C Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$0.01, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.01 or more.

(v) Determination of Consideration. For purposes of this Section 3(d), the consideration received by the Corporation for the issuance of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property. Such consideration shall:

(I) insofar as it consists of cash, be the amount of cash received by the Corporation after deducting any underwriting or similar concessions, commissions or compensation paid or allowed by the Corporation, excluding amounts paid or payable for accrued interest or accrued dividends;

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

(III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3(d)(iii) above, relating to Options and Convertible Securities, shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issuance of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto without regard to any provision contained therein designed to protect against dilution) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time, or from time to time, after the Original Issue Date effect a subdivision of the outstanding Common Stock, each of the Series A Conversion Price, the Series B Conversion Price and the Series C Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time, or from time to time, after the Original Issue Date combine the outstanding shares of Common Stock, each of the Series A Conversion Price, the Series B Conversion Price and the Series C Conversion Price then in effect immediately before the combination

shall be proportionately increased. Any adjustment under this subsection shall become effective concurrently with the effectiveness of such subdivision or combination.

(f) Adjustment for Common Stock Dividends and Distributions. If the Corporation at any time, or from time to time, after the Original Issue Date, shall make or issue a dividend or other distribution payable in additional shares of Common Stock, then and in each such event each of the Series A Conversion Price, the Series B Conversion Price and the Series C Conversion Price then in effect shall be decreased concurrently with the issuance of such dividend or distribution, by multiplying the Series A Conversion Price then in effect, the Series B Conversion Price then in effect and the Series C Conversion Price then in effect, respectively, by a fraction: (x) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and (y) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time, or from time to time, after the Original Issue Date shall make or issue a dividend or other distribution payable in property or securities of the Corporation other than shares of Common Stock (and other than as otherwise adjusted in this Section 3), then and in each such event provision shall be made so that the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall each receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of property or securities of the Corporation that they would have received had their Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock been converted into Common Stock immediately preceding the record date for the determination of stockholders entitled to receive such dividend or other distribution.

(h) Adjustment for Recapitalization, Reclassification, Exchange or Substitution. If the Common Stock issuable upon the conversion of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, exchange, substitution or other similar event (other than pursuant to subsections (e), (f) and (g) above or a Change of Control Transaction which, pursuant to Article IV, Division B, Section 2(c), is deemed to be a Liquidation Event), each holder of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall thereafter receive upon conversion of such Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, in lieu of the number of shares of Common Stock which such holder would otherwise have been entitled to receive, the number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of the shares of Series A Preferred Stock or Series B Preferred Stock or Series C Preferred Stock held by such holder of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock would have been entitled to receive upon such recapitalization, reclassification, exchange, substitution or other similar event.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment of the Series A Conversion Price, the Series B Conversion Price or the Series C Conversion Price pursuant to this Section 3, the Corporation at its expense shall promptly compute such adjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as applicable, a certificate setting forth such adjustment and showing in reasonable detail the facts upon which such adjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments applicable to the holder of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, (ii) the Series A Conversion Price, the Series B Conversion Price or the Series C Conversion Price then in effect, as applicable, and (iii) the number of shares of Common Stock and the amount, if any, of any other property which would then be received upon the conversion of such Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock.

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

(k) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, the Corporation shall mail to each holder of Preferred Stock at least 10 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

(l) Notices. All notices hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the person to be notified; (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day; (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) the next business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the holder at its address and/or facsimile number appearing on the books of the Corporation.

4. Status of Converted Stock. In the event any shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be converted pursuant to Section 3 hereof, the shares so converted shall be cancelled and shall not be reissuable by the Corporation.

5. Voting Rights.

(a) Series C Preferred Stock Voting Rights. Except as may be otherwise provided in this Certificate of Incorporation or as required by law, the Series C Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on all actions to be taken by the stockholders of the Corporation. Each share of Series C Preferred Stock shall entitle the holder thereof to such number of votes per share on each action as shall equal the number of shares of Common Stock into which such share of Series C Preferred Stock is convertible on the record date (assuming for purposes of this calculation that all Series C Accruing Dividends are paid in shares of Common Stock at the then applicable Series C Conversion Price) for determination of the stockholders entitled to vote. The holders of Series C Preferred Stock shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote.

(b) Series B Preferred Stock Voting Rights. Except as may be otherwise provided in this Certificate of Incorporation or as required by law, the Series B Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on all actions to be taken by the stockholders of the Corporation. Each share of Series B Preferred Stock shall entitle the holder thereof to such number of votes per share on each action as shall equal the number of shares of Common Stock into which such share of Series B Preferred Stock is convertible on the record date (assuming for purposes of this calculation that all Series B Accruing Dividends are paid in shares of Common Stock at the then applicable Series B Conversion Price) for determination of the stockholders entitled to vote. The holders of Series B Preferred Stock shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote.

(c) Series A Preferred Stock Voting Rights. Except as may be otherwise provided in this Certificate of Incorporation or as required by law, the Series A Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on all actions to be taken by the stockholders of the Corporation. Each share of Series A Preferred Stock shall entitle the holder thereof to such number of votes per share on each action as shall equal the number of shares of Common Stock into which such share of Series A Preferred Stock is convertible on the record date (assuming for purposes of this calculation that all Series A Accruing Dividends are paid in shares of Common Stock at the then applicable Series A Conversion Price) for determination of the stockholders entitled to vote. The holders of Series A Preferred Stock shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote.

(d) Common Stock Voting Rights. The holder of each outstanding share of Common Stock shall have the right to one vote, and shall be entitled to notice of



any stockholders meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

6. Protective Provisions.

(a) For so long as there are at least 1,000,000 shares of Series C Preferred Stock outstanding (as adjusted for stock splits, recapitalizations and the like), the Corporation shall not (whether by merger, recapitalization or otherwise), without the prior written consent or affirmative vote of the holders of at least two-thirds (2/3) of the outstanding shares of Series C Preferred Stock, consenting or voting, as the case may be, separately as a class:

(i) amend, alter or repeal the preferences, special rights or other powers of the Series C Preferred Stock so as to affect them adversely, either directly or indirectly, through merger or consolidation with any other corporation or otherwise; or

(ii) amend or waive any provision of the Corporation's certificate of incorporation or bylaws so as to affect the Series C Preferred Stock adversely; or

(iii) authorize (including, without limitation, by reclassification of Junior Shares or otherwise) any new class or series of stock, or any other equity securities, or any other securities convertible into equity securities of the Corporation, in any of the foregoing cases being on a parity with or having a preference over the Series C Preferred Stock, including, but not limited to, voting (other than the pari passu voting rights of the Series B Preferred Stock, Series A Preferred Stock and Common Stock), dividends, liquidation, conversion or redemption; or

(iv) increase or decrease the number of authorized shares of Series C Preferred Stock.

(b) For so long as there are at least 1,000,000 shares of Series B Preferred Stock outstanding (as adjusted for stock splits, recapitalizations and the like), the Corporation shall not (whether by merger, recapitalization or otherwise), without the prior written consent or affirmative vote of the holders of at least two-thirds (2/3) of the outstanding shares of Series B Preferred Stock, consenting or voting, as the case may be, separately as a class:

(i) amend, alter or repeal the preferences, special rights or other powers of the Series B Preferred Stock so as to affect them adversely, either directly or indirectly, through merger or consolidation with any other corporation or otherwise; or

(ii) amend or waive any provision of the Corporation's certificate of incorporation or bylaws so as to affect the Series B Preferred Stock adversely.

(c) For so long as there are at least 1,000,000 shares of Series B Preferred Stock outstanding (as adjusted for stock splits, recapitalizations and the like), the Corporation shall not, without the prior written consent or affirmative vote of the holders of at least a majority of the outstanding shares of Series B Preferred Stock, consenting or voting, as the case may be, separately as a class, authorize (including, without limitation, by reclassification of shares of capital stock of the Corporation that is junior to the Series B Preferred Stock or otherwise) any new class or series of stock, or any other equity securities, or any other securities convertible into equity securities of the Corporation, in any of the foregoing cases being on a parity with or having a preference over the Series B Preferred Stock, including, but not limited to, voting (other than the senior dividends, redemption and liquidation rights of the Series C Preferred stock and other than the pari passu voting rights of the Series C Preferred Stock, Series A Preferred Stock and Common Stock), dividends, liquidation, conversion or redemption.

(d) For so long as there are any shares of Preferred Stock outstanding, the Corporation shall not, without the prior written consent or affirmative vote of the holders of at least a majority of the outstanding shares of Preferred Stock, consenting or voting, as the case may be, separately as a class:

(i) increase or decrease the number of authorized shares of Common Stock or Preferred Stock; or

(ii) issue any additional shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock; or

(iii) authorize or issue any stock options (or stock or similar rights) to employees, consultants or directors covering shares of Common Stock in excess of those reserved and available under the Corporation's existing stock option plan; or

(iv) dissolve, liquidate or wind up the Corporation or engage in any Change of Control Transaction; or

(v) redeem or repurchase any shares of capital stock, Options or Convertible Securities (except as required by Section 8 of this Certificate of Incorporation and except for the repurchase of securities from employees, officers, directors, consultants or other persons performing services for the Corporation pursuant to agreements under which the Corporation has the right to repurchase such shares at no greater than cost); or

(vi) declare or pay any dividends on any class of capital stock except for Series C Accruing Dividends on Series C Preferred Stock and Series B Accruing Dividends on Series B Preferred Stock as set forth in Article IV, Division B, Section 1; or

(vii) engage in any merger, acquisition or similar transaction; or

(viii) incur, assume or guaranty any indebtedness in excess of \$5,000,000; or

(ix) make a substantial change in the business of the Corporation; or

(x) enter into any agreement or take any action with respect to any of the foregoing; or

(xi) increase or decrease the authorized size of the Board of Directors.

(c) For so long as there are any shares of Series A Preferred Stock outstanding, the Corporation shall not, without the prior written consent or affirmative vote of the holders of a majority of the outstanding shares of Series A Preferred Stock, consenting or voting, as the case may be, separately as a class, make any proposed amendment to this Certificate of Incorporation that would alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely in a manner different from the Preferred Stock as a class; provided, however, that notwithstanding the foregoing, nothing herein shall in any way expand the rights of the Series A Preferred Stock beyond the rights required pursuant to Section 242(b)(2) of the Delaware General Corporation Law, as the same may be amended and supplemented.

#### 7. Election of Board of Directors.

(a) The Board of Directors shall consist of seven (7) members elected as follows:

(i) For so long as shares of Series C Preferred Stock remain outstanding, the holders of Series C Preferred Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such directors (such directors, the "Series C Director").

(ii) For so long as shares of Series B Preferred Stock remain outstanding, the holders of Series B Preferred Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such directors (such directors, the "Series B Directors" and together with the Series C Director, the "Preferred Directors").

(iii) For so long as shares of Common Stock remain outstanding, the holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such directors (such directors, the "Common Directors").

(iv) Any remaining directors shall be elected by the holders of a majority of the Common Stock and Preferred Stock, voting together as a single class on an as-converted basis.

(b) Notwithstanding the foregoing, in the event of an Event of Noncompliance (as defined below), the Board of Directors shall automatically be increased until such Event of Noncompliance is cured to nine (9) members without any action by the Corporation or its stockholders and the holders of Series C Preferred Stock, voting as a separate class, shall be entitled to elect five (5) members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such directors. An "Event of Noncompliance" shall be deemed to have occurred if the Corporation fails to make any redemption payment pursuant to Section 8, whether or not such payment is legally permissible or would be in contravention if any agreement to which the Corporation is a party, and such failure continues for 90 days after notice of such non-payment is given to the Corporation.

8. Redemption.

(a) The term "Series A Redemption Price" shall mean the greater of (x) the Original Series A Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes), plus any accrued but unpaid Series A Accruing Dividends and any other dividends declared but unpaid thereon and (y) the fair market value of the Series A Preferred Stock as of the date of the Series A Redemption Notice (as defined below), as determined by an independent appraiser reasonably acceptable to the Corporation and the holders of at least a majority of the outstanding Series A Preferred Stock, voting as a separate class (the costs of which appraisal shall be borne by the Corporation). The term "Series B Redemption Price" shall mean the greater of (x) the Original Series B Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes), plus any accrued but unpaid Series B Accruing Dividends and any other dividends declared but unpaid thereon and (y) the fair market value of the Series B Preferred Stock as of the date of the Series B Redemption Notice (as defined below), as determined by an independent appraiser reasonably acceptable to the Corporation and the holders of at least a majority of the outstanding Series B Preferred Stock, voting as a separate class (the costs of which appraisal shall be borne by the Corporation). The term "Series C Redemption Price" shall mean the greater of (x) the Original Series C Issue Price (as adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations and other similar capitalization changes), plus any accrued but unpaid Series C Accruing Dividends and any other dividends declared but unpaid thereon and (y) the fair market value of the Series C Preferred Stock as of the date of the Series C Redemption Notice (as defined below), as determined by an independent appraiser reasonably acceptable to the Corporation and the holders of at least a majority of the outstanding Series C Preferred Stock, voting as a separate class (the costs of which appraisal shall be borne by the Corporation).

(b) The Corporation will, following receipt at any time after the fifth anniversary of the Original Issue Date of a written request signed by holders of at least a two-thirds (2/3) majority of the shares of all Preferred Stock then outstanding, voting as a single class, redeem all outstanding shares of Series A Preferred Stock at the Series A Redemption Price, all outstanding shares of Series B Preferred Stock at the Series B Redemption Price and all outstanding shares of Series C Preferred Stock at the Series C Redemption Price as follows:

(i) one-third (1/3) of the then outstanding shares of Series C Preferred Stock to be redeemed as soon as practicable and in no event later than sixty (60) days after receipt of said request (the "First Redemption Date") and thereafter one-third (1/3) of the then outstanding shares of Series B Preferred Stock to be redeemed as soon as practicable and in no event later than the First Redemption Date;

(ii) one-half (1/2) of the then outstanding shares of Series C Preferred Stock to be redeemed upon the first anniversary of the First Redemption Date (the "Second Redemption Date") and thereafter one-half (1/2) of the then outstanding shares of Series B Preferred Stock to be redeemed as soon as practicable and in no event later than the Second Redemption Date; and

(iii) all of the then remaining shares of Series C Preferred Stock and Series B Preferred Stock and all of the then outstanding shares of Series A Preferred Stock to be redeemed upon the second anniversary of the First Redemption Date (the "Third Redemption Date") (each of the First, Second and Third Redemption Date hereinafter referred to as a "Redemption Date").

(c) At each Redemption Date, the Corporation shall redeem the applicable number of outstanding shares of Series C Preferred Stock at the Series C Redemption Price and the applicable number of outstanding shares of Series B Preferred Stock at the Series B Redemption Price. At the Third Redemption Date, the Corporation shall redeem all of the then outstanding shares of Series A Preferred Stock at the Series A Redemption Price.

(d) At least thirty (30) days prior to each Redemption Date, written notice shall be sent to each holder of record (at the close of business on the business day immediately preceding the day on which notice is given) of the Series C Preferred Stock and Series B Preferred Stock specifying the number of shares to be redeemed from each holder, the applicable Redemption Date, the applicable Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the price designated, its certificate or certificates representing such holder's shares to be redeemed (the "Series C and Series B Redemption Notice"). Except as provided herein, on or after the applicable Redemption Date, such holder of Preferred Stock to be redeemed at such time shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the price designated in the Series C and Series B Redemption Notice, and thereupon the applicable Redemption Price for such shares shall be paid to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered

certificate shall be canceled. In the event fewer than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(e) From and after the applicable Redemption Date, unless there shall have been a default in payment of the Series C Redemption Price or Series B Redemption Price, as applicable, all rights of the holders of shares of Series C Preferred Stock and Series B Preferred Stock designated for redemption in the Series C and Series B Redemption Notice (except the right to receive the applicable Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares at such time, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever.

(f) At least thirty (30) days prior to the Third Redemption Date, written notice shall be sent to each holder of record (at the close of business on the business day immediately preceding the day on which notice is given) of the Series A Preferred Stock specifying the number of shares to be redeemed from each holder, the Third Redemption Date, the Series A Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the price designated, its certificate or certificates representing such holder's shares to be redeemed (the "Series A Redemption Notice"). Except as provided herein, on or after the Third Redemption Date, such holder of Series A Preferred Stock to be redeemed at such time shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the price designated in the Series A Redemption Notice, and thereupon the Series A Redemption Price for such shares shall be paid to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event fewer than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(g) From and after the Third Redemption Date, unless there shall have been a default in payment of the Series A Redemption Price, all rights of the holders of shares of Series A Preferred Stock designated for redemption in the Series A Redemption Notice (except the right to receive the Series A Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares at such time, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever.

(h) Notwithstanding anything contained herein to the contrary, (A) no holder of shares of Series B Preferred Stock shall be redeemed or shall receive any Series B Redemption Payment on or prior to any Redemption Date unless and until the applicable number of shares of Series C Preferred Stock redeemable on such Redemption Date shall have been redeemed and shall have received the Series C Redemption Payment and (B) no holder of shares of Series A Preferred Stock shall be redeemed or shall receive any Series A Redemption Payment on or prior to the Third Redemption Date unless and until the applicable number of shares of Series C Preferred Stock and

shares of Series B Preferred Stock shall have been redeemed and shall have received the applicable Redemption Payment.

(i) If the funds of the Corporation legally available for redemption of shares of Series C Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series C Preferred Stock to be redeemed on such date, those funds that are legally available will be used to redeem the maximum possible number of such shares of Series C Preferred Stock ratably among the holders of such shares of Series C Preferred Stock to be redeemed based upon their holdings of Series C Preferred Stock. The shares of Series C Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series C Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Series C Preferred Stock that the Corporation has become obligated to redeem on any applicable Redemption Date, but which it has not redeemed.

(ii) If the funds of the Corporation legally available for redemption of shares of Series C Preferred Stock and Series B Preferred Stock on any Redemption Date are sufficient to redeem all of the then remaining shares of Series C Preferred Stock but are insufficient to redeem all of the then outstanding shares of Series B Preferred Stock, those funds that are legally available will be used to redeem the maximum possible number of such shares of Series B Preferred Stock ratably among the holders of such shares of Series B Preferred Stock to be redeemed based upon their holdings of Series B Preferred Stock. The shares of Series B Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series B Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Series B Preferred Stock that the Corporation has become obligated to redeem, but which it has not redeemed.

(iii) If the funds of the Corporation legally available for redemption of shares of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock on the Third Redemption Date are sufficient to redeem all of the then remaining shares of Series C Preferred Stock and Series B Preferred Stock but are insufficient to redeem all of the then outstanding shares of Series A Preferred Stock, those funds that are legally available will be used to redeem the maximum possible number of such shares of Series A Preferred Stock ratably among the holders of such shares of Series A Preferred Stock to be redeemed based upon their holdings of Series A Preferred Stock. The shares of Series A Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Series A Preferred Stock that the Corporation has become obligated to redeem, but which it has not redeemed.

(iv) Any shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock redeemed pursuant to this Section 8 shall be canceled and shall not be reissuable by the Corporation, and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock.

(v) Notwithstanding any of the foregoing, if the Corporation does not make the required payment of the applicable Redemption Price within sixty (60) days of each applicable Redemption Date (a "Payment Default"), any such unpaid balance shall accrue interest from the date of such Payment Default at the rate of 15% per annum, payable quarterly in arrears.

9. Waiver. The rights, preferences, privileges and other terms, including, without limitation, rights to notice, of (a) the Series A Preferred Stock may be waived (prospectively or retroactively) as to all shares of Series A Preferred Stock in any instance (without the necessity of convening any meeting of stockholders) upon the written agreement of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding, (b) the Series B Preferred Stock may be waived (prospectively or retroactively) as to all shares of Series B Preferred Stock in any instance (without the necessity of convening any meeting of stockholders) upon the written agreement of the holders of at least two-thirds (2/3) of the shares of Series B Preferred Stock then outstanding and (c) the Series C Preferred Stock may be waived (prospectively or retroactively) as to all shares of Series C Preferred Stock in any instance (without the necessity of convening any meeting of stockholders) upon the written agreement of the holders of at least two-thirds (2/3) of the shares of Series C Preferred Stock then outstanding.

## ARTICLE V

The Corporation is to have perpetual existence. Except for those preemptive rights granted to holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock pursuant to an amended and restated investor rights agreement by and among the Corporation, the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and the other parties thereto, as the same may be amended and/or restated from time to time, no holder of shares of stock of the Corporation shall have any preemptive right to purchase or subscribe for any additional shares of stock of the Corporation or any other security of the Corporation which the Corporation may issue or sell.

## ARTICLE VI

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter or repeal the bylaws of the Corporation, subject to Article IV, Division B, Section 6 of this Amended and Restated Certificate of Incorporation.



## ARTICLE VII

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws may provide. The books of the Corporation may be kept (subject to any provisions contained in applicable statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Corporation. Elections of directors need not be by written ballot unless the bylaws of the Corporation so provide.

## ARTICLE VIII

A. The Corporation shall indemnify each of the Corporation's directors and officers in each and every situation where, under Section 145 of the General Corporation Law of the State of Delaware, as amended from time to time ("Section 145"), the Corporation is permitted or empowered to make such indemnification. The Corporation may, in the sole discretion of the Board of Directors of the Corporation, indemnify any other person who may be indemnified pursuant to Section 145 to the extent the Board of Directors deems advisable, as permitted by Section 145. The Corporation shall promptly make or cause to be made any determination required to be made pursuant to Section 145.

B. No person shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; provided, however, that the foregoing shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for gross negligence and for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under section 174 of the General Corporation Law of the State of Delaware or, (iv) for any transaction from which the director derived an improper personal benefit. If the General Corporation Law of the State of Delaware is subsequently amended to further eliminate or limit the liability of a director, then a director of the Corporation, in addition to the circumstances in which a director is not personally liable as set forth in the preceding sentence, shall not be liable to the fullest extent permitted by the amended General Corporation Law of the State of Delaware. For purposes of this Article VIII, "fiduciary duty as a director" shall include any fiduciary duty arising out of serving at the Corporation's request as a director of another corporation, partnership, joint venture or other enterprise, and "personally liable to the Corporation or its stockholders" shall include any liability to such other corporation, partnership, joint venture, trust or other enterprise, and any liability to the Corporation in its capacity as a security holder, joint venturer, partner, beneficiary, creditor or investor of or in any such other corporation, partnership, joint venture, trust or other enterprise.

C. Neither any amendment nor repeal of this Article VIII, nor the adoption of any provision of this Restated Certificate of Incorporation inconsistent with this Article VIII, shall eliminate or reduce the effect of this Article VIII in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article VIII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE IX

Subject to Article IV, Division B, Section 6 of this Restated Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained herein, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Subject to Article IV, Division B, Section 6 of this Restated Certificate of Incorporation, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding or reserved for issuance by resolution of the Board of Directors of the Corporation) by the affirmative vote of the holders of a majority of the capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law, as the same may be amended and supplemented.

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IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed under the seal of the Corporation this 31st day of October, 2005.

ADVENT SOLAR, INC.

/s/ Russell Schmit

Russell Schmit, President