

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

AZAIRE NETWORKS INC.

William Howe and David Bartlett hereby certify that they are the duly elected and acting President and Secretary, respectively, of Azaire Networks Inc., a Delaware corporation, and further certify as follows:

ONE: The name of the corporation is Azaire Networks Inc., and the original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on June 2, 2003.

TWO: The Certificate of Incorporation of this corporation is hereby amended and restated to read as follows:

I.

The name of the corporation is AZAIRE NETWORKS INC. (the "*Corporation*" or the "*Company*").

II.

The address of the registered office of the Corporation in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, County of Kent, State of Delaware 19901, and the name of the registered agent of the Corporation at that address is National Registered Agents, Inc.

III.

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware.

IV.

A. This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 178,900,000 shares. Of these shares, 98,500,000 shares shall be Common Stock, \$0.0001 par value per share, and 80,400,000 shall be Preferred Stock, \$0.0001 par value per share.

B. Notwithstanding the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware, 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-if-converted basis).

C. Of the authorized shares of Preferred Stock, 4,000,000 shares are hereby designated "Series A Preferred Stock" (the "*Series A Preferred*"), 19,100,000 shares are hereby designated "Series B Preferred Stock" (the "*Series B Preferred*") and 57,300,000 shares are hereby designated "Series C

Convertible Preferred Stock" (the "*Series C Preferred*" and, together with the Series A Preferred and the Series B Preferred, the "*Series Preferred*").

D. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

1. **DIVIDEND RIGHTS.**

a. **Series C Preferred.** From the date that the first share of Series C Preferred is issued (the "*Original Issue Date*") and for a period of two years thereafter (the "*Series C In-Kind Dividend Period*"), holders of Series C Preferred, in preference to the holders of Series B Preferred, Series A Preferred or Common Stock, shall be entitled to receive in-kind dividends of Series C Preferred, which shall accrue from day-to-day at the rate of 8% per annum on each outstanding share of Series C Preferred, resulting in the annual accrual of 0.08 shares of Series C Preferred for each share of Series C Preferred outstanding on each anniversary of the Original Issue Date (and such that, upon expiration of the Series C In-Kind Dividend Period, the holders of Series C Preferred shall be entitled to receive a total of 0.1664 shares of Series C Preferred for each share of Series C Preferred held as of the Original Issue Date). Such in-kind dividends shall be paid promptly following each 12-month anniversary of the Original Issue Date during the Series C In-Kind Dividend Period, whether or not declared by the Board. Following the Series C In-Kind Dividend Period, holders of Series C Preferred, in preference to the holders of Series B Preferred, Series A Preferred or Common Stock, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of 8% of the Series C Original Issue Price (as defined below) per annum on each outstanding share of Series C Preferred, Appropriately Adjusted. The "*Series C Original Issue Price*" shall be \$0.5436 per share. Such cash dividends shall accrue from day-to-day on each share of Series C Preferred from the end of the Series C In-Kind Dividend Period, whether or not earned or declared, but shall be payable only when, as and if declared by the Board of Directors or as otherwise set forth herein. All such dividends referenced in this Section 1(a) shall be cumulative, so that, if dividends in respect or any previous annual dividend period shall not have been paid, the deficiency shall be fully paid before any dividend or other distribution shall be paid on or declared and set apart for the Series B Preferred, Series A Preferred or Common Stock. Unpaid cash dividends on the Series C Preferred shall compound annually on each 12-month anniversary of the Original Issue Date at a rate of 8% per annum.

As used herein, whenever per share data is to be "*Appropriately Adjusted*", such per share data shall be adjusted for any stock dividends (other than payment-in-kind dividends made on shares of Series C Preferred during the Series C In-Kind Dividend Period), combinations, splits, recapitalizations and the like with respect to such shares occurring after the Original Issue Date.

b. **Series B Preferred.** Following any payment of dividends to the holders of the Series C Preferred under Section 1(a) above, holders of Series B Preferred, in preference to the holders of Series A Preferred or Common Stock, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of 8% of the Series B Original Issue Price (as defined below) per annum on each outstanding share of Series B Preferred, Appropriately Adjusted. The "*Series B Original Issue Price*" shall be \$0.50 per share. Such dividends shall accrue from day to day on each share of Series B Preferred from the date that the first share of Series B Preferred is issued; *provided, however* that on and after the Original Issue Date, dividends on the Series B Preferred shall cease to accrue and shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative; *provided further*, that as of the Original Issue Date, the Series B Preferred shall be deemed to have earned an accrued dividend of \$0.0704 per share.

c. **Series A Preferred.** Following any payment of dividends to the holders of the Series C Preferred and the Series B Preferred under Sections 1(a) and 1(b) above, holders of Series A Preferred, in preference to the holders of Common Stock, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of 8% of the Series A Original Issue Price (as defined below) per annum on each outstanding share of Series A Preferred, Appropriately Adjusted. The "*Series A Original Issue Price*" shall be \$0.50 per share. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

d. So long as any shares of Series Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any shares of Common Stock, nor shall any shares of any shares of Common Stock of the Company be purchased, redeemed, or otherwise acquired for value by the Company (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer) until all dividends (set forth in Sections 1(a), 1(b) and 1(c) above) on the Series Preferred shall have been paid or declared and set apart. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Series Preferred in an amount per share (on an as-if-converted basis) equal to the amount paid or set aside for each share of Common Stock. The provisions of this Section 1(d) shall not, however, apply to (i) a dividend payable in Common Stock or (ii) any repurchase of any outstanding securities of the Company that is unanimously approved by the Company's Board of Directors.

2. VOTING RIGHTS.

a. **General Rights.** Except as otherwise provided herein or as required by law, the Series Preferred shall be voted equally with the shares of the Common Stock of the Company and not as separate classes, at any annual or special meeting of stockholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series Preferred are convertible (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

b. **Separate Vote of Series C Preferred.** In addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least two-thirds of the outstanding Series C Preferred shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company, including any filing of a Certificate of Designation (whether by means of a merger, consolidation, recapitalization or otherwise), that waives, alters or changes the voting powers, preferences, or other special rights or privileges or restrictions of the Series C Preferred in a manner different from other series of Preferred Stock;

(ii) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Series C Preferred in right of redemption, liquidation preference, voting or dividends or any increase in the authorized or designated number of any such new class or series;

(iii) Any agreement by the Company or its stockholders regarding an Asset Transfer or Acquisition (each as defined in Section 3(e)); or

(iv) Any voluntary dissolution or liquidation of the Company.

c. Separate Vote of Series Preferred. In addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series Preferred, voting together as a single class on an as-if-converted basis, shall be necessary for effecting or validating the following actions:

(i) Any redemption, repurchase, payment of dividends or other distributions with respect to the Series Preferred or Common Stock (except for: (A) dividends on Common Stock payable solely in shares of Common Stock; (B) acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer; (C) dividends on the Series Preferred in accordance with Section IV(D)(1); or (D) a redemption of any series of the Series Preferred in accordance with Section IV(D)(5) of this Amended and Restated Certificate of Incorporation);

(ii) Incur any indebtedness for borrowed money having a principal amount greater than the lesser of (A) \$4,000,000; or (B) 30% of the sum of the Company's cash and cash equivalents as reflected on the Company's balance sheet dated as of no more than 30 days prior to incurring such indebtedness;

(iii) Any material change in the principal business of the Company from the development, marketing and sale of fixed mobile convergence related products; or

(iv) Any increase or decrease in the authorized number of members of the Company's Board of Directors (unless unanimously approved by the Board of Directors).

d. Election of Board of Directors.

(i) **Series C Director.** For so long as any shares of Series C Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series Preferred), the holders of a majority of the Series C Preferred, voting as a separate class, shall be entitled to elect one member of the Company's Board of Directors (the "*Series C Director*") at each meeting or pursuant to each consent of the Company'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 director.

(ii) **Series B Directors.** For so long as at least 9,460,000 shares of Series B Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series Preferred), the holders of a majority of the Series B Preferred, voting as a separate class, shall be entitled to elect two members of the Company's Board of Directors (the "*Series B Directors*") at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(iii) **Series A Director.** For so long as at least 2,000,000 shares of Series A Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series Preferred), the holders of a majority of the Series A Preferred, voting as a

separate class, shall be entitled to elect one member of the Company's Board of Directors at each meeting or pursuant to each consent of the Company'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 director.

(iv) **Common Directors.** The holders of a majority of the Common Stock, voting as a separate class, shall be entitled to elect two members of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(v) **Series Preferred Directors.** The holders of a majority of the Series Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; *provided, however* that any such director shall neither be an employee of the Company nor be affiliated with any investor of the Company holding more than 1,000,000 shares of the capital stock of the Company (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series Preferred).

(vi) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the Corporation is subject to Section 2115 of the California General Corporation Law ("CGCL"). During such time or times that the Corporation is subject to Section 2115(b) of the CGCL, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

e. Removal.

(i) During such time or times that the Corporation is subject to Section 2115(b) of the CGCL, the Board of Directors or any individual director may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote on such removal; *provided, however* that unless the entire Board of Directors is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing, to such removal, would be sufficient to elect that director if voted cumulatively at an election which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

(ii) At any time or times that the Corporation is not subject to Section 2115(b) of the CGCL and subject to any limitations imposed by law, Section e(i) above shall not apply and the Board of Directors or any director may be removed from office at any time (a) with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of voting

stock of the Corporation entitled to vote on such removal; or (b) without cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of voting stock of the Corporation, entitled to vote on such removal.

3. LIQUIDATION RIGHTS.

a. Series C Preferred. Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any shares of Series B Preferred, Series A Preferred or Common Stock, the holders of Series C Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series C Preferred equal to the Series C Original Issue Price, Appropriately Adjusted, plus all accrued or declared and unpaid dividends on the Series C Preferred, for each share of Series C Preferred held by them. If, upon any such liquidation, distribution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series C Preferred of the liquidation preference set forth in this Section 3(a), then such assets shall be distributed among the holders of Series C Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

b. Series B Preferred. After payment of the full liquidation preference of the Series C Preferred set forth in Section 3(a) above, and before any distribution or payment shall be made to the holders of any shares of Series A Preferred or Common Stock, the holders of Series B Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series B Preferred equal to the Series B Original Issue Price plus all accrued or declared and unpaid dividends on the Series B Preferred, Appropriately Adjusted, for each share of Series B Preferred held by them. If, upon any such liquidation, distribution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series B Preferred of the liquidation preference set forth in this Section 3(b), then such assets shall be distributed among the holders of Series B Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

c. Series A Preferred. After payment of the full liquidation preference of the Series C Preferred and the Series B Preferred set forth in Sections 3(a) and 3(b) above, and before any distribution or payment shall be made to the holders of any shares of Common Stock, the holders of Series A Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series A Preferred equal to the Series A Original Issue Price plus all declared and unpaid dividends on the Series A Preferred, Appropriately Adjusted, for each share of Series A Preferred held by them. If, upon any such liquidation, distribution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in this Section 3(c), then such assets shall be distributed among the holders of Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

d. Series Preferred and Common Stock. After the payment of the full liquidation preference of the Series Preferred as set forth in Sections 3(a), 3(b) and 3(c) above, the remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and Series Preferred on an as-if-converted basis.

e. Deemed Liquidation. Unless the holders of more than two-thirds of the outstanding Series Preferred have otherwise consented in writing, the following events shall be considered a liquidation under this Section:

(i) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than a majority of the Company's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions to which the Company is a party in which in excess of 50% of the Company's voting power is transferred, excluding: (A) any consolidation or merger effected exclusively to change the domicile of the Company; or (B) any equity financing effected primarily for the purpose of raising capital (an "*Acquisition*"); or

(ii) a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company, including, without limitation, the exclusive license of all or substantially all of the Company's intellectual property (an "*Asset Transfer*").

(iii) In any of such events, if the consideration received by the Company is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

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

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

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

(B) 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 (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined by the Board of Directors.

4. CONVERSION RIGHTS.

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the "*Conversion Rights*");

2. Optional Conversion. Subject to and in compliance with the provisions of this Section 4, any shares of Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series Preferred shall be entitled upon conversion shall be the product obtained by multiplying the appropriate conversion rate then in effect (determined as provided in Section 4(b)) by the number of shares of Series Preferred being converted. Subject to paragraph 4(1) hereof, upon any conversion of shares of Series Preferred, any accrued dividends shall be forfeited.

b. Series Preferred Conversion Rates. The conversion rates in effect at any time for conversion of the Series Preferred shall be: (i) with respect to the Series C Preferred, the quotient obtained by dividing the Series C Original Issue Price plus any accrued or declared and unpaid cash dividends, by the "*Series C Preferred Conversion Price*," calculated as provided in Section 4(c), (the "*Series C Preferred Conversion Rate*"); (ii) with respect to the Series B Preferred, the quotient obtained by dividing the Series B Original Issue Price plus any accrued or declared but unpaid cash dividends, by the "*Series B Preferred Conversion Price*," calculated as provided in Section 4(c), (the "*Series B Preferred Conversion Rate*"); and (iii) with respect to the Series A Preferred, the quotient obtained by dividing the Series A Original Issue Price plus any declared but unpaid cash dividends, by the "*Series A Preferred Conversion Price*," calculated as provided in Section 4(c), (the "*Series A Preferred Conversion Rate*"). Otherwise unqualified references to the "*Series Preferred Conversion Rate*" shall mean the respective conversion rates of the Series C Preferred, Series B Preferred or Series A Preferred, as required by context. For the avoidance of doubt, the payment of in-kind dividends on the Series C Preferred during the Series C In-Kind Dividend Period shall not result in any adjustment to the Series A Preferred Conversion Rate, the Series B Conversion Rate or the Series C Conversion Rate.

c. Series Preferred Conversion Prices. As of the date hereof, the conversion prices for the Series Preferred shall initially be: (i) with respect to the Series C Preferred, the Series C Original Price (the "*Series C Preferred Conversion Price*"); (ii) with respect to the Series B Preferred, the Series B Original Issue Price (the "*Series B Preferred Conversion Price*"); and (iii) with respect to the Series A Preferred, the Series A Original Issue Price (the "*Series A Preferred Conversion Price*"). Where applicable below, the term "*Series Preferred Conversion Price*" shall mean the Series C Preferred Conversion Price, the Series B Preferred Conversion Price or the Series A Preferred Conversion Price, as required by context. The Series Preferred Conversion Prices shall be adjusted from time to time in accordance with this Section 4. All references to the Series Preferred Conversion Prices herein shall mean the Series Preferred Conversion Prices as so adjusted.

d. Mechanics of Conversion. Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and (i) if shares of Series Preferred are being converted pursuant to an initial public offering pursuant to Section 4(l), shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any accrued or declared and unpaid dividends on the shares of Series Preferred being converted and (ii) shall promptly pay in cash (at the Common Stock's fair market value determined by the Board of Directors as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

e. Adjustment for Stock Splits and Combinations. If the Company shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the Series Preferred Conversion Prices in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the

Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the Series Preferred Conversion Prices in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

f. Adjustment for Common Stock Dividends and Distributions. If the Company at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Series Preferred Conversion Prices that are then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying each Series Preferred Conversion Price then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; *provided, however* that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Prices shall be recomputed accordingly as of the close of business on such record date and thereafter the Series Preferred Conversion Prices shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

g. Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 3(c) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Series Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

h. Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock (other than an Acquisition or Asset Transfer as defined in Section 3(c) or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, provision shall be made so that the holders of the Series Preferred shall thereafter be entitled to receive upon conversion of the Series Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series Preferred Conversion Prices then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

i. Sale of Shares Below Series Preferred Conversion Price.

(i) **Series Preferred Conversion Price.** If at any time or from time to time after the Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this subsection to have issued or sold, Additional Shares of Common Stock (as defined in subsection (iv) below), other than as a dividend or other distribution on any class of stock as provided in Section 4(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an Effective Price (as defined in subsection (iv) below) less than the then effective Series C Preferred Conversion Price, Series B Preferred Conversion Price or Series A Preferred Conversion Price, as applicable (a "*Dilutive Issuance*"), then and in each such case the applicable Series Preferred Conversion Price shall be reduced, as of the opening of business on the date following such issue or sale, to a price determined by multiplying such Series Preferred Conversion Price by a fraction, (i) the numerator of which shall be: (A) the number of shares of Common Stock "deemed outstanding" (as defined below) immediately prior to such issue or sale (and without giving effect to the adjustments contemplated in this paragraph); plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection (ii)) by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Series Preferred Conversion Price, and (ii) the denominator of which shall be: (C) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale (and without giving effect to the adjustments contemplated in this paragraph); plus (D) the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of: (X) the number of shares of Common Stock actually outstanding; (Y) the number of shares of Common Stock into which the then outstanding shares of Series Preferred could be converted if fully converted on the day immediately preceding the given date (without giving effect to the adjustments contemplated in this paragraph); and (Z) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options, warrants and convertible securities outstanding on the day immediately preceding the given date (without giving effect to the adjustments contemplated in this paragraph).

(ii) For the purpose of making any adjustment required under this Section 4(i), the consideration received by the Company for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in subsection (iii)) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 4(i), if the Company issues or sells (A) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "*Convertible Securities*") or (B) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the applicable Series Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for

the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; *provided, however* that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses; *provided, further* that if the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided, further* that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the applicable Series Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the applicable Series Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided, however* that such readjustment shall not apply to prior conversions of Series Preferred.

(iv) "*Additional Shares of Common Stock*" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(i), whether or not subsequently reacquired or retired by the Company other than (A) shares of Common Stock issued upon conversion of the Series Preferred (including shares of Common Stock issued or deemed to be issued in connection with the payment of in-kind dividends on the Series C Preferred during the Series C In-Kind Dividend Period); (B) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights after the Original Issue Date to employees or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board of Directors; (C) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Original Issue Date; (D) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination approved by the Board of Directors; (E) shares of Common Stock issued pursuant to any equipment or facilities leasing arrangement, third-party consultant or vendor incentive arrangement, or debt financing from a bank or similar financial institution

approved by the Board of Directors; and (F) shares of Common Stock issued in connection with strategic transactions involving the Company and other entities entered into for non-equity financing purposes, including (i) joint ventures, manufacturing, marketing or distribution arrangements; (ii) technology transfer or development arrangements or (iii) bona fide acquisitions; *provided, however* that such strategic transactions and the issuance of shares therein, have been approved by the Board of Directors. References to Common Stock in the subsections of this clause (iv) shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(i). The "*Effective Price*" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 4(i), into the aggregate consideration received, or deemed to have been received by the Company for such issue under this Section 4(i), for such Additional Shares of Common Stock.

j. Certificate of Adjustment. In each case of an adjustment or readjustment of the Series Preferred Conversion Prices for the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred, if the Series Preferred is then convertible pursuant to this Section 4, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series Preferred.

k. Notices of Record Date. Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 3(c)) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 3(c)), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least ten (10) days prior to the record date specified therein (or such shorter period approved by a majority of the outstanding Series Preferred) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

l. Automatic Conversion.

(i) Series C Preferred. Each share of Series C Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series C Preferred Conversion Price: (A) at any time upon the affirmative election of the holders of at least two-thirds of the outstanding shares of the Series C Preferred, subject to the restrictions set forth in Section 1.6(b) of that

certain Amended and Restated Voting Agreement by and among the Company and the stockholder of the Company named therein, dated as of June __, 2006; or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least three times the Series C Original Issue Price, Appropriately Adjusted, and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$35,000,000. Upon any such automatic conversion in accordance with clause (B) above, any accrued or declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(ii) Series A Preferred and Series B Preferred. Each share of Series A Preferred and Series B Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series Preferred Conversion Price: (A) at any time upon the affirmative election of the holders of at least two-thirds of the outstanding shares of the Series A Preferred and Series B Preferred, voting together as a single class on an as-if-converted basis; or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least three times the Series C Original Issue Price, Appropriately Adjusted, and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$35,000,000. Upon any such automatic conversion in accordance with clause (B) above, any accrued or declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(iii) Upon the occurrence of either of the events specified in Sections 4(l)(i) and 4(l)(ii) above, the outstanding shares of Series Preferred 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 Company or its transfer agent; *provided, however* that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred, the holders of Series Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any accrued or declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

m. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

n. Reservation of Stock Issuable Upon Conversion. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for

the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

o. Notices. Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

p. Payment of Taxes. The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

5. REDEMPTION.

a. The Company shall be obligated to redeem the Series Preferred as follows:

(i) Series C Preferred. The holders of at least two-thirds of the then outstanding shares of Series C Preferred, voting together as a separate class, may require the Company, to the extent it may lawfully do so, to redeem the Series C Preferred in two annual installments beginning on April 30, 2011 and ending on the date one year thereafter (each, a "**Series C Redemption Date**"); *provided, however* that the Company shall have received written notice of such election by the holders of Series C Preferred at least thirty (30) days prior to April 30, 2011. The Company shall effect such redemption on the applicable Series C Redemption Date by paying in cash in exchange for the shares of Series C Preferred to be redeemed a sum equal to the Series C Original Issue Price, Appropriately Adjusted, plus accrued or declared and unpaid dividends with respect to such shares. The total amount to be paid for the Series C Preferred is hereinafter referred to as the "**Series C Redemption Price**." The number of shares of Series C Preferred that the Company shall be required to redeem on any one Series C Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series C Preferred outstanding immediately prior to the Series C Redemption Date by (B) the number of remaining Series C Redemption Dates (including the Series C Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 5(a)(i) shall be redeemed from each holder of Series C Preferred on a *pro rata* basis.

(ii) Series B Preferred. Following redemption in full of all outstanding shares of Series C Preferred, the holders of at least two-thirds of the then outstanding shares of Series B Preferred, voting together as a separate class, may require the Company, to the extent it may lawfully do so, to redeem the Series B Preferred in two annual installments beginning no more than thirty (30) days after the final Series C Redemption Date, and ending on the date one year thereafter (each, a "**Series B Redemption Date**"); *provided, however* that the Company shall have received written notice of such election by the holders of Series B Preferred at least thirty (30) days prior to the final Series C Redemption Date. The Company shall effect such redemptions on the applicable Series B Redemption

Date by paying in cash in exchange for the shares of Series B Preferred to be redeemed a sum equal to the Series B Original Issue Price, Appropriately Adjusted, plus accrued or declared and unpaid dividends with respect to such shares. The total amount to be paid for the Series B Preferred is hereinafter referred to as the "**Series B Redemption Price**." The number of shares of Series B Preferred that the Company shall be required to redeem on any one Series B Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series B Preferred outstanding immediately prior to the Series B Redemption Date by (B) the number of remaining Series B Redemption Dates (including the Series B Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 5(a)(ii) shall be redeemed from each holder of Series B Preferred on a *pro rata* basis.

(iii) **Series A Preferred.** Following redemption in full of all outstanding shares of Series C Preferred and Series B Preferred, the holders of at least two-thirds of the then outstanding shares of Series A Preferred, voting together as a separate class, may require the Company, to the extent it may lawfully do so, to redeem the Series A Preferred in two annual installments beginning no more than thirty (30) days after the final Series B Redemption Date, and ending on the date one year thereafter (each, a "**Series A Redemption Date**"); *provided, however* that the Company shall have received written notice of such election by the holders of Series A Preferred at least thirty (30) days prior to the final Series B Redemption Date. The Company shall effect such redemptions on the applicable Series A Redemption Date by paying in cash in exchange for the shares of Series A Preferred to be redeemed a sum equal to the Series A Original Issue Price, Appropriately Adjusted, plus declared and unpaid dividends with respect to such shares. The total amount to be paid for the Series A Preferred is hereinafter referred to as the "**Series A Redemption Price**." The number of shares of Series A Preferred that the Company shall be required to redeem on any one Series A Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series A Preferred outstanding immediately prior to the Series A Redemption Date by (B) the number of remaining Series A Redemption Dates (including the Series A Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 5(a)(iii) shall be redeemed from each holder of Series A Preferred on a *pro rata* basis. Where applicable in this Section 5, the term "**Redemption Date**" without qualification shall mean a Series C Redemption Date, a Series B Redemption Date or a Series A Redemption Date, as required by context. Similarly, the term "**Redemption Price**" shall mean the Series C Redemption Price, the Series B Redemption Price or the Series A Redemption Price, as required by context.

(iv) At least thirty (30) days but no more than sixty (60) days prior to each Redemption Date, the Company shall send a notice (a "**Redemption Notice**") to all holders of Series Preferred to be redeemed on such Redemption Date setting forth (A) the Redemption Price for the shares to be redeemed; and (B) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed on any Redemption Date, then it shall redeem such shares *pro rata* (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

b. On or prior to each Redemption Date, the Company shall deposit the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any monies deposited by the Company pursuant to this Section 5(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 4 hereof no later than the fifth (5th) day preceding the Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the

Company pursuant to this Section 5(b) remaining unclaimed at the expiration of one (1) year following such Redemption Date shall be returned to the Company promptly upon its written request.

c. On or after each Redemption Date, each holder of shares of Series Preferred to be redeemed shall surrender such holder's certificates representing such shares to the Company in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable 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 less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Series Preferred (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided, however* that in the event that shares of Series Preferred are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Series Preferred shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

d. In the event of a call for redemption of any shares of Series Preferred, the Conversion Rights (as defined in Section 4) for such Series Preferred shall terminate as to the shares designated for redemption at the close of business on the fifth (5th) day preceding the Redemption Date, unless default is made in payment of the Redemption Price.

6. NO REISSUANCE OF SERIES PREFERRED.

No share or shares of Series Preferred acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

7. NO PREEMPTIVE RIGHTS.

Stockholders shall have no preemptive rights except as granted by the Company pursuant to written agreements.

V.

A. The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law.

B. This Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the CGCL) for breach of duty to the Corporation and its stockholders through bylaw provisions or through agreements with the agents, or through stockholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the CGCL, subject, at any time or times that the Corporation is subject to Section 2115(b) of the CGCL, to the limits on such excess indemnification set forth in Section 204 of the CGCL.

C. The holders of the Series A Preferred expressly waive their rights, if any, as described in CGCL Sections 502, 503 and 506 as they relate to repurchases of shares upon termination of employment or service as a consultant or director.

D. Any repeal or modification of this Article V shall only be prospective and shall not effect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

VI.

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is provided that:

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed at seven directors.

B. The Board of Directors may from time to time make, amend, supplement or repeal the Bylaws; provided that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of holders of capital stock as provided therein; and provided further that no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

C. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

* * * *

THREE: This Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of this Corporation.

FOUR: This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "**DGCL**") by the Board of Directors and the stockholders of the Corporation. The total number of outstanding shares entitled to vote or act by written consent was 2,455,084 shares of Common Stock, 4,000,000 shares of Series A Preferred and 18,674,270 shares of Series B Preferred. This Amended and Restated Certificate of Incorporation was approved by written consent in accordance with Section 228 of the DGCL by: (i) a majority of the outstanding shares of Series A Preferred, voting as a separate class; (ii) two-thirds of the outstanding shares of Series B Preferred, voting as a separate class; and (iii) a majority of the outstanding Series Preferred and Common Stock, voting together on an as-if converted basis.

IN WITNESS WHEREOF, AZAIRE NETWORKS INC. has caused this Amended and Restated Certificate of Incorporation to be signed by the President and the Secretary in San Jose, California this 19th day of June, 2006.

AZAIRE NETWORKS INC.

By: /s/ William Howe
William Howe, President

ATTEST:

By: /s/ David Bartlett
David Bartlett, Secretary