

**THIRD RESTATED CERTIFICATE OF INCORPORATION  
OF  
AMPERION, INC.**

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Amperion, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware ("DCGL"), hereby certifies as follows:

**FIRST:** The date of filing the original Certificate of Incorporation of this Corporation with the Secretary of State of the State of Delaware was February 16, 2001, which original Certificate of Incorporation was restated on May 29, 2001 (the "Restated Certificate of Incorporation") and which Restated Certificate of Incorporation was restated on November 30, 2004 (the "Second Restated Certificate of Incorporation").

**SECOND:** The Second Restated Certificate of Incorporation, as corrected, be and hereby is restated in its entirety as set forth herein.

**THIRD:** The restatement of the Certificate of Incorporation herein certified has been duly adopted by the stockholders in accordance with Sections 242 and 245 of the DCGL.

**RESOLVED:** That the Second Restated Certificate of Incorporation of the Corporation be and hereby is restated in its entirety so that the same shall read as follows:

**ARTICLE I.**

The name of the corporation is Amperion, Inc. (the "Corporation").

**ARTICLE II.**

The address of the registered office of the Corporation in the State of Delaware is:

The Corporation Trust Company  
1209 Orange Street  
Wilmington, DE 19801

The name of the Corporation's registered agent at said address is The Corporation Trust Company.

**ARTICLE III.**

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

**ARTICLE IV.**

Effective upon the filing of this Third Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "Effective Time"):

(a) Every one thousand (1,000) shares of common stock, par value \$0.001 per share, of the Corporation (the "Old Common Stock") issued and outstanding, immediately prior to the Effective Time, or held in treasury of the Corporation, shall be changed, reclassified, and combined into one (1) share of fully paid and non-assessable common stock, par value \$0.001 per share, of the Corporation (the "Common Stock"), every one thousand (1,000) shares of Class C Common Stock, par value \$0.001 per share, of the Corporation (the "Old Class C Common Stock") issued and outstanding, immediately prior to the Effective Time, or held in treasury of the Corporation, shall be changed, reclassified, and combined into one (1) share of fully paid and non-assessable Class C Common Stock, par value \$0.001 per share, of the Corporation (the "Class C Common Stock"), and every one thousand (1,000) shares of Series A Preferred Stock, par value \$0.001 per share of the Corporation (the "Old Series A Preferred Stock") issued and outstanding, immediately prior to the Effective Time, or held in treasury of the Corporation, shall be changed, reclassified, and combined into one (1) share of fully paid and non-assessable Series A Preferred Stock, par value \$0.001 per share, of the Corporation (the "Series A Preferred Stock");

(b) All authorized but unissued shares of Old Common Stock, Old Class C Common Stock and Old Series A Preferred Stock shall be eliminated and extinguished; and

(c) At the Effective Time, the change, reclassification and combination of (i) every one thousand (1,000) issued and outstanding shares of Old Common Stock into one (1) issued and outstanding share of Common Stock, (ii) every one thousand (1,000) issued and outstanding shares of Old Class C Common Stock into one (1) issued and outstanding share of Class C Common Stock, and (iii) every one thousand (1,000) issued and outstanding shares of Old Series A Preferred Stock into one (1) issued and outstanding share of Series A Preferred Stock shall occur automatically without any further action by the holders of such shares of Old Common Stock, Old Class C Common Stock, or Old Series A Preferred Stock and whether or not the certificates representing the shares of Old Common Stock, Old Class C Common Stock or Old Series A Preferred Stock are surrendered to the Corporation; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock, Class C Common Stock or Series A Preferred Stock, as the case may be, issuable upon such change, reclassification and combination of such Old Common Stock, Old Class C Common Stock or Old Series A Preferred Stock unless the certificates evidencing such shares of Old Common Stock, Old Class C Common Stock or Old Series A Preferred Stock are either delivered to the Corporation as hereinafter provided or the holder notifies the Corporation that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. Notwithstanding anything to the contrary, no fractional shares of Common Stock, Class C Common Stock or Series A Preferred Stock, as the case may be, shall be issued in connection with the reclassification of shares of Old Common Stock, Old Class C Common Stock or Old Series A Preferred Stock. Any fractional shares of Common Stock, Class C Common Stock or Series A Preferred Stock, as the case may be, which, but for this provision, would have been issued shall be deemed to have been issued and immediately sold to the Corporation for their fair market value as determined by the Corporation's Board of Directors as of the Effective Time, and the holder of the Old Common Stock, Old Class C Common Stock or Old Series A Preferred Stock, as the case may be, shall receive from the Corporation cash in lieu of such fractional shares in an amount equal to

the fair market value of one share of Common Stock, Class C Common Stock or Series A Preferred Stock, as the case may be, multiplied by the fractional share.

(d) Following the Effective Time, the holders of Old Common Stock, Old Class C Common Stock or Old Series A Preferred Stock, as the case may be, shall surrender the certificates representing such shares at the office of the Corporation. Thereupon there shall be issued and delivered to each such holder at such office and in the name shown on such surrendered certificate or certificates, a certificate for the number of shares of Common Stock, Class C Common Stock or Series A Preferred Stock, as the case may be, into which the surrendered shares of Old Common Stock, Old Class C Common Stock or Old Series A Preferred Stock, as the case may be, are changed, reclassified and combined, each such certificate to be dated as of the Effective Time. Upon the effectiveness of the reclassification and change of the Old Common Stock into the Common Stock, the Old Class C Common Stock into Class C Common Stock or Old Series A Preferred Stock into Series A Preferred Stock, until such time as the certificates representing the shares of Old Common Stock, Old Class C Common Stock or Old Series A Preferred Stock as the case may be, have been surrendered to the Corporation, such certificates shall represent only the right to receive certificates representing shares of Common Stock, Class C Common Stock or Series A Preferred Stock as the case may be, or cash in lieu of fractional shares in accordance with the terms hereof.

**Section 4.1. Designation of Series.** The Corporation is authorized to issue three classes of stock to be designated, respectively, "Common Stock," "Class C Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is Two Million Seven Hundred Four Thousand Two Hundred Thirty-Nine (2,704,239) shares, One Million Six Hundred Thousand (1,600,000) shares of which shall be Common Stock (the "Common Stock"), Four Thousand Five Hundred (4,500) shares of which shall be Class C Common Stock (the "Class C Common Stock") and One Million Ninety-Nine Thousand Seven Hundred Thirty-Nine (1,099,739) shares of which shall be Preferred Stock (the "Preferred Stock"). The Common Stock shall have a par value of one-tenth of one cent (\$0.001) per share, the Class C Common Stock shall have a par value of one-tenth of one cent (\$0.001) per share, and the Preferred Stock shall have a par value of one-tenth of one cent (\$0.001) per share.

**Section 4.2 Change in Number of Authorized Shares.** 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).

**Section 4.3 Intentionally Left Blank.**

**Section 4.4 Rights, Preferences, Privileges and Restrictions of Preferred Stock.** Three Hundred Twenty-Four Thousand Seven Hundred Eleven (324,711) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" and Seven Hundred Seventy-Five Thousand Twenty-Eight (775,028) of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock." The rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred Stock and the Series B Preferred Stock are as follows:

**(a) Dividend Rights.**

(i) Holders of Series B Preferred Stock, prior and in preference to the holders of the Series A Preferred Stock, the Class C Common Stock and the 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, cumulative cash dividends at the rate of \$0.3819 per annum on each outstanding share of Series B Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) which shall accrue from the date of the original issuance thereof, payable upon the liquidation, dissolution, sale, winding up of the Corporation and upon the redemption of the Series B Preferred Stock; provided, however, that no dividends shall be payable on the Series B Preferred Stock following the conversion of the Series B Preferred Stock into Common Stock except as provided in Section 4.4(d) hereof. No dividends shall be paid on the Series B Preferred Stock except in accordance with Section 4.4(d).

(ii) Holders of Series A Preferred Stock, prior and in preference to the holders of the Class C Common Stock and the Common Stock, but subject to Section 4.4(a)(i) above, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cumulative cash dividends at the rate of \$3.632 per annum on each outstanding share of Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) which shall accrue from the date of the original issuance thereof, payable upon the liquidation, dissolution, sale, winding up of the Corporation and upon the redemption of the Series A Preferred Stock; provided, however, that no dividends shall be payable on the Series A Preferred Stock following the conversion of the Series A Preferred Stock into Common Stock except as provided in Section 4.4(d) hereof. No dividends shall be paid on the Series A Preferred Stock except in accordance with Section 4.4(d).

(iii) So long as any shares of Preferred Stock are outstanding, the Corporation shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Class C Common Stock, the Common Stock or any other stock of the Corporation (other than the Preferred Stock) or purchase or redeem any Class C Common Stock, Common Stock or any other stock of the Corporation (other than the Preferred Stock) until all dividends (set forth in Section 4.4(a)(i) and 4.4(a)(ii) above) on the Preferred Stock shall have been paid or declared and set apart, except for:

(A) acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares at cost upon termination of services to the Corporation;

(B) acquisitions of Common Stock in exercise of the Corporation's right of first refusal to repurchase such shares; and

(C) acquisitions of the Company's stock pursuant to Section 4.5(e) hereof.

(iv) In the event dividends are paid on any share of Common Stock, Class C Common Stock or any other stock of the Corporation on parity with or junior to the Preferred Stock, the Corporation shall pay an additional dividend on all outstanding shares of Preferred Stock in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock, Class C Common Stock or any other stock of the Corporation on parity with or junior to the Preferred Stock.

(v) In the event that the Corporation shall have declared but not paid dividends outstanding immediately prior to, and in the event of, a conversion of any shares of Preferred Stock, as provided in Section 4.4(d) hereof, the Corporation shall pay, out of funds legally available therefor, to such holder the full amount of any such dividends pursuant to Section 4.4(d).

(vi) The provisions of Sections 4.4(a)(iv) and 4.4(a)(v) shall not apply to a dividend payable in Common Stock, or any repurchase of any outstanding securities of the Corporation that is approved by the Corporation's Board of Directors.

**(b) Voting Rights.**

(i) **General Rights.** Each holder of shares of the Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted (pursuant to Section 4.4(d) hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation. Except as otherwise provided herein or as required by law, the Preferred Stock shall vote together with the Common Stock and Class C Common Stock at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the Common Stock.

(ii) **Separate Vote of Preferred Stock.** For so long as any shares of Preferred Stock remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of two-thirds (66.67%) of the then outstanding shares of Series B Preferred Stock and a majority of the then outstanding shares of Series A Preferred Stock, each voting as a separate class on an as-if-converted to Common Stock basis, shall be required for the following actions:

(A) Any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Corporation (including any filing of a Certificate of Designation);

(B) Any increase or decrease in the authorized number of shares of Preferred Stock;

(C) Any authorization, designation or issuance, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible or exercisable into or exchangeable for equity securities of the Corporation ranking on a parity with or senior to the Preferred Stock 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;

(D) Except for the redemptions or repurchases by the Corporation of the Corporation's stock pursuant to Section 4.5 or as contemplated by Section 4.4(a)(iii)(A)-(B), any redemption, repurchase, payment of dividends or other distributions with respect to Class C Common Stock, Common Stock (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares at cost upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer or the redemption of Preferred Stock as provided in Section 4.5), or any class of Preferred Stock;

(E) Any agreement by the Corporation or its stockholders regarding an Asset Transfer or Acquisition (each as defined in Section 4.4(c)(v));

(F) Any action that results in the payment or declaration of a dividend on any shares of Class C Common Stock, Common Stock or Preferred Stock (other than the Series B Preferred Stock or the Series A Preferred Stock); or

(G) Any increase or decrease in the authorized number of members of the Corporation's Board of Directors.

(iii) **Adverse Effect Separate Vote.** In addition to the separate votes set forth in Section 4.4(b)(ii), for so long as any shares of Preferred Stock remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of two-thirds (66.67%) of the then outstanding shares of Series B Preferred Stock and a majority of the then outstanding shares of Series A Preferred Stock, each voting as a separate class on an as-if-converted to Common Stock basis, shall be necessary for any action that amends, alters or repeals the preferences, special rights, privileges or other powers of the Preferred Stock in a manner adverse to the holders of the Preferred Stock.

(iv) **Size of Board of Directors.** The entire Board of Directors shall consist of not fewer than five (5) and not more than seven (7) members, with the actual number of members of the Board of Directors fixed from time to time by resolution of the Board of Directors. Action by the Board of Directors shall be as set forth in the Corporation's Bylaws.

**(c) Liquidation Rights.**

(i) **Series B Preferred Stock.** Upon any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Common Stock, Class C Common Stock or Series A Preferred Stock or any other class or series of stock ranking on liquidation junior to the Series B Preferred Stock, the holders of Series B Preferred Stock shall be entitled to be paid out of the assets of the Corporation legally available for distribution, or the consideration received in such transaction, an amount per share of Series B Preferred Stock equal to \$9.548 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) plus all accrued and unpaid dividends on the Series B Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and

the like with respect to such shares after the filing date hereof) (the "Series B Liquidation Preference Payment"). If, upon any such liquidation, dissolution, or winding up, the assets of the Corporation (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series B Preferred Stock of the Series B Liquidation Preference Payment, then such assets (or consideration) shall be distributed among the holders of Series B Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(ii) **Series A Preferred Stock.** Upon any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Common Stock, Class C Common Stock or any other class or series of stock ranking on liquidation junior to the Series A Preferred Stock, but subject to the rights of the holders of the Series B Preferred Stock in Section 4.4(c)(i) above, the holders of Series A Preferred Stock shall be entitled to be paid out of the assets of the Corporation legally available for distribution, or the consideration received in such transaction, an amount per share of Series A Preferred Stock equal to \$90.80 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) plus all accrued and unpaid dividends on the Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) (the "Series A Liquidation Preference Payment"). If, upon any such liquidation, dissolution, or winding up, the assets of the Corporation (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series A Preferred Stock of the Series A Liquidation Preference Payment, then such assets (or consideration) shall be distributed among the holders of Series A Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(iii) **Class C Common Stock.** Upon any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Common Stock or any other class or series of stock ranking on liquidation junior to the Class C Common Stock, but subject to the rights of holders of Preferred Stock in Sections 4.4(c)(i) and 4.4(c)(ii) above, the holders of Class C Common Stock shall be entitled to be paid out of the assets of the Corporation legally available for distribution, or the consideration received in such transaction, an amount per share of Class C Common Stock equal to \$2,000.00 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) plus all declared and unpaid dividends on the Class C Common Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) (the "Class C Common Stock Liquidation Preference Payment") and together with the Series B Liquidation Preference Payment and the Series A Liquidation Preference Payment, the "Liquidation Preference Payments"). If, upon any such liquidation, dissolution, or winding up, the assets of the Corporation (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Class C Common Stock of the Class C Common Stock Liquidation Preference Payment, then such assets (or consideration) shall be distributed among the holders of Class C Common Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(iv) After the payment of the full Liquidation Preference Payments, the assets of the Corporation legally available for distribution (or the consideration received in such transaction), if any, shall be distributed ratably to the holders of the Common Stock, Class C Common Stock and Preferred Stock on an as-if-converted to Common Stock basis.

(v) The following events shall be considered a liquidation under this Section:

(A) (1) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization or winding-up of the Corporation, in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than 50.0% of the voting power of the surviving entity immediately after such consolidation, merger or reorganization; or (2) any transaction or series of related transactions to which the Corporation is a party in which in excess of fifty percent (50.0%) of the Corporation's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Corporation (each, an "Acquisition"); or

(B) a sale, lease or other disposition of all or substantially all of the assets of the Corporation (an "Asset Transfer").

(C) In any of such events, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors and each of the holders of a majority of the voting power of all then outstanding shares of Series B Preferred Stock and Series A Preferred Stock each voting as a separate class on an as-if-converted to Common Stock basis. Any securities shall be valued as follows:

(1) Securities not subject to investment letter or other similar restrictions on free marketability covered by (2) below:

(i) 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;

(ii) 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

(iii) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board of Directors and the holders of a majority of the voting power of all then outstanding shares of Series B Preferred Stock and Series A Preferred Stock each voting as a separate class on an as-if-converted to Common Stock basis.



(2) 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 Section 4.4(c)(iv)(C)(1) to reflect the approximate fair market value thereof, as mutually determined by the Board of Directors and each of the holders of a majority of the voting power of all then outstanding shares of Series B Preferred Stock and Series A Preferred Stock each voting as a separate class on an as-if-converted to Common Stock basis.

(vi) Notwithstanding anything to the contrary contained in this Section 4.4(c), the Liquidation Preference Payments set forth above shall be subject to the Management Carve Out (as defined below). "Management Carve Out" means a management bonus pool adopted and approved by the Board of Directors after the Effective Time which shall provide that in the event of a liquidation pursuant to this Section 4.4(c), the Corporation shall agree to allocate fifteen percent (15%) of the gross proceeds resulting from such liquidation to the then current management of the Corporation.

**(d) Preferred Stock Conversion Rights.**

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

(i) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4.4(d), any shares of Preferred Stock 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 Preferred Stock shall be entitled upon conversion shall be the product obtained by (A) multiplying the applicable "Preferred Stock Conversion Rate" then in effect (determined as provided in this Section 4.4(d)) by (B) the number of shares of the applicable Preferred Stock being converted.

(ii) **Series B Preferred Stock Conversion Rate.** The conversion rate in effect at any time for conversion of the Series B Preferred Stock (the "Series B Preferred Stock Conversion Rate") shall be the quotient obtained by (A) dividing \$4.774 by (B) the "Series B Preferred Stock Conversion Price," calculated as provided in Section 4.4(c).

(iii) **Series B Preferred Stock Conversion Price.** The conversion price for the Series B Preferred Stock shall be \$4.774 (the "Series B Preferred Stock Conversion Price"). Such Series B Preferred Stock Conversion Price shall be adjusted from time to time in accordance with this Section 4.4(d). All references to the Series B Preferred Stock Conversion Price herein shall mean the Series B Preferred Stock Conversion Price as so adjusted.

(iv) **Series A Preferred Stock Conversion Rate.** The conversion rate in effect at any time for conversion of the Series A Preferred Stock (the "Series A Preferred Stock Conversion Rate") shall be the quotient obtained by (A) dividing \$45.40 by (B) the "Series A Preferred Stock Conversion Price," calculated as provided in Section 4.4(c).

(v) **Series A Preferred Stock Conversion Price.** The conversion price for the Series A Preferred Stock shall be \$45.40 (the "Series A Preferred Stock Conversion Price"). Such Series A Preferred Stock Conversion Price shall be adjusted from time to time in accordance with this Section 4.4(d). All references to the Series A Preferred Stock Conversion Price herein shall mean the Series A Preferred Stock Conversion Price as so adjusted.

(vi) **Mechanics of Conversion.** Each holder of Preferred Stock who desires to convert the same into shares of Common Stock pursuant to this Section 4.4(d) shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Preferred Stock being converted. Thereupon, the Corporation 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 shall promptly pay (i) at the election of such holder of Preferred Stock either in cash or 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 declared and unpaid dividends on the shares of Preferred Stock being converted; provided, however, if such holder elects cash and there are not sufficient funds available to pay cash to such holder, then to the extent sufficient funds are not then legally available therefor, the Corporation shall pay declared and unpaid dividends to such holder of Preferred Stock in Common Stock; and (ii) 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 Preferred Stock. 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 Preferred Stock 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.

(vii) **Adjustment for Stock Splits and Combinations.** If at any time or from time to time after the date the first share of Preferred Stock was issued the Corporation effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the applicable Preferred Stock Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the date the first share of Preferred Stock was issued the Corporation combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the applicable Preferred Stock Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4.4(d)(vii) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(viii) **Adjustment for Common Stock Dividends and Distributions.** If at any time or from time to time after the date the first share of Preferred Stock was issued the Corporation pays a dividend or other distribution in additional shares of Common Stock, the applicable Preferred Stock Conversion Price that is then in effect shall be decreased as of the time of such issuance, as provided below:

(A) The applicable Preferred Stock Conversion Price shall be adjusted by multiplying the applicable Preferred Stock Conversion Price then in effect by a fraction equal to:

(1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

(2) the denominator of which is 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;

(B) If the Corporation fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the applicable Preferred Stock Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(C) 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 applicable Preferred Stock Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Preferred Stock Conversion Price shall be adjusted pursuant to this Section 4.4(d)(viii) to reflect the actual payment of such dividend or distribution.

**(ix) Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the date the first share of Preferred Stock was issued, the Common Stock issuable upon the conversion of the Preferred Stock 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 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 4.4(d)), in any such event each holder of Preferred Stock shall then have the right 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 Preferred Stock 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.

**(x) Reorganizations, Mergers or Consolidations.** If at any time or from time to time after the date the first share of Preferred Stock was issued, there is a capital reorganization of the Common Stock or the merger or consolidation of the Corporation with or into another corporation or another entity or person (other than an Acquisition or Asset Transfer or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4.4(d)), as a part of such capital reorganization, provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or

other securities or property of the Corporation 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 4.4(d) with respect to the rights of the holders of Preferred Stock after the capital reorganization to the end that the provisions of this Section 4.4(d) (including adjustment of the applicable Preferred Stock Conversion Price then in effect and the number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(xi) Sale of Shares Below Applicable Preferred Stock Conversion Price.

(A) If at any time or from time to time after the date the first share of Preferred Stock was issued, the Corporation issues or sells, or is deemed by the express provisions of this Section 4.4(d)(xi) to have issued or sold, Additional Shares of Common Stock, other than as a dividend or other distribution on any class of stock as provided in Section 4.4(d)(viii) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4.4(d)(vii) above, for an Effective Price (as defined below) less than the then effective applicable Preferred Stock Conversion Price, unless the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of the Series B Preferred Stock, in the case the Effective Price is less than the Series B Preferred Stock Conversion Price, or the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, in the case the Effective Price is less than the Series A Preferred Stock Conversion Price, agreeing that no such adjustment shall be made, then the then existing Preferred Stock Conversion Price, as applicable, shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the applicable Preferred Stock Conversion Price in effect immediately prior to such issuance or sale by a fraction equal to:

(1) 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, plus (B) the number of shares of Common Stock which the Aggregate Consideration (as defined below) received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such applicable Preferred Stock Conversion Price, and

(2) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

For the purposes of the second sentence of the preceding paragraph, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Class C Common Stock could be converted if fully converted on the day immediately preceding the given date, (C) the number of shares of Common Stock into which the then outstanding shares of Preferred Stock could be converted if

fully converted on the day immediately preceding the given date and (D) the number of shares of Common Stock into which the then outstanding options, warrants or subscriptions rights could be exercised, exchanged or converted.

(B) No adjustment shall be made to the applicable Preferred Stock Conversion Price in an amount less than one cent per share. Any adjustment otherwise required by this Section 4.4(d)(xi) that is not required to be made due to the preceding sentence shall be included in any subsequent adjustment to the applicable Preferred Stock Conversion Price.

(C) For the purpose of making any adjustment required under this Section 4.4(d)(xi), the aggregate consideration received by the Corporation for any issue or sale of securities (the "Aggregate Consideration") shall be defined as: (A) to the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale but without deduction of any other expenses payable by the Corporation, (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 below) 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 Corporation 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.

(D) For the purpose of the adjustment required under this Section 4.4(d)(xi), if the Corporation issues or sells (x) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or (y) 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 Preferred Stock Conversion Price, in each case the Corporation 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 Corporation for the issuance of such rights or options or Convertible Securities plus:

(1) in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options; and

(2) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); *provided* that if the minimum amounts of such consideration cannot be ascertained,

but are a function of anti-dilution or similar protective clauses, the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses.

(3) If the minimum amount of consideration payable to the Corporation 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 anti-dilution 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 Corporation 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 Corporation upon the exercise or conversion of such rights, options or Convertible Securities.

(4) No further adjustment of the applicable Preferred Stock 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 or 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 Preferred Stock Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the applicable Preferred Stock 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 Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation 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 Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of Preferred Stock.

(E) For the purpose of making any adjustment to the applicable Preferred Stock Conversion Price required under this Section 4.4(d)(xi), "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 4.4(d)(xi) (including shares of Common Stock subsequently reacquired or retired by the Corporation), other than:

(1) shares of Common Stock issued upon conversion of the Preferred Stock or the Class C Common Stock;

(2) shares of Common Stock issued as a dividend or distribution on the Preferred Stock;

(3) up to 215,964 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 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof) after the filing date hereof to employees, officers or directors of, or consultants or advisors to the Corporation or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are, in each case, approved by the Board of Directors, including the affirmative vote of the directors representing the holders of Series B Preferred Stock; provided, however, that such amount shall be increased to reflect any shares of Common Stock (i) not issued pursuant to the rights, agreements, options or warrants outstanding as of the filing date hereof ("Outstanding Options") as a result of the termination of such Outstanding Options or (ii) reacquired by the Corporation from employees, directors or consultants at cost pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation;

(4) up to 3,796 shares of Series A Preferred Stock and/or options, warrants or other Series A Preferred Stock purchase rights and the Series A Preferred Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof) after the filing date hereof to employees, officers or directors of the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are, in each case, approved by the Board of Directors, including the affirmative vote of the directors representing the holders of Series B Preferred Stock;

(5) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the date of filing hereof;

(6) shares of Common Stock or Preferred Stock issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board of Directors;

(7) shares of Common Stock or Preferred Stock issued to third-party service providers in exchange for or as partial consideration for services rendered to the Corporation approved by the Board of Directors;

(8) shares of Common Stock or Preferred Stock issued upon the prior written approval of two-thirds (66.67%) of the holders of the Series B Preferred Stock and a majority of the holders of the Series A Preferred Stock; and

(9) any equity securities issued in connection with strategic transactions involving the Corporation and other entities, including (i) marketing or distribution arrangements or (ii) technology transfer or development arrangements; *provided* that the issuance of shares therein has been approved by the Corporation's Board of Directors.

References to Common Stock in the subsections of this clause (E) above shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 4.4(d)(xi). 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 Corporation under this Section 4.4(d)(xi),

into the Aggregate Consideration received, or deemed to have been received by the Corporation for such issue under this Section 4.4(d)(xi), for such Additional Shares of Common Stock.

**(xii) Certificate of Adjustment.** In each case of an adjustment or readjustment of the applicable Preferred Stock Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Preferred Stock, if any Preferred Stock is then outstanding, the Corporation, 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 Preferred Stock at the holder's address as shown in the Corporation'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 (A) the consideration received or deemed to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (B) the applicable Preferred Stock Conversion Price at the time in effect, (C) the number of Additional Shares of Common Stock and (D) the type and amount, if any, of other property which at the time would be received upon conversion of the Preferred Stock.

**(xiii) Notices of Record Date.** Upon (A) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (B) any Acquisition or other capital reorganization of the Corporation, any reclassification or recapitalization of the stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, or any Asset Transfer, or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Preferred Stock at least ten (10) days prior to the record date specified therein (or such shorter period approved by the holders of a majority of the then outstanding shares of Series B Preferred Stock voting on an as-if-converted to Common Stock basis and the holders of a majority of the then outstanding shares of Series A Preferred Stock voting on an as-if-converted to Common Stock basis) a notice specifying (1) 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, (2) 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 (3) 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.

**(xiv) Automatic Conversion.**

(A) Each share of Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective applicable Preferred Stock Conversion Price (1) 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 Corporation in which (i) the per share price is at least \$14.322 (as adjusted for stock splits, dividends, recapitalizations and



the like after the filing date hereof), and (ii) the gross cash proceeds to the Corporation (before underwriting discounts, commissions and fees) are at least \$30,000,000 or (2) in the case of the Series B Preferred Stock, upon the election of holders of at least a majority of the then outstanding shares of Series B Preferred Stock, or in the case of the Series A Preferred Stock, upon the election of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4.4(d)(vi).

(B) Upon the occurrence of either of the events specified in Section 4.4(d)(xiv)(A) above, the outstanding shares of Series B Preferred Stock and/or Series A Preferred Stock, as the case may be, shall be converted automatically without any further action by the holders of such shares and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided, however*, that the Corporation 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 B Preferred Stock and/or Series A Preferred Stock, as the case may be, are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series B Preferred Stock and/or Series A Preferred Stock, as the case may be, the holders of Series B Preferred Stock and/or Series A Preferred Stock, as the case may be, shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series B Preferred Stock and/or Series A Preferred Stock. 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 B Preferred Stock and/or Series A Preferred Stock, as the case may be, surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4.4(d)(vi).

**(xv) Special Automatic Conversion.**

(A) Any holder of shares of Series A Preferred Stock or Class C Common Stock that did not elect to participate in the Qualified Financing (as defined below) by notifying the Corporation of such holder's election to purchase in the aggregate, in such Qualified Financing and within the time period specified by the Corporation (the Corporation has previously sent to each holder of Series A Preferred Stock and Class C Common Stock at least 15 days written notice of, and the opportunity to purchase its Pro Rata Amount (as defined below) in the Qualified Financing)), such holder's Pro Rata Amount, then effective upon, subject to, and concurrently with, the consummation of the Qualified Financing, all shares of the shares of Series A Preferred Stock or Class C Common Stock, as the case may be, held by such holder shall automatically, and without any further action on the part of such holder, be converted, in the case of Series A Preferred Stock, into shares of Common Stock at the Series A Preferred Stock Conversion Price, in effect immediately prior to the consummation of such Qualified Financing, and, in the case of Class C Common Stock, into shares of Common Stock at the rate of one share of Common Stock for each share of Class C Common Stock then outstanding, in each case, effective upon, subject to, and concurrently with, the consummation of

the Qualified Financing. For purposes of determining the number of shares of Series A Preferred Stock owned by a holder, and for determining the number of Offered Securities (as defined below) a holder of Series A Preferred Stock has purchased in a Qualified Financing, all shares of Series A Preferred Stock held by Affiliates (as defined below) of such holder shall be aggregated with such holder's shares and all Offered Securities purchased by Affiliates of such holder shall be aggregated with the Offered Securities purchased by such holder (provided that no shares or securities shall be attributed to more than one entity or person within any such group of affiliated entities or persons). For purposes of determining the number of shares of Class C Common Stock owned by a holder, and for determining the number of Offered Securities a holder of Class C Common Stock has purchased in a Qualified Financing, all shares of Class C Common Stock held by Affiliates (as defined below) of such holder shall be aggregated with such holder's shares and all Offered Securities purchased by Affiliates of such holder shall be aggregated with the Offered Securities purchased by such holder (provided that no shares or securities shall be attributed to more than one entity or person within any such group of affiliated entities or persons). Such conversion is referred to as a "Special Automatic Conversion".

(B) Upon a Special Automatic Conversion, each holder of shares of Series A Preferred Stock or Class C Common Stock, as the case may be, converted pursuant to Section 4.4(d)(xv) shall surrender such holder's certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 4.4(d)(xv). All rights with respect to the Series A Preferred Stock or Class C Common Stock, as the case may be, converted pursuant to Section 4.4(d)(xv), including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor (or lost certificate affidavit and agreement), to receive the items provided for in the last sentence of this Section 4.4(d)(xv)(B). 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 by such holder's attorney duly authorized in writing. As soon as practicable after the Special Automatic Conversion and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series A Preferred Stock or Class C Common Stock, as the case may be, so converted, the Corporation shall issue and deliver to such holder, or to such holder's nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Series A Preferred Stock or Class C Common Stock, as the case may be, converted.

(C) All shares of Series A Preferred Stock or Class C Common Stock, as the case may be, shall, from and after the time of the Special Automatic Conversion, no longer be deemed to be outstanding and, notwithstanding the failure of the holder or holders thereof to surrender the certificates for such shares on or prior to such time, all rights with respect to such shares shall immediately cease and terminate at the time of the Special

Automatic Conversion, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Such converted Series A Preferred Stock or Class C Common Stock, as the case may be, shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock or Class C Common Stock, as the case may be, accordingly.

(D) For purposes of this Section 4.4(d)(xv), the following definitions shall apply:

(1) “Affiliate” shall mean, with respect to any holder of shares of Series A Preferred Stock or Class C Common Stock, as the case may be, any person, entity or firm which, directly or indirectly, controls, is controlled by or is under common control with such holder, including, without limitation, any entity of which the holder is a partner or member, any partner, officer, director, member or employee of such holder and any venture capital fund now or hereafter existing of which the holder is a partner or member which is controlled by or under common control with one or more general partners of such holder or shares the same management company with such holder.

(2) “Offered Securities” shall mean the equity securities of the Corporation set aside by the Board of Directors of the Corporation for purchase by holders of outstanding shares of Series A Preferred Stock or Class C Common Stock, as the case may be, in connection with a Qualified Financing, and offered to such holders.

(3) “Pro Rata Amount” shall mean, (i) with respect to any holder of Series A Preferred Stock, the number of Offered Securities calculated by multiplying the aggregate number of Offered Securities by a fraction, the numerator of which is equal to the number of shares of the Company’s Common Stock (including all shares of Common Stock issued or issuable upon conversion of the shares of Series A Preferred Stock and Class C Common Stock) which such holder is deemed to be a holder immediately prior to the issuance of such Offered Securities and the denominator of which is equal to the total number of shares of the Company’s outstanding Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock and Class C Common Stock, but excluding shares of Common Stock issued or issuable upon the exercise of any outstanding warrants or options) or (ii) with respect to any holder of Class C Common Stock, the number of Offered Securities calculated by multiplying the aggregate number of Offered Securities by a fraction, the numerator of which is equal to the number of shares of the Company’s Common Stock (including all shares of Common Stock issued or issuable upon conversion of the shares of Series A Preferred Stock and Class C Common Stock) which such holder is deemed to be a holder immediately prior to the issuance of such Offered Securities and the denominator of which is equal to the total number of shares of the Company’s outstanding Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock and Class C Common Stock, but excluding shares of Common Stock issued or issuable upon the exercise of any outstanding warrants or options).

(4) "Qualified Financing" shall mean any transaction involving the issuance or sale of equity securities of the Corporation after the Effective Time which would result in at least \$3,500,000 in gross proceeds to the Corporation (inclusive of the conversion of outstanding indebtedness).

(xvi) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock 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 Corporation 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.

(xvii) **Reservation of Stock Issuable Upon Conversion.** The Corporation 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 Preferred Stock, 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 Preferred Stock. 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 Preferred Stock, the Corporation 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.

(xviii) **Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (A) upon personal delivery to the party to be notified, (B) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (C) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (D) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with 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 Corporation.

(xix) **Payment of Taxes.** The Corporation 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 Preferred Stock, 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 Preferred Stock so converted were registered.

(xx) **No Dilution or Impairment.** Without the consent of the holders of then outstanding Preferred Stock as required under Section 4.4(b), the Corporation shall not amend its Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of

the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of Preferred Stock against dilution or other impairment.

#### **SECTION 4.5. REDEMPTION.**

(a) **Redemption of Series B Preferred Stock.** The Corporation shall not have the right to call or redeem at any time all or any shares of Series B Preferred Stock. With the approval of the holders of at least two thirds (66.67%) of the then outstanding shares of Series B Preferred Stock, one or more holders of shares of Series B Preferred Stock may, by giving notice (the "Series B Redemption Notice") to the Corporation at any time after November 30, 2011, require the Corporation to redeem all of the outstanding Series B Preferred Stock in three equal annual installments, with one-third of the shares of Series B Preferred Stock redeemed on the First Series B Redemption Date (as defined below), one-third of the shares of Series B Preferred Stock redeemed on the first anniversary of the First Series B Redemption Date (the "Second Series B Redemption Date") and the remainder redeemed on the second anniversary of the First Series B Redemption Date (the "Third Series B Redemption Date"). Upon receipt of the Series B Redemption Notice, the Corporation will so notify all other persons holding Series B Preferred Stock. After receipt of the Series B Redemption Notice, the Corporation shall fix the first date for redemption (the "First Series B Redemption Date"), provided that such First Series B Redemption Date shall occur within ninety (90) days after receipt of the Series B Redemption Notice. All holders of Series B Preferred Stock shall deliver to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Series B Preferred Stock or at the principal office of the Corporation or at such other place as may be designated by the Corporation, the certificate or certificates for the Series B Preferred Stock duly endorsed for transfer to the Corporation or in blank on or before the First Series B Redemption Date. The First Series B Redemption Date, the Second Series B Redemption Date and the Third Series B Redemption Date are collectively referred to as the "Series B Redemption Dates".

(b) **Series B Redemption Price and Payment.** The Series B Preferred Stock to be redeemed on the Series B Redemption Dates shall be redeemed by paying for each share in cash an amount equal to the greater of (i) an amount per share of Series B Preferred Stock equal to \$9.548 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) plus all accrued and unpaid dividends on the Series B Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) provided such dividends are from earnings, (ii) (A) six (6) times the trailing twelve months of the Corporation's Earnings Before Interest, Taxes and Depreciation ("EBITDA"), as determined in accordance with generally accepted accounting principles, plus an amount equal to the total amount of (1) all accrued and unpaid dividends on each share through the respective Series B Redemption Date, whether or not declared, provided such dividends are from earnings and (2) all other declared and unpaid dividends on each share provided such dividends are from earnings, divided by (B) the number of outstanding shares of Series B Preferred Stock on an as converted basis (including shares of Common Stock into which shares of Series B Preferred Stock have actually been converted, if any), and (iii) the fair

value of one share of Series B Preferred Stock at the time of the First Series B Redemption Date, as determined by an independent appraiser selected by the holders of a two-thirds (66.67%) of the Series B Preferred Stock then outstanding which appraiser shall be reasonably satisfactory to the Corporation, such amount being referred to as the "Series B Redemption Price." Such payment shall be made in full on each of the Series B Redemption Dates to the holders entitled thereto.

(c) **Redemption of Series A Preferred Stock.** Notwithstanding anything to the contrary contained herein, upon and subject to the availability of sufficient cash in the Corporation to redeem all of the shares of Series B Preferred Stock in accordance with Sections 4.5(a) and (b) above, the Corporation shall redeem the Series A Preferred Stock in accordance with this Section 4.5(c). The Corporation shall not have the right to call or redeem at any time all or any shares of Series A Preferred Stock. With the approval of the holders of a majority of the then outstanding shares of Series A Preferred Stock, one or more holders of shares of Series A Preferred Stock may, by giving notice (the "Series A Redemption Notice") to the Corporation at any time after November 30, 2011, require the Corporation to redeem all of the outstanding Series A Preferred Stock in three equal annual installments, with one-third of the shares of Series A Preferred Stock redeemed on the First Series A Redemption Date (as defined below), one-third of the shares of Series A Preferred Stock redeemed on the first anniversary of the First Series A Redemption Date (the "Second Series A Redemption Date") and the remainder redeemed on the second anniversary of the First Series A Redemption Date (the "Third Series A Redemption Date"). Upon receipt of the Series A Redemption Notice, the Corporation will so notify all other persons holding Series A Preferred Stock. After receipt of the Series A Redemption Notice, the Corporation shall fix the first date for redemption (the "First Series A Redemption Date"), provided that such First Series A Redemption Date shall occur within ninety (90) days after receipt of the Series A Redemption Notice. All holders of Series A Preferred Stock shall deliver to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Series A Preferred Stock or at the principal office of the Corporation or at such other place as may be designated by the Corporation, the certificate or certificates for the Series A Preferred Stock duly endorsed for transfer to the Corporation or in blank on or before the First Series A Redemption Date. The First Series A Redemption Date, the Second Series A Redemption Date and the Third Series A Redemption Date are collectively referred to as the "Series A Redemption Dates" and together with the Series B Redemption Dates, the "Redemption Dates".

(d) **Series A Redemption Price and Payment.** The Series A Preferred Stock to be redeemed on the Series A Redemption Dates shall be redeemed by paying for each share in cash an amount equal to (A) six (6) times the trailing twelve months of the Corporation's EBITDA, as determined in accordance with generally accepted accounting principles, plus an amount equal to the total amount of (i) all accrued and unpaid dividends on each share through the respective Series A Redemption Date, whether or not declared, and (ii) all other declared and unpaid dividends on each share, divided by (B) the number of outstanding shares of Series A Preferred Stock on an as converted basis (including shares of Common Stock into which shares of Series A Preferred Stock have actually been converted, if any), such amount being referred to as the "Series A Redemption Price." Such payment shall be made in full on each of the Series A Redemption Dates to the holders entitled thereto.

(e) **PPL Redemption; Redemption Price and Payment.** Upon the redemption, repurchase or reverse split by the Corporation of any of its issued and outstanding shares of stock, the Corporation shall simultaneously redeem and repurchase that number of shares of Corporation stock held by PPL Broadband, LLC, a Delaware limited liability company (and any of its affiliates) ("PPL") necessary to maintain PPL's ownership of the Corporation at the Non-Affiliate Percentage (as defined below). Such redemptions shall be at a purchase price equal to (A) six (6) times the trailing twelve months of the Corporation's EBITDA, plus all accrued and unpaid dividends on each such share through the time of redemption or repurchase hereunder, divided by (B) the number of outstanding shares of Series A Preferred Stock on an as converted basis (including shares of Common Stock into which shares of Series A Preferred Stock have actually been converted, if any), and consideration for such shares may, at the election of the Corporation, be paid in cash or in the form of promissory note with a three year term, and bearing interest at 8.0% per annum. To the extent that this Section 4.5(c) requires the redemption or repurchase of less than all of the shares of the Corporation's stock held by PPL, the shares of the Corporation's stock redeemed or repurchased pursuant to this Section 4.5(c) shall be redeemed or repurchased in the same sequence in which such shares were issued. The term "Non-Affiliate Percentage" shall mean that number of shares of stock of the Corporation that provides PPL 19.9% ownership of the Corporation, as such percentage shall be determined in accordance with generally accepted accounting principles consistently applied by PPL in connection with its preparation of its consolidated financial reports.

(f) **Redemption Mechanics.** With respect to the redemption contemplated by Sections 4.5(a), (b), (c) and (d): At least 20 but not more than 30 days prior to each Redemption Date, written notice (the "Redemption Notice") shall be given by the Corporation by mail, postage prepaid, or by facsimile transmission to non-U.S. residents, to each holder of record (at the close of business on the business day next preceding the day on which the Redemption Notice is given) of shares of Series B Preferred Stock or Series A Preferred Stock, as the case may be, notifying such holder of the redemption and specifying the Series B Redemption Price or Series A Redemption Price, as the case may be, the Redemption Date and the place where said Series B Redemption Price or Series A Redemption Price, as the case may be, shall be payable. The Redemption Notice shall be addressed to each holder at his electronic or other address as shown by the records of the Corporation. From and after the close of business on the applicable Redemption Date, unless there shall have been a default in the payment of the Series B Redemption Price or Series A Redemption Price, as the case may be, all rights of holders of shares of Series B Preferred Stock or Series A Preferred Stock, as the case may be (except the right to receive the Series B Redemption Price or the Series A Redemption Price, as the case may be) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series B Preferred Stock on any applicable Series B Redemption Date are insufficient to redeem the total number of outstanding shares of Series B Preferred Stock to be redeemed on such Series B Redemption Date, the holders of shares of Series B Preferred Stock shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable with respect to the full number of shares owned by them if all such outstanding shares were redeemed in full. The shares of Series B Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. The Corporation shall not make any payments to redeem shares of Series A Preferred Stock in the event there is not

available sufficient cash to redeem all of the shares of Series B Preferred Stock. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series B Preferred Stock such funds will be used, no later than the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above. If, following the redemption of all shares of Series B Preferred Stock, the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock on any applicable Series A Redemption Date are insufficient to redeem the total number of outstanding shares of Series A Preferred Stock to be redeemed on such Series A Redemption Date, the holders of shares of Series A Preferred Stock shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable with respect to the full number of shares owned by them if all such outstanding shares were redeemed in full. The shares of Series A Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series A Preferred Stock such funds will be used, no later than the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above.

(g) **Redeemed or Otherwise Acquired Shares to be Retired.** Any shares of Preferred Stock redeemed pursuant to this Section 4.5 or otherwise acquired by the Corporation in any manner whatsoever shall be canceled and shall not under any circumstances be reissued; 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 Preferred Stock.

**Section 4.6. Rights, Preferences, Privileges and Restrictions of Common Stock.**

The rights, preferences, privileges, restrictions and other matters relating to the Common Stock are as follows:

(a) **GENERAL.** The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Series B Preferred Stock, the Series A Preferred Stock and the Preferred Stock of any other series as may be designated by the Board of Directors upon any issuance thereof.

(b) **VOTING RIGHTS.** The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

(c) **DIVIDENDS.** Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any restrictions set forth herein and any preferential dividend rights of Series B Preferred Stock, Series A Preferred Stock and any then outstanding Preferred Stock (or Preferred Stock no longer outstanding but for which the right to dividend payments continues).

(d) **LIQUIDATION.** Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights (and participation rights) of any then outstanding Preferred Stock and Class C Common Stock.



**Section 4.7. Preferences, Privileges and Restrictions of Class C Common Stock.**

The rights, preferences, privileges, restrictions and other matters relating to the Class C Common Stock are as follows:

(a) **GENERAL.** The voting, dividend and liquidation rights of the holders of the Class C Commons Stock are subject to and qualified by the rights of the holders of the Series B Preferred Stock, the Series A Preferred Stock and the Preferred Stock of any other series as may be designated by the Board of Directors upon any issuance of such Series B Preferred Stock, Series A Preferred Stock or such Preferred Stock of any series.

(b) **VOTING RIGHTS.** The holders of the shares of Class C Common Stock shall have voting rights equal to the voting rights of the Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Except as otherwise provided herein or as required by law, the Class C Common Stock shall vote together with the Common Stock, the Series A Preferred Stock and the Series B Preferred Stock at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the Common Stock in accordance with the Bylaws of the Corporation.

(c) **DIVIDENDS.** Dividends may be declared and paid on the Class C Common Stock from funds lawfully available therefor by the Board of Directors and subject to any restrictions set forth herein and any preferential dividend rights of any then outstanding Preferred Stock (or Preferred Stock no longer outstanding but for which the right to dividend payments continues).

(d) **LIQUIDATION.** The liquidation rights of the Series C Common Stock are provided in Section 4.4(c)(iii), (iv) and (v).

(e) **CLASS C COMMON STOCK CONVERSION RIGHTS.** Except as otherwise provided in Section 4.4(d)(xv), the holders of the shares of Class C Common Stock shall have the following rights with respect to the conversion of the Class C Common Stock into Common Stock (the "Class C Common Stock Conversion Rights"):

(i) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4.7(e), each share of Class C Common Stock may, at the option of the holder, be converted at any time into one fully-paid and nonassessable share of Common Stock.

(ii) **Mechanics of Conversion.** Before the holders of the Class C Common Stock shall be entitled to convert the same into Common Stock pursuant to Section 4.7(e)(i), each such holder shall surrender the certificate therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Class C Common Stock, and shall give written notice by registered mail, postage prepaid, to the Corporation at its principal corporate office, of the election to convert the same, and such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the Class C Common Stock to be converted; *provided, however*, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Class C Common Stock are either delivered to the

Corporation or its transfer agent, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable thereafter, issue and deliver to such address as each such holder may direct, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled.

**(iii) Automatic Conversion.**

**(A)** Each share of Class C Common Stock shall automatically be converted into one share of Common Stock (1) 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 Corporation in which (i) the per share price is at least \$14.322 (as adjusted for stock splits, dividends, recapitalizations and the like after the filing date hereof), and (ii) the gross cash proceeds to the Corporation (before underwriting discounts, commissions and fees) are at least \$30,000,000 or (2) upon the election of holders of at least a majority of the then outstanding shares of Class C Common Stock.

**(B)** Upon the occurrence of either of the events specified in Section 4.7(e)(iii) above, the outstanding shares of Class C Common Stock shall be converted automatically without any further action by the holders of such shares and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided, however*, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Class C Common Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Class C Common Stock, the holders of Class C Common Stock shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Class C Common Stock. 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 Class C Common Stock surrendered were convertible on the date on which such automatic conversion occurred.

**(iv) Reservation of Stock Issuable Upon Conversion.** The Corporation 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 Class C Common Stock, 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 Class C Common Stock. 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 Class C Common Stock, the Corporation 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.

(v) **Status of Converted Stock.** In the event the shares of Class C Common Stock shall be converted pursuant to this Section 4.7(e), the shares so converted shall be canceled and shall not be reissued by the Corporation.

(vi) **No Impairment.** The Corporation will not, by amendment of this Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 2 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Class C Common Stock against impairment.

#### **ARTICLE V.**

**Section 5.1.** The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent under applicable law.

**Section 5.2.** Any repeal or modification of this Article V shall only be prospective and shall not affect 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.

#### **ARTICLE 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 further *provided* that:

**Section 6.1.** The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Certificate of Incorporation.

**Section 6.2.** The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Corporation.

**Section 6.3.** The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

#### **ARTICLE VII.**

Pursuant to Section 122(17) of the DGCL, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, opportunities in the Corporation's current and potential lines of business that are presented to (a) one or more of the members of the Corporation's board of directors who represent holders of the Preferred Stock (other than in their capacity as a director of the Corporation) or (b) any holders of the Preferred Stock (other than members of management of the Company who hold Preferred Stock).

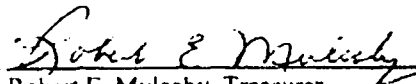
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**FOURTH:** This Third Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Corporation.

**FIFTH:** This Third Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 241 and 245 of the DGCL by a majority of the Board of Directors.

IN WITNESS WHEREOF, Amperion, Inc. has caused this Third Restated Certificate of Incorporation to be signed by its authorized officer this 30th day of June, 2006.

AMPERION, INC.

  
Robert E. Mulcahy, Treasurer