

NE-3

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 03:17 PM 03/29/2006  
FILED 02:43 PM 03/29/2006  
SRV 060298143 - 3466301 FILE

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ACOPIA NETWORKS, INC.

Pursuant to Section 242  
of the General Corporation Law of  
the State of Delaware

Acopia Networks, Inc. (hereinafter called the "Corporation"), organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

1. The name of the Corporation is Acopia Networks, Inc. The original Certificate of Incorporation of this corporation was filed with the Secretary of State of the State of Delaware on December 26, 2001, under the name Acopia Networks, Inc.

2. This Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Certificate of Incorporation of the Corporation and all amendments thereto, and was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

3. The Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

FIRST: The name of the Corporation is: Acopia Networks, Inc.

SECOND: The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is as follows:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 90,000,000 shares of Common Stock, \$.001 par value per share ("Common Stock") and (ii) 70,111,810 shares of Preferred Stock, \$.01 par value per share ("Preferred Stock"), of which 10,960,000 shares have been designated as Series A Convertible Preferred Stock ("Series A Preferred Stock"), 25,751,087 shares have been designated as Series B Convertible Preferred Stock ("Series B Preferred Stock"), 19,297,298 shares have been designated as Series C Convertible Preferred Stock ("Series C Preferred Stock") and 14,103,425 shares have been designated as Series D Convertible Preferred Stock ("Series D Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK.

1. 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 Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

2. Voting. 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.

Except as otherwise provided in the Corporation's Certificate of Incorporation, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of stock representing a majority of the votes represented by the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

3. Dividends. Subject to the provisions of Subsection B.3(d) hereof and any preferential dividend rights of any then outstanding Preferred Stock, dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors.

4. 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 of any then outstanding Preferred Stock.

B. SERIES A CONVERTIBLE PREFERRED STOCK, SERIES B CONVERTIBLE PREFERRED STOCK, SERIES C CONVERTIBLE PREFERRED STOCK AND SERIES D CONVERTIBLE PREFERRED STOCK.

The Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations.

1. Dividends.

(a) The Corporation shall not declare, pay or set aside any dividends on shares of Common Stock (other than dividends payable in shares of Common Stock on the outstanding shares of Common Stock) unless (i) the holders of Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock equal to the greater of (A) \$.08 per share per annum (subject to appropriate

adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) and (B) the product of (1) the per share dividend to be declared, paid or set aside for the Common Stock, multiplied by (2) the number of shares of Common Stock into which such share of Series A Preferred Stock is then convertible. (ii) the holders of Series B Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series B Preferred Stock equal to the greater of (A) \$.0932 per share per annum (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) and (B) the product of (1) the per share dividend to be declared, paid or set aside for the Common Stock, multiplied by (2) the number of shares of Common Stock into which such share of Series B Preferred Stock is then convertible, (iii) the holders of Series C Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series C Preferred Stock equal to the greater of (A) \$.1036 per share per annum (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) and (B) the product of (1) the per share dividend to be declared, paid or set aside for the Common Stock, multiplied by (2) the number of shares of Common Stock into which such share of Series C Preferred Stock is then convertible, and (iv) the holders of Series D Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series D Preferred Stock equal to the greater of (A) \$.11912 per share per annum (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) and (B) the product of (1) the per share dividend to be declared, paid or set aside for the Common Stock, multiplied by (2) the number of shares of Common Stock into which such share of Series D Preferred Stock is then convertible.

(b) The Corporation shall not declare, pay or set aside any dividends on shares of any series of Preferred Stock of the Corporation unless the holders of the other three series of Preferred Stock shall first receive, or simultaneously receive, a dividend on each outstanding share of such other series of Preferred Stock in an amount proportionate (based on the relative amounts of the dividends payable pursuant to clauses (i)(A), (ii)(A), (iii)(A) and (iv)(A) of Subsection B.1(a) above) to the dividend per share on the first such series of Preferred Stock determined as if all such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock had been converted into Common Stock on the record date for determination of holders entitled to receive such dividend.

(c) Notwithstanding the foregoing provisions, (i) no dividend or other distribution shall accrue or be paid with respect to any share of capital stock of the Corporation for any period, whether before or after the effective date of this Certificate of Incorporation, unless and until (A) declared by the Board of Directors of the Corporation and (B) approved by the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock in accordance with Subsection B.3(d) hereof and (ii) no dividends shall automatically accrue on shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock.

(d) Whenever a dividend provided for in this Subsection B.1 shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation.

(e) If, at the time of any conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock pursuant to the terms of Subsections B.4 or B.5 hereof, declared and unpaid dividends exist with respect to any such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, then all such declared and unpaid dividends on such converted shares shall be cancelled.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) Payments to Holders of Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, whether such assets are capital, surplus, or earnings, before any payment or declaration and setting apart for payment of any amount shall be made in respect of the Common Stock or any other class or series of stock ranking on liquidation junior to the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock by reason of their ownership thereof, an amount equal to the greater of (i) \$1.00 per share in the case of the Series A Preferred Stock, \$1.165 per share in the case of the Series B Preferred Stock, \$1.295 per share in the case of the Series C Preferred Stock and \$1.489 per share in the case of the Series D Preferred Stock (subject in each case to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), plus in each case any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had each share of each series of Preferred Stock that would receive a greater amount upon conversion into Common Stock than pursuant to clause (i) above converted into Common Stock pursuant to Subsection B.4 immediately prior to such liquidation, dissolution or winding up (the amounts payable pursuant to this sentence are hereinafter referred to as the "Series A Liquidation Amount", the "Series B Liquidation Amount", the "Series C Liquidation Amount" and the "Series D Liquidation Amount", respectively). If upon any such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock the full preferential amounts to which such holders shall be entitled pursuant to this Subsection B.2(a), then the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall share ratably in any distribution of such assets of the Corporation in proportion to the respective amounts that would otherwise be payable in respect of such shares held by them upon such distribution if all preferential amounts payable on or with respect to such shares, in accordance with this Subsection B.2(a), were paid in full.

(b) Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of the aggregate amount payable to the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock pursuant to Subsection B.2(a) above, the remaining assets of the Corporation available for distribution to its stockholders shall

be distributed among the holders of shares of Common Stock, pro rata based on the number of shares of Common Stock held by each.

(c) Deemed Liquidation Events.

(i) Each of the following events shall be deemed to be a liquidation of the Corporation for purposes of this Subsection B.2 and Subsection B.5(a) (each a "Deemed Liquidation Event"):

(A) a merger or consolidation in which

(I) the Corporation is a constituent party or

(II) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold immediately following such merger or consolidation, in approximately the same proportions as such shares were held immediately prior to such merger or consolidation, at least a majority, by voting power and economic interest, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(B) the sale, lease, exclusive license, or other transfer, in a single transaction or series of related transactions, by the Corporation of all or substantially all the assets of the Corporation (except where such sale is to a wholly owned subsidiary of the Corporation).

(ii) The Corporation shall not effect any transaction constituting a Deemed Liquidation Event pursuant to Subsection B.2(c)(i)(A)(I) above unless (A) the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections B.2(a) and B.2(b) above or (B) (I) the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, voting together as a single class, representing a majority of the votes represented by all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock specifically consent in writing to the allocation of such consideration in a manner different from that provided in Subsections B.2(a) and B.2(b) above and (II) if the holders of the Series D Preferred Stock would be allocated less of the consideration payable to the stockholders of the Corporation than if the consideration was allocated in the manner provided for in Subsections B.2(a) and B.2(b) above, the holders of at least 75% of the then outstanding shares of Series D Preferred Stock voting separately as a class specifically consent in writing to the allocation of such consideration in a manner different from that provided in Subsections B.2(a) and B.2(b) above.

(d) Conversion Prior to Liquidating Distributions. Any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock may, at such holder's option, convert all or a portion of such shares into Common Stock immediately prior to a Deemed Liquidation Event and thereby receive distributions with the holders of the Common Stock in lieu of receiving distributions with the holders of such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as applicable.

(e) Redemption Upon Liquidation Event.

(i) In the event of a Deemed Liquidation Event pursuant to Subsection B.2(c)(i)(A)(II) or B.2(c)(i)(B) above, if the Corporation does not effect a dissolution of the Corporation under the Delaware General Corporation Law within 90 days after such Deemed Liquidation Event, then the Corporation shall deliver a written notice to each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock no later than 90 days after such Deemed Liquidation Event advising such holders of their rights (and the requirements to be met to secure such rights), pursuant to the terms of this Subsection B.2(e), to require the redemption of such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock.

(ii) If the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, voting together as a single class, representing a majority of the votes represented by all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock so request in a written instrument delivered to the Corporation not later than 120 days after any such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation from such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold, leased or licensed, as determined in good faith by the Board of Directors of the Corporation), to the extent legally available therefor, together with any other assets of the Corporation available for distribution to its stockholders (the "Net Proceeds"), to redeem, on the 150<sup>th</sup> day after such Deemed Liquidation Event (the "Liquidation Redemption Date"), all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock at a price per share equal to the Series A Liquidation Amount, the Series B Liquidation Amount, the Series C Liquidation Amount or the Series D Liquidation Amount, as applicable. In the event of a redemption pursuant to the terms of this Subsection B.2(e)(ii), if the Net Proceeds are not sufficient to redeem all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, the Corporation shall redeem such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock ratably in proportion to the respective amounts that would otherwise be payable in respect of such shares in accordance with this Subsection B.2(e)(ii) if the Net Proceeds were sufficient to redeem all such outstanding shares.

(iii) The provisions of Subsections 6(c) through 6(g) below shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock pursuant to this Subsection B.2(e).

(f) Limitation on Use of Proceeds. Prior to any distribution or redemption provided for in this Subsection B.2, the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

(g) Value of Payments, Distributions. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

3. Voting.

(a) General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written action of stockholders in lieu of meeting), each holder of outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the provisions of Subsections B.3(b), B.3(c) and B.3(d) below, holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall vote together with the holders of Common Stock, and with the holders of any other series of Preferred Stock the terms of which so provide, as a single class.

(b) Election of Directors.

(i) Allocation of Board Seats.

(A) For so long as at least 2,575,108 shares of Series B Preferred Stock remain outstanding (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), the holders of record of shares of Series B Preferred Stock, voting exclusively and as a separate class, shall be entitled to elect two directors of the Corporation (the "Series B Directors").

(B) For so long as at least 1,096,000 shares of Series A Preferred Stock remain outstanding (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), the holders of record of shares of Series A Preferred Stock, voting exclusively and as a separate class, shall be entitled to elect two directors of the Corporation (the "Series A Directors").

(C) The holders of record of Common Stock, voting exclusively and as a separate class, shall be entitled to elect one director of the Corporation (the "Common Director").

(D) The holders of record of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, voting together as a single class, shall be entitled to elect two directors of the Corporation (the "Combined Directors").

(ii) Quorums.

(A) Directors representing a majority of the votes represented by the directors at any time in office shall constitute a quorum for the transaction of business at any meeting of directors, unless a greater number is required by law, by this Certificate of Incorporation, or by the By-laws of the Corporation. In the event one or more of the directors shall be disqualified to vote at any meeting, then the required quorum shall be reduced by the number of votes represented by such director or directors so disqualified. Every act or decision done or made by directors representing a majority of the votes represented by the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, unless a greater number is required by law, by this Certificate of Incorporation, or by the By-laws of the Corporation.

(B) At any meeting held for the purpose of electing directors, (I) the presence in person or by proxy of the holders of at least 60% of the aggregate shares of Series B Preferred Stock then outstanding shall constitute a quorum of the Series B Preferred Stock for the purpose of electing the Series B Directors, (II) the presence in person or by proxy of the holders of a majority of the aggregate shares of Series A Preferred Stock then outstanding shall constitute a quorum of the Series A Preferred Stock for the purpose of electing the Series A Directors, (III) the presence in person or by proxy of the holders of a majority of the aggregate shares of Common Stock then outstanding shall constitute a quorum of the Common Stock for the purpose of electing the Common Director, and (IV) the presence in person or by proxy of the holders of Common Stock and Preferred Stock representing a majority of the aggregate number of votes represented by the shares of Common Stock and Preferred Stock then outstanding shall constitute a quorum of the Common Stock and the Preferred Stock for the election of the Combined Directors.

(iii) Vacancies. A vacancy in any directorship (A) elected by the holders of the Series B Preferred Stock shall be filled only by vote of the holders of the Series B Preferred Stock as provided above, (B) elected by the holders of the Series A Preferred Stock shall be filled only by vote of the holders of the Series A Preferred Stock as provided above, (C) elected by the holders of the Common Stock shall be filled only by vote of the holders of the Common Stock as provided above, and (D) elected jointly by the holders of the Common Stock and the Preferred Stock shall be filled only by vote of the holders of the Common Stock and the holders of the Preferred Stock as provided above.

(c) Votes of Individual Series of Preferred Stock.

(i) For so long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, without the written consent or affirmative vote of the holders of majority of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, amend



the Certificate of Incorporation or By-laws of the Corporation so as to amend, alter or repeal the powers, preferences or special rights of Series A Preferred Stock, including without limitation by way of merger or consolidation, in a manner that affects them adversely.

(ii) For so long as any shares of Series B Preferred Stock are outstanding, the Corporation shall not, without the written consent or affirmative vote of the holders of at least 60% of the then outstanding shares of Series B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, amend the Certificate of Incorporation or By-laws of the Corporation so as to amend, alter or repeal the powers, preferences or special rights of Series B Preferred Stock, including without limitation by way of merger or consolidation, in a manner that affects them adversely.

(iii) For so long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not, without the written consent or affirmative vote of the holders of at least two-thirds of the then outstanding shares of Series C Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, amend the Certificate of Incorporation or By-laws of the Corporation so as to amend, alter or repeal the powers, preferences or special rights of Series C Preferred Stock, including without limitation by way of merger or consolidation, in a manner that affects them adversely. Notwithstanding the forgoing, for so long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not, without the written consent or affirmative vote of the holders of at least 80% of the then outstanding shares of Series C Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, amend the Certificate of Incorporation or By-laws of the Corporation so as to amend, alter or repeal the powers, preferences or special rights of Series C Preferred Stock in a manner that affects the Series C Preferred Stock adversely unless a corresponding amendment, alteration or repeal is effected with respect to the applicable powers, preferences and special rights of both the Series A Preferred Stock and the Series B Preferred Stock.

(iv) For so long as any shares of Series D Preferred Stock are outstanding, the Corporation shall not, without the written consent or affirmative vote of the holders of at least 75% of the then outstanding shares of Series D Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, amend the Certificate of Incorporation or By-laws of the Corporation so as to amend, alter or repeal the powers, preferences or special rights of Series D Preferred Stock, including without limitation by way of merger or consolidation, in a manner that affects them adversely, or increase the number of shares of Series D Preferred Stock authorized for issuance.

(d) Additional Votes of the Preferred Stock. For so long as at least 1,096,000 shares of Series A Preferred Stock, 2,575,108 shares of Series B Preferred Stock, 1,930,502 shares of Series C Preferred Stock or 1,343,183 shares of Series D Preferred Stock (each subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) are outstanding, the Corporation shall not, without the written consent or affirmative vote of the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock representing a majority of the votes represented by all outstanding shares of Series A Preferred Stock, Series B

Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, consenting or voting (as the case may be) together as a single class:

(i) authorize or create any new class or series of capital stock having a preference or priority over, or on parity with, the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock with respect to dividends, liquidation preference or redemption rights; or

(ii) increase or decrease the number of authorized shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock; or

(iii) take any action or enter into any transaction that constitutes a Deemed Liquidation Event; or

(iv) declare or pay any dividend or make any distribution on shares of Common Stock (other than dividends on Common Stock payable solely in Common Stock) or permit any subsidiary of the Corporation to declare or pay any dividend or make any distribution (other than dividends or distributions payable solely to the Corporation); or

(v) redeem, repurchase or otherwise acquire any shares of capital stock of the Corporation (other than (A) redemptions pursuant to the terms of Section B.6 hereof, (B) repurchases of Common Stock from employees or others providing services to the Corporation, pursuant to a written benefit plan or pursuant to a restricted stock agreement providing for repurchase rights upon the termination of their employment or provision of services for a purchase price equal to the original issue price of such stock and (C) repurchases pursuant to contractual right of first refusal provisions); or

(vi) enter into any material agreement with any stockholder, officer or director of the Corporation, or any affiliate of any such person (as such term is defined in the rules and regulations promulgated under the Securities Act of 1933), including without limitation any material agreement or other arrangement providing for the furnishing of services by, rental of real or personal property from, or otherwise requiring payments to, any such person or entity; or

(vii) liquidate, dissolve or wind up the Corporation or effect a recapitalization or reorganization of the Corporation (including without limitation, any reorganization into a limited liability company, a partnership or any other non-corporate entity); or

(viii) take any action that constitutes or results in a change of the principal business of the Corporation, or causes the Corporation to enter into any new lines of business not primarily related to the business of the Corporation as conducted as of the Series D Original Issue Date, or exit the current line of business of the Corporation; or

(ix) approve any new stock option, restricted stock or other entity compensation plan of the Corporation or increase the number of shares of Common Stock in the Option Pool (as defined herein).

4. Optional Conversion.

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

(a) Right to Convert.

(i) Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.00 by the Series A Conversion Price (as defined below) in effect at the time of conversion. The "Series A Conversion Price", as of the Series D Original Issue Date (as defined in Section 4(d)(i)(C) hereof), is \$1.00. Such Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided herein.

(ii) Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.165 by the Series B Conversion Price (as defined below) in effect at the time of conversion. The "Series B Conversion Price", as of the Series D Original Issue Date, is \$1.165. Such Series B Conversion Price, and the rate at which shares of Series B Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided herein.

(iii) Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.295 by the Series C Conversion Price (as defined below) in effect at the time of conversion. The "Series C Conversion Price", as of the Series D Original Issue Date, is \$1.295. Such Series C Conversion Price, and the rate at which shares of Series C Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided herein.

(iv) Each share of Series D Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.489 by the Series D Conversion Price (as defined below) in effect at the time of conversion. The "Series D Conversion Price" shall initially be \$1.489. Such initial Series D Conversion Price, and the rate at which shares of Series D Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided herein.

(v) In the event of a notice of redemption of any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock pursuant to Subsection B.6 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed

for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock. In lieu of any fractional share to which a holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Stock to convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock, at the office of the transfer agent for such series of Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

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

Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be.

(iii) If, at the time of any conversion pursuant to the terms of this Subsection B.4, declared and unpaid dividends exist with respect to any such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, then upon any such conversion, no adjustment to the Series A Conversion Price, Series B Conversion Price, Series C Preferred Stock or Series D Conversion Price shall be made for any declared but unpaid dividends and all such declared and unpaid dividends on such converted shares shall be cancelled.

(iv) All shares of Preferred Stock that shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares of Preferred Stock, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor. Any shares of Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of such series of Preferred Stock accordingly.

(v) The Corporation shall pay any and all taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Subsection B.4. The Corporation shall not, however, be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Prices for Diluting Issues.

(i) Special Definitions. For purposes of this Subsection B.4, the following definitions shall apply:

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

(B) "Option Pool" shall mean 17,858,976 shares of Common Stock (subject to appropriate adjustment to reflect stock splits, stock dividends, reorganizations and other capitalization changes effected after the Series D Original Issue Date, as defined herein) issuable pursuant to one or more stock-based compensation plans, agreements or arrangements approved by the Board of Directors of the Corporation and by a majority of the members of the Board of Directors who are not employees of the Corporation or any of its subsidiaries (it being understood that shares (X) subject to Options that lapse or terminate unexercised or (Y) repurchased by the Corporation pursuant to stock restriction agreements may

be returned to the Option Pool and re-issued, so long as no more than the approved number of shares of Common Stock are at any time issued or subject to Options).

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

(D) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(E) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4(d)(iii) below, deemed to be issued) by the Corporation after the Series D Original Issue Date, other than the following shares of Common Stock, and shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (collectively "Exempted Securities"):

- (I) shares of Common Stock or Convertible Securities actually issued upon conversion or exchange of any Convertible Securities or exercise of any Options, in each case provided such issuance is pursuant to the terms of such Convertible Security or Option;
- (II) shares of Common Stock issued or deemed issued as a dividend or distribution on each of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock;
- (III) shares of Common Stock issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsections B.4(e) or B.4(f) below;
- (IV) shares of Common Stock (or Options with respect thereto) issued or issuable to employees or directors of, or consultants to, the Corporation or any of its subsidiaries in each case pursuant to the Option Pool;
- (V) shares of Common Stock (or Options or Convertible Securities with respect thereto) issued or issuable to financing sources for the Corporation or any of its subsidiaries in connection with any equipment lease financing or bank financing approved by the Board of Directors of the Corporation and by a majority of the members of the Board of Directors who are not employees of the Corporation or any of its subsidiaries; and

(VI) shares of Common Stock issued in any registered public offering.

(ii) No Adjustment of Conversion Prices. No adjustment in the Series A Conversion Price shall be made as the result of the issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Subsection B.4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the Series A Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock, or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of a majority of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock. No adjustment in the Series B Conversion Price shall be made as the result of the issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Subsection B.4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the Series B Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock, or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of at least 60% of the then outstanding shares of Series B Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock. No adjustment in the Series C Conversion Price shall be made as the result of the issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Subsection B.4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the Series C Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock, or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of a majority of the then outstanding shares of Series C Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock. No adjustment in the Series D Conversion Price shall be made as the result of the issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Subsection B.4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the Series D Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock, or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of 75% of the then outstanding shares of Series D Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(iii) Issue of Securities Deemed Issue of Additional Shares of Common Stock.

(A) If the Corporation at any time or from time to time after the Series D Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities that are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set

forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price pursuant to the terms of Subsection B.4(d)(iv) below, are revised (as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security, but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then, effective upon such increase or decrease becoming effective, the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price, as the case may be, computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no adjustment pursuant to this clause (B) shall have the effect of increasing the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price to an amount that exceeds the lower of (i) such Conversion Price on the original adjustment date, and (ii) such Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities that are themselves Exempted Securities, the issuance of which did not result in an adjustment to the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price pursuant to the terms of Subsection B.4(d)(iv) below (either because the consideration per share (determined pursuant to Subsection B.4(d)(v) hereof) of the Additional Shares of Common Stock subject thereto was equal to or greater than the applicable Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, then in effect, or because such Option or Convertible Security was issued before the Series D Original Issue Date, are revised after the Series D Original Issue Date (as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security, but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security), to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto



(determined in the manner provided in Subsection 4(d)(iii)(A) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(D) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security that resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price pursuant to the terms of Subsection B.4(d)(iv) below, the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price, as the case may be, shall be readjusted to such Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price as would have obtained had such Option or Convertible Security never been issued.

(E) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Prices provided for in this Subsection B.4(d)(iii) shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (B) and (C) of this Subsection B.4(d)(iii)). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Prices that would result under the terms of this Subsection B.4(d)(iii) at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Prices that such issuance or amendment took place at the time such calculation can first be made.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

(A) In the event the Corporation shall at any time after the Series D Original Issue Date issue or sell Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection B.4(d)(iii), but excluding Additional Shares of Common Stock issued in a Qualifying Public Offering, as defined in Subsection B.5(a)), without consideration or for a consideration per share less than the applicable Series A Conversion Price in effect immediately prior to such issue, then the Series A Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Series A Conversion Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock that the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series A Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding

immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided that, for the purpose of this Subsection B.4(d)(iv)(A), all shares of Common Stock issuable upon the exercise of Options or the conversion or exchange of Convertible Securities outstanding immediately prior to such issue shall be deemed to be outstanding.

(B) In the event the Corporation shall at any time after the Series D Original Issue Date issue or sell Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection B.4(d)(iii), but excluding Additional Shares of Common Stock issued in a Qualifying Public Offering), without consideration or for a consideration per share less than the applicable Series B Conversion Price in effect immediately prior to such issue, then the Series B Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Series B Conversion Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock that the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series B Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided that, for the purpose of this Subsection B.4(d)(iv)(B), all shares of Common Stock issuable upon the exercise of Options or the conversion or exchange of Convertible Securities outstanding immediately prior to such issue shall be deemed to be outstanding.

(C) In the event the Corporation shall at any time after the Series D Original Issue Date issue or sell Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection B.4(d)(iii), but excluding Additional Shares of Common Stock issued in a Qualifying Public Offering), without consideration or for a consideration per share less than the applicable Series C Conversion Price in effect immediately prior to such issue, then the Series C Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Series C Conversion Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock that the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series C Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided that, for the purpose of this Subsection B.4(d)(iv)(C), all shares of Common Stock issuable upon the exercise of Options or the conversion or exchange of Convertible Securities outstanding immediately prior to such issue shall be deemed to be outstanding.

(D) In the event the Corporation shall at any time after the Series D Original Issue Date issue or sell Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection B.4(d)(iii), but excluding Additional Shares of Common Stock issued in a Qualifying Public Offering), without consideration or for a consideration per share less than the applicable Series D Conversion Price in effect immediately prior to such issue, then the Series D Conversion Price shall be reduced,

concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Series D Conversion Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock that the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series D Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued: provided that, for the purpose of this Subsection B.4(d)(iv)(D), all shares of Common Stock issuable upon the exercise of Options or the conversion or exchange of Convertible Securities outstanding immediately prior to such issue shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Subsection B.4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

- (I) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest;
- (II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and
- (III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration that covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors of the Corporation.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection B.4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing

- (I) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision

contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

- (II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are comprised of shares of the same series or class of Preferred Stock and that result in an adjustment to the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price pursuant to the terms of Subsection B.4(d)(iv) above, and such issuance dates occur within a period of no more than 120 days, then, upon the final such issuance, the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as the case may be, shall be readjusted to give effect to all such issuances as if they occurred on the date of the final such issuance (and without giving effect to any adjustments as a result of such prior issuances within such period).

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series D Original Issue Date effect a subdivision of the outstanding Common Stock or combine the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock, the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price and/or the Series D Conversion Price, as the case may be, then in effect immediately before that subdivision or combination shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Series D Original Issue Date combine the outstanding shares of Common Stock or effect a subdivision of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock, the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price and/or the Series D Conversion Price, as the case may be, then in effect immediately before the combination or subdivision shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after the Series D Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to

receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price and the Series D Conversion Price then in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price, as the case may be, then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price and the Series D Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price and the Series D Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made with respect to the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price if the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, simultaneously receive (A) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, had been converted into Common Stock on the date of such event or (B) a dividend or other distribution of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series C Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than shares of Common Stock) or in cash or other property (other than regular cash dividends paid out of earnings or earned surplus, determined in accordance with generally accepted accounting principles), then and in each such event provision shall be made so that the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall receive upon conversion thereof in addition to the number of shares of

Common Stock receivable thereupon, the kind and amount of securities of the Corporation, cash or other property that they would have been entitled to receive had the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be; provided, however, that no such adjustment shall be made if the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, simultaneously receive a dividend or other distribution of such securities, cash or other property in an amount equal to the amount of such securities as they would have received if all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, had been converted into Common Stock on the date of such event.

(h) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection B.2(c), if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock is (but either the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock or the Series D Preferred Stock is not) converted into or exchanged for securities, cash or other property (other than a transaction covered by paragraphs (e), (f) or (g) of this Subsection B.4), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, shall be convertible into the kind and amount of securities, cash or other property that a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Subsection B.4 with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, to the end that the provisions set forth in this Subsection B.4 (including provisions with respect to changes in and other adjustments of the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock or the Series D Preferred Stock, as the case may be.

(i) Duration of Adjusted Conversion Price. Following each computation or readjustment of an adjusted Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price as provided above in this Subsection B.4, the new adjusted Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price shall remain in effect until a further computation or readjustment thereof is required by this Subsection B.4.

(j) [Intentionally Omitted]

(k) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price pursuant to this Subsection B.4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 30 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock (but in any event not later than 30 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price and the Series D Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as applicable.

(l) Notice of Record Date. In the event:

(i) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution (excluding a dividend payable solely in shares of Common Stock for the purpose of effecting a stock split), or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, any consolidation or merger of the Corporation with or into another corporation (other than a consolidation or merger in which the Corporation is the surviving entity and its Common Stock is not converted into or exchanged for any other securities or property), or any transfer of all or substantially all of the assets of the Corporation; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed,

as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice.

(m) Pay-to-Play Provisions.

(i) If (A) the Corporation issues Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection B.4(d)(iii), but excluding shares issued as a stock split or combination as provided in Subsection B.4(e) or upon a dividend or distribution as provided in Subsection B.4(f)), without consideration or for a consideration per share less than the applicable Series D Conversion Price in effect immediately prior to such issuance (such issuance being referred to herein as a "New Issuance"), and (B) a holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock (a "Preferred Holder") has the right, pursuant to the Third Amended and Restated Investor Rights Agreement dated as of March 29, 2006 among the Corporation and the Preferred Holders as of that date (together with any successor or substitute agreement, and any modifications or amendments thereto or waivers thereof, the "Investor Agreement"), to purchase its Pro Rata Share (as defined below) of such New Issuance, and (C) such Preferred Holder does not purchase its full Pro Rata Share of such New Issuance (other than as a result of the failure of the Corporation to comply with the terms of Section 3 of the Investor Agreement) (such holder being referred to herein as a "Non-Participating Holder"), then, effective upon the closing of such New Issuance, all shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock held by such Non-Participating Holder shall automatically be converted into shares of Common Stock, at the then effective conversion rate as provided for in this Subsection B.4 (such conversion shall be referred to herein as a "Special Mandatory Conversion").

(ii) For purposes of the foregoing, "Pro Rata Share" shall mean the proportionate part of the New Issuance that the Preferred Holder has the right to purchase pursuant to the Investor Agreement, taking into account any waiver or modification thereto (including one providing that the Preferred Holder's preemptive rights thereunder apply to only a portion of the New Issuance) effected with the requisite consent of the parties, but without taking into account any right to purchase the proportionate share of other holders who do not elect to purchase their full proportionate shares.

(iii) Notwithstanding the foregoing, the terms of Subsection B.4(m)(i) shall not apply to a New Issuance if (A) such New Issuance involves the same class and series of securities as a previous New Issuance that occurred within the prior three months and is effected pursuant to the same purchase agreement as was such previous New Issuance or (B) the rights of Preferred Holders to purchase a portion of the New Issuance under Section 3 of the Investor Agreement are waived in accordance with the terms thereof. In determining whether a Preferred Holder has purchased its full Pro Rata Share of a New Issuance for purposes of Subsection B.4(m)(i), any portion of a New Issuance purchased by a person or entity that is



either affiliated with a Preferred Holder, or otherwise approved by the Board of Directors of the Corporation and by a majority of the members of the Board of Directors who are not employees of the Corporation or any of its subsidiaries as a substitute investor for such Preferred Holder (provided such person or entity is not also a Preferred Holder). shall be deemed to have been purchased by such Preferred Holder.

(iv) All Non-Participating Holders shall be given written notice of the Special Mandatory Conversion and the place designated for mandatory conversion of all their shares of Preferred Stock pursuant to this Subsection B.4(m). Such notice need not be given in advance of the occurrence of the Special Mandatory Conversion. Such notice shall be sent by first class or registered mail, postage prepaid, or given by electronic communication in compliance with the provisions of the Delaware General Corporation Law, to each Non-Participating Holder, at such holder's address last shown on the records of the transfer agent for the Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each Non-Participating Holder shall surrender for conversion his or its certificate or certificates for all such shares of Preferred Stock 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 Subsection B.4(m). On the effective date of the Special Mandatory Conversion, all shares of Preferred Stock held by such Non-Participating Holders shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices, to vote and to receive dividends (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, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted. 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 his or its attorney duly authorized in writing. As soon as practicable after the effective date of the Special Mandatory Conversion and the surrender of the certificate or certificates for Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection B.4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion. All certificates evidencing shares of Preferred Stock that are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the effective date of the Special Mandatory Conversion, be deemed to have been retired and cancelled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. Such converted Preferred Stock may not be reissued, 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 Preferred Stock accordingly.

## 5. Mandatory Conversion.

(a) Upon the earlier of (i) the closing of the sale of shares of Common Stock, in a firm-commitment underwritten public offering pursuant to an effective registration statement

under the Securities Act of 1933, as amended, at a price to the public of at least \$2.978 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or similar recapitalization affecting such shares) and resulting in at least \$40,000,000 of net proceeds (before deduction of underwriters' commissions and expenses, if any) to the Corporation (a "Qualifying Public Offering") or (ii) a date agreed to in writing by the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, voting together as a single class, representing a majority of the votes represented by all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock (each, a "Mandatory Conversion Date"), all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall automatically be converted into shares of Common Stock at the then applicable Conversion Prices, and such shares may not be reissued by the Corporation as Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be; provided, that if the proposed conversion pursuant to clause (ii) above is in connection with a Deemed Liquidation Event in which the payment that the holders of the Series D Preferred Stock would be entitled to receive pursuant to Subsection B.2 in respect of their shares of Series D Preferred Stock if such stock was not converted pursuant to this Subsection B.5 would be greater than the payment that such holders would be entitled to receive pursuant to Subsection B.2 in respect of their shares of the Common Stock issued upon conversion of such shares of Series D Preferred Stock, the Series D Preferred Stock shall not be converted into shares of Common Stock pursuant to this Subsection B.5 without the written consent or affirmative vote of the holders of at least 75% of the then outstanding shares of Series D Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class.

(b) All holders of record of shares of Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Subsection B.5. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, or given by electronic communication in compliance with the provisions of the Delaware General Corporation Law, to each record holder of Preferred Stock. Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender for conversion his or its certificate or certificates for all such shares of Preferred Stock 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 Subsection B.5. On the Mandatory Conversion Date, all outstanding shares of Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices, to vote and to receive dividends (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, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted. 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 his or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Preferred Stock, the Corporation shall cause to be issued and delivered to such

holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection B.4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(c) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. Such converted Preferred Stock may not be reissued, 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 Preferred Stock accordingly.

#### 6. Redemption.

(a) Scheduled Redemption of the Preferred Stock. The Corporation shall be obligated to offer to redeem, at a per share price equal to \$1.00 per share in the case of the Series A Preferred Stock, \$1.165 per share in the case of the Series B Preferred Stock, \$1.295 per share in the case of the Series C Preferred Stock and \$1.489 per share in the case of the Series D Preferred Stock, plus all declared but unpaid dividends thereon (subject in each case to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), all of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, in three equal annual installments with respect to each such series of Preferred Stock, each to commence within 60 days of each of the fifth, sixth and seventh annual anniversary dates, respectively of the Series D Original Issue Date, to the extent it is lawfully able to do so and if requested by the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, voting together as a single class, representing a majority of the votes represented by all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock (the date of the first redemption being referred to as the "Initial Redemption Date" and the Initial Redemption Date together with the first and second anniversaries thereof each being referred to as a "Redemption Date"). Each holder of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall have the option, each year prior to the applicable Redemption Date, to either accept or reject the redemption offer. The shares to be redeemed shall be redeemed pro rata among the holders of shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock electing to accept redemption.

(b) Insufficient Funds. If the Corporation does not have sufficient funds legally available to redeem the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock to be redeemed on any Redemption Date pursuant to Subsection B.6(a) above, the Corporation shall (i) redeem the maximum possible number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, on a pro rata basis based on the respective amounts which would otherwise be payable in respect of the shares of Series A Preferred Stock, Series B Preferred

Stock, Series C Preferred Stock and Series D Preferred Stock to be redeemed if the legally available funds were sufficient to redeem all such shares, out of funds legally available therefor, and (ii) redeem all remaining shares to have been redeemed (on the basis described in clause (i) above) as soon as practicable after the Corporation has funds legally available therefor.

(c) Redemption Notice. Written notice of the redemption (the "Redemption Notice") shall be mailed, postage prepaid, to each holder of record of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, at its post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the Delaware General Corporation Law, not less than 30 days prior to each Redemption Date. Each Redemption Notice shall state:

- (I) the number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock, as the case may be, held by the holder that the Corporation is required to offer to redeem on the Redemption Date specified in the Redemption Notice;
- (II) the number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock, as the case may be, held by the holder that the Corporation is offering to redeem on the Redemption Date specified in the Redemption Notice;
- (III) the Redemption Date and the applicable per share redemption price for any Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be;
- (IV) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Subsection B.4(a)); and
- (V) that the holder is to surrender to the Corporation, in the manner and at the time and place designated, his or its certificate or certificates representing the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock to be redeemed, as the case may be.

(d) Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his right to convert such shares as provided in Subsection B.4 hereof, shall surrender the certificate or certificates representing such shares to the

Corporation, in the manner and at the time and place designated in the Redemption Notice, and thereupon the applicable per share redemption price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event less than all of the shares of Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Preferred Stock shall promptly be issued.

(e) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the applicable per share redemption price payable upon redemption of the shares of Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment, then notwithstanding that the certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the applicable per share redemption price, without interest, upon surrender of their certificate or certificates therefor.

(f) Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately canceled and shall not be reissued, sold or transferred as shares of Preferred Stock. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock.

(g) Other Redemptions or Acquisitions. Neither the Corporation nor any subsidiary shall redeem or otherwise acquire any shares of Preferred Stock, except as expressly authorized herein.

7. Certain Opportunities. The Corporation hereby renounces, to the fullest extent permitted by Section 122(17) of the General Corporation Law of the State of Delaware, any interest or expectancy of the Corporation in, or in being offered, an opportunity to participate in, any Preferred Business Opportunity. A "Preferred Business Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation. To the fullest extent permitted by law, the Corporation hereby waives any claim against a Covered Person that is based on fiduciary duties, the corporate opportunity doctrine or any other legal theory which could limit any Covered Person from pursuing or engaging in any Preferred Business Opportunity.

8. Waiver. Any of the rights of the holders of Series A Preferred Stock set forth herein may be waived, provided such waiver does not adversely affect the rights of the Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock hereunder, by the affirmative consent or vote of the holders of a majority of the shares of Series A Preferred Stock

then outstanding. Any of the rights of the holders of Series B Preferred Stock set forth herein may be waived, provided such waiver does not adversely affect the rights of the Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock hereunder, by the affirmative consent or vote of the holders of at least 60% of the shares of Series B Preferred Stock then outstanding. Any of the rights of the holders of Series C Preferred Stock set forth herein may be waived, provided such waiver does not adversely affect the rights of the Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock hereunder, by the affirmative consent or vote of the holders of at least 80% of the shares of Series C Preferred Stock then outstanding. Any of the rights of the holders of Series D Preferred Stock set forth herein may be waived, provided such waiver does not adversely affect the rights of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock hereunder, by the affirmative consent or vote of the holders of at least 75% of the shares of Series D Preferred Stock then outstanding. Any of the rights of the holders of Preferred Stock set forth herein may be waived, if such waiver by its terms is equally applicable to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, by the affirmative consent or vote of the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, voting together as a single class, representing a majority of the votes represented by all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock.

SIXTH: In furtherance of and not in limitation of powers conferred by statute, it is further provided:

1. Election of directors need not be by written ballot.
2. The Board of Directors is expressly authorized to adopt, amend or repeal the By-Laws of the Corporation.

SEVENTH: Except to the extent that the General Corporation Law of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

EIGHTH: The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of Delaware, as amended from time to time, indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts

paid in settlement actually and reasonably incurred by or on behalf of an Indemnatee in connection with such action, suit or proceeding and any appeal therefrom.

As a condition precedent to his right to be indemnified, the Indemnatee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving him for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to the Indemnatee.

In the event that the Corporation does not assume the defense of any action, suit, proceeding or investigation of which the Corporation receives notice under this Article, the Corporation shall pay in advance of the final disposition of such matter any expenses (including attorneys' fees) incurred by an Indemnatee in defending a civil or criminal action, suit, proceeding or investigation or any appeal therefrom; provided, however, that the payment of such expenses incurred by an Indemnatee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of the Indemnatee to repay all amounts so advanced in the event that it shall ultimately be determined that the Indemnatee is not entitled to be indemnified by the Corporation as authorized in this Article, which undertaking shall be accepted without reference to the financial ability of the Indemnatee to make such repayment; and further provided that no such advancement of expenses shall be made if it is determined that (i) the Indemnatee did not act in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, or (ii) with respect to any criminal action or proceeding, the Indemnatee had reasonable cause to believe his conduct was unlawful.

The Corporation shall not indemnify an Indemnatee seeking indemnification in connection with a proceeding (or part thereof) initiated by such Indemnatee unless the initiation thereof was approved by the Board of Directors of the Corporation. In addition, the Corporation shall not indemnify an Indemnatee to the extent such Indemnatee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnatee and such Indemnatee is subsequently reimbursed from the proceeds of insurance, such Indemnatee shall promptly refund such indemnification payments to the Corporation to the extent of such insurance reimbursement.

All determinations hereunder as to the entitlement of an Indemnatee to indemnification or advancement of expenses shall be made in each instance by (a) a majority vote of the directors of the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question ("disinterested directors"), whether or not a quorum, (b) a majority vote of a quorum of the outstanding shares of stock of all classes entitled to vote for directors, voting as a single class, which quorum shall consist of stockholders who are not at that time parties to the action, suit or proceeding in question, (c) independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation), or (d) a court of competent jurisdiction.

The indemnification rights provided in this Article (i) shall not be deemed exclusive of any other rights to which an Indemnatee may be entitled under any law, agreement or vote of

stockholders or disinterested directors or otherwise, and (ii) shall inure to the benefit of the heirs, executors and administrators of the Indemnitees. The Corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article.

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



IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its President this 29<sup>th</sup> day of March, 2006.

ACOPIA NETWORKS, INC.

By: /s/ Christopher P. Lynch  
Christopher P. Lynch  
President and Chief Executive Officer