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Conveyance Type

- Assignment
- Security Agreement
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- License
- Nunc Pro Tunc Assignment
- Effective Date
Month Day Year
05192000

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year
04262000

Name Silicon Access Technology, Inc.

Formerly _____

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other _____
- Citizenship/State of Incorporation/Organization Delaware

Receiving Party

Mark if additional names of conveying parties attached

Name Silicon Access Networks, Inc.

DBA/AKA/TA _____

Composed of _____ corporation of Delaware

Address (line 1)

211 River Oaks Parkway

Address (line 2)

Address (line 3)

San Jose

CA

95134

City

State/County

Zip Code

- Individual
- General Partnership
- Limited Partnership
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- Association
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- Citizenship/State of Incorporation/Organization Delaware

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03/07/2001 TDIAZ1 00000038 194215 78001887

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Correspondent Name and Address

Area Code and Telephone Number 415-777-3999

Name Sarah A. Cunniff, Esq.

Address (line 1) Steinhart & Falconer LLP

Address (line 2) 333 Market Street, Suite 3200

Address (line 3) San Francisco, CA 94105-2150

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Pages **Enter the total number of pages of the attached conveyance document including any attachment.** # 1

Trademark Application Number(s) or Registration Number(s)

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Trademark Application Number(s)

Registration Number(s)

78001887 _____

Number of Properties **Enter the total number of properties involved.** # 1

Fee Amount **Fee Amount for Properties Listed (37 CFR 3.41):** \$ 40.00

Method of Payment: Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

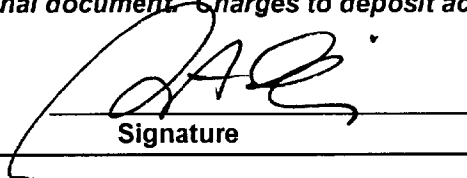
Deposit Account Number: # 19-4215

Authorization to charge additional fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Sarah A. Cunniff
Name of Person Signing


Signature

February 14, 2001
Date Signed



02-14-2001

U.S. Patent & TMO/c/TM Mail Ropt Dt. #01

**FOURTH AMENDED AND RESTATED CERTIFICATE
OF INCORPORATION
OF
SILICON ACCESS TECHNOLOGY, INC.**

Silicon Access Technology, Inc. (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

- 1. The name of the Corporation is Silicon Access Technology, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on September 2, 1997.
- 2. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Fourth Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Corporation's Third Amended and Restated Certificate of Incorporation.
- 3. The terms and provisions of this Fourth Amended and Restated Certificate of Incorporation have been duly approved by written consent of the required number of shares of outstanding stock of the Corporation pursuant to Subsection 228(a) of the General Corporation Law of the State of Delaware and written notice pursuant to Subsection 228(d) of the General Corporation Law of the State of Delaware has been given to those stockholders whose written consent has not been obtained.
- 4. The text of the Fourth Amended and Restated Certificate of Incorporation reads in its entirety as follows:

ARTICLE FIRST

The name of this Corporation is Silicon Access Networks, Inc.

ARTICLE SECOND

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such location is The Corporation Trust Company.

ARTICLE THIRD

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 04:00 PM 05/19/2000
001256981 - 2786519

ARTICLE FOURTH

The total number of shares of all classes of stock which the Corporation has authority to issue is 84,210,000 shares, consisting of 52,500,000 shares of Common Stock, par value \$.001 per share (the "Common Stock"), and 31,710,000 shares of Preferred Stock, par value \$.001 per share (the "Preferred Stock"), of which 9,450,000 shares shall be designated "Series A Preferred Stock" (hereinafter "Series A Preferred"), of which 6,000,000 shares shall be designated "Series B Preferred Stock" (hereinafter "Series B Preferred"), and of which 16,260,000 shares shall be designated "Series C Preferred Stock" (hereinafter "Series C Preferred"). Effective on the date of the filing of this Fourth Amended and Restated Certificate of Incorporation, each two (2) shares of Common Stock of this Corporation outstanding on such date shall split into three (3) shares of Common Stock of this Corporation, with fractional shares rounded up to the nearest whole share, and each two (2) shares of Series A Preferred, Series B Preferred and Series C Preferred outstanding on such date shall split into three (3) shares of Series A Preferred, Series B Preferred, and Series C Preferred, respectively, with fractional shares rounded up to the nearest whole share.

The powers, preferences and rights, and the qualifications, limitations or restrictions thereof, in respect to the Common Stock and the Series A Preferred, Series B Preferred and Series C Preferred, shall be as follows:

1. Dividend Rights. The holders of the Series A Preferred, Series B Preferred and Series C Preferred, shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation dividends at the rate of \$.0427, \$.064, and \$.128 per share, respectively, per annum, payable in preference to payment of any dividend (other than dividends payable solely in Common Stock of the Corporation) with respect to the Common Stock. No dividend or distribution shall be declared or paid on any Common Stock (other than dividends payable solely in Common Stock of the Corporation) unless the preferred dividends described above have first been paid. The right to dividends on shares of Series A Preferred, Series B Preferred or Series C Preferred under this paragraph shall not be cumulative, and no right shall accrue to the holders of the Series A Preferred, Series B Preferred or Series C Preferred under this paragraph by reason of the fact that dividends on such shares are not declared in any period.

2. Liquidation Preference. In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, distributions to the stockholders of the Corporation shall be made in the following manner:

2.1 The holders of each share of the Series A Preferred, Series B Preferred or Series C Preferred then outstanding shall be entitled to be paid first out of the assets and funds of the Corporation legally available therefor an amount equal to the sum of (i) \$.533 per share of Series A Preferred, \$.80 per share of Series B Preferred or \$1.60 per share of Series C Preferred as the case may be (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or other similar event with respect to such series of Preferred Stock), plus (ii) all dividends declared but unpaid thereon.

2.2 If the assets and funds of the Corporation legally available for distribution to the holders of the Series A Preferred, Series B Preferred and Series C Preferred shall be insufficient to permit the payment to such holders of the full preferential amount to which each holder is entitled, then the entire assets and funds of the Corporation legally available for distribution to such holders shall be distributed ratably among the holders of the Series A Preferred, Series B Preferred and Series C Preferred in such a manner that the amount to be distributed to each holder of Series A Preferred, Series B Preferred and Series C Preferred shall equal the amount obtained by multiplying the entire assets and funds of the corporation legally available for distribution hereunder by a fraction, the numerator of which shall be the sum of the products obtained by multiplying the number of shares of Series A Preferred, Series B Preferred and Series C Preferred then held by the holder by the respective liquidation preference of each such series of Preferred Stock, and the denominator of which shall be the sum of the products obtained by multiplying the total then outstanding number of shares of Series A Preferred, Series B Preferred and Series C Preferred by the respective liquidation preference of each such series of Preferred Stock.

2.3 After payment has been made to the holders of the Series A Preferred, Series B Preferred and Series C Preferred Stock of the full amounts to which they shall be entitled as aforesaid, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed ratably among the holders of the Common Stock.

2.4 For purposes of this Section 2, a merger or consolidation of the Corporation with or into any other corporation or corporations, or the merger of any other corporation or corporations into the Corporation, in which consolidation or merger the stockholders of the Corporation receive distributions in cash or securities of another corporation or corporations as a result of such consolidation or merger, or a sale of all or substantially all of the assets of the Corporation, shall be treated as a liquidation, dissolution or winding up of the Corporation, unless the stockholders of this Corporation receive in such consolidation, merger or sale of assets more than fifty percent (50%) of the voting equity securities of the successor or surviving corporation.

3. Voting Rights.

(a) General. Except as required by law or pursuant to subparagraph (b) below or Sections 4.4 or 5 hereof, the holders of Preferred Stock and the holders of Common Stock shall be entitled to notice of any stockholders' meeting and to vote together as a single class upon any matter submitted to the stockholders for a vote as follows: (i) the holders of the Preferred Stock shall have one vote for each full share of Common Stock into which their respective shares of Preferred Stock are convertible on the record date for the vote, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, and (ii) the holders of Common Stock shall have one vote per share of Common Stock.

(b) Voting for Directors. (i) For so long as at least 750,000 shares of Series A Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series A Preferred), the holders of Series A Preferred, voting as a separate series, shall be entitled to elect one (1) member of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove

from office such director and to fill any vacancy caused by the resignation, death or removal of such director; (ii) for so long as at least 750,000 shares of Series C Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series C Preferred), the holders of Series C Preferred, voting as a separate series, shall be entitled to elect one (1) member of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director; (iii) the holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; and (iv) the holders of Common Stock and Preferred Stock, voting together as a class, shall be entitled to elect all remaining members of the Board of Directors.

4. Conversion to Common Stock. The Preferred Stock shall be convertible into Common Stock of the Corporation as follows:

4.1 Definitions. For purposes of this Section 4 the following definitions shall apply:

4.1.1 "Original Issue Date" shall mean, with respect to a series of Preferred Stock, the first date on which the Corporation issues any shares of such series of Preferred Stock.

4.1.2 "Conversion Price" shall mean the price, determined pursuant to this Section 4, at which shares of Common Stock shall be deliverable upon conversion of the Series A Preferred, Series B Preferred or Series C Preferred, as applicable.

4.1.3 "Current Conversion Price" shall mean the Conversion Price immediately before the occurrence of any event, that, pursuant to Section 4.3, causes an adjustment to the Conversion Price.

4.1.4 "Convertible Securities" shall mean any indebtedness or shares of stock convertible into or exchangeable for Common Stock or for securities convertible into or exchangeable for such securities, including the Series A Preferred, Series B Preferred or Series C Preferred.

4.1.5 "Options" shall mean any rights, warrants or options to subscribe for, purchase or otherwise acquire or receive Common Stock or Convertible Securities.

4.2 Right to Convert: Initial Conversion Price. Each holder of the Series A Preferred, Series B Preferred or Series C Preferred may, at any time, convert any or all of such Series A Preferred, Series B Preferred or Series C Preferred, into fully paid and nonassessable shares of Common Stock at the applicable Conversion Price for such series. Each share of Series A Preferred, Series B Preferred and Series C Preferred shall be convertible into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$.533 in the case of

the Series A Preferred, \$.80 in the case of the Series B Preferred and \$1.60 in the case of Series C Preferred, by the Conversion Price for such series, determined as hereinafter provided, in effect at the time of the conversion. The Conversion Price of the Series A Preferred, Series B Preferred, and Series C Preferred shall initially be \$.533 per share, \$.80 per share and \$1.60 per share, respectively, of Common Stock (the "Initial Conversion Price"). The Conversion Price shall be subject to adjustment from time to time in certain instances as hereinafter provided.

No adjustments with respect to conversion shall be made on account of any dividends that may be declared but unpaid on the Series A Preferred, Series B Preferred or Series C Preferred surrendered for conversion, but no dividends shall thereafter be paid on the Common Stock unless such unpaid dividends have first been paid to the holders entitled to payment at the time of conversion of the Series A Preferred, Series B Preferred or Series C Preferred.

Before any holder of Series A Preferred, Series B Preferred or Series C Preferred shall be entitled to convert the same into Common Stock, it shall surrender the certificate or certificates therefor, duly endorsed, to the office of the Corporation or any transfer agent for such Series A Preferred, Series B Preferred or Series C Preferred and shall give written notice to the Corporation at such office that such holder elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred, Series B Preferred or Series C Preferred, or to his nominee or nominees, certificates for the number of full shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share as hereinafter provided, and, if less than all of the shares of Series A Preferred, Series B Preferred or Series C Preferred, represented by such certificate are converted, a certificate representing the shares of Series A Preferred, Series B Preferred or Series C Preferred not converted. Such conversion shall be deemed to have been made as of the date of such surrender of the certificate for the Series A Preferred, Series B Preferred or Series C Preferred to be converted, and the person or persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common stock on such date. If the conversion is in connection with an offer of securities registered pursuant to the Securities Act of 1933, as amended (the "Securities Act"), the conversion may, at the option of any holder tendering Series A Preferred, Series B Preferred or Series C Preferred for conversion, be conditioned upon the closing of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Series A Preferred, Series B Preferred or Series C Preferred shall not be deemed to have converted such Series A Preferred, Series B Preferred, or Series C Preferred until immediately prior to the closing of such sale of securities.

4.3 Adjustments to Conversion Price. The Conversion Price in effect from time to time for a particular series of Preferred Stock shall be subject to adjustment in certain cases as follows:

4.3.1 Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Section 4.3.1, the following definitions shall apply:

(1) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 4.3.1(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued (or, pursuant to Section 4.3.1(iii), deemed to be issued) or issuable at any time:

(A) upon conversion of the Preferred Stock into Common Stock;

(B) to officers, directors, and employees of, and consultants to, the Corporation pursuant to plans, arrangements or agreements approved by the Board of Directors, provided that the director elected by the holders of Series A Preferred pursuant to subparagraph 3(b) hereof consents to such issuance;

(C) pursuant to an equipment or bank financing transaction or leasing arrangement approved by the Board of Directors of the Corporation; or

(D) pursuant to a corporate partnering agreement approved by the Board of Directors of the Corporation;

(E) as a dividend or distribution on the Preferred Stock or any event for which adjustment is made pursuant to subparagraph (iv) or Sections 4.3.2, 4.3.3 or 4.3.4 hereof; or

(F) by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (A), (B), (C), (D), (E) or this clause (F) or on shares of Common Stock so excluded.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular share of Series A Preferred, Series B Preferred or Series C Preferred shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the respective Conversion Price in effect on the date of, and immediately prior to, such issue, for such share of Series A Preferred, Series B Preferred or Series C Preferred, respectively.

(iii) Deemed Issue of Additional Shares of Common Stock. Except as otherwise provided in Section 4.3.1(ii), in the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible 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 (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock 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, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

- (1) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;
- (2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;
- (3) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:
 - (A) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and
 - (B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and
- (4) no readjustment pursuant to clause (2) or (3) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) such lower Conversion Price as would have resulted from any issuance of Additional Shares of Common Stock (including

Additional Shares of Common Stock deemed to be issued pursuant to Section 4.3.1(iii)) between the original adjustment date and such readjustment date.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4.3.1(iii)) without consideration or for a consideration per share less than the Conversion Price in effect with respect to a particular series of Preferred Stock on the date of and immediately prior to such issue, then and in such event, the Conversion Price with respect to such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest tenth of a cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price; and 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 purposes of this subsection (iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Series A Preferred, Series B Preferred and Series C Preferred, and all outstanding Convertible Securities, and upon exercise of all outstanding Options, shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Section 4.3.1, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as reasonably determined in good faith by the Board; provided, however, that in the event a holder of Preferred Stock disputes the determination of the Board, a nationally recognized investment banking or accounting firm shall be retained to make a final and binding determination, with half of the expense borne by the Corporation, and half of the expense borne by the objecting holders; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as reasonably determined in good faith by the Board; provided, however, that in the event a holder of Series A Preferred, Series B Preferred or Series C Preferred disputes the determination of the Board, a nationally recognized investment banking or

accounting firm shall be retained to make a final and binding determination, with half of the expense borne by the Corporation, and half of the expense borne by the objecting holders.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4.3.1(iii), relating to Options and Convertible Securities, shall be determined by dividing

(A) 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

(B) 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.

4.3.2 Stock Splits, Dividends, Distributions and Combinations. In the event the Corporation should at any time or from time to time after the Original Issue Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock (other than a split effectuated by this Fourth Amended and Restated Certificate of Incorporation) or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock, Options or Convertible Securities, then, following such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Conversion Price for the Series A Preferred, Series B Preferred and Series C Preferred shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred, Series B Preferred or Series C Preferred shall be increased in proportion to such increase in the number of outstanding shares of Common Stock (including for this purpose, Options and Convertible Securities) determined in accordance with Section 4.3.3. If the number of shares of Common Stock outstanding at any time after the Original Issue Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A Preferred, Series B Preferred and Series C Preferred shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred, Series B Preferred or Series C Preferred shall be decreased in proportion to such decrease in the number of outstanding shares of Common Stock.

4.3.3 Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, or assets (excluding cash dividends) then, in each such case for the

purpose of this Section 4.3.3, the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

4.3.4 Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than an event provided for in Sections 4.2, 4.3.1, 4.3.2 or 4.3.3 hereof), provision shall be made so that the holders of Preferred Stock shall thereafter be entitled to receive upon conversion of shares of the Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the respective Conversion Prices then in effect and the number of shares purchasable upon conversion of shares of Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

4.3.5 Successive Changes. The above provisions of this Section 4 shall similarly apply to successive issuances, deemed issuances, dividends or other distributions, or other transactions after the Original Issue Date.

4.3.6 No Impairment. The Corporation will not, without the consent of the holders of then outstanding Preferred Stock as required under Section 5 below, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Preferred Stock against impairment.

4.3.7 Miscellaneous Conversion Price Matters. The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock the full number of shares of Common Stock deliverable upon conversion of all of the then outstanding Preferred Stock and shall, at its own expense, take all such actions and obtain all such permits and orders as may be necessary to enable the Corporation lawfully to issue such Common Stock upon the conversion of such Preferred Stock.

4.3.8 No Fractional Shares. No fractional shares shall be issued upon conversion of shares of Preferred Stock into Common Stock and if the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of such fractional share, pay the holder a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors of the Corporation).

4.3.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of the Series A Preferred, Series B Preferred, or Series C Preferred pursuant to this Section 4, the Corporation, at its expense shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred, Series B Preferred or Series C Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred, Series B Preferred or Series C Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Current Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series A Preferred or Series B Preferred or Series C Preferred.

4.3.10 No Adjustment. No adjustment of the Conversion Price for the Series A Preferred, Series B Preferred or Series C Preferred Stock shall be made in an amount less than one percent of the then existing Conversion Price for such series, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be taken into account in any subsequent adjustment made hereunder.

4.4 Automatic Conversion.

4.4.1 Events of Automatic Conversion. Each share of Series A Preferred, Series B Preferred and Series C Preferred, shall automatically be converted into Common Stock of the Corporation at the then effective Conversion Price for such series immediately prior to the closing of a firmly underwritten public offering pursuant to an effective registration statement pursuant to which Common Stock is sold to the public by the Corporation (other than a registration statement with respect to either (i) an employee benefit plan, or (ii) a transaction described in Rule 145 under the Securities Act) in a public offering registered under the Securities Act, at a per share public offering price of not less than \$8.00 and an aggregate public offering price of at least \$15,000,000. Each share of a series of Preferred Stock shall be automatically converted into Common Stock of the Corporation at the then effective Conversion Price for such series upon the vote of the holders of at least a majority of the outstanding shares of such series of Preferred Stock, voting as a separate series.

4.4.2 Effects of Automatic Conversion. On and after the date of an automatic conversion pursuant to Section 4.4.1, notwithstanding that any certificates for the shares of Series A Preferred, Series B Preferred and Series C Preferred, shall not have been surrendered for conversion, the shares of Series A Preferred, Series B Preferred or Series C Preferred evidenced thereby shall be deemed to be no longer outstanding, and all rights with respect thereto shall forthwith cease and terminate, except only the rights of the holder (i) to receive the shares of Common Stock to which such holder shall be entitled upon conversion thereof, (ii) to receive the amount of cash payable in respect of any fractional share of Common Stock to which he shall be entitled, and (iii) with respect to dividends declared but unpaid on the Series A Preferred, Series B Preferred or Series C Preferred, prior to such conversion date. In the event that any holder of

Series A Preferred, Series B Preferred or Series C Preferred presents such holder's certificate therefor for surrender to the Company or its transfer agent upon such conversion, a certificate for the number of shares of Common Stock into which the shares of Series A Preferred, Series B Preferred or Series C Preferred surrendered, were convertible on such conversion date promptly will be issued and delivered to such holder.

5. Protective Provisions.

5.1 In addition to any other rights provided by law, so long as 750,000 shares of Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the outstanding shares of the Preferred Stock, voting together as a single class without regard to series:

(a) effect any sale, lease, assignment, transfer or other conveyance (other than the grant of a mortgage or security interest in connection with the indebtedness for borrowed money from banks and other non-affiliated financial institutions) of all or substantially all the assets of the Corporation or any of its subsidiaries, or merge into or with or consolidate with any other corporation (other than a merger or consolidation with a wholly-owned subsidiary or which would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent 50% or more of the voting securities of the Corporation immediately thereafter);

(b) authorize or issue shares of any class or series of stock having any rights preference (including those with respect to redemption, liquidation preference, voting or dividends) senior to or on a parity with any series of Preferred Stock as to dividend rights or liquidation preferences; or

(c) redeem, retire or repurchase any shares of any class or series of Preferred Stock.

5.2 In addition to any other rights provided by law, so long as 750,000 shares of Series A Preferred shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the outstanding shares of the Series A Preferred, voting as a separate series, amend or repeal any provision of, or add any provision to, the Corporation's Certificate of Incorporation or by-laws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series A Preferred, or increase or decrease the number of shares of Series A Preferred authorized hereby.

5.3 In addition to any other rights provided by law, so long as 750,000 shares of Series B Preferred shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the outstanding shares of the Series B Preferred, voting as a separate series, amend or repeal any provision of, or add any provision to, the Corporation's Certificate of Incorporation or by-laws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the

restrictions provided for the benefit of, the Series B Preferred, or increase or decrease the number of shares of Series B Preferred authorized hereby.

5.4 In addition to any other rights provided by law, so long as 750,000 shares of Series C Preferred shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the outstanding shares of the Series C Preferred, voting as a separate series, amend or repeal any provision of, or add any provision to, the Corporation's Certificate of Incorporation or by-laws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series C Preferred, or increase or decrease the number of shares of Series C Preferred authorized hereby.

6. Residual Rights. Subject to the rights of any series of Preferred Stock which may in the future come into existence, all rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested with the Common Stock.

ARTICLE FIFTH

The Corporation is to have perpetual existence.

ARTICLE SIXTH

The election of directors need not be by written ballot unless the Bylaws of the corporation shall so provide.

ARTICLE SEVENTH

The number of directors which constitute the whole Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation.

ARTICLE EIGHTH

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, alter, amend or repeal the Bylaws of the corporation without any action on the part of the stockholders.

ARTICLE NINTH

(a) To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director.

(b) The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer or employee of the Corporation or any predecessor of the Corporation or serves or

served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

(c) Neither any amendment nor repeal of this Article Ninth, nor the adoption of any provision of this Corporation's Certificate of Incorporation inconsistent with this Article Ninth, shall eliminate or reduce the effect of this Article Ninth, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article Ninth, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE TENTH

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation."

[Remainder of page intentionally left blank]