

**Exhibit A**  
**Designated Contact Persons**

Question 5: Please attach a sheet designating contact persons to work with Staff on the issues listed below, including each contact person's (i) name, (ii) title, (iii) mailing address, (iv) telephone number, (v) facsimile number, and (vi) e-mail address, if any:

**Response to Question 5 (a-g):**

**a) Issues related to processing this application**

Gregg Hyde  
Mang. Regulatory & Corporate Compliance  
Net2000 Communications Services, Inc.  
2180 Fox Mill Road, Herndon, VA 20171  
Voice: (703) 654-2029  
Fax: (703) 654-2049  
email: ghyde@Net2000.com

**b) Consumer issues**

Gregg Hyde  
Mang. Regulatory & Corporate Compliance  
Net2000 Communications Services, Inc.  
2180 Fox Mill Road, Herndon, VA 20171  
Voice: (703) 654-2029  
Fax: (703) 654-2049  
email: ghyde@Net2000.com

**c) Customer complaint resolution**

Anthony Hansel  
Attorney  
Net2000 Communications Services, Inc.  
2180 Fox Mill Road, Herndon, VA 20171  
Voice: (703) 654-2028  
Fax: (703) 654-2049  
email: thansel@Net2000.com

**d) Technical and service quality issues**

Dave Nelson  
Vice President Network Operations  
Net2000 Communications Services, Inc.  
2180 Fox Mill Road, Herndon, VA 20171  
Voice: (703) 654-2000  
Fax: (703) 654-2998  
email: dnelson@Net2000.com

**e) “Tariff” and pricing issue**

Gregg Hyde  
Mang. Regulatory & Corporate Compliance  
Net2000 Communications Services, Inc.  
2180 Fox Mill Road, Herndon, VA 20171  
Voice: (703) 654-2029  
Fax: (703) 654-2049  
email: ghyde@Net2000.com

**f) 9-1-1 issues**

Dave Nelson  
Vice President Network Operations  
Net2000 Communications Services, Inc.  
2180 Fox Mill Road, Herndon, VA 20171  
Voice: (703) 654-2000  
Fax: (703) 654-2998  
email: dnelson@Net2000.com

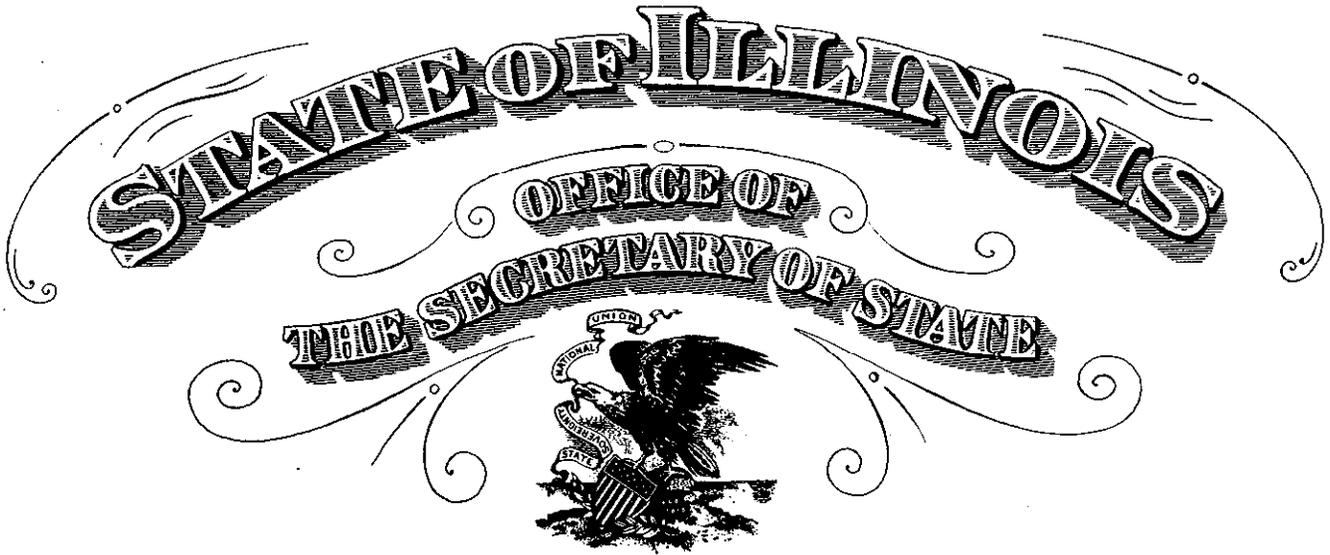
**g) Security/law enforcement**

Dave Nelson  
Vice President Network Operations  
Net2000 Communications Services, Inc.  
2180 Fox Mill Road, Herndon, VA 20171  
Voice: (703) 654-2000  
Fax: (703) 654-2998  
email: dnelson@Net2000.com

**Exhibit B**  
**Certificate of Incorporation and Authority to Transact Business in Illinois**

Question 7: Submit a copy of articles of incorporation and a copy of certificate of authority to transact business in Illinois.

**Response to Question 7: A copy of Applicant's Certificate of Incorporation is attached hereto. Applicant is qualified to do business in the State of Illinois. A copy of Net2000's certificate of authority to transact business in Illinois is also attached.**



**To all to whom these Presents Shall Come, Greeting:**

*I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that*

NET2000 COMMUNICATIONS SERVICES, INC.,  
INCORPORATED IN THE STATE OF DELAWARE AND LICENSED TO TRANSACT  
BUSINESS IN THIS STATE ON JUNE 24, 1998, APPEARS TO HAVE COMPLIED  
WITH ALL THE PROVISIONS OF THE BUSINESS CORPORATION ACT OF THIS  
STATE RELATING TO THE FILING OF ANNUAL REPORTS AND PAYMENT OF  
FRANCHISE TAXES, AND IS AT THIS TIME A FOREIGN CORPORATION IN GOOD  
STANDING AND AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OF  
ILLINOIS\*\*\*\*\*

**In Testimony Whereof, I, hereto set**  
*my hand and cause to be affixed the Great Seal of*  
*the State of Illinois, this* \_\_\_\_\_ 3RD  
*day of* \_\_\_\_\_ MARCH *A.D.* \_\_\_\_\_ 2000



*Jesse White*

SECRETARY OF STATE

**State of Delaware**  
**Office of the Secretary of State**

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "NET2000 COMMUNICATIONS SERVICES, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-NINTH DAY OF OCTOBER, A.D. 1999.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.



2801600 8300

991460574



Edward J. Freel, Secretary of State

0054012

AUTHENTICATION:

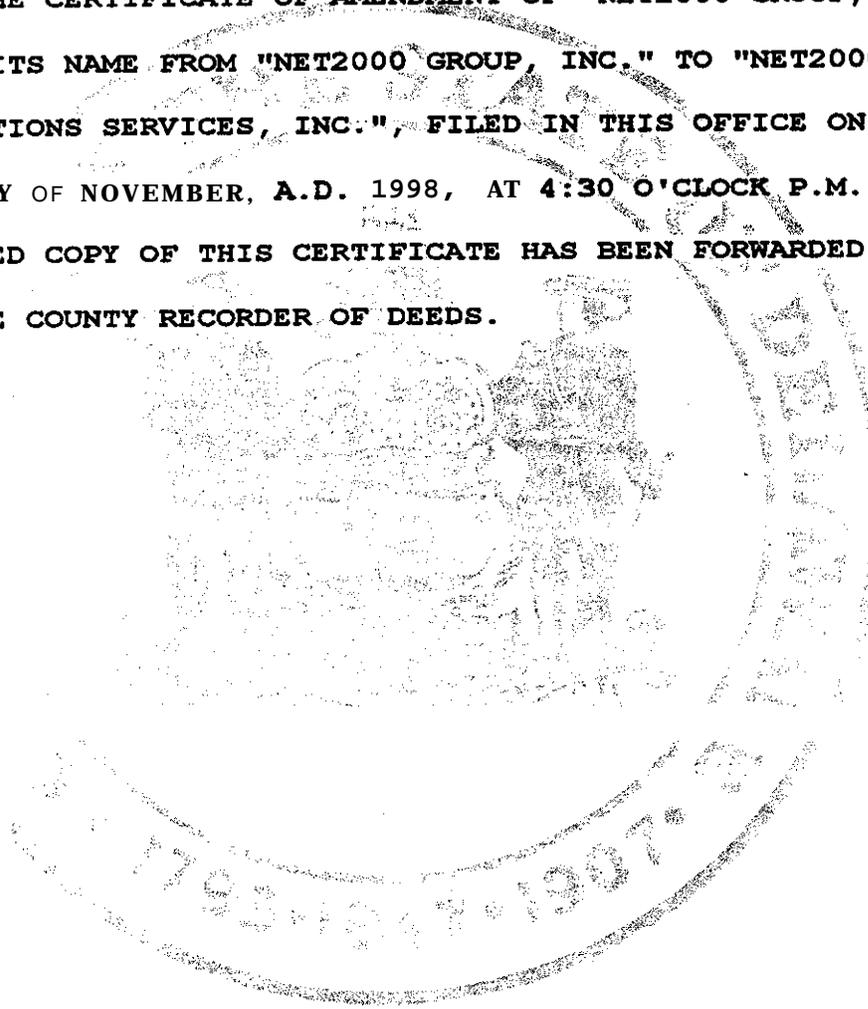
10-29-99

DATE:

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "NET2000 GROUP, INC.", CHANGING ITS NAME FROM "NET2000 GROUP, INC." TO "NET2000 COMMUNICATIONS SERVICES, INC.", FILED IN THIS OFFICE ON THE SECOND DAY OF NOVEMBER, A.D. 1998, AT 4:30 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



*Edward J. Freel*

Edward J. Freel, Secretary of State

2801600 8100

981422463

AUTHENTICATION: 9387780

DATE: 11-04-98

**CERTIFICATE OF AMENDMENT  
TO  
CERTIFICATE OF INCORPORATION  
OF  
NET2000 GROUP, INC.**

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

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Net2000 Group, 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:

FIRST: Transitional Provisions.

A. Pre-Split Shares - Common Stock. Upon **the** filing of this Certificate of Amendment to Certificate of Incorporation (the "Effective Time"), each share of the Corporation's Common Stock issued and outstanding immediately prior thereto (the "he-split Shares") shall, *ipso facto* and without any action on **the** part of the holder of the Pm-Split **Shares**, be changed, converted and reclassified into 0.000004975 shares of Common Stock (**the "Reverse Split"**), and **the** par value of all shares of Common Stock shall continue to be, as of the Effective Time and henceforth **thereafter**, \$0.01 per share. The shares of Common Stock into which the Pre-Split Shares will be converted upon the Effective Time are referred to herein as the "Split **Shares**."

B. No Fractional Shares. No fractional Split Shares will be issued as a result of **the** Reverse Split; in lieu of the holder of **each** Pm-Split Share **otherwise** entitled to a **fractional** Split Share may be paid an amount in cash determined at the rate of \$10.00 per Split Share.

C. Delivery of New Certificates.

(1) Exchange of Certificates. Each holder of **certificates** representing **Pre-Split Shares** may **deliver and surrender** all of such certificates to **the** Corporation for cancellation after the Effective Time, and shall receive upon such delivery, surrender and cancellation, or as soon thereafter as is practicable, in **place thereof** a certificate or certificates for the number of Split Shares of Common Stock into which such holder's Pm-Split Shares were converted upon the Effective Time.

(2) Interim Rights. **Until** surrendered **as** provided in paragraph **(C)(1)** above, as of the Effective Time, certificates formerly representing Pre-Split Shares shall be deemed for **all** corporate **purposes** to **represent** solely the **right to** receive the Split Shares into which such Pm-Split Shares were converted at **the** Effective Time and **the**

**right** to be paid cash for **fractional** Split Shares, if any, all upon surrender of such **Pre-Split Share** certificates.

SECOND: By unanimous **written** consent, the Board of Directors of the Corporation adopted resolutions pursuant to Sections 141(f) and 242 of the General Corporation Law of the State of Delaware **setting** forth the following amendments to the Certificate of Incorporation of the Corporation, including the Reverse Split, **and** declaring said amendments to be advisable. The stockholder of the Corporation duly approved said proposed amendments, **including** the Reverse Split, by **written** consent in accordance with Sections 228 and 242 of the General Corporation Law of the State of Delaware. Accordingly, the Certificate of Incorporation of **the** Corporation is hereby amended by deleting the entire document and inserting the following in lieu thereof:

FIRST: The **name** of the corporation (which is hereinafter called the "Corporation") is Net2000 **Communications** Services, 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 of the Corporation to engage in any **lawful** act or activity for which corporations may **be** organized under the Delaware General Corporation Law and to possess **and** exercise all **of the** powers and privileges granted **under** such law and the other laws of the State of Delaware.

FOURTH: The total number of shares of **all** classes of stock which the Corporation shall have **authority** to issue is 100, all of which shall be Common Stock, \$0.01 par value per share, with an aggregate par value of \$1 **.00**.

FIFTH: The number of directors of the Corporation shall be as fixed from time to time by or pursuant to the By-laws of the Corporation (the "By-Laws"). No director of the Corporation need be a Stockholder.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any **breach** of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good **faith** or which involve **intentional** misconduct or a **knowing** violation of law, (iii) under Section 174 of the Delaware General Corporation Law; or (iv) for any **transaction** from which the director derived an improper **personal** benefit. If **the** Delaware General Corporation Law is amended **after** approval of this article to

**authorize corporate** action further eliminating or limiting the personal liability of **directors**, then the liability of a director of the corporation shall be eliminated or limited to the **fullest** extent permitted by the Delaware General **Corporation Law**, as so amended.

**Any** repeal or modification of the foregoing paragraph by the stockholders of the **corporation** shall not adversely affect any right or protection of a director of the Corporation existing at the time of such **repeal** or modification.

**EIGHTH:** The corporation shall, to the **fullest** extent **permitted** by Section 145 of the Delaware General Corporation Law, 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), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, **finer** and amounts paid in settlement actually and reasonably incurred by him or **on his behalf in** connection with **such** action, suit or proceeding and any appeal therefrom.

Indemnification may include payment by the corporation of expenses in defending an action or **proceeding** in advance of the final disposition of such action or **proceeding** upon receipt of an undertaking by the person **indemnified** to repay such payment if it is ultimately determined that such person is not entitled to indemnification under this **EIGHTH** Article, which undertaking may be accepted without reference to the **financial** ability of such person to make such repayment.

The corporation shall not indemnify any such person seeking indemnification **in** connection with a proceeding (or part thereof) initiated by such person unless the initiation thereof was approved by the Board of Directors of the corporation.

The indemnification rights provided in this **EIGHTH** Article (i) shall not be deemed exclusive of any other rights to which those indemnified 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 such persons. 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 parer or less than, those set forth in this EIGHTH 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 the Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the Corporation has cawed its corporate seal to be affixed hereto and this Certificate of Amendment to be signed by the President and Chief Executive Officer this 30th day of October, 1998.

[Corporate Seal]

NET2000GROUP.INC.

By:   
Clayton A. [unclear]  
President and Chief Executive Officer

*State of Delaware*  
*Office of the Secretary of State*

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PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "NET2000 GROUP, INC.", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF MAY, A.D. 1998, AT 2:30 O'CLOCK P.M.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

2801600 8100

981424840

AUTHENTICATION:

9387843

DATE:

11-04-98

FROM CORPORATION TRUST

**RESTATED CERTIFICATE OF INCORPORATION  
OF NET2000 GROUP, INC.**

Net2000 Group, 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:

The date of incorporation of the Corporation is October 1, 1997.

The the Board of Directors of the Corporation by unanimous written consent as provided by Section 141(f) of the General Corporation Law of the State of Delaware, adopted a resolution, pursuant to Section 242 of the General Corporation Law of the State of Delaware, setting forth an amended and restated Certificate of Incorporation of the Corporation and declaring said amendment and restatement to be advisable, The stockholders of the Corporation duly approved said proposed amendment and restatement by written consent in accordance with Sections 228 242 and 245 of the General Corporation Law of the State of Delaware, and written notice of such consent has been given to all stockholders who have not consented in writing to said amendment and restatement. The resolution setting forth the amendment is as follows:

RESOLVED: That the Certificate of Incorporation of the Corporation be and hereby is amended and restated as follows:

FIRST: The name of the corporation (which is hereinafter called the "Corporation") is:

Net2000 Group, Inc

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

THIRD: The nature of the business of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware and to possess and exercise all of the powers and privileges granted under such law and the other laws of the State of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 35,000,000 in the designated classes as follows:

Class	Number of Shares
common stock, \$.01 par value pa share	28,000,000

Preferred Stock, \$.01 par value per share 7,000,000

A. Common Stock

(1) The voting, dividend and liquidation rights of holders of shares of 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

(2) Subject to the voting rights of holders of shares of the Preferred Stock, 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 and at any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders or a majority of the shares of Common Stock then outstanding shall constitute a quorum of the Common Stock for the purpose of electing directors by holders of Common Stock.

(3) Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as, if and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.

(4) Upon voluntary or involuntary liquidation, sale, merger, consolidation, dissolution or winding up of the Corporation, holders of shares 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.

(5) The Common Stock is nonredeemable.

B. Preferred Stock

One million twenty-one thousand eight hundred and ninety-eight (1,021,898) shares of preferred stock shall be designated as "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"), par value \$.01 value. Five Million five hundred ten thousand five hundred thirty-five (5,510,535) shares of Preferred Stock shall be designated as "Series B Convertible Preferred Stock" (the "Series B Preferred Stock"), par value \$.01. As more fully described below, the Series A Preferred Stock and the Series B Preferred Stock shall rank, as to dividends and upon a Liquidation Event (as defined in Article FOURTH(B)(2) hereof), senior and prior to the Common Stock and all other classes or series of shares issued by the Corporation (the "Junior Stock"). As more fully described below, the Series B Preferred Stock shall rank, as to dividends and upon a Liquidation Event, senior to the Series A Preferred Stock. The Series A Preferred Stock and the Series B Preferred Stock shall be referred to herein collectively as the "Preferred Stock."

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, in no event shall any Adjustment (as defined below) be made to any of the terms of the Series' I3 Preferred Stock as a result of the stock split being effectuated by the Corporation concurrently with the filing of this Restated Certificate of Incorporation (the "Stock Split"). The terms of the Series A Preferred Stock shall be subject to Adjustment as a result of the Stock Split.

The Preferred Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations:

**1. Dividends.**

(a) The holders of shares of Series B Preferred Stock shall be entitled to receive, out of funds legally available therefor, when and if declared by the Board of Directors:

(i) annual dividends at the rate per annum of \$.309 per share of the Series B Preferred Stock as adjusted for stock splits, stock dividends, recapitalizations, reclassifications and similar events which affect the number of outstanding shares of the Series B Preferred Stock (any such event, an "Adjustment"); such dividends will accrue if not declared by the Board of Directors; provided however, that if a Qualifying Event (as defined in Section I(d)) has been consummated prior to the third anniversary of the Series B Original Issue Date (as defined below), no such dividends, whether accrued or unaccrued, will be payable, and upon the occurrence of the Qualifying Event, dividends Pursuant to this Section I(a)(i) will cease to accrue;

(ii) if a dividend or other distribution is declared or distributed on the Common Stock of the Corporation below, dividends or distributions in an amount at least equal to the amount that would have been paid on the Common Stock into which the Series B Preferred Stock is then convertible if all such common Stock had been issued upon conversion and had been outstanding on the record date for such dividend or distribution on Common Stock (or, if no record is taken, the date as of which the record holders entitled to such dividend or distribution are determined) and therefor entitled to such dividends or distributions; provided that any such dividends payable under this clause (ii) shall offset any dividends accruing thereafter pursuant to clause (i); and

(iii) such other dividends or distributions when and as declared by the Board of Directors of the Corporation, acting in its sole discretion.

(b) The holders of shares of Series A Preferred Stock shall be entitled to receive, out of funds legally available therefor, when and if declared by the Board of Directors:

(i) annual dividends at the rate per annum of \$0.274 per share of the Series A Preferred Stock, subject to Adjustment; such dividends, will accrue if not declared by the Board of Directors; provided however, that if a Qualifying Event (as defined in Section I(d)) has been

consummated prior to the third anniversary of the Series A Original Issue Date (as defined below), no such dividends, whether accrued or unaccrued, will be payable, and upon the occurrence of the Qualifying Event, dividends pursuant to this Section 1(b)(i) will cease to accrue;

(ii) if a dividend or other distribution is declared or distributed on the Common Stock of the Corporation below, dividends or distributions in an amount at least equal to the amount that would have been paid on the Common Stock into which the Series A Preferred Stock is then convertible if all such Common Stock had been issued upon conversion and had been outstanding on the record date for such dividend or distribution on Common Stock (or, if no record is taken, the date as of which the record holders entitled to such dividend or distribution are determined) and therefor entitled to such dividends or distributions; provided that any such dividends payable under this clause (ii) shall offset any dividends accruing thereafter pursuant to clause (i); and

(iii) such other dividends or distributions when and as declared by the Board of Directors of the Corporation, acting in its sole discretion.

(c) The holders of the Series B Preferred Stock shall be entitled to be paid, in full, the dividends and distributions declared or accrued (regardless of whether payable) or payable in accordance with clauses (a)(i) and (a)(ii) above, prior to the payment of any dividends or distributions in respect of Common Stock of the Corporation, the Series A Preferred Stock, including any dividends or distributions payable in accordance with clause (b) above, or in respect of any other series of Preferred Stock of the Corporation whose right to payment of dividends or distributions is junior to the Series B preferred Stock, unless the holders of a majority of the shares of Series B Preferred Stock agree otherwise in writing. The holders of the Series A Preferred Stock shall be entitled to be paid, in full, the dividends and distributions declared or accrued (regardless of whether payable) or payable in accordance with clauses (b)(i) and (b)(ii) above, prior to the payment of any dividends or distributions in respect of Common Stock of the Corporation, or in respect of any other series of Preferred Stock of the Corporation whose right to payment of dividends or distributions is junior to the Series A Preferred Stock, unless the holders of a majority of the shares of Series A Preferred Stock agree otherwise in writing.

(d) A "Qualifying Event" shall mean (a) a Qualified Public Offering (as defined in Section 5(a) hereof) or (b) an Acquisition Event (as defined in Section 2(d) hereof).

## 2. Liquidation, Dissolution or Winding Up.

(a) In the event of any liquidation, dissolution or winding up of the Corporation (a "Liquidation Event"), the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings (the "Corporate Assets") shall be distributed as follows:

(i) **First**, subject to Section 2(b), to the holders of Sties B Preferred Stock an amount sufficient to pay the holders of shares of Series B Preferred Stock then outstanding an amount equal to \$3.085 per share (subject to Adjustment) plus all accrued and unpaid dividends thereon to be shared on a pro rata basis;

(ii) **Second**, subject to Section 2(b), to the holders of Series A Preferred Stock an amount sufficient to pay the holders of shares of Series A Preferred Stock then outstanding an amount equal to \$3.425 per share (subject to Adjustment), plus all accrued and unpaid dividends thereon to be shared on a pro rata basis; and

(iii) **Third**, to the holders of Common Stock the holders of Series A Preferred Stock and the holders of Series B Preferred Stock, on a pro rata basis, with the amount distributable computed on the basis of the number of shares of Common Stock which would be held by such holders if immediately prior to the Liquidation Event all of the shares of the Series A Preferred Stock and Series B Preferred Stock had been converted into shares of Common Stock; provided, however, that in the event that the holders of the Series B Preferred Stock receive no distribution under Section 2(a)(i) as a result of the operation of Section 2(b), in no event shall the distribution with respect to the holders of the Series B Preferred Stock under this Section 2(a)(iii) be less than the Series B Distribution Minimum (as defined below) and provided, further, that in the event that the holders of the Series A Preferred Stock receive no distribution under Section 2(a)(ii) as a result of the operation of Section Z(b), in no event shall the distribution with respect to the holders of the Series A Preferred Stock under this Section 2(a)(iii) be less than the Series A Distribution Minimum (as defined below).

For purposes of this Section 2(a), the term "Series A Distribution Minimum" shall mean the amount which would be distributed to the holders of the Series A Preferred Stock under this Section 2(a) if the amount to be distributed under this Section 2(a) equaled the highest amount which would not cause the first sentence of Section 2(b) to become effective. For purposes of this Section 2(a), the term "Series B Distribution Minimum" shall mean the amount which would be distributed to the holders of the Series B Preferred Stock under this Section 2(a) if the amount to be distributed under this Section 2(a) equaled the highest amount which would not cause the second sentence of Section 2(b) to become effective.

(b) Notwithstanding Section 2(a)(ii), in the event of any Liquidation Event in which the Corporate Assets, after the distribution, if any, to the holders of the Series B Preferred Stock required pursuant to Section 2(a)(i), exceed an amount which is sufficient to pay to the holders of Common Stock, Series B Preferred Stock and Series A Preferred Stock, on an as-if-converted and fully-diluted basis, an amount per share greater than all accrued and unpaid dividends per share on the outstanding shares of Series A Preferred Stock plus \$10.275 without taking into account any rights of the Series A Preferred to preferential payment (subject to Adjustment), then no Corporate Assets shall be distributed pursuant to Section 2(a)(ii) and therefore the Corporate Assets should be distributed pursuant to Section 2(a)(i) and 2(a)(iii), subject to the last sentence of this Section 2(b). Notwithstanding Section 2(a)(i), in the event of any Liquidation Event in

which the Corporate Assets exceed an amount which, is sufficient to pay to the holders of Common Stock, Series B Preferred Stock and Series A Preferred Stock, on an as-if-converted and fully-diluted basis, an amount per share greater than all accrued and unpaid dividends per share on the outstanding shares of Series B Preferred Stock plus \$ 4.628 without taking into account any rights of the Series B Preferred Stock or the Series A Preferred Stock to preferential payment (subject to Adjustment), then no Corporate Assets shall be distributed pursuant to Section 2(a)(i) or 2(a)(ii) and therefore the Corporate Assets should be distributed in accordance with 2(a)(iii) hereof.

(c) Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of the liquidation payments and the place where said liquidation payment shall be payable, shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by telecopier or telex not less than 20 days prior to the payment date stated therein, to the holders of record of Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation.

(d) Unless the holders of a majority of the then outstanding shares of Series B Preferred Stock elect otherwise, the merger, reorganization or consolidation of the corporation into OK with another corporation, or the sale of all or substantially all of the assets of the Corporation, or other similar transaction or series of related transactions, in which more than 50% of the voting power of the Corporation is disposed of or in which the stockholders of the Corporation immediately prior to such merger, reorganization or consolidation, own less than 50% of the Corporation's voting power immediately after such merger, reorganization or consolidation, or the sale of all or substantially all the assets of the Corporation (any such event an "Acquisition Event"), shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of Section 2(a).

(e) Unless the holders of at least two-thirds (2/3) of the then outstanding shares of Series A Preferred Stock elect otherwise, any Acquisition Event shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of Section 2(b).

### 3. Voting.

(a) Except as provided in Sections 3(b) and (c) below and elsewhere in this Restated Certificate of Incorporation, each holder of outstanding shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of common Stock into which the shares of Preferred Stock held by such holder are convertible (as adjusted from time to time pursuant to Section 4 hereof), at each meeting of the stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law, by the provisions of Sections 3(b) and (c) below or by the provisions establishing any other series of Preferred Stock holders of Series A Preferred Stock, Series B Preferred Stock and of any other

**outstanding series of Preferred Stock shall vote together with the holders of Common Stock as a single class.**

**(b) The holders of a majority of the shares of the Series B Preferred Stock, voting together as a separate class, shall be entitled to (i) elect one director to the Corporation's Board of Directors (the "Series B Preferred Dir"), (ii) to remove the Series B Preferred Director, and (iii) to fill any vacancy occurring on the Board of Directors as a result of the death, resignation or removal of the Series B Preferred Director.**

**(c) The holders of a majority of the shares of the Series A Preferred Stock, voting together as a separate class, shall be entitled to (i) elect one director to the Corporation's Board of Directors (the "Series A Preferred Director"), (ii) to remove the Series A Preferred Director, and (iii) to fill any vacancy occurring on the Board of Directors as a result of the death, resignation or removal of the Series A Preferred Director.**

**(d) Any and all director positions in excess of the one director elected by the holders of the Series B Preferred Stock pursuant to Section 3(b) and the one director elected by the holders of the Series A Preferred Stock pursuant to Section 3(c) shall be elected by the holders of the Common Stock and the Preferred Stock voting as a single class. The Corporation shall not expend the number of Directors without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of each of Series A Preferred Stock and Series B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be), each voting separately as a class,**

**(e) The Corporation shall not, without the written consent or affirmative vote of a majority of the holders 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) together as a class:**

**(i) prior to May 18, 2001, engage in an Acquisition Event, unless the value of the Corporation based on such transaction is equal to or exceeds \$130,000,000 and the proceeds received by the Corporation are in cash or securities publicly traded on a recognized United States securities exchange;**

**(ii) authorize, create or issue any shares of stock or securities exchangeable for, convertible into or evidencing the right to purchase any shares of stock, having rights, preferences or privileges (including without limitation, redemption rights or rights of anti-dilution protection) superior to or on a parity with that of the Series E1 Preferred Stock, including, without limitation, authorization or issuance of additional shares of Series B Preferred Stock;**

**(iii) amend, alter, or repeal the Corporation's Bylaws (including, without limitation, Article 2 thereof) or this Certificate of Incorporation so as to materially affect the preferences, special rights or other powers of the Series B Preferred Stock;**