

09-17-2003



102553986

Attorney Docket No.: 005191.P001

To the Director of the United States Patent and Trademark Office. Please record the attached original documents or copy thereof.

 1. Name of conveying party(ies): 9-15-03  
 FHP Wireless, Inc.

 Additional name(s) of conveying party(ies) attached?  
☒ No ☐ Yes

3. Nature of Conveyance

☐ Assignment☐ Merger☐ Security Agreement☒ Change of Name☐ Other:Execution Date(s): June 3, 2003

2. Name and address of receiving party(ies):

Name: Tropos Networks, Inc.

Internal Address: \_\_\_\_\_

Street Address: 1730 South Amphlett Blvd., Suite 114City: San MateoState/Province: CAZip: 94402Country: USAAdditional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_

A. Patent Application No.(s)

09/751,262

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Blakely, Sokoloff, Taylor & Zafman LLP

Internal Address: \_\_\_\_\_

Street Address: 12400 Wilshire Boulevard, 7<sup>th</sup> Floor  
Los Angeles, California 900256. Total number of applications and patents involved: ☒ 17. Total Fee (37 CFR 3.41).....\$ 40.00☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit Account Number:

02-2666

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. 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.*Judith A. Szepesi

Name of Person Signing

Signature

9/11/03

Date

Total number of pages including cover sheet, attachments, and documents: 20

Mail documents to be recorded with required cover sheet information to:

Mail Stop Assignment Recordation Services

Director of the United States Patent and Trademark Office

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Based on Form PTO-1595 as modified by BLAKELY, SOKOLOFF, TAYLOR &amp; ZAFMAN LLP on 05/09/03

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 PATENT  
 REEL: 014487 FRAME: 0863

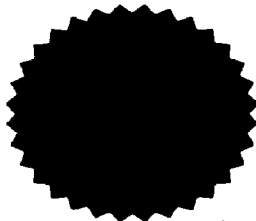
# Delaware

PAGE 1

## *The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "FHP WIRELESS, INC.", CHANGING ITS NAME FROM "FHP WIRELESS, INC." TO "TROPOS NETWORKS, INC.", FILED IN THIS OFFICE ON THE THIRD DAY OF JUNE, A.D. 2003, AT 3:11 O'CLOCK P.M.

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



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3280925 8100

AUTHENTICATION: 2451171

030365394

DATE: 06-04-03

PATENT  
REEL: 014487 FRAME: 0864

**FIFTH AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
FHP WIRELESS, INC.**

The undersigned, Michael Taylor, hereby certifies that:

1. He is the duly elected and acting Chief Financial Officer of FHP Wireless, Inc., a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on September 8, 2000.
3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

**"ARTICLE I**

The name of this corporation is Tropos Networks, Inc. (the "Corporation").

**ARTICLE II**

The address of the Corporation's registered office in the State of Delaware is 15 East North Street, Dover, County of Kent. The name of its registered agent at such address is Incorporating Services, Ltd.

**ARTICLE III**

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

**ARTICLE IV**

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 100,221,387 shares, each with a par value of \$0.0001 per share. 61,500,000 shares shall be Common Stock and 38,721,387 shares shall be Preferred Stock.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation (the "Restated Certificate") may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of 1,905,000 shares. The second series of Preferred Stock shall be designated "Series B Preferred Stock" and shall consist of 9,621,387 shares. The third series of Preferred Stock shall be designated "Series C Preferred Stock" and shall consist of 27,195,000 shares. The rights, preferences, privileges, and

restrictions granted to and imposed on each series of Preferred Stock are as set forth below in this Article IV(B).

1. **Dividend Provisions.** The holders of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of (a) \$0.06896 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series A Preferred Stock, (b) \$0.025486 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series B Preferred Stock, and (c) \$0.029712 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series C Preferred Stock, each payable annually when, as and if declared by the Board of Directors; provided, however, that any such dividend, if in less than the full amounts set forth above, shall be paid on shares of each such series pro rata in respect of such amounts. Such dividends shall not be cumulative. After payment of such dividends, any additional dividends shall be distributed among the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock then held by each holder (assuming conversion of all such Preferred Stock into Common Stock).

2. **Liquidation.**

(a) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to (i) \$0.916 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series A Preferred Stock then held by them, (ii) \$0.318575 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series B Preferred Stock then held by them, and (iii) \$0.3714 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series C Preferred Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** Upon the completion of the distribution required by Section 2(a) above, if assets remain in the Corporation, the holders of the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation.

(c) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2, a "Liquidation Transaction" shall include (A) the closing of the sale, transfer or other disposition of all or substantially all of the Corporation's assets; provided, however, that a transfer or other disposition by mortgage, pledge or grant of a security interest to a bona fide lender shall not constitute a Liquidation Transaction, (B) the consummation of the merger or consolidation of the Corporation or a subsidiary of the Corporation with or into another entity (except one in which the holders of capital stock of the Corporation as constituted immediately prior to such merger or consolidation continue to hold at least 50% of the voting power of the capital stock of the Corporation or the surviving or acquiring entity in substantially the same relative proportions), (C) the closing of the acquisition, in one transaction or a series of related transactions by a person or group of affiliated persons (other than an underwriter of the Corporation's securities), of 50% or more of the outstanding voting stock of the Corporation; provided, however, that a transaction shall not constitute a Liquidation Transaction: (i) if its sole purpose is to change the state of the Corporation's incorporation, (ii) if its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Corporation's securities immediately prior to such transaction, or (iii) if it is an bona fide equity financing in which the Corporation is the surviving corporation; or (D) a liquidation, dissolution or winding up of the Corporation.

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(c)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

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

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the seven (7) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the seven (7) day period ending three (3) days prior to the closing; and

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

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

(iii) **Notice of Liquidation Transaction.** The Corporation shall give each holder of record of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock written notice of any impending Liquidation Transaction not later than 10 days prior to the stockholders' meeting called to approve such Liquidation Transaction, or 10 days prior to the closing of such Liquidation Transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such Liquidation Transaction. The first of such notices shall describe the material terms and conditions of the impending Liquidation Transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The Liquidation Transaction shall in no event take place sooner than 10 days after the Corporation has given the first notice provided for herein or sooner than 10 days after the Corporation has given notice of any material changes provided for herein. Notwithstanding the other provisions of this Restated Certificate, all notice periods or requirements in this Restated Certificate may be shortened or waived, either before or after the action for which notice is required, upon the written consent of the holders of a majority of the voting power of the outstanding shares of Preferred Stock that are entitled to such notice rights.

(iv) **Effect of Noncompliance.** In the event the requirements of this Section 2(c) are not complied with, the Corporation shall forthwith either cause the closing of the Liquidation Transaction to be postponed until the requirements of this Section 2 have been complied with, or cancel such Liquidation Transaction, in which event the rights, preferences, privileges and restrictions of the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall revert to and be the same as such rights, preferences, privileges and restrictions existing immediately prior to the date of the first notice referred to in Section 2(c)(iii).

3. **Redemption.** The Preferred Stock shall be redeemable as follows:

(a) **Redemption Date and Price.** At any time after December 1, 2007, but on a date (the "**First Redemption Date**") within 30 days after receipt by the Corporation of a written request (a "**Redemption Election**") from the holders of not less than two-thirds of the then outstanding Preferred Stock, voting together as a class on an as-converted basis, that all of the shares of Preferred Stock be redeemed, the Corporation shall, to the extent it may lawfully do so, redeem 50% of the total number of shares of Preferred Stock then outstanding (the "**Originally Outstanding Preferred**") in accordance with the procedures set forth in this Section 3 by paying in cash therefor a sum per share equal to the then applicable liquidation preference amount per share specified in Section 2(a) hereof for the applicable series of Preferred Stock plus all declared or accumulated but unpaid dividends on such shares (the "**Redemption Price**"). On the date that is one year following the First Redemption Date (the "**Second Redemption Date**"), the Corporation shall, to the extent it may lawfully do so, redeem 25% of the total number of shares of Originally Outstanding Preferred in accordance with the procedures set forth in this Section 3 by paying in cash therefor the Redemption Price. On the date that is one year following the Second Redemption Date (the "**Third Redemption Date**"), the Corporation shall, to the extent it may lawfully do so, redeem the remaining 25% of the total number of shares of Originally Outstanding Preferred in accordance with the procedures set forth in this Section 3 by paying in cash therefor the Redemption Price. The First Redemption Date, the Second

Redemption Date and the Third Redemption Date shall be referred to herein as the "Redemption Dates."

(b) **Procedure.** Within 15 days following its receipt of the Redemption Election, the Corporation shall mail a written notice, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of Preferred Stock at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Dates, the applicable Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, such holder's certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in Section 3(c), on or after each Redemption Date, each holder of Preferred Stock shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) **Effect of Redemption; Insufficient Funds.** From and after the First Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Preferred Stock designated for redemption in the Redemption Notice (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon the total Redemption Price applicable to each such holder's shares of Preferred Stock which are subject to redemption on such Redemption Date. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any Redemption Date but which it has not redeemed.

4. **Conversion.** The holders of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) **Right to Convert.** Subject to Section 4(c), each share of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be convertible, at

the option of the holder thereof, at any time after the date of issuance of such share and on or prior to the Third Redemption Date, if any, as may have been fixed in any Redemption Notice with respect to such series of Preferred Stock, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) \$0.862 in the case of the Series A Preferred Stock by the Conversion Price applicable to such share, (ii) \$0.318575 in the case of the Series B Preferred Stock by the Conversion Price applicable to such share, and (iii) \$0.3714 in the case of the Series C Preferred Stock by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share shall be \$0.5531667 for shares of Series A Preferred Stock, \$0.318575 for shares of Series B Preferred Stock and \$0.3714 for shares of Series C Preferred Stock. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4(d) below.

(b) Automatic Conversion. Each share of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), which results in aggregate cash proceeds to the Corporation in excess of \$15,000,000 (net of underwriting discounts and commissions) and an initial offering price of at least \$1.12 per share or (ii) the date specified by written consent or agreement of the holders of two-thirds of the then outstanding shares of Preferred Stock, voting together as a class on an as-converted basis.

(c) Mechanics of Conversion. Before any holder of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be entitled to convert such Preferred Stock into shares of Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Preferred Stock being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of



such date. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event any persons entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Price of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be subject to adjustment from time to time as follows:

(i) **Issuance of Additional Stock below Purchase Price.** If the Corporation should issue or be deemed by the express provisions of this Section 4(d)(i) to issue, at any time after the date upon which any shares of Series C Preferred Stock were first issued (the "Series C Purchase Date"), any Additional Stock (as defined below) either (x) without consideration or (y) (1) with respect to an adjustment to the Conversion Price of the Series C Preferred Stock, for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock or (2) with respect to an adjustment to the Conversion Price of the Series A Preferred Stock or Series B Preferred Stock, for a consideration per share less than the Conversion Price for the Series B Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.**

(1) **Series C Preferred Stock.** Whenever the Conversion Price for the Series C Preferred Stock is adjusted pursuant to this Section (4)(d)(i), the new Conversion Price for such series shall be determined by multiplying the Conversion Price then in effect for such series by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(2) **Series B Preferred Stock.** Whenever the Conversion Price for the Series B Preferred Stock is adjusted pursuant to this Section (4)(d)(i), the new Conversion Price for such series shall be determined by multiplying the Conversion Price then in effect for such series by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding

Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(3) Series A Preferred Stock. Whenever the Conversion Price for the Series A Preferred Stock is adjusted pursuant to this Section (4)(d)(i), the new Conversion Price for such series for the Series A Preferred Stock shall be determined by multiplying the Conversion Price then in effect for the Series B Preferred Stock (as has been adjusted to account for the issuance of the same Additional Stock which is causing the adjustment to the Series A Preferred Stock) by 1.736378.

(B) Definition of "Additional Stock". For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Series C Purchase Date) other than

(1) Common Stock issued pursuant to stock dividends, stock splits or similar transactions, as described in Section 4(d)(ii) hereof;

(2) Shares of Common Stock issued or issuable to employees, officers, consultants, vendors or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation;

(3) Capital stock, or options or warrants to purchase capital stock, issued in connection with commercial credit arrangements, equipment financings, commercial property lease transactions or similar transactions with a financial institution or lessor approved by the Board of Directors of the Corporation;

(4) Shares of Common Stock or Preferred Stock issuable upon exercise of options, warrants or other convertible securities outstanding as of the date of this Restated Certificate;

(5) Capital stock, or warrants or options to purchase capital stock, issued for consideration other than cash in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation;

(6) Shares of Common Stock issued or issuable upon conversion of Preferred Stock;

(7) Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Preferred Stock will be converted to Common Stock;

(8) Capital stock issued or issuable to an entity as a component of any business relationship with such entity for the purpose of (A) joint venture, technology licensing or development activities, (B) distribution, supply or manufacture of the Corporation's products or services or (C) any other arrangements involving corporate partners that are primarily for purposes other than raising capital, the terms of which business relationship with such entity are approved by the Board of Directors; and

(9) Shares of Common Stock issued or issuable with the affirmative vote of at least two-thirds of the then outstanding shares of Preferred Stock, voting together as a class on an as-converted basis, the terms of which are approved by the Board of Directors.

(C) No Fractional Adjustments. No adjustment of the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be made in an amount less than one-tenth of one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) Determination of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable legal expenses and after deducting any discounts, commissions or other non-legal expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(E) Deemed Issuances of Common Stock. In the case of the issuance (whether before, on or after the Series C Purchase Date) of securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (the "Common Stock Equivalents"), the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon conversion, exchange or exercise (assuming the satisfaction of any conditions to convertibility, exchangeability or exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of any Common Stock Equivalents and subsequent conversion, exchange or exercise thereof shall be deemed to have been issued at the time such securities were issued or

such Common Stock Equivalents were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related Common Stock Equivalents (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion, exchange or exercise of any Common Stock Equivalents (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(2) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon conversion, exchange or exercise of any Common Stock Equivalents including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of any series of Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the conversion, exchange or exercise of such Common Stock Equivalents.

(3) Upon the termination or expiration of the convertibility, exchangeability or exercisability of any Common Stock Equivalents, the Conversion Price of any series of Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Common Stock Equivalents that remain convertible, exchangeable or exercisable) actually issued upon the conversion, exchange or exercise of such Common Stock Equivalents.

(4) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Section 4(d)(i)(E)(1) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(2) or 4(d)(i)(E)(3).

(F) No Increased Conversion Price. Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(2) and 4(d)(i)(E)(3), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) Stock Splits and Dividends. In the event the Corporation should at any time after the Series C Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or Common Stock Equivalents without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each of the Series A Preferred Stock, Series B Preferred Stock

and Series C Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iii) **Reverse Stock Splits.** If the number of shares of Common Stock outstanding at any time after the Series C Purchase 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 each of the Series A Preferred Stock, Series B Preferred Stock and the Series C Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) **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, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of Series A Preferred Stock, Series B Preferred Stock or Series C 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.

(f) **Recapitalizations.** If at any time or from time to time the Common Stock issuable upon the conversion of the Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2) provision shall be made so that the holders of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the maximum 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 upon such recapitalization, reclassification, merger, consolidation or change. 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 such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Impairment.** Except in accordance with Section 6 hereof and applicable law, the Corporation will not, 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 dilution or other impairment.

(h) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded down to the nearest whole share and the Corporation shall pay in cash the fair value of any fractional shares (as determined by the Board of Directors) on the date of conversion. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (A) such adjustment and readjustment, (B) the consideration received or deemed to be received by the Corporation for any Additional Stock issued or sold or deemed to have been issued or sold, (C) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Additional Stock and the type and amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(i) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock, at least 10 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of such series of Preferred Stock; and if at any time the number of authorized

but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

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

5. Voting Rights. The holder of each share of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

6. Protective Provisions. So long as at least 2,500,000 shares of Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassification and the like) or 2,000,000 shares of Series C Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the Corporation shall not, whether by amendment, merger, consolidation or otherwise, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a class on an as-converted basis:

- (a) effect a Liquidation Transaction;
- (b) amend, alter or change this Restated Certificate or the bylaws of

the Corporation;

(c) increase or decrease (other than by conversion or in accordance with the redemption provisions of this Restated Certificate) the total number of authorized shares of Preferred Stock;

(d) authorize or issue, or obligate itself to issue, any other equity security (other than Series C Preferred Stock) convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series C Preferred Stock with respect to voting, dividends, redemption, conversion or upon liquidation;

(e) (i) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock (other than by conversion or in accordance with the redemption provisions of this Restated Certificate) or (ii) pay any dividends on Common Stock except as permitted hereunder; provided, however, that these restrictions shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements approved by the Board of Directors under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, or has the right to exercise of any right of first refusal (each, an "Exempt Repurchase"); provided, further, however, that the aggregate amount of the Exempt Repurchases shall not exceed \$250,000 in any twelve month period without the approval of the Board of Directors;

(f) change the authorized number of the members of the Corporation's Board of Directors;

(g) authorize or issue, or obligate itself to issue, any equity security other than those securities which are excepted from the definition of Additional Stock under Section 4(d)(i)(B)(2) through Section 4(d)(i)(B)(9), above;

(h) permit any subsidiary of the Corporation to issue or sell any equity security of such subsidiary (other than to the Corporation or a wholly-owned subsidiary of the Corporation);

(i) authorize or permit any material change in the principal business of the Corporation without the approval of the Corporation's Board of Directors (including the approval of the Director nominated or elected by holders of a majority of Series C Preferred Stock, if any);

(j) without the approval of the Corporation's Board of Directors (including the approval of the Director nominated or elected by holders of a majority of Series C Preferred Stock, if any), authorize or grant an exclusive license of all or substantially all of the Corporation's intellectual property, or materially inhibit the Corporation's ability to engage in commercial use of its intellectual property or encumber of the Corporation's core intellectual property.



7. **Status of Redeemed or Converted Stock.** In the event any shares of Preferred Stock shall be redeemed pursuant to Section 3 or converted pursuant to Section 4 hereof, the shares so redeemed or converted shall be cancelled and shall not be issuable by the Corporation. This Restated Certificate shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) **Common Stock.**

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends and subject to Section 6(e), the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the occurrence of a Liquidation Transaction, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B).

3. **Redemption.** The Common Stock is not redeemable.

4. **Voting Rights.** Each holder of Common Stock shall have the right to one vote per share of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

**ARTICLE V**

The Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

**ARTICLE VI**

The number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

**ARTICLE VII**

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

**ARTICLE VIII**

(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 breach of fiduciary duty as a director.

(B) The Corporation shall 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 or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

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

#### ARTICLE IX

In connection with repurchases by the Corporation of its Common Stock from employees, officers, directors, advisors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, should the Corporation become subject to the requirements of Section 2115 of the California Corporations Code, then Sections 502 and 503 of the California Corporations Code, such sections shall not apply in all or in part with respect to such repurchases."

\* \* \*

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by the Corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at San Mateo, California, on June 3, 2003.

/s/ Michael Taylor

Michael Taylor, Chief Financial Officer

**TROPOS NETWORKS, INC.  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**