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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 8-K

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**CURRENT REPORT**  
**Pursuant to Section 13 or 15(d)**  
**of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): September 7, 2001

**ON Semiconductor Corporation**  
(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**000-30419**  
(Commission File Number)

**36-3840979**  
(I.R.S Employer  
Identification No.)

**5005 E. McDowell Road**  
**Phoenix, Arizona 85008**  
(Address of Principal Executive Offices) (Zip Code)

**(602) 244-6600**  
(Registrant's Telephone Number, Including Area Code)

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**Item 5. Other Events.**

On September 7, 2001, ON Semiconductor Corporation (the "Company") announced the closing of a \$100,000,000 investment in the Company by Texas Pacific Group ("TPG"), a leading private equity investment firm and the Company's majority stockholder.

In connection with this investment, TPG purchased 10,000 shares of the Company's Series A cumulative convertible preferred stock with a stated value of \$10,000 per share. The Series A preferred stock has a cumulative dividend, payable quarterly in cash, at the rate of 8.0% per annum (or, if greater during the relevant quarterly period, in an amount equal to the value of the dividends that would be paid on the common stock then issuable upon conversion of the Series A preferred stock). In the event dividends are not declared or paid, the dividends will accumulate on a compounded basis. The Series A preferred stock has a liquidation preference equal to the greater of (i) the stated value of the Series A preferred stock plus all accrued and unpaid dividends thereon or (ii) the amount that would be payable to holders of the Series A preferred stock if their shares had been converted into shares of the Company's common stock immediately prior to the liquidation event.

The Series A preferred stock ranks prior to the common stock and any other junior securities with respect to the payment of dividends and liquidating distributions. The Company is prohibited from issuing any capital stock that ranks senior to the Series A preferred stock or is redeemable prior to the Series A preferred stock without the consent of the holders of a majority of the outstanding shares of Series A preferred stock or, subject to certain exceptions, from creating contractual or other limitations on the ability of the Company or any of its subsidiaries to pay dividends on or to repurchase or redeem any of its equity securities. However, the right of a holder to receive dividend payments or other distributions in respect of Series A preferred stock is subject to and subordinated in right of payment to the payment in full and discharge of all amounts of principal, interest and fees then outstanding under the Company's principal credit agreement, its senior subordinated notes, and certain other existing and future indebtedness of the Company.

Each share of Series A preferred stock is convertible at the option of the holder any time into shares of common stock at a conversion price of \$2.82 per share of common stock, subject to customary anti-dilution adjustments. The conversion feature, which for financial accounting purposes has a value of approximately \$13 million, will not impact the Company's net results for the third quarter or the full year, but will decrease the Company's per share results for such periods by approximately \$0.08. Shareholder approval (or waiver by the Nasdaq thereof) will be required prior to the issuance of any shares of common stock upon conversion of the Series A preferred stock in excess of 19.9% of the number of shares of common stock outstanding on the closing date.

At any time on or after the eighth anniversary of the issuance date of the Series A preferred stock, the holders may require the Company to redeem their shares at a redemption price equal to the greater of (i) the stated value of the Series A preferred stock plus all accrued and unpaid dividends thereon or (ii) 50% of the then current market price of the common stock (based upon the average closing price of the common stock over the preceding 30 trading days) and other assets and property, if any, into which one share of Series A preferred stock is then convertible.

Upon a change of control, the holders of the Series A preferred stock may "put" their shares to the Company at 101% of the stated value plus accumulated and unpaid dividends.

The holders of the Series A preferred stock will be entitled to vote with the holders of the common stock as a single class. Each share of Series A preferred stock will be entitled to approximately

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3,135 votes, subject to certain adjustments for accumulated dividends and those made in accordance with the anti-dilution provisions.

Under the transaction documents, TPG is entitled to designate two directors to serve on the Company's Board of Directors for so long as TPG and its affiliates beneficially own at least 50% of the Series A preferred stock. The holders of the Series A preferred stock also have been granted registration rights in respect of the common stock underlying the preferred stock.

The investment by TPG, which was required by the Company's lenders as a condition to the waivers and amendments to the Company's credit agreement, was approved by the Company's board of directors, following the unanimous recommendation of a special committee of independent directors formed specifically for the purpose of negotiating, evaluating and considering the transaction. Broadview International LLC acted as the financial advisor to the special committee and delivered a fairness opinion in connection with the investment by TPG. Snell & Wilmer L.L.P. acted as the legal advisor to the special committee for the investment. As a further condition to the waivers and amendments to the credit agreement, TPG and the Company were required to enter a subordination agreement for the benefit of lenders under the Company's principal credit facility.

### **Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.**

- (a) Financial Statements of Business Acquired. Not applicable.
- (b) Pro Forma Financial Information. Not applicable.
- (c) Exhibits:

- 3.1 Certificate of Designations relating to the Series A Cumulative Convertible Preferred Stock
- 4.1 Specimen of Share Certificate of Series A Cumulative Convertible Preferred Stock
- 4.2 Investment Agreement, dated as of September 7, 2001, between TPG ON Holdings LLC and ON Semiconductor Corporation
- 4.3 Registration Rights Agreement, dated as of September 7, 2001, between TPG ON Holdings LLC and ON Semiconductor Corporation
- 4.4 Subordination Agreement, dated as of September 7, 2001, by and between TPG ON Holdings LLC and ON Semiconductor Corporation, for the benefit of Senior Creditors
- 99.1 Press Release dated September 7, 2001

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### **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: September 7, 2001

ON Semiconductor Corporation  
By /s/ Dario Sacomani

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Dario Sacomani  
Senior Vice President and Chief Financial Officer

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## EXHIBIT INDEX

<b>Exhibit Number</b>	<b>Description</b>
3.1	Certificate of Designations relating to the Series A Cumulative Convertible Preferred Stock
4.1	Specimen of Share Certificate of Series A Cumulative Convertible Preferred Stock
4.2	Investment Agreement, dated as of September 7, 2001, between TPG ON Holdings LLC and ON Semiconductor Corporation
4.3	Registration Rights Agreement, dated as of September 7, 2001, between TPG ON Holdings and ON Semiconductor Corporation
4.4	Subordination Agreement, dated as of September 7, 2001, by and between TPG ON Holdings LLC and ON Semiconductor Corporation, for the benefit of Senior Creditors
99.1	Press Release dated September 7, 2001

CERTIFICATE OF DESIGNATIONS  
OF  
SERIES A CUMULATIVE CONVERTIBLE PREFERRED STOCK  
OF  
ON SEMICONDUCTOR CORPORATION  
(PURSUANT TO SECTION 151 OF THE  
DELAWARE GENERAL CORPORATION LAW)

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ON Semiconductor Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to authority of the Board of Directors as required by Section 151 of the General Corporation Law of the State of Delaware:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors in accordance with the provisions of the Amended and Restated Certificate of Incorporation of the Corporation (the "Certificate of Incorporation"), the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, \$0.01 par value (the "Preferred Stock"), and hereby states the designation and number thereof, and fixes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

Series A Cumulative Convertible Preferred Stock:

I. Designation and Amount

The designation of this series of shares shall be "Series A Cumulative Convertible Preferred Stock" (the "Series A Preferred Stock"); the stated value per share shall be \$10,000 (the "Stated Value"); and the number of shares constituting such series shall be 10,000. The number of shares of the Series A Preferred Stock may be decreased from time to time by a resolution or resolutions of the Board of Directors or a duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such reduction has been so authorized; provided, however, that such number shall not be decreased below the aggregate number of shares of the Series A Preferred Stock then outstanding.

II. Rank

A. With respect to dividend rights, the Series A Preferred Stock shall rank (i) junior to each other class or series of Preferred Stock which by its terms ranks senior to the Series A Preferred Stock as to payment of dividends, (ii) on a parity with each other class or series of Preferred Stock which by its terms ranks on a parity with the Series A Preferred Stock as to payment of dividends, and (iii) prior to the Corporation's Common Stock, par value \$0.01 per share (the "Common Stock"), and, except as specified above, all other classes and series of capital stock of the Corporation hereafter issued by the Corporation. With respect to dividends,

all equity securities of the Corporation to which the Series A Preferred Stock ranks senior, including the Common Stock, are collectively referred to herein as the "Junior Dividend Securities"; all equity securities of the Corporation with which the Series A Preferred Stock ranks on a parity, if any, are collectively referred to herein as the "Parity Dividend Securities"; and all equity securities of the Corporation to which the Series A Preferred Stock ranks junior, if any, are collectively referred to herein as the "Senior Dividend Securities."

B. With respect to the distribution of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the Series A Preferred Stock shall rank (i) junior to each other class or series of Preferred Stock which by its terms ranks senior to the Series A Preferred Stock as to distribution of assets upon liquidation, dissolution or winding up, (ii) on a parity with each other class or series of Preferred Stock which by its terms ranks on a parity with the Series A Preferred Stock as to distribution of assets upon liquidation, dissolution or winding up of the Corporation, and (iii) prior to the Common Stock, and, except as specified above, all other classes and series of capital stock of the Corporation hereinafter issued by the Corporation. With respect to the distribution of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, all equity securities of the Corporation to which the Series A Preferred Stock ranks senior, including the Common Stock, are collectively referred to herein as "Junior Liquidation Securities" (and together with the Junior Dividend Securities are referred to herein as the "Junior Securities"); all equity securities of the Corporation to which the Series A Preferred Stock ranks on parity, if any, are collectively referred to herein as "Parity Liquidation Securities" (and together with the Parity Dividend Securities are referred to herein as the "Parity Securities"); and all equity securities of the Corporation to which the Series A Preferred Stock ranks junior, if any, are collectively referred to herein as "Senior Liquidation Securities" (and together with the Senior Dividend Securities are referred to herein as the "Senior Securities").

C. The Series A Preferred Stock shall be subject to the creation of Junior Securities and Parity Securities, but no Senior Securities or additional Series A Preferred Stock shall be created except in accordance with the terms hereof, including, without limitation, Article VII, Section E.

### III. Dividends

A. Dividends. Shares of Series A Preferred Stock shall accumulate dividends, payment of which shall be made in cash except as otherwise provided in this Article III, at a rate of 8.00% per annum or, if greater in any quarterly period, in an amount equal to the value of the dividends that would have been paid with respect to the shares of Common Stock into which such shares of Series A Preferred Stock could have been converted on the record date for the payment of such dividends with respect to the Common Stock. Dividends are due and shall be paid in four equal quarterly installments on the last day of March, June, September and December of each year (commencing December 31, 2001, it being understood that dividends shall be deemed to have accumulated from the Closing Date through December 31, 2001), or if any such date is not a Business Day, on the Business Day next preceding such day (each such date, regardless of whether any dividends have been paid or declared and set aside for payment on such date, a "Dividend Payment Date"), to holders of record (the "Registered Holders") as they appear on the stock record books of the Corporation on the fifteenth day prior to the

relevant Dividend Payment Date; provided, however, that the Corporation may elect not to declare or make any dividend payment due hereunder on any Dividend Payment Date (other than as required in connection with any redemption of shares of Series A Preferred Stock or any liquidation, dissolution or winding up of the Corporation), and any such amount then due in respect of dividends shall constitute an Arrearage (as defined below). Dividends shall be paid only when, as and if declared by the Board of Directors out of funds at the time legally available for the payment of dividends. Dividends shall begin to accumulate on outstanding shares of Series A Preferred Stock from the date of issuance and shall be deemed to accumulate from day to day whether or not earned or declared until paid. Dividends shall accumulate on the basis of a 360-day year consisting of twelve 30-day months (four 90-day quarters) and the actual number of days elapsed in the period for which payable.

B. Accumulation. Dividends on the Series A Preferred Stock shall be cumulative, and from and after any Dividend Payment Date on which any dividend that has accumulated or been deemed to have accumulated through such date has not been paid in full or any payment date set for a redemption on which such redemption payment has not been paid in full, additional dividends shall accumulate in respect of the amount of such unpaid dividends or unpaid redemption payment (such amount, the "Arrearage") as provided in Section A of this Article III (or such lesser rate as may be the maximum rate that is then permitted by applicable law). Such additional dividends in respect of any Arrearage shall be deemed to accumulate from day to day whether or not earned or declared until the Arrearage is paid, shall be calculated as of such successive Dividend Payment Date and shall constitute an additional Arrearage from and after any such successive Dividend Payment Date to the extent not paid on such Dividend Payment Date. References in any Article herein to dividends that have accumulated or that have been deemed to have accumulated with respect to the Series A Preferred Stock shall include the amount, if any, of any Arrearage together with any dividends accumulated or deemed to have accumulated on such Arrearage pursuant to the immediately preceding two sentences. Additional dividends in respect of any Arrearage may be declared and paid at any time, in whole or in part, without reference to any regular Dividend Payment Date, to Registered Holders as they appear on the stock record books of the Corporation on such record date as may be fixed by the Board of Directors (which record date shall be no less than 10 days prior to the corresponding payment date).

C. Method of Payment. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accumulated and payable on all outstanding shares of Series A Preferred Stock shall be allocated pro rata on a share-by-share basis among all such shares then outstanding. Any such partial payment shall be made in cash. Dividends that are declared and paid in an amount less than the full amount of dividends accumulated on the Series A Preferred Stock (and on any Arrearage) shall be applied first to the earliest dividend which has not theretofore been paid. All cash payments of dividends on the shares of Series A Preferred Stock shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

#### IV. Liquidation Preference

In the event of a liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of then-outstanding shares of Series A Preferred

Stock shall be entitled to receive out of the assets of the Corporation, whether such assets are capital or surplus of any nature, an amount per share equal to the greater of (i) the sum of (A) the dividends, if any, accumulated or deemed to have accumulated thereon to the date of final distribution to such holders, whether or not such dividends are declared, and (B) the Stated Value thereof, and (ii) the amount that would be payable to holders of the Series A Preferred Stock if the shares of Series A Preferred Stock had been converted into shares of Common Stock immediately prior to such liquidation, dissolution or winding up, and no more, before any payment shall be made or any assets distributed to the holders of any Junior Liquidation Securities. After any such payment in full, the holders of Series A Preferred Stock shall not, as such, be entitled to any further participation in any distribution of assets of the Corporation. All the assets of the Corporation available for distribution to stockholders after the liquidation preferences of any Senior Liquidation Securities, if any, shall be distributed ratably (in proportion to the full distributable amounts to which holders of Series A Preferred Stock and Parity Liquidation Securities, if any, are respectively entitled upon such dissolution, liquidation or winding up) among the holders of the then-outstanding shares of Series A Preferred Stock and Parity Liquidation Securities, if any, when such assets are not sufficient to pay in full the aggregate amounts payable thereon.

Neither a consolidation or merger of the Corporation with or into any other Person or Persons, nor a sale, conveyance, lease, exchange or transfer of all or part of the Corporation's assets for cash, securities or other property to a Person or Persons shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of this Article IV entitling the Series A Preferred Stock to a liquidation preference hereunder, but the holders of shares of Series A Preferred Stock shall nevertheless be entitled from and after any such consolidation, merger or sale, conveyance, lease, exchange or transfer of all or part of the Corporation's assets to the rights in respect of a liquidation provided by this Article IV following any such transaction. Notice of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, stating the payment date or dates when, and the place or places where, the amounts distributable to each holder of shares of Series A Preferred Stock in such circumstances shall be payable, shall be given by first-class mail, postage prepaid, mailed not less than 45 days prior to any payment date stated therein, to holders of record as they appear on the stock record books of the Corporation as of the date such notices are first mailed.

#### V. Mandatory Redemption

A. Mandatory Redemption. The Series A Preferred Stock shall not be redeemable except as provided in this Article V. At any time on or after the eighth anniversary of the original issuance of the Series A Preferred Stock, the Series A Preferred Stock, shall, to the extent that the Corporation shall have funds legally available therefore, be redeemable in whole or in part at the option of the holders of the Series A Preferred Stock at a redemption price per share in cash (the "Mandatory Redemption Price") equal to the greater of (i) Stated Value plus all unpaid dividends accumulated thereon to the date of actual payment of the Mandatory Redemption Price, whether or not such dividends have been declared and (ii) 50% of the Current Market Price of the Conversion Shares and other assets and property, if any, into which one share of Series A Preferred Stock is then convertible, in each case determined as of the Mandatory Redemption Date.

B. Mandatory Redemption Notice and Redemption Procedures. If any holder of Series A Preferred Stock desires to exercise such holder's redemption right pursuant to Section A of this Article V, such holder shall give written notice to the Corporation stating such holder's election and specifying the number of shares to be redeemed pursuant to Section A of this Article V (the "Mandatory Redemption Notice"). Within 10 days after the receipt of such Mandatory Redemption Notice, the Corporation shall give written notice to such holder, by first-class mail, postage prepaid, at such holder's address as it appears on the records of the Company:

(i) notifying such holder of the date fixed for redemption (which shall not be later than 30 days after the receipt by the Corporation of the Mandatory Redemption Notice) (the "Mandatory Redemption Date");

(ii) stating that the Series A Preferred Stock may be converted until the close of business on the Business Day prior to the Mandatory Redemption Date by surrendering to the Corporation or its transfer agent for the Series A Preferred Stock the certificate or certificates for the shares to be converted, accompanied by written notice specifying the number of shares to be converted, and stating the name and address of the transfer agent of the Series A Preferred Stock, if any; and

(iii) stating that dividends shall cease to accrue on the Mandatory Redemption Date unless the Corporation defaults in the payment of the Mandatory Redemption Price.

The Corporation shall redeem the number of shares of Series A Preferred Stock so specified in the Mandatory Redemption Notice on the Mandatory Redemption Date.

C. Change of Control. In the event there occurs a Change of Control, any holder of record of shares of Series A Preferred Stock, in accordance with the procedures set forth in Section D of this Article V, may require the Corporation to redeem any or all of the shares of Series A Preferred Stock held by such holder in an amount per share equal to the sum of (i) the amount, if any, of all unpaid dividends accumulated thereon to the date of actual payment thereof, whether or not such dividends have been declared, and (ii) 101% of Stated Value (the "Change of Control Price").

D. Change of Control Notice and Redemption Procedures. Notice of any Change of Control shall be sent to the holders of record of the outstanding shares of Series A Preferred Stock not more than ten days following a Change of Control, which notice (a "Change of Control Notice") shall describe the transaction or transactions constituting such Change of Control and set forth each holder's right to require the Corporation to redeem any or all shares of Series A Preferred Stock held by him or her out of funds legally available therefor, the redemption date, which date shall be not more than 30 days from the date of such Change of Control Notice (the "Change of Control Redemption Date"), and the procedures to be followed by such holders in exercising his or her right to cause such redemption; provided, however, that if shares of Series A Preferred Stock are owned by more than 50 holders or groups of Affiliated holders and if the Series A Preferred Stock is listed on any national securities exchange or quoted on any national quotation system, the Corporation shall give such Change of Control Notice by publication in a newspaper of general circulation in the Borough of Manhattan, The City of New York, within 30 days following such Change of Control and, in any case, a similar notice shall be



mailed concurrently to each holder of shares of Series A Preferred Stock. Failure by the Corporation to give the Change of Control Notice as prescribed by the preceding sentence, or the formal insufficiency of any such Change of Control Notice, shall not prejudice the rights of any holder of shares of Series A Preferred Stock to cause the Corporation to redeem any such shares held by him or her. In the event a holder of shares of Series A Preferred Stock shall elect to require the Corporation to redeem any or all such shares of Series A Preferred Stock pursuant to Section C of this Article V, such holder shall deliver, prior to the Change of Control Redemption Date as set forth in the Change of Control Notice, or, if the Change of Control Notice is not given as required by this Section D, at any time following the last day the Corporation was required to give the Change of Control Notice in accordance with this Section D (in which case the Change of Control Redemption Date shall be the date which is the later of (x) 30 days following the last day the Corporation was required to give the Change of Control Notice in accordance with this Section D and (y) 15 days following the delivery of such election by such holder), a written notice, in the form specified by the Corporation (if the Corporation did in fact give the notice required by this Section D), to the Corporation so stating, and specifying the number of shares to be redeemed pursuant to Section C of this Article V; provided, however, that if all of the shares of the Series A Preferred Stock are owned by 50 or fewer holders or groups of Affiliated holders, such holders or groups may deliver a notice or an election to redeem at any time within 90 days following the occurrence of a Change of Control without awaiting receipt of a Change of Control Notice or the expiration of the time allowed for the delivery of a Change of Control Notice hereunder. The Corporation shall redeem the number of shares so specified on the Change of Control Redemption Date fixed by the Corporation or as provided in the preceding sentence. The Corporation shall comply with the requirements of Rules 13e-4 and 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of the shares of Series A Preferred Stock as a result of a Change of Control. From and after the time the Change of Control Redemption Price is paid in accordance with the terms hereof with respect to any share of Series A Preferred Stock, all dividends on such share of Series A Preferred Stock shall cease to accumulate and all rights of the holder thereof as a holder of Series A Preferred Stock shall cease and terminate.

E. Deposit of Funds. The Corporation shall, no later than 11:00 a.m., New York City time, on any Mandatory Redemption Date or Change of Control Redemption Date pursuant to this Article V, deposit with its transfer agent or other redemption agent in the Borough of Manhattan, The City of New York having a capital and surplus of at least \$500,000,000, as a trust fund for the benefit of the holders of the shares of Series A Preferred Stock to be redeemed, cash that is sufficient in amount to redeem the shares to be redeemed in accordance with the Mandatory Redemption Notice or Change of Control Notice, with irrevocable instructions and authority to such transfer agent or other redemption agent to pay to the respective holders of such shares, as evidenced by a list of such holders certified by an officer of the Corporation, the Mandatory Redemption Price or Change of Control Redemption Price, as the case may be, upon surrender of their respective share certificates. Such deposit shall be deemed to constitute full payment of such shares to the holders, and from and after the date of such deposit, all rights of the holders of the shares of Series A Preferred Stock that are to be redeemed as stockholders of the Corporation with respect to such shares, except the right to receive the Mandatory Redemption Price or Change of Control Price, as applicable, upon the surrender of their respective certificates and all rights under Articles VIII and X, shall cease and terminate. In case

holders of any shares of Series A Preferred Stock called for redemption shall not, within two years after such deposit, claim the cash deposited for redemption thereof, such transfer agent or other redemption agent shall, upon demand, pay over to the Corporation the balance so deposited. Thereupon, such transfer agent or other redemption agent shall be relieved of all responsibility to the holders thereof and the sole right of such holders, with respect to shares to be redeemed, shall be to receive the Mandatory Redemption Price or Change of Control Price, as applicable, as general creditors of the Corporation. Any interest accrued on any funds so deposited shall belong to the Corporation, and shall be paid to it from time to time on demand.

#### VI. Restrictions on Dividends

So long as any shares of the Series A Preferred Stock are outstanding, the Board of Directors shall not declare, and the Corporation shall not pay or set apart for payment any dividend on any Junior Securities or Parity Securities or make any payment on account of, or set apart for payment money for a sinking or other similar fund for, the repurchase, redemption or other retirement of, any Junior Securities or Parity Securities or any warrants, rights or options exercisable for or convertible into any Junior Securities or Parity Securities (other than the repurchase, redemption or other retirement of debentures or other debt securities that are convertible or exchangeable into any Junior Securities or Parity Securities), or make any distribution in respect of the Junior Securities or Parity Securities, either directly or indirectly, and whether in cash, obligations or shares of the Corporation or other property (other than distributions or dividends in Junior Securities to the holders of Junior Securities), and shall not permit any Person directly or indirectly controlled by the Corporation to purchase or redeem any Junior Securities or Parity Securities or any warrants, rights, calls or options exercisable for or convertible into any Junior Securities or Parity Securities (other than the repurchase, redemption or other retirement of debentures or other debt securities that are convertible or exchangeable into any Junior Securities or Parity Securities) unless prior to or concurrently with such declaration, payment, setting apart for payment, repurchase, redemption or other retirement or distribution, as the case may be, all accumulated and unpaid dividends on shares of the Series A Preferred Stock not paid on the dates provided for in Section A of Article III (including Arrearages and accumulated dividends thereon and regardless of whether the Corporation shall have had the right to elect to defer such payments as provided for in Article III) shall have been paid, except that when dividends are not paid in full as aforesaid upon the shares of Series A Preferred Stock, all dividends declared on the Series A Preferred Stock and any series of Parity Dividend Securities shall be declared and paid pro rata so that the amount of dividends so declared and paid on Series A Preferred Stock and such series of Parity Dividend Securities shall in all cases bear to each other the same ratio that accumulated dividends (including interest accrued on or additional dividends accumulated in respect of such accumulated dividends) on the shares of Series A Preferred Stock and such Parity Dividend Securities bear to each other. Notwithstanding the foregoing, this paragraph shall not prohibit (i) the acquisition, repurchase, exchange, conversion, redemption or other retirement for value of shares of Series A Preferred Stock or any Parity Dividend Security by the Corporation in accordance with the terms of such securities or (ii) the acquisition, repurchase, exchange, conversion, redemption or other retirement for value by the Corporation of any Junior Dividend Securities by the Corporation in accordance with obligations in existence at the time of original issuance of the Series A Preferred Stock.

## VII. Voting Rights

A. The holders of shares of Series A Preferred Stock shall have no voting rights except as set forth below or as otherwise from time to time required by law.

B. So long as any shares of the Series A Preferred Stock are outstanding, each share of Series A Preferred Stock shall entitle the holder thereof to vote on all matters voted on by holders of Common Stock, and the shares of Series A Preferred Stock shall vote together with shares of Common Stock as a single class. With respect to any such vote, each share of Series A Preferred Stock shall entitle its holder to a number of votes equal to the number of shares of Common Stock into which such share of Series A Preferred Stock would be convertible at the time of the record date with respect to such vote (assuming all conditions precedent to such conversion have been satisfied and that such conversion had occurred as of the record date for such vote), assuming for purposes of this Section B only, and without prejudice to any other provision of this Certificate of Designations, that the Conversion Price for purposes of determining such number of shares of Common Stock is \$3.19, which price shall be adjusted, mutatis mutandis, as set forth in Section B of Article VIII.

C. So long as the Investor or any of its Affiliates Beneficially Owns, in the aggregate, at least 50% of the Series A Preferred Stock, in the event that one or more of the Investor Nominees required to be designated for election to the Board of Directors pursuant to the Investment Agreement are not so designated or are not elected to the Board of Directors, then the number of directors constituting the Board of Directors shall, without further action, be increased by the number of such Investor Nominees not elected to the Board of Directors pursuant to the Investment Agreement, or if such requisite increase in the number of directors constituting the Board of Directors would require the approval of the Corporation's stockholders or is prohibited by the Investment Agreement, then the number of directors constituting the Board of Directors shall be increased to the extent the approval of the Corporation's stockholders is not required and the Investment Agreement would not be breached and a number of directors (other than Investor Nominees) shall resign from the Board of Directors, so as to enable the Investor and its Affiliates to designate as directors the number of Investor Nominees not elected to the Board of Directors pursuant to the Investment Agreement, and the Investor and its Affiliates shall have, in addition to the other voting rights set forth herein, the exclusive right, voting separately as a single class, to elect a number of directors to the Board of Directors equal to the number of such Investor Nominees not elected to the Board of Directors. Directors elected pursuant to this Section C shall continue as directors and such additional voting right shall continue until such time as the requisite number of Investor Nominees are elected to the Board of Directors pursuant to the Investment Agreement, at which time the directors elected by the Investor and its Affiliates pursuant to this Section C shall cease to be directors (unless elected as Investor Nominees), and such additional voting rights shall terminate subject to re-vesting in the event of each and every subsequent event of the character indicated above.

D. (a) The foregoing rights of holders of shares of Series A Preferred Stock to take any action as provided in this Article VII may be exercised at any annual meeting of stockholders or at a special meeting of stockholders held for such purpose as hereinafter provided or at any adjournment thereof, or by the written consent, delivered to the Secretary of the Corporation, of the holders of the minimum number of shares required to take such action.

So long as such right to vote continues (and unless such right has been exercised by written consent of the minimum number of shares required to take such action), the Chairman of the Board of Directors may call, and upon the written request of holders of record of 20% of the outstanding shares of Series A Preferred Stock, addressed to the Secretary of the Corporation at the principal office of the Corporation, shall call, a special meeting of the holders of shares entitled to vote as provided herein. Such meeting shall be held as soon as reasonably practicable after delivery of such request to the Secretary, at the place and upon the notice provided by law and in the By-laws for the holding of meetings of stockholders.

(b) Each director elected pursuant to Section C of this Article VII shall serve until the next annual meeting or until his or her successor shall be elected and shall qualify, unless the director's term of office shall have terminated pursuant to the provisions of Section C hereof. In case any vacancy shall occur among the directors elected pursuant to Section C hereof, such vacancy shall be filled for the unexpired portion of the term by vote of the remaining director or directors theretofore elected pursuant to Section C of this Article VII (or such director's or directors' successor in office), if any. If any such vacancy is not so filled within 20 days after the creation thereof or if all of the directors so elected shall cease to serve as directors before their term shall expire, the holders of the shares of Series A Preferred Stock then outstanding and entitled to vote for such director pursuant to the provisions of Section C of this Article VII may elect successors to hold office for the unexpired terms of any vacant directorships, by written consent as provided herein, or at a special meeting of such holders called as provided herein. The holders of a majority of the shares entitled to vote for directors pursuant to Section C of this Article VII shall have the right to remove with or without cause at any time and replace any directors such holders have elected pursuant to such section, by written consent as herein provided, or at a special meeting of such holders called as provided herein.

E. Without the consent or affirmative vote of the holders of at least a majority of the outstanding shares of Series A Preferred Stock, voting separately as a class, the Corporation shall not: (i) authorize, create or issue, or increase the authorized amount of, (a) any Senior Securities or additional Series A Preferred Stock or (b) any class or series of capital stock or any security convertible into or exercisable for any class or series of capital stock, that is redeemable mandatorily or redeemable at the option of the holder thereof at any time on or prior to the redemption of the Series A Preferred Stock (whether or not only upon the occurrence of a specified event); (ii) amend, alter or repeal any provision of the Certificate of Incorporation or the By-laws, if the amendment, alteration or repeal alters or changes the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely; or (iii) authorize or take any other action if such action would be inconsistent with the provisions of this Certificate of Designations.

F. Other Securities. Subject to Section G of Article X, the Corporation shall not, from and after the date of the original issuance of the Series A Preferred Stock, enter into any agreement, amend or modify any existing agreement or obligation, or issue any security that prohibits, conflicts or is inconsistent with, or would be breached by, the Corporation's performance of its obligations hereunder.

## VIII. Conversion

A. Conversion. (a) At the option and election of the holder thereof, each share of Series A Preferred Stock, including all unpaid dividends accumulated thereon to the Conversion Date (as defined below), whether or not such dividends have been declared, may be converted in the manner provided herein at any time into fully paid and nonassessable shares of Common Stock. As of the Conversion Date with respect to a share of Series A Preferred Stock, subject to subsections (d) and (e) of this Section A, such share shall be converted into that number of shares of Common Stock equal to the quotient of (i) the sum of (A) the Stated Value plus (B) all unpaid dividends accumulated on such share of Series A Preferred Stock to the Conversion Date whether or not such dividends have been declared, divided by (ii) the Conversion Price in effect on the Conversion Date.

(b) Conversion of shares of the Series A Preferred Stock may be effected by any holder thereof upon the surrender to the Corporation at the principal office of the Corporation or at the office of any agent or agents of the Corporation, as may be designated by the Board of Directors of the Corporation and identified to the holders in writing upon such designation, of the certificate for such shares of Series A Preferred Stock to be converted accompanied by a written notice stating that such holder elects to convert all or a specified whole number of shares represented by such certificate in accordance with the provisions of this Section A and specifying the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. In case such notice shall specify a name or names other than that of such holder, such notice shall be accompanied by payment of all transfer taxes payable upon the issuance of shares of Common Stock in such name or names. Other than such taxes, the Corporation will pay any and all issue and other taxes (other than taxes based on income) that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Series A Preferred Stock pursuant hereto. As promptly as practical, and in any event within three Business Days after the Conversion Date, the Corporation shall deliver or cause to be delivered as directed by the holder of shares of Series A Preferred Stock being converted (i) certificates representing the number of validly issued, fully paid and nonassessable full shares of Common Stock to which such holder shall be entitled to, (ii) any cash that is required to be paid pursuant to subsection (d) of this Section A, and (iii) if less than the full number of shares of Series A Preferred Stock evidenced by the surrendered certificate or certificates is being converted, a new certificate or certificates, of like tenor, for the number of shares of Series A Preferred Stock evidenced by such surrendered certificate or certificates less the number of shares of Series A Preferred Stock being converted. Such conversion shall be deemed to have occurred at the close of business on the date (the "Conversion Date") of the giving of such notice by the holder of the Series A Preferred Stock to be converted and of such surrender of the certificate or certificates representing the shares of Series A Preferred Stock to be converted so that as of such time the rights of the holder thereof as to the shares being converted shall cease except for the right to receive shares of Common Stock and/or cash in accordance herewith, and the person entitled to receive the shares of Common Stock issued as a result of such conversion shall be treated for all purposes as having become the holder of such shares of Common Stock at such time.

(c) In the event that the Series A Preferred Stock is to be redeemed pursuant to Article V, from and after the Mandatory Redemption Date or Change of Control Redemption

Date, as applicable, the right of a holder to convert shares of Series A Preferred Stock pursuant to this Section A shall cease and terminate, except if the Corporation shall default in payment of the Mandatory Redemption Price on the Mandatory Redemption Date or the Change of Control Redemption Price on the Change of Control Redemption Date, in which case all such rights shall continue unless and until such shares are redeemed and such price is paid in full in accordance with the terms hereof. Notwithstanding anything in the foregoing to the contrary, if the Conversion Date shall occur with respect to any shares of Series A Preferred Stock on or prior to any Mandatory Redemption Date or Change of Control Redemption Date, such shares of Series A Preferred Stock shall be converted by the Corporation into Common Stock in the manner provided in this Section A.

(d) In connection with the conversion of any shares of Series A Preferred Stock, no fractions of shares of Common Stock shall be issued, but in lieu thereof the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount equal to such fractional interest multiplied by the Closing Price per share of Common Stock on the Conversion Date (or on the Trading Day immediately preceding the Conversion Date, if the Conversion Date is not a Trading Day). If more than one share of Series A Preferred Stock shall be surrendered for conversion by the same holder on the same Conversion Date, the number of full shares of Common Stock issuable on conversion thereof shall be computed on the basis of the total number of shares of Series A Preferred Stock so surrendered.

(e) To the extent the Series A Shareholder Approval is required to be obtained pursuant to applicable rules, interpretations, rulings or determinations of Nasdaq, then notwithstanding anything to the contrary in this Section A, in the event that a Conversion Date with respect to a share of Series A Preferred Stock occurs on a date before which the Series A Shareholder Approval has been obtained, the number of shares of Common Stock into which such share of Series A Preferred Stock shall be converted shall not exceed the quotient of (i) the number of shares of Common Stock that is equal to 19.9% of the number of shares of Common Stock outstanding on the Closing Date (as adjusted for any stock split, reverse stock split, stock dividend or similar event) divided by (ii) 10,000, and upon delivery of such shares of Common Stock in accordance with the terms hereof, the Corporation shall pay in cash to the holder of such share of Series A Preferred Stock the amount, if any, equal to the Closing Price of the Common Stock on the Conversion Date (or, if the Conversion Date is not a Trading Day, the immediately preceding Trading Day) multiplied by the number of shares of Common Stock that would have been received upon conversion pursuant to this Article VIII that is in excess of the actual number of shares of Common Stock received as a result of the operation of this subsection (e).

(f) The Corporation shall at all times reserve and keep available for issuance upon the conversion of the Series A Preferred Stock in accordance with the terms hereof, such number of its authorized but unissued shares of Common Stock as will from time to time be sufficient to permit the conversion of all outstanding shares of Series A Preferred Stock, and shall take all action required to increase the authorized number of shares of Common Stock if necessary to permit the conversion of all outstanding shares of Series A Preferred Stock.

B. Adjustment of Conversion Price. Except in connection with an Organic Change, which shall be subject to Section C below, the Conversion Price shall be subject to adjustment from time to time as follows:

(a) Stock Dividends. In case the Corporation after the date of the original issuance of the Series A Preferred Stock shall pay a dividend or make a distribution to all holders of shares of Common Stock in shares of Common Stock, then in any such case the Conversion Price in effect at the opening of business on the day following the record date for the determination of stockholders entitled to receive such dividend or distribution shall be reduced to a price obtained by multiplying such Conversion Price by a fraction of which (x) the numerator shall be the number of shares of Common Stock outstanding at the close of business on such record date and (y) the denominator shall be the sum of such number of shares of Common Stock outstanding and the total number of shares of Common Stock constituting such dividend or distribution, such reduction to become effective immediately after the opening of business on the day following such record date. For purposes of this subsection (a), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Corporation will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Corporation.

(b) Stock Splits and Reverse Splits. In case after the date of the original issuance of the Series A Preferred Stock outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and, conversely, in case after the original issuance of the Series A Preferred Stock outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(c) Issuances Below Market. (i) If the Corporation after the date of the original issuance of the Series A Preferred Stock issues Common Stock without consideration or at a price per share (such no consideration or price per share, the "New Price Per Share") less than either (A) the Closing Price of the Common Stock on the Trading Day immediately preceding the date of such issuance of Common Stock or (B) the Conversion Price in effect immediately preceding such issuance of Common Stock, then the Conversion Price shall be adjusted effective immediately following such issuance of Common Stock to a price obtained by multiplying such Conversion Price by a fraction of which (x) the numerator shall be the number of shares of Common Stock outstanding immediately preceding such issuance of Common Stock plus the number of shares of Common Stock that the aggregate consideration received from such issuance of Common Stock would purchase at (1) if the New Price Per Share is less than both the Closing Price specified in clause (A) and the Conversion Price specified in clause (B), the higher of such prices or (2) if the New Price Per Share is less than either the Closing Price specified in clause (A) or the Conversion Price specified in clause (B) but not both, such price that the New Price Per Share is lower than, and (y) the denominator shall be the number of shares of Common Stock outstanding immediately preceding such issuance of Common Stock plus the number of additional shares of Common Stock so issued; provided, however, that no adjustment shall be made if such Common Stock is issued to holders of Common Stock and the Corporation issues or distributes to each holder of Series A Preferred Stock the Common Stock that each such

holder would have been entitled to receive had the Series A Preferred Stock held by such holder been converted prior to such issuance of such Common Stock. For the purposes of this subsection (c)(i), the number of shares of Common Stock at any time outstanding shall not include shares held in treasury of the Corporation but shall include shares issuable in respect of scrip certificates issued in lieu of fractional shares of Common Stock.

(ii) If the Corporation after the date of the original issuance of the Series A Preferred Stock issues Derivative Securities entitling Persons to subscribe for or acquire Common Stock, in each case at a New Price Per Share less than either (A) the Closing Price of the Common Stock on the Trading Day immediately preceding the date of such issuance of Derivative Securities or (B) the Conversion Price in effect immediately preceding such issuance of Derivative Securities, then the Conversion Price shall be adjusted effective immediately following such issuance of Derivative Securities to a price obtained by multiplying such Conversion Price by a fraction of which (x) the numerator shall be the number of shares of Common Stock outstanding immediately preceding such issuance of Derivative Securities plus the number of shares of Common Stock that the aggregate consideration received from the exercise, conversion or exchange of such Derivatives Securities would purchase at (1) if the New Price Per Share is less than both the Closing Price specified in clause (A) and the Conversion Price specified in clause (B), the higher of such prices or (2) if the New Price Per Share is less than either the Closing Price specified in clause (A) or the Conversion Price specified in clause (B) but not both, such price that the New Price Per Share is lower than, and (y) the denominator shall be the number of shares of Common Stock outstanding immediately preceding such issuance of Derivative Securities plus the number of additional shares of Common Stock for or into which such Derivative Securities are exercisable, convertible or exchangeable; provided, however, that no adjustment shall be made if such Derivative Securities are issued to holders of Common Stock and the Corporation issues or distributes to each holder of Series A Preferred Stock the Derivative Securities that each such holder would have been entitled to receive had the Series A Preferred Stock held by such holder been converted prior to such issuance of Derivative Securities. For the purposes of this subsection (c)(ii), the number of shares of Common Stock at any time outstanding shall not include shares held in treasury of the Corporation but shall include shares issuable in respect of scrip certificates issued in lieu of fractional shares of Common Stock. The Corporation shall not issue any Derivative Securities in respect of shares of Common Stock held in the treasury of the Corporation. Rights or warrants issued by the Corporation to all holders of Common Stock entitling the holders thereof to subscribe for or purchase Equity Securities, which rights or warrants (A) are deemed to be transferred with such shares of Common Stock, (B) are not exercisable and (C) are also issued in respect of future issuances of Common Stock, including shares of Common Stock issued upon conversion of shares of Series A Preferred Stock, in each case in clauses (A) through (C) until the occurrence of a specified event or events (a "Trigger Event"), shall for purposes of this subsection (c)(ii) not be deemed issued until the occurrence of the earliest Trigger Event.

(iii) If (A) the exercise price provided for in any Derivative Securities referred to in subsection (c)(ii) above, (B) the additional consideration, if any, payable upon the conversion or exchange of any Derivative Securities referred to in subsection (c)(ii) above or (C) the rate at which any such Derivative Securities referred to in subsection (c)(ii) above are convertible into or exchangeable for Common Stock shall change at any time (other than under or by reason of provisions designed to protect against dilution upon an event which results in a



related adjustment pursuant to this Article VIII), the Conversion Price then in effect shall forthwith be readjusted (effective only with respect to the conversion of Series A Preferred Stock after such readjustment) to the Conversion and Price that would then be in effect had the adjustment made upon the issuance, sale, distribution or granting of such Derivative Securities been made based upon such changed purchase price, additional consideration or conversion rate, as the case may be, but only with respect to such Derivative Securities as then remain outstanding.

(d) Special Dividends. In case the Corporation after the date of the original issuance of the Series A Preferred Stock shall distribute to all holders of shares of Common Stock evidences of its indebtedness or assets (excluding any regular periodic cash dividend but including any extraordinary cash dividend), Equity Securities (other than Common Stock) or rights to subscribe (excluding those referred to in subsection (c) above) for Equity Securities other than Common Stock, in each such case the Conversion Price in effect immediately prior to the close of business on the record date for the determination of stockholders entitled to receive such distribution shall be adjusted to a price obtained by multiplying such Conversion Price by a fraction of which (x) the numerator shall be the Closing Price per share of Common Stock on such record date, less the then-current fair market value as of such record date (as determined by the Board of Directors in its good faith judgment) of the portion of assets or evidences of indebtedness or Equity Securities or subscription rights so distributed applicable to one share of Common Stock, and (y) the denominator shall be such Closing Price, such adjustment to become effective immediately prior to the opening of business on the day following such record date; provided, however, that no adjustment shall be made (1) if the Corporation issues or distributes to each holder of Series A Preferred Stock the subscription rights referred to above that each such holder would have been entitled to receive had the Series A Preferred Stock held by such holder been converted prior to such record date or (2) if the Corporation grants to each such holder the right to receive, upon the conversion of the Series A Preferred Stock held by such holder at any time after the distribution of the evidences of indebtedness or assets or Equity Securities referred to above, the evidences of indebtedness or assets or Equity Securities that such holder would have been entitled to receive had such Series A Preferred Stock been converted prior to such record date. The Corporation shall provide any holder of Series A Preferred Stock, upon receipt of a written request therefor, with any indenture or other instrument defining the rights of the holders of any indebtedness, assets, subscription rights or Equity Securities referred to in this subsection (d). Rights or warrants issued by the Corporation to all holders of Common Stock entitling the holders thereof to subscribe for or purchase Equity Securities, which rights or warrants (i) are deemed to be transferred with such shares of Common Stock, (ii) are not exercisable and (iii) are also issued in respect of future issuances of Common Stock, including shares of Common Stock issued upon conversion of shares of Series A Preferred Stock, in each case in clauses (i) through (iii) until the occurrence of a Trigger Event, shall for purposes of this subsection (d) not be deemed issued until the occurrence of the earliest Trigger Event.

(e) Tender or Exchange Offer. In case a tender or exchange offer made by the Corporation or any subsidiary of the Corporation for all or any portion of the Common Stock shall be consummated and such tender offer shall involve an aggregate consideration having a fair market value (as determined by the Board of Directors in its good faith judgment) at the last time (the "Offer Time") tenders may be made pursuant to such tender or exchange offer (as it

may be amended) that, together with the aggregate of the cash plus the fair market value (as determined by the Board of Directors in its good faith judgment), as of the Offer Time, of consideration payable in respect of any tender or exchange offer by the Corporation or any such subsidiary for all or any portion of the Common Stock consummated within the 12 months preceding the Offer Time and in respect of which no Conversion Price adjustment pursuant to this subsection (e) has been made, exceeds 5% of the product of the Closing Price of the Common Stock at the Offer Time multiplied by the number of shares of Common Stock outstanding (including any tendered shares) at the Offer Time, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the Offer Time by a fraction of which (x) the numerator shall be (i) the product of the Closing Price of the Common Stock at the Offer Time multiplied by the number of shares of Common Stock outstanding (including any tendered shares) at the Offer Time minus (ii) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered and not withdrawn as of the Offer Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the denominator shall be the product of (i) such Closing Price at the Offer Time multiplied by (ii) such number of outstanding shares at the Offer Time minus the number of Purchased Shares, such reduction to become effective immediately prior to the opening of business on the day following the Offer Time. For purposes of this subsection (e), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(f) Closing Price Determination. For the purpose of any computation under subsections (c) and (d) of this Section B, the Closing Price of Common Stock on any date shall be deemed to be the average of the Closing Prices for the five consecutive Trading Days ending on the day in question (or if such day is not a Trading Day, the next preceding Trading Day), provided, however, that (i) if the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to this Section B occurs on or after the 20th Trading Day prior to the day in question and prior to the "ex" date for the issuance or distribution requiring such computation, the Closing Price for each Trading Day prior to the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the same fraction which the Conversion Price is so required to be adjusted as a result of such other event, (ii) if the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to this Section B occurs on or after the "ex" date for the issuance or distribution requiring such computation and on or prior to the day in question, the Closing Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event, and (iii) if the "ex" date for the issuance or distribution requiring such computation is on or prior to the day in question, after taking into account any adjustment required pursuant to clause (ii) of this proviso, the Closing Price for each Trading Day on or after such "ex" date shall be adjusted by adding thereto the fair market value on the day in question (as determined by the Board of Directors in a manner consistent with any determination of such value for the purposes of subsection (d) of this Section B) of the assets, evidences of indebtedness, Equity Securities or subscription rights being distributed applicable to

one share of Common Stock as of the close of business on the day before such "ex" date. For the purposes of any computation under subsection (e) of this Section B, the Closing Price on any date shall be deemed to be the average of the daily Closing Prices for the five consecutive Trading Days ending at the Offer Time; provided, however, that if the "ex" date for any event (other than the tender or exchange offer requiring such computation) that requires an adjustment to the Conversion Price pursuant to this Section B occurs on or after the date of commencement of such tender or exchange offer and prior to the Offer Time for such tender or exchange offer, the Closing Price for each Trading Day prior to the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the same fraction by which the Conversion Price is so required to be adjusted as a result of such other event. For purposes of this subsection (f), the term "ex" date, (i) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the Nasdaq or on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution, (ii) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on the Nasdaq or such exchange or in such market after the time at which such subdivision or combination becomes effective, and (iii) when used with respect to any tender or exchange offer means the first date on which the Common Stock trades regular way on the Nasdaq or such exchange or in such market after the Offer Time of such tender or exchange offer.

(g) Other Adjustments. The Corporation may, but shall not be required to, make such reductions in the Conversion Price, in addition to those required by clauses (a), (b), (c), (d), (e) and (f) of this Section B, as it considers to be advisable, including without limitation in order to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock, from any event treated as such for income tax purposes, from any subdivision, reclassification or combination of stock, from any issuance of rights or warrants or from any other transaction having an effect similar to any of the above. Whenever the Conversion Price is reduced pursuant to the preceding sentence, the Corporation shall mail to the holders of then-outstanding shares of Series A Preferred Stock a notice of the reduction at least 15 days prior to the date the reduced Conversion Price takes effect, and such notice shall state the reduced Conversion Price and the period it will be in effect.

(h) Minimum Adjustment Requirement. No adjustment shall be required unless such adjustment would result in an increase or decrease of at least \$0.01 in the Conversion Price then subject to adjustment; provided, however, that any adjustments that are not made by reason of this subsection (h) shall be carried forward and taken into account in any subsequent adjustment. In case the Corporation shall at any time issue shares of Common Stock by way of dividend on any stock of the Corporation or subdivide or combine the outstanding shares of Corporation Stock, said amount of \$0.01 specified in the preceding sentence (as therefore increased or decreased, if said amount shall have been adjusted in accordance with the provisions of this subsection (h)) shall forthwith be proportionately increased in the case of such a combination or decreased in the case of such a subdivision or stock dividend so as appropriately to reflect the same.

(i) Minimum Permissible Conversion Price. Notwithstanding any other provision of this Section B, no adjustment to the Conversion Price shall reduce the Conversion Price below \$0.01, and any such purported adjustment shall instead reduce the Conversion Price to \$0.01.

The Corporation hereby covenants not to take any action that would or does result in any adjustment in the Conversion Price that, if made without giving effect to the previous sentence, would cause the Conversion Price to be less than \$0.01.

(j) Notice. Whenever the Conversion Price is adjusted as herein provided, a notice stating that the Conversion Price has been adjusted and setting forth the adjusted Conversion Price shall promptly be mailed by the Corporation to the holders of the Series A Preferred Stock.

(k) No Adjustment. Anything to the contrary herein notwithstanding, no adjustment to the Conversion Price shall be made pursuant to this Section B as a result of, or in connection with, the issuance of Common Stock or Derivative Securities (i) to directors, employees or consultants of the Corporation or its Subsidiaries pursuant to an existing or future stock option, stock purchase or other similar plan adopted by the Board of Directors, an employment agreement approved by the Board of Directors, a consulting agreement or arrangement approved by the Board of Directors, or the modification, renewal or extension of any such plan, agreement or arrangement if approved by the Board of Directors; provided, however, that with respect to the issuance of Common Stock and/or Derivative Securities to consultants other than Bain & Company, only the issuance of Common Stock and/or Derivative Securities to such consultants pursuant to such plans, agreements or arrangements in any one calendar year that would otherwise cause an adjustment to the Conversion Price pursuant to this Section B and represents in the aggregate 1% or less of the Corporation's outstanding Common Stock as of the first day of such calendar year shall be covered by this subsection (k) and any such subsequent issuance after such 1% threshold has been exceeded shall not be covered by this subsection (k) and there shall be an adjustment to the Conversion Price as a result of any such subsequent issuance if otherwise required pursuant to this Section B, (ii) as consideration for the acquisition of a business or of assets, in each case, approved by the Board of Directors, (iii) in a firm commitment underwritten public offering in which both (x) the underwriting discount is less than 7% and (y) the offering price per share is greater than the Conversion Price in effect immediately preceding the execution of the underwriting agreement for such offering, (iv) to the Corporation's joint venture partners in exchange for interests in the relevant joint venture if such exchange is approved by the Board of Directors, or (v) upon exercise, conversion or exchange of any Derivative Securities the issuance of which caused an adjustment hereunder or the issuance of which did not require adjustment hereunder.

#### C. Organic Change.

(a) Corporation Survives. Upon the consummation of an Organic Change (other than a transaction in which the Corporation is not the surviving entity), lawful provision shall be made as part of the terms of such transaction whereby the terms hereof shall be modified, without payment of any additional consideration by any holder, so as to provide that upon the conversion of shares of Series A Preferred Stock following the consummation of such Organic Change, the holder of Series A Preferred Stock shall have the right to acquire and receive (in lieu of or in addition to the shares of Common Stock acquirable and receivable prior to the Organic Change), without payment of additional consideration therefor, such securities, cash and other property as such holder would have received if such holder had converted such shares of Series A Preferred Stock into Common Stock immediately prior to such Organic Change.  
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provision also shall be made as part of the terms of the Organic Change so that all other terms hereof shall remain in full force and effect following such an Organic Change. The provisions of this subsection (a) shall similarly apply to successive Organic Changes of the character described in this subsection (a).

(b) Corporation Does Not Survive. The Corporation shall not enter into an Organic Change that is a transaction in which the Corporation is not the surviving entity unless lawful provision shall be made as part of the terms of such transaction whereby the surviving entity shall issue new securities to each holder of Series A Preferred Stock, without payment of any additional consideration by such holder, with terms that provide that upon the conversion of such securities, the holder of such securities shall have the right to acquire and receive (in lieu of or in addition to the shares of Common Stock acquirable and receivable prior to the Organic Change), without payment of additional consideration therefor, such securities, cash and other property (the "New Securities") as such holder would have received if such holder had converted such shares of Series A Preferred Stock into Common Stock immediately prior to such Organic Change. The certificate or articles of incorporation or other constituent document of the surviving entity shall provide for such adjustments which, for events subsequent to the effective date of such certificate or articles of incorporation or other constituent document, shall be equivalent to the adjustments provided for in Section B of this Article VIII. All other terms of such New Securities shall be substantially equivalent to the terms provided herein. The provisions of this subsection (b) shall similarly apply to successive Organic Changes of the character described in of this subsection (b).

D. Certain Events. If any event similar to or of the type contemplated by the provisions of Section B or Section C of this Article VIII, but not expressly provided for by such provisions, occurs, then the Board of Directors of the Corporation, will make an appropriate and equitable adjustment in the Conversion Price so as to protect the rights of the holders of Series A Preferred Stock; provided, however, that no such adjustment will decrease the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock.

#### IX. Additional Definitions

For the purposes of this Certificate of Designations of Series A Preferred Stock, the following terms shall have the meanings indicated:

"Affiliate" has the meaning set forth in Rule 12b-2 under the Exchange Act as in effect on the date of the Investment Agreement. The term "Affiliated" has a correlative meaning.

"Beneficially Own" with respect to any securities means having "beneficial ownership" of such securities (as determined pursuant to Rule 13d-3 under the Exchange Act as in effect on the date of the Investment Agreement, except that a Person shall be deemed to Beneficially Own all such securities that such Person has the right to acquire whether such right is exercisable immediately or after the passage of time). The terms "Beneficial Ownership" and "Beneficial Owner" have correlative meanings.

"Business Day" means any day, other than a Saturday, Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

"By-laws" means the By-laws of the Corporation, as amended from time to time.

"Change of Control" shall be deemed to have occurred if (a) any person or group (within the meaning of Rule 13d-5 under the Exchange Act as in effect on the date of the Investment Agreement) shall own directly or indirectly, beneficially or of record, shares representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Securities of the Corporation, other than any TPG Person or any Person or Group that owned at least 5% of such Equity Securities on the Closing Date; (b) a majority of the seats (other than vacant seats) on the board of directors of the Corporation shall at any time be occupied by persons who were neither (i) nominated by the board of directors of the Corporation nor (ii) appointed by directors so nominated; (c) any change in control (or similar event, however denominated) with respect to the Corporation shall occur under and as defined in any indenture or agreement in respect of Indebtedness for borrowed money in excess of the aggregate principal amount of \$10,000,000 to which the Corporation or any Subsidiary thereof is a party; or (d) a "Change in Control" or "Change of Control" (or similar event) shall have occurred under the Credit Agreement or the Indenture, unless, in the case of a "Change of Control" under the Indenture, the aggregate principal amount outstanding under the Senior Subordinated Notes is less than \$10,000,000. Notwithstanding the foregoing, no event described above shall constitute a "Change of Control" if such event resulted directly from any action taken by the Investor or any of its Affiliates.

"Closing" has the meaning set forth in the Investment Agreement.

"Closing Date" has the meaning set forth in the Investment Agreement.

"Closing Price" with respect to a share of Common Stock on any day means, subject to subsection (f) of Section B of Article VIII if applicable, the last reported sale price on that day or, in case no such reported sale takes place on such day, the average of the last reported bid and asked prices, regular way, on that day, in either case, as reported in the consolidated transaction reporting system with respect to securities quoted on Nasdaq or, if the shares of Common Stock are not quoted on Nasdaq, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the shares of Common Stock are listed or admitted to trading or, if the shares of Common Stock are not quoted on Nasdaq and not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices on such other nationally recognized quotation system then in use, or, if on any such day the shares of Common Stock are not quoted on any such quotation system, the average of the closing bid and asked prices as furnished by a professional market maker selected by the Board of Directors in good faith making a market in the shares of Common Stock. If the shares of Common Stock are not publicly held, or so listed, quoted or publicly traded, the "Closing Price" means the fair market value of a share of Common Stock, as determined in good faith by the Board of Directors.

"Conversion Price" shall mean \$2.82, as adjusted from time to time pursuant to Section B of Article VIII.

"Conversion Shares" has the meaning set forth in the Investment Agreement.

"Credit Agreement" has the meaning set forth in the Investment Agreement.

"Current Market Price" means, in respect of any share of Common Stock as of any date, the average Closing Price for the 30 Trading Days immediately preceding the date in question. In case any event that would require an adjustment to the Conversion Price pursuant to Section B of occurs with an "ex" date or an effective date occurring during the foregoing 30 Trading Day period, the Closing Prices used in determining the Current Market Price shall be appropriately adjusted to take such event into account.

"Derivative Securities" means any subscriptions, options, conversion rights, warrants, or other agreements, securities or commitments of any kind obligating the Company to issue, grant, deliver or sell, or cause to be issued, granted, delivered or sold, Common Stock.

"Equity Securities" of any Person, means any and all common stock, preferred stock and any other class of capital stock of, and any partnership or limited liability company interests in, such Person or any other similar interests of any Person that is not a corporation, partnership or limited liability company.

"Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, from time to time.

"Governmental Entity" means any government or political subdivision or department thereof, any governmental or regulatory body (including without limitation the NASD and the Nasdaq), commission, board, bureau, agency or instrumentality, or any court or arbitrator or alternative dispute resolution body, in each case whether federal, state, local or foreign.

"Group" has the meaning set forth in Rule 13d-5 under the Exchange Act.

"Guarantee" means any direct or indirect obligation, contingent or otherwise, to guarantee (or having the economic effect of guaranteeing) Indebtedness in any manner, including, without limitation, any monetary obligation to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness (whether arising by agreement to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise).

"Indebtedness" means, with respect to any Person, without duplication, (i) all obligations of such Person for money borrowed, (ii) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (v) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding (x) trade accounts payable and accrued obligations incurred in the ordinary

course of business and (y) deferred earn-out and other performance-based payment obligations incurred in connection with any Permitted Acquisition (as such term is defined in the Credit Agreement as in effect on the date of the Investment Agreement), (vi) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (vii) all Guarantees by such Person of Indebtedness of others, (viii) all capital lease obligations of such Person, (ix) all obligations (determined on the basis of actual, not notional, obligations) of such Person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements and (x) all obligations of such Person as an account party in respect of letters of credit and bankers' acceptances issued in support of obligations that constitute Indebtedness under any other clause of this definition (unless such obligations are fully cash collateralized), provided, however, that all obligations in respect of letters of credit shall be deemed Indebtedness to the extent drawings thereunder are unreimbursed (after any applicable grace period) regardless of the purpose for which such letter of credit was issued. The Indebtedness of any Person shall include the recourse Indebtedness of any partnership in which such Person is a general partner. Notwithstanding the foregoing, no portion of Indebtedness that becomes the subject of a defeasance (whether a legal defeasance or a "covenant" or "in substance" defeasance) shall, at any time that such defeasance remains in effect, be treated as Indebtedness for purposes hereof.

"Indenture" has the meaning set forth in the Investment Agreement.

"Investment Agreement" means the Investment Agreement, dated on or about the date hereof, by and between the Investor and the Corporation, as amended, supplemented or otherwise modified from time to time.

"Investor" has the meaning set forth in the Investment Agreement.

"Investor Group" means, collectively, the Investor and its Affiliates.

"Investor Nominee" means a person designated for election to the Board of Directors by the Investor pursuant to the Investment Agreement.

"Law" means any law, treaty, statute, ordinance, code, rule, regulation, judgment, decree, order, writ, award, injunction or determination of any Governmental Entity.

"Lien" means any mortgage, pledge, lien, security interest, claim, voting agreement, conditional sale agreement, title retention agreement, restriction, option or encumbrance of any kind, character or description whatsoever.

"NASD" means the National Association of Securities Dealers, Inc.

"Nasdaq" means The Nasdaq Stock Market's National Market.

"Organic Change" means, with respect to any Person, any transaction (including without limitation any recapitalization, capital reorganization or reclassification of any class of capital stock, any consolidation or amalgamation of such Person with, or merger of such Person



into, any other Person, any merger of another Person into such Person (other than a merger which does not result in a reclassification, conversion, exchange or cancellation of outstanding shares of capital stock of such Person), any sale or transfer or lease of all or substantially all of the assets of such Person or any compulsory share exchange) pursuant to which any class of capital stock of such Person is converted into the right to receive other securities, cash or other property.

"Other Credit Facilities" means, with respect to the Company, such agreements (other than the Credit Agreement and the Indenture) to which the Company now is, or hereafter becomes, a party, which agreements evidence obligations of the Company that are included within clauses (i) or (ii) of the definition of "Indebtedness", as the same may be amended, restated, supplemented, extended, renewed or increased from time to time, replaced, substituted, refunded or refinanced or otherwise modified from time to time, in whole or in part, and any successive replacements, substitutions, refundings or refinancings..

"Person" means any individual, corporation, company, association, partnership, limited liability company, joint venture, trust or unincorporated organization, or Governmental Entity.

"Securities Act" means the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, from time to time.

"Senior Subordinated Notes" means the Senior Subordinated Notes issued pursuant to the Indenture.

"Series A Shareholder Approval" has the meaning set forth in the Investment Agreement.

"Subsidiary" means as to any Person, any other Person of which more than 50% of the shares of the voting stock or other voting interests are owned or controlled, or the ability to select or elect more than 50% of the directors or similar managers is held, directly or indirectly, by such first Person or one or more of its Subsidiaries or by such first Person and one or more of its Subsidiaries; provided, however, that no Joint Venture (as such term is defined in the Investment Agreement) shall be considered (i) a "Subsidiary" of the Corporation or (ii) a "Subsidiary" of any Subsidiary of the Corporation.

"TPG Person" means the Investor, and each Person controlled by, controlling or under common control with the Investor.

"Trading Day" means any day on which the Nasdaq is open for trading, or if the shares of Common Stock are not quoted on the Nasdaq any day on which the principal national securities exchange or national quotation system on which the shares of Common Stock are listed, admitted to trading or quoted is open for trading, or if the shares of Common Stock are not so listed, admitted to trading or quoted, any Business Day.

## X. Miscellaneous

A. Notices. Any notice referred to herein shall be in writing and shall be deemed to have been duly given (and shall be effective when received), if delivered personally, by facsimile or sent by overnight courier or by first class mail, postage prepaid, as follows:

(i) if to the Corporation, to its office at 5005 East McDowell Road, Phoenix, Arizona 85008 (Attention: General Counsel);

(ii) if to a holder of the Series A Preferred Stock, to such holder at the address of such holder as listed in the stock record books of the Corporation (which may include the records of any transfer agent for the Series A Preferred Stock); or

(iii) to such other address as the Corporation or such holder, as the case may be, shall have designated by notice similarly given.

B. Reacquired Shares. Any shares of Series A Preferred Stock redeemed, purchased or otherwise acquired by the Corporation, directly or indirectly, in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof (and shall not be deemed to be outstanding for any purpose) and, if necessary to provide for the lawful redemption or purchase of such shares, the capital represented by such shares shall be reduced in accordance with the Delaware General Corporation Law. All such shares of Series A Preferred Stock shall upon their cancellation and upon the filing of an appropriate certificate with the Secretary of State of the State of Delaware, become authorized but unissued shares of Preferred Stock, \$0.01 par value, of the Corporation and may be reissued as part of another series of Preferred Stock, \$0.01 par value, of the Corporation subject to the conditions or restrictions on issuance set forth herein.

C. Enforcement. Any registered holder of shares of Series A Preferred Stock may proceed to protect and enforce its rights and the rights of such holders by any available remedy by proceeding at law or in equity to protect and enforce any such rights, whether for the specific enforcement of any provision in this Certificate of Designations or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

D. Transfer Taxes. Except as otherwise agreed upon pursuant to the terms of this Certificate of Designations, the Corporation shall pay any and all documentary, stamp or similar issue or transfer taxes and other governmental charges that may be imposed under the laws of the United States of America or any political subdivision or taxing authority thereof or therein in respect of any issue or delivery of Common Stock on conversion, or other securities or property issued on account of, shares of Series A Preferred Stock pursuant hereto or certificates representing such shares or securities. The Corporation shall not, however, be required to pay any such tax or other charge that may be imposed in connection with any transfer involved in the issue or transfer and delivery of any certificate for Common Stock or other securities or property in a name other than that in which the shares of Series A Preferred Stock so converted, or on account of which such securities were issued, were registered and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Corporation the amount

of any such tax or has established to the satisfaction of the Corporation that such tax has been paid or is not payable.

E. Transfer Agent. The Corporation may appoint, and from time to time discharge and change, a transfer agent for the Series A Preferred Stock. Upon any such appointment or discharge of a transfer agent, the Corporation shall send notice thereof by first-class mail, postage prepaid, to each holder of record of shares of Series A Preferred Stock.

F. Record Dates. In the event that the Series A Preferred Stock shall be registered under either the Securities Act or the Exchange Act, the Corporation shall establish appropriate record dates with respect to payments and other actions to be made with respect to the Series A Preferred Stock.

G. Subordination to Credit Agreement and Senior Subordinated Notes. Notwithstanding anything to the contrary herein, by accepting a share of Series A Preferred Stock, the holder thereof shall be deemed to have acknowledged and agreed that (a) such holder's right to receive payments in respect of the Series A Preferred Stock is subject and subordinated in right of payment to the payment in full and discharge of all amounts of principal, interest and fees (however denominated) then outstanding under the Credit Agreement, the Senior Subordinated Notes and then existing Other Credit Facilities and (b) until (i) either payment in full of all such amounts (however denominated) under the Credit Agreement, the Senior Subordinated Notes and then existing Other Credit Facilities has been made in cash, or (ii) if earlier than such payment, all necessary waivers and consents have been obtained with respect to the relevant document as contemplated by the proviso to the last sentence of this Section G, no payment, whether directly or indirectly, by exercise of any right of set off or otherwise in respect of the Series A Preferred Stock shall be made by the Corporation, and no deposit in respect of the Series A Preferred Stock shall be made pursuant to the terms hereof. In the event that any payment by, or distribution of the assets of, the Corporation of any kind or character (whether in cash, property or securities, whether directly or indirectly, by exercise of any right of set-off or otherwise and whether as a result of a bankruptcy proceeding with respect to the Corporation or otherwise) shall be received by a holder of Series A Preferred Stock at any time when such payment is prohibited by this Section G, such payment shall be held in trust for the benefit of, and shall be paid over to, the lenders under the Credit Agreement, the holders of Senior Subordinated Notes and the lenders under Other Credit Facilities, as the case may be, as their interests may appear. The preceding two sentences address the relative rights of holders of Series A Preferred Stock, on the one hand, and the lenders under the Credit Agreement, the holders of Senior Subordinated Notes and the lenders under Other Credit Facilities, as the case may be, on the other hand, and nothing in this Certificate of Designations shall impair, as between the Corporation and the holders of Series A Preferred Stock, the obligation of the Corporation, which is absolute and unconditional, to pay amounts due in respect of the Series A Preferred Stock in accordance with their terms. Without limiting the foregoing, upon a Change of Control, the Corporation shall pay all amounts outstanding under the Credit Agreement, the Indenture and the Other Credit Facilities to the extent necessary, but only if permitted under the relevant document, in order to permit the payment of the Change of Control Price hereunder or, if such payment is not so permitted under any such document, the Corporation shall exercise any right of defeasance it has under such document (provided that all conditions precedent to the exercise of such right of defeasance have been satisfied, which conditions the Corporation shall

use its reasonable best efforts to satisfy) to the extent necessary in order to permit the payment of the Change of Control Price hereunder; provided, that the Corporation shall not be required to make such payments or exercise such right of defeasance under the Credit Agreement, the Indenture or an Other Credit Facility if the Corporation has received all necessary waivers and consents from the applicable lenders or holders of notes permitting the Corporation to pay the Change of Control Price hereunder.

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its Chief Financial Officer and attested by its Assistant Secretary, this 6th day of September, 2001.

ON SEMICONDUCTOR CORPORATION

By: /s/ Dario Sacomani

-----  
Name: Dario Sacomani  
Title: Sr. Vice President and  
Chief Financial Officer

[Corporate Seal]

ATTEST:

/s/ Judith A. Boyle

-----  
Name: Judith A. Boyle  
Title: Assistant Secretary

[CERTIFICATE]

NUMBER	SHARES
A-1	10,000

ON SEMICONDUCTOR CORPORATION

Authorized 10,000 Series A Cumulative Convertible Preferred Shares

This Certifies that TPG ON Holdings LLC is the owner of Ten Thousand Series A Cumulative Convertible Preferred Shares of the Capital Stock of ON SEMICONDUCTOR CORPORATION, fully paid and nonassessable transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 7th day of September A.D. 2001

/s/ Curtis Crawford  
-----  
Chairman of the Board

/s/ George H. Cave  
-----  
Sr. Vice President and  
Chief Financial Officer

/s/ Dario Sacomani  
-----  
Vice President

SHARES            \$0.01            EACH

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAW, AND MAY NOT BE OFFERED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

THE COMPANY WILL FURNISH TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE A STATEMENT AS TO THE POWERS, DESIGNATIONS, PREFERENCES AND A RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF THE APPLICABLE CLASS OR SERIES OF STOCK OF THE COMPANY AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR RIGHTS.

[STOCK CERTIFICATE GRAPHIC]

CERTIFICATE  
FOR  
10,000 SHARES  
of the  
Capital Stock

ON SEMICONDUCTOR  
CORPORATION

ISSUED TO  
TPG ON Holdings L.L.C.  
DATE  
September 7, 2001

For Value Received, \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated \_\_\_\_\_  
In presence of \_\_\_\_\_

\_\_\_\_\_  
NOTICE. THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATEVER.

[EXECUTION COPY]

INVESTMENT AGREEMENT  
dated as of September 7, 2001  
between  
TPG ON HOLDINGS LLC  
and  
ON SEMICONDUCTOR CORPORATION



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## INVESTMENT AGREEMENT

THIS INVESTMENT AGREEMENT (the "Agreement"), dated as of September 7, 2001, by and between TPG ON Holdings LLC, a Delaware limited liability company (the "Investor"), and ON Semiconductor Corporation, a Delaware corporation (the "Company").

## W I T N E S S E T H:

WHEREAS, each of the Company and the Investor has determined to enter into this Agreement pursuant to which the Investor has agreed to purchase from the Company, and the Company has agreed to issue and sell to the Investor, 10,000 shares of the Company's Series A Cumulative Convertible Preferred Stock, par value \$0.01 per share (the "Series A Preferred Stock"), having the rights, preferences, privileges and restrictions set forth in the Form of Certificate of Designations attached hereto as Exhibit A (the "Series A Certificate of Designations"), each share convertible at the option of the holder at any time following the Closing into shares (the "Conversion Shares") of common stock, par value \$0.01 per share (the "Common Stock"), of the Company;

WHEREAS, the Company and the Investor desire to make certain representations, warranties, covenants and agreements in connection with the transactions contemplated herein;

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

## ARTICLE I

## DEFINITIONS

SECTION 1.01. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

"Administrative Agent" means The Chase Manhattan Bank, in its capacity as administrative agent under the Credit Agreement.

"Affiliate" has the meaning set forth in Rule 12b-2 under the Exchange Act as in effect on the date hereof. The term "Affiliated" has a correlative meaning. Notwithstanding the foregoing, for all purposes hereof, neither the Company nor any of its Subsidiaries shall be deemed an "Affiliate" of any TPG Person.

"Agreement" has the meaning set forth in the preamble hereto.

"Balance Sheet" has the meaning set forth in Section 3.07.

"Beneficially Own" with respect to any securities means having "beneficial ownership" of such securities (as determined pursuant to Rule 13d-3 under the Exchange Act as in effect on the date hereof, except that a Person shall be deemed to Beneficially Own all such securities that such Person has the right to acquire whether such right is exercisable immediately

or after the passage of time). The terms "Beneficial Ownership" and "Beneficial Owner" have correlative meanings.

"Board of Directors" means the board of directors of the Company.

"Business Day" means any day, other than a Saturday, Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

"By-laws" means the By-laws of the Company, as amended from time to time.

"Certificate of Incorporation" means the Amended and Restated Certificate of Incorporation of the Company, as amended from time to time.

"Claim" has the meaning set forth in Section 10.04(d).

"Class I" means the class of directors of the Board of Directors whose initial term expired at the annual meeting of stockholders of the Company in 2000 and will expire at every third annual meeting thereafter.

"Class II" means the class of directors of the Board of Directors whose initial term expired at the annual meeting of stockholders of the Company in 2001 and will expire at every third annual meeting thereafter.

"Class III" means the class of directors of the Board of Directors with a term expiring at the annual meeting of stockholders of the Company in 2002 and every third annual meeting thereafter.

"Closing" means the closing of the Share Purchase pursuant to Section 2.02.

"Closing Date" has the meaning set forth in Section 2.02(a).

"Code" means the Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder, as in effect from time to time.

"Commission" means the U.S. Securities and Exchange Commission.

"Common Stock" has the meaning set forth in the recitals hereto.

"Company" has the meaning set forth in the preamble hereto.

"Company Documents" means each document, instrument or certificate, other than the Transaction Agreements, to be executed and delivered by the Company in connection with the consummation of the transactions contemplated by this Agreement, including the Series A Certificate of Designations.

"Conversion Shares" has the meaning set forth in the recitals hereto.

"Credit Agreement" means the Credit Agreement, dated as of August 4, 1999, as amended and restated as of April 3, 2000, as amended as of August 13, 2001 and as further amended thereafter, among the Company, Semiconductor Components Industries, LLC, the banks and other financial institutions named therein, The Chase Manhattan Bank, as administrative agent, collateral agent and syndication agent and Credit Lyonnais New York Branch, DLJ Capital Funding, Inc. and Lehman Commercial Paper, Inc., as co-documentation agents, together with all other documents entered into under or in connection with the Credit Agreement, in each case, as the same may be amended, restated, supplemented, extended, renewed or increased from time to time, replaced, substituted, refunded or refinanced or otherwise modified from time to time, in whole or in part, and any successive replacements, substitutions, refundings or refinancings.

"Derivative Securities" means any subscriptions, options, conversion rights, warrants, or other agreements, securities or commitments of any kind obligating the Company or any of its Significant Subsidiaries to issue, grant, deliver or sell, or cause to be issued, granted, delivered or sold, any Equity Securities of the Company or any of its Significant Subsidiaries.

"DGCL" means the Delaware General Corporation Law.

"Disclosure Schedule" means the Disclosure Schedule of ON Semiconductor Corporation that is attached hereto.

"Employment Agreement" means any employment or consulting agreement or other similar arrangement between the Company or any of its Significant Subsidiaries, on the one hand, and any Representative of the Company or any of its Significant Subsidiaries, on the other.

"Environmental Laws" means any Law relating to the protection of human health and safety, to the protection or preservation of the environment or natural resources or to a Release or threatened Release of Hazardous Materials.

"Equity Securities" of any Person, means any and all common stock, preferred stock and any other class of capital stock of, and any partnership or limited liability company interests in, such Person or any other similar interests of any Person that is not a corporation, partnership or limited liability company.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and all regulations promulgated thereunder, as in effect from time to time.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder from time to time.

"GAAP" means U.S. generally accepted accounting principles as in effect at the relevant time or for the relevant period.

"Governmental Entity" means any government or political subdivision or department thereof, any governmental or regulatory body (including the NASD and Nasdaq),

commission, board, bureau, agency or instrumentality, or any court or arbitrator or alternative dispute resolution body, in each case whether federal, state, local or foreign.

"Group" has the same meaning as is used with respect to that term in Rule 13d-5 under the Exchange Act as in effect on the date hereof.

"Hazardous Materials" means any substance, pollutant, contaminant, chemical or other material (including petroleum or any fraction thereof, asbestos or asbestos-containing-material, polychlorinated biphenyls, urea formaldehyde foam insulation) or waste that is identified or regulated under any Environmental Law.

"Indemnified Company Parties" has the meaning set forth in Section 10.04(b).

"Indemnified Investor Parties" has the meaning set forth in Section 10.04(a).

"Indemnified Party" has the meaning set forth in Section 10.04(d).

"Indemnified Special Committee Parties" has the meaning set forth in Section 10.04(c).

"Indenture" means the Indenture entered into between the Company and State Street Bank and Trust Company, as Trustee, dated as of August 4, 1999, as the same may be amended, restated, supplemented, extended, renewed or increased from time to time, replaced, substituted, refunded or refinanced or otherwise modified from time to time, in whole or in part, and any successive replacements, substitutions, refundings or refinancings.

"Insolvency Event" means (i) the Company or any of its Subsidiaries commences a voluntary case concerning itself under Title 11 of the United States Code as now or hereafter in effect, or under any state insolvency, liquidation, rehabilitation or similar statute or any successor statutes thereto ("Insolvency Statutes"); (ii) an involuntary case is commenced against the Company or any of its Subsidiaries under an Insolvency Statute; (iii) a custodian is appointed under any applicable Insolvency Statute for, or takes charge of, all or any substantial part of the property of the Company or any of its Subsidiaries; (iv) any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution or similar law of any jurisdiction, whether now or hereafter in effect, relating to the Company or any of its Subsidiaries is commenced (a) by the Company or any of its Subsidiaries or (b) by any other Person; (v) the Company or any of its Subsidiaries is adjudicated insolvent or bankrupt; (vi) any order of relief or other order approving any such case or proceeding is entered; (vii) the Company or any of its Subsidiaries makes a general assignment for the benefit of creditors; or (viii) the Company or any of its Subsidiaries shall state in writing that it is unable to pay, or shall be unable to pay, its debts, generally as they become due.

"Insolvency Statutes" has the meaning set forth in the definition of "Insolvency Event."

"Intellectual Property" means all intellectual property rights, including patents, patent rights, trade secrets, know-how, trademarks, service marks, trade names, copyrights, licenses and proprietary processes and formulae.



"Investment Agreement" has the meaning set forth in the recitals hereto.

"Investor" has the meaning set forth in the preamble hereto.

"Investor Documents" means each document, instrument or certificate, other than the Transaction Agreements, to be executed and delivered by the Investor in connection with the consummation of the transactions contemplated by this Agreement.

"Investor Group" means, collectively, the Investor and its Affiliates.

"Investor Information" has the meaning set forth in Section 7.08(b).

"Investor Nominees" has the meaning set forth in Section 5.02(a).

"Joint Ventures" means the entities listed in Section 1.01 of the Disclosure Schedule.

"Law" means any law, treaty, statute, ordinance, code, rule, regulation, judgment, decree, order, writ, award, injunction or determination of any Governmental Entity.

"Lien" means any mortgage, pledge, lien, security interest, claim, voting agreement, conditional sale agreement, title retention agreement, restriction, option or encumbrance of any kind, character or description whatsoever.

"Losses" has the meaning set forth in Section 10.04(a).

"Material Adverse Effect" means any event, change, circumstance or effect that is or is reasonably likely to be materially adverse to the business, properties, assets, liabilities, condition (financial or otherwise), operations or results of operations of the Company and its Subsidiaries taken as a whole, other than any event, change, circumstance or effect that (i) results from or arises out of changes or circumstances affecting the industry in which the Company and its Subsidiaries operate, which event, change, circumstance or effect does not affect the Company and its Subsidiaries disproportionately relative to other entities operating in such industry, (ii) was previously disclosed by the Company in any periodic report or proxy statement that was filed by the Company with the Commission under the Exchange Act or in any press release issued by the Company, in each case prior to the date of this Agreement, or (iii) results solely from a decline in the market value of the Common Stock. In determining whether any individual event, change, circumstance or effect would result in a Material Adverse Effect, notwithstanding that such event, change, circumstance or effect does not in and of itself have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event, change, circumstance or effect and all other existing events, changes, circumstances and effects would result in a Material Adverse Effect.

"NASD" has the meaning set forth in Section 3.03(b).

"NASD Rules" has the meaning set forth in Section 3.03(b).

"Nasdaq" means The Nasdaq Stock Market's National Market.

"Option Plans" means the Company's 1999 Founders Stock Option Plan, 2000 Stock Incentive Plan and the 2000 Employee Stock Purchase Plan.

"Original Number of Series A Shares" means the number of shares of Series A Preferred Stock outstanding as of the Closing.

"Person" means any individual, corporation, company, association, partnership, limited liability company, joint venture, trust, unincorporated organization, or Governmental Entity.

"Plan" means each material employee benefit plan (within the meaning of Section 3(3) of ERISA), whether or not subject to ERISA, and each material bonus, incentive or deferred compensation, stock option or other equity based, severance, termination, or fringe benefit or other material benefit, plan, program or policy, maintained, sponsored or contributed to by the Company or any of its Subsidiaries or to which any such Person may have any liability (contingent or otherwise), including any governmental arrangement maintained for the purpose of providing benefits to employees outside the United States.

"Policies" has the meaning set forth in Section 3.17.

"Proceeding" has the meaning set forth in Section 3.10.

"Proxy Statement" means a proxy statement used in connection with a Shareholder Meeting.

"Registration Rights Agreement" means the Registration Rights Agreement of even date herewith between the Company and the Investor, which agreement shall not become effective until the Closing.

"Regulatory Approvals" means (i) any and all certificates, permits, licenses, franchises, concessions, grants, consents, approvals, orders, registrations, authorizations, waivers, variances or clearances from, or filings or registrations with, Governmental Entities, and (ii) any and all waiting periods imposed by applicable laws.

"Release" means any spill, discharge, leak, emission, disposal, injection, escape, dumping, leaching, dispersal, emanation, migration or release of any kind whatsoever of any Hazardous Substance or noxious noise or odor, at, in, on, into or onto the environment.

"Representatives" means, with respect to any Person, any of such Person's officers, directors, employees, agents, attorneys, accountants, consultants, equity financing partners or financial advisors or other Person associated with, or acting on behalf of, such Person.

"SEC Reports" means (i) the Company's Annual Report on Form 10-K for each of the fiscal years ended December 31, 2000 and 1999, (ii) the Company's Quarterly Report on Form 10-Q for each of the periods ended June 29, 2001 and March 31, 2001 and (iii) each registration statement, report on Form 8-K, proxy statement, information statement or other report or statement filed by the Company with the Commission on or since January 1, 2000 and

prior to the date hereof, in each case in the form (including exhibits and any amendments or supplements thereto) filed with the Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder from time to time.

"Senior Subordinated Notes" means the Senior Subordinated Notes of the Company issued pursuant to the Indenture.

"Series A Certificate of Designations" has the meaning set forth in the recitals hereto.

"Series A Nasdaq Approval" means both (i) any necessary interpretation, ruling, determination or waiver by or from Nasdaq relating to the issuance of the Series A Preferred Stock or the issuance of Conversion Shares upon conversion of the Series A Preferred Stock in an amount in excess of 19.9% of the outstanding shares of Common Stock as of the Closing Date and (ii) the satisfaction by the Company of all requirements set forth in any such interpretation, ruling, determination or waiver in order to make the same effective.

"Series A Preferred Stock" has the meaning set forth in the recitals hereto.

"Series A Shareholder Approval" means any necessary approval by the stockholders of the Company relating to the issuance of the Series A Preferred Stock or the issuance of Conversion Shares upon conversion of the Series A Preferred Stock in an amount in excess of 19.9% of the outstanding shares of Common Stock as of the Closing Date.

"Series A Shareholder Approval Proposal" means a proposal made by the Board of Directors to the stockholders of the Company in accordance with the DGCL to consider and vote on the Series A Shareholder Approval.

"Shareholder Meeting" has the meaning set forth in Section 7.08(a).

"Share Purchase" has the meaning set forth in Section 2.01.

"Share Purchase Price" has the meaning set forth in Section 2.01.

"Significant Subsidiary" means all Subsidiaries of the Company that are "Significant Subsidiaries" (as such term is defined in Regulation S-X under the Exchange Act, as in effect on the date hereof) of the Company.

"Special Committee" means a committee of the Board of Directors consisting of directors who are not Representatives of a TPG Person.

"Special Committee Approval" means the approval by the Special Committee of the Company's issuance of the Series A Preferred Stock and of the terms thereof.

"Subordination Agreement" means an agreement meeting the description and requirements of clause (b) of the definition of "TPG Equity Purchase" under the Credit Agreement.

"Subsidiary" means as to any Person, any other Person of which more than 50% of the shares of the voting stock or other voting interests are owned or controlled, or the ability to select or elect more than 50% of the directors or similar managers is held, directly or indirectly, by such first Person or one or more of its Subsidiaries or by such first Person and one or more of its Subsidiaries; provided, however, that no Joint Venture shall be considered (i) a "Subsidiary" of the Company or (ii) a "Subsidiary" of any Subsidiary of the Company.

"Tax" or "Taxes" means all taxes, including any interest, liabilities, fines, penalties or additions to tax that may become payable in respect thereof, imposed by any Governmental Entity, which taxes shall include, without limiting the generality of the foregoing, income taxes (including United States federal income taxes and state income taxes), payroll and employee withholding taxes, unemployment insurance, social security, sales and use taxes, excise taxes, franchise taxes, gross or net receipts taxes, occupation taxes, real and personal property taxes, ad valorem taxes, stamp taxes, transfer taxes, capital taxes, import duties, withholding taxes, workers' compensation, and other obligations of the same or of a similar nature whether arising before, on or after the Closing Date.

"Tax Returns" has the meaning set forth in Section 3.12(a).

"Third Party Claim" has the meaning set forth in Section 10.04(d).

"TPG Person" means the Investor, and each Person controlled by, controlling or under common control with the Investor, other than the Company and its Subsidiaries.

"Trading Day" has the meaning set forth in the Series A Certificate of Designations.

"Transaction Agreements" means this Agreement and the Registration Rights Agreement.

"to the knowledge of the Company and its Subsidiaries" and similar phrases with respect to the Company or to the Company and its Subsidiaries, mean to the actual knowledge, after due inquiry, of any of Steven P. Hanson, William George, Dario Sacomani, Michael Rohleder or Jim Stoeckmann.

"Voting Power" means, with respect to any Voting Securities, the aggregate number of votes attributable to such Voting Securities that could generally be cast by the holders thereof for the election of directors at the time of determination (assuming such election were then being held).

"Voting Securities" means, (i) with respect to the Company, the Equity Securities of the Company entitled to vote generally for the election of directors of the Company, and (ii) with respect to any other Person, any securities of or interests in such Person entitled to vote generally for the election of directors or any similar managing person of such Person.

"Wholly-Owned Subsidiary" means, as to any Person, a Subsidiary of such Person of which 100% of the Equity Securities (other than directors' qualifying shares or similar shares) is owned, directly or indirectly, by such Person.

SECTION 1.02. General Interpretive Principles. Whenever used in this Agreement, except as otherwise expressly provided or unless the context otherwise requires, any noun or pronoun shall be deemed to include the plural as well as the singular and to cover all genders. The name assigned this Agreement and the Section captions used herein are for convenience of reference only and shall not be construed to affect the meaning, construction or effect hereof. Unless otherwise specified, the terms "hereof," "herein" and similar terms refer to this Agreement as a whole (including the exhibits and schedules hereto), and references herein to Articles or Sections refer to Articles or Sections of this Agreement. Words of inclusion shall not be construed as terms of limitation herein, so that references to "include", "includes" and "including" shall not be limiting and shall be regarded as references to non-exclusive and non-characterizing illustrations.

## ARTICLE II

### SHARE PURCHASE

SECTION 2.01. Share Purchase. Upon the terms and subject to the conditions set forth in this Agreement, and in reliance upon the representations and warranties hereinafter set forth, at the Closing, the Company will issue, sell and deliver to the Investor, and the Investor will purchase from the Company 10,000 shares of Series A Preferred Stock, free and clear of all Liens, for an aggregate purchase price of \$100,000,000 (the "Share Purchase Price"). The transaction described in this Section 2.01 is referred to herein as the "Share Purchase."

SECTION 2.02. Share Purchase Closing. (a) The Closing shall take place at the offices of Snell & Wilmer L.L.P. at 10:00 a.m., Arizona time, on September 7, 2001 following satisfaction or, if permissible, waiver, of the conditions set forth in Sections 8.01 and 8.02 hereof, or at such other time and place as the parties may agree (the date on which the Closing occurs, the "Closing Date").

(a) At the Closing, (i) the Company will deliver to the Investor certificates representing the shares of Series A Preferred Stock to be purchased by, and sold to, the Investor pursuant to Section 2.01 (registered in the names and in the denominations designated by the Investor at least two Business Days prior to the Closing Date), together with the other documents, certificates and opinions to be delivered pursuant to Section 8.01, and (ii) the Investor, in full payment for the shares of Series A Preferred Stock to be purchased by, and sold to, the Investor pursuant to Section 2.01, will pay to the Company as provided in Section 2.01, an aggregate amount equal to the Share Purchase Price, in immediately available funds, and the Investor shall deliver to the Company the other documents, certificates and opinions to be delivered pursuant to Section 8.02. The amount to be paid to the Company will be paid by wire transfer to an account designated by the Company in writing at least one Business Day in advance of the Closing.

## ARTICLE III

## REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to, and agrees with, the Investor as of the date hereof and as of the Closing Date that, except to the extent set forth in, and in accordance with, the Disclosure Schedule:

SECTION 3.01. Corporate Organization and Qualification. Each of the Company and each of its Significant Subsidiaries is a corporation or limited liability company duly organized or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to own or lease and operate its properties and to conduct its business as it is currently being conducted and is proposed to be conducted. Each of the Company and each of its Significant Subsidiaries is duly licensed, authorized or qualified as a foreign corporation or limited liability company for the transaction of business and is in good standing under the laws of each other jurisdiction in which its ownership, lease or operation of property or conduct of business requires such qualification, except where its failure to be so licensed, authorized or qualified would not have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.02. Authorization of Agreements. (a) The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under the Transaction Agreements and the Company Documents. The execution, delivery and performance of the Transaction Agreements and the Company Documents, and the consummation by the Company of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action on the part of the Company. The Special Committee and the Board of Directors has approved the entry by the Company into this Agreement and has approved the consummation of the transactions contemplated by the Transaction Agreements for all purposes under the DGCL. The Company has delivered to the Investor true and correct copies of resolutions adopted by the Special Committee and the Board of Directors to the foregoing effects.

(b) This Agreement and the Registration Rights Agreement have been duly executed and delivered by the Company, and each such agreement constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

SECTION 3.03. Consents; No Conflicts. (a) The execution and delivery of each of this Agreement and the Registration Rights Agreement does not, and the execution and delivery of each of the Company Documents will not, and the performance of the obligations set forth herein and therein and the consummation of the transactions contemplated hereby and thereby will not, (i) violate any provision of the Certificate of Incorporation or the By-laws or the comparable governing instruments of any of the Significant Subsidiaries; (ii) give rise to any preemptive rights, rights of first refusal or other similar rights on behalf of any Person under any applicable Law or any provision of the Certificate of Incorporation or By-laws or any agreement or instrument applicable to the Company or any of its Significant Subsidiaries; (iii) conflict with,

contravene or result in a breach or violation of any of the terms or provisions of, or constitute a default (with or without notice or the passage of time) under, or result in or give rise to a right of termination, cancellation, acceleration or modification of any right or obligation under, or give rise to a right to put or to compel a tender offer for outstanding securities of the Company or any of its Significant Subsidiaries under, or require any consent, waiver or approval under, any note, bond, debt instrument (including the Credit Agreement), indenture, mortgage, deed of trust, lease, loan agreement, joint venture agreement, Regulatory Approval, contract or any other agreement, instrument or obligation to which the Company or any of its Significant Subsidiaries is a party or by which the Company or any of its Significant Subsidiaries or any property of the Company or any of its Significant Subsidiaries is bound; (iv) result in the creation or imposition of any Lien upon any assets or properties of the Company or any of its Significant Subsidiaries; or (v) violate any Law applicable to the Company or any of its Significant Subsidiaries, except, in the case of clauses (iii), (iv) and (v), for such conflicts, contraventions, breaches, defaults, rights of termination, cancellation, acceleration or modification, rights to put, required consents, waivers or approvals the failure of which to obtain, Liens or violations that would not have a Material Adverse Effect and would not materially impair or delay, or reasonably be expected to materially impair or delay, the ability of the Company to consummate the transactions contemplated by the Transaction Agreements or the Series A Certificate of Designations or to perform its obligations under the Transaction Agreements or the Series A Certificate of Designations.

(b) Other than the Series A Shareholder Approval, no consent or approval of the Company's stockholders is required by Law, the Certificate of Incorporation, the By-laws, the rules (the "NASD Rules") of the National Association of Securities Dealers, Inc. ("NASD") relating to the quotation of the Common Stock on the Nasdaq, or otherwise, for the execution, delivery and performance by the Company of the Transaction Agreements and the Company Documents and the consummation of the transactions contemplated thereby.

(c) The execution and delivery of the Transaction Agreements and the consummation of transactions contemplated hereby and thereby will not constitute a "Change in Control" or "Change of Control" (or similar concept) as such term (or concept) is defined in the Credit Agreement, the Indenture or any other material contract, agreement, indenture, mortgage, note, lease or other instrument to which the Company or any of its Significant Subsidiaries is a party or by which the Company or any such Subsidiary is bound or to which the properties of the Company or any such Subsidiary is subject.

SECTION 3.04. Capitalization; Securities. (a) As of the date hereof, the authorized capital stock of the Company consists of (i) 300,000,000 shares of Common Stock, of which 173,932,892 shares are outstanding, 30,076,666 shares are reserved for issuance under the Option Plans, and (ii) 100,000 shares of preferred stock, \$0.01 par value, of which no shares are outstanding, no shares have been designated and no shares are reserved for issuance. All of such outstanding shares of Common Stock were duly authorized and validly issued and are fully paid and non-assessable.

(b) Except for the options and purchase rights granted pursuant to the Option Plans, there are no authorized or outstanding (or any obligations to authorize or issue) Derivative Securities.

(c) Subject to the filing of the Series A Certificate of Designations with the Secretary of State of the State of Delaware, the shares of Series A Preferred Stock to be issued pursuant to this Agreement have been duly and validly authorized and, when issued as contemplated by this Agreement, will have been validly issued and will be fully paid and non-assessable. The Conversion Shares have been duly and validly authorized and validly reserved for issuance, and when issued upon the conversion of Series A Preferred Stock will have been validly issued and will be fully paid and non-assessable. The registration of the Conversion Shares pursuant to the Registration Rights Agreement will not give rise to any registration rights on behalf of any Person under any agreement or instrument applicable to the Company (other than the Registration Rights Agreement). Other than pursuant to the Registration Rights Agreement, no Person has any right to require the Company to register securities of the Company under the Securities Act, and there are no shareholder or similar agreements to which the Company is a party.

SECTION 3.05. Dividends, Stock Repurchases, Etc. Other than pursuant to this Agreement, the Series A Certificate of Designations, the Indenture (as in effect on the date hereof) or the Credit Agreement (as in effect on the date hereof), or as restricted or limited by applicable Law, there are no contractual or other restrictions or limitations on the ability of the Company or any of its Significant Subsidiaries to pay any dividends or make any other distributions on, or to purchase, redeem or otherwise acquire, any of its Equity Securities.

SECTION 3.06. Company Reports; Financial Statements. (a) As of their respective dates, the SEC Reports (i) were timely filed with the Commission; (ii) complied in all material respects, with the applicable requirements of the Exchange Act and the Securities Act, and (iii) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Other than the SEC Reports, as of the date of this Agreement the Company has not filed or been required to file any other reports or statements with the Commission on or since January 1, 2000.

(b) Each of the consolidated balance sheets (including the related notes and schedules) included in or incorporated by reference into the SEC Reports fairly presents in all material respects, the consolidated financial position of the entities to which it applies as of the date thereof, and each of the consolidated statements of income (or statements of results of operations), stockholders' equity and cash flows (including the related notes and schedules) included in or incorporated by reference into the SEC Reports, fairly presents in all material respects, the results of operations, retained earnings and cash flows, as the case may be, of the entities to which it applies (on a consolidated basis) for the periods or as of the dates, as the case may be, set forth therein, in each case in accordance with GAAP applied on a consistent basis throughout the periods covered (except as stated therein or in the notes thereto) and in compliance with the rules and regulations of the Commission.

(c) The Company is eligible to register securities for offer and sale on Form S-3 under the Securities Act.

SECTION 3.07. Undisclosed Liabilities. At June 29, 2001, there were no material liabilities or obligations of any nature (whether accrued, absolute, fixed, contingent,



liquidated, unliquidated or otherwise and whether due or to become due) required by GAAP to be set forth on (i) the Balance Sheet (as defined below) of the Company except as reflected or reserved against on the consolidated balance sheet of the Company at June 29, 2001 as set forth in the SEC Reports (the "Balance Sheet") or in the notes thereto or (ii) the consolidated balance sheet of any other entity included in the SEC Reports except as reflected or reserved against on such balance sheet included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2000, as amended through the date hereof, or in the notes thereto. Since June 29, 2001, the Company has not incurred any material liabilities or obligations except (i) those incurred in the ordinary course of business, (ii) for the amendment to the Credit Agreement dated as of August 13, 2001 and (iii) such as would not, individually or in the aggregate, have a Material Adverse Effect.

SECTION 3.08. Absence of Certain Changes. Except for transactions contemplated by the Transaction Agreements (including transactions expressly permitted pursuant to Section 6.02) or transactions with respect to which the Investor shall have given its prior written consent, from June 29, 2001 to the Closing, the Company and its Significant Subsidiaries have conducted their business in the ordinary and usual course, and there has not been any of the following:

(i) any issuance or sale, or any direct or indirect purchase, redemption or other acquisition of any shares of their respective Equity Securities or any Derivative Securities by the Company or any of its Significant Subsidiaries, other than pursuant to this Agreement or the Option Plans;

(ii) any entry into or amendment of any material employment, severance, compensation, consulting, retention, change of control or similar agreement with, or any material increase in the compensation or benefits payable or to become payable by the Company or any of its Subsidiaries to, any employee of the Company or any of its Subsidiaries (other than agreements terminable without penalty or similar payment by the Company or such Subsidiary, as the case may be, on not more than 30 days' notice and increases in compensation payable or to become payable to employees (other than directors or officers) in the ordinary course of business consistent with past practice);

(iii) any change in the financial accounting methods, principles or practices of the Company and its Subsidiaries for financial accounting purposes, except as required by GAAP or applicable Law; or

(iv) any change, condition, occurrence, circumstance or other event that, individually or in the aggregate, has had or is reasonably likely to have a Material Adverse Effect.

SECTION 3.09. Intellectual Property. Each of the Company and its Significant Subsidiaries owns or possesses the rights to use, and is in compliance with, in all material respects, all Intellectual Property that is material to the Company or a Significant Subsidiary and is used or required by it in the conduct of its business and all such Intellectual Property is in full force and effect and will not cease to be in full force and effect in accordance with its terms by virtue of the consummation of the transactions contemplated by the Transaction

Agreements. Neither the Company nor any of its Subsidiaries has received any notice of, and they have no knowledge of, (i) any infringement of or conflict with asserted rights of others with respect to any Intellectual Property owned or used by the Company or any of its Subsidiaries, (ii) any challenge to the ownership of or validity or effectiveness of any license for the use of any Intellectual Property owned or used by the Company or any of its Subsidiaries, or (iii) any claim against the use by the Company or any of its Subsidiaries of any Intellectual Property owned or used by it, except, in each case for such matters that would not, individually or in the aggregate have a Material Adverse Effect.

SECTION 3.10. Litigation. There are no claims, suits, actions, proceedings, arbitrations or investigations (each, a "Proceeding") pending or, to the knowledge of the Company or its Subsidiaries, explicitly threatened, against or affecting the Company or any of its Subsidiaries, that involve a claim against the Company or any of its Subsidiaries in a stated amount in excess of \$5,000,000, that may involve criminal liability or result in or involve criminal proceedings, that may affect the status of any material Regulatory Approval maintained by the Company or any Subsidiary, or that, individually or in the aggregate, are reasonably likely to have a Material Adverse Effect; and except as so disclosed, there are no judgments, decrees, injunctions, rules, stipulations or orders outstanding against or applicable to the Company or any of its Subsidiaries or against or applicable to any of their respective properties or businesses that, individually or in the aggregate, are reasonably likely to have a Material Adverse Effect.

SECTION 3.11. Compliance with Laws; Regulatory Approvals. Since August 4, 1999, the businesses of the Company and its Significant Subsidiaries have been conducted, and the businesses of the Company and its Significant Subsidiaries currently are being conducted, in compliance with all applicable Laws in all material respects. Since August 4, 1999, all material Regulatory Approvals required by the Company and its Significant Subsidiaries to conduct their respective businesses have been obtained, and all material Regulatory Approvals required by the Company and its Significant Subsidiaries to conduct their respective businesses as now conducted by them are in full force and effect. The Company and its Significant Subsidiaries are in compliance with the terms and requirements of such Regulatory Approvals in all material respects. Except such that would not, individually or in the aggregate, have a Material Adverse Effect, none of the Company or any of its Significant Subsidiaries has received any written notice or other written communication from or on behalf of any Governmental Entity regarding (i) any prior, pending, threatened or possible revocation, withdrawal, suspension, termination or modification of, or the imposition of any material conditions with respect to, any Regulatory Approval, except for any such revocation, withdrawal, suspension, termination, modification or condition that would not have a Material Adverse Effect, (ii) any material violation of any Law by the Company or any such Subsidiary, (iii) any prior, pending, threatened or possible investigation involving or otherwise relating to any material Regulatory Approval or (iv) any other limitations on the conduct of business by the Company or any such Subsidiary that would have a Material Adverse Effect.

SECTION 3.12. Taxes. (a) The Company and its Subsidiaries have timely filed (taking into account available extensions) all material U.S. federal, state, local, foreign and other tax returns (including any information returns), reports and statements (collectively, "Tax Returns") that are required to have been filed with the appropriate taxing authorities. All information provided in such Tax Returns is complete and accurate in all material respects. The

Company and its Subsidiaries have paid all material amounts due in respect of Taxes (whether or not actually shown on such Tax Returns), or have otherwise set up reserves in accordance with GAAP in respect of all Taxes for the periods covered by such Tax Returns. As of the date hereof, there is no proposed liability for any material Tax to be imposed upon the Company or any of the Subsidiaries for the fiscal year ended December 31, 2001 and all prior years for which there is not an adequate reserve, considering such reserves in the aggregate.

(b) No audits or investigations relating to any Taxes for which the Company or its Subsidiaries may be liable are pending or threatened in writing by any taxing authority. There are no agreements or applications by the Company or any of its Subsidiaries for the extension of the time for filing any tax return or paying any Tax nor have there been any waivers of any statutes of limitation for the assessment of any Taxes.

(c) Neither the Company nor any of its Subsidiaries is a party to any agreements relating to the sharing or allocation of Taxes with any other Person.

(d) The Company or its Subsidiaries have withheld from its employees and timely paid to the appropriate taxing authority proper and accurate amounts in all material respects through all periods in compliance in all material respects with all employee Tax withholding provisions of all applicable Laws.

#### SECTION 3.13. ERISA and Other Employment Matters.

(a) None of the Company nor any of its Subsidiaries has an express or implied commitment, (i) to create, incur liability with respect to or cause to exist any material employee benefit plan, program or arrangement other than the Plans or (ii) except for amendments necessary or appropriate to comply with applicable Law, to modify, change or terminate any Plan.

(b) Neither the execution and delivery of the Transaction Agreements nor the consummation of the transactions contemplated thereby will (i) accelerate the time of payment, vesting or funding of, or increase or modify the amount or terms of, any compensation or benefits that are or may become payable from or by the Company or any of its Subsidiaries to or in respect of any current or former executive officer or other key employee of any such Person, or (ii) constitute a Change in Control under any of the Employment Agreements with any such executive officer or other key employee.

(c) All employer and employee contributions, premiums and expenses payable to or in respect of any Plan or required by Law or any Plan or labor agreement or arrangement have been timely paid, or, if not yet due, have been fully and adequately accrued as a liability on the Company's financial statements included in the SEC Reports and no Plan is subject to Section 412 of the Code or Section 302 of ERISA.

(d) (i) No trade or business, whether or not incorporated, is or has been treated as a single employer together with the Company for any purpose under ERISA or Section 414 of the Code other than the Company's Subsidiaries, the Investor and any of its Affiliates, (ii) no material liability under Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans or employee compensation has been incurred (directly or

indirectly, including as a result of any indemnification obligation or agreement) by the Company or any of its Subsidiaries and is still outstanding, and no event, transaction or condition has occurred or exists which is reasonably expected to result in any material liability to the Company, any of its Subsidiaries or, following the Closing, the Investor or any Affiliate thereof, and (iii) no reportable event, within the meaning of Section 4043 of ERISA and the regulations of the U.S. Pension Benefit Guaranty Corporation promulgated thereunder, has occurred that is reasonably expected to result in the imposition of any material liability to the Company or any of its Subsidiaries, or will occur in connection with the consummation of the transactions contemplated by this Agreement, with respect to any Plan.

(e) Each Plan has been operated and administered and is in compliance with all applicable Laws except for any failures that, individually and in the aggregate, would not result in any material liability of the Company or any of its Subsidiaries. For each Plan that is intended to qualify under Section 401(a) of the Code, the Company will timely file a request for a favorable determination from the Internal Revenue Service as to its qualification and, to the knowledge of the Company and its Subsidiaries, no event or condition has occurred or exists that is likely to result in the disqualification of such Plan.

(f) None of the Company or any of its Subsidiaries is a party to any collective bargaining agreements and there are no labor unions or other organizations representing, or to the knowledge of the Company and its Subsidiaries, purporting to represent or attempting to represent, any employee of the Company or any of its Subsidiaries.

(g) Neither the Company nor any of its Subsidiaries has violated any provision of Law regarding the terms and conditions of employment of employees, former employees or prospective employees or other labor related matters, including Laws relating to discrimination, fair labor standards and occupational health and safety, wrongful discharge or violation of the personal rights of employees, former employees or prospective employees, which is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.14. Contracts. (a) Other than the Option Plans, neither the Company nor any of its Subsidiaries is a party or subject to any of the following (whether written or oral, express or implied): (i) any Employment Agreement or understanding or obligation, with respect to severance, termination, retention or change in control, to pay liabilities or fringe benefits, with any present or former Representative of the Company or any of its Subsidiaries, who is or may be entitled to receive pursuant to the terms thereof, compensation in excess of \$400,000 upon termination of such Person's employment or engagement; or (ii) any plan, contract or understanding providing for bonuses, pensions, options, deferred compensation, retirement payments, royalty payments, profit sharing or similar payment or benefit with respect to any present or former Representative of the Company or any of its Subsidiaries, who is or may be entitled to receive pursuant to the terms thereof, compensation in excess of \$400,000 in any single year.

(b) None of the Company, any of its Subsidiaries, or to the knowledge of the Company and its Subsidiaries, any other party, is in breach or violation or in default in the performance or observance of any term or provision of any contract, agreement, indenture, mortgage, loan agreement, note, lease or other instrument to which the Company or any such

Subsidiary is a party or by which the Company or any such Subsidiary is bound or to which any of the properties of the Company or any such Subsidiary is subject, which breach, violation or default is reasonably likely to, individually or in the aggregate, involve a claim against the Company or any of its Subsidiaries in an amount in excess of \$3,000,000 or have a Material Adverse Effect.

SECTION 3.15. Financial Advisors and Brokers; Fairness Opinion. (a) Except for Broadview International LLC, no Person has acted, directly or indirectly, as a broker, finder or financial advisor of the Company in connection with the Transaction Agreements or the transactions contemplated thereby, and no Person is entitled to receive any broker's, finder's or similar fee or commission in respect thereof based in any way on any agreement, arrangement or understanding made by or on behalf of the Company, any of its Subsidiaries or any of their respective directors, officers or employees. True and correct copies of all agreements between the Company, on the one hand, and Broadview International LLC (or any of its Affiliates), on the other, have been delivered to the Investor.

(b) The Special Committee has received an opinion of Broadview International LLC to the effect that the consideration to be paid to the Company for the shares of Series A Preferred Stock to be sold hereunder is fair, from a financial point of view, to the Company and the holders (other than any TPG Person) of the Common Stock of the Company.

SECTION 3.16. Exemption from Registration. Assuming the representations and warranties of the Investor set forth in Article IV are true and correct in all material respects, the offer and sale of the Series A Preferred Stock made pursuant to this Agreement and the acquisition of the Conversion Shares upon conversion of the Series A Preferred Stock will be in compliance with the Securities Act and any applicable state securities laws and will be exempt from the registration requirements of the Securities Act and such state securities laws.

SECTION 3.17. Insurance. The Company and its Subsidiaries have property, fire, professional liability, fiduciary and other insurance policies covering their assets, employees, officers and directors customary for companies similarly situated and in such amounts (subject to such reasonable deductibles) customary for companies similarly situated. All such policies are in full force and effect in accordance with their respective terms and will remain in full force and effect after the Closing. Neither the Company nor any of its Subsidiaries has received any notice of default with respect to any provision of any such policies, or any notice that the insurer is unwilling to renew any such Policy following the currently scheduled expiration of such policy or intends to materially modify any term of any such renewed policy as compared to the existing policy. With respect to its directors' and officers' liability insurance policies, neither the Company nor any of its Subsidiaries has failed to give any notice or present any claim thereunder in due and timely fashion or as required by any such policies so as to jeopardize full recovery under such policies.

SECTION 3.18. No Rights Plan. The Company has not issued any rights or warrants to holders of Common Stock entitling the holders thereof to subscribe for or purchase Common Stock, which rights or warrants (i) are deemed to be transferred with such shares of Common Stock, (ii) are not exercisable and (iii) are also issued in respect of future issuances of

Common Stock, in each case in clauses (i) through (iii) until the occurrence of a specified event or events.

SECTION 3.19. Disclosure. No representation or warranty by the Company in this Agreement, and no exhibit, document, statement, certificate or schedule furnished or to be furnished to the Investor pursuant to the terms of this Agreement, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements or facts contained herein or therein not misleading.

SECTION 3.20. Environmental Matters. (i) neither the conduct or operations of the Company or its Subsidiaries nor any condition of any property presently or previously owned, leased or operated by any of them violates or, within the applicable statute or limitations period, violated Environmental Laws, except for violations that are not material, (ii) the Company and its Subsidiaries have received and are in compliance with all material permits, licenses or other approvals required under applicable Environmental Laws for the conduct of their respective businesses and (iii) neither the Company nor any of its Subsidiaries have received notice of any actual or potential material liability for the investigation or remediation or any disposal or release of Hazardous Materials.

SECTION 3.21. Controls. The Company and each of its Subsidiaries maintains internal information systems and controls sufficient to provide reasonable assurance that (i) material transactions are executed in accordance with management's general or specific authorizations, and (ii) material transactions (including payment of claims and collection of receivables) are executed in accordance with their terms and applicable Law and are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability.

SECTION 3.22. Joint Venture Matters. To the knowledge of the Company and its Subsidiaries, since August 4, 1999 (or with respect to any Joint Venture (and only with respect to such Joint Venture), if later, the date on which the Company or any of its Subsidiaries first acquired an equity interest in such Joint Venture or any of the businesses conducted by such Joint Venture), none of the following has occurred that, individually or in the aggregate, has had, or would be reasonably likely to have, a Material Adverse Effect:

(a) the failure of any Joint Venture to comply with all applicable Laws and Regulatory Approvals in the conduct of its business;

(b) the failure of any Joint Venture to obtain and maintain in full force and effect all Regulatory Approvals necessary to conduct its business;

(c) the revocation, withdrawal, suspension or termination of, or any threatened or pending revocation, withdrawal, suspension or termination of, or the imposition of any material conditions with respect to, any Regulatory Approval necessary for any Joint Venture to conduct its business;

(d) the initiation of, or explicit threat of initiation of, any Proceeding by any Person, or the initiation of, or explicit threat of initiation of, any investigation by any Governmental Entity, against or affecting any Joint Venture, that may involve criminal liability

or result in or involve criminal proceedings, that may affect the status of any Regulatory Approval maintained by such Joint Venture that is necessary for such Joint Venture to conduct its business;

(e) the institution of any judgment, decree, injunction, rule, stipulation or order against or applicable to any Joint Venture or against or applicable to any of its properties or businesses; or

(f) any other event or occurrence with respect to any Joint Venture that has had, or would be reasonably likely to have, a Material Adverse Effect.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES OF THE INVESTOR

The Investor represents and warrants to, and agrees with, the Company as of the date hereof and as of the Closing Date as follows:

SECTION 4.01. Organization. The Investor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own or lease and operate its properties and to conduct its business as it is now being conducted and is proposed to be conducted.

SECTION 4.02. Authorization of Agreements. (a) The Investor has all requisite power and authority as a limited liability company to execute, deliver and perform its obligations under the Transaction Agreements and the Investor Documents. The execution, delivery and performance of the Transaction Agreements and the Investor Documents, and the consummation by the Investor of the transactions contemplated thereby, have been duly authorized by all necessary action on the part of the Investor.

(b) This Agreement and the Registration Rights Agreement have been duly executed and delivered by the Investor, and each such agreement constitutes a legal, valid and binding obligation of the Investor, enforceable against the Investor in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

SECTION 4.03. Consents; No Conflicts. (a) The execution and delivery of this Agreement and the Registration Rights Agreement does not, and the execution and delivery of each of the Investor Documents will not, and the performance of the obligations set forth herein and therein and the consummation of the transactions contemplated hereby and thereby will not, (i) violate any provision of the certificate of formation of the Investor; (ii) conflict with, contravene or result in a breach or violation of any of the terms or provisions of, or constitute a default (with or without notice or the passage of time) under, or result in or give rise to a right of termination, cancellation, acceleration or modification of any right or obligation under, or require any consent, waiver or approval under, any note, bond, debt instrument, indenture, mortgage, deed of trust, lease, loan agreement, joint venture agreement, Regulatory Approval, contract or any other agreement, instrument or obligation to which the Investor is a party or by which the Investor or any of its property is bound, or (iii) violate any Law applicable to the Investor.

SECTION 4.04. Financial Advisors and Brokers. No Person has acted directly or indirectly as a broker, finder or financial advisor of the Investor in connection with the Transaction Agreements or the transactions contemplated thereby, and no Person is entitled to receive any broker's, finder's or similar fee or commission in respect thereof based in any way on any agreement, arrangement or understanding made by or on behalf of the Investor or any of its directors, officers or employees.

SECTION 4.05. Purpose of Investment; Reliance on Exemptions. The Investor is acquiring the Series A Preferred Stock under this Agreement for its own account solely for the purpose of investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act. The Investor acknowledges that (i) the Series A Preferred Stock and the Conversion Shares have not been registered under the Securities Act and may be sold or disposed of in the absence of such registration only pursuant to an exemption from the registration requirements of the Securities Act and state securities laws, and (ii) the Company is relying upon the truth and accuracy of, and the Investor's compliance with, the representations, warranties, agreements, acknowledgements and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Series A Preferred Stock and the Conversion Shares.

SECTION 4.06. Information. The Investor and its Representatives have been furnished with copies of the SEC Reports and all materials relating to the business, finances and operations of the Company that have been requested by the Investor, and have been afforded the opportunity to ask questions of the Company regarding such matters.

#### ARTICLE V

#### GOVERNANCE

SECTION 5.01. Board Size. For so long as the Investor is entitled to designate any Investor Nominee for election to the Board of Directors, the Board of Directors shall consist of no more than thirteen, nor less than six, directors.

SECTION 5.02. Board Representation. (a) As promptly as practicable after the Closing, the Board of Directors shall elect a total of two nominees designated in writing by the Investor (such persons, or replacements designated by the Investor, the "Investor Nominees"), to the Board of Directors, to be allocated to Class I, Class II or Class III as specified by the Investor. Commencing with the annual meeting of stockholders of the Company the record date for which next follows the Closing Date, and at each annual meeting of stockholders of the Company thereafter, the Investor shall be entitled to present to the Board of Directors or the nominating committee thereof a number of nominees for election to the class of directors up for election to the Board of Directors at such annual meeting equal to the number of Investor Nominees in such class immediately prior to such election and the Company shall use its best efforts to cause the election to the Board of Directors of such Investor Nominees. If the Board of Directors shall cease to be a classified board, the Investor shall be entitled to present to the Board of Directors or the nominating committee thereof two nominees for election to the Board of Directors at each annual meeting of stockholders of the Company. In the event of the death, disability, resignation or removal of an Investor Nominee, the Investor shall designate a



replacement for such director, which replacement the Company shall cause to be elected to the Board of Directors.

(b) The Company shall cause each Investor Nominee designated for election to the Board of Directors pursuant to Section 5.02(a) to be included in the slate of nominees recommended by the Board of Directors to the stockholders of the Company for election as directors at the relevant annual meeting of the stockholders, and shall use its best efforts to cause the election of each such Investor Nominee, including soliciting proxies in favor of the election of such person.

(c) Notwithstanding the foregoing provisions of this Section 5.02, the Investor shall not be entitled to designate Investor Nominees for election to the Board of Directors in the event that the Investor and its Affiliates Beneficially Own, in the aggregate, less than 50% of the Original Number of Series A Shares. In the event that the Investor shall not be entitled to designate Investor Nominees for election to the Board of Directors, the Investor Nominees shall resign from the Board of Directors no later than the thirtieth day after the day on which the Investor becomes aware that the aggregate Beneficial Ownership of it and its Affiliates is reduced below the threshold ownership level of Original Number of Series A Shares specified in this Section 5.02(c). If an Investor Nominee does not resign on or prior to such thirtieth day as required pursuant to the immediately preceding sentence, a majority of the Board of Directors (excluding any Investor Nominees) shall have the right to remove such Investor Nominee from the Board of Directors.

(d) If the Board of Directors shall determine in good faith in the exercise of its fiduciary duties, that nomination of any person designated by the Investor for election to the Board of Directors would be contrary to the best interests of the Company, then the Company shall promptly notify the Investor of such determination (either in person, if such determination shall be made at a Board of Directors meeting at which an Investor Nominee is present or by telephone (promptly confirmed in writing), if such determination shall be made at a Board of Directors meeting at which an Investor Nominee is not present) and thereafter the Investor shall have a period of no less than five Business Days to designate a new person for nomination for election to the Board of Directors as an Investor Nominee.

SECTION 5.03. Meetings. From and after the Closing Date, for so long as an Investor Nominee serves as a member of the Board of Directors, each Investor Nominee shall be invited to attend all regular and special meetings of the Board of Directors. The Company shall notify each Investor Nominee of any such meeting no later than the time at which it notifies any other member of the Board of Directors of such meeting.

## ARTICLE VI

### PRE-CLOSING COVENANTS

SECTION 6.01. Taking of Necessary Action. Each of the parties hereto agrees to use its best efforts promptly to take or cause to be taken all actions and promptly to do or cause to be done all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement

in accordance with the terms of the Agreement. Without limiting the foregoing, the Company will use its best efforts to file the Series A Certificate of Designations with the Secretary of State of the State of Delaware.

SECTION 6.02. Conduct of Business. From the date hereof until the Closing Date, except as set forth on Section 6.02 of the Disclosure Schedule, the Company shall conduct its business and shall cause its Subsidiaries to conduct their respective businesses in, and only in, the ordinary course and shall use, and shall cause its Subsidiaries to use, their best efforts to preserve intact their respective present business organizations, operations, goodwill and relationships with third parties (including clients and providers) and to keep available the services of the present directors, officers and key employees. Without limiting the generality of the foregoing, from the date hereof until the Closing Date, without the prior written consent of the Investor (except as expressly permitted or required by this Agreement):

(i) the Company shall not, and shall cause each of its Subsidiaries or Significant Subsidiaries, as the case may be, not to take any of the actions or enter into any of the agreements, commitments or transactions described in clause (i), (ii) or (iii) of Section 3.08;

(ii) the Company shall not, and shall cause each of its Subsidiaries not to, take any action that it knows or has reason to believe would cause a representation or warranty of the Company set forth herein to be untrue in any material respect if made at such time, or a covenant of the Company set forth in Article VII to fail to be satisfied as of the Closing Date; and

(iii) the Company shall not, and shall cause each of its Subsidiaries not to, commit or agree to do any of the foregoing.

SECTION 6.03. Notifications. At all times prior to the Closing Date, the Investor shall promptly notify the Company and the Company shall promptly notify the Investor in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event which will or is reasonably likely to result in the failure to satisfy, in any material respect, the conditions to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 6.03 shall not limit or otherwise affect the remedies available hereunder to any party receiving such notice.

SECTION 6.04. Subordination Agreement. Each of the Investor and the Company will in good faith negotiate with one another and the Administrative Agent the terms and conditions of the Subordination Agreement and, upon reaching agreement on such terms and conditions, execute and deliver the Subordination Agreement.

## ARTICLE VII

### ADDITIONAL COVENANTS

SECTION 7.01. Financial and Other Information. (a) So long as members of the Investor Group Beneficially Own, in the aggregate, at least 10% of the Original Number of Series A Shares, the Company shall (and shall cause each of its Subsidiaries to) afford to

members of the Investor Group that then Beneficially Own shares of Series A Preferred Stock and their Representatives reasonable access, upon reasonable notice and in such manner as will not unreasonably interfere with the conduct of the Company's (or such Subsidiary's) business, to their respective properties, books, contracts, commitments and records (including information regarding any pending or threatened Proceeding to which the Company or any of its Subsidiaries is, or reasonably expects to be, a party) and to discuss the business, affairs, finances, regulatory status and other matters related to the purchase and Beneficial Ownership of the Series A Preferred Stock and Conversion Shares with Representatives of the Company; provided, however, that neither the Company nor any Subsidiary shall be required to disclose any such information pursuant to this Section 7.01 to the extent that such disclosure (i) would result in the breach or violation of the confidentiality or non-disclosure provisions of any license or agreement to which the Company or any of its Subsidiaries is a party or (ii) in the opinion of outside legal counsel to the Company, would result in the Company's inability to assert the attorney-client privilege with respect to such information or require premature public disclosure thereof in accordance with applicable rules and regulations of the Commission promulgated under the Exchange Act.

(b) Upon the written request of the Company, each member of the Investor Group shall inform the Company of the number of Series A Shares then Beneficially Owned by such member of the Investor Group. Such information shall be delivered to the Company within five Business Days of the delivery of such request to such member of the Investor Group. To the extent such information is not available to the public, the Company shall keep such information confidential.

SECTION 7.02. Limitation on Restrictions on Payment of Dividends. From and after the Closing (for so long as members of the Investor Group Beneficially Own, in the aggregate, at least 50% of the Original Number of Series A Shares), without the prior written approval of the Investor, except as permitted or provided in this Agreement, the Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, cause or suffer to exist or become effective any contractual or other restrictions or limitations on the ability of (a) the Company to pay any dividends on or make any other distributions on, or to purchase, redeem or otherwise acquire, the Series A Preferred Stock or (b) any Subsidiary of the Company to pay any dividends or make any other distributions on, or to purchase, redeem or otherwise acquire, any of its Equity Securities, except in each case those restrictions imposed by Law, the Credit Agreement, the Indenture or any Other Credit Facility (as defined in the Series A Certificate of Designations); provided, however, that nothing in this Section 7.02 shall be deemed to prohibit, restrict or otherwise modify the right of the Company to create or issue Senior Securities, Parity Securities or Junior Securities (each as defined in the Series A Certificate of Designations), or pay dividends or make any other distributions on, or to purchase, redeem or otherwise acquire, such Senior Securities, Parity Securities or Junior Securities, in each case subject to the terms, conditions and limitations of the Series A Certificate of Designations.

SECTION 7.03. Publicity. Except as required by Law or by obligations pursuant to any listing agreement with or requirement of any national securities exchange or national quotation system on which the Common Stock is listed, admitted to trading or quoted, neither the Company (nor any of its Affiliates) nor the Investor (nor any of its Affiliates) shall, without the prior written consent of each other party hereto, which consent shall not be

unreasonably withheld or delayed, make any public announcement or issue any press release with respect to the transactions contemplated by this Agreement. Prior to making any public disclosure required by applicable Law or pursuant to any listing agreement with or requirement of any relevant national exchange or national quotation system, the disclosing party shall consult with the other parties hereto, to the extent feasible, as to the content and timing of such public announcement or press release.

SECTION 7.04. Status of Dividends. The Company agrees to treat the Series A Preferred Stock as equity for all Tax purposes unless the Company determines that there is no reasonable basis for such position. The Company shall take no action (other than as required by Law) that would jeopardize the availability of the dividends received deduction under Section 243(a)(1) of the Code for the distributions on the Series A Preferred Stock that are paid out of current or accumulated earnings and profits, if any.

SECTION 7.05. Director and Officer Indemnification. (a) So long as any Investor Nominee or member of the Special Committee serves as a member of the Board of Directors or as an officer of the Company, the Company shall provide to each such individual indemnification and directors' and officers' insurance having terms and provisions no less favorable to such individuals than the indemnification and directors' and officers' insurance provided to other directors and officers of the Company (including coverage for matters based in whole or in part on, or arising in whole or in part out of, any matter existing or occurring while such Investor Nominee or member of the Special Committee was a director, even though such Investor Nominee or member of the Special Committee may no longer be a director at the time any claim for indemnification or coverage under insurance is made).

(b) So long as any Investor Nominee or member of the Special Committee serves as a member of the Board of Directors or as an officer of the Company, the Company shall not amend the Certificate of Incorporation or By-laws so as to adversely affect the rights of any such person with respect to indemnification by the Company for any Losses incurred by such person in such person's capacity as an officer or director of the Company.

SECTION 7.06. Listing; Reservation. (a) So long as any member of the Investor Group Beneficially Owns Conversion Shares, the Company shall use its commercially reasonable efforts to ensure that the Common Stock continues to be quoted or listed on Nasdaq or any national securities exchange.

(b) From and after the Closing, the Company shall at all times reserve and keep available, out of its authorized and unissued Common Stock, solely for the purpose of issuing Common Stock upon the conversion of the Series A Preferred Stock, such number of shares of Common Stock free of preemptive rights as shall be sufficient to issue Common Stock upon the conversion of all outstanding shares of Series A Preferred Stock.

SECTION 7.07. Legend. (a) The Investor agrees to the placement on (i) certificates representing Series A Preferred Stock issued to the Investor pursuant to the terms of this Agreement, (ii) certificates representing Conversion Shares, and (iii) any certificate issued at any time in exchange or substitution for any certificate bearing such legend, a legend (the "Private Placement Legend") substantially as set forth below:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAW, AND MAY NOT BE OFFERED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

(b) The Private Placement Legend shall be removed from a certificate representing Series A Preferred Stock or Conversion Shares if the securities represented thereby are sold pursuant to an effective registration statement under the Securities Act or there is delivered to the Company such satisfactory evidence, which may include an opinion of independent counsel, as reasonably may be requested by the Company, to confirm that neither such legend nor the restrictions on transfer set forth therein are required to ensure that transfers of such securities will not violate the registration and prospectus delivery requirements of the Securities Act.

SECTION 7.08. Approval for Issuance of Shares. (a) The Company shall, upon written request of the Investor and as soon as possible after such request, (i) use its best efforts to obtain the Series A Nasdaq Approval and (ii) if applicable, use its best efforts to obtain the Series A Shareholder Approval until the Series A Shareholder Approval is duly obtained by the Company and take all action necessary to present the Series A Shareholder Approval Proposal for a vote at each meeting of stockholders of the Company, annual or otherwise, held after the execution of this Agreement. Each meeting of stockholders at which the Series A Shareholder Approval is considered is referred to herein as a "Shareholder Meeting." The Company shall use its best efforts to obtain the required approval of its stockholders of the Series A Shareholder Approval Proposal at each Shareholder Meeting. Upon written request of the Investor to the Company delivered at any time prior to or on March 1, 2002, the Company shall file with the Commission a Proxy Statement no later than 30 days after the date of such request, and the Company shall use its best efforts to hold a Shareholder Meeting no later 90 days after the date of such request.

(b) Any such Proxy Statement shall contain the recommendation of the Board of Directors that the stockholders approve the Series A Shareholder Approval Proposal. The Company shall notify the Investor promptly of the receipt by it of any comments from the Commission or its staff and of any request by the Commission for amendments or supplements to such Proxy Statement or for additional information, and will supply the Investor with copies of all correspondence between the Company and its representatives, on the one hand, and the Commission or the members of its staff or of any other Governmental Entities, on the other hand, with respect to such Proxy Statement. The Company shall give the Investor and its counsel a reasonable opportunity to review and comment on those portions of such Proxy Statement describing or referring to the Series A Shareholder Approval Proposal or any member of the Investor Group (the "Investor Information") prior to the filing of the Proxy Statement with the Commission and shall give the Investor and its counsel a reasonable opportunity to review and comment on all amendments and supplements to the Investor Information and all responses to

requests for additional information and replies to comments prior to their being filed with, or sent to, the Commission with respect to the Investor Information. The Company shall give reasonable consideration to any comments the Investor or its counsel may provide with respect to the Investor Information or any amendment or supplement thereto.

(c) Any such Proxy Statement, as of the date it is mailed to stockholders of the Company and as of the date of the relevant Shareholder Meeting, will not include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that this Section 7.08(c) shall not apply to any information provided to the Company in writing by any member of the Investor Group with respect to such member expressly for inclusion in the Proxy Statement.

SECTION 7.09. Transactions with Affiliates. From and after the Closing, so long as members of the Investor Group Beneficially Own, in the aggregate, at least 50% of the Series A Preferred Stock, the Company shall not, without the prior written approval of the holders of at least 50% of the Series A Preferred Stock, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except such transactions that are permitted under the Credit Agreement.

SECTION 7.10. Pre-Closing Trading. (a) The Investor represents, warrants and covenants that, during the ten Trading Days preceding the Closing Date, neither it nor any of its Affiliates have engaged or will engage in (or encourage), either directly or indirectly, any hedging transactions, short sales of the Common Stock or other trading activity which might reasonably be expected to cause or result in a decrease in the price of the Common Stock.

(b) The Company represents, warrants and covenants that, during the ten Trading Days preceding the Closing Date, neither it nor any of its Affiliates have engaged or will engage in (or encourage), either directly or indirectly, any hedging transactions or other trading activity which might reasonably be expected to cause or result in an increase in the price of the Common Stock.

## ARTICLE VIII

### CONDITIONS

SECTION 8.01. Conditions to Investor's Obligations with Respect to the Share Purchase. The obligation of the Investor to purchase and pay for the Series A Preferred Stock pursuant to Section 2.01 at the Closing is subject to satisfaction or waiver of each of the following conditions precedent:

(a) Representations and Warranties; Covenants. The representations and warranties of the Company set forth in Article III qualified as to materiality shall have been true and correct in all respects, and those not so qualified shall have been true and correct in all material respects, on and as of the date hereof and as of the Closing as if made on the Closing Date (except where such representation and warranty speaks by its

terms as of a different date, in which case it shall be true and correct as of such date, or except where such representation and warranty is not true or correct solely as a result of actions expressly permitted by Section 6.02). The Company shall have performed in all material respects all obligations and complied with all agreements, undertakings, covenants and conditions required hereunder to be performed by it at or prior to the Closing. The Company shall have delivered to the Investor at the Closing a certificate in form and substance reasonably satisfactory to the Investor dated the Closing Date and signed by the chief financial officer of the Company to the effect that the conditions set forth in this Section 8.01(a) have been satisfied.

(b) Opinions of Counsel. The Investor shall have received at the Closing (i) a written opinion from Snell & Wilmer L.L.P., special counsel to the Company, and (ii) a written opinion of George H. Cave, Esq., General Counsel of the Company, each dated the Closing Date, such opinions to cover in the aggregate the matters substantially as set forth in Exhibit B.

(c) Fairness Opinion. Broadview International LLC shall have delivered a written opinion to the Special Committee to the effect that the consideration paid to the Company for the shares of Series A Preferred Stock sold pursuant to Section 2.01, is fair, from a financial point of view, to the Company and the holders (other than any TPG Person) of Common Stock of the Company, and a true and correct copy of such opinion shall have been delivered to the Investor.

(d) Establishment of Preferred Stock. (i) The Company shall have filed with the Secretary of State of the State of Delaware the Certificate of Designations in the form of Exhibit A containing the resolutions of the Board of Directors of the Company creating the Series A Preferred Stock and setting forth the terms and conditions of the Series A Preferred Stock. A copy of each of the Certificate of Incorporation and the Series A Certificate of Designations, certified by the State of Delaware (or, in the case of the Series A Certificate of Designations, accompanied by evidence of its filing reasonably satisfactory to the Investor), shall have been delivered to the Investor. (ii) The Company shall have executed and delivered to the Investor the shares of Series A Preferred Stock to be purchased by the Investor pursuant to Section 2.01.

(e) Compliance with Laws; No Adverse Action or Decision. Since the date hereof, (i) no Law shall have been promulgated, enacted or entered that restrains, enjoins, prevents, materially delays, prohibits or otherwise makes illegal the performance of any of the Transaction Agreements or Company Documents; (ii) no preliminary or permanent injunction or other order by any Governmental Entity that restrains, enjoins, prevents, delays, prohibits or otherwise makes illegal the performance of any of the Transaction Agreements or Company Documents shall have been issued and remain in effect; and (iii) no Governmental Entity shall have instituted any Proceeding that seeks to restrain, enjoin, prevent, delay, prohibit or otherwise make illegal the performance of any of the Transaction Agreements or Company Documents.

(f) Proceedings. All corporate and other proceedings to be taken by the Company in connection with the Transaction Agreements and the Company Documents

with respect to the transactions contemplated thereby to be completed at the Closing and documents incident thereto shall have been completed in form and substance reasonably satisfactory to the Investor, and the Investor shall have received all such counterpart originals or certified or other copies of the Transaction Agreements and the Company Documents and such other documents as it may reasonably request.

(g) No Material Adverse Effect; No Insolvency Event. No event shall have occurred or change, circumstance or effect arisen or been discovered that has had, or is reasonably likely to have, a Material Adverse Effect; and no Insolvency Event shall have occurred.

(h) Registration Rights Agreement. The Registration Rights Agreement shall be in full force and effect.

(i) Subordination Agreement. The Subordination Agreement shall be in full force and effect.

SECTION 8.02. Conditions of the Company's Obligations with Respect to the Share Purchase. The obligation of the Company to issue and sell the Series A Preferred Stock pursuant to Section 2.01 at the Closing is subject to satisfaction or waiver of each of the following conditions precedent:

(a) Representations and Warranties; Covenants. The representations and warranties of the Investor set forth in Article IV qualified as to materiality shall have been true and correct in all respects, and those not so qualified shall have been true and correct in all material respects, on and as of the date hereof and as of the Closing as if made on the Closing Date (except where such representation and warranty speaks by its terms as of a different date, in which case it shall be true and correct as of such date). The Investor shall have performed in all material respects all obligations and complied with all agreements, undertakings, covenants and conditions required by it to be performed at or prior to the Closing, and the Investor shall have delivered to the Company at the Closing a certificate in form and substance reasonably satisfactory to the Company dated the Closing Date and signed on behalf of a member of the Investor to the effect that the conditions set forth in this Section 8.02(a) have been satisfied.

(b) Opinions of Counsel. The Company shall have received at the Closing (i) a written opinion from Cleary, Gottlieb, Steen & Hamilton, special counsel to the Investor, and (ii) a written opinion from Morris, Nichols, Arsht & Tunnell, special counsel to the Investor, each dated the Closing Date, such opinions to cover in the aggregate the matters substantially as set forth in Exhibit C.

(c) Compliance with Laws; No Adverse Action or Decision. Since the date hereof, (i) no Law shall have been promulgated, enacted or entered that restrains, enjoins, prevents, materially delays, prohibits or otherwise makes illegal the performance of any of the Transaction Agreements or the Company Documents with respect to the transactions contemplated thereby to be completed at the Closing; (ii) no preliminary or permanent injunction or other order by any Governmental Entity that restrains, enjoins,



prevents, delays, prohibits or otherwise makes illegal the performance of any of the Transaction Agreements or the Company Documents with respect to the transactions contemplated thereby to be completed at the Closing shall have been issued and remain in effect; and (iii) no Governmental Entity shall have instituted any action, claim, suit, investigation or other proceeding that seeks to restrain, enjoin, prevent, delay, prohibit or otherwise make illegal the performance of any of the Transaction Agreements or the Company Documents.

(d) Subordination Agreement. The Subordination Agreement shall be in full force and effect.

#### ARTICLE IX

##### TERMINATION

SECTION 9.01. Termination of Agreement. Subject to Section 9.02, this Agreement may be terminated by notice in writing at any time prior to the Closing by:

(a) the Investor or the Company, if the Closing shall not have occurred on or before September 7, 2001; provided, however, that the right to terminate this Agreement under this Section 9.01(a) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date;

(b) the Investor if there has been a material breach by the Company of a representation, warranty, covenant or agreement set forth in this Agreement which has not been cured within one day after written notice thereof;

(c) the Investor or the Company, if any Governmental Entity of competent jurisdiction shall have issued any judgment, injunction, order, ruling or decree or taken any other action restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by the Transaction Agreements and such judgment, injunction, order, ruling, decree or other action becomes final and non-appealable; provided that the party seeking to terminate this Agreement pursuant to this clause (b) shall have used its best efforts to have such judgment, injunction, order, ruling or decree lifted, vacated or denied; or

(d) mutual written agreement of the Investor and the Company.

Section 9.02. Effect of Termination. (a) If this Agreement is terminated in accordance with Section 9.01 and the transactions contemplated hereby are not consummated, this Agreement shall become null and void and of no further force and effect except that (i) the terms and provisions of this Section 9.02, Section 7.03 and Article X shall remain in full force and effect and (ii) any termination of this Agreement shall not relieve any party hereto from any liability for any breach of its obligations hereunder.

#### ARTICLE X

##### MISCELLANEOUS

SECTION 10.01. Fees and Expenses. (a) The Company shall be responsible for the payment of all expenses incurred by it in connection with the Transaction Agreements and the transactions contemplated thereby (including any Proxy Statement), including all fees and expenses of its legal counsel and all third-party consultants engaged by it to assist in such transactions. The Company shall be responsible for and reimburse the Investor for all reasonable fees and disbursements of legal counsel and third party consultants and reasonable out-of-pocket expenses incurred by the Investor in connection with the Transaction Agreements and the transactions contemplated thereby. Such reimbursements shall be due to the Investor at the Closing, or promptly following any earlier termination of this Agreement for any reason, as the case may be, or in the case of such fees and expenses incurred thereafter, promptly upon demand therefor, subject in each case to the delivery to the Company of reasonable supporting documentation.

(b) All amounts payable under this Agreement shall be paid in immediately available funds to an account or accounts designated by the recipient of such amounts.

SECTION 10.02. Survival of Representations and Warranties. Notwithstanding any investigation conducted or notice or knowledge obtained by or on behalf of any party hereto, each representation or warranty in this Agreement or in the Disclosure Schedule or certificates delivered pursuant to this Agreement shall survive the Closing for a period of two years; provided, however, that each representation and warranty made in Sections 3.12, 3.13 and 3.20 or in any section of the Disclosure Schedule or certificate related thereto shall survive the Closing until the sixtieth day following the expiration of the applicable statute of limitations with respect to any action that may be brought relating to the matters described in such representation and warranty. Any claim for indemnification under this Article X arising out of the inaccuracy or breach of any representation or warranty must be made prior to the termination of the applicable survival period.

SECTION 10.03. Specific Performance; Exclusive Remedy for Monetary Damages. (a) The parties hereto specifically acknowledge that monetary damages are not an adequate remedy for violations of this Agreement, and that any party hereto may, in its sole discretion, apply to a court of competent jurisdiction for specific performance or injunctive or such other relief as such court may deem just and proper in order to enforce this Agreement or prevent any violation hereof and, to the extent permitted by applicable law and to the extent the party seeking such relief would be entitled on the merits to obtain such relief, each party waives any objection to the imposition of such relief.

(b) Each party hereto specifically acknowledges that the indemnification provided in Section 10.04 hereof and Section 2.9 of the Registration Rights Agreement shall be the sole remedies for monetary damages with respect to the Transaction Agreements, exclusive of any other rights to monetary indemnification or monetary damages to which a party may be entitled under any statute or contract.

SECTION 10.04. Indemnification. (a) The Company agrees to indemnify and hold harmless the Investor, each member, limited partner or general partner, as the case may be, of the Investor, each limited or general partner of each such member, limited partner or general partner, each of their Affiliates and each of their Representatives (collectively, the "Indemnified

Investor Parties") from and against any and all losses, penalties, judgments, suits, costs, claims, liabilities, damages and expenses (including reasonable attorneys' fees and disbursements but excluding Taxes imposed as a result of being a direct or indirect owner of the Series A Preferred Stock or realizing income or gain with respect thereto) (collectively, "Losses"), incurred by, imposed upon or asserted against any of the Indemnified Investor Parties as a result of, relating to or arising out of:

(i) the breach of any representation or warranty made by the Company in any Transaction Agreement or in any certificate delivered by the Company pursuant to any Transaction Agreement (each of which shall be deemed to have been made for the benefit of all members of the Investor Group); provided, however, that no claim for indemnification under this Section 10.04(a)(i) may be made unless (A) the amount of Losses with respect to such claim exceeds \$50,000 and (B) the aggregate amount of Losses (aggregating all claims for indemnification under this Section 10.04(a)(i)) exceeds \$1,000,000; provided further, however, that in the event the threshold in clause (B) is exceeded, indemnity shall become due for the amount of all Losses (aggregating all claims for indemnification under this Section 10.04(a)(i)) in excess of \$500,000;

(ii) the breach of any agreement or covenant made by the Company in any Transaction Agreement or in any certificate delivered by the Company pursuant to any Transaction Agreement (each of which shall be deemed to have been made for the benefit of all members of the Investor Group); or

(iii) to the fullest extent permitted by law, the transactions contemplated hereby, the negotiation, execution, delivery and performance of the Transaction Documents and the purchase and/or direct or indirect ownership of the Series A Preferred Stock or Conversion Shares (including any litigation, suits, actions, investigations, claims or proceedings to which an Indemnified Investor Party is made party as a result thereof), including in connection with an Indemnified Investor Party's status as a shareholder of the Company and any alleged violation of applicable business combination, control share and any other similar anti-takeover statutes; provided, however, that nothing in this clause (iii) shall require the Company to indemnify any Indemnified Investor Party with respect to any Loss resulting solely from a decline in the market value of the Series A Preferred Stock or Conversion Shares.

(b) The Investor agrees to indemnify and hold harmless the Company and each of its Representatives (collectively, the "Indemnified Company Parties") from and against any and all Losses incurred by any of the Indemnified Company Parties as a result of, or arising out of:

(i) the breach of any representation or warranty made by the Investor in the Transaction Agreements or in any certificate delivered by the Investor pursuant to the Transaction Agreements; provided, however, that no claim for indemnification under this Section 10.04(b)(i) may be made unless (A) the amount of Losses with respect to such claim exceeds \$50,000 and (B) the aggregate amount of Losses (aggregating all claims for indemnification under this Section 10.04(b)(i)) exceeds \$1,000,000; provided further, however, that in the event the threshold in clause (B) is exceeded, indemnity shall

become due for the amount of all Losses (aggregating all claims for indemnification under this Section 10.04(b)(i)) in excess of \$500,000; or

(ii) the breach of any agreement or covenant made by the Investor in the Transaction Agreements or in any certificate delivered by the Investor pursuant to the Transaction Agreements.

(c) The Investor agrees to indemnify and hold harmless each individual that is a member of the Special Committee (collectively, the "Indemnified Special Committee Parties") from and against any and all Losses incurred by any of the Indemnified Special Committee Parties as a result of, or arising out of, any claim relating to breach of fiduciary duty or illegality (other than claims based upon fraud, embezzlement or any criminal violation of law), in each case, related to the transactions contemplated hereby; provided, however, that such indemnification shall only be available to the extent that both (i) indemnification for such Losses is not available from the Company under applicable law or as a result of the Company's insolvency and (ii) the Company's insurers refuse to pay on the Company's directors' and officers' liability insurance policies with respect to such Losses.

(d) The following provisions shall apply to any claim for Losses (a "Claim") by an Indemnified Investor Party, Indemnified Company Party or Indemnified Special Committee Party (as the case may be, the "Indemnified Party") entitled to any indemnification under this Section 10.04 in respect of, arising out of or involving a claim or demand made by any Person against an Indemnified Party (a "Third Party Claim"):

(i) The Indemnified Party shall notify the indemnifying party in writing within 10 Business Days after receipt by such Indemnified Party of written notice of a Third Party Claim if a Claim in respect thereof is to be made against the indemnifying party under this Section 10.04; but the failure to so notify the indemnifying party (x) will not relieve the indemnifying party from liability under this Section 10.04 unless and to the extent it has been actually and materially prejudiced by such failure and (y) will not, in any event, relieve the indemnifying party from any obligations to any Indemnified Party other than the indemnification obligation provided in this Section 10.04.

(ii) If a Third Party Claim is made against an Indemnified Party, the indemnifying party shall be entitled to participate in the defense thereof and shall have the absolute right, in its sole discretion to assume the defense thereof with counsel of the indemnifying party's choice to represent the Indemnified Party; provided, however, that such counsel shall be reasonably satisfactory to the Indemnified Party; provided, further, that the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the indemnifying party (except that the indemnifying party shall be liable for the fees and expenses of counsel employed by the Indemnified Party for any period during which the indemnifying party has failed to assume the defense of any Third Party Claim within a reasonable period of time after receipt of a written notice of such Third Party Claim pursuant to clause (i) above). Notwithstanding the foregoing, the Indemnified Party shall have the right to employ one firm or separate counsel (plus local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate

counsel, if (w) the use of counsel chosen by the indemnifying party to represent the Indemnified Party would present such counsel with a conflict of interest (based upon written advice of counsel to the Indemnified Party), (x) the actual or potential defendants in, or targets of, any such action include both the Indemnified Party and the indemnifying party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it or other Indemnified Parties which are different from or additional to those available to the indemnifying party, (y) the indemnifying party shall not have employed counsel satisfactory to the Indemnified Party (in the exercise of the Indemnified Party's reasonable judgment) to represent the Indemnified Party within a reasonable time after notice of the Third Party Claim or (z) the indemnifying party shall authorize in writing the Indemnified Party to employ separate counsel at the expense of the indemnifying party.

(iii) Whether or not the indemnifying party shall have assumed the defense of a Third Party Claim, the indemnifying party shall not admit any liability with respect to, or settle, compromise or discharge, any pending or threatened Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld). If the indemnifying party shall have assumed the defense of a Third Party Claim, the Indemnified Party shall agree to any settlement, compromise or discharge of a Third Party Claim which the indemnifying party shall recommend and which releases the Indemnified Party completely and unconditionally from all liability in connection with such Third Party Claim and which would not otherwise adversely affect the Indemnified Party.

(iv) Notwithstanding the foregoing, in the event the indemnifying party fails timely, in good faith or diligently to defend, contest or otherwise protect against any Third Party Claim (after having assumed the defense therefor), the Indemnified Party shall have the right, but not the obligation, to assume the defense of such Third Party Claim and take such other action as it may elect to defend, protect against or settle such Third Party Claim as it may determine.

(v) The indemnifying party shall be subrogated to the claims or rights of the Indemnified Investor Parties or the Indemnified Company Parties, as the case may be, as against any other Persons with respect to any Loss paid by the indemnifying party under this Section 10.04(d). The Investor shall be subrogated (i) to the claims or rights of the Indemnified Special Committee Parties as against any other Persons, including the Company, with respect to any Loss paid by the Investor under this Section 10.04(d) to the Indemnified Special Committee Parties and (ii) to the claims or rights of the Company as against the Company's insurers, that refused to pay on the Company's applicable directors' and officers' liability insurance policies as contemplated by Section 10.04(c), with respect to any Loss paid by the Investor under this Section 10.04(d). The Company shall use its best efforts to take all necessary steps to implement the subrogation contemplated in the preceding sentence.

(e) All payments under this Section 10.04 shall be due promptly following the occurrence of the related Loss; provided, however, that if a final, non-appealable judicial

determination is made that an Indemnified Party is not entitled to any such payment it will promptly repay the appropriate amounts to the appropriate indemnifying party.

Section 10.05. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given, if delivered personally, by facsimile or sent by overnight courier or by first class mail, postage prepaid, as follows:

(i) If to the Company, to:

ON Semiconductor Corporation  
5005 East McDowell Road  
Phoenix, Arizona 85008  
Attention: George H. Cave, Esq.  
Facsimile: 602-244-5601

With a copy to:

Snell & Wilmer L.L.P.  
One Arizona Center  
400 E. Van Buren  
Phoenix, Arizona 85004  
Attention: Steven D. Pidgeon, Esq.  
Facsimile: 602-382-6070

(ii) If to the Investor, to:

TPG ON Holdings LLC  
301 Commerce Street  
Suite 3300  
Fort Worth, Texas 76102  
Attention: Richard A. Ekleberry, Esq.  
Facsimile: 817-871-4688

With a copy to:

Cleary, Gottlieb, Steen & Hamilton  
One Liberty Plaza  
New York, New York 10006  
Attention: Michael L. Ryan, Esq.  
Facsimile: 212-225-3999

If to any other holder of shares of Series A Preferred Stock, or Conversion Shares, addressed to such holder at the address of such holder in the record books of the Company; or to such other address or addresses as shall be designated in writing. All notices shall be effective when received.

SECTION 10.06. Entire Agreement. This Agreement and the documents described herein or attached or delivered pursuant hereto (including the Disclosure Schedule, the Registration Rights Agreement and the Series A Certificate of Designations) set forth the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement and supersedes the letter agreement dated August 13, 2001, between the Company and the Investor which is terminated in its entirety hereby.

SECTION 10.07. Amendment. Any provision of this Agreement may only be amended, modified or supplemented in whole or in part at any time by an agreement in writing among the parties hereto executed in the same manner as this Agreement; provided, that no amendment, modification or supplement to this Agreement shall be effective unless approved by a majority of the directors then serving on the Board of Directors who have not previously been, are not then and are not anticipated to be Representatives of any TPG Person. No failure on the part of any party to exercise, and no delay in exercising, any right shall operate as waiver thereof, nor shall any single or partial exercise by either party of any right preclude any other or future exercise thereof or the exercise of any other right. No investigation by the Investor of the Company prior to or after the date hereof shall stop or prevent the Investor from exercising any right hereunder or be deemed to be a waiver of any such right.

SECTION 10.08. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute one and the same document.

SECTION 10.09. Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of New York applicable to contracts made and to be performed in that State without reference to its conflict of laws rules. The parties hereto agree that the appropriate and exclusive forum for any disputes arising out of this Agreement solely between the Company and the Investor shall be the United States District Court for Delaware, and, if such court will not hear any such suit, the courts of the State of Delaware, and the parties hereto irrevocably consent to the exclusive jurisdiction of such courts, and agree to comply with all requirements necessary to give such courts jurisdiction. The parties hereto further agree that the parties will not bring suit with respect to any disputes arising out of this Agreement except as expressly set forth below for the execution or enforcement of judgment, in any jurisdiction other than the above specified courts. Each of the parties hereto irrevocably consents to the service of process in any action or proceeding hereunder by the mailing of copies thereof by registered or certified airmail, postage prepaid, to the address specified in Section 10.05. The foregoing shall not limit the rights of any party hereto to serve process in any other manner permitted by the law or to obtain execution of judgment in any other jurisdiction. The parties further agree, to the extent permitted by law, that final and unappealable judgment against any of them in any action or proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of indebtedness. The parties agree to waive any and all rights that they may have to a jury trial with respect to disputes arising out of this Agreement.

SECTION 10.10. Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the

Company's successors and assigns. Neither this Agreement nor any rights hereunder may be assigned by any party hereto in whole or in part without the prior written consent of the other party hereto; provided, however, that the Investor may assign all or part of its interest in this Agreement and its rights hereunder to any of its Affiliates and, thereafter, the term "Investor," as applied to the assigning Investor, shall include any such Affiliate to the extent of such assignment and shall mean the assigning Investor and such Affiliates taken collectively.

SECTION 10.11. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, except that the provisions of Section 7.05 shall inure to the benefit of and be enforceable by the Investor Nominees and the provisions of Section 10.04 shall inure to the benefit of and be enforceable by each Indemnified Investor Party, Indemnified Company Party and Indemnified Special Committee Party, as the case may be.



IN WITNESS WHEREOF, this Agreement has been executed on behalf of the parties hereto by their respective duly authorized officers, all as of the date first above written.

TPG ON HOLDINGS LLC

By: /s/ Richard A. Ekleberry

\_\_\_\_\_  
Name: Richard A. Ekleberry  
Title: Vice President

ON SEMICONDUCTOR CORPORATION

By: /s/ Dario Sacomani

\_\_\_\_\_  
Name: Dario Sacomani  
Title: Sr. Vice President and  
Chief Financial Officer

EXHIBIT A

SERIES A CERTIFICATE OF DESIGNATIONS

A-1

## EXHIBIT B

## FORM OF COUNSEL TO COMPANY OPINION

Opinion substantially to the effect that:

1. Each of the Company and the Significant Subsidiaries is a corporation or limited liability company, as the case may be, duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite organizational power and authority to own or lease and operate its properties and to conduct its business as currently being conducted.
2. Each of the Company and the Significant Subsidiaries is duly authorized or qualified as a foreign corporation or limited liability company, as the case may be, for the transaction of business and is in good standing under the laws of each jurisdiction in which it owns, leases or operates property or conducts business, except where its failure to be so authorized, qualified or in good standing would not have, individually or in the aggregate, a Material Adverse Effect.
3. The Company (i) has all requisite corporate power and authority to execute and deliver the Transaction Agreements and to perform its obligations under the Transaction Agreements and the Series A Certificate of Designations, and (ii) has duly authorized by all necessary corporate action on its part the execution and delivery of the Transaction Agreements and the performance by the Company of its obligations under the Transaction Agreements and the Series A Certificate of Designations.
4. Each of the Transaction Agreements has been duly executed and delivered by the Company and constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms under the laws of the State of New York, except (i) as may be subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity, and (ii) as rights to indemnification may be limited by federal or state securities laws or regulations or the public policy underlying such laws or regulations.
5. The shares of Series A Preferred Stock have been duly and validly authorized and validly issued by the Company and are fully paid and non-assessable. The shares of Common Stock into which the Series A Preferred Stock is convertible have been duly and validly authorized and validly reserved for issuance and, when issued in accordance with the terms of the Series A Certificate of Designations, will have been validly issued and will be fully paid and non-assessable.
6. No consent or approval of the Company's stockholders is required by Law or the Certificate of Incorporation or By-laws for the execution, delivery or performance by the Company of the Transaction Agreements, other than as expressly provided in the Agreement.

7. The execution, delivery and performance by the Company of the Transaction Agreements will not violate the law of the State of Delaware or the United States of America.
8. The execution and delivery of each of the Transaction Agreements does not, and the performance by the Company of its obligations as set forth in the Transaction Agreements and the Series A Certificate of Designations and the consummation of the transactions contemplated by the Transaction Agreements will not, violate any provision of the Certificate of Incorporation or the By-laws of the Company or the comparable organizational documents of any of the Significant Subsidiaries.

## EXHIBIT C

## FORM OF COUNSEL TO INVESTOR OPINION

Opinion substantially to the effect that:

1. Investor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.
2. Investor has all requisite power as a limited liability company and authority to execute, deliver and perform its obligations under the Agreement and the Registration Rights Agreement. The execution, delivery and performance of the Agreement and the Registration Rights Agreement have been duly authorized by all other necessary action on the part of Investor.
3. Each of the Agreement and the Registration Rights Agreement has been duly executed and delivered by Investor and, assuming due execution and delivery by each other party thereto, each such agreement constitutes a valid and binding obligation of Investor enforceable against Investor in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

B-1

REGISTRATION RIGHTS AGREEMENT

dated as of September 7, 2001

between

ON SEMICONDUCTOR CORPORATION

and

TPG ON HOLDINGS LLC

## REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT ("Agreement"), dated as of September 7, 2001, by and between ON Semiconductor Corporation, a Delaware corporation (the "Company"), and TPG ON Holdings LLC, a Delaware limited liability company (together with its permitted assigns, "TPG" or the "Investor").

## W I T N E S S E T H:

WHEREAS, the Company and the Investor have entered into an Investment Agreement, dated as of September 7, 2001 (the "Investment Agreement"), pursuant to which the Investor has agreed to purchase from the Company, and the Company has agreed to issue and sell to the Investor, shares of the Company's Series A Cumulative Convertible Preferred Stock, \$0.01 par value (the "Series A Preferred Stock"), having the rights, preferences, privileges and restrictions set forth in the form of Certificate of Designations attached as Exhibit A to the Investment Agreement; and

WHEREAS, as an inducement to the Investor entering into the Investment Agreement, the Investor has required that the Company agree, and the Company has agreed, to provide the rights set forth in this Agreement; and

WHEREAS, the consummation of the Closing is conditioned upon, among other things, the execution and delivery of this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual premises, covenants and agreements of the parties hereto, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## SECTION 1. DEFINITIONS.

1.1. Capitalized Terms. Capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Investment Agreement.

1.2. Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Adverse Disclosure" means public disclosure of material non-public information, disclosure of which, in the Board of Directors' good faith judgment, after consultation with independent outside counsel to the Company, (i) would be required to be made in any Registration Statement filed with the SEC by the Company so that such Registration Statement would not be materially misleading; (ii) would not be required to be made at such time but for the filing of such Registration Statement; and (iii) the Company has a bona fide business purpose for not disclosing publicly.

"Agreement" has the meaning set forth in the preamble hereto.

"Board of Directors" means the board of directors of the Company.

"Common Stock" means the Company's common stock, par value \$0.01 per share.

"Company" has the meaning set forth in the preamble and shall include the Company's successors by merger, acquisition, reorganization or otherwise.

"Company Public Sale" has the meaning set forth in Section 2.3(a).

"Demand Notice" has the meaning set forth in Section 2.2(e).

"Demand Period" has the meaning set forth in Section 2.2(d).

"Demand Registration" has the meaning set forth in Section 2.2(a).

"Demand Registration Statement" has the meaning set forth in Section 2.2(a).

"Effectiveness Date" means the 180th day following the Closing Date.

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"Filing Date" means the 120th day following the Closing Date.

"holder" means any holder of Registrable Securities (whether or not acquired pursuant to the Investment Agreement) who is a party hereto or who succeeds to rights hereunder pursuant to Section 3.5.

"Investment Agreement" has the meaning set forth in the recitals hereto.

"Investor" has the meaning set forth in the preamble hereto.

"Material Adverse Change" means (i) any general suspension of trading in, or limitation on prices for, securities on any national securities exchange or in the over-the-counter market in the United States of America; (ii) the declaration of a banking moratorium or any suspension of payments in respect of banks in the United States of America or Delaware; (iii) a material outbreak or escalation of armed hostilities or other international or national calamity involving the United States of America or Delaware or the declaration by the United States or Delaware of a national emergency or war or a change in national or international financial, political or economic conditions; and (iv) any event, change, circumstance or effect that is or is reasonably likely to be materially adverse to the business, properties, assets, liabilities, condition (financial or otherwise), operations, results of operations or prospects of the Company and its Subsidiaries taken as a whole.

"NASD" means the National Association of Securities Dealers, Inc.



"Other Holder" means each Stockholder (as such term is defined in the Stockholders Agreement) other than a TPG Holder (as such term is defined in the Stockholders Agreement).

"Person" means any individual, firm, limited liability company or partnership, joint venture, corporation, joint stock company, trust or unincorporated organization, incorporated or unincorporated association, government (or any department, agency or political subdivision thereof) or other entity of any kind, and shall include any successor (by merger or otherwise) of such entity.

"Piggyback Registration" has the meaning set forth in Section 2.3(a).

"Prospectus" means the prospectus included in any Registration Statement, all amendments and supplements to such prospectus, including post-effective amendments, and all other material incorporated by reference in such prospectus.

"Registrable Securities" means any shares of Common Stock or other securities issued upon the conversion of or as a dividend with respect to the Series A Preferred Stock and any securities that may be issued or distributed or be issuable in respect of any Registrable Securities by way of conversion, dividend, stock split or other distribution, merger, consolidation, exchange, recapitalization or reclassification or similar transaction; provided, however, that any such Registrable Securities shall cease to be Registrable Securities to the extent (i) a Registration Statement with respect to the sale of such Registrable Securities has been declared effective under the Securities Act and such Registrable Securities have been disposed of in accordance with the plan of distribution set forth in such Registration Statement, (ii) such Registrable Securities have been distributed pursuant to Rule 144 (or any similar provisions then in force) under the Securities Act or (iii) such Registrable Securities shall have been otherwise transferred and new certificates for them not bearing a legend restricting transfer under the Securities Act shall have been delivered by the Company and such securities may be publicly resold without Registration under the Securities Act.

"Registration" means a registration with the SEC of the Company's securities for offer and sale to the public under a Registration Statement. The term "Register" shall have a correlative meaning.

"Registration Expenses" has the meaning set forth in Section 2.8.

"Registration Statement" means any registration statement of the Company filed with, or to be filed with, the SEC under the rules and regulations promulgated under the Securities Act, including the related Prospectus, amendments and supplements to such registration statement, including post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"Series A Preferred Stock" has the meaning set forth in the preamble hereto.

"Shelf Period" has the meaning set forth in Section 2.1(b).

"Shelf Registration" means a Registration effected pursuant to Section 2.1.

"Shelf Registration Statement" means a Registration Statement of the Company filed with the SEC on either (i) Form S-3 (or any successor form or other appropriate form under the Securities Act) or (ii) if the Company is not permitted to file a Registration Statement on Form S-3, an evergreen Registration Statement on Form S-1 (or any successor form or other appropriate form under the Securities Act), in each case for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act (or any similar rule that may be adopted by the SEC) covering the Registrable Securities, as applicable.

"Shelf Suspension" has the meaning set forth in Section 2.1(c).

"Stockholders Agreement" means the Stockholders' Agreement, dated as of August 4, 1999, by and among the Company, TPG Semiconductor Holdings LLC and Motorola, Inc., as amended from time to time.

"Underwritten Offering" means a Registration in which securities of the Company are sold to an underwriter or underwriters on a firm commitment basis for reoffering to the public.

1.3. General Interpretive Principles. Whenever used in this Agreement, except as otherwise expressly provided or unless the context otherwise requires, any noun or pronoun shall be deemed to include the plural as well as the singular and to cover all genders. The name assigned this Agreement and the section captions used herein are for convenience of reference only and shall not be construed to affect the meaning, construction or effect hereof. Unless otherwise specified, the terms "hereof," "herein" and similar terms refer to this Agreement as a whole (including the exhibits, schedules and disclosure statements hereto), and references herein to Sections refer to Sections of this Agreement. Words of inclusion shall not be construed as terms of limitation herein, so that references to "include", "includes" and "including" shall not be limiting and shall be regarded as references to non-exclusive and non-characterizing illustrations.

## SECTION 2. REGISTRATION RIGHTS.

### 2.1. Shelf Registration.

(a) Filing. On or before the Filing Date, the Company shall file with the SEC a Shelf Registration Statement relating to the offer and sale of the Registrable Securities by the holders from time to time in accordance with the methods of distribution elected by such holders and set forth in the Shelf Registration Statement and, thereafter, shall use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective under the Securities Act by the Effectiveness Date. If, on the Filing Date, the Company does not qualify to file a Shelf Registration Statement under the Securities Act, then the provisions of Section 2.2 shall apply, but at any time thereafter that the Company does so qualify, it shall, as promptly as

practicable, file a Shelf Registration Statement and use its reasonable best efforts to cause the Shelf Registration Statement to be declared effective.

(b) Continued Effectiveness. The Company shall use its reasonable best efforts to keep such Shelf Registration Statement continuously effective under the Securities Act in order to permit the Prospectus forming a part thereof to be usable by holders until such time as the Investor and its Affiliates hold no Series A Preferred Stock and less than 1.0% of the Common Stock (assuming conversion of the Series A Preferred Stock) (such period of effectiveness, the "Shelf Period"). Subject to Section 2.1(c), the Company shall not be deemed to have used its reasonable best efforts to keep the Shelf Registration Statement effective during the Shelf Period if the Company voluntarily takes any action or omits to take any action that would result in holders of the Registrable Securities covered thereby not being able to offer and sell any Registrable Securities pursuant to such Shelf Registration Statement during the Shelf Period, unless such action or omission is required by applicable law.

(c) Suspension of Registration. If the continued use of such Shelf Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the holders, suspend use of the Shelf Registration Statement (a "Shelf Suspension"); provided, however, that the Company shall not be permitted to exercise a Shelf Suspension (i) more than three times during any 18 month period, or (ii) for a period exceeding 40 days on any one occasion. In the case of a Shelf Suspension, the holders agree to suspend use of the applicable Prospectus in connection with any sale or purchase of, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the holders upon the termination of any Shelf Suspension, amend or supplement the Prospectus, if necessary, so it does not contain any untrue statement or omission and furnish to the holders such numbers of copies of the Prospectus as so amended or supplemented as the holders may reasonably request. The Company agrees, if necessary, to supplement or make amendments to the Shelf Registration Statement, if required by the registration form used by the Company for the Shelf Registration or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the holders of a majority of the Registrable Securities then outstanding.

(d) Underwritten Offering. If the holders of not less than a majority of any Registrable Securities included in any offering pursuant to such Shelf Registration Statement so elect, such offering of Registrable Securities shall be in the form of an Underwritten Offering, and the Company shall amend or supplement the Shelf Registration Statement for such purpose. The holders of a majority of such Registrable Securities included in such Underwritten Offering shall have the right to select the managing underwriter or underwriters to administer such offering; provided, that such managing underwriter or underwriters shall be reasonably acceptable to the Company.

## 2.2. Demand Registrations.

(a) Demand by Holders. If, on or at any time after the Effectiveness Date, the Shelf Registration Statement is not effective under the Securities Act or is not available for use by the holders for a period exceeding 30 days, then at any time thereafter the holders of not less

than 35% of any Registrable Securities may make a written request to the Company for Registration of Registrable Securities held by such holders and any other holders of Registrable Securities; provided, that the estimated market value of the Registrable Securities to be so Registered is at least \$10 million in the aggregate at the time such request is made. Any such requested Registration shall hereinafter be referred to as a "Demand Registration." Each request for a Demand Registration shall specify the kind and aggregate amount of Registrable Securities to be Registered and the intended methods of disposition thereof. Within 30 days of a request for a Demand Registration, the Company shall file a Registration Statement relating to such Demand Registration (a "Demand Registration Statement"), and shall use its reasonable best efforts to cause such Demand Registration Statement to promptly be declared effective under (i) the Securities Act and (ii) the "Blue Sky" laws of such jurisdictions as any holder of Registrable Securities being registered under such Registration or any underwriter, if any, reasonably requests.

(b) Limitation on Demand Registrations. Subject to Section 2.2(h), in no event shall the Company be required to effect more than two Demand Registrations.

(c) Demand Withdrawal. A holder may withdraw its Registrable Securities from a Demand Registration at any time prior to the effectiveness of the applicable Demand Registration Statement. Upon receipt of notices from all holders to such effect, the Company shall cease all efforts to secure effectiveness of the applicable Demand Registration Statement and such Registration nonetheless shall be deemed a Demand Registration for purposes of Section 2.2(b) unless (i) the withdrawing holders shall have paid or reimbursed the Company for all of the reasonable and documented fees and expenses incurred by the Company in connection with the Registration of such withdrawn Registrable Securities or (ii) the withdrawal is made following the occurrence of a Material Adverse Change; provided, however, that if the Material Adverse Change (A) is an event, change, circumstance or effect identified in clause (iv) of the definition thereof and not an event specified in clauses (i), (ii) or (iii) of such definition and (B) results from or arises out of changes or circumstances affecting the industry in which the Company and its Subsidiaries operate, which event, change, circumstance or effect does not affect the Company and its Subsidiaries disproportionately relative to other entities operating in such industry, then such Registration shall be deemed a Demand Registration for purposes of Section 2.2(b) unless the withdrawing holders shall have paid or reimbursed the Company for all of the reasonable and documented fees and expenses incurred by the Company in connection with the Registration of such withdrawn Registrable Securities.

(d) Effective Registration. The Company shall be deemed to have effected a Demand Registration if the Demand Registration Statement is declared effective by the SEC and remains effective for not less than 180 days (or such shorter period as will terminate when all Registrable Securities covered by such Demand Registration Statement have been sold or withdrawn), or if such Registration Statement relates to an Underwritten Offering, such longer period as in the opinion of counsel for the underwriter or underwriters a Prospectus is required by law to be delivered in connection with sales of Registrable Securities by an underwriter or dealer (the applicable period, the "Demand Period"). No Demand Registration shall be deemed to have been effected if (i) during the Demand Period such Registration is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court or (ii) the conditions to closing specified in the underwriting agreement, if any, entered into

in connection with such Registration are not satisfied by reason of a wrongful act, misrepresentation or breach of such applicable underwriting agreement by the Company.

(e) Demand Notice. Promptly upon receipt of any request for a Demand Registration pursuant to Section 2.2(a) (but in no event more than 5 Business Days thereafter), the Company shall deliver a written notice (a "Demand Notice") of any such Registration request to all other holders of Registrable Securities to be included in such Demand Registration, and the Company shall include in such Demand Registration all such Registrable Securities with respect to which the Company has received written requests for inclusion therein within 10 Business Days after the date that the Demand Notice has been delivered. All requests made pursuant to this Section 2.2(e) shall specify the aggregate amount of Registrable Securities to be registered and the intended method of distribution of such securities.

(f) Delay in Filing; Suspension of Registration. If the filing, initial effectiveness or continued use of a Demand Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the holders, delay the filing or initial effectiveness of, or suspend use of, the Demand Registration Statement (a "Demand Suspension"); provided, however, that the Company shall not be permitted to exercise a Demand Suspension (i) more than three times during any 18 month period, or (ii) for a period exceeding 40 days on any one occasion. In the case of a Demand Suspension, the holders agree to suspend use of the applicable Prospectus in connection with any sale or purchase, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the holders upon the termination of any Demand Suspension, amend or supplement the Prospectus, if necessary, so it does not contain any untrue statement or omission and furnish to the holders such numbers of copies of the Prospectus as so amended or supplemented as the holders may reasonably request. The Company agrees, if necessary, to supplement or make amendments to the Demand Registration Statement, if required by the registration form used by the Company for the Demand Registration or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the holders of a majority of the Registrable Securities that are included in such Demand Registration Statement.

(g) Underwritten Offering. If the holders of not less than a majority of the Registrable Securities requesting a Demand Registration so elect, such offering of Registrable Securities shall be in the form of an Underwritten Offering. The holders of a majority of such Registrable Securities included in such Underwritten Offering shall have the right to select the managing underwriter or underwriters to administer the offering; provided, that such managing underwriter or underwriters shall be reasonably acceptable to the Company.

(h) Priority of Securities Registered Pursuant to Demand Registrations. If the managing underwriter or underwriters of a proposed Underwritten Offering of the Registrable Securities included in a Demand Registration (or, in the case of a Demand Registration not being underwritten, the holders of a majority of the Registrable Securities included therein), advise the Board of Directors in writing that, in its or their opinion, the number of securities requested to be included in such Demand Registration exceeds the number which can be sold in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the

securities offered or the market for the securities offered, the number of Registrable Securities to be included in such Demand Registration shall be allocated pro rata among the holders that have requested to participate in such Demand Registration on the basis of the relative number of Registrable Securities then held by each such holder, to the extent necessary to reduce the total number of Registrable Securities to be included in such offering to the number recommended by the managing underwriter or underwriters or such holders, provided, that any securities thereby allocated to a holder that exceed such holder's request shall be reallocated among the remaining requesting holders in like manner. To the extent that Registrable Securities so requested to be registered are excluded from the offering, then the holders of such Registrable Securities shall have the right to one additional Demand Registration under this Section 2.2.

(i) Registration Statement Form. Registrations under this Section 2.2 shall be on such appropriate form of the SEC (i) as shall be selected by the Company and as shall be reasonably acceptable to the holders of a majority of the Registrable Securities requesting a Demand Registration and (ii) as shall permit the disposition of such Registrable Securities in accordance with the intended method or methods of disposition specified in such holders' requests for such Registration.

### 2.3. Piggyback Registrations.

(a) Participation. If the Company at any time proposes to file a Registration Statement under the Securities Act with respect to any offering of its securities for its own account or for the account of any other Persons (other than (i) a Registration under Section 2.1 or 2.2, (ii) a Registration on Form S-4 or S-8 or any successor form to such Forms or (iii) a Registration of securities solely relating to an offering and sale to employees or directors of the Company pursuant to any employee stock plan or other employee benefit plan arrangement) (a "Company Public Sale"), then, as soon as practicable (but in no event less than 45 days prior to the proposed date of filing such Registration Statement), the Company shall give written notice of such proposed filing to all holders of Registrable Securities, and such notice shall offer the holders of such Registrable Securities the opportunity to Register under such Registration Statement such number of Registrable Securities as each such holder may request in writing (a "Piggyback Registration"). Subject to Section 2.3(b), the Company shall include in such Registration Statement all such Registrable Securities which are requested to be included therein within 15 days after the receipt by such holder of any such notice; provided, however, that if at any time after giving written notice of its intention to Register any securities and prior to the effective date of the Registration Statement filed in connection with such Registration, the Company shall determine for any reason not to Register or to delay Registration of such securities, the Company may, at its election, give written notice of such determination to each holder of Registrable Securities and, thereupon, (i) in the case of a determination not to Register, shall be relieved of its obligation to Register any Registrable Securities in connection with such Registration (but not from its obligation to pay the Registration Expenses in connection therewith), without prejudice, however, to the rights of any holders of Registrable Securities entitled to request that such Registration be effected as a Demand Registration under Section 2.2, and (ii) in the case of a determination to delay Registering, in the absence of a request for a Demand Registration, shall be permitted to delay Registering any Registrable Securities, for the same period as the delay in Registering such other securities. If the offering pursuant to such Registration Statement is to be underwritten, then each holder making a request for a Piggyback Registration pursuant to this Section 2.3(a) must, and the Company shall make such arrangements with the managing underwriter or underwriters so that each such holder may, participate in such Underwritten Offering. If the offering pursuant to such Registration Statement is to be on any other basis, then each holder making a request for a Piggyback

Registration pursuant to this Section 2.3(a) must, and the Company will make such arrangements so that each such holder may, participate in such offering on such basis. Each holder of Registrable Securities shall be permitted to withdraw all or part of such holder's Registrable Securities from a Piggyback Registration at any time prior to the effective date thereof.

(b) Priority of Piggyback Registration. If the managing underwriter or underwriters of any proposed Underwritten Offering of Registrable Securities included in a Piggyback Registration informs the Company and the holders of Registrable Securities in writing that, in its or their opinion, the number of securities which such holders and any other Persons intend to include in such offering exceeds the number which can be sold in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the securities to be included in such Registration shall be (i) first, 100% of the securities that the Company or (subject to Section 2.7) any Person (other than a holder of Registrable Securities) exercising a contractual right to demand Registration, as the case may be, proposes to sell, and (ii) second, and only if all the securities referred to in clause (i) have been included, the number of Registrable Securities that, in the opinion of such managing underwriter or underwriters, can be sold without having such adverse effect, with such number to be allocated pro rata among the holders that have requested to participate in such Registration based on the relative number of Registrable Securities then held by each such holder (provided that any securities thereby allocated to a holder that exceed such holder's request shall be reallocated among the remaining requesting holders in like manner) and (iii) third, and only if all of the Registrable Securities referred to in clause (ii) have been included in such Registration, any other securities eligible for inclusion in such Registration.

(c) No Effect on Demand Registrations. No Registration of Registrable Securities effected pursuant to a request under this Section 2.3 shall be deemed to have been effected pursuant to Sections 2.1 and 2.2 or shall relieve the Company of its obligations under Sections 2.1 or 2.2.

#### 2.4. Black-out Periods

(a) Black-out Periods for Holders. In the event of a Company Public Sale of the Company's equity securities in an Underwritten Offering, the holders of Registrable Securities agree, if requested by the managing underwriter or underwriters in such Underwritten Offering, not to effect any public sale or distribution of any securities (except, in each case, as part of the applicable Registration, if permitted) that are the same as or similar to those being Registered in connection with such Company Public Sale, or any securities convertible into or exchangeable or exercisable for such securities, during the period beginning seven days before, and ending 90 days (or such lesser period as may be permitted by the Company or such managing underwriter or underwriters) after, the effective date of the Registration Statement filed in connection with such Registration, to the extent timely notified in writing by the Company or the managing underwriter or underwriters.

(b) Black-out Period for the Company and Others. In the case of a Registration of Registrable Securities pursuant to Section 2.1 or 2.2 for an Underwritten Offering, the Company agrees, if requested by the holders of a majority of Registrable Securities to be included in such Registration or the managing underwriter or underwriters, not to effect any public sale or distribution of any securities which are the same as or similar to those being Registered, or any securities convertible into or exchangeable or exercisable for such securities, during the period beginning seven days before, and ending 90 days (or such lesser period as may be permitted by such holders or such managing underwriter or underwriters) after, the effective date of the Registration Statement filed in connection with such Registration (or, in the case of an offering under a Shelf Registration Statement, the date of the closing under the underwriting agreement in connection therewith), to the extent timely notified in writing by a holder of Registrable Securities covered by such Registration Statement or the managing underwriter or underwriters. Notwithstanding the foregoing, the Company may effect a public sale or distribution of securities of the type described above and during the periods described above if such sale or distribution is made pursuant to Registrations on Form S-4 or S-8 or any successor form to such Forms or as part of any Registration of securities for offering and sale to employees or directors of the Company pursuant to any employee stock plan or other employee benefit plan arrangement. The Company agrees to use its reasonable best efforts to obtain from each holder of restricted securities of the Company which securities are the same as or similar to the Registrable Securities being Registered, or any restricted securities convertible into or exchangeable or exercisable for any of such securities, an agreement not to effect any public sale or distribution of such securities during any such period referred to in this paragraph, except as part of any such Registration, if permitted. Without limiting the foregoing (but subject to Section 2.7), if after the date hereof the Company grants any Person (other than a holder of Registrable Securities) any rights to demand or participate in a Registration, the Company agrees that the agreement with respect thereto shall include such Person's agreement to comply with any blackout period required by this Section as if it were the Company hereunder.

#### 2.5. Registration Procedures.

(a) In connection with the Company's Registration obligations under Sections 2.1, 2.2 and 2.3, the Company will use its reasonable best efforts to effect such Registration to permit the sale of such Registrable Securities in accordance with the intended method or methods of distribution thereof as expeditiously as reasonably practicable, and in connection therewith the Company will:

(i) prepare the required Registration Statement including all exhibits and financial statements required under the Securities Act to be filed therewith, and before filing a Registration Statement or Prospectus, or any amendments or supplements thereto, (x) furnish to the underwriters, if any, and to the holders of the Registrable Securities covered by such Registration Statement, copies of all documents prepared to be filed, which documents will be subject to the review of such underwriters and such holders and their respective counsel and (y) except in the case of a Registration under Section 2.3, not file any Registration Statement or Prospectus or amendments or supplements thereto to which the holders of a majority of Registrable Securities covered by such Registration Statement or the underwriters, if any, shall reasonably object;



(ii) as soon as possible (in the case of a Demand Registration, no later than 30 days after a request for a Demand Registration) file with the SEC a Registration Statement relating to the Registrable Securities including all exhibits and financial statements required by the SEC to be filed therewith, and use its reasonable best efforts to cause such Registration Statement to become effective under the Securities Act;

(iii) prepare and file with the SEC such amendments and post-effective amendments to such Registration Statement and supplements to the Prospectus as may be (x) reasonably requested by the holders of a majority of participating Registrable Securities, (y) reasonably requested by any participating holder (to the extent such request relates to information relating to such holder), or (z) necessary to keep such Registration effective for the period of time required by this Agreement, and comply with provisions of the applicable securities laws with respect to the sale or other disposition of all securities covered by such Registration Statement during such period in accordance with the intended method or methods of disposition by the sellers thereof set forth in such Registration Statement;

(iv) notify the participating holders of Registrable Securities and the managing underwriter or underwriters, if any, and (if requested) confirm such advice in writing and provide copies of the relevant documents, as soon as reasonably practicable after notice thereof is received by the Company (a) when the applicable Registration Statement or any amendment thereto has been filed or becomes effective, and when the applicable Prospectus or any amendment or supplement to such Prospectus has been filed, (b) of any written comments by the SEC or any request by the SEC or any other federal or state governmental authority for amendments or supplements to such Registration Statement or such Prospectus or for additional information, (c) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or any order by the SEC or any other regulatory authority preventing or suspending the use of any preliminary or final Prospectus or the initiation or threatening of any proceedings for such purposes, (d) if, at any time, the representations and warranties of the Company in any applicable underwriting agreement cease to be true and correct and in all material respects, and (e) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(v) promptly notify each selling holder of Registrable Securities and the managing underwriter or underwriters, if any, when the Company becomes aware of the happening of any event as a result of which the applicable Registration Statement or the Prospectus included in such Registration Statement (as then in effect) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of such Prospectus and any preliminary Prospectus, in light of the circumstances under which they were made) not misleading or, if for any other reason it shall be necessary during such time period to amend or supplement such Registration Statement or Prospectus in order to comply with the Securities Act and, in either case as promptly as reasonably practicable thereafter, prepare and file with the SEC, and furnish without charge to the selling holders and the managing underwriter or underwriters, if any, an amendment or supplement to such Registration Statement or Prospectus which will correct such misstatement or omission or effect such compliance;

(vi) use its reasonable best efforts to prevent or obtain the withdrawal of any stop order or other order suspending the use of any preliminary or final Prospectus;

(vii) promptly incorporate in a Prospectus supplement or post-effective amendment such information as the managing underwriter or underwriters and the holders of a majority of Registrable Securities being sold agree should be included therein relating to the plan of distribution with respect to such Registrable Securities; and make all required filings of such Prospectus supplement or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment;

(viii) furnish to each selling holder of Registrable Securities and each underwriter, if any, without charge, as many conformed copies as such holder or underwriter may reasonably request of the applicable Registration Statement and any amendment or post-effective amendment thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference);

(ix) deliver to each selling holder of Registrable Securities and each underwriter, if any, without charge, as many copies of the applicable Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such holder or underwriter may reasonably request (it being understood that the Company consents to the use of such Prospectus or any amendment or supplement thereto by each of the selling holders of Registrable Securities and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto) and such other documents as such selling holder or underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities by such holder or underwriter;

(x) on or prior to the date on which the applicable Registration Statement is declared effective, use its reasonable best efforts to register or qualify, and cooperate with the selling holders of Registrable Securities, the managing underwriter or underwriters, if any, and their respective counsel, in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or "Blue Sky" laws of each state and other jurisdiction of the United States as any such selling holder or managing underwriter or underwriters, if any, or their respective counsel reasonably request in writing and do any and all other acts or things reasonably necessary or advisable to keep such registration or qualification in effect for such period as required by Section 2.1(b) or Section 2.2(d), whichever is applicable, provided that the Company will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to taxation or general service of process in any such jurisdiction where it is not then so subject;

(xi) cooperate with the selling holders of Registrable Securities and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends; and enable such Registrable Securities to be in such denominations and registered in such names as the managing underwriters may request at least two business days prior to any sale of Registrable Securities to the underwriters;

(xii) use its reasonable best efforts to cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter or underwriters, if any, to consummate the disposition of such Registrable Securities;

(xiii) not later than the effective date of the applicable Registration Statement, provide a CUSIP number for all Registrable Securities and provide the applicable transfer agent with printed certificates for the Registrable Securities which are in a form eligible for deposit with The Depository Trust Company;

(xiv) make such representations and warranties to the holders of Registrable Securities being registered, and the underwriters or agents, if any, in form, substance and scope as are customarily made by issuers in secondary underwritten public offerings;

(xv) enter into such customary agreements (including underwriting and indemnification agreements) and take all such other actions as the holders of at least a majority of any Registrable Securities being sold or the managing underwriter or underwriters, if any, reasonably request in order to expedite or facilitate the registration and disposition of such Registrable Securities;

(xvi) obtain for delivery to the holders of Registrable Securities being registered and to the underwriter or underwriters, if any, an opinion or opinions from counsel for the Company dated the effective date of the Registration Statement or, in the event of an Underwritten Offering, the date of the closing under the underwriting agreement, in customary form, scope and substance, which opinions shall be reasonably satisfactory to such holders or underwriters, as the case may be, and their respective counsel;

(xvii) in the case of an Underwritten Offering, obtain for delivery to the Company and the managing underwriter or underwriters, with copies to the holders of Registrable Securities included in such Registration, a cold comfort letter from the Company's independent certified public accountants in customary form and covering such matters of the type customarily covered by cold comfort letters as the managing underwriter or underwriters reasonably request, dated the date of execution of the underwriting agreement and brought down to the closing under the underwriting agreement;

(xviii) cooperate with each seller of Registrable Securities and each underwriter, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the NASD;

(xix) use its reasonable best efforts to comply with all applicable securities laws and make available to its security holders, as soon as reasonably practicable an earnings statement satisfying the provisions of Section 11(a) of the Securities Act and the rules and regulations promulgated thereunder;

(xx) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by the applicable Registration Statement from and after a date not later than the effective date of such Registration Statement;

(xxi) cause all Registrable Securities covered by the applicable Registration Statement to be listed on each securities exchange on which any of the Company's securities are then listed or quoted and on each inter-dealer quotation system on which any of the Company's securities are then quoted;

(xxii) make available upon reasonable notice at reasonable times and for reasonable periods for inspection by a representative appointed by the majority of the holders of Registrable Securities covered by the applicable Registration Statement, by any underwriter participating in any disposition to be effected pursuant to such Registration Statement and by any attorney, accountant or other agent retained by such holders or any such underwriter, all pertinent financial and other records, pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees and the independent public accountants who have certified its financial statements to make themselves available to discuss the business of the Company and to supply all information reasonably requested by any such Person in connection with such Registration Statement as shall be necessary to enable them to exercise their due diligence responsibility; provided, however, that any such Person gaining access to information regarding the Company pursuant to this Section 2.5(a)(xxii) shall agree to hold in strict confidence and shall not make any disclosure or use any information regarding the Company which the Company determines in good faith to be confidential, and of which determination such Person is notified, unless (w) the release of such information is requested or required (by deposition, interrogatory, requests for information or documents by a Governmental Entity, subpoena or similar process), (x) such information is or becomes publicly known without a breach of this or any other agreement of which such Person has knowledge, (y) such information is or becomes available to such Person on a non-confidential basis from a source other than the Company or (z) such information is independently developed by such Person; and

(xxiii) in the case of an Underwritten Offering, cause the senior executive officers of the Company to participate in the customary "road show" presentations that may be reasonably requested by the managing underwriter or underwriters in any such Underwritten Offering and otherwise to facilitate, cooperate with, and participate in each proposed offering contemplated herein and customary selling efforts related thereto.

(b) The Company may require each seller of Registrable Securities as to which any Registration is being effected to furnish to the Company such information regarding the distribution of such securities and such other information relating to such holder and its ownership of Registrable Securities as the Company may from time to time reasonably request in writing. Each holder of Registrable Securities agrees to furnish such information to the Company and to cooperate with the Company as reasonably necessary to enable the Company to comply with the provisions of this Agreement.

(c) Each holder of Registrable Securities agrees by acquisition of such Registrable Securities that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 2.5(a)(v), such holder will forthwith discontinue

disposition of Registrable Securities pursuant to such Registration Statement until such holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 2.5(a)(v), or until such holder is advised in writing by the Company that the use of the Prospectus may be resumed, and if so directed by the Company, such holder will deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such holder's possession, of the Prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event the Company shall give any such notice, the period during which the applicable Registration Statement is required to be maintained effective shall be extended by the number of days during the period from and including the date of the giving of such notice to and including the date when each seller of Registrable Securities covered by such Registration Statement either receives the copies of the supplemented or amended Prospectus contemplated by Section 2.5(a)(v) or is advised in writing by the Company that the use of the Prospectus may be resumed.

(d) Holders may seek to register different types of Registrable Securities simultaneously and the Company shall use its reasonable best efforts to effect such Registration and sale in accordance with the intended method or methods of disposition specified by such holders.

## 2.6. Underwritten Offerings.

(a) Shelf and Demand Registrations. If requested by the underwriters for any Underwritten Offering requested by holders of Registrable Securities pursuant to a Registration under Section 2.1 or under Section 2.2, the Company shall enter into an underwriting agreement with such underwriters for such offering, such agreement to be reasonably satisfactory in substance and form to the Company, holders of a majority of the Registrable Securities to be included in such underwriting, and the underwriters, and to contain such representations and warranties by the Company and such other terms as are generally prevailing in agreements of that type, including indemnities no less favorable to the recipient thereof than those provided in Section 2.9. The holders of the Registrable Securities proposed to be distributed by such underwriters will cooperate with the Company in the negotiation of the underwriting agreement and will give consideration to the reasonable suggestions of the Company regarding the form thereof. Such holders of Registrable Securities to be distributed by such underwriters shall be parties to such underwriting agreement, which underwriting agreement shall (i) contain such representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of such holders of Registrable Securities as are customarily made by issuers to selling stockholders in secondary underwritten public offerings and (ii) provide that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement also shall be conditions precedent to the obligations of such holders of Registrable Securities. Any such holder of Registrable Securities shall not be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such holder, such holder's Registrable Securities, such holder's intended method of distribution and any other representations required by law.

(b) Piggyback Registrations. If the Company proposes to register any of its securities under the Securities Act as contemplated by Section 2.3 and such securities are to be

distributed in an Underwritten Offering through one or more underwriters, the Company will, if requested by any holder of Registrable Securities pursuant to Section 2.3 and subject to the provisions of Section 2.3(b), use its best efforts to arrange for such underwriters to include on the same terms and conditions that apply to the other sellers in such Registration all the Registrable Securities to be offered and sold by such holder among the securities of the Company to be distributed by such underwriters in such Registration. The holders of Registrable Securities to be distributed by such underwriters shall be parties to the underwriting agreement between the Company and such underwriters, which underwriting agreement shall (i) contain such representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of such holders of Registrable Securities as are customarily made by issuers to selling stockholders in secondary underwritten public offerings and (ii) provide that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement also shall be conditions precedent to the obligations of such holders of Registrable Securities. Any such holder of Registrable Securities shall not be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such holder, such holder's Registrable Securities and such holder's intended method of distribution or any other representations required by law.

(c) Participation in Underwritten Registrations. No Person may participate in any Underwritten Offering hereunder unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Persons entitled to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements.

2.7. No Inconsistent Agreements; Additional Rights. The Company will not hereafter enter into, and is not currently a party to, any agreement with respect to its securities which is inconsistent with the rights granted to the holders of Registrable Securities by this Agreement.

2.8. Registration Expenses. All expenses incident to the Company's performance of or compliance with this Agreement will be paid by the Company, including (i) all registration and filing fees, and any other fees and expenses associated with filings required to be made with the SEC or the NASD, (ii) all fees and expenses in connection with compliance with state securities or "Blue Sky" laws, (iii) all printing, duplicating, word processing, messenger, telephone, facsimile and delivery expenses (including expenses of printing certificates for the Registrable Securities in a form eligible for deposit with The Depository Trust Company and of printing prospectuses), (iv) all fees and disbursements of counsel for the Company and of all independent certified public accountants of the Company (including the expenses of any special audit and cold comfort letters required by or incident to such performance), (v) Securities Act liability insurance or similar insurance if the Company so desires or the underwriters so require in accordance with then-customary underwriting practice, (vi) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or quotation of the Registrable Securities on any inter-dealer quotation system, (vii) all applicable rating agency fees with respect to the Registrable Securities, (viii) all reasonable fees and disbursements of one law firm or other counsel selected by the holders of a

majority of the Registrable Securities being registered, (ix) all fees and expenses of accountants selected by the holders of a majority of the Registrable Securities being registered, (x) any reasonable fees and disbursements of underwriters customarily paid by issuers or sellers of securities, (xi) all fees and expenses of any special experts or other Persons retained by the Company in connection with any Registration, and (xii) all of the Company's internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties). All such expenses are referred to herein as "Registration Expenses." The Company shall not be required to pay any fees and disbursements to underwriters not customarily paid by the issuers of securities in a secondary offering, including underwriting discounts and commissions and transfer taxes, if any, attributable to the sale of Registrable Securities.

## 2.9. Indemnification.

(a) Indemnification by the Company. The Company agrees to indemnify and hold harmless, to the full extent permitted by law, each holder of Registrable Securities, each limited or general partner thereof, each member, limited partner or general partner of each such limited or general partner, each of their respective Affiliates, officers, directors, shareholders, employees, advisors, and agents and each Person who controls (within the meaning of the Securities Act or the Exchange Act) such Persons and each of their respective Representatives from and against any and all losses, penalties, judgments, suits, costs, claims, damages, liabilities (or actions or proceedings in respect thereof, whether or not such indemnified party is a party thereto) and expenses, joint or several (including reasonable costs of investigation and legal expenses) (each, a "Loss" and collectively "Losses") arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which such Registrable Securities were Registered under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein), or (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading; provided, however, that the Company shall not be liable to any particular indemnified party (x) to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any such Registration Statement in reliance upon and in conformity with written information furnished to the Company by such indemnified party expressly for use in the preparation thereof or (y) to the extent that any such Loss arises out of or is based upon an untrue statement or omission in a preliminary Prospectus relating to Registrable Securities, if a Prospectus (as then amended or supplemented) that would have cured the defect was furnished to the indemnified party from whom the Person asserting the claim giving rise to such Loss purchased Registrable Securities at least 5 days prior to the written confirmation of the sale of the Registrable Securities to such Person and a copy of such Prospectus (as amended and supplemented) was not sent or given by or on behalf of such indemnified party to such Person at or prior to the written confirmation of the sale of the Registrable Securities to such Person. This indemnity shall be in addition to any liability the Company may otherwise have. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such holder or any indemnified party and shall survive the transfer of such securities by such holder. The Company will also indemnify underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution, their officers and directors and

each Person who controls such Persons (within the meaning of the Securities Act and the Exchange Act) to the same extent as provided above with respect to the indemnification of the indemnified parties.

(b) Indemnification by the Selling Holder of Registrable Securities. Each selling holder of Registrable Securities agrees (severally and not jointly) to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors and officers and each Person who controls the Company (within the meaning of the Securities Act or the Exchange Act) from and against any Losses resulting from (i) any untrue statement of a material fact in any Registration Statement under which such Registrable Securities were Registered under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein), or (ii) any omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading, to the extent, but only to the extent, that such untrue statement or omission is contained in any information furnished in writing by such selling holder to the Company specifically for inclusion in such Registration Statement and has not been corrected in a subsequent writing prior to or concurrently with the sale of the Registrable Securities to the Person asserting the claim. In no event shall the liability of any selling holder of Registrable Securities hereunder be greater in amount than the dollar amount of the proceeds received by such holder under the sale of Registrable Securities giving rise to such indemnification obligation. The Company shall be entitled to receive indemnities from underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution, to the same extent as provided above (with appropriate modification) with respect to information furnished in writing by such Persons specifically for inclusion in any Prospectus or Registration Statement. Each holder also shall indemnify any underwriters of the Registrable Securities, their officers and directors and each person who controls such underwriters (within the meaning of the Securities Act or the Exchange Act) to the same extent as provided above with respect to indemnification of the Company.

(c) Conduct of Indemnification Proceedings. Any Person entitled to indemnification hereunder will (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided, that any delay or failure to so notify the indemnifying party shall relieve the indemnifying party of its obligations hereunder only to the extent, if at all, that it is actually and materially prejudiced by reason of such delay or failure) and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided, however, that any Person entitled to indemnification hereunder shall have the right to select and employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (i) the indemnifying party has agreed in writing to pay such fees or expenses, (ii) the indemnifying party shall have failed to assume the defense of such claim within a reasonable time after receipt of notice of such claim from the Person entitled to indemnification hereunder and employ counsel reasonably satisfactory to such Person, (iii) the indemnified party has reasonably concluded (based upon advice of its counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, or (iv) in the reasonable judgment of any such Person (based upon advice of its counsel) a conflict of interest may exist between such Person and the



indemnifying party with respect to such claims (in which case, if the Person notifies the indemnifying party in writing that such Person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such Person). If the indemnifying party assumes the defense, the indemnifying party shall not have the right to settle such action without the consent of the indemnified party. No indemnifying party shall consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of an unconditional release from all liability in respect to such claim or litigation. If such defense is not assumed by the indemnifying party, the indemnifying party will not be subject to any liability for any settlement made without its prior written consent, but such consent may not be unreasonably withheld. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements or other charges of more than one separate firm admitted to practice in such jurisdiction at any one time from such indemnified party or parties unless (x) the employment of more than one counsel has been authorized in writing by the indemnifying party or parties, (y) an indemnified party has reasonably concluded (based on the advice of counsel) that there may be legal defenses available to it that are different from or in addition to those available to the other indemnified parties or (z) a conflict or potential conflict exists or may exist (based upon advice of counsel to an indemnified party) between such indemnified party and the other indemnified parties, in each of which cases the indemnifying party shall be obligated to pay the reasonable fees and expenses of such additional counsel or counsels.

(d) Contribution. If for any reason the indemnification provided for in paragraphs (a) and (b) of this Section 2.9 is unavailable to an indemnified party or insufficient in respect of any Losses referred to therein, then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such Loss (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party on the one hand and the indemnified party or parties on the other hand; or (ii) if the allocation provided by clause (i) of this Section 2.9(d) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) of this Section 2.9(d) but also the relative fault of the indemnifying party on the one hand and the indemnified party or parties on the other hand in connection with the acts, statements or omissions that resulted in such losses, as well as any other relevant equitable considerations. In connection with any Registration Statement filed with the SEC by the Company, (x) the relative benefits received by the indemnifying on the one hand and the indemnified party on the other hand shall be deemed to be in the same respective proportions as the net proceeds from the offering of any securities registered thereunder (before deducting expenses) received by the indemnifying party and the net proceeds from the offering of any Registrable Securities (before deducting expenses) received by the indemnified party, bear to the aggregate public offering price of the securities registered thereunder; and (y) the relative fault of the indemnifying party on the one hand and the indemnified party on the other hand shall be determined by reference to, among other things, whether any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it

would not be just or equitable if contribution pursuant to this Section 2.9(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The amount paid or payable by an indemnified party as a result of the Losses referred to in Sections 2.9(a) and 2.9(b) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 2.9(d), in connection with any Registration Statement filed by the Company, a selling holder of Registrable Securities shall not be required to contribute any amount in excess of the dollar amount of the proceeds received by such holder under the sale of Registrable Securities giving rise to such contribution obligation. If indemnification is available under this Section 2.9, the indemnifying parties shall indemnify each indemnified party to the full extent provided in Sections 2.9(a) and 2.9(b) hereof without regard to the relative fault of said indemnifying parties or indemnified party. The remedies provided for in this Section 2.9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

2.10. Rules 144 and 144A. The Company covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the request of any holder of Registrable Securities, make publicly available such necessary information for so long as necessary to permit sales pursuant to Rules 144, 144A or Regulation S under the Securities Act), and it will take such further action as any holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such holder to sell Registrable Securities without Registration under the Securities Act within the limitation of the exemptions provided by (i) Rules 144, 144A or Regulation S under the Securities Act, as such Rules may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any holder of Registrable Securities, the Company will deliver to such holder a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

### SECTION 3. MISCELLANEOUS.

3.1. Term. This Agreement shall terminate upon the expiration of the Shelf Period, except for the provisions of Sections 2.9 and 2.10 and all of this Section 3, which shall survive any such termination.

3.2. Injunctive Relief. It is hereby agreed and acknowledged that it will be impossible to measure in money the damage that would be suffered if the parties fail to comply with any of the obligations herein imposed on them and that in the event of any such failure, an aggrieved Person will be irreparably damaged and will not have an adequate remedy at law. Any such Person shall, therefore, be entitled (in addition to any other remedy to which it may be entitled in law or in equity) to injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this

Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law.

3.3. Attorneys' Fees. In any action or proceeding brought to enforce any provision of this Agreement or where any provision hereof is validly asserted as a defense, the successful party shall, to the extent permitted by applicable law, be entitled to recover reasonable attorneys' fees in addition to any other available remedy.

3.4. Notices. All notices, other communications or documents provided for or permitted to be given hereunder, shall be made in writing and shall be given either personally by hand-delivery, by facsimile transmission, by mailing the same in a sealed envelope, registered first-class mail, postage prepaid, return receipt requested, or by air courier guaranteeing overnight delivery:

(a) if to the Company:

ON Semiconductor Corporation  
5005 East McDowell Road  
Phoenix, Arizona 85008  
Attention: General Counsel  
Facsimile No.: (602) 244-5601

(b) if to the Investor:

TPG ON Holdings LLC  
301 Commerce Street  
Suite 3300  
Fort Worth, Texas 76102  
Attention: Richard A. Ekleberry, Esq.  
Facsimile No.: 817-871-4088

Each holder, by written notice given to the Company in accordance with this Section 3.4 may change the address to which notices, other communications or documents are to be sent to such holder. All notices, other communications or documents shall be deemed to have been duly given: (i) at the time delivered by hand, if personally delivered; (ii) when receipt is acknowledged in writing by addressee, if by facsimile transmission; (iii) five business days after being deposited in the mail, postage prepaid, if mailed by first class mail; and (iv) on the first business day with respect to which a reputable air courier guarantees delivery; provided, however, that notices of a change of address shall be effective only upon receipt.

3.5. Successors, Assigns and Transferees. (a) The registration rights of any holder under this Agreement with respect to any Registrable Securities may be transferred and assigned, provided that, other than an assignment to the Investor or an Affiliate of the Investor, no such assignment shall be binding upon or obligate the Company to any such assignee unless and until the Company shall have received notice of such assignment as herein provided and a written agreement of the assignee to be bound by the provisions of this Agreement.

(b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns. Whether or not any express assignment shall have been made, the provisions of this Agreement which are for the benefit of the parties hereto other than the Company shall also be for the benefit of and enforceable by any subsequent holder of Registrable Securities, subject to the provisions contained herein.

3.6. Governing Law; Service of Process; Consent to Jurisdiction. (a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED WITHIN THE STATE, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS.

(b) To the fullest extent permitted by applicable law, each party hereto (i) agrees that any claim, action or proceeding by such party seeking any relief whatsoever arising out of, or in connection with, this Agreement or the transactions contemplated hereby shall be brought only in the United States District Court for the State of Delaware and the courts of the State of Delaware and not in any other State or Federal court in the United States of America or any court in any other country, (ii) agrees to submit to the exclusive jurisdiction of such courts located in the State of Delaware for purposes of all legal proceedings arising out of, or in connection with, this Agreement or the transactions contemplated hereby, and (iii) irrevocably waives any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

3.7. Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

3.8. Severability. Whenever possible, each provision or portion of any provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or portion of any provision in such jurisdiction, and this agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained therein.

3.9. Amendment; Waiver.

(a) This Agreement may not be amended or modified and waivers and consents to departures from the provisions hereof may not be given, except by an instrument or instruments in writing making specific reference to this Agreement and signed by the Company, the holders of a majority of Registrable Securities then outstanding and, so long as it is a holder, the Investor; provided, that no amendment, modification or supplement to this Agreement shall be effective unless approved by a majority of the directors then serving on the Board of Directors who have not previously been are not then and are not anticipated to be a Representative of any TPG Person. Each holder of any Registrable Securities at the time or thereafter outstanding shall

be bound by any amendment, modification, waiver or consent authorized by this Section 3.9(a), whether or not such Registrable Securities shall have been marked accordingly.

(b) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. Except as otherwise expressly provided herein, no failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder, or otherwise available in respect hereof at law or in equity, shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

3.10. Counterparts. This Agreement may be executed in any number of separate counterparts and by the parties hereto in separate counterparts each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

3.11. Effectiveness. The provisions of this Agreement shall take effect upon the occurrence of the Closing (as such term is defined in the Investment Agreement) without further action by or on behalf of any party hereto, and other than this Section 3.11 shall have no force or effect prior to the Closing. This Agreement shall terminate and be of no further force and effect upon the termination of the Investment Agreement.

3.12 Other Registration Rights. In the event that the Other Holders exercise their registration rights under the Stockholders Agreement to require the Company to Register shares held by such Other Holders in any Registration Statement to be filed by the Company pursuant to this Agreement, (i) the Company shall be entitled to include in such Registration Statement all such shares that the Company is required to include therein in accordance with the terms of the Stockholders Agreement, and (ii) any conflicting terms of this Agreement shall be deemed to be modified, in each case to the extent necessary to permit the Company to comply fully with its obligations under the Stockholders Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the date first written above.

ON SEMICONDUCTOR CORPORATION

By: /s/ Dario Sacomani

\_\_\_\_\_  
Name: Dario Sacomani  
Title: Sr. Vice President &  
Chief Financial Officer

TPG ON HOLDINGS LLC

By: /s/ Richard A. Ekleberry

\_\_\_\_\_  
Name: Richard A. Ekleberry  
Title: Vice President

## SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the "Agreement"), dated as of September 7, 2001, by and between TPG ON Holdings LLC (the "Investor") and ON Semiconductor Corporation (the "Company"), for the benefit of the Senior Creditors herein described.

## W I T N E S S E T H:

WHEREAS, pursuant to the Credit Agreement (as defined below), the Senior Creditors (as defined below) have extended credit to Semiconductor Components Industries, LLC, a subsidiary of the Company, and, pursuant to the terms of and subject to the conditions in the Credit Agreement Amendment (as defined below), the Senior Creditors have amended and waived certain provisions of the Credit Agreement; and

WHEREAS, the Credit Agreement (as so amended) provides that an Event of Default under the Credit Agreement shall occur if the TPG Equity Purchase (as defined in the Credit Agreement) shall not have been consummated on or prior to September 7, 2001; and

WHEREAS, to effect the TPG Equity Purchase, the Company and the Investor have entered into the Investment Agreement (as defined below), providing for the purchase by the Investor of 10,000 shares of Series A Preferred Stock from the Company; and

WHEREAS, in order for such purchase of Series A Preferred Stock to constitute the TPG Equity Purchase for purposes of the Credit Agreement, the Company and the Investor are required to enter into this Agreement in order to subordinate, in the manner set forth herein, all payments under the Series A Preferred Stock to the rights of the Senior Creditors; and

WHEREAS, it is a condition precedent to the obligations of both the Investor and the Company to effect the purchase and sale of the Series A Preferred Stock under the Investment Agreement that this Agreement be in full force and effect;

NOW, THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

SECTION 1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

"Affiliate" has the meaning set forth in Rule 12b-2 under the Exchange Act as in effect on the date hereof. Notwithstanding the foregoing, for all purposes hereof, neither the Company nor any of its Subsidiaries shall be deemed a TPG Person or an "Affiliate" of any TPG Person.

"Commitments" has the meaning set forth in the Credit Agreement.

"Credit Agreement" means the Credit Agreement, dated as of August 4, 1999, as amended and restated as of April 3, 2000, as amended by the Credit Agreement Amendment and

as further amended thereafter, among the Company, Semiconductor Components Industries, LLC, the banks and other financial institutions named therein, The Chase Manhattan Bank, as administrative agent, collateral agent and syndication agent and Credit Lyonnais New York Branch, DLJ Capital Funding, Inc. and Lehman Commercial Paper, Inc., as co-documentation agents, together with any Loan Document referred to therein entered into under or in connection with the Credit Agreement, in each case, as the same may be amended, restated, supplemented, or otherwise modified from time to time, in whole or in part, together with any Loan Document referred to therein.

"Credit Agreement Amendment" means the Waiver, Consent and Amendment dated as of August 13, 2001 to the Credit Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder from time to time.

"Insolvency Proceeding" means any bankruptcy, reorganization, arrangement, composition, insolvency, liquidation or other proceeding for relief by or against the Company or any Affiliate of the Company under any Federal or state bankruptcy or similar law relating to the relief of debtors or the readjustment of indebtedness.

"Investment Agreement" means the Investment Agreement, dated as of September 7, 2001, by and between the Company and the Investor, as amended, supplemented or otherwise modified from time to time.

"Person" means any individual, corporation, company, association, partnership, limited liability company, joint venture, trust, unincorporated organization, or governmental entity.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of September 7, 2001, by and between the Company and the Investor, as amended, supplemented or otherwise modified from time to time.

"Senior Creditor" means each Person entitled to the benefits of any of the Senior Obligations as described in the definition of Senior Obligations below.

"Senior Obligations" means all liabilities or obligations of any type or nature, whether for principal, interest and fees (including, without limitation, interest accruing after the initiation of any Insolvency Proceeding) charges and expenses, and without limitation as to amount or terms thereof, presently owing or hereafter created or due from the Company and/or any of its Affiliates, and their respective successors and assigns, to the Lenders (as defined in the Credit Agreement), and their respective successors, assigns and participants, arising under or incidental to the Credit Agreement.

"Series A Certificate of Designations" means the certificate of designations of Series A Cumulative Convertible Preferred Stock of the Company.

"Series A Preferred Stock" means the Company's Series A Cumulative Convertible Preferred Stock, par value \$0.01 per share.



"Subordinated Obligations" means the rights of any holder of Series A Preferred Stock to receive from the Company cash payments in respect of the Series A Preferred Stock.

"Subsidiary" means, as to any Person, any other Person of which more than 50% of the shares of the voting stock or other voting interests are owned or controlled, or the ability to select or elect more than 50% of the directors or similar managers is held, directly or indirectly, by such first Person or one or more of its Subsidiaries or by such first Person and one or more of its Subsidiaries.

"TPG Person" means the Investor, and each Person controlled by, controlling or under common control with the Investor, other than the Company and its Subsidiaries.

SECTION 2. General Subordination. The Company and the Investor acknowledge and agree that the Subordinated Obligations are and shall be subordinate and subject in right of payment to the prior indefeasible payment in full in cash of the Senior Obligations and the termination of the Commitments to the extent, and in the manner, set forth herein. The Company agrees that it shall not, and shall not cause, permit or suffer any Affiliate of the Company to, impair in any manner the rights of the Senior Creditors to enforce or otherwise receive the benefits of the subordination set forth in this Agreement.

#### SECTION 3. Payment Blockage.

(a) Unless the Senior Obligations shall have been indefeasibly paid in full in cash and the Commitments shall have been terminated, and except as otherwise provided in subsection (b) below, no cash dividend or redemption payment shall be made by the Company or any Affiliate of the Company, or received or accepted by the Investor, in respect of the Subordinated Obligations.

(b) Notwithstanding the provisions of subsection (a) above, and in accordance with the Series A Certificate of Designations, in the event that there shall have occurred a Change of Control (as defined in the Series A Certificate of Designations), the Company shall pay all amounts outstanding under the Credit Agreement and other indebtedness specified in the Series A Certificate of Designations to the extent necessary, but only if permitted under the relevant document, in order to permit the payment of the Change of Control Price (as defined in the Series A Certificate of Designations) or, if such payment is not so permitted under any such document, the Company shall exercise any right of defeasance it has under such document (provided that all conditions precedent to the exercise of such right of defeasance have been satisfied, which conditions the Company shall use its reasonable best efforts to satisfy) to the extent necessary in order to permit the payment of the Change of Control Price; provided, that the Company shall not be required to make such payments or exercise such right of defeasance under the Credit Agreement or other documents evidencing such indebtedness specified in the Series A Certificate of Designations if the Company has received all necessary waivers and consents from the applicable lenders or holders of notes permitting the Company to pay the Change of Control Price pursuant to the Series A Certificate of Designations.

SECTION 4. Distributions. In the event of any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all

or any part of the assets or property of the Company or any Affiliate of the Company or the proceeds thereof, to creditors of the Company or any Affiliate of the Company, or upon any repayment of indebtedness of the Company or any Affiliate of the Company, by reason of (a) the liquidation, dissolution or other winding up, partial or complete, of the Company or any Affiliate of the Company or its or their respective business, or (b) any Insolvency Proceeding, then, and in any such event, if the Senior Obligations have not been paid in full, any payment or distribution of any kind or character, whether in cash, securities or other property which but for this Agreement would be payable or deliverable to the Investor on account of the Subordinated Obligations (whether or not such payment or distribution shall have been made in accordance with any plan approved in an Insolvency Proceeding), shall instead be paid or delivered directly to the Senior Creditors for application to the Senior Obligations, whether then due or not due, until the Senior Obligations shall have been indefeasibly paid in full in cash and the Commitments shall have been terminated; provided that, for purposes of determining whether the Senior Obligations have been indefeasibly paid in full in cash, the Senior Creditors shall be required to use reasonable best efforts to sell all securities and other property received by virtue of this provision for cash at fair market value.

SECTION 5. Distributions to be Held in Trust. Unless and until the Senior Obligations shall have been indefeasibly paid in full in cash and the Commitments shall have been terminated, if any payment, distribution of security or proceeds of any security are received by the Investor upon or in respect of the Subordinated Obligations which are not permitted to be paid in accordance with the provisions of this Agreement, the Investor will forthwith deliver the same to the Senior Creditors in the form received (except for the endorsement or assignment of the Investor where necessary), for application to the Senior Obligations, whether then due or not due, and, until so delivered, the same shall be held in trust by the Investor as property of the Senior Creditors. In the event of the failure of the Investor to make any such endorsement or assignment, the Senior Creditors or their agent, or any of its or their officers or employees, are hereby irrevocably authorized to make the same.

SECTION 6. Assignment of Subordinated Obligations. The Investor agrees that it will not transfer, assign, pledge or encumber the Subordinated Obligations or any part thereof or any instrument evidencing the same unless the respective instrument of assignment specifically provides that the assignee takes such Subordinated Obligations (or part thereof) subject to the provisions of this Agreement and such assignee executes and delivers to or for the benefit of the Senior Creditors an instrument in form and substance reasonably satisfactory to the Administrative Agent under the Credit Agreement pursuant to which such assignee agrees to be bound by the provisions of this Agreement as though named herein as the Investor.

SECTION 7. Continuing Subordination. The subordination effected by this Agreement is a continuing subordination, and the Investor hereby agrees that, at any time and from time to time and without notice to it:

(a) the time, place or manner for payment or performance by the Company or any Affiliate of the Company of, or compliance with any of its agreements or instruments evidencing, the Senior Obligations may be extended or waived by the Senior Creditors;

(b) any act permitted to be taken by the Company, any Affiliate of the Company or any Senior Creditor under the agreements or instruments evidencing the Senior Obligations may be so taken;

(c) any of the agreements or instruments evidencing the Senior Obligations may be amended or modified in any manner, including for the purpose of adding any provisions thereto, increasing the amount of, or changing the terms of, the Senior Obligations, adding or releasing any security or collateral therefor, or changing in any manner the covenants or rights of the Senior Creditors or the Company or any Affiliate of the Company or any other Person thereunder;

(d) the maturity of any of the Senior Obligations may be accelerated;

(e) any or all collateral security for the Senior Obligations may be exchanged, sold, surrendered, released or otherwise dealt with;

(f) the Company or any Affiliate of the Company, any co-borrower with the Company or any Affiliate of the Company, any guarantor or any other Person may be released of its obligations in respect of the Senior Obligations, whether or not in connection with any Insolvency Proceeding; and

(g) any other event which could, but for this provision, be used as a defense to the obligations of the Investor hereunder may occur;

all without impairing or affecting the obligations of the Investor or the rights of the Senior Creditors hereunder. The rights and remedies of the Senior Creditors hereunder shall be irrevocable and shall remain in full force and effect notwithstanding (i) any lack of validity or enforceability of the Senior Obligations, (ii) any circumstance which might constitute a defense available to, or the discharge of, the Company in respect of the Senior Obligations, or (iii) the occurrence of any of the circumstances described in clauses (a) through (g) of the preceding sentence. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment in respect of the Senior Obligations is rescinded or must otherwise be returned by any Senior Creditor in any Insolvency Proceeding, all as though such payment had not been made.

SECTION 8. Subrogation. No payment or distribution to the Senior Creditors pursuant to the provisions of this Agreement shall entitle the Investor to exercise any rights of subrogation in respect thereof (and any such rights existing under law are hereby waived) until such time as the Senior Obligations have been indefeasibly paid in full in cash and the Commitments shall have been terminated. After (a) the Senior Obligations have been indefeasibly paid in full in cash and (b) the Commitments have been terminated, and until the Subordinated Obligations are paid in full, the Investor shall be subrogated to the rights of the Senior Creditors to receive distributions applicable to the Senior Obligations to the extent that distributions otherwise payable to the Investor have been applied to the payment of Senior Obligations.

SECTION 9. Relative Rights of Creditors. The provisions of this Agreement are intended only for the purpose of defining the relative rights of the Senior Creditors, on the one

hand, and the Investor, on the other hand. Nothing herein is intended to, nor shall this Agreement, impair, as between the Company and the Investor, the obligation of the Company to pay to the Investor the Subordinated Obligations or any other amounts due to the Investor under the Investment Agreement as and when the same shall become due and payable, or to affect the relative rights of the Investor and creditors of the Company other than the Senior Creditors nor shall the foregoing or provisions to implement the foregoing prevent the Investor from exercising all remedies otherwise permitted by applicable law upon any breach of the Investment Agreement, subject to the rights contemplated herein of the Senior Creditors.

SECTION 10. Subordinated Obligations; Rights of Senior Creditors as to Security. The Investor and the Company acknowledge and agree that the Investment Agreement, the Series A Certificate of Designations, the Registration Rights Agreement and the Series A Preferred Stock certificates evidence the full and complete obligations of the Company comprising the Subordinated Obligations, and the Company shall not issue any further instrument or agreement (other than Common Stock upon the conversion of the Series A Preferred Stock in accordance with the Series A Certificate of Designations) in respect of the Subordinated Obligations. The Series A Certificate of Designations shall expressly state that the payment obligations of the Company thereunder are expressly subordinate in right of payment to the Senior Obligations. The Investor and the Company shall not amend, or modify or supplement the Series A Certificate of Designations without the written consent of the Senior Creditors, except for such amendments, modifications or supplements which could not reasonably be expected to have a material adverse effect on any Senior Creditor.

SECTION 11. Undertakings in Insolvency Proceedings. In furtherance of the subordination provided herein, the Investor, for itself, its successors and assigns, agrees that in any Insolvency Proceeding, it shall not vote its claim(s) or take any other-consensual actions in a manner inconsistent with the terms of this Agreement.

SECTION 12. Further Assurances. The Investor agrees that (a) promptly upon the written request of the Senior Creditors, it shall take such other action as may be reasonably requested by the Senior Creditors for the protection of the rights of the Senior Creditors under this Agreement or to effectuate the subordination provided herein, and (b) payments under the Subordinated Obligations shall not at any time be secured by any lien or security interest on property of the Company or any Affiliate of the Company.

SECTION 13. Specific Enforcement; Remedies. The Senior Creditors are hereby authorized to demand the specific performance of this Agreement, whether or not the Company shall have complied with any provisions hereof applicable to it, at any time when the Investor shall have failed to comply with the terms hereof, and the Investor hereby waives any objection or defense in any action for the specific performance hereof based upon the adequacy of any remedy at law; but nothing herein shall limit the right of the Senior Creditors to seek damages at law for any failure by the Investor or the Company to perform their respective obligations hereunder. In any action or suit for the enforcement of any right or remedy under this Agreement, the parties acknowledge and agree that a court may assess reasonable costs, including reasonable attorneys fees, against any party litigant in such action, having due regard for the merits and good faith of the claims or defenses made by such party.

SECTION 14. Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of New York applicable to contracts made and to be performed in that State without reference to its conflict of laws rules.

SECTION 15. Judicial Proceedings. The parties hereto agree that the appropriate and exclusive forum for any disputes arising out of this Agreement between the parties hereto shall be the United States District Court for the Southern District of New York, and, if such court will not hear any such suit, the courts of the state of the Company's incorporation, and the parties hereto irrevocably consent to the exclusive jurisdiction of such courts, and agree to comply with all requirements necessary to give such courts jurisdiction. The parties hereto further agree that the parties will not bring suit with respect to any disputes arising out of this Agreement except as expressly set forth below for the execution or enforcement of judgment, in any jurisdiction other than the above specified courts. Each of the parties hereto irrevocably consents to the service of process in any action or proceeding hereunder by the mailing of copies thereof by registered or certified airmail, postage prepaid, to the address specified in Section 18. The foregoing shall not limit the rights of any party hereto to serve process in any other manner permitted by the law or to obtain execution of judgment in any other jurisdiction. The parties further agree, to the extent permitted by law, that final and unappealable judgment against any of them in any action or proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of indebtedness. The parties agree to waive any and all rights that they may have to a jury trial with respect to disputes arising out of this Agreement.

SECTION 16. Representations of the Investor. The Investor represents and warrants that:

(a) the Investor is duly organized and existing in good standing under the laws of its jurisdiction of formation, with full power and legal right to enter into this Agreement and to perform its obligations hereunder. The making and performance by the Investor of its obligations under this Agreement have been duly authorized by proper corporate or partnership action.

(b) The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby will not conflict with or cause or constitute a breach of or default under its corporate or partnership documents or any bond, contract, indenture, agreement or other instrument to the Investor is a party or by which it or its property is bound.

(c) This Agreement constitutes the legal, valid and binding obligation the Investor enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

SECTION 17. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in such

jurisdiction, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 18. Notices. All notices, requests, demands, directions and other communications provided for herein shall be in writing and shall be personally delivered or sent (and shall be effective when received) by certified mail, postage prepaid, or by a reputable courier service (with charges prepaid), or by facsimile transmission, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to the Company:

ON Semiconductor Corporation  
5005 East McDowell Road  
Phoenix, Arizona 85008  
Attention: George H. Cave, Esq.  
Facsimile: 602-244-5601

If to the Investor:

TPG ON Holdings LLC  
301 Commerce Street  
Suite 3300  
Fort Worth, Texas 76102  
Attention: Richard A. Ekleberry, Esq.  
Facsimile: 817-871-4688

If to the Senior Creditors:

The Chase Manhattan Bank, as Administrative Agent  
Loan and Agency Services Group  
One Chase Manhattan Plaza, 8th Floor  
  
New York, New York 10081  
Attention: Janet Belden  
Facsimile: (212) 552-5658

With a copy to:

The Chase Manhattan Bank  
270 Park Avenue  
New York, New York 10017  
Attention: Edmond DeForest  
Facsimile: (212) 270-4584

SECTION 19. Waivers, etc. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by holders of greater than 50% of the Series A Preferred Stock and the Company and approved in writing by or on behalf of the Senior Creditors.

SECTION 20. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

SECTION 21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument. Delivery of a photocopy or telecopy of an executed counterpart of a signature page to this Agreement shall be effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Subordination Agreement to be duly executed as of the day and year first above written.

TPG ON HOLDINGS LLC

By: /s/ Richard A. Ekleberry

\_\_\_\_\_  
Name: Richard A. Ekleberry  
Title: Vice President

ON SEMICONDUCTOR CORPORATION

By: /s/ Dario Sacomani

\_\_\_\_\_  
Name: Dario Sacomani  
Title: Sr. Vice President &  
Chief Financial Officer

Acknowledged and accepted:

The Chase Manhattan Bank, as  
Administrative Agent

By: /s/ Edmond DeForest

\_\_\_\_\_  
Name: Edmond DeForest  
Title: Vice President



[ON SEMICONDUCTOR LOGO]

Everett Tackett, APR  
Director Public Relations  
ON Semiconductor  
(602) 244-4534  
everett.tackett@onsemi.com

Rudy Garcia  
Investor Relations  
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ON SEMICONDUCTOR RECEIVES \$100 MILLION EQUITY INVESTMENT FROM TEXAS  
PACIFIC GROUP

PHOENIX, ARIZ. - SEPT. 7, 2001 - ON Semiconductor Corporation (Nasdaq: ONNN) today announced the closing of a \$100 million investment in the Company by Texas Pacific Group (TPG), a leading private equity investment firm and the Company's majority stockholder.

"We are extremely pleased that our majority stockholder has demonstrated its continued commitment to the Company," said Steve Hanson, ON Semiconductor president and chief executive officer. "When coupled with our recent efforts to improve our cost structure, we believe we are in a strong position to meet the challenges posed by the recent economic downturn, and enhance our competitive position."

In connection with the investment, TPG purchased 10,000 shares of the Company's Series A cumulative convertible preferred stock with a stated value of \$10,000 per share. The Series A preferred stock has a cumulative dividend, payable quarterly in cash, at the rate of 8.0 percent per annum (or, if greater, the "as converted" amount paid on the Company's common stock). The Company is, however, prohibited from paying dividends or making other distributions in respect of the Series A preferred stock under existing debt covenants. In the event dividends are not declared or paid, the dividends will accumulate on a compounded basis.

Each share of Series A preferred stock will be convertible by TPG into shares of the Company's common stock any time after the closing. The conversion price of \$2.82 represents a 15 percent discount from the average of the closing prices of the Company's common stock for the five trading days prior to the closing date, and is subject to customary anti-dilution adjustments using a weighted average formula.

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## ON Semiconductor Receives \$100 Million Equity Investment From Texas Pacific Group

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The conversion feature, which for financial reporting purposes has a value of approximately \$13 million, will not impact the Company's net results for the third quarter of 2001 or the full year, but will decrease the Company's per share results for the same periods by approximately \$0.08.

Under the investment agreement, TPG will be entitled to two additional board seats on ON Semiconductor's board of directors. The holders of Series A preferred stock are entitled to vote with the holders of the Company's common stock on an "as converted" basis.

The investment by TPG, which was required by the Company's lenders as a condition to recent waivers and amendments to the Company's credit agreement, was approved by the Company's board of directors, following the unanimous recommendation of a special committee of independent directors formed specifically for the purpose of negotiating, evaluating and considering the transaction. Broadview International LLC acted as the financial advisor to the special committee and delivered a fairness opinion in connection with the investment by TPG. Snell & Wilmer LLP acted as the legal advisor to the special committee for the investment.

### ABOUT ON SEMICONDUCTOR

ON Semiconductor (Nasdaq: ONNN) is a global supplier of high-performance broadband and power management integrated circuits and standard semiconductors used in numerous advanced devices ranging from high-speed fiber optic networking equipment to the precise power management functions in today's advanced portable electronics. For more information visit ON Semiconductor's Web site at <http://www.onsemi.com>.

# # #

ON Semiconductor and the ON Semiconductor logo are trademarks of Semiconductor Components Industries, LLC. All other brand and product names appearing in this document are registered trademarks or trademarks of their respective holders.

This release includes "forward-looking statements" as that term is defined in Section 21E of the Securities Exchange Act of 1934. Forward-looking statements are often characterized by the use of words such as "believes," "estimates," "expects," "projects," "may," "will," "intends," "plans," or "anticipates," or by discussions of strategy, plans or intentions. All forward-looking statements in the release are made based on management's current expectations and estimates, which involve risks, uncertainties and other factors that could cause results to differ materially from those expressed in forward-looking statements. Among these factors are changes in overall economic conditions, the cyclical nature of the semiconductor industry, changes in demand for our products, changes in inventories at our customers and distributors, technological and product development risks, availability of manufacturing capacity, availability of raw materials, competitors' actions, loss of key customers, order cancellations or reduced bookings,

ON Semiconductor Receives \$100 Million Equity Investment From Texas Pacific Group

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changes in manufacturing yields, restructuring programs and the impact of such programs, control of costs and expenses, inability to reduce manufacturing and selling, general and administrative costs, litigation, risks associated with acquisitions and dispositions, changes in management, risks associated with our substantial leverage and restrictive covenants in our debt instruments (including those relating to the increased cost of servicing our debt and complying with the additional restrictions imposed as a result of the recent amendment to our senior credit facilities), and risks involving environmental or other governmental regulation. Additional factors that could affect the company's future operating results are described in Exhibit 99.1, entitled "Risk Factors" in our Annual Report on Form 10-K for the year ended Dec. 31, 2000 and other factors as described from time to time in our SEC filings. Readers are cautioned not to place undue reliance on forward-looking statements. We assume no obligation to update such information.