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05-29-2001

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RE



U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

101731128

To the Honorable Commissioner of Patents

Original documents or copy thereof.

1. Name of conveying party(ies): InnoVentry Corp. Individual(s) Association General Partnership Limited Partnership Corporation-State Delaware Other Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies) Name: Impli, Inc. Internal Address: Street Address: 2121 N. California Blvd. #695 City: Walnut Creek State: WA Zip: 94596 Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State California Other If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other Execution Date: May 9, 2001

4. Application number(s) or registration number(s): A. Trademark Application No.(s) 75/884,433 B. Trademark Registration No.(s) Additional number(s) attached Yes No

B. Trademark Registration No.(s)

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Catherine H. Tran Internal Address: Street Address: 1201 Third Avenue, Suite 4800 City: Seattle State: WA Zip: 89101

6. Total number of applications and registrations involved: 8 7. Total fee (37 CFR 3.41): \$215.00 Enclosed Authorized to be charged to deposit account 8. Deposit account number: 50-0665 (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Catherine H. Tran Name of Person Signing Signature Date May 18, 2001 Total number of pages including cover sheet, attachments, and document: 23

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

TRADEMARK REEL: 002304 FRAME: 0337

EXHIBIT 1

To Recordation Form Cover Sheet for Impli, Inc.

Trademark	Serial No.
IMPLI	75/884,437
IMPLI (stylized)	76/033,466
IMPLI (stylized)	76/033,465
IMPLI MEDIA	75/884,435
IMPLI MEDIA	75/884,438
IMPLI.COM	75/884,434
IMPLI.COM	75/884,436

ASSIGNMENT OF TRADEMARK RIGHTS

WHEREAS, InnoVentry Corp. ("Assignor"), a Delaware corporation with its principal place of business at 680 Second Street, San Francisco, CA 94107, has common law rights in the marks that are the subject of this assignment.

WHEREAS, Assignor is also the owner of the pending intent-to-use trademark/service mark applications set forth in Exhibit 1 and incorporated herein by reference;

WHEREAS, Impli, Inc ("Assignee"), a California corporation with its principal place of business at 2121 N. California Blvd., Walnut Creek CA 94596, is desirous of acquiring said common law rights, registrations, applications and the goodwill associated therewith; and

WHEREAS, Impli, Inc. is a successor-in-business to the marks in Exhibit 1, as evidenced by the Amended and Restated Asset Contribution Agreement between InnoVentry Corporation and Interlane Images, Inc. (relevant portions shown in Exhibit 2) and the subsequent name change from Interlane Images, Inc. to Impli, Inc. as evidenced in Exhibit 3;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor does hereby assign unto Assignee all right, title and interest in and to the marks set forth in Exhibits 1, together with that portion of its business relating to the marks and the goodwill appurtenant thereto.

Signed this 9th day of May, 2001.

InnoVentry Corp.

By

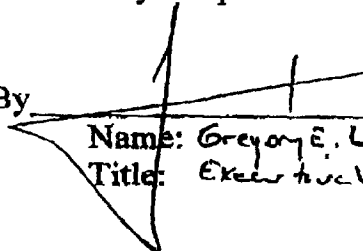

Name: Gregory E. Lichtwardt
Title: Executive Vice President

EXHIBIT 2

[SL010870.316]

TRADEMARK
REEL: 002304 FRAME: 0340

**AMENDED AND RESTATED ASSET CONTRIBUTION
AGREEMENT**

DATED AS OF OCTOBER 6, 2000

BY AND BETWEEN

INTERLANE IMAGES, INC.

AND

INNOVENTRY CORPORATION

(a) Following are those material contracts with respect to the Business to which InnoVentry is a party and involving payments in excess of \$25,000:

- (i) purchase order to eMotion for which \$22,812.00 is owed for software received;
- (ii) Fourth Street office lease;
- (iii) Installation agreement with McBride Electric, which will require payments in the range of \$500,000;
- (iv) see contracts described at paragraph 3.12 below;

(b) No disclosures.

3.08 Intellectual Property and Technology.

Following is a complete and correct list of all Intellectual Property and all other computer software, programs and code owned by or licensed to InnoVentry relating to the Business:

Trademarks:

1. Impli, Class 9. Filed Dec. 29, 1999, application 75/884433 pending.
2. Impli, Class 41. Filed Dec. 29, 1999, application 75/884437 pending.
3. Impli (and design), Class 9. Filed Feb. 16, 2000, application 76/033466 pending.
4. Impli (and design), Class 41. Filed Feb. 16, 2000, application 76/033465 pending.
5. Impli.com, Class 9. Filed Dec. 29, 1999, application 75/884436 pending.
6. Impli.com, Class 41. Filed Dec. 29, 1999, application 75/884434 pending.
7. Impli Media, Class 9. Filed Dec. 29, 1999, application 75/884438 pending.
8. Impli Media, Class 41. Filed Dec. 29, 1999, application 75/884435 pending.

SOFTWARE AND SOURCE CODE:

Multimedia scheduling, distribution and playback system for multi-node networks, including back-end database, front-end synchronization software, data distribution software, and media player software, including:

1. Completed Emotion Software identified by InnoVentry PO # IV10029; an outstanding balance of \$22,812 is owed on this item, which amount InnoVentry shall be responsible to pay.
2. Attached list of Server Components, Player Components and Miscellaneous software.
3. License to Microsoft Developer Network
4. License for Install Shield

3.09 Title to the Assets.

EXHIBIT 3

[SL010870.316]

TRADEMARK
REEL: 002304 FRAME: 0343



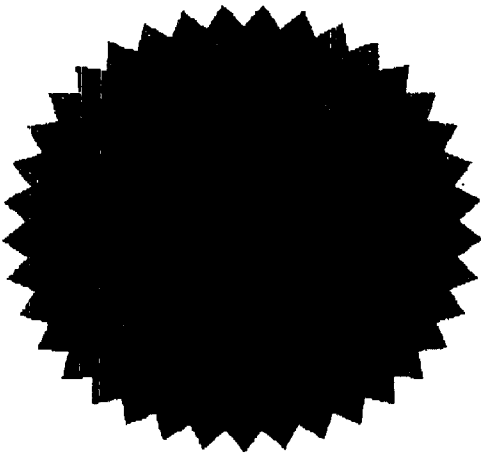
SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 16 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

MAY 03 2001



Bill Jones
 Secretary of State

Secretary of State

A0552438

2013633
 AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

INTERLANE IMAGES, INC.

FILED NEP
 In the office of the Secretary of State
 the State of California

SEP 15 2000

Bill Jones
 BILL JONES, Secretary of State

Doug Rowan and Philip Otto certify that:

1. They are the Chief Executive Officer and Secretary, respectively, of Interlane Images, Inc., a California Corporation (the "Corporation").
2. The Articles of Incorporation of this Corporation are amended and restated in their entirety to read as follows:

ONE. The name of the Corporation is Impli, Inc.

TWO. The purpose of this Corporation is to engage in any lawful act or activity for which a Corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

THREE. The Corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares of Common Stock that the Corporation is authorized to issue is 50,000,000, no par value per share. The total number of shares of Preferred Stock that the Corporation is authorized to issue is 23,500,000 no par value per share, of which 2,500,000 are designated *Series A Preferred Stock* ("Series A Preferred"), 14,000,000 shall be designated *Series B Preferred Stock* ("Series B Preferred"), and 7,000,000 shall be designated *Series C Preferred Stock* ("Series C Preferred," and together with Series A Preferred and Series B Preferred, "Preferred Stock").

The Corporation shall from time to time in accordance with the laws of the State of California increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance shall not be sufficient to permit conversion of the Preferred Stock.

The relative rights, preferences, privileges and restrictions granted to or imposed upon the respective classes and series of the shares of capital stock or the holders thereof are as set forth below:

Section 1. Dividends. When and if declared by the Corporation's board of directors, distributions to holders of Preferred Stock shall be made in the following preferential order: first, the holders of Series C Preferred shall be entitled to receive, out of any funds legally available therefor,

noncumulative dividends in an amount equal to \$0.10 per share per annum (as adjusted for any recapitalization, stock combination, stock splits, stock dividends and the like with respect to such shares ("Recapitalization")); second, the holders of Series B Preferred shall be entitled to receive, out of any funds legally available therefor, noncumulative dividends in an amount equal to \$0.085 per share per annum (as adjusted for Recapitalization); and third, the holders of Series A Preferred shall be entitled to receive, out of any funds legally available therefor, noncumulative dividends in an amount equal to \$0.041 per share per annum (as adjusted for Recapitalization). No dividend shall be paid on the Common Stock, nor shall any shares of any Common Stock be repurchased, redeemed, or otherwise acquired for value by the Company, except for the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Company upon or after termination of the employment, consulting or other relationship between the Company and such persons, other than dividends payable solely in capital stock, until all dividends payable pursuant to this Section 1 have been declared and paid on the Preferred Stock, and no dividends on the Common Stock shall be paid, nor shall any shares of any Common Stock be repurchased, redeemed, or otherwise acquired for value by the Company, except for the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Company upon or after termination of the employment, consulting or other relationship between the Company and such persons, unless the amount of such dividend or distribution on the Common Stock is also paid on, or set aside for payment on, the Preferred Stock on an as-converted to Common Stock basis.

Section 2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of Series A Preferred, Series B Preferred and the Common Stock by reason of their ownership of such stock, the holders of Series C Preferred Stock shall be entitled to receive for each outstanding share of Series C Preferred Stock then held by them an amount equal to \$1.00 plus declared but unpaid dividends on such share (as adjusted for any Recapitalizations). If, upon the occurrence of a liquidation, dissolution or winding up, the assets and funds of the Corporation legally available for distribution to shareholders by reason of their ownership of stock of the Corporation shall be insufficient to permit the payment to such holders of Series C Preferred Stock of the full aforementioned preferential amount, then the entire assets and funds of the Corporation legally available for distribution to shareholders by reason of their ownership of stock of the Corporation shall be distributed ratably among the holders of Series C Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) In the event of any liquidation, dissolution or winding up of the Corporation, after payment has been made to the holders of the Series C Preferred of the full amount to which they shall be entitled as set forth in Section 2(a) above, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, the holders of Series A Preferred shall be entitled to receive for each outstanding share of Series A Preferred then held by them an amount equal to \$0.41 plus declared but unpaid dividends on such share (as adjusted for any Recapitalizations). If, upon the occurrence of a liquidation, dissolution or winding up, the assets and funds of the Corporation legally available for

distribution to the holders of Series A Preferred pursuant to this Section 2(b) shall be insufficient to permit the payment to such holders of Series A Preferred of the full aforementioned preferential amount, then the entire assets and funds of the Corporation legally available for distribution to such holders of Series A Preferred shall be distributed ratably among the holders of Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(c) In the event of any liquidation, dissolution or winding up of the Corporation, after payment to the holders of Series C Preferred and Series A Preferred of the amounts to which they are entitled pursuant to Sections 2(a) and 2(b), respectively, all assets and funds of the Corporation that remain legally available for distribution to shareholders by reason of their ownership of stock of the Corporation shall be distributed ratably among the holders of Common Stock and Preferred Stock in proportion to the number of shares of Common Stock held by them or issuable upon the conversion of the Preferred Stock held by them and based on the total number of shares of Common Stock outstanding, or issuable upon conversion of the outstanding Preferred Stock, until such time as each holder of shares of Series A Preferred and Series C Preferred has received an aggregate liquidation amount under this Section 2(c) equal to two (2) times (i) \$0.41 ("Original Series A Issue Price") in the case of Series A Preferred, and (ii) \$1.00 ("Original Series C Issues Price") in the case of Series C Preferred, as adjusted for Recapitalizations. Thereafter, all remaining assets and funds of the Corporation legally available for distribution to shareholders of the Corporation by reason of their ownership of its capital stock shall be distributed ratably among the holders of Series B Preferred and Common Stock.

(d) For the purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include, the Corporation's sale of all or substantially all of its assets or the acquisition of this Corporation by another entity by means of any merger, consolidation or similar transaction resulting in the exchange of the outstanding shares of this Corporation for securities or consideration issued, or caused to be issued, by the acquiring Corporation or its parent or subsidiary, unless the shareholders of the Corporation immediately prior thereto hold at least a majority of the voting power of the surviving entity in such a transaction.

(e) If any of the assets of this Corporation are to be distributed under this Section 2, or for any other purpose, in a form other than cash, then the board of directors shall be empowered to, and shall promptly determine in good faith the value of the assets to be distributed to the holders of Preferred Stock and Common Stock. This Corporation shall, upon receipt of such determination, give prompt written notice of the determination to each holder of shares of Preferred Stock and Common Stock.

Section 3. Conversion. The holders of Preferred Stock shall have conversion rights as follows:

(a) **Right to Convert.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) in the case of Series A Preferred, Original Series A Issue Price by the Series A Conversion Price (determined as provided below) in effect at the time of conversion, (ii) in the case of Series B Preferred by dividing \$0.75 by

the Series B Conversion Price (determined as provided below) in effect at the time of conversion, and (iii) in the case of Series C Preferred by dividing the Original Series C Issue Price by the Series C Conversion Price (determined as provide below). The prices at which shares of Common Stock shall be deliverable upon conversion of shares of Series A Preferred, Series B Preferred and Series C Preferred, respectively, shall initially be the forty-one cents (\$0.41) per share of Common Stock with respect to shares of Series A Preferred (the "Series A Conversion Price"), seventy-five cents (\$0.75) per share of Common Stock with respect to shares of Series B Preferred ("Series B Conversion Price"), and one dollar (\$1.00) per share of Common Stock with respect to shares of Series C Preferred (the "Series C Conversion Price"). The term "Conversion Price" shall refer to the Series A Conversion Price, the Series B Conversion Price and the Series C Conversion Price, as applicable, and shall be subject to adjustment as hereinafter provided.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price upon the earlier of (i) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock to the public involving gross proceeds to the Company of not less than \$15,000,000 at a per share offering price of at least \$10.00 (a "Qualified Initial Public Offering") or (ii) the consent of holders of more than 80% of the then outstanding shares of Preferred Stock voting as a class.

(c) **Mechanics of Conversion.** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled (after aggregating all shares of Series A Preferred, Series B Preferred or Series C Preferred held by such holder to be converted, such that the maximum number of whole shares of Common Stock is issued to such holder upon conversion), the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price of such series of Preferred Stock. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Section 3(a), such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such Preferred Stock, and shall give written notice by mail, postage prepaid, to the Corporation at its principal corporate office, of the election to convert the same, and such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted. In the event of an automatic conversion pursuant to Section 3(b), the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holder of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or the transfer agent for such Preferred Stock; and the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or the transfer agent for such Preferred Stock as provided above, or the holder notifies the Corporation or the transfer agent for such Preferred Stock that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable thereafter, issue and deliver to such address as the holder may direct, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled. If the conversion is in connection with a public offering of securities described in Section 3(b), the conversion shall be

conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, and the conversion shall not be deemed to have occurred until immediately prior to the closing of such sale of securities.

(d) **Status of Converted Stock** In the event any shares of Preferred Stock shall be converted pursuant to this Section 3, the shares so converted shall be canceled and shall not be reissued by the Corporation.

(e) **Adjustment of Conversion Price of Preferred Stock** The Conversion Price shall be subject to adjustment from time to time as follows:

(i) **Adjustments for Subdivisions or Combinations of Common Stock**

In the event the outstanding shares of Common Stock shall be subdivided by stock split, stock dividend or otherwise, into a greater number of shares of Common Stock, the Conversion Price of each share of Preferred Stock then in effect shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined or consolidated into a lesser number of shares of Common Stock, the Conversion Price of each share of Preferred Stock then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(ii) **Adjustments for Stock Dividends and Other Distributions** In the event the Corporation makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, any distribution (excluding repurchases of securities by the Corporation not made on a pro rata basis) payable in property, in securities of the Corporation other than shares of Common Stock or evidences of indebtedness of the Corporation, and other than as otherwise adjusted for in this Section 3 or as provided for in Section 1 in connection with a dividend, then and in each such event the holders of Preferred Stock shall receive, at the time of such distribution, the amount of property, the number of securities or amount of such indebtedness of the Corporation that they would have received had their share of Preferred Stock been converted into Common Stock immediately prior to the date of such event.

(iii) **Adjustments for Reorganizations, Reclassifications, Exchange or Similar Events** Except as provided in Section 2 upon any liquidation, dissolution or winding up of the Corporation, if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock or other securities or property, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then each share of Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such shares of Preferred Stock shall have been entitled upon such reorganization, reclassification or other event.

(iv) **Adjustments for Diluting Issues** In addition to the adjustment of the applicable Conversion Price provided above, the Conversion Price of the Preferred Stock shall be subject to further adjustment from time to time as follows:

(A) **Special Definitions.**

(1) "*Options*" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

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

(3) "*Convertible Securities*" shall mean securities convertible, either directly or indirectly, into or exchangeable for Common Stock.

(4) "*Additional Shares of Common Stock*" shall mean all shares of Common Stock issued (or, pursuant to Section 3(e)(iv)(C) deemed to be issued) by the Corporation after the Original Issue Date other than shares of Common Stock issued (or, pursuant to Section 3(e)(iv)(C) deemed to be issued) at any time:

i) upon conversion of shares of Preferred Stock or exercise of any warrants outstanding as of the Original Issue Date;

ii) to employees, consultants or directors pursuant to stock option, stock grant, stock purchase or similar plans or arrangements approved by the board of directors, including without limitation upon the exercise of Options outstanding as of the Original Issue Date;

iii) to equipment lessors, banks, financial institutions or similar entities in transactions approved by the board of directors, the principle purpose of which is other than the raising of capital through the sale of equity securities;

iv) as a dividend or other distribution in connection with which an adjustment to the Conversion Price is made pursuant to Section 3(e)(i), (ii) or (iii);

v) in the Corporation's Qualified Initial Public Offering;

vi) in a merger or acquisition that is approved by the board of directors, with a majority of the outside directors vote in favor of such merger or acquisition; or

vii) pursuant to any transactions approved by the board of directors, with a majority of the outside directors voting in favor of such transaction, primarily for the purpose of pursuing (A) joint ventures, technology licensing or research and development activities, (B) distribution or manufacture of the Corporation's products or services, or (C) any other transactions involving corporate partners that are primarily for purposes other than raising capital through the sale of equity securities.

(B) **No Adjustment of Conversion Price.** No adjustment in the Conversion Price shall be made pursuant to Section 3(e)(iv)(D) unless the consideration per share for an Additional Share of Common Stock issued (or, pursuant to Section 3(e)(iv)(C), deemed to be issued) by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to, such issue, and provided that any such adjustment shall not have the effect of increasing the Conversion Price to an amount which exceeds the Conversion Price existing immediately prior to such adjustment.

(C) **Deemed Issue of Additional Shares of Common Stock.** Except as otherwise provided in Section 3(e)(iv)(A) or 3(e)(iv)(B), in the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of any holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which additional shares of Common Stock are deemed to be issued:

(1) no further adjustment in the Conversion Price shall be made upon the subsequent issue of such Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof or upon the occurrence of a record date with respect thereto, and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease;

(3) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof or upon the occurrence of a record date with respect thereto, and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

i) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such

Convertible Securities, whether or not converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

ii) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) no readjustment pursuant to Section 3(e)(iv)(C)(2) or (3) above shall have the effect of increasing the Conversion Price to an amount which exceeds the Conversion Price existing immediately prior to the original adjustment with respect to the issuance of such Options or Convertible Securities, as adjusted for any Additional Shares of Common Stock issued (or, pursuant to Section 3(e)(iv)(C), deemed to be issued) between such original adjustment date and such readjustment date;

(5) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options; and

(6) in the case of any Option or Convertible Security with respect to which the maximum number of shares of Common Stock issuable upon exercise or conversion or exchange thereof is not determinable, no adjustment to the Conversion Price shall be made until such number becomes determinable.

(D) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. Subject to the limitation set forth in Section 3(e)(iv)(B), above, if Additional Shares of Common Stock are issued (or, pursuant to Section 3(e)(iv)(C), deemed to be issued) without consideration or for a consideration per share (computed on an as-converted to Common Stock basis) less than a Conversion Price in effect on the date of, and immediately prior to, such issue (a "Dilutive Issue"), then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-tenth cent) determined by multiplying such Conversion Price by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price, and (y) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purposes of this Section 3(e)(iv)(D), all shares of Common Stock issuable upon exercise of outstanding Options and upon conversion of outstanding Convertible Securities shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to Section 3(e)(iv)(C), such Additional Shares of Common Stock shall be deemed to be outstanding.

(E) **Determination of Consideration.** For purposes of this Section 3(e)(iv), the consideration received by the Corporation for any Additional Shares of Common Stock issued (or, pursuant to Section 3(e)(iv)(C), deemed to be issued) shall be computed as follows:

(1) **Cash and Property.** Such consideration shall:

i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation after deducting any commissions paid by the Corporation with respect to such issuance;

ii) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issuance, as determined in good faith by the board of directors of the Corporation; and

iii) if Additional Shares of Common Stock are issued (or, pursuant to Section 3(e)(iv)(C), deemed to be issued) together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the board of directors of the Corporation.

(2) **Options and Convertible Securities.** The consideration received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3(e)(iv)(C), relating to Options and Convertible Securities, shall be the sum of (x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus (y) the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(f) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 3, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock to which such adjustment pertains a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Prices at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's Preferred Stock.

Section 4. Redemption.

(a) After September 27, 2005, the Corporation shall redeem, within thirty (30) calendar days after receipt by the Corporation of written requests by not less than a majority of the holders of Series A Preferred and Series C Preferred at that time, from any source of funds legally available therefor, the shares of Series A Preferred and shares of Series C Preferred held by such holders until all such shares of Series A Preferred and Series C Preferred presented to the Corporation by such holders for redemption thereof are so redeemed. The Corporation shall effect such redemptions by paying in cash in exchange for the shares of Series A Preferred and shares of Series C Preferred to be redeemed a sum per share equal to the Original Series A Issue Price per share of Series A Preferred or Original Series C Issue Price per share of Series C Preferred, as applicable, in three annual installments beginning on September 27, 2005 (as adjusted for any stock dividends, combinations or splits with respect to such shares) (the "Redemption Price").

(b) If any holders of Series A Preferred or Series C Preferred shall have elected redemption pursuant to Section 4(a) above, written notice shall be delivered or mailed, first class postage prepaid, or via a nationally recognized courier service, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of shares of Series A Preferred and Series C Preferred, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Price, the place at which payment is to be obtained and setting forth for such holder the process by which such holder is to surrender to the Corporation, in the manner and at the place designated, its certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in Section 4(c) below, on or after the redemption, each holder of Series A Preferred or Series C Preferred to be redeemed shall surrender to this Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) If any holder of shares of Series A Preferred or Series C Preferred shall have elected redemption pursuant to Section 4(a) above, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of such shares of Series A Preferred or Series C Preferred designated for redemption in the Redemption Notice as holders of Series A Preferred or Series C Preferred (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series A Preferred and Series C Preferred are insufficient to redeem the total number of shares of such Series A Preferred and Series C Preferred to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Series A Preferred or Series C Preferred. The shares of Preferred Series A Preferred or Series C not redeemed shall remain

outstanding and entitled to all the voting powers, preferences, rights, qualifications, limitations and restrictions provided herein subject to the terms hereof. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred and Series C Preferred, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem, but which it has not redeemed.

(d) The Corporation shall deposit the Redemption Price of all shares of Series A Preferred and Series C Preferred designated for redemption in the Redemption Notice and not yet redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to such bank or trust company to pay the Redemption Price for such shares to their respective holders upon receipt of notification from the Corporation that such holder has surrendered his share certificate to the Corporation pursuant to Section 4(b) above. Thereafter, the deposit shall constitute full payment of the shares to their holders, and from and after that time, the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders of the Corporation with respect to such shares and shall have no rights with respect thereto except the right to receive from the bank or trust company payment of the Redemption Price of the shares, without interest, upon surrender of their certificates therefor. Such instructions shall also provide that any moneys deposited by the Corporation pursuant to this Section 4(d) for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to Section 4(b) above prior to such time shall be returned to the Corporation forthwith upon such conversion. The balance of any moneys deposited by the Corporation pursuant to this Section 4(d) remaining unclaimed at the expiration of one (1) year following the redemption shall thereafter be returned to the Corporation upon its request expressed in a resolution of its board of directors.

(e) Notwithstanding the foregoing, in the event that the board of directors of the Corporation certifies that a redemption pursuant to this Section 4 would render the Corporation insolvent, then the board of directors shall determine an alternative to the redemption right afforded by the provisions of Sections 4(a) through 4(d) above.

Section 5. Voting.

(a) **General.** Except as otherwise required by law, each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock so held could be converted at the record date for determination of the shareholders entitled to vote, or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited. Except as required by law or as otherwise set forth herein (including without limitation Section 5(b)), all shares of all series of Preferred Stock and all shares of Common Stock shall vote together as a single class. Fractional votes by the holders of Preferred Stock shall not, however, be permitted, and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be rounded down to the nearest whole number.

(b) Election of Directors

(i) With respect to the election of directors, (a) the holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) directors of the Corporation; (b) the holders of Series A Preferred, voting as a separate class, shall be entitled to elect one (1) director of the Corporation; (c) the holders of Series B Preferred, voting as a separate class, shall be entitled to elect two (2) directors of the Corporation; (d) the holders of Series C Preferred, voting as a separate class, shall be entitled to elect one (1) director of the Corporation, and (e) the holders of the Common Stock, Series A Preferred, Series B Preferred and Series C Preferred voting together as a single class, shall be entitled to elect all remaining directors of the Corporation.

(ii) The holders of Common Stock shall be entitled to vote as a separate class on the removal, with or without cause, of any director who was elected pursuant to Section 5(b)(i)(a) above. Holders of Series A Preferred, voting as a separate class, shall be entitled to together remove, with or without cause, any director elected pursuant to Section 5(b)(i)(b) above. Holders of Series B Preferred, voting as a separate class, shall be entitled to together remove, with or without cause, any director elected pursuant to Section 5(b)(i)(c) above. Holders of Series C Preferred, voting as a separate class, shall be entitled to together remove, with or without cause, any director elected pursuant to Section 5(b)(i)(d) above. Holders of Common Stock, Series A Preferred, Series B Preferred and Series C Preferred voting as a single class, shall be entitled to together remove, with or without cause, any director elected pursuant to Section 5(b)(i)(e) above.

(c) Approval by Series A Preferred. The Corporation shall not, without first obtaining the approval of the holders of not less than a majority of the then outstanding total number of shares of Series A Preferred:

- Preferred; or
- (i) increase or decrease the number of authorized shares of Series A
- Series A Preferred;
- (ii) alter or change the rights, preferences, privileges or restrictions of the

(d) Approval by Series B Preferred. The Corporation shall not, without first obtaining the approval of the holders of not less than a majority of the then outstanding total number of shares of Series B Preferred:

- Preferred; or
- (i) increase or decrease the number of authorized shares of Series B
- Series B Preferred.
- (ii) alter or change the rights, preferences, privileges, or restrictions of the

(e) **Approval by Series C Preferred.** The Corporation shall not, without first obtaining the approval of the holders of not less than a majority of the then outstanding total number of shares of Series C Preferred:

- Preferred; or
- (i) increase or decrease the number of authorized shares of Series C Preferred; or
 - (ii) alter or change the rights, preferences, privileges, or restrictions of the Series C Preferred.

(f) **Approval by Preferred Stock.**

(i) So long as 2,000,000 shares of Preferred Stock remain outstanding, the Corporation shall not, without first obtaining the approval of the holders of not less than eighty percent (80%) of the then outstanding Preferred Stock,

(A) Amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws if such action would adversely alter or change in any material respect the rights, preferences, privileges or restrictions of the Preferred Stock;

(B) take any action resulting in the repurchase or redemption of shares of Common Stock of the Corporation, except as set forth in Section 5 hereof;

(ii) authorize, create or issue any shares of any class or series of stock having any preference or priority superior to or on parity with any such preference or priority of the Preferred Stock.

(C) pay any dividends on its Common Stock or Preferred Stock; or

(D) change the authorized number of directors on the Board of Directors.

(iii) So long as 1,000,000 shares of Preferred Stock remain outstanding, the Corporation shall not, without first obtaining the approval of the holders of not less than eighty percent (80%) of the then outstanding Preferred Stock, enter into a transaction that would occasion the sale of all or substantially all of the Corporation's assets or the acquisition of this Corporation by another entity by means of merger or consolidation resulting in the exchange of the outstanding shares of this Corporation for securities or consideration issued, or caused to be issued, by the acquiring Company or its subsidiary, unless the stockholders of the Corporation hold at least 50% of the voting power of the surviving corporation in such a transaction.

Section 6. Consent to Distributions. Each holder of Preferred Stock shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the California Corporations Code and Sections 1 and 2 of this Article Three, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock from employees, officers, directors or consultants of the

Corporation in connection with the termination of their employment or services pursuant to agreements or arrangements approved by the board of directors of the Corporation.

Section 7. Reacquired Shares. Any shares of any series of Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of such series of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the board of directors, subject to the conditions and restrictions on issuance set forth herein.

Section 8. Waiver of Rights, Preferences or Privileges. Any right, preference or privilege of Preferred Stock may be waived by a majority of the outstanding shares of Preferred Stock voting on an as converted to Common Stock basis, and such waiver shall be binding on all holders of Preferred Stock. Any right, preference or privilege of any series of Preferred Stock may be waived by a majority of the outstanding shares of such series of Preferred Stock voting on an as converted to Common Stock basis, and such waiver shall be binding on all holders of such series of Preferred Stock.

FOUR. The Corporation is to have perpetual existence.

FIVE. The number of directors which constitute the whole board of the Corporation shall be as specified in the Bylaws of the Corporation.

SIX. In furtherance and not in limitation of the powers conferred by statute, the board of directors of the Corporation is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation, subject to Corporations Code §211, 212.

SEVEN. Elections of directors need not be by written ballot unless a shareholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the Corporation shall so provide.

EIGHT.

(a) **Limitation of Director's Liability.** To the fullest extent not prohibited by the California Corporation's Code as the same exists or as it may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for conduct as a director.

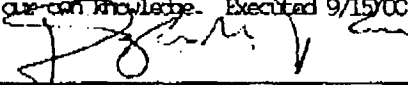
(b) **Indemnification of Corporate Agents.** The Corporation may indemnify to the fullest extent not prohibited by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, such person's testator or intestate is or was a director, officer, employee benefit plan fiduciary, agent or employee of the Corporation or any predecessor of the Corporation or serves or served at the request of the Corporation or any predecessor of the Corporation as a director, officer, agent, employee benefit plan fiduciary or employee of another Corporation, partnership, limited liability company, joint venture, trust or other entity or enterprise.

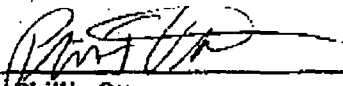
(c) **Repeal or Modification.** Neither any amendment or repeal of this Article Eight, nor the adoption of any provision of the Corporation's Articles of Incorporation inconsistent with this Article Eight, shall eliminate or reduce the effect of this Article Eight, in respect of any matter occurring,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

3. The foregoing amendment and restatement to the Articles of Incorporation has been duly approved by the board of directors of the Corporation.

4. The foregoing amendment and restatement to the Articles of Incorporation has been duly approved by the required vote of shareholders, in accordance with Section 902 of the California Corporations Code. The total number of outstanding shares of the Corporation is 3,319,139 shares of Common Stock and 2,439,024 shares of Series A Preferred. The number of shares voting in favor of the amendment and restatement equaled or exceeded the vote required, such vote required being more than fifty percent (50%) of the shares of Common Stock and more than fifty percent (50%) of the shares of Series A Preferred.

We further declare under penalty of perjury under the laws of the state of California that the matters set forth in this certificate are true and correct of our own knowledge. Executed 9/15/00.


Name: Doug Rowan
Title: Chief Executive Officer


Name: Phillip Otto
Title: Secretary

