

03-04-2002

D



Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)

RECC

TRADEMARK 101999792

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

Tab settings

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

ClickNet Software Corporation

2.7.02

- Individual(s), General Partnership, Corporation-State (checked), Other, Association, Limited Partnership

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

3. Nature of conveyance:

- Assignment, Security Agreement, Other Amended and Restated Articles (checked), Merger, Change of Name

Execution Date: 12/07/2000

2. Name and address of receiving party(ies)

Name: Entercept Security Technologies Inc

Internal Address:

Address:

Street Address: 2460 Zanker Road

City: San Jose State: CA Zip: 95131

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State California (checked), Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (No checked) (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No (No checked)

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

A. Trademark Application No.(s) 75/832,061

B. Trademark Registration No.(s)

Additional number(s) attached Yes No (No checked)

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

Name: Peter F. Weinberg

Internal Address: Gibson, Dunn & Crutcher LLP

Street Address: 1801 California Street Suite 4100

City: Denver State: CO Zip: 80202

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed (checked), Authorized to be charged to deposit account (checked)

for any deficiency of fee overpayment

8. Deposit account number:

50-0792



02-07-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #73

DO NOT USE THIS SPACE

9. 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.

Peter F. Weinberg

Name of Person Signing

[Signature]

Signature

1-31-02

Date

23

Total number of pages including cover sheet, attachments, and document:

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

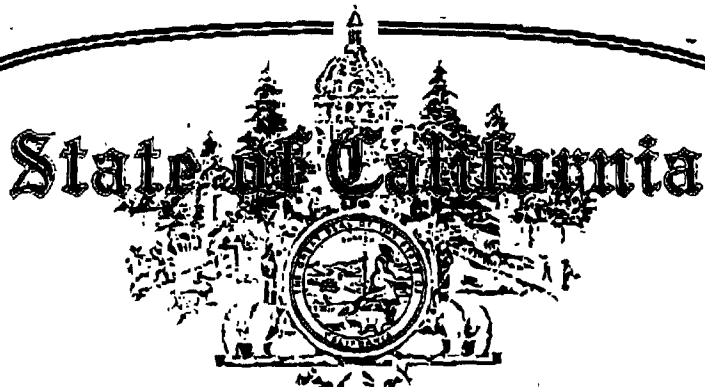
Atty Docket: 19400-00003

03/01/2002 TDIAZ1 00000055 75832061

01 FC:481

40.00 DP

TRADEMARK REEL: 002451 FRAME: 0852



SECRETARY OF STATE

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

That the attached transcript of 21 page(s) has been compared with the record on file in this office, 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

DEC 08 2000



Bill Jones

Secretary of State

AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
CLICKNET SOFTWARE CORPORATION

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

DEC 08 2000

BILL JONES, Secretary of State

Lou Ryan and David Worthington hereby certify that:

1. They are the President and Secretary, respectively, of ClickNet Software Corporation, a California corporation (the "Corporation").
2. The Amended and Restated Articles of Incorporation of the Corporation are amended and restated to read as follows:

ARTICLE I

The name of the Corporation is Intercept Security Technologies, Inc.

ARTICLE II

The purpose of the 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.

ARTICLE III

This Corporation is authorized to issue two classes of shares to be designated respectively Common Stock ("Common") and Preferred Stock ("Preferred"). The total number of shares of Common the Corporation shall have authority to issue is 80,000,000 and the total number of shares of Preferred the Corporation shall have authority to issue is 42,505,508, 1,828,000 of which are hereby designated as Series A Preferred Stock (the "Series A Preferred"), 977,547 of which are hereby designated as Series B Preferred Stock (the "Series B Preferred"), 4,898,259 of which are hereby designated Series C Preferred Stock (the "Series C Preferred"), 3,685,646 of which are hereby designated Series D Preferred Stock (the "Series D Preferred") and 31,116,056 of which are hereby designated Series A-1 Preferred Stock (the "Series A-1 Preferred"). All shares of Common and Preferred shall be without par value.

The Corporation shall from time to time in accordance with the laws of the State of California increase the authorized amount of its Common if at any time the number of shares of Common remaining unissued and available for issuance shall not be sufficient to permit conversion of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred or the Series A-1 Preferred.

The relative rights, preferences, privileges and restrictions granted to or imposed upon the Common Stock, the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred and the Series A-1 Preferred and the holders thereof are as set forth below.

Section 1. Liquidation Rights.

(a) Liquidation Preferences. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation (or the deemed occurrence of such event pursuant to subsection (c) of this Section 1 distributions to the shareholders of the Corporation shall be made in the following manner

(i) The holders of each share of Series A Preferred shall be entitled to receive an amount equal to the sum of \$1.25 (the "**Series A Original Issue Price**") (subject to adjustment for stock splits, stock dividends and recapitalizations) for each outstanding share of Series A Preferred plus an amount equal to all declared but unpaid dividends on such share prior to the date fixed for distribution (the "**Series A Liquidation Preference**"). The holders of each share of Series B Preferred shall be entitled to receive an amount equal to the sum of \$1.55 (the "**Series B Original Issue Price**") (subject to adjustment for stock splits, stock dividends and recapitalizations) for each outstanding share of Series B Preferred plus an amount equal to all declared but unpaid dividends on such share prior to the date fixed for distribution (the "**Series B Liquidation Preference**"). The holders of each share of Series C Preferred shall be entitled to receive an amount equal to the sum of \$1.9068 (subject to adjustment for stock splits, stock dividends and recapitalizations) for each outstanding share of Series C Preferred plus an amount equal to all declared but unpaid dividends on such share prior to the date fixed for distribution (the "**Series C Liquidation Preference**"). The holders of each share of Series D Preferred shall be entitled to receive an amount equal to the sum of \$1.510 (subject to adjustment for stock splits, stock dividends and recapitalizations) for each outstanding share of Common Stock into which each share of Series D Preferred is convertible pursuant to Section 2 hereof plus an amount equal to all declared but unpaid dividends on such share prior to the date fixed for distribution (the "**Series D Liquidation Preference**"). The holders of each share of Series A-1 Preferred shall be entitled to receive an amount equal to the greater of (A) the sum of \$2.568 (subject to adjustment for stock splits, stock dividends and recapitalizations) for each outstanding share of Series A-1 Preferred plus an amount equal to all declared but unpaid dividends on such share prior to the date fixed for distribution or (B) the amount the holder of such share would receive on an as if converted basis with the holders of Common as a single class in the distribution of assets of the Company with respect to Common (the "**Series A-1 Liquidation Preference**"). The Series A Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred and the Series A-1 Preferred shall rank on parity as to the receipt of the respective preferential amount for each such series and shall be superior to the Common as to the receipt of the respective preferential amounts for each such series.

(ii) All of the preferential amounts to be paid to the holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred and the Series A-1 Preferred under Section 1(a)(i) shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets of the Corporation to, the holders of the Common in connection with any such liquidation, dissolution or winding up.

(iii) If the assets and funds distributed to the holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred and the Series A-1 Preferred shall be insufficient to permit payment to such holders of the full aforesaid preferential amounts, then the entire assets or property of the Corporation legally available for distribution shall be distributed ratably to the holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred and the Series A-1 Preferred in proportion to the aggregate Series A Liquidation Preference, Series B Liquidation Preference, Series C Liquidation Preference, Series D Liquidation Preference and Series A-1 Liquidation Preference for all shares of Preferred owned by each such holder.

(b) Distribution after Payment of Liquidation Preference. After payment has been made to the holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred and the Series A-1 Preferred of the full preferential amounts as set forth in Section 1(a)(i) above, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed ratably among the holders of Common in a manner such that the amount distributed to each holder of the Common shall equal the amount obtained by multiplying the entire assets and funds of the Corporation legally available for distribution pursuant to this Section 1(b) by a fraction, the numerator of which shall be the sum of the number of shares of Common then held by the holder, and the denominator of which shall be the sum of the total number of shares of Common then outstanding.

(c) Deemed Liquidation. For purposes of this Section 1, a merger, consolidation or reorganization of the Corporation with or into any other corporation or corporations as a result of which the holders of capital stock of the Corporation immediately prior to such transaction own less than a majority of the outstanding capital stock of the Corporation, or the surviving corporation if other than the Corporation, immediately following such transaction, or a sale or other transfer of all or substantially all of the assets of the Corporation (or any series of related transactions resulting in the sale or other transfer of all or substantially all of the assets of the Corporation), shall be treated as a liquidation, dissolution or winding up.

(d) Consent. Each holder of an outstanding share of Preferred shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the General Corporation Law of California, to distributions made by the Corporation in connection with the repurchase of shares of Common issued to or held by employees or consultants upon termination of their employment or services pursuant to agreements between the Corporation and such persons providing for the Corporation's right of said repurchase.

Section 2. Conversion Rights. The holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred and the Series A-1 Preferred shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred and the Series A-1 Preferred shall be convertible, without the payment of any additional consideration by the holder thereof and 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 Preferred, into such number of fully paid and

nonassessable shares of Common as is determined (i) in the case of the Series A Preferred, by dividing \$1.25 by the Series A Conversion Price, (ii) in the case of the Series B Preferred, by dividing \$1.55 by the Series B Conversion Price, (iii) in the case of the Series C Preferred, by dividing \$0.9534 by the Series C Conversion Price, (iv) in the case of the Series D Preferred, by dividing \$0.755 by the Series D Conversion Price, and (v) in the case of the Series A-1 Preferred, by dividing \$1.284 by the Series A-1 Conversion Price, determined in each case as hereinafter provided, in effect at the time of conversion. The price at which shares of Common shall be deliverable upon conversion of the Series A Preferred without the payment of any additional consideration by the holders thereof (the "Series A Conversion Price") shall initially be \$ 1.094 per share of Common. The price at which shares of Common shall be deliverable upon conversion of the Series B Preferred without the payment of any additional consideration by the holders thereof (the "Series B Conversion Price") shall initially be \$1.315 per share of Common. The price at which shares of Common shall be deliverable upon conversion of the Series C Preferred without the payment of any additional consideration by the holders thereof (the "Series C Conversion Price") shall initially be \$0.663 per share of Common. The price at which shares of Common shall be deliverable upon conversion of the Series D Preferred without the payment of any additional consideration by the holders thereof (the "Series D Conversion Price") shall initially be \$0.755 per share of Common. The price at which shares of Common shall be deliverable upon conversion of the Series A-1 Preferred without the payment of any additional consideration by the holders thereof (the "Series A-1 Conversion Price") shall initially be \$1.284 per share of Common. The Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series D Conversion Price and the Series A-1 Conversion Price are herein referred to collectively as the "Conversion Prices." Such initial Conversion Prices shall be subject to adjustment, in order to adjust the number of shares of Common into which each series of Preferred is convertible, as hereinafter provided.

(b) Automatic Conversion.

(i) Each share of Preferred shall automatically be converted into shares of Common at the then effective and appropriate Conversion Price upon the closing ("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 for the account of the Corporation to the public at an offering price to the public (prior to underwriting commissions and expenses) of at least \$3.21 per share (as adjusted for stock splits, stock dividends, reclassifications, and like events) and in which the aggregate gross proceeds received by the Corporation (net of underwriting discounts) equal or exceed \$25,000,000 (the "Offering"). Each share of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall automatically be converted into shares of Common at the then effective and appropriate conversion price upon the affirmative vote or the written consent of holders of a majority of the then outstanding shares of the Series A Preferred, the Series B Preferred, the Series C Preferred and the Series D Preferred, voting together as a class. In the event of an automatic conversion pursuant to clause (a) of this subsection (i), the person(s) entitled to receive Common issuable upon such conversion of Preferred shall not be deemed to have converted such Preferred until immediately prior to the Closing.

(ii) Each share of Series C Preferred shall automatically be converted into shares of Common at the then effective and appropriate Conversion Price upon either (a) the

closing ("Closing") of the Offering; or (b) the affirmative vote or the written consent of holders of at least two-thirds of the then outstanding shares of the Series C Preferred voting separately as a class. In the event of an automatic conversion pursuant to clause (a) of this subsection (ii), the person(s) entitled to receive Common issuable upon such conversion of Preferred shall not be deemed to have converted such Preferred until immediately prior to the Closing.

(iii) Each share of Series A-1 Preferred shall automatically be converted into shares of Common at the then effective and appropriate Conversion Price upon either (a) the Closing of the Offering; or (b) the affirmative vote or the written consent of holders of at least two-thirds of the then outstanding shares of the Series A-1 Preferred voting separately as a class. In the event of an automatic conversion pursuant to clause (a) of this subsection (iii), the person(s) entitled to receive Common issuable upon such conversion of Preferred shall not be deemed to have converted such Preferred until immediately prior to the Closing.

(c) Mechanics of Conversion. No fractional shares of Common shall be issued upon conversion of Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation at its election shall either (i) pay cash equal to such fraction multiplied by the then effective Conversion Price or (ii) issue one whole share for each fraction of a share outstanding, after aggregating all fractional shares held by each such shareholder. Before any holder of Preferred shall be entitled to convert the same into full shares of Common pursuant to Section 2(a) hereof, he or she shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for Preferred, and shall give written notice to the Corporation at such office that he or she elects to convert the same and shall state therein his or her name or the name or names of his or her nominees in which he or she wishes the certificate or certificates for shares of Common to be issued. In the event of automatic conversion pursuant to Section 2(b), the outstanding shares of Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent 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 at such office to such holder of Preferred, or to his or her nominee or nominees, a certificate or certificates for the number of shares of Common to which he or she shall be entitled as aforesaid, together with cash in lieu of any fraction of a share. 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 to be converted, and the person or persons entitled to receive the shares of Common issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date.

(d) Adjustments to Conversion Price.

(i) Special Definitions. For purposes of this subsection 2(d), the following definitions shall apply:

10441556_3.DOC

5

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

(2) "Original Issue Date" shall mean the date of filing with the Secretary of State of the State of California of these Amended and Restated Articles of Incorporation.

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common" shall mean all shares of Common issued (or, pursuant to Section 2(d)(iii), deemed to be issued) by the Corporation after the Original Issue Date, except for shares of Common, Convertible Securities or Options therefore issued or issuable:

(A) upon conversion of shares of Preferred;

(B) as a dividend or distribution on Preferred or any event for which adjustment is made pursuant to subparagraph (d)(vii), (d)(viii) and d(ix) hereof;

(C) to any commercial banking or equipment leasing financing entities in connection with such banking or lease financing transactions as the Board of Directors shall approve, provided, that the Board of Directors shall also approve the grant of shares of Common, Convertible Securities or Options in connection therewith;

(D) to officers, directors and employees of, and consultants to, the Corporation or its subsidiaries, pursuant to a stock grant, option plan or purchase plan or other employee stock incentive program unanimously approved by the Board of Directors, other than to Terence J. Munday and Lou Ryan (to whom such shares issued shall be considered Additional Shares of Common);

(E) pursuant to a merger or consolidation of the Corporation with or into any other corporation or corporations;

(F) to corporate partners in connection with strategic transactions with operating companies unanimously approved by the Board of Directors involving research or development funding, technology licensing or joint marketing or manufacturing activities; provided, that the number of shares of Common that may be issued or issuable pursuant to this clause (F) shall not ever exceed an aggregate total of one percent of the then issued and outstanding Common; or

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

(ii) Special Adjustment Provisions for Series D and Series A-1. The Series D Conversion Price shall be subject to adjustment resulting from the occurrence of a Milestone Event(s), a Financing Transaction and/or an Appraisal in or before August 2001 (by a

reduction, but not an increase, in the Series D Conversion Price) in accordance with that certain Agreement and Plan of Reorganization dated August 1999 entered into among the Corporation and CoreKT Security Systems, Inc. (the "Reorganization Agreement"), a copy of which agreement is on file at the Corporation's principal offices. The Series A-1 Conversion Price shall be subject to adjustment (by a reduction, but not an increase, in the Series A-1 Conversion Price) concurrently with the adjustment of the Series D Conversion Price pursuant to the Reorganization Agreement as follows: upon each such adjustment that results in an adjusted Series D Conversion Price of less than \$0.583 per share, the Series A-1 Conversion Price shall be adjusted to equal (x) the Series A-1 Conversion Price immediately prior to such adjustment minus (y) 0.4323 multiplied by (\$0.583 minus the adjusted Series D Conversion Price). The foregoing figures are subject to adjustment for stock splits, stock dividends, stock combinations and other recapitalizations.

(iii) Deemed Issuances of Additional Shares of Common.

(1) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common 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 issued as of the time of such issue or, in the case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common shall not be deemed to have been issued with respect to an adjustment of the Conversion Price for any series of Preferred unless the consideration per share (determined pursuant to subsection 2(d)(viii) hereof) of such Additional Shares of Common would be less than the Conversion Price of such series of Preferred in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common are deemed to be issued:

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

(B) 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 decrease or increase in the number of shares of Common issuable, upon the exercise, conversion or exchange thereof, the Conversion Prices computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) 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 Prices computed upon the original issue thereof (or upon the

10441556_3.DOC

7

occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

1) in the case of Convertible Securities or Options for Common, the only Additional Shares of Common issued were the shares of Common, 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 such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

2) 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 deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to subsection 2(d)(viii) upon the issue of the Convertible Securities with respect to which such Options were actually exercised,

(D) no readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Conversion Prices to an amount which exceeds the lower of (i) the Conversion Prices on the original adjustment date, or (ii) the Conversion Prices that would have resulted from any issuance of Additional Shares of Common between the original adjustment date and such readjustment date;

(E) in the case of any Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of the Conversion Prices shall be made until the expiration or exercise of all such Options issued on the same date, whereupon such adjustment shall be made in the same manner provided in clause (C) above; and

(F) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Prices which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Prices shall be adjusted pursuant to this subsection 2(d)(iii) as of the actual date of their issuance.

(iv) Adjustment of Series A and Series B Conversion Prices Upon Issuance of Additional Shares of Common. In the event that the Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to subsection 2(d)(iii)), without consideration or for a consideration per share less than the Series A Conversion Price or the Series B Conversion Price in effect on the date of or immediately prior to such issue, then and in such event, such respective Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-tenth of one

cent) determined by multiplying such Conversion Price by a fraction (x) the numerator of which shall be (1) the number of shares of Common outstanding immediately prior to such issue plus (2) the number of shares of Common which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at the Conversion Price, and (y) the denominator of which shall be (1) the number of shares of Common outstanding immediately prior to such issue plus (2) the number of such Additional Shares of Common so issued, provided that for the purposes of this subsection (iv), all shares of Common issuable upon exercise, conversion or exchange of outstanding Options or Convertible Securities, as the case may be, shall be deemed to be outstanding, and immediately after any Additional Shares of Common are deemed issued pursuant to subsection (iii) above, such Additional Shares of Common shall be deemed to be outstanding, and provided further that such Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$0.001, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.001 or more.

(v) Adjustment of Series C Conversion Price Upon Issuance of Additional Shares of Common. In the event that the Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to subsection 2(d)(ii)), without consideration or for a consideration per share less than the Series C Conversion Price in effect on the date of or immediately prior to such issue, then and in such event, the Series C Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-tenth of one cent) determined by multiplying the Series C Conversion Price by a fraction (x) the numerator of which shall be (1) the number of shares of Common (including any shares of Common into which shares of Preferred could be converted) outstanding immediately prior to such issue, plus (2) the number of shares of Common which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at the Series C Conversion Price, and (y) the denominator of which shall be (1) the number of shares of Common outstanding immediately prior to such issue (including any shares of Common into which shares of Preferred could be converted) plus (2) the number of such Additional Shares of Common so issued, provided that for the purposes of this subsection (v), all shares issuable upon conversion of Preferred shall be treated as outstanding. Shares issuable upon exercise of options or warrants to purchase Common or Preferred outstanding as of October 7, 1997 and shares of Common owned by Terence J. Munday and subject to vesting pursuant to the Corporation's repurchase options shall not be treated as outstanding. Notwithstanding the prior sentence, immediately after any Additional Shares of Common are deemed issued pursuant to subsection (iii) above, such Additional Shares of Common shall be deemed to be outstanding, and provided further that such Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$0.001, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.001 or more.

(vi) Adjustment of Series D Conversion Price Upon Issuance of Additional Shares of Common. In the event that the Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to subsection

2(d)(iii)) at any time after August 3, 2001, without consideration or for a consideration per share less than the product of the Series D Conversion Price in effect on the date of or immediately prior to such issue, and in such event, such respective Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-tenth of one cent) determined by multiplying such Conversion Price by one minus the product of one-fifth times one minus a fraction (x) the numerator of which shall be: (1) the number of shares of Common outstanding immediately prior to such issue plus (2) the number of shares of Common which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at the Conversion Price, and (y) the denominator of which shall be (1) the number of shares of Common outstanding immediately prior to such issue plus (2) the number of such Additional Shares of Common so issued (the "Fraction"), which calculation may also be expressed as:

$$\text{Conversion Price} \times (1 - 1/5(1 - \text{the Fraction}))$$

provided that for the purposes of this subsection (vi), all shares of Common issuable upon exercise, conversion or exchange of outstanding Options or Convertible Securities, as the case may be, shall be deemed to be outstanding, and immediately after any Additional Shares of Common are deemed issued pursuant to subsection (iii) above, such Additional Shares of Common shall be deemed to be outstanding, and provided further that such Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$0.001, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.001 or more.

(vii) Adjustment of Series A-1 Conversion Price Upon Issuance of Additional Shares of Common. In the event that the Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to subsection 2(d)(iii)), without consideration or for a consideration per share less than the Series A-1 Conversion Price in effect on the date of or immediately prior to such issue, then and in such event, the Series A-1 Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-tenth of one cent) determined by multiplying the Series A-1 Conversion Price by a fraction (x) the numerator of which shall be (1) the number of shares of Common (including any shares of Common into which shares of Preferred could be converted) outstanding immediately prior to such issue, plus (2) the number of shares of Common which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at the Series A-1 Conversion Price, and (y) the denominator of which shall be (1) the number of shares of Common outstanding immediately prior to such issue (including any shares of Common into which shares of Preferred could be converted) plus (2) the number of such Additional Shares of Common so issued, provided that for the purposes of this subsection (vii), all shares issuable upon conversion of Preferred shall be treated as outstanding. Notwithstanding the prior sentence, immediately after any Additional Shares of Common are deemed issued pursuant to subsection (iii) above, such Additional Shares of Common shall be deemed to be outstanding, and provided further that such Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$0.001, but any such amount shall be carried forward and reduction with respect thereto

made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.001 or more.

(viii) Determination of Consideration. For purposes of this subsection 2(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

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

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(C) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to subsection 2(d)(iii)(1), relating to Options and Convertible Securities, shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(y) the maximum number of shares of Common (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(ix) Adjustments for Stock Dividends, Distributions, Subdivisions, Combinations or Consolidation of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend or make any other distribution on Common payable in Common, or in the event the outstanding shares of Common shall be subdivided (by stock split, or otherwise), into a greater number of shares of Common, the Conversion Price for each series of Preferred then in effect shall, concurrently with the effectiveness of such dividend, distribution, or subdivision, be proportionately decreased. In

the event the outstanding shares of Common shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common, the Conversion Price for each Series of Preferred then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(x) Adjustments for Other Distributions. In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common entitled to receive, any distribution payable in securities of the Corporation other than shares of Common, then and in each such event provision shall be made so that the holders of Preferred shall receive upon conversion thereof, in addition to the number of shares of Common receivable thereupon, the amount of securities of the Corporation which they would have received had their Preferred been converted into Common on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 2 with respect to the rights of the holders of Preferred.

In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends), or options or rights not referred to in subsection 2(d)(iii), then, in each such case for the purpose of this subsection 2(d), the holders of Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common of the Corporation into which their shares of Preferred are convertible as of the record date fixed for the determination of the holders of Common of the Corporation entitled to receive such distribution.

(xi) Adjustments for Reclassification, Exchange, and Substitution. If the Common issuable upon conversion of Preferred shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), the Conversion Price for each series of Preferred then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Preferred shall be convertible into, in lieu of the number of shares of Common which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common that would have been subject to receipt by the holders upon conversion of Preferred immediately before that change.

(xii) Reorganization, Mergers, Consolidations, or Sales of Assets. Subject to Section 1 hereof, if at any time or from time to time there shall be a capital reorganization of the Common (other than a subdivision, combination, reclassification, or exchange of shares provided for elsewhere in this Section 2) or a merger or consolidation of the Corporation with or into another corporation, or the sale of all or substantially all of the Corporation's properties and assets to any other person, then, as a part of such reorganization, merger, consolidation, or sale, provision shall be made so that the holders of Preferred shall thereafter be entitled to receive upon conversion of Preferred, the number of shares of stock or other securities or property of the Corporation, or of the successor corporation resulting from such merger or consolidation or sale, to which a holder of Common deliverable upon conversion

would have been entitled on such capital reorganization, merger, consolidation, or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of Section 2 with respect to the rights of the holders of Preferred after the reorganization, merger, consolidation, or sale to the end that the provisions of this Section 2 (including adjustment of the Conversion Price of each series of Preferred then in effect and the of shares purchasable upon conversion of Preferred) shall be applicable after that event as nearly equivalent as may be practicable.

(e) No Impairment. Except in accordance with Section 6 below, the Corporation will not, by amendment of its Amended and Restated Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 2 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 2, 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 a certificate certified by the Corporation's chief financial officer 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, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price in effect at that time for each series of Preferred, and (iii) the number of shares of Common and the amount, if any, of other property which at the time would be received upon the conversion of Preferred.

(g) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend which is the same as cash dividends paid in previous quarters) or other distribution, the Corporation shall mail to each holder of Preferred at least ten (10) days prior to the date specified herein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

Section 3. Redemption Rights.

(a) Series C Preferred Stock Redemption.

(i) Subject to the provisions of Section 3(d) below, in the event of a written notice of election delivered to the Company at any date after September 8, 2005 (the "Series C Redemption Date") by the holders of at least two-thirds of the outstanding shares of Series C Preferred (the "Requisite Series C Shares") to effect the provisions of this Section 3, the Corporation shall redeem, out of and only to the extent of funds legally available therefor, on the sixtieth day after such Series C Redemption Date, all of the issued, outstanding and unconverted shares of Series C Preferred.

10441556_3.DOC

13

P.14

SEP 28 11:05AM GDR: LA CONFLICTS

(ii) Each share of Series C Preferred shall be redeemed at a price (the "Series C Redemption Price") equal to the greater of (x) \$0.9534 (subject to adjustment for stock splits, stock dividends, stock combinations and other recapitalizations) plus any declared but unpaid dividends prior to the Series C Redemption Date and (y) the Fair Market Value for such share of Series C Preferred, as determined pursuant to Section 3(e) below.

(b) Series D Preferred Stock Redemption.

(i) Subject to the provisions of Section 3(d) below, in the event of a written notice of election delivered to the Company at any date after September 8, 2005 (the "Series D Redemption Date") by the holders of at least a majority of the outstanding shares of Series D Preferred (the "Requisite Series D Shares") to effect the provisions of this Section 3, the Corporation shall redeem, out of and only to the extent of funds legally available therefor, on the sixtieth day after such Series D Redemption Date, up to twenty percent (20%) of the issued, outstanding and unconverted shares of Series D Preferred.

(ii) Each share of Series D Preferred shall be redeemed at a price (the "Series D Redemption Price") equal to the greater of (x) \$0.755 (subject to adjustment for stock splits, stock dividends, stock combinations and other recapitalizations) plus any declared but unpaid dividends prior to the Series D Redemption Date and (y) the Fair Market Value of such share of Series D Preferred, as determined in accordance with Section 3(e) below.

(c) Series A-1 Preferred Stock Redemption.

(i) Subject to the provisions of Section 3(d) below, in the event of a written notice of election delivered to the Company (the "Election"), from time to time, at any time after September 8, 2005 (the "Series A-1 Redemption Date") by the holders of at least a majority of the then outstanding shares of Series A-1 Preferred (the "Requisite Series A-1 Shares") to effect the provisions of this Section 3, the Corporation shall redeem, out of and only to the extent of funds legally available therefor, on the sixtieth day after such Series A-1 Redemption Date, all of the issued, outstanding and unconverted shares of Series A-1 Preferred of such electing holders.

(ii) Each of such electing holder's shares of Series A-1 Preferred shall be redeemed at a price (the "Series A-1 Redemption Price") equal to the greater of (x) \$1.284 (subject to adjustment for stock splits, stock dividends, stock combinations and other recapitalizations) plus any declared but unpaid dividends prior to the Series A-1 Redemption Date and (y) the Fair Market Value of such share of Series A-1 Preferred, as determined in accordance with Section 3(e) below.

(d) Preferred Stock Redemption Procedures: Pro Rata Allocation.

(i) In the event of the election by the holders of the Requisite Series C Shares, the Requisite Series D Shares or the Requisite Series A-1 Shares, as provided in Section 3(a), Section 3(b) or Section 3(c) above, the Corporation shall send to all holders of Series C Preferred, all holders of Series D Preferred and all holders of Series A-1 Preferred, not less than twenty (20) and not more than sixty (60) days before the applicable Redemption Date, at the address last shown on the records of the Corporation for such holder, the audited financial

statements of the Corporation for the prior fiscal year and the most recent unaudited year-to-date financial statements of the Corporation, together with a written notice (the "Redemption Notice") advising such holders of the proposed redemption pursuant to this Section 3, specifying the Series C Redemption Date, the Series C Redemption Price, the Series D Redemption Date, the Series D Redemption Price, the Series A-1 Redemption Date, the Series A-1 Redemption Price and the place at which payment may be obtained.

(A) If the written notice of election is delivered by the Requisite Series A-1 Shares, then (x) any holder of shares of Series A-1 Preferred whose shares were not included in the Election, may by delivering written notice to the Company of such holder's intent to participate in the redemption, thereby elect to have its shares of Series A-1 Preferred redeemed at the Series A-1 Redemption Price on the Series A-1 Redemption Date and (y) holders of the Requisite Series C Shares may by delivering written notice to the Company of such holders' intent to participate in the redemption, thereby elect to have all of the outstanding shares of Series C Preferred redeemed at the Series C Redemption Price on the Series A-1 Redemption Date, and (z) holders of the Requisite Series D Shares may by delivering written notice to the Company of such holders' intent to participate in the redemption, thereby elect to have up to twenty percent (20%) of the outstanding shares of Series D Preferred redeemed at the Series D Redemption Price on the Series A-1 Redemption Date.

(B) If the written notice of election is delivered by the Requisite Series C Shares, then (x) any holder of shares of Series A-1 Preferred whose shares were not included in the Election, may by delivering written notice to the Company of such holder's intent to participate in the redemption, provided that holders of at least the Requisite Series A-1 Shares so elect, thereby elect to have its shares of Series A-1 Preferred redeemed at the Series A-1 Redemption Price on the Series C Redemption Date and (y) holders of the Requisite Series D Shares may by delivering written notice to the Company of such holders' intent to participate in the redemption, thereby elect to have up to twenty percent (20%) of the outstanding shares of Series D Preferred redeemed at the Series D Redemption Price on the Series C Redemption Date.

(C) If the written notice of election is delivered by the Requisite Series D Shares, then (x) any holder of shares of Series A-1 Preferred whose shares were not included in the Election, may by delivering written notice to the Company of such holder's intent to participate in the redemption, provided that holders of at least the Requisite Series A-1 Shares so elect, thereby elect to have its shares of Series A-1 Preferred redeemed at the Series A-1 Redemption Price on the Series D Redemption Date and (y) holders of the Requisite Series C Shares may by delivering written notice to the Company of such holders' intent to participate in the redemption, thereby elect to have all of the outstanding shares of Series C Preferred redeemed at the Series C Redemption Price on the Series D Redemption Date.

(ii) Shares of Series A-1 Preferred, shares of Series C Preferred and shares of Series D Preferred shall be redeemed from each holder of Series A-1 Preferred, each holder of Series C Preferred and each holder of Series D Preferred who have elected to have the Corporation redeem shares of Series A-1 Preferred, Series C Preferred or Series D Preferred pursuant to Section 3(a), Section 3(b), Section 3(c), and/or Section 3(d)(i). On or after the applicable Redemption Date, each holder of Series A-1 Preferred, Series C Preferred or Series D

Preferred to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the applicable Redemption Notice, and thereupon the applicable 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. As promptly as practicable thereafter the Corporation shall issue and deliver to or upon the written order of such holder, at such office or other place designated by the holder, a check for cash with respect to the shares so redeemed.

(iii) From and after the applicable Redemption Date, unless there shall have been a default in payment of the applicable Redemption Price, all rights of such holders of the outstanding shares of Series A-1 Preferred, Series C Preferred or Series D Preferred to be redeemed shall cease as holders of such Series A-1 Preferred, Series C Preferred or Series D Preferred, as the case may be (except the right to receive the appropriate Series A-1 Redemption Price, Series C Redemption Price or Series D Redemption Price, as applicable, without interest upon surrender of their certificate or certificates), and such shares shall not thereafter be transferred on the books of the Corporation, be convertible into shares of Common or be deemed to be outstanding for any purpose whatsoever. If (A) funds of the Corporation legally available for redemption of shares of Series A-1 Preferred, Series C Preferred or Series D Preferred scheduled to be redeemed on a Redemption Date are insufficient to redeem the total number of shares of Series A-1 Preferred, Series C Preferred and Series D Preferred to be redeemed on such date or (B) the redemption of the shares of Series A-1 Preferred, the Series C Preferred and the Series D Preferred to be redeemed on a Redemption Date would cause the difference obtained by subtracting the total current liabilities of the Corporation from the total current assets of the Corporation (such difference herein referred to as "Working Capital") to be less than zero (0) on such Redemption Date, then in either instance those funds which are available will be used to redeem the maximum possible number of such shares ratably among the holders of shares of Series A-1 Preferred, Series C Preferred and Series D Preferred in a manner such that the number of shares to be redeemed for each holder of Series A-1 Preferred, Series C Preferred and Series D Preferred shall equal the amount obtained by multiplying the total number of shares to be redeemed on such Redemption Date by a fraction, the numerator of which shall be the number of shares of Common issuable upon conversion of the shares of Series A-1 Preferred, Series C Preferred and twenty percent (20%) of the number of shares of Series D Preferred held by such holder, and the denominator of which shall be the number of shares of Common issuable upon conversion of the total number of outstanding shares of Series A-1 Preferred, Series C Preferred and Series D Preferred to be redeemed on such Redemption Date. In such event, notwithstanding the first sentence of this Section 3(d)(iii), the shares of Series A-1 Preferred, Series C Preferred and Series D Preferred not redeemed shall remain outstanding and be entitled to all the rights and preferences provided herein and a new certificate shall be issued representing the unredeemed shares. At the end of any fiscal quarter of the Corporation at which (x) additional funds of the Corporation are legally available for the redemption of the shares of Series A-1 Preferred, Series C Preferred and Series D Preferred that have been the subject of an election for redemption but remain outstanding or (y) the Corporation's Working Capital is greater than zero (0), then in either instance within thirty (30) days thereafter the Corporation will, subject to the limitations set forth in Section 3(d)(iii)(A) and Section 3(d)(iii)(B), redeem the balance of the shares which the Corporation has become obligated to redeem on such Redemption Date but which it has not redeemed.

(c) Fair Market Value. For purposes of this Section 3, the term "Fair Market Value" shall mean:

(i) At any time prior to the initial public offering (the "Public Offering") of the Common under the U.S. Securities Act of 1933, as amended (the "1933 Act"), as mutually agreed upon by the Company and holders of two-thirds of the Series C Preferred, Series D Preferred or Series A-1 Preferred, as applicable, or, if such parties cannot reach agreement on the Fair Market Value within thirty (30) days, as determined by an appraisal by top tier investment banking firm agreed to by the Company and holders of at least two-thirds of the Series C Preferred, Series D Preferred or Series A-1 Preferred, as applicable.

(ii) At any time after the Public Offering of the Common under the 1933 Act, if the Common is listed on the New York Stock Exchange, the average of the closing prices of the Common over the ten (10) trading days immediately prior to the applicable Redemption Date.

(iii) At any time after the Public Offering of the Common under the 1933 Act, if the Common is listed on the NASDAQ National Market System or Small Cap Market, the average of the closing bid and ask prices of the Common over the ten (10) trading days immediately prior to the Redemption Date.

Section 4. Voting Rights.

(a) Except as otherwise required by law, each share of Common issued and outstanding shall have one vote and each share of Preferred issued and outstanding shall have the number of votes equal to the number of Common shares into which the Preferred is convertible as adjusted from time to time pursuant to Section 2 hereof, and the holders of Preferred shall be entitled to vote with the holders of Common on all matters submitted to a vote of shareholders, except those required hereunder or by law to be submitted to a class vote.

(b) For so long as 1,000,000 shares of Preferred remains outstanding (as adjusted for stock splits, stock dividends, reclassifications, and like events), the holders of at least a majority of Preferred, voting together as a class, shall be entitled to elect one (1) member to the Company's Board of Directors.

(c) For so long as 1,000,000 shares of Series C Preferred remain outstanding (as adjusted for stock splits, stock dividends, reclassifications, and like events), the holders of the Series C Preferred, voting separately as a class, shall be entitled to elect two (2) members of the Company's Board of Directors.

(d) For so long as 1,000,000 shares of Series D Preferred remain outstanding (as adjusted for stock splits, stock dividends, reclassifications, and like events), the holders of the Series D Preferred, voting separately as a class, shall be entitled to elect one (1) member to the Company's Board of Directors.

(e) For so long as 4,000,000 shares of Series A-1 Preferred remain outstanding (as adjusted for stock splits, stock dividends, reclassifications, and like events), the

holders of the Series A-1 Preferred, voting separately as a class, shall be entitled to elect two (2) members to the Company's Board of Directors.

Section 5. Dividend Rights.

(a) The holders of outstanding shares of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series A-1 Preferred shall be entitled to receive, when and as declared by the Board of Directors and out of funds legally available therefore, dividends at the rate of (i) \$0.100 per annum for each share of Series A Preferred held by them, (ii) \$0.124 per annum for each share of Series B Preferred held by them, (iii) \$0.0762 per annum for each share of Series C Preferred held by them, (iv) \$0.0604 per annum for each share of Common Stock into which each share of Series D Preferred Stock held by them is convertible pursuant to Section 2 hereof, and (v) \$0.10272 per annum for each share of Series A-1 Preferred held by them, payable in preference and priority to any payment of any dividend on the Common, when and as declared by the Board of Directors. The right to such dividends on shares of Preferred shall not be cumulative, and no right shall accrue to holders of Preferred by reason of the fact that dividends on said shares are not declared or paid in any prior year. No dividends or other distributions shall be made with respect to the Common in any fiscal year, other than dividends payable solely in Common, until all such dividends for that year have been paid or set apart for payment. In the event that the Corporation shall have declared and unpaid dividends outstanding immediately prior to, and in the event of, conversion of Preferred the Corporation shall, at its option, pay in cash to the holder(s) of Preferred subject to conversion the full amount of any such dividends or convert such dividends into Common at the then effective Conversion Prices referred to in Section 2 or a combination thereof, together with cash in lieu of any fractional share of Common.

(b) Dividends may be paid on the Common as and when declared by the Board of Directors, subject to the prior dividend rights of Preferred. The holders of outstanding shares of Preferred shall also be entitled to receive such dividends as though they were the holders of the number of shares of Common into which their shares of Preferred would be convertible as of the record date fixed for the determination of the holders of the Common entitled to receive such dividends.

Section 6. Protective Provisions.

(a) Series C Preferred. For so long as 1,000,000 shares of Series C Preferred shall be outstanding (as adjusted for stock splits, stock dividends, reclassifications, and like events), the Corporation shall not, without first obtaining the affirmative vote or written consent of holders of at least two-thirds of such outstanding shares of Series C Preferred voting separately as a class:

(i) amend or repeal any provision of, or add any provision to, the Corporation's Amended and Restated Articles of Incorporation or Bylaws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of Series C Preferred.

(ii) create or issue any new series of Preferred or reclassify any Common shares into shares having any preference or priority as to dividends or assets superior to any such preference or priority of Series C Preferred,

(iii) approve any merger, consolidation, or other corporate reorganization, or any transaction or series of transactions in which in excess of fifty percent (50%) of the Corporation's voting power is transferred by the Corporation or in which all or substantially all of the assets of the Corporation are sold.

(b) Series A-1 Preferred. For so long as 8,956,387 shares of Series A-1 Preferred shall be outstanding (as adjusted for stock splits, stock dividends, reclassifications, and like events), the Corporation shall not, without first obtaining the affirmative vote or written consent of holders of at least two-thirds of such outstanding shares of Series A-1 Preferred voting separately as a class:

(i) amend or repeal any provision of, or add any provision to, the Corporation's Amended and Restated Articles of Incorporation or Bylaws,

(ii) create or issue any new series of capital stock or reclassify any Common shares into shares having parity with or any preference or priority as to dividends, assets or any other rights superior to any such preference, priority or other rights of the Series A-1 Preferred,

(iii) pay any dividend to or redeem any shares of Common or any other capital stock of the Corporation that is designated by the Board of Directors as junior to the Series A-1 Preferred with respect to any preference of priority as to dividends or assets, or

(iv) approve any voluntary liquidation of the Corporation.

and the Corporation shall not, without first obtaining the affirmative vote or written consent of holders of at least a majority of such outstanding shares of Series A-1 Preferred voting separately as a class:

(v) approve any merger, consolidation, or other corporate reorganization, or any transaction or series of transactions in which in excess of fifty percent (50%) of the Corporation's voting power is transferred by the Corporation or in which all or substantially all of the assets of the Corporation are sold.

Section 7. Residual Rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common.

Section 8. Status of Converted Stock. In the event any shares of Preferred shall be converted pursuant to Section 2 hereof the shares so converted shall be canceled and shall not be reissuable by the Corporation, and the Amended and Restated Articles of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized stock.

Section 9. Partial Conversion. In the event that less than all of a holder's shares of Preferred shall be converted at any time pursuant to Section 2 hereof, the Corporation shall promptly upon receipt of such holder's certificate for shares to be converted, issue a new certificate to such holder representing the unconverted shares.

ARTICLE IV

I. Limitation of Directors' Liability. The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

II. Indemnification of Corporate Agents. The Corporation is authorized to indemnify the directors and officers of the Corporation to the fullest extent permissible under California law.

III. Repeal or Modification. Any repeal or modification of the foregoing provisions of this Article IV by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

10441556_3.DOC

20

P. 21

SEP 28 '01 11:09AM GD&C LA CONFLICTS

TRADEMARK
REEL: 002451 FRAME: 0873

3. The foregoing amendment and restatement of the Amended and Restated Articles of Incorporation has been duly approved by the Board of Directors.

4. The foregoing amendment and restatement of the Amended and Restated Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the California Corporations Code. The total number of outstanding shares of Common Stock of the Corporation is 12,000,661. The total number of outstanding shares of Series A Preferred is 1,600,000. The total number of outstanding shares of Series B Preferred is 875,680. The total number of outstanding shares of Series C Preferred is 4,898,259. The total number of outstanding shares of Series D Preferred is 3,685,646. The total number of outstanding shares of Series A-1 Preferred is 20,646,118.

The percentage vote required was (i) more than 50% of the Common, voting separately, (ii) more than 50% of the outstanding Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series A-1 Preferred, voting together as a class, (iii) more than 66 2/3% of the outstanding Series C Preferred, voting separately, (iv) more than 50% of the outstanding Series D Preferred, voting separately, and (v) more than 66 2/3% of the outstanding Series A-1 Preferred, voting separately.

The undersigned declare under penalty of perjury that the matters set forth in the foregoing Certificate are true of our own knowledge.

Executed at San Jose, California on December 7, 2000.

Lou Ryan

Lou Ryan, President
David Worthington

David Worthington, Secretary



10441556_3