

FORM PTO-1594  
1-31-92

08-13-2002

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office



To the Honorable Commissioner of

102187926

...hed original documents or copy thereof.

<p>1. Name of conveying party(ies): KangarooNet, Inc. <span style="float: right;"><i>7.16.02</i></span></p> <p><input type="checkbox"/> Individual(s)                      <input type="checkbox"/> Association  <input type="checkbox"/> General Partnership              <input type="checkbox"/> Limited Partnership  <input checked="" type="checkbox"/> Corporation-State of California  <input type="checkbox"/> Other _____                  Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>		<p>2. Name and address of receiving party(ies): Name: <u>Entopia, Inc.</u> <span style="float: right;">6</span></p> <p>Internal Address: <u>1301 Shoreway Road, Suite 302</u></p> <p>Street Address: _____</p> <p>City <u>Belmont</u> State <u>California</u> ZIP <u>94002</u></p> <p><input type="checkbox"/> Individual(s) citizenship _____  <input type="checkbox"/> Association _____  <input type="checkbox"/> General Partnership _____  <input type="checkbox"/> Limited Partnership _____  <input checked="" type="checkbox"/> Corporation-State of California _____  <input type="checkbox"/> Other _____</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                  (Designation must be a separate document from Assignment)                  Additional name(s) &amp; address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>3. Nature of conveyance:</p> <p><input type="checkbox"/> Assignment                              <input type="checkbox"/> Merger  <input type="checkbox"/> Security Agreement                  <input checked="" type="checkbox"/> Change of Name  <input type="checkbox"/> Other _____</p> <p>Execution Date: <u>October 17, 2001</u></p>			
<p>4. Application number(s) or registration number(s):</p> <p>A. Trademark Application No.(s) <u>SEE ATTACHED SCHEDULE</u></p> <p>B. Trademark registration No.(s) <u>NONE</u></p> <p>Additional numbers attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>			
<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>PENNIE &amp; EDMONDS LLP                  3300 Hillview Avenue                  Palo Alto, California 94304</p> <p>Attn.: <u>Andrew J. Gray IV</u></p> <p>File No.: <u>10644-0029-999</u></p>		<p>6. Total number of applications and registrations involved: <u>12</u></p> <p>7. Total fee (37 CFR 3.41):.....\$ <u>315.00</u></p> <p>Please charge to the deposit account listed in Section 8.</p> <p>8. Deposit account number: <u>16-1150</u></p>	

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.*

<p><u>Andrew J. Gray IV</u> Name of Person Signing    Reg. No.</p>	 Signature	<p><u>July 15, 2002</u> Date</p>
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Total number of pages comprising cover sheet: 17

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

08/12/2002 DBYRNE 00000093 161150 76307060  
 01 FC:481 40.00 CH  
 02 FC:482 275.00 CH

# Trademarks Schedule

Mark Name	App # App Date	Org # (Reg #) Org Date (Reg Date)	Renewal Date	Status	Country
COLLECT COLLABORATE CAPITALIZE	76/307060 AUGUST 28, 2001			PENDING APP.	UNITED STATES
ENTOPIA	76/324502 OCTOBER 12, 2001			PUBLISHED	UNITED STATES
ENTOPIA QUANTUM	76/324504 OCTOBER 12, 2001			PUBLISHED	UNITED STATES
ENTOPIZO	76/324503 OCTOBER 12, 2001			PENDING APP.	UNITED STATES
IKANGAROO	76/088902 JULY 14, 2000			ABANDONED	UNITED STATES
KANGAROO SMARTPOUCH	76/132418 SEPTEMBER 20, 2000			PENDING APP.	UNITED STATES
KANGAROO-PERSONAL	76/089285 JULY 14, 2000			ABANDONED	UNITED STATES
KANGAROO-WEB	76/089875 JULY 14, 2000			ABANDONED	UNITED STATES
KANGAROONET	76/088961 JULY 14, 2000			PENDING APP.	UNITED STATES
SMARTPOUCH	76/131991 SEPTEMBER 20, 2000			PUBLISHED	UNITED STATES
TURNING INTERNET WORK INTO AN ASSET	76/091149 JULY 17, 2000			PUBLISHED	UNITED STATES
TURNING KNOWLEDGE INTO ACTION	76/307491 AUGUST 29, 2001			PUBLISHED	UNITED STATES

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SECRETARY OF STATE

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

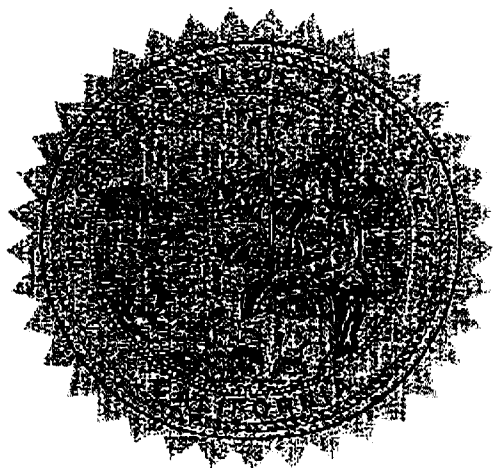
That the attached transcript of 14 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

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

OCT 22 2001

*Bill Jones*

Secretary of State



AUG 17 1991

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

**CERTIFICATE OF AMENDMENT TO THE  
RESTATED ARTICLES OF INCORPORATION  
OF  
KANGAROONET, INC.**

**OCT 19 2001**

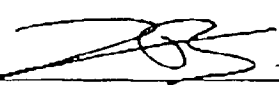
**BILL JONES, Secretary of State**

Lionel S. Baraban and Assim Jang hereby certify that:

1. They are the President & CEO and Secretary, respectively, of KangarooNet, Inc., a California corporation.
2. The Restated Articles of Incorporation of this corporation are amended and restated in their entirety to read as set forth in Exhibit A attached hereto.
3. The attached amendment and restatement of this Corporation's Restated Articles of Incorporation has been duly approved by the Corporation's board of directors.
4. The attached amendment and restatement of the Restated Articles of Incorporation has been duly approved by the Company's shareholders in accordance with Sections 902 and 903 of the California Corporations Code. The total number of outstanding shares of capital stock of the Company is 6,615,810 shares of Common Stock, 6,296,000 shares of Series A Preferred Stock and 11,429,900 shares of Series B Preferred Stock. The number of shares approving the amendment equaled or exceeded that required. The percentage approval required was more than 50% of the outstanding shares of Common Stock, voting together as a single class, more than 50% of the Common Stock and each series of Preferred Stock, voting together as a single class, more than 50% of the outstanding Series A Preferred Stock, voting separately as a single class, and more than 50% of the outstanding Series B Preferred Stock, voting separately as a single class.

The undersigned 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 their own knowledge.

Dated: October 17, 2001.

  
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 Lionel S. Baraban, President & CEO

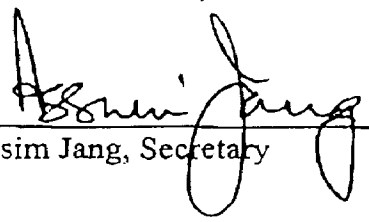
  
 \_\_\_\_\_  
 Assim Jang, Secretary

EXHIBIT AAMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
KANGAROONET, INC.

## I

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

## 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.

## III

The Corporation is authorized to issue only two classes of shares, designated respectively as Common Stock (the "Common Stock") and Preferred Stock (the "Preferred Stock"). The Corporation is authorized to issue 32,000,000 shares of Common Stock and 18,296,000 shares of Preferred Stock. The Preferred Stock is divided into two series. The first series consists of 6,296,000 shares and is designated as "Series A Preferred Stock" (the "Series A Preferred"). The second series consists of 12,000,000 shares and is designated as "Series B Preferred Stock" (the "Series B Preferred").

## IV

The relative rights, preferences, privileges and restrictions granted to or imposed upon the Common Stock and the Preferred Stock and the holders thereof are as follows:

## SECTION 1. DIVIDENDS.

The holders of record of Common Stock (the "Common Holders") and the holders of record of Preferred Stock (the "Preferred Holders") shall be entitled to receive dividends out of funds legally available therefor, when, as, and if declared by the board of directors of the Company (the "Board"), provided that:

1.1 Preferential Dividends. The holders of record of Series A Preferred (the "Series A Holders") and the holders of record of the Series B Preferred (the "Series B Holders") shall be entitled to receive a noncumulative dividend in preference to the Common Stock of \$0.04 per fiscal year per share

of Series A Preferred and \$0.126 per fiscal year per share of Series B Preferred (as adjusted for any stock splits, stock dividends, recapitalizations or the like effected with respect to the Preferred Stock after the date these Restated Articles of Incorporation)

1.2 Paid by Preference. No dividend shall be declared or paid with respect to the Common Stock or the Series A Preferred until the full dividend for the applicable period has been declared and paid on the Series B Preferred. Upon full payment of the Series B dividend, the Series A Preferred shall be paid in full or if less than full dividends are paid or declared and set apart for payment to the holders of the Series A Preferred Stock, then the amount to be paid or declared and set aside for payment shall be paid ratably to the holders of the Series A Preferred and in preference and prior to any dividends paid in respect to the Common Stock. Dividends, if paid, or if declared and set apart for payment, must be paid, or declared and set apart for payment on, all outstanding shares of Preferred Stock.

1.3 Additional Dividends. After payment in full of such preferential dividends, any additional dividends shall be paid ratably to the Common Holders and Preferred Holders on an as-converted basis.

1.4 Non-cumulative. Such dividends shall be noncumulative, and no right shall accrue to the Preferred Holders by reason of the fact that such dividends are not declared in any period.

## SECTION 2. LIQUIDATION PREFERENCES

2.1 Liquidation. In the event of any liquidation, dissolution, Business Combination, as defined below, or winding up of the Company, whether voluntary or involuntary:

(i) The Preferred Holders shall be entitled to receive a liquidation preference in the amount of \$0.1985 per share of Series A Preferred and \$1.575 per share of Series B Preferred (as adjusted for any stock splits, stock dividends, recapitalizations or the like effected with respect to the Preferred Stock after the date these Restated Articles of Incorporation) plus any declared but unpaid dividends thereon (the "Liquidation Preference").

(ii) If the assets of the Company legally available for distribution to the shareholders (the "Assets") are insufficient to permit the payment of such full Liquidation Preferences of the Series A Preferred liquidation preference amount and the Series B Preferred liquidation preference amount, then the holders of each share of Series B Preferred shall be entitled to be paid first out of the assets and funds of the Company legally available for distribution up to an amount equal to the Series B Preferred liquidation preference amount and then all remaining assets and funds of the Company legally available for distribution shall be ratably distributed among the holders of the Series A Preferred (which is junior to the Series B Preferred in liquidation) in proportion to the preferential amount each such holder is otherwise entitled to receive.

(iii) After payment of such full Liquidation Preferences, the Common Holders and the Preferred Holders shall be entitled to receive ratably on an as-converted basis the entire remaining Assets, if any.

2.2 Business Combination. For purposes of this Section 2, a "Business Combination" shall mean (i) the sale, lease or exchange (for cash, shares of stock, securities or other consideration)

of all or substantially all the property and assets of the Company or (ii) the merger or consolidation of the Company into or with any other corporation or the merger or consolidation of any other corporation into or with the Company (except for a merger or consolidation in which the holders of 100% of the voting capital stock of the Company hold more than 50% of the voting rights of the surviving entity); provided, however, that the total consideration to be received by the Company or the holders of the voting capital stock of the Company shall not exceed \$40 million.

2.3 Valuation. Whenever the distribution provided for in this Section 2 is payable in property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the Board.

### SECTION 3. CONVERSION.

The Preferred Holders shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert; Automatic Conversion.

(i) Subject to Section 3(c), 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 this Company or any transfer agent for such shares, into such number of fully paid and nonassessable shares of Common Stock determined as set forth below.

Each share of Series A Preferred shall be convertible into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.1985 by the Series A Conversion Price, determined as hereafter provided, in effect at the time of conversion. Each share of Series B Preferred shall be convertible into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.575 by the Series B Conversion Price, determined as hereafter provided, in effect at the time of conversion. The initial Series A Conversion Price shall be \$0.1985 per share and the initial Series B Conversion Price shall be \$1.575; provided, however, that such Conversion Prices shall be subject to adjustment as set forth below. If a conversion election under this subsection 3(a)(i) is made in connection with an underwritten offering of the Company's securities pursuant to the Securities Act of 1933, as amended (the "Act"), (which underwritten offering does not cause an automatic conversion pursuant to subsection 3(a)(ii)(A) to take place) the conversion may, at the option of the holder tendering shares of Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of the Company's securities pursuant to such offering, in which event the holders making such elections who are entitled to receive Common Stock upon conversion of their Preferred Stock shall not be deemed to have converted such shares of Preferred Stock until immediately prior to the closing of such sale of the Company's securities in the offering.

(ii) Each share of each series of Preferred Stock shall automatically be converted into shares of Common Stock at the applicable Conversion Price immediately upon the occurrence of the first of the following:

(A) Immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement filed under the Act as to

the Company's Common Stock; provided that the public offering price shall not be less \$6.35 per share and the gross proceeds shall not be less than \$20 million (both prior to underwriters' discounts and expenses).

(B) Upon the approval of such conversion by the written consent of the holders of at least two-thirds (2/3) of the then outstanding shares of Preferred Stock.

Upon the occurrence of any event specified in subparagraph 3(a)(ii)(A) or (B) above, the outstanding shares of Preferred Stock shall be converted into Common Stock automatically without the need for any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the holder of such shares complies with paragraph 3(b) below.

(b) Mechanics of Conversion. Subject to subparagraph 3(a)(i) above, before any holder of shares of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or of any transfer agent for such shares, and shall give written notice by mail, postage prepaid, to the Company at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. (A Preferred Holder may not effect a transfer of shares pursuant to a conversion unless all applicable restrictions on transfer are complied with.) The Company shall, as soon as practicable thereafter, issue and deliver at such office to such holder of shares of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as provided above. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date.

(c) Conversion Price Adjustments.

(i) The Conversion Price of each series of Preferred Stock shall be subject to adjustment from time to time as follows:

(A) If the Company shall issue any Additional Stock (as defined below) without consideration or for a consideration per share less than such Conversion Price in effect immediately prior to the issuance of such Additional Stock, then such Conversion Price in effect immediately prior to each such issuance shall (except as otherwise provided in this clause (i)) be adjusted to:

the Conversion Price determined by dividing (X) an amount equal to the sum of (a) the product derived by multiplying the Conversion Price of such series in effect immediately prior to such issue times the number of shares of Common Stock outstanding



immediately prior to such issue, plus ( ) the consideration, if any, received by the Company upon such issue, by (Y) an amount equal to the sum of (c) the number of shares of Common Stock outstanding immediately prior to such issue, plus ( ) the number of shares of Common Stock issued in such issue.

(B) No adjustment of the Conversion Price for any series of Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustment that is not required to be made by reason of this sentence shall be carried forward and taken into account in any subsequent adjustment. Except to the limited extent provided for in Sections 3(c)(i)(E)(3), 3(c)(i)(E)(4) and 3(c)(iv), no adjustment of such Conversion Price shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board.

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities (where the shares of Common Stock issuable upon exercise of such options or rights or upon conversion or exchange of such securities are not excluded from the definition of Additional Stock), the following provisions shall apply:

(1) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Sections 3(c)(i)(C) and 3(c)(i)(D)), if any, received by the Company upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby;

(2) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Company for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Company upon the conversion or exchange of such securities or the exercise of any related options or rights (the

consideration in each case to be determined in the manner provided in Sections 3(c)(i)(C) and 3(c)(i)(D));

(3) In the event of any change in the number of shares of Common Stock deliverable upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price in effect at the time for each series of Preferred Stock shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment that was made upon the issuance of such options, rights or securities not converted prior to such change or the options or rights related to such securities not converted prior to such change been made upon the basis of such change, but no further adjustment shall be made for the actual issuance of Common Stock upon the exercise of any such options or rights or the conversion or exchange of such securities;

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price for each series of Preferred Stock shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment that was made upon the issuance of such options, rights or securities or options or rights related to such securities been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(ii) "Effective Date" with respect to each series of Preferred Stock means the first date on which shares of such series of Preferred Stock were issued.

"Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 3(c)(i)(E)) by this Company after the Effective Date other than:

(A) Common Stock issued pursuant to a transaction described in Section 3(c)(iii).

(B) Common Stock issued or issuable to employees, officers, or directors of, or consultants to, the Company, pursuant to an arrangement approved by the Board.

(C) Common Stock issued pursuant to the acquisition of another corporation by merger, purchase of all or substantially all of the assets, or other reorganization in which the Company acquires, in a single transaction or series of related transactions, all or substantially all of the assets of such other corporation or entity or fifty percent (50%) or more of the voting power of such other corporation or entity or fifty percent (50%) or more of the equity ownership of such other entity; provided that such transaction or series of transactions has been approved by the Company's Board of Directors and the shareholders to the extent required by Section 5.

(D) Common Stock issuable upon conversion of the shares of Preferred Stock.

(iii) In the event the Company should at any time or from time to time after the Effective Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each such share shall be increased in proportion to such increase of outstanding shares determined by taking Section 3(c)(i)(E) into account.

(iv) If the number of shares of Common Stock outstanding at any time after the Effective Date is decreased by a combination of the outstanding shares of Common Stock, then, as of the record date of such combination, the Conversion Price for each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each such share shall be decreased in proportion to such decrease in outstanding shares.

(d) Other Distributions. In the event this Company shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Company or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 3(c)(iii), then, in each such case for the purpose of this Section (d), the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Company into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Company entitled to receive such distribution.

(e) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section), provision shall be made (in form and substance satisfactory to the holders of a majority of the Preferred Stock then outstanding) so that the holders of the Preferred Stock shall thereafter be entitled to receive, upon conversion of the Preferred Stock, such shares or other securities or property of the Company or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section with respect to the rights of the holders of the Preferred Stock after the recapitalization to the end that the provisions of this Section (including adjustment of the Conversion Prices then in effect and the number of shares purchasable upon conversion of shares of Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(f) No Impairment. This Company will not, by amendment of its articles of incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 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 the Preferred Stock against impairment; provided that in any event, any provision of this Section may be amended by the approval of the holders of a majority of the outstanding shares of any series of Preferred Stock adversely effected (in addition to all other approvals required by law).

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares of Common Stock shall be issuable upon conversion of shares of the Preferred Stock. In lieu of any fractional shares, to which a Preferred Holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the then fair market value of the Common Stock as determined by the Company's Board of Directors.

(ii) Upon the occurrence of each adjustment of the Conversion Price of a series of Preferred Stock pursuant to this Section, the Company, at its expense, shall promptly compute such adjustment in accordance with the terms hereof and prepare and furnish to each holder of shares of the series of Preferred Stock with respect to which the Conversion Price is being adjusted a certificate setting forth such adjustment and showing in detail the facts upon which such adjustment is based. The Company shall, upon the written request at any time of any Preferred Holder, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment, (B) the Conversion Price at the time in effect for each series of Preferred Stock, and (C) 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 shares of Preferred Stock.

(h) Notices of Record Date. In the event of any taking by this Company of a record of its shareholders for the purpose of determining shareholders who are entitled to receive payment of any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of any class or any other securities or property, or to receive any other right, this Company shall mail to each holder of shares of Preferred Stock, at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution, or right.

(i) Reservation of Shares Issuable Upon Conversion. This Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, this Company will take such corporate action as may, in the opinion of its

counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(j) Notices. Any notice required by the provisions of this Section to be given to the holders of shares of Preferred Stock shall be deemed to be delivered when deposited in the United States mail, postage prepaid, registered or certified, and addressed to each holder of record at his address appearing on the stock transfer books of this Company.

#### SECTION 4. VOTING RIGHTS.

4.1 Common Stock. Each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held.

4.2 Preferred Stock. Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which such shares of Preferred Stock could be converted pursuant to the provisions of Section 3 above at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, the date such vote is taken or any written consent of stockholders is solicited.

4.3 General. Subject to the other provisions of this Restated Articles of Incorporation, each holder of Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company (as in effect at the time in question) and applicable law, and shall be entitled to vote, together with the holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except as may be otherwise provided by applicable law. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes. At all elections of directors of the Company, each holder of Preferred Stock and Common Stock shall be entitled to as many votes as shall equal the number of votes in which such holder would be entitled to cast for the election of directors with respect to such holder's shares of stock multiplied by the number of directors to be elected by such holder and such holder may cast all of such votes for a single director or may distribute them among the number of directors to be voted for, or for any two (2) or more of them, as the holder may see fit.

#### 4.4 Board of Directors Election and Removal.

(a) Election of Directors. The authorized number of directors of the Company will be fixed by the Board, in accordance with the terms of this Section 4.4, but in no event will be less than five nor more than seven. Any increases or decreases in the composition of the Board which differs from the terms of this Section 4.4 shall be subject to the voting requirements described in Section 5 hereof. The Board will be composed as follows: (i) so long as at least 2,000,000 shares of Series A Preferred are outstanding (such number of shares being subject to proportional adjustments to reflect combinations or subdivisions of such series of Preferred Stock or dividends declared in shares of such stock), the holders of Series A Preferred, voting as a separate class (with cumulative voting rights as among themselves in accordance with Section 708 of the California General Corporation Law), shall be entitled to elect and remove two (2) directors of the Company; (ii) so

long as at least 2,857,645 shares of Series B Preferred are outstanding (such number of shares being subject to proportional adjustments to reflect combinations or subdivisions of such series of Preferred Stock or dividends declared in shares of such stock), the holders of the Series B Preferred, voting as a separate class (with cumulative voting rights as among themselves in accordance with Section 708 of the California Corporations Code), shall be entitled to elect and remove two (2) directors of the Company, (iii) the holders of Common Stock, voting as a separate class (with cumulative voting rights as among themselves in accordance with Section 708 of the California Corporations Code), shall be entitled to elect and remove one (1) director of the Company, and (iv) the holders of the Preferred Stock and the Common Stock, voting together as a single class (with cumulative voting rights as among themselves in accordance with Section 708 of the California Corporations Code) shall be entitled to elect and remove the remaining directors of the Company.

(b) Quorum; Required Vote.

(i) Quorum. At any meeting held for the purpose of electing directors, the presence in person or by proxy (A) of the holders of a majority of the shares of the Series A Preferred, Series B Preferred or Common Stock then outstanding, respectively, shall constitute a quorum for the election of directors to be elected solely by the holders of the Series A Preferred, Series B Preferred or Common Stock, respectively, and (B) of holders of a majority of the voting power of all the then-outstanding shares of Preferred Stock and Common Stock shall constitute a quorum for the election of the directors to be elected jointly by the holders of the Preferred Stock and the Common Stock.

(ii) Required Vote. With respect to the election of any director or directors by the holders of the outstanding shares of a specified class or series of stock given the right to elect such director or directors pursuant to subsection 4.4 above (the "Specified Stock"), that candidate or those candidates (as applicable) shall be elected who either: (i) in the case of any such vote conducted at a meeting of the holders of such Specified Stock, receive the highest number of affirmative votes (on an as-converted basis) of the outstanding shares of such Specified Stock, up to the number of directors to be elected by such Specified Stock; or (ii) in the case of any such vote taken by written consent without a meeting, are elected by the unanimous written consent of the holders of shares of such Specified Stock; provided that the holders of Specified Stock may elect a director to fill a vacancy, other than a vacancy created by removal, by the written consent of a majority of the holders of shares of such Specified Stock.

(c) Vacancy. If there shall be any vacancy in the office of a director elected or to be elected by the holders of any Specified Stock, then a director to hold office for the unexpired term of such directorship may be elected by either: (i) a majority of the remaining director or directors (if any) in office that were so elected by the holders of such Specified Stock, by the affirmative vote of a majority of such directors (or by the sole remaining director elected by the holders of such Specified Stock if there be but one), unless the vacancy is due to the removal of a director, in which case the vacancy can only be filled by the stockholders or (ii) the required vote of holders of the shares of such Specified Stock specified in subsection 4.4(b)(ii) above that are entitled to elect such director.

(d) Procedures. Any meeting of the holders of any Specified Stock, and any action taken by the holders of any Specified Stock by written consent without a meeting, in order to elect or remove a director under this subsection 4.4, shall be held in accordance with the procedures and provisions of the Company's Bylaws, the California Corporations Code and applicable law regarding stockholder meetings and stockholder actions by written consent, as such are then in effect (including but not limited to procedures and provisions for determining the record date for shares entitled to vote).

(e) Termination. Notwithstanding anything in this subsection 4.4 to the contrary, the provisions of this subsection 4.4 shall cease to be of any further force or effect in its entirety or with respect to the election of directors by the holders of Series A Preferred or Series B Preferred, as the case may be, upon the earliest to occur of: (i) in the case of directors to be elected by holders of Series A Preferred, the first date on which the total number of outstanding shares of Series A Preferred is less than 2,000,000 shares (such number of shares being subject to proportional adjustment to reflect combination or subdivisions of such series of Preferred Stock or dividends declared in shares of such stock), (ii) in the case of directors to be elected by the holders of Series B Preferred, the first date on which the total number of outstanding shares of Series B Preferred is less than 3,631,060 shares (such number of shares being subject to proportional adjustment to reflect combination or subdivisions of such series of Preferred Stock or dividends declared in shares of such stock); or (ii) upon the merger or consolidation of the Company with or into any other corporation or corporations if such consolidation or merger is approved by the stockholders of the Company in compliance with applicable law and the Restated Articles of Incorporation and Bylaws of the Company in which the holders of the Company's outstanding shares immediately before such consolidation or merger do not, immediately after such consolidation or merger, retain stock representing a majority of the voting power of the surviving corporation (or its parent corporation if the surviving corporation is wholly owned by the parent corporation); or (iii) a sale of all or substantially all of the Company's assets.

## SECTION 5. PROTECTIVE PROVISIONS.

5.1 The Company shall not, without the approval of the holders of a majority of the outstanding shares of Series A Preferred:

(i) amend or repeal any provision of, or add any provision to, this Company's Articles of Incorporation if such action would materially and adversely alter or change the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of, the Series A Preferred;

(ii) authorize or issue shares of any class or series of stock having any rights, preferences, privileges or restrictions senior to or on a parity with the Series A Preferred;

(iii) reclassify any shares of Common Stock or any other shares of this Company into shares having any rights, preferences, privileges or restrictions senior to or on a parity with the Series A Preferred;

(iv) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred;

(v) reorganize, consolidate or merge with or into any corporation or effect any transaction or series of related transactions if such transaction or series of related transactions would result in the stockholders of the Company immediately prior to such transaction or series of related transactions holding less than a majority of the voting power of the surviving corporation (or its parent corporation if the surviving corporation is wholly owned by the parent corporation) of such transaction or series of related transactions (provided however this subsection shall not apply to a merger affected exclusively for the purpose of changing the domicile of the corporation); or

(vi) sell, lease, convey or otherwise dispose of all or substantially all the Company's assets or one of its divisions in a single transaction or series of related transactions.

5.2 The Company shall not, without the approval of the holders of a majority of the outstanding shares of Series B Preferred:

(i) amend or repeal any provision of, or add any provision to, this Company's Articles of Incorporation if such action would materially and adversely alter or change the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of, the Series B Preferred;

(ii) authorize or issue shares of any class or series of stock having any rights, preferences, privileges or restrictions senior to or on a parity with the Series B Preferred;

(iii) reclassify any shares of Common Stock or any other shares of this Company into shares having any rights, preferences, privileges or restrictions senior to or on a parity with the Series B Preferred;

(iv) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series B Preferred;

(v) reorganize, consolidate or merge with or into any corporation or effect any transaction or series of related transactions if such transaction or series of related transactions would result in the stockholders of the Company immediately prior to such transaction or series of related transactions holding less than a majority of the voting power of the surviving corporation (or its parent corporation if the surviving corporation is wholly owned by the parent corporation) of such transaction or series of related transactions (provided however this subsection shall not apply to a merger affected exclusively for the purpose of changing the domicile of the corporation).

(vi) sell, lease, convey or otherwise dispose of all or substantially all the Company's assets or one of its divisions in a single transaction or series of related transactions;

(vii) increase the authorized number of directors;

(viii) increase the number of shares reserved under the Company's 2000 Stock Plan to a number greater than 7,954,968 shares (as adjusted for any stock splits, stock



dividends, recapitalizations or the like effected with respect to Common Stock after the date these Restated Articles of Incorporation are first filed);

(ix) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any of the shares of the Company; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Company or any subsidiary thereof pursuant to an agreement under which the Company has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment or other service relationship;

(x) directly or indirectly engage in any loans, leases, contracts or other transactions with any director, officer or key employee of the Company, or any member of any such person's immediate family or any entity affiliated with any such person;

(xi) permit any subsidiary to issue or sell, or obligate itself to issue or sell, except to the Company or any wholly owned subsidiary, any stock of such subsidiary; or

(xii) declare bankruptcy, liquidate, dissolve or windup the Company.

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