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FORM 8-K

CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported) September 17, 1999

TITAN MOTORCYCLE CO. OF AMERICA

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(Exact Name of Registrant as Specified in Charter)

Nevada

000-24477

86-0776876

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(State or Other Jurisdiction  
of Incorporation)

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(Commission  
File Number)

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(IRS Employer  
Identification No.)

2222 West Peoria Avenue, Phoenix, Arizona

85029

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(Address of Principal Executive Offices)

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(Zip Code)

Registrant's telephone number, including area code (602) 861-6977

ITEM 5. OTHER EVENTS.

On September 17, 1999, Titan Motorcycle Co. of America sold 3,000 shares of Titan's Series A Convertible Preferred Stock and a warrant to purchase 279,725 shares of Titan's common stock to Advantage Fund II Ltd. and 1,000 shares of Titan's Series A Convertible Preferred Stock and a warrant to purchase 93,242 shares of Titan's common stock to Koch Investment Group Limited in a private placement for a total of \$4,000,000 in proceeds to Titan.

Unless shareholder approval is obtained, the Series A Convertible Preferred Stock is convertible at any time into a maximum of 2,572,050 shares of Titan's common stock for Advantage Fund and 857,350 shares of Titan's common stock for Koch. For the first year after issuance, the Series A Convertible Preferred Stock is convertible at a fixed conversion price of \$2.6812, which represents the average market price of the common stock for the ten days prior to September 17, 1999. Thereafter, the conversion price is adjusted every six months to be the lesser of (a) 130% of the prior conversion price or (b) 90% of the average market price for the ten days prior to such adjustment date. The conversion price is subject to further adjustment under certain circumstances. The number of shares of common stock underlying the Series A Convertible Preferred Stock is subject to adjustment for stock splits, stock dividends, combinations, capital reorganizations and similar events relating to Titan's common stock. Titan has the right to redeem the Series A Convertible Preferred Stock at a premium and under some circumstances at the market price of its common stock that the Series A Convertible Preferred Stock would otherwise be convertible into. Subject to certain restrictions in subordination agreements with Titan's bank, Wells Fargo Bank, N.A., Advantage Fund and Koch each has the right to force Titan to redeem the Series A Convertible Preferred Stock at a premium upon the occurrence of any of the following events:

1. There is no closing bid price of Titan's common stock for five consecutive trading days;
2. Titan's common stock ceases to be listed for trading on a market or exchange;
3. The inability for 30 or more days (whether or not consecutive) of any holder of Series A Convertible Preferred Stock to sell its common stock issuable upon conversion of the Series A Convertible Preferred Stock pursuant to an effective registration statement;
4. Titan defaults under any of the agreements relating to the sale of the Series A Convertible Preferred Stock;
5. Certain business combination events; and

6. The adoption of any amendment to Titan's Articles of Incorporation materially adverse to the holders of the Series A Convertible Preferred Stock without the consent of the majority of the Series A Convertible Preferred Stock.

The net proceeds of the offering will be used for working capital and general corporate purposes.

The terms of the private placement are set forth in full in the Subscription Agreements attached as Exhibits 10.1 and 10.2 to this current report. The rights and preferences of the Series A Convertible Preferred Stock are set forth in full in the Certificate of Designations attached as Exhibit 4.1 to this current report. The warrants are subject to the terms and conditions of the Warrants attached as Exhibits 4.2 and 4.3 to this current report. Under Registration Rights Agreements attached as Exhibits 4.5 and 4.6 to this current report, Titan has agreed to prepare and file with the Securities and Exchange Commission a registration statement covering the resale of the shares underlying the Series A Convertible Preferred Stock and warrants.

In connection with the placement of Titan's Series A Convertible Preferred Stock, Titan issued a warrant to purchase 25,000 shares of Titan's common stock to Reedland Capital Partners. Reedland acted as placement agent for the Series A Convertible Preferred Stock. The 25,000 shares of Titan's common stock issuable upon exercise of the warrant to Reedland will be included in the registration statement covering the resale of the shares underlying the Series A Convertible Preferred Stock and warrants held by Advantage Fund and Koch.

The warrants issued to Advantage Fund, Koch and Reedland are exercisable for a period of five years at an exercise price of \$3.21744 per share.

ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS.

(c) EXHIBITS.

EXHIBIT NUMBER - - - - -	DESCRIPTION - - - - -
3	Bylaws, as amended and restated on September 10, 1999
4.1	Certificate of Designations of the Series A Convertible Preferred Stock, dated September 17, 1999
4.2	Warrant issued to Advantage Fund II Ltd., dated September 17, 1999
4.3	Warrant issued to Koch Investment Group Limited, dated September 17, 1999
4.4	Form of Warrant issued to Reedland Capital Partners and others, dated September 17, 1999
4.5	Registration Rights Agreement with Advantage Fund II Ltd., dated as of September 15, 1999
4.6	Registration Rights Agreement with Koch Investment Group Limited, dated as of September 15, 1999
10.1	Subscription Agreement with Advantage Fund II Ltd., dated as of September 15, 1999
10.2	Subscription Agreement with Koch Investment Group Limited, dated as of September 15, 1999

SIGNATURES

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

Titan Motorcycle Co. of America

By: /s/ Francis S. Keery

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Francis S. Keery  
Chief Executive Officer

Dated: September 30, 1999

## TITAN MOTORCYCLE CO. OF AMERICA

## ARTICLE I

## MEETING OF STOCKHOLDERS

SECTION 1. The annual meeting of the stockholders of the Company shall be held at its office in Maricopa County, State of Arizona, on a date in the month of May as designated by the Board of Directors each year, for the purpose of electing directors of the company to serve during the ensuing year and for the transaction of such other business as may be brought before the meeting.

At least five days' written notice specifying the time and place, when and where, the annual meeting shall be convened, shall be mailed in a United States Post Office addressed to each of the stockholders of record at the time of issuing the notice at his or her, or its address last known, as the same appears on the books of the company.

SECTION 2. Special meetings of the stockholders may be held at the office of the company in the State of Arizona, or elsewhere, whenever called by the President, or by the Board of Directors, or by vote of, or by an instrument in writing signed by the holders of 25% of the issued and outstanding capital stock of the company. At least ten days' written notice of such meeting, specifying the day and hour and place, when and where such meeting shall be convened, and objects for calling the same, shall be mailed in a United States Post Office, addressed to each of the stockholders of record at the time of issuing the notice, at his or her or its address last known, as the same appears on the books of the company.

SECTION 3. If all the stockholders of the company shall waive notice of a meeting, no notice of such meeting shall be required, and whenever all of the stockholders shall meet in person or by proxy, such meeting shall be valid for all purposes without call or notice, and at such meeting any corporate action may be taken. The written certificate of the officer or officers calling any meeting setting forth the substance of the notice, and the time and place of the mailing of the same to the several stockholders, and the respective addresses to which the same were mailed, shall be prima facie evidence of the manner and fact of the calling and giving such notice. If the address of any stockholder does not appear upon the books of the company, it will be sufficient to address any notice to such stockholder at the principal office of the corporation.

SECTION 4. All business lawful to be transacted by the stockholders of the company, may be transacted at any special meeting or at any adjournment thereof. Only such business, however, shall be acted upon at special meeting of the stockholders as shall have been referred to in the notice calling such meetings, but at any stockholders' meeting at which all of the outstanding capital stock of the company is represented, either in person or by proxy, any lawful business may be transacted, and such meeting shall be valid for all purposes.

SECTION 5. At the stockholders' meetings the holders of Twenty-five percent (25%) in amount of the entire issued and outstanding capital stock of the company, shall constitute a quorum for all purposes of such meetings.

If the holders of the amount of stock necessary to constitute a quorum shall fail to attend, in person or by proxy, at the time and place fixed by these By-Laws for any annual meeting, or fixed by a notice as above provided for a special meeting, a majority in Interest of the stockholders present in person or by proxy may adjourn from time to time without notice other than by announcement at the meeting, until holders of the amount of stock requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted as originally called.

SECTION 6. At each meeting of the stockholders every stockholder shall be entitled to vote in person or by his duly authorized proxy appointed by instrument in writing subscribed by such stockholder or by his duly authorized attorney. Each stockholder shall have one vote for each share of stock standing registered in his or her or its name on the books of the corporation, ten days preceding the day of such meeting. The votes for directors, and upon demand by any stockholder, the votes upon any question before the meeting, shall be viva voce.

At each meeting of the stockholders, a full, true and complete list, in alphabetical order, of all the stockholders entitled to vote at such meeting, and indicating the number of shares held by each, certified by the Secretary of the Company, shall be furnished, which list shall be prepared at least ten days before such meeting, and shall be open to the inspection of the stockholders, or

their agents or proxies, at the place where such meeting is to be held, and for ten days prior thereto. Only the persons in whose names shares of stock are registered on the books of the company for ten days preceding the date of such meeting, as evidenced by the list of stockholders, shall be entitled to vote at such meeting. Proxies and powers of Attorney to vote must be filed with the Secretary of the Company before an election or a meeting of the stockholders, or they cannot be used at such election or meeting.

SECTION 7. At each meeting of the stockholders the polls shall be opened and closed; the proxies and ballots issued, received, and be taken in charge of, for the purpose of the meeting, and all questions touching the qualifications of voters and the validity of proxies, and the acceptance or rejection of votes, shall be decided by two inspectors. Such inspectors shall be appointed at the meeting by the presiding officer of the meeting.

SECTION 8. At the stockholders' meetings, the regular order of business shall be as follows:

1. Reading and approval of the Minutes of previous meeting or meetings;
2. Reports of the Board of Director, the President, Treasurer and Secretary of the Company in the order named;
3. Reports of Committee;
4. Election of Directors;
5. Unfinished Business;
6. New Business;
7. Adjournment.

## ARTICLE II

### DIRECTORS AND THEIR MEETINGS

SECTION 1. The Board of Directors of the Company shall consist of five persons who shall be chosen by the stockholders annually, at the annual meeting of the Company, and who shall hold office for one year, and until their successors are elected and qualify.

SECTION 2. When any vacancy occurs among the Directors by death, resignation, disqualification or other cause, the stockholders, at any regular or special meeting, or at any adjourned meeting thereof, or the remaining Directors, by the affirmative vote of a majority thereof, shall elect a successor to hold office for the unexpired portion of the term of the Director whose place shall have become vacant and until his successor shall have been elected and shall qualify.

SECTION 3. Meeting of the Directors may be held at the principal office of the company in the state of Arizona, or elsewhere, at such place or places as the Board of Directors may, from time to time, determine.

SECTION 4. Without notice or call, the Board of Directors shall hold its first annual meeting for the year immediately after the annual meeting of the stockholders or immediately after the election of Directors at such annual meeting.

Regular meetings of the Board of Directors shall be held at the office of the company in Maricopa County, State of Arizona, unless otherwise designated by the Board of Directors. Notice of such regular meetings shall be mailed to each Director by the Secretary at least three days previous to the day fixed for such meetings, but no regular meeting shall be held void or invalid if such notice is not given, provided. the meeting is held at the time and place fixed by these By-Laws for holding such regular meetings.

Special meetings of the Board of Directors may be held on the call of the President or Secretary on at least three days notice by mail or telegraph.

Any meeting of the Board, no matter where held, at which all of the members shall be present, even though without or of which notice shall have been waived by all absentees, provided a quorum shall be present, shall be valid for all purposes unless otherwise indicated in the notice calling the meeting or in the waiver of notice.

Any and all business may be transacted by any meeting of the Board of Directors, either regular or special.

SECTION 5. A majority of the Board of Directors in office shall constitute a quorum for the transaction of business, but if at any meeting of the Board there be less than a quorum present, a majority of those present may adjourn from time to time, until a quorum shall be present, and no notice of such adjournment shall be required. The Board of Directors may prescribe rules not in conflict with these By-Laws for the conduct of its business; provided, however, that in the fixing of salaries of the officers of the corporation, the unanimous action of all of the Directors shall be required.

SECTION 6. A Director need not be a stockholder of the corporation.

SECTION 7. The Directors shall be allowed and paid all necessary expenses incurred in attending any meeting of the Board, but shall not receive any compensation for their services as Directors until such time as the company is able to declare and pay dividends on its capital stock.

SECTION 8. The Board of Directors shall make a report to the stockholders at annual meetings of the stockholders of the condition of the company, and shall, at request, furnish each of the stockholders with a true copy thereof.

The Board of Directors in its discretion may submit any contract or act for approval or ratification at any annual meeting of the stockholders called for the purpose of considering any such contract or act, which, it approved, or ratified by the vote of the holders of a majority of the capital stock of the company represented in person or by proxy at such meeting, provided that a lawful quorum of stockholders be there represented in person or by proxy, shall be valid and binding upon the corporation and upon all the stockholders thereof, as if it had been approved or ratified by every stockholder of the corporation.

SECTION 9. The Board of Directors shall have the power from time to time to provide for the management of the offices of the company in such manner as they see fit, and in particular from time to time to delegate any of the powers of the Board in the course of the current business of the company to any standing or special committee or to any officer or agent and to appoint any persons to be agents of the company with such powers (including the power to subdelegate), and upon such terms as may be deemed fit.



SECTION 10. The Board of Directors is vested with the complete and unrestrained authority in the management of all the affairs of the company, and is authorized to exercise for such purpose as the General Agent of the Company, its entire corporate authority.

SECTION 11. The regular order of business at meetings of the Board of Directors shall be as follows:

1. Reading and approval of the minutes of any previous meeting or meetings;
2. Reports of officers and committeemen;
3. Election of officers;
4. Unfinished business;
5. New business;
6. Adjournment.

### ARTICLE III

#### OFFICERS AND THEIR DUTIES

SECTION 1. The Board of Directors, at its first and after each meeting after the annual meeting of stockholders, shall elect a President, a Vice-President, a Secretary and a Treasurer, to hold office for one year next coming, and until their successors are elected and qualify. The offices of the Secretary and Treasurer may be held by one person.

Any vacancy in any of said offices may be filled by the Board of Directors. The Board of Directors may from time to time, by resolution, appoint such additional Vice Presidents and additional Assistant Secretaries, Assistant Treasurer and Transfer Agents of the company as it may deem advisable; prescribe their duties, and fix their compensation, and all such appointed officers shall be subject to removal at any time by the Board of Directors. All officers, agents, and factors of the company shall be chosen and appointed in such manner and shall hold their office for such terms as the board of Directors may by resolution prescribe.

SECTION 2. The President shall be the executive officer of the company and shall have the supervision and, subject to the control of the Board of Directors, the direction of the Company's affairs, with full power to execute all resolutions and orders of the Board of Directors not especially entrusted to some other officer of the company. He shall be a member of the Executive Committee, and the Chairman thereof; he shall preside at all meetings of the Board of Directors, and at all meetings of the stockholders, and shall sign the Certificates of Stock issued by the company, and shall perform such other duties as shall be prescribed by the Board of Directors.

SECTION 3. The Vice-President shall be vested with all the powers and perform all the duties of the President in his absence or inability to act, including the signing of the Certificates of Stock issued by the company, and he shall so perform such other duties as shall be prescribed by the Board of Directors.

SECTION 4. The Treasurer shall have the custody of all the funds and securities of the company. When necessary or proper he shall endorse on behalf of the company for collection checks, notes, and other obligations; he shall deposit all monies to the credit of the company in such bank or banks or other depository as the Board of Directors may designate; he shall sign all receipts and vouchers for payments made by the company, except as herein otherwise provided. He shall sign with the President all bills of exchange and promissory notes of the company; he shall also have the care and custody of the stocks, bonds, certificates, vouchers, evidence of debts, securities, and such other property belonging to the company as the Board of Directors shall designate; he shall sign all papers required by law or by those Bylaws or the Board of Directors to be signed by the Treasurer. Whenever required by the Board of Directors, he shall render a statement of his cash account; he shall enter regularly in the books of the company to be kept by him for the purpose, full and accurate accounts of all monies received and paid by him on account of the company. He shall at all reasonable times exhibit the books of account to any Directors of the company during business hours, and he shall perform all acts incident to the position of Treasurer subject to the control of the Board of Directors.

The Treasurer shall, if required by the Board of Directors, give bond to the company conditioned for the faithful performance of all his duties as Treasurer in such sum, and with such surety as shall be approved by the Board of Directors, with expense of such bond to be borne by the company.

SECTION 5. The Board of Directors may appoint an Assistant Treasurer who shall have such powers and perform such duties as may be prescribed for him by the Treasurer of the company or by the Board of Directors, and the Board of Directors shall require the Assistant Treasurer to give a bond to the company in such sum and with such security as it shall approve, as conditioned for the faithful performance of his duties as Assistant Treasurer, the expense of such bond to be borne by the company.

SECTION 6. The Secretary shall keep the Minutes of all meetings of the Board of Directors and the Minutes of all meetings of the stockholders and of the Executive Committee in books provided for that purpose. He shall attend to the giving and serving of all notices of the company; he may sign with the President or Vice-President, in the name of the Company, all contracts authorized by the Board of Directors or Executive Committee; he shall affix the corporate seal of the company thereto when so authorized by the Board of Directors or Executive Committee; he shall have the custody of the corporate seal of the company; he shall affix the corporate seal to all certificates of stock duly issued by the company; he shall have charge of Stock Certificate Books, Transfer books and Stock Ledgers, and such other books and papers as the

Board of Directors or the Executive Committee may direct, all of which shall at all reasonable times be open to the examination of any Director upon application at the office of the company during business hours, and he shall, in general, perform all duties incident to the office of Secretary.

SECTION 7. The Board of Directors may appoint an Assistant Secretary who shall have such powers and perform such duties as may be prescribed for him by the Secretary of the company or by the Board of Directors.

SECTION 8. Unless otherwise ordered by the Board of Directors, the President shall have full power and authority in behalf of the company to attend and to act and to vote at any meetings of the stockholders of any corporation in which the company may hold stock, and at any such meetings, shall possess and may exercise any and all rights and powers incident to the ownership of such stock, and which as the new owner thereof, the company might have possessed and exercised if present. The Board of Directors, by resolution, from time to time, may confer like powers on any person or persons in place of the President to represent the company for the purposes in this section mentioned.

#### ARTICLE IV

#### CAPITAL STOCK

SECTION 1. The capital stock of the company shall be issued in such manner and at such times and upon such conditions as shall be prescribed by the Board of Directors.

SECTION 2. Ownership of stock in the company shall be evidenced by certificates of stock in such forms as shall be prescribed by the Board of Directors, and shall be under the seal of the company and signed by the President or the Vice-President and also by the Secretary or by an Assistant Secretary.

All certificates shall be consecutively numbered; the name of the person owning the shares represented thereby with the number of such shares and the date of issue shall be entered on the company's books.

No certificates shall be valid unless it is signed by the President or Vice-President and by the Secretary or Assistant Secretary.

All certificates surrendered to the company shall be canceled and no new certificate shall be issued until the former certificate for the same number of shares shall have been surrendered or canceled.

SECTION 3. No transfer of stock shall be valid as against the company except on surrender and cancellation of the certificate therefor, accompanied by an assignment or transfer by the owner therefor, made either in person or under assignment, a new certificate shall be issued therefor.

Whenever any transfer shall be expressed as made for collateral security and not absolutely, the same shall be so expressed in the entry of said transfer on the books of the company.

SECTION 4. The Board of Directors shall have power and authority to make all such rules and regulations not inconsistent herewith as it may deem expedient concerning the issue, transfer and registration of certificates for shares of the capital stock of the company.

The Board of Directors may appoint a transfer agent and a registrar of transfers and may require all stock certificates to bear the signature of such transfer agent and such registrar of transfer.

SECTION 5. The Stock Transfer Books shall be closed for all meetings of the stockholders for the period of ten days prior to such meetings and shall be closed for the payment of dividends during such periods as from time to time may be fixed by the Board of Directors, and during such periods no stock shall be transferable.

SECTION 6. Any person or persons applying for a certificate of stock in lieu of one alleged to have been lost or destroyed, shall make affidavit or affirmation of the fact, and shall deposit with the company an affidavit. Whereupon, at the end of six months after the deposit of said affidavit and upon such person or persons giving Bond of Indemnity to the company with surety to be approved by the Board of Directors in double the current value of stock against any damage, loss or inconvenience to the company, which may or can arise in consequence of a new or duplicate certificate being issued in lieu of the one lost or missing, the Board of Directors may cause to be issued to such person or persons a new certificate, or a duplicate of the certificate, so lost or destroyed. The Board of Directors may, in its discretion refuse to issue such new or duplicate certificate save upon the order of some court having jurisdiction in such matter, anything herein to the contrary notwithstanding.

#### ARTICLE V

##### OFFICES AND BOOKS

SECTION 1. The principal office of the corporation, in Arizona shall be at 2222 West Peoria Avenue, Phoenix, Arizona 85029, and the company may have a principal office in any other state or territory as the Board of Directors may designate.

SECTION 2. The Stock and Transfer Books and a copy of the By-Laws and Articles of Incorporation of the company shall be kept at its principal office in the County of Maricopa, State of Arizona, for the inspection of all who are authorized or have the right to see the same, and for the transfer of stock. All other books of the company shall be kept at such places as may be prescribed by the Board of Directors.

#### ARTICLE VI

##### INDEMNIFICATION OF CORPORATE AGENTS; PURCHASE OF LIABILITY INSURANCE

SECTION 1. INDEMNIFICATION OF AGENTS OF THE CORPORATION; PURCHASE OF LIABILITY INSURANCE.

(a) The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the act that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgements, fines and amounts paid in settlement, actually and reasonably incurred by him in connection with the action, suit or proceeding, if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or the proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of NOLO CONTENDERE or its equivalent does not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and that, with respect to any criminal action or proceeding, he had reasonable cause to believe that his conduct was unlawful.

(b) The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including amounts paid in settlement and attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of the action or suit, if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation. However, indemnification shall not be made for any claim, issue or matter as to which a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation or for

amounts paid in settlement to the corporation, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

(c) To the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsection (a) or (b), or in defense of any claim, issue or matter therein, he shall be indemnified by the corporation against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense.

(d) Any indemnification under subsection (a) or (b), unless ordered by a court or advanced pursuant to the subsection (e), shall be made by the corporation only as authorized in the specified case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances. The determination shall be made: (i) by the stockholders; (ii) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding; (iii) if a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding so orders, by independent legal counsel in a written opinion, or (iv) if a quorum consisting of directors who were not parties to the action, suit or proceeding cannot be obtained, by independent legal counsel in a written opinion.

(e) The expenses of officers and directors incurred in defending a civil or criminal action, suit or proceeding shall be paid by the corporation as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he is not entitled to be indemnified by the corporation. The provisions of this subsection (e) do not affect any rights to advancement of expenses to which corporate personnel other than directors or officers may be entitled under any contract or otherwise by law.

(f) The indemnification and advancement of expenses authorized in or ordered by a court pursuant to this Article VI (i) does not exclude any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation, the bylaws or any agreement, vote of stockholders or disinterested directors or otherwise, for either an action in his official capacity or an action in another capacity while holding his office, except that indemnification, unless ordered by a court pursuant to subsection (b) or for the advancement of expenses made pursuant to subsection (e), shall not be made to or on behalf of any director or officer if a final adjudication establishes that his acts or omissions involved intentional misconduct, fraud or knowing violation of the law and were material to the cause of action (ii) continues for a person who has ceased to be a director, officer, employee or agent and inures to the benefit of the heirs, executors and administrators of such a person.

(g) The corporation may purchase and maintain insurance or make other financial arrangements on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, for any liability asserted against him and liability and expenses incurred by him in his capacity as a director, officer, employee or agent, or arising out of his status as such, whether or not the corporation has the authority to indemnify him against such liability and expenses. The other financial arrangements made by the corporation may include any now or hereafter permitted by applicable law.

(h) In the event that the Nevada Revised Statutes shall hereafter permit or authorize indemnification by the corporation of the directors, officers, employees or agents of the corporation for any reason or purpose or in any manner not otherwise provided for in this Article VI, then such directors, officers, employees and agents shall be entitled to such indemnification by making written demand therefore upon the corporation, it being the intention of this Article VI at all times to provide the most comprehensive indemnification coverage to the corporations's directors, officers, employees and agents as may now or hereafter be permitted by the Nevada Revised Statutes.

(i) The foregoing indemnification provisions shall inure to the benefit of all present and future directors, officers, employees and agents of the corporation and all persons now or hereafter serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise and their heirs, executors and administrators, and shall be applicable to all acts or omissions to act of any such persons, whether such acts or omissions to act are alleged to have or actually occurred prior to or subsequent to the adoption of this Article VI.

SECTION 2. VESTED RIGHTS. Neither the amendment nor repeal of this Article VI, nor the adoption of any provision of the articles or incorporation or the bylaws or of any statute inconsistent with this Article VI, shall adversely affect any right or protection of a director, officer, employee or agent of the corporation existing at the time of such amendment, repeal or adoption of such inconsistent provision.

#### ARTICLE VII

#### MISCELLANEOUS

SECTION 1. The Board of Directors shall have power to reserve over and above the capital stock paid in, such an amount in its discretion as it may deem advisable to fix as a reserve fund, and may, from time to time, declare dividends from the accumulated profits of the company in excess of the amounts so reserved, and pay the same to the stockholders of the company, and may also, if it deems the same advisable, declare stock dividends of the unissued capital stock of the company.

SECTION 2. No agreement, contract or obligation (other than checks in payment of indebtedness incurred by authority of the Board of Directors) involving the payment of monies or the credit of the company for more than \$100,000 dollars, shall be made without the authority of the Board of Directors, or of the Executive Committee acting as such.

SECTION 3. Unless otherwise ordered by the Board of Directors, all agreements and contracts shall be signed by the President and the Secretary in the name and on behalf of the company, and shall have the corporate seal thereto affixed.

SECTION 4. All monies of the corporation shall be deposited when and as received by the Treasurer in such bank or banks or other depository as may from time to time be designated by the Board of Directors, and such deposits shall be made in the name of the company.

SECTION 5. No note, draft, acceptance, endorsement or other evidence of indebtedness shall be valid or against the company unless the same shall be signed by the President or a Vice-President, and attested by the Secretary or an Assistant Secretary, or signed by the Treasurer or an Assistant Treasurer, and countersigned by the President, Vice-President, or Secretary, except that the Treasurer or an Assistant Treasurer may, without countersignature, make endorsements for deposit to the credit of the company in all its duly authorized depositories.

SECTION 6. No loan or advance of money shall be made by the company to any stockholder or officer therein, unless the Board of Directors shall otherwise authorize.

SECTION 7. No director nor executive officer of the company shall be entitled to any salary or compensation for any services performed for the company, unless such salary or compensation shall be fixed by resolution of the Board of Directors, adopted by the unanimous vote of all the Directors voting in favor thereof.

SECTION 8. The company may take, acquire, hold, mortgage, sell, or otherwise deal in stocks or bonds or securities of any other corporation, if and as often as the Board of Directors shall so elect.

SECTION 9. The Directors shall have power to authorize and cause to be executed, mortgages, and liens without limit as to amount upon the property and franchise of this corporation, and pursuant to the affirmative vote, either in person or by proxy, of the holders of a majority of the capital stock issued and outstanding; the Directors shall have the authority to dispose in any manner of the whole property of this corporation.

SECTION 10. The company shall have a corporate seal, the design thereof being as follows:



ARTICLE VIII  
AMENDMENT OF BY-LAWS

SECTION 1. Amendments and changes of these By-Laws may be made at any regular or special meeting of the Board of Directors by a vote of not less than all of the entire Board, or may be made by a vote of, or a consent in writing signed by the holders of, 51% of the issued and outstanding capital stock.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, being the directors of the above named corporation, do hereby consent to the foregoing By-Laws and adopt the same as and for the By-Laws of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand this day of \_\_\_\_\_,  
1998.

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Secretary of the Corporation

ANNEX I  
TO  
SUBSCRIPTION  
AGREEMENT

TITAN MOTORCYCLE CO. OF AMERICA

CERTIFICATE OF DESIGNATIONS OF  
SERIES A CONVERTIBLE PREFERRED STOCK

(Pursuant to Section 78.1955 of the General Corporation  
Law of the State of Nevada)

Titan Motorcycle Co. of America, a Nevada corporation (the "Corporation"), in accordance with the provisions of Section 78.1955 of the General Corporation Law of the State of Nevada (the "NGCL"), DOES HEREBY CERTIFY:

That pursuant to authority vested in the Board of Directors of the Corporation by the Restated Articles of Incorporation of the Corporation, the Board of Directors of the Corporation, by unanimous written consent dated September 10, 1999, adopted a resolution providing for the creation of a series of the Corporation's Preferred Stock, \$.001 par value, which series is designated as "Series A Convertible Preferred Stock," which resolution is as follows:

RESOLVED, that pursuant to authority vested in the Board of Directors by the Restated Articles of Incorporation of the Corporation, the Board of Directors does hereby provide for the creation of a series of Preferred Stock, \$.001 par value (hereinafter called the "Preferred Stock"), of the Corporation, and to the extent that the voting powers and the designations, preferences and relative, participating, optional or other special rights thereof and the qualifications, limitations or restrictions of such rights have not been set forth in the Restated Articles of Incorporation of the Corporation, does hereby fix the same as follows:

SERIES A CONVERTIBLE PREFERRED STOCK

SECTION 1. DEFINITIONS. As used herein, the following terms shall have the following meanings:

"Accrual Amount" means with respect to any share of Series A Convertible Preferred Stock on any date the amount of all accrued but unpaid dividends on such share from the Issuance Date to the date of determination.

"Affiliate" means, with respect to any person, any other person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the subject person; for purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise.

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"Aggregated Person" means, with respect to any person, any person whose beneficial ownership of shares of Common Stock would be aggregated with the beneficial ownership of shares of Common Stock by such person for purposes of Section 13(d) of the Exchange Act, and Regulation 13D-G thereunder.

"Amendment Event" means an Optional Redemption Event described in clause (4) of the definition of Optional Redemption Event which arises under the terms of any amendment of any of the following: this Certificate of Designations, the Subscription Agreements, the Registration Rights Agreements, the Warrants, or any other agreements or documents entered into in connection with the issuance of shares of Series A Convertible Preferred Stock.

"AMEX" means the American Stock Exchange, Inc.

"Auditors" means PricewaterhouseCoopers LLP or such other firm of independent public accountants of recognized national standing as shall have been engaged by the Corporation to audit its financial statements.

"Auditors' Determination" means a determination requested by the Corporation and signed by the Auditors concurring with the Company's conclusion that a requirement of the Corporation to redeem, or a right of any holder of shares of Series A Convertible Preferred Stock to require redemption of, shares of Series A Convertible Preferred Stock by reason of the occurrence of (i) a specified Inconvertibility Day or (ii) a specified Optional Redemption Event which occurs by reason of (x) an event described in clause (1), (2) or (5) of

the definition of Optional Redemption Event or (y) an Amendment Event, whichever is applicable, would result in the Corporation being required to classify the Series A Convertible Preferred Stock as redeemable preferred stock on a balance sheet of the Corporation in accordance with Generally Accepted Accounting Principles and Regulation S-X of the SEC. The Auditors' Determination shall (i) set forth in reasonable detail all relevant facts considered by the Auditors in connection therewith, (ii) set forth all applicable accounting principles and assumptions used, and (iii) set forth in reasonable detail or attach copies of all legal, expert and other advice or information used by the Auditors in reaching their conclusion. To the extent any facts are assumed for purposes of either the Company's conclusion or the Auditor's Determination, the validity of such conclusion or determination shall depend upon such assumed facts being true and complete in all material respects.

"Average Market Price" for any date means the arithmetic average of the Market Price for each of the Trading Days during the applicable Measurement Period.

"Biannual Reset Date" means the date occurring every six months after the Initial Reset Date on the same day of each sixth month as the Initial Reset Date through the third anniversary of the Issuance Date (for example, if the Initial Reset Date is September 9, 2000, Biannual Reset Dates shall occur on each March 9 and September 9 thereafter through September 9, 2002).

"Blackout Period" means the period of up to 30 consecutive days after the date the Corporation notifies holders of shares of Series A Convertible Preferred Stock who are bound by any Registration Rights Agreement that such holders are required, pursuant to Section 4(d) of the Registration Rights Agreements, to suspend offers and sales of Registrable Securities pursuant to the Registration Statement as a result of an event or circumstance described in Section 3(f)(1) of the Registration Rights Agreements, during which period, by reason of Section 3(f)(2) of the Registration Rights Agreements, the Corporation is not required to amend the Registration Statement or to supplement the related prospectus.

"Board of Directors" or "Board" means the Board of Directors of the Corporation.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

"Cash and Cash Equivalent Balances" of any person on any date shall be determined from such person's books maintained in accordance with Generally Accepted Accounting Principles, and means, without duplication, the sum of (1) the cash accrued by such person and its subsidiaries on a consolidated basis on such date and available for use by such person and its subsidiaries on such date and (2) all assets which would, on a consolidated balance sheet of such person and its subsidiaries prepared as of such date in accordance with Generally Accepted Accounting Principles, be classified as cash or cash equivalents.

"Common Stock" means the Common Stock, \$.001 par value, of the Corporation.

"Computation Date" means, if a Redemption Limitation Event occurs, any of (1) the date which is 30 days after such Redemption Limitation Event occurs, if any Redemption Limitation Event is continuing on such date, (2) each date which is 30 days after a Computation Date, if any Redemption Limitation Event is continuing on such date, and (3) the date on which all Redemption Limitation Events cease to continue.

"Control Notice" means a notice given by the Corporation to the holders of shares of the Series A Convertible Preferred Stock, in accordance with Section 7(a)(5) or Section 11(b)(4), (i) stating that an Inconvertibility Day or an Optional Redemption Event, as the case may be, has occurred by reason of events which are not solely within the control of the Corporation and (ii) enclosing an executed copy of an Auditors' Determination.

"Conversion Agent" means Signature Stock Transfer, Inc., or its duly appointed successor, as conversion agent for the Series A Convertible Preferred Stock pursuant to the Transfer Agent Agreement.

"Conversion Amount" initially shall be equal to \$1,000.00, subject to adjustment as herein provided.

"Conversion Date" means, with respect to each conversion of shares of Series A Convertible Preferred Stock pursuant to Section 10, the date on which the Conversion Notice relating to such conversion is actually received by the Conversion Agent, whether by mail, courier, personal service, telephone line facsimile transmission or other means.

"Conversion Notice" means a written notice, duly signed by or on behalf of a holder of shares of Series A Convertible Preferred Stock, stating the number of shares of Series A Convertible Preferred Stock to be converted in the form specified in the Subscription Agreements.

"Conversion Price" means:

(1) for any Conversion Date during the period from the Issuance Date through the 364th day thereafter, the Fixed Conversion Price;

(2) for any Conversion Date during the Reset Period commencing on the Initial Reset Date, the lesser of:

(a) 130% of the Fixed Conversion Price; and

(b) 90% of the Average Market Price during the Measurement Period for the Initial Reset Date; and

(3) for any Conversion Date during each Reset Period commencing on each successive Biannual Reset Date, the lesser of:

(a) 130% of the Conversion Price in effect for the previous Reset Period; and

(b) 90% of the Average Market Price during the Measurement Period for such Biannual Reset Date;

PROVIDED, HOWEVER, that the Conversion Price applicable to a particular conversion shall be subject to reduction as provided in Section 10(b)(6); and PROVIDED FURTHER, HOWEVER, that if a Redemption Limitation Event occurs, then, in addition to any other right or remedy of any holder of shares of Series A Convertible Preferred Stock, thereafter the Conversion Price for the shares not redeemed shall be reduced on each Computation Date by an amount equal to five percent of the amount that the Conversion Price otherwise would have been without any reduction pursuant to this proviso (pro rated in the case of any Computation Date which is less than 30 days after a Redemption Limitation Event occurs or less than 30 days after another Computation Date), such reduction not to exceed a maximum aggregate reduction for all Computation Dates of 30% of the amount that the Conversion Price otherwise would have been without any reduction pursuant to this proviso, such reduction to remain in effect for 30 days after the end of the Redemption Limitation Event.

"Conversion Rate" shall have the meaning provided in Section 10(a).

"Converted Market Price" means, for any share of Series A Convertible Preferred Stock as of any date of determination, an amount equal to the product obtained by multiplying (x) the number of shares of Common Stock which would, at the time of such determination, be issuable on conversion in accordance with Section 10(a) of one share of Series A Convertible Preferred Stock if a Conversion Notice were given by the holder of such share of Series A Convertible Preferred Stock on the date of such determination (determined without regard to

any limitation on conversion based on beneficial ownership contained in Section 10(a)) TIMES (y) the Average Market Price of the Common Stock during the Measurement Period for the date of such determination.

"Corporation Optional Redemption Notice" means a notice given by the Corporation to the holders of shares of Series A Convertible Preferred Stock pursuant to Section 9(a) which notice shall state (1) that the Corporation is exercising its right to redeem all or a portion of the outstanding shares of Series A Convertible Preferred Stock pursuant to Section 9(a), (2) the number of shares of Series A Convertible Preferred Stock held by such holder which are to be redeemed, (3) the Redemption Price per share of Series A Convertible Preferred Stock to be redeemed or the formula for determining the same, determined in accordance herewith, and (4) the applicable Redemption Date.

"Current Price" means with respect to any date the arithmetic average of the Market Price of the Common Stock on the ten consecutive Trading Days commencing 15 Trading Days before such date.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Final Redemption Date" means the date of redemption of shares of Series A Convertible Preferred Stock pursuant to Section 9(b), determined in accordance therewith.

"Final Redemption Notice" means a notice given by the Corporation to each holder of Series A Convertible Preferred Stock pursuant to Section 9(b), which notice shall state (1) that the Corporation is exercising its right to redeem all outstanding shares of Series A Convertible Preferred Stock pursuant to Section 9(b), (2) the number of shares of Series A Convertible Preferred Stock held by such holder which are to be redeemed, (3) the Final Redemption Price per share of Series A Convertible Preferred Stock held by such holder which are to be redeemed, determined in accordance herewith, and (4) the Final Redemption Date.

"Final Redemption Price" means, for any share of Series A Convertible Preferred Stock on any date, an amount equal to the sum of (i) \$1,000 PLUS (ii) an amount equal to the Accrual Amount on the share of Series A Convertible Preferred Stock to be redeemed to the Final Redemption Date, PLUS (iii) an amount equal to the accrued and unpaid interest on cash dividends in arrears on such share of Series A Convertible Preferred Stock to the Final Redemption Date (determined as provided in Section 5).

"Fixed Conversion Price" means \$2.6812 (subject to equitable adjustments from time to time on terms reasonably determined by the Board of Directors for stock splits, stock dividends, combinations, recapitalizations, reclassifications and similar events occurring or with respect to which "ex-" trading commences on or after the date of filing of this Certificate of Designations with the Secretary of State of the State of Nevada).

"Generally Accepted Accounting Principles" for any person means the generally accepted accounting principles and practices applied by such person from time to time in the preparation of its audited financial statements.

"Inconvertibility Day" means any Trading Day on which the Corporation would not have been required to convert in accordance with Section 10(a) any shares of Series A Convertible Preferred Stock as a consequence of the limitations set forth in Section 7(a)(1) had all outstanding shares of Series A Convertible Preferred Stock held by such holder on such Trading Day been converted into Common Stock on such Trading Day (without regard to the limitation, if any, on beneficial ownership by such holder contained in Section 10(a)).

"Inconvertibility Notice" shall have the meaning provided in Section 7(a)(2).

"Indebtedness" as used in reference to any person means all indebtedness of such person for borrowed money, the deferred purchase price of property, goods and services and obligations under leases which are required to be capitalized in accordance with Generally Accepted Accounting Principles and shall include all such indebtedness guaranteed in any manner by such person and all indebtedness secured by mortgage or other lien upon property owned by such person, although such person has not assumed or become liable for the payment of such indebtedness, and, for all purposes hereof, such indebtedness shall be treated as though it has been assumed by such person, but excluding specifically accounts payable and accrued expenses.

"Initial Reset Date" means the first anniversary of the Issuance Date (having the same calendar month and day as the Issuance Date).

"Issuance Date" means the first date of original issuance of any shares of Series A Convertible Preferred Stock.

"Junior Dividend Stock" means, collectively, the Common Stock and any other class or series of capital stock of the Corporation ranking junior as to dividends to the Series A Convertible Preferred Stock.

"Junior Liquidation Stock" means the Common Stock or any other class or series of the Corporation's capital stock ranking junior as to liquidation rights to the Series A Convertible Preferred Stock.

"Junior Stock" shall have the meaning provided in Section 10(b)(8).

"Liquidation Preference" means, for each share of Series A Convertible Preferred Stock, the sum of (i) an amount equal to the Accrual Amount thereon to the date of final distribution to such holders and (ii) \$1,000.00.

"Majority Holders" means at any time the holders of shares of Series A Convertible Preferred Stock which shares constitute a majority of the outstanding shares of Series A Convertible Preferred Stock.

"Market Price" of the Common Stock on any date means the closing bid price for one share of Common Stock on such date on the first applicable among the following: (a) the national securities exchange on which the shares of Common Stock are listed which constitutes the principal securities market for the Common Stock, (b) the Nasdaq, if the Nasdaq constitutes the principal market for

the Common Stock on such date, or (c) the Nasdaq SmallCap, if the Nasdaq SmallCap constitutes the principal securities market for the Common Stock on such date, in any such case as reported by Bloomberg, L.P.; PROVIDED, HOWEVER, that if during any Measurement Period or other period during which the Market Price is being determined:

(i) The Corporation shall declare or pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock or fix any record date for any such action, then the Market Price for each day in such Measurement Period or such other period which day is prior to the earlier of (1) the date fixed for the determination of stockholders entitled to receive such dividend or other distribution and (2) the date on which ex-dividend trading in the Common Stock with respect to such dividend or distribution begins shall be reduced by multiplying the Market Price (determined without regard to this proviso) for each such day in such Measurement Period or such other period by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the earlier of (1) the record date fixed for such determination and (2) the date on which ex-dividend trading in the Common Stock with respect to such dividend or distribution begins and the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution;

(ii) The Corporation shall issue rights or warrants to all holders of its outstanding shares of Common Stock, or fix a record date for such issuance, which rights or warrants entitle such holders (for a period expiring within forty-five (45) days after the date fixed for the determination of stockholders entitled to receive such rights or warrants) to subscribe for or purchase shares of Common Stock at a price per share less than the Market Price (determined without regard to this proviso) for any day in such Measurement Period or such other period which day is prior to the end of such 45-day period, then the Market Price for each such day shall be reduced so that the same shall equal the price determined by multiplying the Market Price (determined without regard to this proviso) by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the record date fixed for the determination of stockholders entitled to receive such rights or warrants plus the number of shares which the aggregate offering price of the total number of shares so offered would purchase at such Market Price, and the denominator of which shall be the number of shares of Common Stock outstanding on the close of business on such record date plus the total number of additional shares of Common Stock so offered for subscription or purchase. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than the Market Price (determined without regard to this proviso), and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration, if other than cash, to be determined in good faith by a resolution of the Board of Directors of the Corporation;

(iii) The outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock or a record date for any such subdivision shall be fixed, then the Market Price of the Common Stock for each day in such Measurement Period or such other period which day is prior to the earlier of (1) the day upon which such subdivision becomes effective



and (2) the date on which ex-dividend trading in the Common Stock with respect to such subdivision begins shall be proportionately reduced, and conversely, in case the outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Market Price for each day in such Measurement Period or such other period which day is prior to the earlier of (1) the date on which such combination becomes effective and (2) the date on which trading in the Common Stock on a basis which gives effect to such combination begins, shall be proportionately increased;

(iv) The Corporation shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Corporation (other than any dividends or distributions to which clause (i) of this proviso applies) or evidences of its indebtedness, cash or other assets including securities (but excluding any rights or warrants referred to in clause (ii) of this proviso, dividends and distributions paid exclusively in cash and any capital stock, evidences of indebtedness, cash or assets distributed upon a merger or consolidation) (the foregoing hereinafter in this clause (iv) of this proviso called the "Securities"), or fix a record date for any such distribution, then, in each such case, the Market Price for each day in such Measurement Period or such other period which day is prior to the earlier of (1) the record date for such distribution and (2) the date on which ex-dividend trading in the Common Stock with respect to such distribution begins shall be reduced so that the same shall be equal to the price determined by multiplying the Market Price (determined without regard to this proviso) by a fraction, the numerator of which shall be the Market Price (determined without regard to this proviso) for such date less the fair market value (as determined in good faith by resolution of the Board of Directors of the Corporation) on such date of the portion of the Securities so distributed or to be distributed applicable to one share of Common Stock and the denominator of which shall be the Market Price (determined without regard to this proviso) for such date; PROVIDED, HOWEVER, that in the event the then fair market value (as so determined) of the portion of the Securities so distributed applicable to one share of Common Stock is equal to or greater than the Market Price (determined without regard to this clause (iv) of this proviso) for any such Trading Day, in lieu of the foregoing adjustment, adequate provision shall be made so that the holders of shares of Series A Convertible Preferred Stock shall have the right to receive upon conversion of the shares of Series A Convertible Preferred Stock the amount of Securities the holders of shares of Series A Convertible Preferred Stock would have received had the number of shares of Common Stock to be issued in payment of such dividends on the shares of Series A Convertible Preferred Stock been issued, or had the holders of shares of Series A Convertible Preferred Stock converted the shares of Series A Convertible Preferred Stock, in either such case immediately prior to the record date for such distribution (PROVIDED, HOWEVER, that if such Securities are not then available, the Corporation shall substitute cash or securities or other property of equivalent value on terms reasonably satisfactory to the holders of shares of Series A Convertible Preferred Stock). If the Board of Directors of the Corporation determines the fair market value of any distribution for purposes of this clause (iv) by reference to the actual or when issued trading market for any securities comprising all or part of such distribution, it must in doing so consider the prices in such market on the same day for which an adjustment in the Market Price is being determined.

For purposes of this clause (iv) and clauses (i) and (ii) of this proviso, any dividend or distribution to which this clause (iv) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock to which clause (i) or (ii) of this proviso applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants other than such shares of Common Stock or rights or warrants to which clause (i) or (ii) of this proviso applies (and any Market Price reduction required by this clause (iv) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Market Price reduction required by clauses (i) and (ii) of this proviso with respect to such dividend or distribution shall then be made), except that any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of clause (i) of this proviso;

(v) The Corporation or any subsidiary of the Corporation shall (x) by dividend or otherwise, distribute to all holders of its Common Stock cash in (or fix any record date for any such distribution), or (y) repurchase or reacquire shares of its Common Stock (other than an Option Share Surrender) for, in either case, an aggregate amount that, combined with (1) the aggregate amount of any other such distributions to all holders of its Common Stock made exclusively in cash after the Issuance Date and within the 12 months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to this clause (v) has been made, (2) the aggregate amount of any cash plus the fair market value (as determined in good faith by a resolution of the Board of Directors of the Corporation) of consideration paid in respect of any repurchase or other reacquisition by the Corporation or any subsidiary of the Corporation of any shares of Common Stock (other than an Option Share Surrender) made after the Issuance Date and within the 12 months preceding the date of payment of such distribution or making of such repurchase or reacquisition, as the case may be, and in respect of which no adjustment pursuant to this clause (v) has been made, and (3) the aggregate of any cash plus the fair market value (as determined in good faith by a resolution of the Board of Directors of the Corporation) of consideration payable in respect of any Tender Offer by the Corporation or any of its subsidiaries for all or any portion of the Common Stock concluded within the 12 months preceding the date of payment of such distribution or completion of such repurchase or reacquisition, as the case may be, and in respect of which no adjustment pursuant to clause (vi) of this proviso has been made (such aggregate amount combined with the amounts in clauses (1), (2) and (3) above being the "Combined Amount"), exceeds 10% of the product of the Market Price (determined without regard to this proviso) for any day in such Measurement Period or such other period which day is prior to the earlier of (A) the record date with respect to such distribution and (B) the date on which ex-dividend trading in the Common Stock with respect to such distribution begins or the date of such repurchase or reacquisition, as the case may be, times the number of shares of Common Stock outstanding on such date, then, and in each such case, the Market Price for each such day shall be reduced so that the same shall equal the price determined by multiplying the Market Price (determined without regard to this proviso) for such day by a fraction (i) the numerator of which shall be equal to the Market Price (determined without regard to this proviso) for such day less an amount equal to the quotient of (x) the excess of such Combined Amount over such

10% and (y) the number of shares of Common Stock outstanding on such day and (ii) the denominator of which shall be equal to the Market Price (determined without regard to this proviso) for such day; PROVIDED, HOWEVER, that in the event the portion of the cash so distributed or paid for the repurchase or reacquisition of shares (determined per share based on the number of shares of Common Stock outstanding) applicable to one share of Common Stock is equal to or greater than the Market Price (determined without regard to this clause (v) of this proviso) of the Common Stock for any such day, then in lieu of the foregoing adjustment with respect to such day, adequate provision shall be made so that the holders of shares of Series A Convertible Preferred Stock shall have the right to receive upon conversion of shares of Series A Convertible Preferred Stock the amount of cash the holders of shares of Series A Convertible Preferred Stock would have received had the holders of shares of Series A Convertible Preferred Stock converted shares of Series A Convertible Preferred Stock immediately prior to the record date for such distribution or the payment date of such repurchase, as applicable; or

(vi) A Tender Offer made by the Corporation or any of its subsidiaries for all or any portion of the Common Stock shall expire and such Tender Offer (as amended upon the expiration thereof) shall require the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the Tender Offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined in good faith by resolution of the Board of Directors of the Corporation) that combined together with (1) the aggregate of the cash plus the fair market value (as determined in good faith by a resolution of the Board of Directors of the Corporation), as of the expiration of such Tender Offer, of consideration paid or payable in respect of any other Tender Offers by the Corporation or any of its subsidiaries for all or any portion of the Common Stock expiring within the 12 months preceding the expiration of such Tender Offer and in respect of which no adjustment pursuant to this clause (vi) has been made, (2) the aggregate amount of any cash plus the fair market value (as determined in good faith by a resolution of the Board of Directors of the Corporation) of consideration paid in respect of any repurchase or other reacquisition by the Corporation or any subsidiary of the Corporation of any shares of Common Stock (other than an Option Share Surrender) made after the Issuance Date and within the 12 months preceding the expiration of such Tender Offer and in respect of which no adjustment pursuant to clause (v) of this proviso has been made, and (3) the aggregate amount of any distributions to all holders of Common Stock made exclusively in cash within 12 months preceding the expiration of such Tender Offer and in respect of which no adjustment pursuant to clause (v) of this proviso has been made, exceeds 10% of the product of the Market Price (determined without regard to this proviso) for any day in such period times the number of shares of Common Stock outstanding on such day, then, and in each such case, the Market Price for such day shall be reduced so that the same shall equal the price determined by multiplying the Market Price (determined without regard to this proviso) for such day by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding on such day multiplied by the Market Price (determined without regard to this proviso) for such day and the denominator of which shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration paid or payable to stockholders based on the acceptance (up to any maximum specified in the terms of the Tender Offer) of all shares

validly tendered and not withdrawn as of the last time tenders could have been made pursuant to such Tender Offer (the "Expiration Time") (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) on such day times the Market Price (determined without regard to this proviso) of the Common Stock on the Trading Day next succeeding the Expiration Time.

"Maximum Share Amount" means 3,429,400 shares of Common Stock, or such greater number of shares as permitted by the rules of the Nasdaq SmallCap or other securities market on which the Common Stock is then listed (such amount to be subject to equitable adjustment from time to time on terms reasonably determined by the Board of Directors for stock splits, stock dividends, combinations, capital reorganizations and similar events relating to the Common Stock occurring or with respect to which "ex-" trading commences after the date of filing this Certificate of Designations with the Secretary of State of the State of Nevada).

"Measurement Period" means, with respect to any date, the period of ten consecutive Trading Days ending on the Trading Day prior to such date.

"Nasdaq" means the Nasdaq National Market.

"Nasdaq SmallCap" means the Nasdaq SmallCap Market.

"Net Cash and Cash Equivalent Balances" of any person on any date means an amount not less than zero equal to the consolidated Cash and Cash Equivalent Balances of such person and its subsidiaries on such date LESS the amount of any outstanding Indebtedness of such person or any of its subsidiaries which, directly or indirectly, is secured in whole or in part by, or restricts the use of, the consolidated Cash and Cash Equivalent Balances of such person and its subsidiaries.

"1933 Act" means the Securities Act of 1933, as amended.

"NYSE" means the New York Stock Exchange, Inc.

"Option Share Surrender" means the surrender of shares of Common Stock to the Corporation in payment of the exercise price or tax obligations incurred in connection with the exercise of a stock option granted by the Corporation to any of its employees, directors or consultants.

"Optional Redemption Event" means any one of the following events:

(1) For any period of five consecutive Trading Days there shall be no closing bid price of the Common Stock on the Nasdaq, the Nasdaq SmallCap, the NYSE or the AMEX;

(2) The Common Stock ceases to be listed for trading on any of the Nasdaq, the Nasdaq SmallCap, the NYSE or the AMEX and is not simultaneously listed on one of the other such markets or exchanges;

(3) The inability for 30 or more days (whether or not consecutive) of any holder of shares of Series A Convertible Preferred Stock to sell such shares of Common Stock issued or issuable on conversion of shares of Series A Convertible Preferred Stock pursuant to the Registration Statement for any reason other than a Blackout Period on each of such 30 days;

(4) The Corporation shall (A) default in the timely performance of the obligation to issue shares of Common Stock upon conversion of shares of Series A Convertible Preferred Stock as and when required by Section 10 or (B) fail or default in the timely performance of any material obligation (other than as specifically set forth elsewhere in this definition) to a holder of shares of Series A Convertible Preferred Stock under the terms of this Certificate of Designations or under the Subscription Agreements, the Registration Rights Agreements, the Warrants or any other agreement or document entered into in connection with the issuance of shares of Series A Convertible Preferred Stock, as such instruments may be amended from time to time; PROVIDED, HOWEVER, that (i) with respect to the first two occurrences of an event described in clause (A) above, each of such events shall be an Optional Redemption Event only if such default shall have continued for a period of three Trading Days after notice thereof is given to the Corporation by any holder of shares of Series A Convertible Preferred Stock and (ii) an event described in clause (B) above shall be an Optional Redemption Event only if such failure or default shall have continued for a period of 30 days after notice thereof is given to the Corporation by any holder of shares of Series A Convertible Preferred Stock.

(5) (A) Any consolidation or merger of the Corporation with or into another entity (other than a merger or consolidation of a subsidiary of the Corporation with or into the Corporation or a wholly-owned subsidiary of the Corporation) where the shareholders of the Corporation immediately prior to such transaction do not collectively own at least 51% of the outstanding voting securities of the surviving corporation of such consolidation or merger immediately following such transaction and (i) such transaction materially and adversely affects the rights of any holder of shares of Series A Convertible Preferred Stock or (ii) the common stock of the surviving corporation is not listed for trading on the NYSE, the AMEX, the Nasdaq or the Nasdaq SmallCap; or (B) any sale or other transfer of all or substantially all of the assets of the Corporation UNLESS (i) the shareholders of the Corporation immediately prior to such transaction own at least 51% of the outstanding voting securities of the transferee of such assets, (ii) the common stock of such transferee is listed for trading on the NYSE, the AMEX, the Nasdaq or the Nasdaq SmallCap and (iii) such transferee assumes all of the obligations of the Corporation to the holders of the Series A Convertible Preferred Stock under this Certificate of Designations, the Subscription Agreements and the other instruments contemplated hereby and thereby; or

(6) The adoption of any amendment to the Corporation's Articles of Incorporation, without the consent of the Majority Holders, which materially and adversely affects the rights of any holder of shares of Series A Convertible Preferred Stock.

"Optional Redemption Notice" means a notice from a holder of shares of Series A Convertible Preferred Stock to the Corporation which states (1) that the holder delivering such notice is thereby requiring the Corporation to redeem shares of Series A Convertible Preferred Stock pursuant to Section 11, (2) to

such holder's knowledge, a summary of the circumstances constituting the Optional Redemption Event giving rise to such redemption, and (3) the number of shares of Series A Convertible Preferred Stock held by such holder which are to be redeemed.

"Optional Redemption Price" means the greater of (i) the Premium Price on the applicable redemption date and (ii) the Converted Market Price on the applicable redemption date.

"Parity Dividend Stock" means any class or series of the Corporation's capital stock ranking, as to dividends, on a parity with the Series A Convertible Preferred Stock.

"Parity Liquidation Stock" means any class or series of the Corporation's capital stock having parity as to liquidation rights with the Series A Convertible Preferred Stock.

"Premium Percentage" means 120%.

"Premium Price" means, for any share of Series A Convertible Preferred Stock as of any date of determination, the sum of (a) the product obtained by multiplying (x) the sum of (1) the Conversion Amount PLUS (2) an amount equal to the Accrual Amount on such share of Series A Convertible Preferred Stock to the date of determination, TIMES (y) the Premium Percentage PLUS (b) an amount equal to the accrued and unpaid interest on cash dividends in arrears (as provided in Section 5) to the date of determination.

"Redemption Date" means the date of a redemption of shares of Series A Convertible Preferred Stock pursuant to Section 9(a), determined in accordance therewith.

"Redemption Limitation Event" means the failure of the Corporation to pay the applicable redemption price when due for some or all of the shares of Series A Convertible Preferred Stock required to be redeemed pursuant to Section 7 or Section 11 by reason of a restriction contained in the Company's loan agreements or facilities with Wells Fargo Credit, Inc., or with any other institutional lender, whether such agreements or facilities are now existing or hereafter created; and such Redemption Limitation Event shall be deemed to continue until such redemption price is paid in full in accordance with the terms of this Certificate of Designations.

"Redemption Price" means the greater of (i) the Premium Price on the applicable Redemption Date and (ii) the Converted Market Price on the applicable Redemption Date; PROVIDED, HOWEVER, that if the Corporation, as certified by an officer of the Corporation in the Corporation Optional Redemption Notice, has Net Cash and Cash Equivalent Balances which, together with the amount of all definitive, binding commitments available to the Corporation (which may include available borrowing capacity under instruments which also reflect outstanding Indebtedness) on or prior to the applicable Redemption Date to fund payment of the Redemption Price (as defined in this proviso) of the shares of Series A Convertible Preferred Stock to be redeemed, are sufficient, after taking into account the Corporation's net cash requirements during the period from the date the Corporation Optional Redemption Notice is given to the Redemption Date, to pay such Redemption Price of the shares of Series A Convertible Preferred Stock to be redeemed, the "Redemption Price" means the Premium Price on the applicable Redemption Date.

"Registration Rights Agreements" means the several Registration Rights Agreements entered into between the Corporation and the original holders of the shares of Series A Convertible Preferred Stock, as amended or modified from time to time in accordance with their respective terms.

"Registration Statement" means the Registration Statement required to be filed by the Corporation with the SEC pursuant to Section 2(a) of the Registration Rights Agreements.

"Reset Period" means the applicable six month period commencing on the Initial Reset Date and on each Biannual Reset Date thereafter and ending on the day immediately prior to the next Biannual Reset Date.

"SEC" means the United States Securities and Exchange Commission.

"SEC Effective Date" means the date the Registration Statement is first declared effective by the SEC.

"Senior Dividend Stock" means any class or series of capital stock of the Corporation ranking senior as to dividends to the Series A Convertible Preferred Stock.

"Senior Liquidation Stock" means any class or series of capital stock of the Corporation ranking senior as to liquidation rights to the Series A Convertible Preferred Stock.

"Series A Convertible Preferred Stock" means the Series A Convertible Preferred Stock, \$.001 par value, of the Corporation.

"Share Limitation Redemption Date" means each date on which the Corporation is required to redeem shares of Series A Convertible Preferred Stock as provided in Section 7(a).

"Share Limitation Redemption Price" means the greater of (a) the Premium Price on the applicable Share Limitation Redemption Date and (b) the Converted Market Price on the applicable Share Limitation Redemption Date.

"Stockholder Approval" shall mean the approval by a majority of the votes cast by the holders of shares of Common Stock (in person or by proxy) at a meeting of the stockholders of the Corporation (duly convened at which a quorum was present), or a written consent of holders of shares of Common Stock entitled to such number of votes given without a meeting, of the issuance by the Corporation of 20% or more of the Common Stock of the Corporation outstanding on the Issuance Date for less than the greater of the book or market value of such Common Stock on conversion of the Series A Convertible Preferred Stock, as and to the extent required under Rule 4310(c)(25)(H) of the Nasdaq SmallCap as in effect from time to time or any successor, replacement or similar provision thereof or of any other market on which the Common Stock is listed for trading.

"Subscription Agreements" means the several Subscription Agreements by and between the Corporation and the original holders of shares of Series A Convertible Preferred Stock pursuant to which the shares of Series A Convertible Preferred Stock were issued.

"Tender Offer" means a tender offer or exchange offer.

"Trading Day" means a day on whichever of (x) the national securities exchange, (y) the Nasdaq or (z) the Nasdaq SmallCap, which at the time constitutes the principal securities market for the Common Stock, is open for general trading.

"Transfer Agent Agreement" means the Transfer Agent Agreement, dated as of September 15, 1999, by and among the Corporation, the Conversion Agent and the original holders of the Series A Convertible Preferred Stock for the benefit of the holders from time to time of shares of Series A Convertible Preferred Stock.

"Warrants" means the Common Stock Purchase Warrants issued by the Corporation in connection with the issuance of the shares of Series A Convertible Preferred Stock.

SECTION 2. DESIGNATION AND AMOUNT. The shares of such series shall be designated as "Series A Convertible Preferred Stock", and the number of shares constituting the Series A Convertible Preferred Stock shall be 4,000, and shall not be subject to increase. The Corporation shall not issue any shares of Series A Convertible Preferred Stock other than pursuant to the Subscription Agreements, unless such issuance shall have been approved by the Majority Holders. Any shares of Series A Convertible Preferred Stock which are redeemed by the Corporation and retired and any shares of Series A Convertible Preferred Stock which are converted in accordance with Section 10 shall be restored to the status of authorized, unissued and undesignated shares of the Corporation's class of Preferred Stock and shall not be subject to issuance, and may not thereafter be outstanding, as shares of Series A Convertible Preferred Stock.

SECTION 3. [RESERVED.]

SECTION 4. RANK. Subject to Section 12(b), all Series A Convertible Preferred Stock shall rank (i) senior to the Common Stock, now or hereafter issued, as to payment of dividends and distribution of assets upon liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, (ii) senior to any additional series of the class of Preferred Stock which series the Board of Directors may from time to time authorize, both as to payment of dividends and as to distributions of assets upon liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, and (iii) senior to any additional class of preferred stock (or series of preferred stock of such class) which the Board of Directors or the stockholders may from time to time authorize in accordance herewith.

SECTION 5. DIVIDENDS AND DISTRIBUTIONS. (a) The holders of shares of Series A Convertible Preferred Stock shall be entitled to receive, when, as, and if declared by the Board of Directors out of funds legally available for such purpose, dividends at the rate of \$60.00 per annum per share, and no more, which shall be fully cumulative, shall accrue without interest (except as otherwise provided herein as to dividends in arrears) from the date of original issuance of each share of Series A Convertible Preferred Stock and shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year commencing December 1, 1999 (except that if any such date is a Saturday, Sunday, or legal holiday, then such dividend shall be payable on the next succeeding day that is not a Saturday, Sunday, or legal holiday) to holders of record as they appear on the stock books of the Corporation on such record dates, which record dates must



be not more than 20 nor less than 10 days preceding the payment dates for such dividends, as shall be fixed by the Board. Dividends on the Series A Convertible Preferred Stock shall be paid in cash or, in lieu of paying such dividends and subject to the limitations in Section 5(b) hereof, the amount of such dividends shall be included in the Accrual Amount for each share, at the option of the Corporation as hereinafter provided. The amount of the dividends payable per share of Series A Convertible Preferred Stock for each quarterly dividend period shall be computed by dividing the annual dividend amount by four. The amount of dividends payable for the initial dividend period and any period shorter than a full quarterly dividend period shall be computed on the basis of a 360-day year of twelve 30-day months. Dividends required to be paid in cash pursuant to Section 5(b) which are not paid on a payment date, whether or not such dividends have been declared, will bear interest at the rate of 14% per annum until paid (or such lesser rate as shall be the maximum rate allowable by applicable law). No dividends or other distributions, other than the dividends payable solely in shares of any Junior Dividend Stock, shall be paid or set apart for payment on any shares of Junior Dividend Stock, and no purchase, redemption, or other acquisition shall be made by the Corporation of any shares of Junior Dividend Stock (except for Option Share Surrenders), unless and until all accrued and unpaid cash dividends on the Series A Convertible Preferred Stock and interest on dividends in arrears at the rate specified herein shall have been paid or declared and set apart for payment.

If at any time any dividend on any Senior Dividend Stock shall be in arrears, in whole or in part, no dividend shall be paid or declared and set apart for payment on the Series A Convertible Preferred Stock unless and until all accrued and unpaid dividends with respect to the Senior Dividend Stock, including the full dividends for the then current dividend period, shall have been paid or declared and set apart for payment, without interest. No full dividends shall be paid or declared and set apart for payment on any Parity Dividend Stock for any period unless all accrued but unpaid dividends (and interest on dividends in arrears at the rate specified herein) have been, or contemporaneously are, paid or declared and set apart for such payment on the Series A Convertible Preferred Stock. No full dividends shall be paid or declared and set apart for payment on the Series A Convertible Preferred Stock for any period unless all accrued but unpaid dividends have been, or contemporaneously are, paid or declared and set apart for payment on the Parity Dividend Stock for all dividend periods terminating on or prior to the date of payment of such full dividends. When dividends are not paid in full upon the Series A Convertible Preferred Stock and the Parity Dividend Stock, all dividends paid or declared and set apart for payment upon shares of Series A Convertible Preferred Stock (and interest on dividends in arrears at the rate specified herein) and the Parity Dividend Stock shall be paid or declared and set apart for payment pro rata, so that the amount of dividends paid or declared and set apart for payment per share on the Series A Convertible Preferred Stock and the Parity Dividend Stock shall in all cases bear to each other the same ratio that accrued and unpaid dividends per share on the shares of Series A Convertible Preferred Stock and the Parity Dividend Stock bear to each other.

Any references to "distribution" contained in this Section 5 shall not be deemed to include any stock dividend or distributions made in connection with any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary.

(b) If (x) prior to any dividend payment date the Corporation notifies the holders of Series A Convertible Preferred Stock that the dividends with respect to such date will be paid in cash or (y) on any dividend payment date the

Corporation is not in compliance in all material respects with its obligations to the holders of the Series A Convertible Preferred Stock (including, without limitation, its obligations under the Subscription Agreements, the Registration Rights Agreements, the Warrants and this Certificate of Designations) and such noncompliance continues for a period of ten days after notice thereof is given to the Corporation by any holder of Series A Convertible Preferred Stock, such dividends must be timely paid in cash. If clauses (x) or (y) of the foregoing sentence do not apply on any dividend payment date, the Corporation may, but shall not be required to, pay the applicable dividends in cash. The amount of any dividends not paid in cash shall be included in the Accrual Amount for each share of Series A Convertible Preferred Stock.

(c) Neither the Corporation nor any subsidiary of the Corporation shall redeem, repurchase or otherwise acquire in any one transaction or series of related transactions any shares of Common Stock, Junior Dividend Stock or Junior Liquidation Stock if the number of shares so repurchased, redeemed or otherwise acquired in such transaction or series of related transactions (excluding any Option Share Surrender) is more than 10% of the number of shares of Common Stock, Junior Dividend Stock or Junior Liquidation Stock, as the case may be, outstanding immediately prior to such transaction or series of related transactions unless the Corporation or such subsidiary offers to purchase for cash from each holder of shares of Series A Convertible Preferred Stock at the time of such redemption, repurchase or acquisition the same percentage of such holder's shares of Series A Convertible Preferred Stock as the percentage of the number of outstanding shares of Common Stock, Junior Dividend Stock or Junior Liquidation Stock, as the case may be, to be so redeemed, repurchased or acquired at a purchase price per share of Series A Convertible Preferred Stock equal to the greater of (i) the Premium Price in effect on the date of purchase pursuant to this Section 5(c) and (ii) the Converted Market Price on the date of purchase pursuant to this Section 5(c).

(d) Neither the Corporation nor any subsidiary of the Corporation shall (1) make any Tender Offer for 10% or more of the outstanding shares of Common Stock, unless the Corporation contemporaneously therewith makes an offer, or (2) enter into an agreement regarding such a Tender Offer for outstanding shares of Common Stock by any person other than the Corporation or any subsidiary of the Corporation, unless such person agrees with the Corporation to make an offer, in either such case to each holder of outstanding shares of Series A Convertible Preferred Stock to purchase for cash at the time of purchase in such Tender Offer the same percentage of shares of Series A Convertible Preferred Stock held by such holder as the percentage of outstanding shares of Common Stock actually purchased in such Tender Offer at a price per share of Series A Convertible Preferred Stock equal to the greater of (i) the Premium Price in effect on the date of purchase pursuant to this Section 5(d) and (ii) the Converted Market Price on the date of purchase pursuant to this Section 5(d).

SECTION 6. LIQUIDATION PREFERENCE. In the event of a liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, the holders of Series A Convertible Preferred Stock shall be entitled to receive out of the assets of the Corporation, whether such assets constitute stated capital or surplus of any nature, an amount per share of Series A Convertible Preferred Stock equal to the Liquidation Preference, and no more, before any payment shall be made or any assets distributed to the holders of Junior Liquidation Stock; PROVIDED, HOWEVER, that such rights shall accrue to the holders of Series A Convertible Preferred Stock only in the event that the

Corporation's payments with respect to the liquidation preference of the holders of Senior Liquidation Stock are fully met. After the liquidation preferences of the Senior Liquidation Stock are fully met, the entire assets of the Corporation available for distribution shall be distributed ratably among the holders of the Series A Convertible Preferred Stock and any Parity Liquidation Stock in proportion to the respective preferential amounts to which each is entitled (but only to the extent of such preferential amounts). After payment in full of the liquidation price of the shares of the Series A Convertible Preferred Stock and the Parity Liquidation Stock, the holders of such shares shall not be entitled to any further participation in any distribution of assets by the Corporation. Neither a consolidation or merger of the Corporation with another corporation nor a sale or transfer of all or part of the Corporation's assets for cash, securities, or other property in and of itself will be considered a liquidation, dissolution or winding up of the Corporation.

#### SECTION 7. MAXIMUM SHARE AMOUNT REDEMPTION.

(a) REDEMPTION BASED ON MAXIMUM SHARE AMOUNT. (1) Notwithstanding any other provision herein, unless the Stockholder Approval shall have been obtained from the stockholders of the Corporation or waived by the Nasdaq, the Nasdaq SmallCap, or other securities market on which the Common Stock is then listed, so long as the Common Stock is listed on the Nasdaq, the Nasdaq SmallCap, the NYSE or the AMEX the Corporation shall not be required to issue upon conversion of shares of Series A Convertible Preferred Stock pursuant to Section 10 more than the Maximum Share Amount. The Maximum Share Amount shall be allocated among the shares of Series A Convertible Preferred Stock at the time of initial issuance thereof pro rata based on the initial issuance of 4,000 shares of Series A Convertible Preferred Stock. Each certificate for shares of Series A Convertible Preferred Stock initially issued shall bear a notation as to the number of shares constituting the portion of the Maximum Share Amount allocated to the shares of Series A Convertible Preferred Stock represented by such certificate for purposes of conversion thereof. Upon surrender of any certificate for shares of Series A Convertible Preferred Stock for transfer or re-registration thereof (or, at the option of the holder, for conversion pursuant to Section 10(a) of less than all of the shares of Series A Convertible Preferred Stock represented thereby), the Corporation shall make a notation on the new certificate issued upon such transfer or re-registration or evidencing such unconverted shares, as the case may be, as to the remaining number of shares of Common Stock from the Maximum Share Amount remaining available for conversion of the shares of Series A Convertible Preferred Stock evidenced by such new certificate. If any certificate for shares of Series A Convertible Preferred Stock is surrendered for split-up into two or more certificates representing an aggregate number of shares of Series A Convertible Preferred Stock equal to the number of shares of Series A Convertible Preferred Stock represented by the certificate so surrendered (as reduced by any contemporaneous conversion of shares of Series A Convertible Preferred Stock represented by the certificate so surrendered), each certificate issued on such split-up shall bear a notation of the portion of the Maximum Share Amount allocated thereto determined by pro rata allocation from among the remaining portion of the Maximum Share Amount allocated to the certificate so surrendered. If any shares of Series A Convertible Preferred Stock represented by a single certificate are converted in full pursuant to Section 10, all of the portion of the Maximum Share Amount allocated to such shares of Series A Convertible Preferred Stock which remains unissued after such conversion shall be re-allocated pro rata to the outstanding shares of Series A Convertible Preferred Stock held of record by the holder of record at the close of business on the date of such conversion of

the shares of Series A Convertible Preferred Stock so converted, and if there shall be no other shares of Series A Convertible Preferred Stock held of record by such holder at the close of business on such date, then such portion of the Maximum Share Amount shall be allocated pro rata among the shares of Series A Convertible Preferred Stock outstanding on such date.

(2) The Corporation shall promptly, but in no event later than five Business Days after the occurrence, give notice to each holder of shares of Series A Convertible Preferred Stock (by telephone line facsimile transmission at such number as such holder has specified in writing to the Corporation for such purposes or, if such holder shall not have specified any such number, by overnight courier or first class mail, postage prepaid, at such holder's address as the same appears on the stock books of the Corporation) and any holder of shares of Series A Convertible Preferred Stock may at any time after the occurrence give notice to the Corporation, in either case, if on any ten Trading Days within any period of 20 consecutive Trading Days the Corporation would not have been required to convert shares of Series A Convertible Preferred Stock of such holder in accordance with Section 10(a) as a consequence of the limitations set forth in Section 7(a)(1) had the shares of Series A Convertible Preferred Stock held by such holder been converted in full into Common Stock on each such day, determined without regard to the limitation, if any, on such holder contained in the proviso to the second sentence of Section 10(a) (any such notice, whether given by the Corporation or a holder, an "Inconvertibility Notice"). If the Corporation shall have given or been required to give any Inconvertibility Notice, or if a holder shall have given any Inconvertibility Notice, then within ten Trading Days after such Inconvertibility Notice is given or was required to be given, the holder receiving or giving, as the case may be, such Inconvertibility Notice shall have the right by written notice to the Corporation (which written notice may be contained in the Inconvertibility Notice given by such holder) to direct the Corporation to redeem the portion of such holder's outstanding shares of Series A Convertible Preferred Stock (which, if applicable, shall be all of such holder's outstanding shares of Series A Convertible Preferred Stock) as shall not, on the Business Day prior to the date of such redemption, be convertible into shares of Common Stock by reason of the limitations set forth in Section 7(a)(1) (determined without regard to the limitation, if any, on beneficial ownership of Common Stock by such holder contained in the proviso to the second sentence of Section 10(a)), within 15 Trading Days after such holder so directs the Corporation, at a price per share equal to the Share Limitation Redemption Price. If a holder of shares of Series A Convertible Preferred Stock directs the Corporation to redeem outstanding shares of Series A Convertible Preferred Stock and, prior to the date the Corporation is required to redeem such shares of Series A Convertible Preferred Stock, the Corporation would have been able, within the limitations set forth in Section 7(a)(1), to convert all of such holder's shares of Series A Convertible Preferred Stock (determined without regard to the limitation, if any, on beneficial ownership of shares of Common Stock by such holder contained in the proviso to the second sentence of Section 10(a)) on any ten Trading Days within any period of 15 consecutive Trading Days commencing after the period of 20 consecutive Trading Days which gave rise to the applicable Inconvertibility Notice from the Corporation or such holder of shares of Series A Convertible Preferred Stock, as the case may be, had all of such holder's shares of Series A Convertible Preferred Stock been surrendered for conversion into Common Stock on each of such ten Trading Days within such 15 Trading Day period, then the Corporation shall not be required to redeem any shares of Series A Convertible Preferred Stock by reason of such Inconvertibility Notice.

(3) Notwithstanding the giving of any Inconvertibility Notice by the Corporation to the holders of Series A Convertible Preferred Stock pursuant to Section 7(a)(2) or the giving or the absence of any notice by the holders of the Series A Convertible Preferred Stock in response thereto or any redemption of shares of Series A Convertible Preferred Stock pursuant to Section 7(a)(2), thereafter the provisions of Section 7(a)(2) shall continue to be applicable on any occasion unless the Stockholder Approval shall have been obtained from the stockholders of the Corporation or waived by the Nasdaq, the Nasdaq SmallCap, or other securities market on which the Common Stock is then listed.

(4) On each Share Limitation Redemption Date (or such later date as a holder of shares of Series A Convertible Preferred Stock shall surrender to the Corporation the certificate(s) for the shares of Series A Convertible Preferred Stock being redeemed pursuant to this Section 7(a)), the Corporation shall make payment in immediately available funds of the applicable Share Limitation Redemption Price to such holder of shares of Series A Convertible Preferred Stock to be redeemed to or upon the order of such holder as specified by such holder in writing to the Corporation at least one Business Day prior to such Share Limitation Redemption Date. Upon redemption of less than all of the shares of Series A Convertible Preferred Stock evidenced by a particular certificate, promptly, but in no event later than three Business Days after surrender of such certificate to the Corporation, the Corporation shall issue a replacement certificate for the shares of Series A Convertible Preferred Stock evidenced by such certificate which have not been redeemed. Only whole shares of Series A Convertible Preferred Stock may be redeemed.

(5) (A) Notwithstanding any other provision of this Certificate of Designations, if an Inconvertibility Day occurs by reason of events which are not solely within the control of the Corporation, the Corporation shall have the right to give a Control Notice to the holders of Series A Convertible Preferred Stock at any time after such Inconvertibility Day occurs and prior to the earlier of (1) the date on which all holders of shares of Series A Convertible Preferred Stock who had the right (other than as limited by this Section 7(a)(5)) to require redemption of any shares of Series A Convertible Preferred Stock by reason of the occurrence of such Inconvertibility Day no longer have such right and (2) the applicable Share Limitation Redemption Date by reason of the earliest notice given by any holder of shares of Series A Convertible Preferred Stock directing the Corporation to redeem such shares in accordance with Section 7(a)(2) by reason of such Inconvertibility Day. For purposes of this Section 7(a)(5), an Inconvertibility Day shall be deemed to have occurred by reason of events which are not solely within the control of the Corporation if a requirement of the Corporation to redeem, or a right of any holder of shares of Series A Convertible Preferred Stock to require redemption of, shares of Series A Convertible Preferred Stock by reason thereof would result in the Corporation being required to classify the Series A Convertible Preferred Stock as redeemable preferred stock on a balance sheet of the Corporation prepared in accordance with Generally Accepted Accounting Principles and Regulation S-X of the SEC. If the Corporation timely gives a Control Notice to the holders of shares of Series A Convertible Preferred Stock, then in lieu of payment of the Share Limitation Redemption Price pursuant to a redemption notice given by any holder of shares of Series A Convertible Preferred Stock in accordance with Section 7(a)(2) by reason of such Inconvertibility Day and commencing on such Inconvertibility Day the Conversion Price for all outstanding shares of Series A Convertible Preferred Stock will be 80% of the amount the Conversion Price would otherwise be. Such adjustment of the Conversion Price shall continue in effect until the earliest of (x) the date which is 90 days after the Stockholder

Approval shall have been obtained from the stockholders of the Corporation or waived by the Nasdaq SmallCap or other securities market on which the Common Stock is then listed, (y) the date any further adjustments are made following a failure to obtain the Stockholder Approval as provided below, and (z) the date when shares of Series A Convertible Preferred Stock are no longer outstanding. On or after the date the Corporation gives such Control Notice, upon notice from the Majority Holders, the Corporation promptly shall call a special meeting of its stockholders, to be held not later than 90 days after such notice is given, to seek the Stockholder Approval for the issuance of all shares of Common Stock issuable upon conversion of the Series A Convertible Preferred Stock in accordance with Section 10 and shall use its best efforts to obtain the Stockholder Approval. The Corporation shall prepare and file with the SEC within 20 days after such notice is given preliminary proxy materials which set forth a proposal to seek such Stockholder Approval. The Corporation shall provide the Majority Holders an opportunity to consult with the Corporation regarding the content of such proxy materials insofar as it relates to the Stockholder Approval by providing copies of such preliminary proxy materials and any revised preliminary proxy materials to the Majority Holders a reasonable period of time prior to their filing with the SEC. The Corporation shall furnish to each holder of shares of Series A Convertible Preferred Stock a copy of its definitive proxy materials for such special meeting and any amendments or supplements thereto promptly after the same are mailed to stockholders or filed with the SEC. Upon the earlier of (i) the failure to obtain the Stockholder Approval at the special meeting or (ii) the failure to hold the special meeting within such 90-day period, the Corporation shall so notify the holders of shares of Series A Convertible Preferred Stock and such of the following as shall be specified by notice to the Corporation from the Majority Holders shall occur: (1) commencing on the Business Day following the Corporation's receipt of such notice, the Conversion Price of the outstanding shares of Series A Convertible Preferred Stock will be 60% of the amount the Conversion Price would otherwise be without regard to other adjustments pursuant to this Section 7(a)(5) or Section 11(b)(4) and (2) the Corporation shall promptly file applications and take all other actions necessary to (i) list the Common Stock for trading and quotation on the OTC Bulletin Board or such other securities market or exchange which will not restrict the number of shares of Common Stock issuable upon conversion of the Series A Convertible Preferred Stock and (ii) upon filing such applications, request the immediate removal of the Common Stock from listing on the securities market on which it is then listed which restricts the issuance of shares of Common Stock upon conversion of shares of Series A Convertible Preferred Stock without the Stockholder Approval.

(B) If and for so long as an adjustment of the Conversion Price is simultaneously required by this Section 7(a)(5) and by Section 11(b)(4), the applicable Conversion Price shall be the lower of the two amounts required by each such section.

(C) The rights of holders of shares of Series A Convertible Preferred Stock to require redemption of their shares and exercise other rights pursuant to Sections 7(a)(1) through 7(a)(4) by reason of an Inconvertibility Day as to which the Corporation does not have a right to give a Control Notice, or fails to exercise such right on a timely basis, shall not be limited by the operation of this Section 7(a)(5).

(b) NO OTHER REDEMPTION. The shares of Series A Convertible Preferred Stock shall not be subject to redemption by the Corporation at the option of the Holders except as provided in this Section 7 and in Section 11.

SECTION 8. NO SINKING FUND. The shares of Series A Convertible Preferred Stock shall not be subject to the operation of a purchase, retirement or sinking fund.

SECTION 9. OPTIONAL REDEMPTION.

(a) CORPORATION OPTIONAL REDEMPTION. If (1) the Corporation shall be in compliance in all material respects with its obligations to the holders of shares of Series A Convertible Preferred Stock (including, without limitation, its obligations under the Subscription Agreements, the Registration Rights Agreements, the Warrants and the provisions of this Certificate of Designations), (2) on the date the Corporation Optional Redemption Notice is given and at all times until the Redemption Date, the Registration Statement is effective and available for use by each holder of shares of Series A Convertible Preferred Stock for the resale of shares of Common Stock acquired by such holder upon conversion of all shares of Series A Convertible Preferred Stock held by such holder and (3) no Optional Redemption Event shall have occurred with respect to which, on the date a Corporation Optional Redemption Notice is to be given or on the Redemption Date, any holder of shares of Series A Convertible Preferred Stock (A) shall be entitled to exercise optional redemption rights under Section 11 by reason of such Optional Redemption Event or (B) shall have exercised optional redemption rights under Section 11 by reason of such Optional Redemption Event and the Corporation shall not have paid the Optional Redemption Price to such holder, then the Corporation shall have the right, exercisable by giving a Corporation Optional Redemption Notice not less than 30 days or more than 50 days prior to the Redemption Date to all holders of record of the shares of Series A Convertible Preferred Stock, at any time to redeem all or from time to time to redeem any part of the outstanding shares of Series A Convertible Preferred Stock in accordance with this Section 9(a). If the Corporation shall redeem less than all outstanding shares of Series A Convertible Preferred Stock, such redemption shall be made as nearly as practical pro rata from all holders of shares of Series A Convertible Preferred Stock. Any Corporation Optional Redemption Notice under this Section 9(a) shall be given to the holders of record of the shares of Series A Convertible Preferred Stock at their addresses appearing on the records of the Corporation; PROVIDED, HOWEVER, that any failure or defect in the giving of such notice to any such holder shall not affect the validity of notice to or the redemption of shares of Series A Convertible Preferred Stock of any other holder. On the Redemption Date (or such later date as a holder of shares of Series A Convertible Preferred Stock surrenders to the Corporation the certificate(s) for shares of Series A Convertible Preferred Stock to be redeemed pursuant to this Section 9(a)), the Corporation shall make payment of the applicable Redemption Price to each holder of shares of Series A Convertible Preferred Stock to be redeemed in immediately available funds to such account as specified by such holder in writing to the Corporation at least one Business Day prior to the Redemption Date. A holder of shares of Series A Convertible Preferred Stock to be redeemed pursuant to this Section 9(a) shall be entitled to convert such shares of Series A Convertible Preferred Stock in accordance with Section 10 (x) through the day prior to the Redemption Date and (y) if the Corporation shall fail to pay the Redemption Price of any share of Series A Convertible Preferred Stock when due, at any time after the due date thereof until such date as the Corporation pays the Redemption Price of such share of Series A Convertible Preferred Stock. No share of Series A Convertible Preferred Stock as to which the holder exercises the right of conversion pursuant to Section 10 or the optional redemption right pursuant to Section 11 may be redeemed by the Corporation pursuant to this Section 9(a) on or after the date of exercise of such conversion right or optional redemption right, as the

case may be, regardless of whether the Corporation Optional Redemption Notice shall have been given prior to, or on or after, the date of exercise of such conversion right or optional redemption right, as the case may be.

(b) FINAL REDEMPTION. The Corporation shall have the right to redeem all, but not less than all, outstanding shares of Series A Convertible Preferred Stock at any time on or after the third anniversary of the Issuance Date so long as (1) the Corporation shall be in compliance in all material respects with its obligations to the holders of the Series A Convertible Preferred Stock (including, without limitation, its obligations under the Subscription Agreements, the Registration Rights Agreements, the Warrants and this Certificate of Designations) and (2) no Optional Redemption Event shall have occurred with respect to which on the date a Final Redemption Notice is to be given or on the Final Redemption Date, any holder of shares of Series A Convertible Preferred Stock (a) shall be entitled to exercise optional redemption rights under Section 11 by reason of such Optional Redemption Event or (b) shall have exercised optional redemption rights under Section 11 by reason of such Optional Redemption Event and the Corporation shall not have paid the Optional Redemption Price to such holder. In order to exercise its rights under this Section 9(b), the Corporation shall give a Final Redemption Notice not less than 30 days or more than 50 days prior to the Final Redemption Date to all holders of record of the shares of Series A Convertible Preferred Stock. Any Final Redemption Notice shall be given to the holders of record of the shares of Series A Convertible Preferred Stock by telephone line facsimile transmission to such number as shown on the records of the Corporation for such purpose; PROVIDED, HOWEVER, that any failure or defect in the giving of such notice to any such holder shall not affect the validity of notice to or the redemption of shares of Series A Convertible Preferred Stock of any other holder. On the Final Redemption Date (or such later date as a holder of shares of Series A Convertible Preferred Stock surrenders to the Corporation the certificate(s) for shares of Series A Convertible Preferred Stock to be redeemed pursuant to this Section 9(b)), the Corporation shall make payment of the applicable Final Redemption Price to each holder of shares of Series A Convertible Preferred Stock to be redeemed in immediately available funds to such account as specified by such holder in writing to the Corporation at least one Business Day prior to the Final Redemption Date. A holder of shares of Series A Convertible Preferred Stock to be redeemed pursuant to this Section 9(b) shall be entitled to convert such shares of Series A Convertible Preferred Stock in accordance with Section 10 (x) through the day prior to the Final Redemption Date and (y) if the Corporation shall fail to pay the Final Redemption Price of any share of Series A Convertible Preferred Stock when due, at any time after the due date thereof until such date as the Corporation pays the Final Redemption Price of such share of Series A Convertible Preferred Stock to such holder. No share of Series A Convertible Preferred Stock as to which a holder exercises the right of conversion pursuant to Section 10 or the optional redemption right pursuant to Section 11 may be redeemed by the Corporation pursuant to this Section 9(b) on or after the date of exercise of such conversion right or optional redemption right, as the case may be, regardless of whether the Final Redemption Notice shall have been given prior to, or on or after, the date of exercise of such conversion right or optional redemption right, as the case may be.

(c) NO OTHER OPTIONAL REDEMPTION. The shares of Series A Convertible Preferred Stock shall not be subject to redemption at the option of the Corporation except as provided in Sections 9(a) and 9(b).



SECTION 10. CONVERSION.

(a) CONVERSION AT OPTION OF HOLDER. The holders of the Series A Convertible Preferred Stock may at any time on or after the Issuance Date convert at any time all or from time to time any part of their shares of Series A Convertible Preferred Stock into fully paid and nonassessable shares of Common Stock and such other securities and property as herein provided. Each share of Series A Convertible Preferred Stock may be converted at the office of the Conversion Agent or at such other additional office or offices, if any, as the Board of Directors may designate, into such number of fully paid and nonassessable shares of Common Stock (calculated as to each conversion to the nearest 1/100th of a share) determined by dividing (x) the sum of (i) the Conversion Amount, (ii) an amount equal to the Accrual Amount on the share of Series A Convertible Preferred Stock being converted to the applicable Conversion Date, and (iii) accrued but unpaid interest on the dividends required to be paid in cash on the share of Series A Convertible Preferred Stock being converted in arrears to the applicable Conversion Date at the rate provided in Section 5 BY (y) the Conversion Price for such Conversion Date (the "Conversion Rate"); PROVIDED, HOWEVER, that in no event shall any holder of shares of Series A Convertible Preferred Stock be entitled to convert any shares of Series A Convertible Preferred Stock in excess of that number of shares of Series A Convertible Preferred Stock upon conversion of which the sum of (1) the number of shares of Common Stock beneficially owned by such holder and all Aggregated Persons of such holder (other than shares of Common Stock deemed beneficially owned through the ownership of (x) unconverted shares of Series A Convertible Preferred Stock and (y) the unconverted or unexercised portion of any instrument, including without limitation the Warrants, which contains limitations similar to those set forth in this sentence) and (2) the number of shares of Common Stock issuable upon the conversion of the number of shares of Series A Convertible Preferred Stock with respect to which the determination in this proviso is being made, would result in beneficial ownership by such holder and all Aggregated Persons of such holder of more than 4.9% of the outstanding shares of Common Stock. For purposes of the proviso to the immediately preceding sentence, beneficial ownership shall be determined in accordance with Section 13(d) of the Exchange Act and Regulation 13D-G thereunder, except as otherwise provided in clause (1) of the proviso to the immediately preceding sentence.

(b) OTHER PROVISIONS. (1) Notwithstanding anything in this Section 10(b) to the contrary, no change in the Conversion Amount pursuant to this Section 10(b) shall actually be made until the cumulative effect of the adjustments called for by this Section 10(b) since the date of the last change in the Conversion Amount would change the Conversion Amount by more than 1%. However, once the cumulative effect would result in such a change, then the Conversion Amount shall actually be changed to reflect all adjustments called for by this Section 10(b) and not previously made. Notwithstanding anything in this Section 10(b), no change in the Conversion Amount shall be made that would result in the price at which a share of Series A Convertible Preferred Stock is converted being less than the par value of the Common Stock into which shares of Series A Convertible Preferred Stock are at the time convertible.

(2) The holders of shares of Series A Convertible Preferred Stock at the close of business on the record date for any dividend payment to holders of Series A Convertible Preferred Stock shall be entitled to receive the dividend payable on such shares on the corresponding dividend payment date notwithstanding the conversion thereof after such dividend payment record date or the Corporation's default in payment of the dividend due on such dividend

payment date; PROVIDED, HOWEVER, that the holder of shares of Series A Convertible Preferred Stock surrendered for conversion during the period between the close of business on any record date for a dividend payment and the opening of business on the corresponding dividend payment date must pay to the Corporation, within five days after receipt by such holder, an amount equal to the dividend payable on such shares on such dividend payment date if such dividend is paid by the Corporation to such holder. A holder of shares of Series A Convertible Preferred Stock on a record date for a dividend payment who (or whose transferee) tenders any of such shares for conversion into shares of Common Stock on or after such dividend payment date will receive the dividend payable by the Corporation on such shares of Series A Convertible Preferred Stock on such date, and the converting holder need not make any payment of the amount of such dividend in connection with such conversion of shares of Series A Convertible Preferred Stock. Except as provided above, no adjustment shall be made in respect of cash dividends on Common Stock or Series A Convertible Preferred Stock that may be accrued and unpaid at the date of surrender of shares of Series A Convertible Preferred Stock.

(3) (A) The right of the holders of Series A Convertible Preferred Stock to convert their shares shall be exercised by giving (which may be done by telephone line facsimile transmission) a Conversion Notice to the Conversion Agent, with a copy to the Corporation. If a holder of Series A Convertible Preferred Stock elects to convert any shares of Series A Convertible Preferred Stock in accordance with Section 10(a), such holder shall not be required to surrender the certificate(s) representing such shares of Series A Convertible Preferred Stock to the Corporation unless all of the shares of Series A Convertible Preferred Stock represented thereby are so converted. Each holder of shares of Series A Convertible Preferred Stock and the Corporation shall maintain records showing the number of shares so converted and the dates of such conversions or shall use such other method, satisfactory to such holder and the Corporation, so as to not require physical surrender of such certificates upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if any shares of Series A Convertible Preferred Stock evidenced by a particular certificate therefor are converted as aforesaid, the holder of Series A Convertible Preferred Stock may not transfer the certificate(s) representing such shares of Series A Convertible Preferred Stock unless such holder first physically surrenders such certificate(s) to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such holder of shares of Series A Convertible Preferred Stock new certificate(s) of like tenor, registered as such holder of shares of Series A Convertible Preferred Stock (upon payment by such holder of shares of Series A Convertible Preferred Stock of any applicable transfer taxes) may request, representing in the aggregate the remaining number of shares of Series A Convertible Preferred Stock represented by such certificate(s). Each holder of shares of Series A Convertible Preferred Stock, by acceptance of a certificate for such shares, acknowledges and agrees that (1) by reason of the provisions of this paragraph, following conversion of any shares of Series A Convertible Preferred Stock represented by such certificate, the number of shares of Series A Convertible Preferred Stock represented by such certificate may be less than the number of shares stated on such certificate, and (2) the Corporation may place a legend on the certificates for shares of Series A Convertible Preferred Stock which refers to or describes the provisions of this paragraph.

(B) The Corporation shall pay any transfer tax arising in connection with any conversion of shares of Series A Convertible Preferred Stock except that the Corporation shall not, however, be required to pay any tax which may be payable

in respect of any transfer involved in the issue and delivery upon conversion of shares of Common Stock or other securities or property in a name other than that of the holder of the shares of the Series A Convertible Preferred Stock being converted, and the Corporation shall not be required to issue or deliver any such shares or other securities or property unless and until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of any such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The number of shares of Common Stock to be issued upon each conversion of shares of Series A Convertible Preferred Stock shall be the number set forth in the applicable Conversion Notice which number shall be conclusive absent manifest error. The Corporation shall notify a holder who has given a Conversion Notice of any claim of manifest error within one Trading Day after such holder gives such Conversion Notice and no such claim of error shall limit or delay performance of the Corporation's obligation to issue upon such conversion the number of shares of Common Stock which are not in dispute. A Conversion Notice shall be deemed for all purposes to be in proper form unless the Corporation notifies a holder of shares of Series A Convertible Preferred Stock being converted within one Trading Day after a Conversion Notice has been given (which notice shall specify all defects in the Conversion Notice) and any Conversion Notice containing any such defect shall nonetheless be effective on the date given if the converting holder promptly corrects all such defects.

(4) The Corporation (and any successor corporation) shall take all action necessary so that a number of shares of the authorized but unissued Common Stock (or common stock in the case of any successor corporation) sufficient to provide for the conversion of the Series A Convertible Preferred Stock outstanding upon the basis hereinbefore provided are at all times reserved by the Corporation (or any successor corporation), free from preemptive rights, for such conversion, subject to the provisions of the next succeeding paragraph. If the Corporation shall issue any securities or make any change in its capital structure which would change the number of shares of Common Stock into which each share of the Series A Convertible Preferred Stock shall be convertible as herein provided, the Corporation shall at the same time also make proper provision so that thereafter there shall be a sufficient number of shares of Common Stock authorized and reserved, free from preemptive rights, for conversion of the outstanding Series A Convertible Preferred Stock on the new basis. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all of the outstanding shares of Series A Convertible Preferred Stock, the Corporation promptly shall seek, and use its best efforts to obtain and complete, 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.

(5) In case of any consolidation or merger of the Corporation with any other corporation (other than a wholly-owned subsidiary of the Corporation) in which the Corporation is not the surviving corporation, or in case of any sale or transfer of all or substantially all of the assets of the Corporation, or in the case of any share exchange pursuant to which all of the outstanding shares of Common Stock are converted into other securities or property, the Corporation shall make appropriate provision or cause appropriate provision to be made so that each holder of shares of Series A Convertible Preferred Stock then outstanding shall have the right thereafter to convert such shares of Series A Convertible Preferred Stock into the kind of shares of stock and other securities and property receivable upon such consolidation, merger, sale, transfer, or share exchange by a holder of shares of Common Stock into which

such shares of Series A Convertible Preferred Stock could have been converted immediately prior to the effective date of such consolidation, merger, sale, transfer, or share exchange and on a basis which preserves the economic benefits of the conversion rights of the holders of shares of Series A Convertible Preferred Stock on a basis as nearly as practical as such rights exist hereunder prior thereto. If, in connection with any such consolidation, merger, sale, transfer, or share exchange, each holder of shares of Common Stock is entitled to elect to receive securities, cash, or other assets upon completion of such transaction, the Corporation shall provide or cause to be provided to each holder of Series A Convertible Preferred Stock the right to elect the securities, cash, or other assets into which the Series A Convertible Preferred Stock held by such holder shall be convertible after completion of any such transaction on the same terms and subject to the same conditions applicable to holders of the Common Stock (including, without limitation, notice of the right to elect, limitations on the period in which such election shall be made, and the effect of failing to exercise the election); PROVIDED, HOWEVER, that if such securities or other assets are not then available, in whole or in part, the Corporation shall substitute other securities, cash or other assets of equivalent value on terms reasonably satisfactory to the holders of shares of Series A Convertible Preferred Stock. The Corporation shall not effect any such transaction unless the provisions of this paragraph have been complied with. The above provisions shall similarly apply to successive consolidations, mergers, sales, transfers, or share exchanges.

(6) If a holder shall have given a Conversion Notice for shares of Series A Convertible Preferred Stock, the Corporation shall issue and deliver to such person certificates for the Common Stock issuable upon such conversion within three Trading Days after such Conversion Notice is given and the person converting shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, and all rights with respect to the shares surrendered shall forthwith terminate except the right to receive the Common Stock or other securities, cash, or other assets as herein provided. If a holder shall have given a Conversion Notice as provided herein, the Corporation's obligation to issue and deliver the certificates for Common Stock shall be absolute and unconditional, irrespective of any action or inaction by the converting holder to enforce the same, any waiver or consent with respect to any provision thereof, the recovery of any judgment against any person or any action to enforce the same, any failure or delay in the enforcement of any other obligation of the Corporation to such holder, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such holder or any other person of any obligation to the Corporation or any violation or alleged violation of law by such holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to the holder in connection with such conversion. If the Corporation fails to issue and deliver the certificates for the Common Stock to the holder converting shares of Series A Convertible Preferred Stock pursuant to the first sentence of this paragraph within three Trading Days after such Conversion Notice is given, in addition to any other liabilities the Corporation may have hereunder and under applicable law (1) the Corporation shall pay or reimburse such holder on demand for all out-of-pocket expenses including, without limitation, reasonable fees and expenses of legal counsel incurred by such holder as a result of such failure, (2) for each Trading Day thereafter on which the Corporation so fails to deliver such certificates, the Conversion Price applicable to such conversion shall be reduced by an amount equal to one percent of the amount that the Conversion Price would otherwise be, and (3) such holder may by written notice (which may be given by mail, courier, personal service or telephone line facsimile transmission) or oral notice (promptly confirmed in writing) given at any time prior to delivery to such holder of the certificates for the shares of Common Stock issuable upon such conversion of shares of Series

A Convertible Preferred Stock, rescind such conversion, whereupon such holder shall have the right to convert such shares of Series A Convertible Preferred Stock thereafter in accordance herewith.

(7) No fractional shares of Common Stock shall be issued upon conversion of Series A Convertible Preferred Stock but, in lieu of any fraction of a share of Common Stock to purchase fractional shares of Common Stock which would otherwise be issuable in respect of the aggregate number of such shares surrendered for conversion at one time by the same holder, the Corporation shall pay in cash an amount equal to the product of (i) the arithmetic average of the Market Price of one share of Common Stock on the three consecutive Trading Days ending on the Trading Day immediately preceding the Conversion Date TIMES (ii) such fraction of a share.

(8) The Conversion Amount shall be adjusted from time to time under certain circumstances, subject to the provisions of Section 10(b)(1), as follows:

(i) In case the Corporation shall issue rights or warrants on a pro rata basis to all holders of the Common Stock entitling such holders to subscribe for or purchase Common Stock on the record date referred to below at a price per share less than the Current Price for such record date, then in each such case the Conversion Amount in effect on such record date shall be adjusted in accordance with the following formula:

$$C(1) = \frac{C \times O + N}{O + N \times P} \times M$$

where

C(1) = the adjusted Conversion Amount

C = the current Conversion Amount

O = the number of shares of Common Stock outstanding on the record date.

N = the number of additional shares of Common Stock issuable pursuant to the exercise of such rights or warrants.

P = the offering price per share of the additional shares (which amount shall include amounts received by the Corporation in respect of the issuance and the exercise of such rights or warrants).

M = the Current Price per share of Common Stock on the record date.

Such adjustment shall become effective immediately after the record date for the determination of stockholders entitled to receive such rights or warrants. If any or all such rights or warrants are not so issued or expire or terminate before being exercised, the Conversion Amount then in effect shall be readjusted appropriately.

(ii) In case the Corporation shall, by dividend or otherwise, distribute to all holders of its Junior Stock (as hereinafter defined) evidences of its indebtedness or assets (including securities, but excluding any warrants or subscription rights referred to in subparagraph (i) above and any dividend or distribution paid in cash out of the retained earnings of the Corporation), then in each such case the Conversion Amount then in effect shall be adjusted in accordance with the formula

$$C(1) = C \times \frac{M}{M - F}$$

where

C(1) = the adjusted Conversion Amount

C = the current Conversion Amount

M = the Current Price per share of Common Stock on the record date mentioned below.

F = the aggregate amount of such cash dividend and/or the fair market value on the record date of the assets or securities to be distributed divided by the number of shares of Common Stock outstanding on the record date. The Board of Directors shall determine such fair market value, which determination shall be conclusive.

Such adjustment shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution. For purposes of this subparagraph (ii), "Junior Stock" shall include any class of capital stock ranking junior as to dividends or upon liquidation to the Series A Convertible Preferred Stock.

(iii) All calculations hereunder shall be made to the nearest cent or to the nearest 1/100 of a share, as the case may be.

(iv) If at any time as a result of an adjustment made pursuant to Section 10(b)(5), the holder of any Series A Convertible Preferred Stock thereafter surrendered for conversion shall become entitled to receive securities, cash, or assets other than Common Stock, the number or amount of such securities or property so receivable upon conversion shall be subject to adjustment from time to time in a manner and on terms nearly equivalent as practicable to the provisions with respect to the Common Stock contained in subparagraphs (i) to (iii) above.

(9) Except as otherwise provided above in this Section 10, no adjustment in the Conversion Amount shall be made in respect of any conversion for share distributions or dividends theretofore declared and paid or payable on the Common Stock.

(10) Whenever the Conversion Amount is adjusted as herein provided, the Corporation shall send to each holder and each transfer agent, if any, for the Series A Convertible Preferred Stock and the transfer agent for the Common Stock, a statement signed by the Chairman of the Board, the President, or any Vice President of the Corporation and by its Treasurer or its Secretary or an Assistant Secretary stating the adjusted Conversion Amount determined as provided in this Section 10, and any adjustment so evidenced, given in good

faith, shall be binding upon all stockholders and upon the Corporation. Whenever the Conversion Amount is adjusted, the Corporation will give notice by mail to the holders of record of Series A Convertible Preferred Stock, which notice shall be made within 15 days after the effective date of such adjustment and shall state the adjustment and the Conversion Amount. Notwithstanding the foregoing notice provisions, failure by the Corporation to give such notice or a defect in such notice shall not affect the binding nature of such corporate action of the Corporation.

(11) In case on or after the Issuance Date:

(A) the Corporation shall declare a dividend (or any other distribution) on the Common Stock (other than in cash out of retained earnings); or

(B) the Corporation shall authorize the granting to the holders of the Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(C) the Board of Directors shall authorize any reclassification of the Common Stock (other than a subdivision or combination of the outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or any consolidation or merger or other business combination transaction to which the Corporation is a party and for which approval of any stockholders of the Corporation is required, or the sale or transfer of all or substantially all of the assets of the Corporation; or

(D) there shall be pending the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation;

the Corporation shall give the holders of record of the Series A Convertible Preferred Stock, as promptly as possible but in any event at least ten Trading Days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, other business combination transaction, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record who shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, other business combination transaction, sale, transfer, dissolution, liquidation or winding-up shall be determined. Such notice shall not include any information which would be material non-public information for purposes of the 1934 Act. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. In the case of any such action of which the Corporation gives such notice to the holders of record of the Series A Convertible Preferred Stock or is required to give such notice to such holders, such holders shall be entitled to give a Conversion Notice which is contingent on the completion of such action.

SECTION 11. REDEMPTION AT OPTION OF HOLDERS.

(a) REDEMPTION RIGHT. If an Optional Redemption Event occurs, then, in addition to any other right or remedy of any holder of shares of Series A Convertible Preferred Stock, each holder of shares of Series A Convertible Preferred Stock shall have the right, at such holder's option, to require the Corporation to redeem all of such holder's shares of Series A Convertible Preferred Stock, or any portion thereof, on the date that is 15 Business Days after the date such holder gives the Corporation an Optional Redemption Notice with respect to such Optional Redemption Event at any time while any of such holder's shares of Series A Convertible Preferred Stock are outstanding, at a price equal to the Optional Redemption Price.

(b) NOTICES; METHOD OF EXERCISING OPTIONAL REDEMPTION RIGHTS, ETC. (1) On or before the fifth Business Day after the occurrence of an Optional Redemption Event, the Corporation shall give to each holder of outstanding shares of Series A Convertible Preferred Stock a notice of the occurrence of such Optional Redemption Event and of the redemption right set forth herein arising as a result thereof. Such notice from the Corporation shall set forth:

(i) the date by which the optional redemption right must be exercised, and

(ii) a description of the procedure (set forth below) which each such holder must follow to exercise such holder's optional redemption right.

No failure of the Corporation to give such notice or defect therein shall limit the right of any holder of shares of Series A Convertible Preferred Stock to exercise the optional redemption right or affect the validity of the proceedings for the redemption of such holder's shares of Series A Convertible Preferred Stock.

(2) To exercise its optional redemption right, each holder of outstanding shares of Series A Convertible Preferred Stock shall deliver to the Corporation on or before the 30th day after the notice required by Section 11(b)(1) is given to such holder (or if no such notice has been given by the Corporation to such holder, within 40 days after such holder first learns of such Optional Redemption Event) an Optional Redemption Notice to the Corporation. At the Corporation's option, an Optional Redemption Notice may be revoked by such holder giving such Optional Redemption Notice by giving notice of such revocation to the Corporation at any time prior to the time the Corporation pays the Optional Redemption Price to such holder.



(3) If a holder of shares of Series A Convertible Preferred Stock shall have given an Optional Redemption Notice, on the date which is 15 Business Days after the date such Optional Redemption Notice is given (or such later date as such holder surrenders such holder's certificates for the shares of Series A Convertible Preferred Stock to be redeemed) the Corporation shall make payment in immediately available funds of the applicable Optional Redemption Price to such account as specified by such holder in writing to the Corporation at least one Business Day prior to the applicable redemption date.

(4) Notwithstanding any other provision of this Certificate of Designations, if an Optional Redemption Event occurs by reason of the occurrence of (x) an event described in clause (1), (2) or (5) of the definition of the term Optional Redemption Event or (y) an Amendment Event, and such occurrence is by reason of events which are not solely within the control of the Corporation, the Corporation shall have the right to give a Control Notice to the holders of shares of Series A Convertible Preferred Stock at any time after such Optional Redemption Event occurs and prior to the earlier of (1) the date on which all holders of shares of Series A Convertible Preferred Stock who had the right (other than as limited by this Section 11(b)(4)) to require redemption of any shares of Series A Convertible Preferred Stock by reason of the occurrence of such Optional Redemption Event no longer have such right and (2) the applicable Optional Redemption Date by reason of the earliest Optional Redemption Notice given by any holder of shares of Series A Convertible Preferred Stock by reason of such Optional Redemption Event. If the Corporation timely gives such Control Notice to the holders of shares of Series A Convertible Preferred Stock, then in lieu of payment of the Optional Redemption Price by reason of any such Optional Redemption Event and commencing on the first date on which such Optional Redemption Event occurs the following adjustments shall take effect (subject to the provisions of Section 7(a)(5)(B)):

(A) In the case of an Optional Redemption Event described in clauses (1) or (2) of the definition of the term Optional Redemption Event or in the case of an Amendment Event, for so long as such Optional Redemption Event or Amendment Event continues and for a period of ten Trading Days thereafter the Conversion Price will be 70% of the amount which the Conversion Price would otherwise be.

(B) In the case of an Optional Redemption Event described in clause (5) of the definition of the term Optional Redemption Event, for so long as any shares of Preferred Stock are outstanding the Conversion Price will be 70% of the amount which the Conversion Price would otherwise be.

For purposes of this Section 11(b)(4), an Optional Redemption Event described in clause (1), (2) or (5) of the definition of the term Optional Redemption Event or an Amendment Event shall be deemed to have occurred by reason of events which are not solely within the control of the Corporation if a requirement of the Corporation to redeem, or a right of any holder of shares of Series A Convertible Preferred Stock to require redemption of, shares of Series A Convertible Preferred Stock by reason thereof would result in the Corporation being required to classify the Series A Convertible Preferred Stock as redeemable preferred stock on a balance sheet of the Corporation prepared in accordance with Generally Accepted Accounting Principles and Regulation S-X of the SEC, and, in the case of an Optional Redemption Event described in clause (5) of the definition of the term Optional Redemption Event, the Board or the stockholders of the Corporation do not have the right to approve or disapprove the transactions resulting in such event.

(C) OTHER. (1) In connection with a redemption pursuant to this Section 11 of less than all of the shares of Series A Convertible Preferred Stock evidenced by a particular certificate, promptly, but in no event later than three Business Days after surrender of such certificate to the Corporation, the Corporation shall issue and deliver to such holder a replacement certificate for the shares of Series A Convertible Preferred Stock evidenced by such certificate which have not been redeemed.

(2) An Optional Redemption Notice given by a holder of shares of Series A Convertible Preferred Stock shall be deemed for all purposes to be in proper form unless the Corporation notifies such holder in writing within three Business Days after such Optional Redemption Notice has been given (which notice shall specify all defects in such Optional Redemption Notice), and any Optional Redemption Notice containing any such defect shall nonetheless be effective on the date given if such holder promptly undertakes to correct all such defects. No such claim of error shall limit or delay performance of the Corporation's obligation to redeem all shares of Series A Convertible Preferred Stock not in dispute whether or not such holder makes such undertaking.

#### SECTION 12. VOTING RIGHTS; CERTAIN RESTRICTIONS.

(a) VOTING RIGHTS. Except as otherwise required by law or expressly provided herein, shares of Series A Convertible Preferred Stock shall not be entitled to vote on any matter.

(b) ARTICLES OF INCORPORATION; CERTAIN STOCK. The affirmative vote or consent of the Majority Holders, voting separately as a class, will be required for (1) any amendment, alteration, or repeal, whether by merger or consolidation

or otherwise, of the Corporation's Articles of Incorporation if the amendment, alteration, or repeal materially and adversely affects the powers, preferences, or special rights of the Series A Convertible Preferred Stock, or (2) the creation and issuance of any Senior Dividend Stock or Senior Liquidation Stock; PROVIDED, HOWEVER, that any increase in the authorized Preferred Stock of the Corporation or the creation and issuance of any stock which is both Junior Dividend Stock and Junior Liquidation Stock shall not be deemed to affect materially and adversely such powers, preferences, or special rights and any such increase or creation and issuance may be made without any such vote by the holders of Series A Convertible Preferred Stock except as otherwise required by law.

(c) REPURCHASES OF SERIES A CONVERTIBLE PREFERRED STOCK. The Corporation shall not repurchase or otherwise acquire any shares of Series A Convertible Preferred Stock (other than pursuant to Sections 7(a), 9(a), 9(b) or 11) unless the Corporation offers to repurchase or otherwise acquire simultaneously a pro rata portion of each holder's shares of Series A Convertible Preferred Stock for cash at the same price per share.

(d) OTHER. So long as any shares of Series A Convertible Preferred Stock are outstanding:

(1) PAYMENT OF OBLIGATIONS. The Corporation will pay and discharge, and will cause each subsidiary of the Corporation to pay and discharge, when due all their respective obligations and liabilities which are material to the Corporation and its subsidiaries taken as a whole, including, without limitation, tax liabilities, except where the same may be contested in good faith by appropriate proceedings.

(2) MAINTENANCE OF PROPERTY; INSURANCE. (A) The Corporation will keep, and will cause each subsidiary of the Corporation to keep, all material property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

(B) The Corporation will maintain, and will cause each subsidiary of the Corporation to maintain, with financially sound and responsible insurance companies, insurance against loss or damage by fire or other casualty and such other insurance, including but not limited to, product liability insurance, in such amounts and covering such risks as is reasonably adequate for the conduct of their businesses and the value of their properties.

(3) CONDUCT OF BUSINESS AND MAINTENANCE OF EXISTENCE. The Corporation will continue, and will cause each subsidiary of the Corporation to continue, to engage in business of the same general type as conducted by the Corporation and its operating subsidiaries at the time this Certificate of Designations is filed with the Secretary of State of the State of Nevada, and will preserve, renew and keep in full force and effect, and will cause each subsidiary of the Corporation to preserve, renew and keep in full force and effect, their respective corporate existence and their respective material rights, privileges and franchises necessary or desirable in the normal conduct of business.

(4) COMPLIANCE WITH LAWS. The Corporation will comply, and will cause each subsidiary of the Corporation to comply, in all material respects with all applicable laws, ordinances, rules, regulations, decisions, orders and requirements of governmental authorities and courts (including, without limitation, environmental laws) except (i) where compliance therewith is contested in good faith by appropriate proceedings or (ii) where non-compliance therewith could not reasonably be expected to have a material adverse effect on the business, condition (financial or otherwise), operations, performance, properties or prospects of the Corporation and its subsidiaries taken as a whole.

(5) INVESTMENT COMPANY ACT. The Corporation will not be or become an open-end investment trust, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the Investment Company Act of 1940, as amended, or any successor provision.

SECTION 13. OUTSTANDING SHARES. For purposes of this Certificate of Designations, all authorized and issued shares of Series A Convertible Preferred Stock shall be deemed outstanding except (i) from the applicable Conversion Date, each share of Series A Convertible Preferred Stock converted into Common Stock, unless the Corporation shall default in its obligation to issue and deliver shares of Common Stock upon such conversion as and when required by Section 10; (ii) from the date of registration of transfer, all shares of Series A Convertible Preferred Stock held of record by the Corporation or any subsidiary or Affiliate of the Corporation (other than an Affiliate of the Corporation who is a natural person or any original holder of shares of Series A Convertible Preferred Stock) and (iii) from the applicable Redemption Date, Share Limitation Redemption Date, Final Redemption Date or date of redemption pursuant to Section 11, all shares of Series A Convertible Preferred Stock which are redeemed or repurchased, so long as in each case the Redemption Price, the Share Limitation Redemption Price, the Final Redemption Price, the Optional Redemption Price or other repurchase price, as the case may be, of such shares of Series A Convertible Preferred Stock shall have been paid by the Corporation as and when due hereunder.

SECTION 14. MISCELLANEOUS.

(a) NOTICES. Any notices required or permitted to be given under the terms of this Certificate of Designations shall be in writing and shall be delivered personally (which shall include telephone line facsimile transmission) or by courier and shall be deemed given upon receipt, if delivered personally or by courier (a) in the case of the Corporation, addressed to the Corporation at 2222 West Peoria Avenue, Phoenix, Arizona 85029, Attention: Chief Executive Officer (telephone line facsimile transmission number (602) 331-0941), or (b) in the case of any holder of shares of Series A Convertible Preferred Stock, at such holder's address or telephone line facsimile transmission number shown on the stock books maintained by the Corporation with respect to the Series A Convertible Preferred Stock or such other address as the Corporation shall have provided by notice to the holders of shares of Series A Convertible Preferred Stock in accordance with this Section or any holder of shares of Series A Convertible Preferred Stock shall have provided to the Corporation in accordance with this Section.

(b) REPLACEMENT OF CERTIFICATES. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the ownership of and the loss, theft, destruction or mutilation of any certificate for shares of Series A Convertible Preferred Stock and (1) in the case of loss, theft or destruction, of indemnity from the record holder of the certificate for such shares of Series A Convertible Preferred Stock reasonably satisfactory in form to the Corporation (and without the requirement to post any bond or other security if such holder has and agrees to maintain reasonably sufficient assets to support the indemnity) or (2) in the case of mutilation, upon surrender and cancellation of the certificate for such shares of Series A Convertible Preferred Stock, the Corporation will execute and deliver to such holder a new certificate for such shares of Series A Convertible Preferred Stock without charge to such holder.

(c) OVERDUE AMOUNTS. Except as otherwise specifically provided in Section 5 with respect to dividends in arrears on the Series A Convertible Preferred Stock, whenever any amount which is due to any holder of shares of Series A Convertible Preferred Stock is not paid to such holder when due, such amount shall bear interest at the rate of 14% per annum (or such other rate as shall be the maximum rate allowable by applicable law) until paid in full.

IN WITNESS WHEREOF, Titan Motorcycle Co. of America has caused this Certificate of Designations to be signed by Patrick Keery, its President, and Barbara S. Keery, its Secretary, as of the 14th day of September, 1999.

TITAN MOTORCYCLE CO. OF AMERICA

By: /s/ Patrick Keery

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Title: President

By: /s/ Barbara S. Keery

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Title: Secretary

STATE OF ARIZONA     )  
                          ) ss.  
COUNTY OF MARICOPA )

On the 14th day of September, 1999, personally appeared before me, a Notary Public, Patrick Francis Keery, President of Titan Motorcycle Co. of America personally known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the instrument.

/s/ Mary K. Garrett

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NOTARY PUBLIC

STATE OF ARIZONA     )  
                          ) ss.  
COUNTY OF MARICOPA )

On the 14th day of September, 1999, personally appeared before me, a Notary Public, Barbara S. Keery, Secretary of Titan Motorcycle Co. of America personally known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that she executed the instrument.

/s/ Mary K. Garrett

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NOTARY PUBLIC

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE RESOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT.

Right to Purchase 279,725 Shares of Common  
Stock of Titan Motorcycle Co. of America

TITAN MOTORCYCLE CO. OF AMERICA

COMMON STOCK PURCHASE WARRANT

NO. W-1

TITAN MOTORCYCLE CO. OF AMERICA, a Nevada corporation (the "Company"), hereby certifies that, for value received, ADVANTAGE FUND II LTD. or registered assigns (the "Holder"), is entitled, subject to the terms set forth below, to purchase from the Company at any time or from time to time after the date hereof, and before 5:00 p.m., New York City time, on the Expiration Date (as hereinafter defined), 279,725 fully paid and nonassessable shares of Common Stock (as hereinafter defined) at a purchase price per share equal to the Purchase Price (as hereinafter defined). The number of such shares of Common Stock and the Purchase Price are subject to adjustment as provided in this Warrant.

As used herein the following terms, unless the context otherwise requires, have the following respective meanings:

"Closing Price" means \$2.6812 (subject to equitable adjustments from time to time on terms reasonably determined by the Board of Directors of the Company for stock splits, stock dividends, combinations, recapitalizations, reclassifications and similar events occurring or with respect to which "ex-" trading commences on or after the Issuance Date).

"Common Stock" includes the Company's Common Stock, \$.001 par value per share, as authorized on the date hereof, and any other securities into which or for which the Common Stock may be converted or exchanged pursuant to a plan of recapitalization, reorganization, merger, sale of assets or otherwise.

"Company" shall include Titan Motorcycle Co. of America and any corporation that shall succeed to or assume the obligations of Titan Motorcycle Co. of America hereunder in accordance with the terms hereof.

"Expiration Date" means September 17, 2004.

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"Issuance Date" means the first date of original issuance of this Warrant.

"1934 Act" means the Securities Exchange Act of 1934, as amended.

"1933 Act" means the Securities Act of 1933, as amended.

"Other Securities" refers to any stock (other than Common Stock) and other securities of the Company or any other person (corporate or otherwise) which the Holder at any time shall be entitled to receive, or shall have received, on the exercise of this Warrant, in lieu of or in addition to Common Stock, or which at any time shall be issuable or shall have been issued in exchange for or in replacement of Common Stock or Other Securities pursuant to Section 4.

"Purchase Price" shall mean \$3.21744 per share, subject to adjustment as provided in this Warrant.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of September 15, 1999 by and between the Company and the original Holder of this Warrant, as amended from time to time in accordance with its terms.

"Subscription Agreement" means the Subscription Agreement, dated as of September 15, 1999, by and between the Company and the original Holder of this Warrant, as amended from time to time in accordance with its terms.

"Trading Day" means a day on which the principal securities market for the Common Stock is open for general trading of securities.

1. EXERCISE OF WARRANT.

1.1 EXERCISE. (a) This Warrant may be exercised by the Holder hereof in full or in part at any time or from time to time during the exercise period specified in the first paragraph hereof until the Expiration Date by surrender of this Warrant and the subscription form annexed hereto (duly executed by the Holder), to the Company's transfer agent and registrar for the Common Stock, with a copy to the Company, and by making payment, in cash or by certified or official bank check payable to the order of the Company, in the amount obtained by multiplying (a) the number of shares of Common Stock designated by the Holder in the subscription form by (b) the Purchase Price then in effect. On any partial exercise the Company will forthwith issue and deliver to or upon the order of the Holder hereof a new Warrant or Warrants of like tenor, in the name of the Holder hereof or as the Holder (upon payment by the Holder of any applicable transfer taxes) may request, providing in the aggregate on the face or faces thereof for the purchase of the number of shares of Common Stock for which such Warrant or Warrants may still be exercised.

(b) Notwithstanding any other provision of this Warrant, in no event shall



the Holder be entitled at any time to purchase a number of shares of Common Stock on exercise of this Warrant in excess of that number of shares upon purchase of which the sum of (1) the number of shares of Common Stock beneficially owned by the Holder and all persons whose beneficial ownership of shares of Common Stock would be aggregated with the Holder's beneficial ownership of shares of Common Stock for purposes of Section 13(d) of the 1934 Act and Regulation 13D-G thereunder, (each such person other than the Holder an "Aggregated Person" and all such persons other than the Holder, collectively, the "Aggregated Persons") (other than shares of Common Stock deemed beneficially owned through the ownership by the Holder and all Aggregated Persons of the Holder of the unexercised portion of this Warrant and the unexercised or unconverted portion of any other security of the Company which contains similar provisions) and (2) the number of shares of Common Stock issuable upon exercise of the portion of this Warrant with respect to which the determination in this sentence is being made, would result in beneficial ownership by the Holder and all Aggregated Persons of the Holder of more than 4.9% of the outstanding shares of Common Stock. For purposes of the immediately preceding sentence, beneficial ownership shall be determined in accordance with Section 13(d) of the 1934 Act and Regulation 13D-G thereunder, except as otherwise provided in clause (1) of the immediately preceding sentence.

1.2 NET ISSUANCE. Notwithstanding anything to the contrary contained in Section 1.1, if on the date this Warrant is exercised or on the date the Company delivers stock certificates in connection with such exercise pursuant to Section 2 below (a) the Registration Statement (as defined in the Registration Rights Agreement) is not available to the Holder for the public resale of any of the shares of Common Stock issued upon exercise of this Warrant or (b) the Company is not in compliance in all material respects with its obligations to the Holder (including, without limitation, its obligations under this Warrant, the Subscription Agreement, the Registration Rights Agreement and the Certificate of Designations (as defined in the Subscription Agreement)), the Holder may elect to exercise this Warrant in whole or in part by receiving shares of Common Stock equal to the net issuance value (as determined below) of this Warrant, or any part hereof, upon surrender of this Warrant to the Company's transfer agent and registrar for the Common Stock together with the subscription form annexed hereto (duly executed by the Holder), in which event the Company shall issue to the Holder a number of shares of Common Stock computed using the following formula:

$$X = \frac{Y (A-B)}{A}$$

Where: X = the number of shares of Common Stock to be issued to the Holder

Y = the number of shares of Common Stock as to which this Warrant is to be exercised

A = the current fair market value of one share of Common Stock calculated as of the last Trading Day immediately preceding the exercise of this Warrant

B = the Purchase Price

As used herein, current fair market value of Common Stock as of a specified date shall mean with respect to each share of Common Stock the closing sale price of the Common Stock on the principal securities market on which the Common Stock may at the time be listed or, if there have been no sales on any such exchange on such day, the average of the highest bid and lowest asked prices on the principal securities market at the end of such day, or, if on such day the Common Stock is not so listed, the average of the representative bid and asked prices quoted in the Nasdaq System as of 4:00 p.m., New York City time, or, if on such day the Common Stock is not quoted in the Nasdaq System, the average of the highest bid and lowest asked price on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of five consecutive Trading Days consisting of the day as of which the current fair market value of a share of Common Stock is being determined (or if such day is not a Trading Day, the Trading Day next preceding such day) and the four consecutive Trading Days prior to such day. If on the date for which current fair market value is to be determined the Common Stock is not listed on any securities exchange or quoted in the Nasdaq System or the over-the-counter market, the current fair market value of Common Stock shall be the highest price per share which the Company could then obtain from a willing buyer (not a current employee or director) for shares of Common Stock sold by the Company, from authorized but unissued shares, as determined in good faith by the Board of Directors of the Company, unless prior to such date the Company has become subject to a merger, acquisition or other consolidation pursuant to which the Company is not the surviving party, in which case the current fair market value of the Common Stock shall be deemed to be the value received by the holders of the Company's Common Stock for each share thereof pursuant to the Company's acquisition.

2. DELIVERY OF STOCK CERTIFICATES, ETC., ON EXERCISE. As soon as practicable after the exercise of this Warrant, and in any event within three Trading Days thereafter, the Company at its expense (including the payment by it of any applicable issue or stamp taxes) will cause to be issued in the name of and delivered to the Holder hereof, or as the Holder (upon payment by the Holder of any applicable transfer taxes) may direct, a certificate or certificates for the number of fully paid and nonassessable shares of Common Stock (or Other Securities) to which the Holder shall be entitled on such exercise, in such denominations as may be requested by the Holder, plus, in lieu of any fractional share to which the Holder would otherwise be entitled, cash equal to such fraction multiplied by the then current fair market value (as determined in accordance with subsection 1.2) of one full share, together with any other stock or other securities and property (including cash, where applicable) to which the Holder is entitled upon such exercise pursuant to Section 1 or otherwise. Upon exercise of this Warrant as provided herein, the Company's obligation to issue and deliver the certificates for Common Stock shall be absolute and unconditional, irrespective of the absence of any action by the Holder to enforce the same, any waiver or consent with respect to any provision thereof, the recovery of any judgment against any person or any action to enforce the same, any failure or delay in the enforcement of any other obligation of the Company to the Holder, or any setoff, counterclaim, recoupment, limitation or

termination, or any breach or alleged breach by the Holder or any other person of any obligation to the Company, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with such exercise. If the Company fails to issue and deliver the certificates for the Common Stock to the Holder pursuant to the first sentence of this paragraph as and when required to do so, in addition to any other liabilities the Company may have hereunder and under applicable law, the Company shall pay or reimburse the Holder on demand for all out-of-pocket expenses including, without limitation, reasonable fees and expenses of legal counsel incurred by the Holder as a result of such failure.

3. ADJUSTMENT FOR DIVIDENDS IN OTHER STOCK, PROPERTY, ETC.; RECLASSIFICATION, ETC. In case at any time or from time to time after the Issuance Date, all the holders of Common Stock (or Other Securities) shall have received, or (on or after the record date fixed for the determination of stockholders eligible to receive) shall have become entitled to receive, without payment therefor,

(a) other or additional stock or other securities or property (other than cash) by way of dividend, or

(b) any cash (excluding cash dividends payable solely out of earnings or earned surplus of the Company), or

(c) other or additional stock or other securities or property (including cash) by way of spin-off, split-up, reclassification, recapitalization, combination of shares or similar corporate rearrangement,

other than additional shares of Common Stock (or Other Securities) issued as a stock dividend or in a stock-split (adjustments in respect of which are provided for in Section 5), then and in each such case the Holder, on the exercise hereof as provided in Section 1, shall be entitled to receive the amount of stock and other securities and property (including cash in the cases referred to in subdivisions (b) and (c) of this Section 3; PROVIDED, HOWEVER, that if such property is not then available, the Company shall either (A) substitute cash or property of equivalent value or (B) reduce the Purchase Price and/or increase the number of shares of Common Stock issuable upon the exercise of this Warrant to reflect the value of the property distributable to stockholders, in each case in a manner reasonably satisfactory to the Holder) which the Holder would hold on the date of such exercise if on the date thereof the Holder had been the holder of record of the number of shares of Common Stock called for on the face of this Warrant and had thereafter, during the period from the date hereof to and including the date of such exercise, retained such shares and all such other or additional stock and other securities and property (including cash in the case referred to in subdivisions (b) and (c) of this Section 3) receivable by the Holder as aforesaid during such period, giving effect to all adjustments called for during such period by Section 4. Notwithstanding anything in this Section 3 to the contrary, no adjustments pursuant to this Section 3 shall actually be made until the cumulative effect of the adjustments called for by this Section 3 since the date of the last adjustment actually made would change the amount of stock or other securities and property which the Holder would hold by more than 1%.

4. EXERCISE UPON REORGANIZATION, CONSOLIDATION, MERGER, ETC. In case at any time or from time to time after the Issuance Date, the Company shall (a) effect a reorganization, (b) consolidate with or merge into any other person, (c) effect an exchange of outstanding shares of the Company for securities of any other person or (d) transfer all or substantially all of its properties or assets to any other person under any plan or arrangement contemplating the dissolution of the Company, then, in each such case, as a condition of such reorganization, consolidation, merger, share exchange, sale or conveyance, (i) the Company shall give at least 15 days notice to the Holder of such pending transaction whereby the Holder shall have the right to exercise this Warrant prior to any such reorganization, consolidation, merger, share exchange, sale or conveyance and (ii) if the Holder does not so exercise this Warrant in full, the Company shall cause effective provisions to be made so that the Holder shall have the right thereafter, by exercising this Warrant (in lieu of the shares of Common Stock of the Company purchasable and receivable upon exercise of the rights represented hereby immediately prior to such transaction) to purchase the kind and amount of shares of stock and other securities and property (including cash); PROVIDED, however, that if such property is not then available, the Company shall either (A) substitute cash or property of equivalent value or (B) reduce the Purchase Price and/or increase the number of shares of Common Stock issuable upon the exercise of this Warrant to reflect the value of the property distributable to stockholders, in each case in a manner reasonably satisfactory to the Holder) receivable upon such reorganization, consolidation, merger, share exchange, sale or conveyance by a holder of the number of shares of Common Stock that might have been received upon exercise of this Warrant immediately prior to such reorganization, consolidation, merger, share exchange, sale or conveyance. Any exercise of this Warrant pursuant to notice under this Section may, at the option of the Holder, be conditioned upon the closing of such reorganization, consolidation, merger, sale or conveyance which is the subject of the notice and the exercise of this Warrant shall not be deemed to have occurred until immediately prior to the closing of such transaction.

5. ADJUSTMENT FOR EXTRAORDINARY EVENTS. In the event that after the Issuance Date the Company shall (i) issue additional shares of Common Stock as a dividend or other distribution on outstanding Common Stock, (ii) subdivide or reclassify its outstanding shares of Common Stock, or (iii) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, then, in each such event, the Purchase Price shall, simultaneously with the happening of such event, be adjusted by multiplying the Purchase Price in effect immediately prior to such event by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event, and the product so obtained shall thereafter be the Purchase Price then in effect. The Purchase Price, as so adjusted, shall be readjusted in the same manner upon the happening of any successive event or events described herein in this Section 5. The Holder shall thereafter, on the exercise hereof as provided in Section 1, be entitled to receive that number of shares of Common Stock determined by multiplying the number of shares of Common Stock which would be issuable on such exercise immediately prior to such issuance by a fraction of which (i) the numerator is the Purchase Price in effect immediately prior to such issuance and (ii) the denominator is the Purchase Price in effect on the date of such exercise.

6. ADJUSTMENT FOR CERTAIN STOCK ISSUANCES. In case at any time the Company shall issue shares of its Common Stock or debt or equity securities convertible into or exercisable or exchangeable for shares of Common Stock (collectively, the "Newly Issued Securities"), other than (i) an issuance pro rata to all holders of its outstanding Common Stock, (ii) issuances pursuant to options, warrants and convertible securities outstanding on the Issuance Date (including securities issued pursuant to the Subscription Agreement) and (iii) issuances pursuant to stock option plans and other stock-based plans or arrangements approved by the Board of Directors of the Company, at a price below the Closing Price in effect at the time of such issuance, then following such issuance of Newly Issued Securities the number of shares of Common Stock which the Holder shall be entitled to receive upon exercise of this Warrant shall be increased and the Purchase Price shall be decreased to the respective amounts determined pursuant to this Section 6. The number of shares of Common Stock purchasable upon the exercise of this Warrant following any such adjustment shall be determined by multiplying the number of shares purchasable upon exercise of this Warrant immediately prior to such adjustment by a fraction, the numerator of which shall be the sum of (a) the number of shares of Common Stock outstanding immediately prior to the issuance of the Newly Issued Securities (calculated on a fully-diluted basis assuming the exercise or conversion of all options, warrants, purchase rights or convertible securities which are exercisable at the time of the issuance of the Newly Issued Securities), plus (b) the number of Newly Issued Securities, and the denominator of which shall be the sum of (a) the number of shares of Common Stock outstanding immediately prior to the issuance of the Newly Issued Securities (calculated on a fully-diluted basis assuming the conversion of all options, warrants, purchase rights or convertible securities which are exercisable at the time of the issuance of the Newly Issued Securities), plus (b) the number of shares of Common Stock which the aggregate consideration, if any, received by the Company for the number of Newly Issued Securities would purchase at a price equal to the Closing Price in effect at the time of such issuance. Upon any adjustment under this Section 6, the number of shares of Common Stock purchasable upon exercise of this Warrant in full immediately after such adjustment shall be rounded to the nearest one-one-hundredth of a share of Common Stock subject, however, to Section 2 of this Warrant relating to fractional shares of Common Stock. Such adjustment of the number of shares purchasable provided for in this Section 6 may be expressed as the following mathematical formula:

$$X = W \times \frac{[O+N]}{[O+(A/C)]}$$

where:

A = aggregate consideration received by the Company for the Newly Issued Securities

C = Closing Price in effect at the time of the issuance of the Newly Issued Securities

N = number of Newly Issued Securities

O = number of shares of Common Stock outstanding (on a fully diluted basis, as described above) prior to the issuance of the Newly Issued Securities

W = number of shares issuable upon exercise of this Warrant prior to the issuance of the Newly Issued Securities

X = number of shares issuable upon exercise of this Warrant after the issuance of the Newly Issued Securities

Upon the issuance of such Newly Issued Securities, the Purchase Price shall, simultaneously with the happening of such event, be adjusted by multiplying the Purchase Price in effect immediately prior to such event by a fraction, the numerator of which shall be the number of shares of Common Stock issuable upon exercise of this Warrant prior to the issuance of the Newly Issued Securities and the denominator of which shall be the number of shares of Common Stock issuable upon the exercise of this Warrant after the issuance of the Newly Issued Securities as provided in this Section 6, and the product so obtained shall thereafter be the Purchase Price then in effect. The number of shares issuable upon exercise of this Warrant and the Purchase Price, as each is so adjusted, shall be readjusted in the same manner upon the happening of any successive issuances of Newly Issued Securities described in this Section 6.

7. FURTHER ASSURANCES. The Company will take all action that may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of stock, free from all taxes, liens and charges with respect to the issue thereof, on the exercise of all or any portion of this Warrant from time to time outstanding.

8. NOTICES OF RECORD DATE, ETC. In the event of

(a) any taking by the Company 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 on, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, or

(b) any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any transfer of all or substantially all of the assets of the Company to or consolidation or merger of the Company with or into any other person (other than a wholly-owned subsidiary of the Company), or

(c) any voluntary or involuntary dissolution, liquidation or winding-up of the Company,

then and in each such event the Company will mail or cause to be mailed to the Holder, at least ten days prior to such record date, a notice specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend,

distribution or right, (ii) the date on which any such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or Other Securities) shall be entitled to exchange their shares of Common Stock (or Other Securities) for securities or other property deliverable on such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding-up, and (iii) the amount and character of any stock or other securities, or rights or options with respect thereto, proposed to be issued or granted, the date of such proposed issue or grant and the persons or class of persons to whom such proposed issue or grant is to be offered or made. Such notice shall also state that the action in question or the record date is subject to the effectiveness of a registration statement under the 1933 Act, or a favorable vote of stockholders if either is required. Such notice shall be mailed at least ten days prior to the date specified in such notice on which any such action is to be taken or the record date, whichever is earlier. Any failure to receive such notice shall not affect the corporate action taken.

9. RESERVATION OF STOCK, ETC., ISSUABLE ON EXERCISE OF WARRANTS. The Company will at all times reserve and keep available out of its authorized but unissued shares of capital stock, solely for issuance and delivery on the exercise of this Warrant, a sufficient number of shares of Common Stock (or Other Securities) to effect the full exercise of this Warrant and the exercise, conversion or exchange of any other warrant or security of the Company exercisable for, convertible into, exchangeable for or otherwise entitling the holder to acquire shares of Common Stock (or Other Securities), and if at any time the number of authorized but unissued shares of Common Stock (or Other Securities) shall not be sufficient to effect such exercise, conversion or exchange, the Company shall take such action as may be necessary to increase its authorized but unissued shares of Common Stock (or Other Securities) to such number as shall be sufficient for such purposes.

10. TRANSFER OF WARRANT. This Warrant shall inure to the benefit of the successors to and assigns of the Holder. This Warrant and all rights hereunder, in whole or in part, are registrable at the office or agency of the Company referred to below by the Holder hereof in person or by his duly authorized attorney, upon surrender of this Warrant properly endorsed.

11. REGISTER OF WARRANTS. The Company shall maintain, at the principal office of the Company (or such other office as it may designate by notice to the Holder hereof), a register in which the Company shall record the name and address of the person in whose name this Warrant has been issued, as well as the name and address of each successor and prior owner of such Warrant. The Company shall be entitled to treat the person in whose name this Warrant is so registered as the sole and absolute owner of this Warrant for all purposes.

12. EXCHANGE OF WARRANT. This Warrant is exchangeable, upon the surrender hereof by the Holder hereof at the office or agency of the Company referred to in Section 11, for one or more new Warrants of like tenor representing in the aggregate the right to subscribe for and purchase the number of shares of Common Stock which may be subscribed for and purchased hereunder, each of such new Warrants to represent the right to subscribe for and purchase such number of shares as shall be designated by said Holder hereof at the time of such surrender.

13. REPLACEMENT OF WARRANT. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of any such loss, theft or destruction of this Warrant, on delivery of an indemnity agreement or security reasonably satisfactory in form and amount to the Company or, in the case of any such mutilation, on surrender and cancellation of this Warrant, the Company at its expense will execute and deliver, in lieu thereof, a new Warrant of like tenor.

14. WARRANT AGENT. In accordance with the Transfer Agent Agreement, dated as of September 15, 1999, by and among the Company, Signature Stock Transfer, Inc., as Transfer Agent and Registrar (the "Transfer Agent"), and the original Holder of this Warrant and the other common stock purchase warrants of like tenor issued by the Company in connection with the issuance of this Warrant, the Company has appointed the Transfer Agent as the exercise agent for purposes of issuing shares of Common Stock (or Other Securities) on the exercise of this Warrant pursuant to Section 1. The Company may, by notice to the Holder, appoint an agent having an office in the United States of America for the purpose of exchanging this Warrant pursuant to Section 12 and replacing this Warrant pursuant to Section 13, or either of the foregoing, and thereafter any such exchange or replacement, as the case may be, shall be made at such office by such agent.

15. REMEDIES. The Company stipulates that the remedies at law of the Holder in the event of any default or threatened default by the Company in the performance of or compliance with any of the terms of this Warrant are not and will not be adequate, and that such terms may be specifically enforced by a decree for the specific performance of any agreement contained herein or by an injunction against a violation of any of the terms hereof or otherwise.

16. NO RIGHTS OR LIABILITIES AS A STOCKHOLDER. This Warrant shall not entitle the Holder hereof to any voting rights or other rights as a stockholder of the Company. No provision of this Warrant, in the absence of affirmative action by the Holder hereof to purchase Common Stock, and no mere enumeration herein of the rights or privileges of the Holder hereof, shall give rise to any liability of the Holder for the Purchase Price or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

17. NOTICES, ETC. All notices and other communications from the Company to the registered Holder or from the registered Holder to the Company shall be delivered personally (which shall include telephone line facsimile transmission with answer back confirmation) or by courier and shall be effective upon receipt, addressed to each party at the address or telephone line facsimile transmission number for each party set forth in the Subscription Agreement or at such other address or telephone line facsimile transmission number as a party shall have provided to the other party in accordance with this provision.

18. TRANSFER RESTRICTIONS. By acceptance of this Warrant, the Holder represents to the Company that the Holder is an "accredited investor" as defined in Regulation D under the 1933 Act, has reviewed the Company's periodic filings



made under the 1934 Act and desires no further information, is aware of the risks of investing in the Company, and confirms that this Warrant is being acquired for the Holder's own account and for the purpose of investment and not with a view to, or for sale in connection with, the distribution thereof, nor with any present intention of distributing or selling this Warrant or the Common Stock issuable upon exercise of this Warrant. The Holder acknowledges and agrees that this Warrant and, except as otherwise provided in the Registration Rights Agreement, the shares of Common Stock issuable upon exercise of this Warrant (if any) have not been (and at the time of acquisition by the Holder, will not have been or will not be), registered under the 1933 Act or under the securities laws of any state, in reliance upon certain exemptive provisions of such statutes. The Holder further recognizes and acknowledges that because this Warrant and, except as provided in the Registration Rights Agreement, the Common Stock issuable upon exercise of this Warrant (if any) are unregistered, they may not be eligible for resale, and may only be resold in the future pursuant to an effective registration statement under the 1933 Act and any applicable state securities laws, or pursuant to a valid exemption from such registration requirements. Unless the shares of Common Stock issuable upon exercise of this Warrant have theretofore been registered for resale under the 1933 Act, the Company may require, as a condition to the issuance of Common Stock upon the exercise of this Warrant (i) in the case of an exercise in accordance with Section 1.1 hereof, a confirmation as of the date of exercise of the Holder's representations pursuant to this Section 18, or (ii) in the case of an exercise in accordance with Section 1.2 hereof, an opinion of counsel reasonably satisfactory to the Company that the shares of Common Stock to be issued upon such exercise may be issued without registration under the 1933 Act.

19. LEGEND. Unless theretofore registered for resale under the 1933 Act, each certificate for shares issued upon exercise of this Warrant shall bear the following legend:

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended. The securities have been acquired for investment and may not be resold, transferred or assigned in the absence of an effective registration statement for the securities under the Securities Act of 1933, as amended, or an opinion of counsel reasonably acceptable to the Company that registration is not required under said Act.

20. AMENDMENT; WAIVER. This Warrant and any terms hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. Notwithstanding any other provision of this Warrant or the Subscription Agreement, in addition to the requirements of the immediately preceding sentence, any amendment of (x) Section 1.1(b), (y) the definition of the term Aggregated Person or (z) this sentence shall require approval by the affirmative vote of the holders of a majority of the outstanding shares of Common Stock, present in person or represented by proxy at a duly convened meeting of stockholders of the Company, and entitled to vote, or the consent thereto in writing by holders of a majority of the outstanding shares of Common Stock, and the stockholders of the Company are hereby expressly made third party beneficiaries of this sentence.

21. MISCELLANEOUS. This Warrant shall be construed and enforced in accordance with and governed by the internal laws of the State of Arizona. The headings in this Warrant are for purposes of reference only, and shall not limit or otherwise affect any of the terms hereof. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed on its behalf by one of its officers thereunto duly authorized.

Dated: September 17, 1999

TITAN MOTORCYCLE CO. OF AMERICA

By: /s/ Francis S. Keery

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Title: Chief Executive Officer

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FORM OF SUBSCRIPTION

TITAN MOTORCYCLE CO. OF AMERICA

(To be signed only on exercise of Warrant)

TO: Signature Stock Transfer & Trust,      CC: Titan Motorcycle Co. of America  
    Inc., as Exercise Agent                      2222 West Peoria Avenue  
14675 Midway Road                              Phoenix, Arizona 85029  
Suite 221  
Dallas, Texas 75244

1. The undersigned Holder of the attached original, executed Warrant hereby elects to exercise its purchase right under such Warrant with respect to \_\_\_\_\_ shares of Common Stock, as defined in the Warrant, of Titan Motorcycle Co. of America, a Nevada corporation (the "Company").

2. The undersigned Holder (check one):

(a) elects to pay the aggregate purchase price for such shares of Common Stock (the "Exercise Shares") (i) by lawful money of the United States or the enclosed certified or official bank check payable in United States dollars to the order of the Company in the amount of \$\_\_\_\_\_, or (ii) by wire transfer of United States funds to the account of the Company in the amount of \$\_\_\_\_\_, which transfer has been made before or simultaneously with the delivery of this Form of Subscription pursuant to the instructions of the Company;

or

(b) elects to receive shares of Common Stock having a value equal to the value of the Warrant as permitted by and calculated in accordance with Section 1.2 of the Warrant.

3. Please issue a stock certificate or certificates representing the appropriate number of shares of Common Stock in the name of the undersigned or in such other name as is specified below:

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Name:

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Address:

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4. The undersigned Holder confirms with respect to such Holder and the shares of Common Stock issuable pursuant to this exercise the representations set forth in Section 18 of the Warrant.

Dated: \_\_\_\_\_, \_\_\_\_\_

(Signature must conform to name of Holder as specified on the face of the Warrant)

(Address)

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE RESOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT.

Right to Purchase 93,242 Shares of Common  
Stock of Titan Motorcycle Co. of America

TITAN MOTORCYCLE CO. OF AMERICA

COMMON STOCK PURCHASE WARRANT

NO. W-2

TITAN MOTORCYCLE CO. OF AMERICA, a Nevada corporation (the "Company"), hereby certifies that, for value received, KOCH INVESTMENT GROUP LIMITED or registered assigns (the "Holder"), is entitled, subject to the terms set forth below, to purchase from the Company at any time or from time to time after the date hereof, and before 5:00 p.m., New York City time, on the Expiration Date (as hereinafter defined), 93,242 fully paid and nonassessable shares of Common Stock (as hereinafter defined) at a purchase price per share equal to the Purchase Price (as hereinafter defined). The number of such shares of Common Stock and the Purchase Price are subject to adjustment as provided in this Warrant.

As used herein the following terms, unless the context otherwise requires, have the following respective meanings:

"Closing Price" means \$2.6812 (subject to equitable adjustments from time to time on terms reasonably determined by the Board of Directors of the Company for stock splits, stock dividends, combinations, recapitalizations, reclassifications and similar events occurring or with respect to which "ex-" trading commences on or after the Issuance Date).

"Common Stock" includes the Company's Common Stock, \$.001 par value per share, as authorized on the date hereof, and any other securities into which or for which the Common Stock may be converted or exchanged pursuant to a plan of recapitalization, reorganization, merger, sale of assets or otherwise.

"Company" shall include Titan Motorcycle Co. of America and any corporation that shall succeed to or assume the obligations of Titan Motorcycle Co. of America hereunder in accordance with the terms hereof.

"Expiration Date" means September 17, 2004.

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"Issuance Date" means the first date of original issuance of this Warrant.

"1934 Act" means the Securities Exchange Act of 1934, as amended.

"1933 Act" means the Securities Act of 1933, as amended.

"Other Securities" refers to any stock (other than Common Stock) and other securities of the Company or any other person (corporate or otherwise) which the Holder at any time shall be entitled to receive, or shall have received, on the exercise of this Warrant, in lieu of or in addition to Common Stock, or which at any time shall be issuable or shall have been issued in exchange for or in replacement of Common Stock or Other Securities pursuant to Section 4.

"Purchase Price" shall mean \$3.21744 per share, subject to adjustment as provided in this Warrant.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of September 15, 1999 by and between the Company and the original Holder of this Warrant, as amended from time to time in accordance with its terms.

"Subscription Agreement" means the Subscription Agreement, dated as of September 15, 1999, by and between the Company and the original Holder of this Warrant, as amended from time to time in accordance with its terms.

"Trading Day" means a day on which the principal securities market for the Common Stock is open for general trading of securities.

1. EXERCISE OF WARRANT.

1.1 EXERCISE. (a) This Warrant may be exercised by the Holder hereof in full or in part at any time or from time to time during the exercise period specified in the first paragraph hereof until the Expiration Date by surrender of this Warrant and the subscription form annexed hereto (duly executed by the Holder), to the Company's transfer agent and registrar for the Common Stock, with a copy to the Company, and by making payment, in cash or by certified or official bank check payable to the order of the Company, in the amount obtained by multiplying (a) the number of shares of Common Stock designated by the Holder in the subscription form by (b) the Purchase Price then in effect. On any partial exercise the Company will forthwith issue and deliver to or upon the order of the Holder hereof a new Warrant or Warrants of like tenor, in the name of the Holder hereof or as the Holder (upon payment by the Holder of any applicable transfer taxes) may request, providing in the aggregate on the face or faces thereof for the purchase of the number of shares of Common Stock for which such Warrant or Warrants may still be exercised.

(b) Notwithstanding any other provision of this Warrant, in no event shall the Holder be entitled at any time to purchase a number of shares of Common Stock on exercise of this Warrant in excess of that number of shares upon purchase of which the sum of (1) the number of shares of Common Stock beneficially owned by the Holder and all persons whose beneficial ownership of shares of Common Stock would be aggregated with the Holder's beneficial ownership of shares of Common Stock for purposes of Section 13(d) of the 1934 Act and Regulation 13D-G thereunder, (each such person other than the Holder an "Aggregated Person" and all such persons other than the Holder, collectively, the "Aggregated Persons") (other than shares of Common Stock deemed beneficially owned through the ownership by the Holder and all Aggregated Persons of the Holder of the unexercised portion of this Warrant and the unexercised or unconverted portion of any other security of the Company which contains similar provisions) and (2) the number of shares of Common Stock issuable upon exercise of the portion of this Warrant with respect to which the determination in this sentence is being made, would result in beneficial ownership by the Holder and all Aggregated Persons of the Holder of more than 4.9% of the outstanding shares of Common Stock. For purposes of the immediately preceding sentence, beneficial ownership shall be determined in accordance with Section 13(d) of the 1934 Act and Regulation 13D-G thereunder, except as otherwise provided in clause (1) of the immediately preceding sentence.

1.2 NET ISSUANCE. Notwithstanding anything to the contrary contained in Section 1.1, if on the date this Warrant is exercised or on the date the Company delivers stock certificates in connection with such exercise pursuant to Section 2 below (a) the Registration Statement (as defined in the Registration Rights Agreement) is not available to the Holder for the public resale of any of the shares of Common Stock issued upon exercise of this Warrant or (b) the Company is not in compliance in all material respects with its obligations to the Holder (including, without limitation, its obligations under this Warrant, the Subscription Agreement, the Registration Rights Agreement and the Certificate of Designations (as defined in the Subscription Agreement)), the Holder may elect to exercise this Warrant in whole or in part by receiving shares of Common Stock equal to the net issuance value (as determined below) of this Warrant, or any part hereof, upon surrender of this Warrant to the Company's transfer agent and registrar for the Common Stock together with the subscription form annexed hereto (duly executed by the Holder), in which event the Company shall issue to the Holder a number of shares of Common Stock computed using the following formula:

$$X = \frac{Y (A-B)}{A}$$

- Where:
- X = the number of shares of Common Stock to be issued to the Holder
  - Y = the number of shares of Common Stock as to which this Warrant is to be exercised
  - A = the current fair market value of one share of Common Stock calculated as of the last Trading Day immediately preceding the exercise of this Warrant
  - B = the Purchase Price



As used herein, current fair market value of Common Stock as of a specified date shall mean with respect to each share of Common Stock the closing sale price of the Common Stock on the principal securities market on which the Common Stock may at the time be listed or, if there have been no sales on any such exchange on such day, the average of the highest bid and lowest asked prices on the principal securities market at the end of such day, or, if on such day the Common Stock is not so listed, the average of the representative bid and asked prices quoted in the Nasdaq System as of 4:00 p.m., New York City time, or, if on such day the Common Stock is not quoted in the Nasdaq System, the average of the highest bid and lowest asked price on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of five consecutive Trading Days consisting of the day as of which the current fair market value of a share of Common Stock is being determined (or if such day is not a Trading Day, the Trading Day next preceding such day) and the four consecutive Trading Days prior to such day. If on the date for which current fair market value is to be determined the Common Stock is not listed on any securities exchange or quoted in the Nasdaq System or the over-the-counter market, the current fair market value of Common Stock shall be the highest price per share which the Company could then obtain from a willing buyer (not a current employee or director) for shares of Common Stock sold by the Company, from authorized but unissued shares, as determined in good faith by the Board of Directors of the Company, unless prior to such date the Company has become subject to a merger, acquisition or other consolidation pursuant to which the Company is not the surviving party, in which case the current fair market value of the Common Stock shall be deemed to be the value received by the holders of the Company's Common Stock for each share thereof pursuant to the Company's acquisition.

2. DELIVERY OF STOCK CERTIFICATES, ETC., ON EXERCISE. As soon as practicable after the exercise of this Warrant, and in any event within three Trading Days thereafter, the Company at its expense (including the payment by it of any applicable issue or stamp taxes) will cause to be issued in the name of and delivered to the Holder hereof, or as the Holder (upon payment by the Holder of any applicable transfer taxes) may direct, a certificate or certificates for the number of fully paid and nonassessable shares of Common Stock (or Other Securities) to which the Holder shall be entitled on such exercise, in such denominations as may be requested by the Holder, plus, in lieu of any fractional share to which the Holder would otherwise be entitled, cash equal to such fraction multiplied by the then current fair market value (as determined in accordance with subsection 1.2) of one full share, together with any other stock or other securities and property (including cash, where applicable) to which the Holder is entitled upon such exercise pursuant to Section 1 or otherwise. Upon exercise of this Warrant as provided herein, the Company's obligation to issue and deliver the certificates for Common Stock shall be absolute and unconditional, irrespective of the absence of any action by the Holder to enforce the same, any waiver or consent with respect to any provision thereof, the recovery of any judgment against any person or any action to enforce the same, any failure or delay in the enforcement of any other obligation of the Company to the Holder, or any setoff, counterclaim, recoupment, limitation or

termination, or any breach or alleged breach by the Holder or any other person of any obligation to the Company, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with such exercise. If the Company fails to issue and deliver the certificates for the Common Stock to the Holder pursuant to the first sentence of this paragraph as and when required to do so, in addition to any other liabilities the Company may have hereunder and under applicable law, the Company shall pay or reimburse the Holder on demand for all out-of-pocket expenses including, without limitation, reasonable fees and expenses of legal counsel incurred by the Holder as a result of such failure.

3. ADJUSTMENT FOR DIVIDENDS IN OTHER STOCK, PROPERTY, ETC.; RECLASSIFICATION, ETC. In case at any time or from time to time after the Issuance Date, all the holders of Common Stock (or Other Securities) shall have received, or (on or after the record date fixed for the determination of stockholders eligible to receive) shall have become entitled to receive, without payment therefor,

(a) other or additional stock or other securities or property (other than cash) by way of dividend, or

(b) any cash (excluding cash dividends payable solely out of earnings or earned surplus of the Company), or

(c) other or additional stock or other securities or property (including cash) by way of spin-off, split-up, reclassification, recapitalization, combination of shares or similar corporate rearrangement,

other than additional shares of Common Stock (or Other Securities) issued as a stock dividend or in a stock-split (adjustments in respect of which are provided for in Section 5), then and in each such case the Holder, on the exercise hereof as provided in Section 1, shall be entitled to receive the amount of stock and other securities and property (including cash in the cases referred to in subdivisions (b) and (c) of this Section 3; PROVIDED, HOWEVER, that if such property is not then available, the Company shall either (A) substitute cash or property of equivalent value or (B) reduce the Purchase Price and/or increase the number of shares of Common Stock issuable upon the exercise of this Warrant to reflect the value of the property distributable to stockholders, in each case in a manner reasonably satisfactory to the Holder) which the Holder would hold on the date of such exercise if on the date thereof the Holder had been the holder of record of the number of shares of Common Stock called for on the face of this Warrant and had thereafter, during the period from the date hereof to and including the date of such exercise, retained such shares and all such other or additional stock and other securities and property (including cash in the case referred to in subdivisions (b) and (c) of this Section 3) receivable by the Holder as aforesaid during such period, giving effect to all adjustments called for during such period by Section 4. Notwithstanding anything in this Section 3 to the contrary, no adjustments pursuant to this Section 3 shall actually be made until the cumulative effect of the adjustments called for by this Section 3 since the date of the last adjustment actually made would change the amount of stock or other securities and property which the Holder would hold by more than 1%.

4. EXERCISE UPON REORGANIZATION, CONSOLIDATION, MERGER, ETC. In case at any time or from time to time after the Issuance Date, the Company shall (a) effect a reorganization, (b) consolidate with or merge into any other person, (c) effect an exchange of outstanding shares of the Company for securities of any other person or (d) transfer all or substantially all of its properties or assets to any other person under any plan or arrangement contemplating the dissolution of the Company, then, in each such case, as a condition of such reorganization, consolidation, merger, share exchange, sale or conveyance, (i) the Company shall give at least 15 days notice to the Holder of such pending transaction whereby the Holder shall have the right to exercise this Warrant prior to any such reorganization, consolidation, merger, share exchange, sale or conveyance and (ii) if the Holder does not so exercise this Warrant in full, the Company shall cause effective provisions to be made so that the Holder shall have the right thereafter, by exercising this Warrant (in lieu of the shares of Common Stock of the Company purchasable and receivable upon exercise of the rights represented hereby immediately prior to such transaction) to purchase the kind and amount of shares of stock and other securities and property (including cash); PROVIDED, HOWEVER, that if such property is not then available, the Company shall either (A) substitute cash or property of equivalent value or (B) reduce the Purchase Price and/or increase the number of shares of Common Stock issuable upon the exercise of this Warrant to reflect the value of the property distributable to stockholders, in each case in a manner reasonably satisfactory to the Holder) receivable upon such reorganization, consolidation, merger, share exchange, sale or conveyance by a holder of the number of shares of Common Stock that might have been received upon exercise of this Warrant immediately prior to such reorganization, consolidation, merger, share exchange, sale or conveyance. Any exercise of this Warrant pursuant to notice under this Section may, at the option of the Holder, be conditioned upon the closing of such reorganization, consolidation, merger, sale or conveyance which is the subject of the notice and the exercise of this Warrant shall not be deemed to have occurred until immediately prior to the closing of such transaction.

5. ADJUSTMENT FOR EXTRAORDINARY EVENTS. In the event that after the Issuance Date the Company shall (i) issue additional shares of Common Stock as a dividend or other distribution on outstanding Common Stock, (ii) subdivide or reclassify its outstanding shares of Common Stock, or (iii) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, then, in each such event, the Purchase Price shall, simultaneously with the happening of such event, be adjusted by multiplying the Purchase Price in effect immediately prior to such event by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event, and the product so obtained shall thereafter be the Purchase Price then in effect. The Purchase Price, as so adjusted, shall be readjusted in the same manner upon the happening of any successive event or events described herein in this Section 5. The Holder shall thereafter, on the exercise hereof as provided in Section 1, be entitled to receive that number of shares of Common Stock determined by multiplying the number of shares of Common Stock which would be issuable on such exercise immediately prior to such issuance by a fraction of which (i) the numerator is the Purchase Price in effect immediately prior to such issuance and (ii) the denominator is the Purchase Price in effect on the date of such exercise.

6. ADJUSTMENT FOR CERTAIN STOCK ISSUANCES. In case at any time the Company shall issue shares of its Common Stock or debt or equity securities convertible into or exercisable or exchangeable for shares of Common Stock (collectively, the "Newly Issued Securities"), other than (i) an issuance pro rata to all holders of its outstanding Common Stock, (ii) issuances pursuant to options, warrants and convertible securities outstanding on the Issuance Date (including securities issued pursuant to the Subscription Agreement) and (iii) issuances pursuant to stock option plans and other stock-based plans or arrangements approved by the Board of Directors of the Company, at a price below the Closing Price in effect at the time of such issuance, then following such issuance of Newly Issued Securities the number of shares of Common Stock which the Holder shall be entitled to receive upon exercise of this Warrant shall be increased and the Purchase Price shall be decreased to the respective amounts determined pursuant to this Section 6. The number of shares of Common Stock purchasable upon the exercise of this Warrant following any such adjustment shall be determined by multiplying the number of shares purchasable upon exercise of this Warrant immediately prior to such adjustment by a fraction, the numerator of which shall be the sum of (a) the number of shares of Common Stock outstanding immediately prior to the issuance of the Newly Issued Securities (calculated on a fully-diluted basis assuming the exercise or conversion of all options, warrants, purchase rights or convertible securities which are exercisable at the time of the issuance of the Newly Issued Securities), plus (b) the number of Newly Issued Securities, and the denominator of which shall be the sum of (a) the number of shares of Common Stock outstanding immediately prior to the issuance of the Newly Issued Securities (calculated on a fully-diluted basis assuming the conversion of all options, warrants, purchase rights or convertible securities which are exercisable at the time of the issuance of the Newly Issued Securities), plus (b) the number of shares of Common Stock which the aggregate consideration, if any, received by the Company for the number of Newly Issued Securities would purchase at a price equal to the Closing Price in effect at the time of such issuance. Upon any adjustment under this Section 6, the number of shares of Common Stock purchasable upon exercise of this Warrant in full immediately after such adjustment shall be rounded to the nearest one-one-hundredth of a share of Common Stock subject, however, to Section 2 of this Warrant relating to fractional shares of Common Stock. Such adjustment of the number of shares purchasable provided for in this Section 6 may be expressed as the following mathematical formula:

$$X = W \times \frac{[O+N]}{[O+(A/C)]}$$

where:

A = aggregate consideration received by the Company for the Newly Issued Securities

C = Closing Price in effect at the time of the issuance of the Newly Issued Securities

N = number of Newly Issued Securities

O = number of shares of Common Stock outstanding (on a fully diluted basis, as described above) prior to the issuance of the Newly Issued Securities

W = number of shares issuable upon exercise of this Warrant prior to the issuance of the Newly Issued Securities

X = number of shares issuable upon exercise of this Warrant after the issuance of the Newly Issued Securities

Upon the issuance of such Newly Issued Securities, the Purchase Price shall, simultaneously with the happening of such event, be adjusted by multiplying the Purchase Price in effect immediately prior to such event by a fraction, the numerator of which shall be the number of shares of Common Stock issuable upon exercise of this Warrant prior to the issuance of the Newly Issued Securities and the denominator of which shall be the number of shares of Common Stock issuable upon the exercise of this Warrant after the issuance of the Newly Issued Securities as provided in this Section 6, and the product so obtained shall thereafter be the Purchase Price then in effect. The number of shares issuable upon exercise of this Warrant and the Purchase Price, as each is so adjusted, shall be readjusted in the same manner upon the happening of any successive issuances of Newly Issued Securities described in this Section 6.

7. FURTHER ASSURANCES. The Company will take all action that may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of stock, free from all taxes, liens and charges with respect to the issue thereof, on the exercise of all or any portion of this Warrant from time to time outstanding.

8. NOTICES OF RECORD DATE, ETC. In the event of

(a) any taking by the Company 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 on, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, or

(b) any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any transfer of all or substantially all of the assets of the Company to or consolidation or merger of the Company with or into any other person (other than a wholly-owned subsidiary of the Company), or

(c) any voluntary or involuntary dissolution, liquidation or winding-up of the Company,

then and in each such event the Company will mail or cause to be mailed to the Holder, at least ten days prior to such record date, a notice specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend,

distribution or right, (ii) the date on which any such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or Other Securities) shall be entitled to exchange their shares of Common Stock (or Other Securities) for securities or other property deliverable on such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding-up, and (iii) the amount and character of any stock or other securities, or rights or options with respect thereto, proposed to be issued or granted, the date of such proposed issue or grant and the persons or class of persons to whom such proposed issue or grant is to be offered or made. Such notice shall also state that the action in question or the record date is subject to the effectiveness of a registration statement under the 1933 Act, or a favorable vote of stockholders if either is required. Such notice shall be mailed at least ten days prior to the date specified in such notice on which any such action is to be taken or the record date, whichever is earlier. Any failure to receive such notice shall not affect the corporate action taken.

9. RESERVATION OF STOCK, ETC., ISSUABLE ON EXERCISE OF WARRANTS. The Company will at all times reserve and keep available out of its authorized but unissued shares of capital stock, solely for issuance and delivery on the exercise of this Warrant, a sufficient number of shares of Common Stock (or Other Securities) to effect the full exercise of this Warrant and the exercise, conversion or exchange of any other warrant or security of the Company exercisable for, convertible into, exchangeable for or otherwise entitling the holder to acquire shares of Common Stock (or Other Securities), and if at any time the number of authorized but unissued shares of Common Stock (or Other Securities) shall not be sufficient to effect such exercise, conversion or exchange, the Company shall take such action as may be necessary to increase its authorized but unissued shares of Common Stock (or Other Securities) to such number as shall be sufficient for such purposes.

10. TRANSFER OF WARRANT. This Warrant shall inure to the benefit of the successors to and assigns of the Holder. This Warrant and all rights hereunder, in whole or in part, are registrable at the office or agency of the Company referred to below by the Holder hereof in person or by his duly authorized attorney, upon surrender of this Warrant properly endorsed.

11. REGISTER OF WARRANTS. The Company shall maintain, at the principal office of the Company (or such other office as it may designate by notice to the Holder hereof), a register in which the Company shall record the name and address of the person in whose name this Warrant has been issued, as well as the name and address of each successor and prior owner of such Warrant. The Company shall be entitled to treat the person in whose name this Warrant is so registered as the sole and absolute owner of this Warrant for all purposes.

12. EXCHANGE OF WARRANT. This Warrant is exchangeable, upon the surrender hereof by the Holder hereof at the office or agency of the Company referred to in Section 11, for one or more new Warrants of like tenor representing in the aggregate the right to subscribe for and purchase the number of shares of Common Stock which may be subscribed for and purchased hereunder, each of such new Warrants to represent the right to subscribe for and purchase such number of shares as shall be designated by said Holder hereof at the time of such surrender.

13. REPLACEMENT OF WARRANT. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of any such loss, theft or destruction of this Warrant, on delivery of an indemnity agreement or security reasonably satisfactory in form and amount to the Company or, in the case of any such mutilation, on surrender and cancellation of this Warrant, the Company at its expense will execute and deliver, in lieu thereof, a new Warrant of like tenor.

14. WARRANT AGENT. In accordance with the Transfer Agent Agreement, dated as of September 15, 1999, by and among the Company, Signature Stock Transfer, Inc., as Transfer Agent and Registrar (the "Transfer Agent"), and the original Holder of this Warrant and the other common stock purchase warrants of like tenor issued by the Company in connection with the issuance of this Warrant, the Company has appointed the Transfer Agent as the exercise agent for purposes of issuing shares of Common Stock (or Other Securities) on the exercise of this Warrant pursuant to Section 1. The Company may, by notice to the Holder, appoint an agent having an office in the United States of America for the purpose of exchanging this Warrant pursuant to Section 12 and replacing this Warrant pursuant to Section 13, or either of the foregoing, and thereafter any such exchange or replacement, as the case may be, shall be made at such office by such agent.

15. REMEDIES. The Company stipulates that the remedies at law of the Holder in the event of any default or threatened default by the Company in the performance of or compliance with any of the terms of this Warrant are not and will not be adequate, and that such terms may be specifically enforced by a decree for the specific performance of any agreement contained herein or by an injunction against a violation of any of the terms hereof or otherwise.

16. NO RIGHTS OR LIABILITIES AS A STOCKHOLDER. This Warrant shall not entitle the Holder hereof to any voting rights or other rights as a stockholder of the Company. No provision of this Warrant, in the absence of affirmative action by the Holder hereof to purchase Common Stock, and no mere enumeration herein of the rights or privileges of the Holder hereof, shall give rise to any liability of the Holder for the Purchase Price or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

17. NOTICES, ETC. All notices and other communications from the Company to the registered Holder or from the registered Holder to the Company shall be delivered personally (which shall include telephone line facsimile transmission with answer back confirmation) or by courier and shall be effective upon receipt, addressed to each party at the address or telephone line facsimile transmission number for each party set forth in the Subscription Agreement or at such other address or telephone line facsimile transmission number as a party shall have provided to the other party in accordance with this provision.

18. TRANSFER RESTRICTIONS. By acceptance of this Warrant, the Holder represents to the Company that the Holder is an "accredited investor" as defined in Regulation D under the 1933 Act, has reviewed the Company's periodic filings

made under the 1934 Act and desires no further information, is aware of the risks of investing in the Company, and confirms that this Warrant is being acquired for the Holder's own account and for the purpose of investment and not with a view to, or for sale in connection with, the distribution thereof, nor with any present intention of distributing or selling this Warrant or the Common Stock issuable upon exercise of this Warrant. The Holder acknowledges and agrees that this Warrant and, except as otherwise provided in the Registration Rights Agreement, the shares of Common Stock issuable upon exercise of this Warrant (if any) have not been (and at the time of acquisition by the Holder, will not have been or will not be), registered under the 1933 Act or under the securities laws of any state, in reliance upon certain exemptive provisions of such statutes. The Holder further recognizes and acknowledges that because this Warrant and, except as provided in the Registration Rights Agreement, the Common Stock issuable upon exercise of this Warrant (if any) are unregistered, they may not be eligible for resale, and may only be resold in the future pursuant to an effective registration statement under the 1933 Act and any applicable state securities laws, or pursuant to a valid exemption from such registration requirements. Unless the shares of Common Stock issuable upon exercise of this Warrant have theretofore been registered for resale under the 1933 Act, the Company may require, as a condition to the issuance of Common Stock upon the exercise of this Warrant (i) in the case of an exercise in accordance with Section 1.1 hereof, a confirmation as of the date of exercise of the Holder's representations pursuant to this Section 18, or (ii) in the case of an exercise in accordance with Section 1.2 hereof, an opinion of counsel reasonably satisfactory to the Company that the shares of Common Stock to be issued upon such exercise may be issued without registration under the 1933 Act.

19. LEGEND. Unless theretofore registered for resale under the 1933 Act, each certificate for shares issued upon exercise of this Warrant shall bear the following legend:

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended. The securities have been acquired for investment and may not be resold, transferred or assigned in the absence of an effective registration statement for the securities under the Securities Act of 1933, as amended, or an opinion of counsel reasonably acceptable to the Company that registration is not required under said Act.

20. AMENDMENT; WAIVER. This Warrant and any terms hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. Notwithstanding any other provision of this Warrant or the Subscription Agreement, in addition to the requirements of the immediately preceding sentence, any amendment of (x) Section 1.1(b), (y) the definition of the term Aggregated Person or (z) this sentence shall require approval by the affirmative vote of the holders of a majority of the outstanding shares of Common Stock, present in person or represented by proxy at a duly convened meeting of stockholders of the Company, and entitled to vote, or the consent thereto in writing by holders of a majority of the outstanding shares of Common Stock, and the stockholders of the Company are hereby expressly made third party beneficiaries of this sentence.



21. MISCELLANEOUS. This Warrant shall be construed and enforced in accordance with and governed by the internal laws of the State of Arizona. The headings in this Warrant are for purposes of reference only, and shall not limit or otherwise affect any of the terms hereof. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed on its behalf by one of its officers thereunto duly authorized.

Dated: September 17, 1999

TITAN MOTORCYCLE CO. OF AMERICA

By: /s/ Francis S. Keery

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Title: Chief Executive Officer

FORM OF SUBSCRIPTION

TITAN MOTORCYCLE CO. OF AMERICA

(To be signed only on exercise of Warrant)

TO: Signature Stock Transfer & Trust,      CC: Titan Motorcycle Co. of America  
    Inc., as Exercise Agent                      2222 West Peoria Avenue  
14675 Midway Road                              Phoenix, Arizona 85029  
Suite 221  
Dallas, Texas 75244

1. The undersigned Holder of the attached original, executed Warrant hereby elects to exercise its purchase right under such Warrant with respect to \_\_\_\_\_ shares of Common Stock, as defined in the Warrant, of Titan Motorcycle Co. of America, a Nevada corporation (the "Company").

2. The undersigned Holder (check one):

(a) elects to pay the aggregate purchase price for such shares of Common Stock (the "Exercise Shares") (i) by lawful money of the United States or the enclosed certified or official bank check payable in United States dollars to the order of the Company in the amount of \$\_\_\_\_\_, or (ii) by wire transfer of United States funds to the account of the Company in the amount of \$\_\_\_\_\_, which transfer has been made before or simultaneously with the delivery of this Form of Subscription pursuant to the instructions of the Company;

or

(b) elects to receive shares of Common Stock having a value equal to the value of the Warrant as permitted by and calculated in accordance with Section 1.2 of the Warrant.

3. Please issue a stock certificate or certificates representing the appropriate number of shares of Common Stock in the name of the undersigned or in such other name as is specified below:

Name:

-----

Address:

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4. The undersigned Holder confirms with respect to such Holder and the shares of Common Stock issuable pursuant to this exercise the representations set forth in Section 18 of the Warrant.

Dated: \_\_\_\_\_, \_\_\_\_\_

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(Signature must conform to name of Holder as specified on the face of the Warrant)

(Address)

These securities have not been registered under the Securities Act of 1933 or any state securities laws. These securities have been acquired for investment and not with a view to distribution or resale, and may not be sold, mortgaged, pledged, hypothecated or otherwise transferred without registration under the Securities Act of 1933 and qualification under state securities laws, or an opinion of counsel acceptable to the corporation that registration and qualification is not required.

TITAN MOTORCYCLE CO. OF AMERICA

Common Stock Purchase Warrant

To Subscribe for and Purchase  
25,000 Shares of Common Stock of  
TITAN MOTORCYCLE CO. OF AMERICA

September 17, 1999

THIS CERTIFIES that, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Reedland Capital Partners or its registered assigns (the "Holder") is entitled to subscribe for and purchase from TITAN MOTORCYCLE CO. OF AMERICA, a Nevada corporation (hereinafter called the "Company"), up to 25,000 shares (subject to adjustment as hereinafter provided) of fully paid and non-assessable Common Stock of the Company (the "Common Stock"), subject to the provisions and upon the terms and conditions hereinafter set forth at the price of \$3.21744 per share (such price as may from time to time be adjusted as provided herein is called the "Warrant Price"), at or prior to 5:00 p.m. Pacific time on September 17, 2004 (the "Exercise Period").

This Warrant and any Warrant subsequently issued upon exchange or transfer hereof are hereinafter collectively called the "Warrant."

Section 1. EXERCISE OF WARRANT. The rights represented by this Warrant may be exercised by the Holder, in whole or in part (but not as to fractional shares) at any time or from time to time during the Exercise Period by the completion of the purchase form attached hereto and by the surrender of this Warrant (properly endorsed) at the office of the Company as it may designate by notice in writing to the Holder hereof at the address of the Holder appearing on the books of the Company, and by payment to the Company of the Warrant Price in cash or by certified or official bank check, for each share being purchased. In the event of any exercise of the rights represented by this Warrant, a certificate or certificates for the shares of Common Stock so purchased, registered in the name of the Holder or its nominee or other party designated in the purchase form by the Holder hereof, shall be delivered to the Holder within fifteen (15) business days after the date on which the rights represented by this Warrant shall have been so exercised; and, unless this Warrant has expired or has been exercised in full, a new Warrant representing the number of shares (except a remaining fractional share), if any, with respect to which this Warrant shall not then have been exercised shall also be issued to the Holder within such time. The person in whose name any certificate for shares of Common Stock is issued upon exercise of this Warrant shall for all purposes be deemed

to have become the holder of record of such shares on the date on which this Warrant was surrendered and payment of the Warrant is made, except that, if the date of such surrender and payment is a date on which the stock transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares at the close of business on the next succeeding date on which the stock transfer books are open. No fractional shares shall be issued upon exercise of this Warrant and no payment or adjustment shall be made upon any exercise on account of any cash dividends on the Common Stock issued upon such exercise. If any fractional interest in a share of Common Stock would, except for the provision of this Section 1, be delivered upon such exercise, the Company, in lieu of delivery of a fractional share thereof, shall pay to the Holder an amount in cash equal to the current market price of such fractional share as determined in good faith by the Board of Directors of the Company. Current market price means the closing price of the Common Stock on the relevant date as reported on the Nasdaq SmallCap Market (or any national securities exchange, national market including the Nasdaq National Market, or other quotation system on which the Common Stock is then listed) or, if no prices are reported for that date, such prices on the next preceding date for which closing prices were reported, or if the Common Stock is not publicly traded, by such methods or procedures as may be established from time to time by the Board of Directors of the Company in good faith.

Section 2. STOCK SPLITS, CONSOLIDATION, MERGER, AND SALE. In the event that before the issuance of the shares of Common Stock into which this Warrant may be exercised the outstanding shares of Common Stock shall be split, combined, or consolidated, by dividend, reclassification or otherwise, into a greater or lesser number of shares of Common Stock or any other class or classes of stock, as appropriate, the Warrant Price in effect immediately prior to such combination or consolidation and the number of shares purchasable under this

Warrant shall, concurrently with the effectiveness of such combination or consolidation, be proportionately adjusted. If there shall be effected any consolidation or merger of the Company with another corporation, or a sale of all or substantially all of the Company's assets to another corporation, and if the holders of Common Stock shall be entitled pursuant to the terms of any such transaction to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such consolidation, merger or sale, lawful and adequate provisions shall be made whereby the Holder of this Warrant shall thereafter have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the exercise of such Warrant, such shares of stock, securities or assets as may be issuable or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore so receivable had such consolidation, merger or sale not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of the Holder to the end that the provisions hereof shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of this Warrant.

(a) STOCK TO BE RESERVED. The Company will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issue upon the exercise of this Warrant as herein provided, such number of shares of Common Stock as shall then be issuable upon the exercise of this Warrant.

(b) ISSUE TAX. The issuance of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holders of this Warrant for any issuance tax in respect thereof provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the Holder of this Warrant, which shall be borne by the Holder.

(c) CLOSING OF BOOKS. The Company will not close its transfer books to impair any issuance of the shares of Common Stock upon the exercise of this Warrant.

Section 3. NOTICES OF RECORD DATES. In the event of:

(a) any taking by the Company 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 or other distribution (other than cash dividends out of earned surplus), or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, or

(b) any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any transfer of all or substantially all the assets of the Company to or consolidation or merger of the Company with or into any other corporation, or

(c) any voluntary or involuntary dissolution, liquidation or winding-up of the Company, then and in each such event the Company will give notice to the Holder of this Warrant specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and stating the amount and character of such dividend, distribution or right, and (ii) the date on which any such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock will be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding-up. Such notice shall be given at least ten (10) days and not more than ninety (90) days prior to the date therein specified, and such notice shall state that the action in question or the record date is subject to the effectiveness of a registration statement under the Securities Act of 1933, as amended (the "Securities Act") or to a favorable vote of shareholders, if either is required. Any failure to provide a notice hereunder shall not affect the corporate action taken.

Section 4. NO SHAREHOLDER RIGHTS OR LIABILITIES. This Warrant shall not entitle the Holder hereof to any voting rights or other rights as a shareholder of the Company. No provision hereof, in the absence of affirmative action by the Holder hereof to purchase shares of Common Stock, and no mere enumeration hereon of the rights or privileges of the Holder hereof, shall give rise to any

liability of such Holder for the Warrant Price or as a shareholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

Section 5. REPRESENTATIONS OF HOLDER. The Holder hereby represents and acknowledges to the Company as of the date hereof and as of each exercise of this Warrant that:

(a) this Warrant, the Common Stock issuable upon exercise of this Warrant and any securities issued with respect to any of them by way of a stock dividend or stock split or in connection with a recapitalization, merger, consolidation or other reorganization will be "restricted securities" as such term is used in the rules and regulations under the Securities Act; such securities have not been and may not be registered under the Securities Act or any state securities law; and such securities must be held indefinitely unless registration is effected or transfer can be made pursuant to appropriate exemptions;

(b) the Holder has read, and fully understands, the terms of this Warrant set forth on its face and the attachments hereto, including the restrictions on transfer contained herein;

(c) the Holder is purchasing for investment for its own account and not with a view to or for sale in connection with any distribution of this Warrant or the Common Stock of the Company issuable upon exercise of this Warrant and it has no intention of selling such securities in a public distribution in violation of the federal securities laws or any applicable state securities laws;

(d) the Holder is an "accredited investor" within the meaning of paragraph (a) of Rule 501 of Regulation D promulgated by the Securities and Exchange Commission and an "excluded purchaser" within the meaning of Section 25102(f) of the California Corporate Securities Law of 1968; and

(e) the Company may affix the following legend (in addition to any other legend(s), if any, required by applicable state corporate and/or securities laws) to certificates for shares of Common Stock (or other securities) issued upon exercise of this Warrant:

These securities have not been registered under the Securities Act of 1933 or any state securities laws. These securities have been acquired for investment and not with a view to distribution or resale, and may not be sold, mortgaged, pledged, hypothecated or otherwise transferred without registration under the Securities Act of 1933 and qualification under state securities laws, or an opinion of counsel acceptable to the corporation that registration and qualification is not required.

Section 6. RESTRICTIONS ON TRANSFER; REGISTRATION RIGHTS.

(a) The Holder may not transfer this Warrant without the written consent of the Company and an opinion of counsel acceptable to the Company that the transfer may be effected in compliance with exemptions under the Securities Act and applicable state securities laws. The Holder may not transfer the Common



Stock underlying the Warrant unless there is an effective registration statement in effect under the Securities Act and the transfer is qualified under applicable state securities laws, or the Holder has delivered to the Company an opinion of counsel acceptable to the Company that registration and qualification is not required.

(b) The Company is obligated to cause a registration statement to be filed under the Securities Act on or before October 15, 1999 pursuant to a Registration Rights Agreement between the Company and Advantage Fund II Ltd. and a Registration Rights Agreement between the Company and Koch Investment Group Limited (the "Registration Statement"). The Company shall include in such Registration Statement all of the Common Stock issuable upon conversion of the Warrant.

(c) All fees, disbursements, and out-of-pocket expenses incurred in connection with the filing of the Registration Statement under Paragraph (a) of Section 6 and in complying with applicable securities and Blue Sky laws shall be borne by the Company, provided, however, that any expenses of the individual Holder or holders of the underlying securities, including but not limited to the Holder or holders' attorneys' fees and discounts and commissions, shall be borne by the Holder and holders of the Common Stock. The Company at its expense will supply the Holder and any holder of Common Stock with copies of the Registration Statement and the prospectus or offering circular included therein and other related documents in such quantities as may be reasonably requested by the Holder or holder of Common Stock.

(d) The Company shall have no obligation to register the Warrant but shall be obligated to register the Common Stock issuable upon exercise of the Warrant in accordance with Paragraph (b) of Section 6.

(e) The Company agrees that it will use its best efforts to keep such Registration Statement effective until September 17, 2004 or such earlier date as all Common Stock covered by such Registration Statement have been disposed of pursuant thereto.

(f) The Holder agrees to cooperate with the Company and to provide the Company on its request with all information concerning the Holder, the Warrant issued hereunder, any Common Stock acquired upon exercise of the Warrant and the means or methods of intended disposition of the Common Stock pursuant to the Registration Statement that may reasonably be requested by the Company in order for the Company to perform its obligation under this Section 6.

Section 7. LOST, STOLEN, MUTILATED, OR DESTROYED WARRANT. If this Warrant is lost, stolen, mutilated, or destroyed, the Company may, on such terms as to indemnity or otherwise as it may in its discretion reasonably impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as the Warrant so lost, stolen, mutilated, or destroyed.

Section 8. PRESENTMENT. Prior to due presentment of this Warrant, together with a completed assignment form attached hereto for registration of transfer, the Company may deem and treat the Holder as the absolute owner of the Warrant, notwithstanding any notation of ownership or other writing thereon, for the purpose of any exercise thereof and for all other purposes, and the Company shall not be affected by any notice to the contrary.

Section 9. NOTICE. Notice or demand pursuant to this Warrant shall be sufficiently given or made, if sent by first-class mail, postage prepaid, addressed, if to the Holder of this Warrant, to the Holder at its last known address as it shall appear in the records of the Company, and if to the Company, at 2222 West Peoria Avenue, Phoenix, Arizona 85029, Attention: Chief Financial Officer. The Company may alter the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section 9 for the giving of notice.

Section 10. GOVERNING LAW. The validity, interpretation, and performance of this Warrant shall be governed by the laws of the State of Arizona without regard to principles of conflicts of laws.

Section 11. SUCCESSORS, ASSIGNS. Subject to the restrictions on transfer by Holder set forth in Section 6 hereof, all the terms and provisions of the Warrant shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

Section 12. AMENDMENT. This Warrant may be modified, amended, or terminated by a writing signed by the Company and the Holder.

Section 13. SEVERABILITY. Should any part but not the whole of this Warrant for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Warrant had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties hereto that they would have executed the remaining portion of this Warrant without including therein any such part which may, for any reason, be hereafter declared invalid.

Section 14. NO IMPAIRMENT. The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder of this Warrant against impairment.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed and delivered on and as of the day and year first above written by one of its officers thereunto duly authorized.

TITAN MOTORCYCLE CO. OF AMERICA,  
a Nevada corporation

Dated: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

The undersigned Holder agrees and accepts this Warrant and acknowledges that it has read and confirms each of the representations contained in Section 5.

REEDLAND CAPITAL PARTNERS

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

PURCHASE FORM

(To be executed by the Warrant Holder if he desires to exercise the Warrant in whole or in part)

To: TITAN MOTORCYCLE CO. OF AMERICA

The undersigned, whose Social Security or other identifying number is \_\_\_\_\_, hereby irrevocably exercises the attached Warrant, agrees to purchase \_\_\_\_\_ shares of Common Stock, and tenders payment herewith to the order of TITAN MOTORCYCLE CO. OF AMERICA in the amount of \$\_\_\_\_\_.

The undersigned requests that certificates for such shares be issued as follows:

Name: \_\_\_\_\_

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

Deliver to: \_\_\_\_\_

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

and, if the number of shares shall not be all the shares purchasable under the Warrant, that a new Warrant for the balance remaining of the shares purchasable under the attached Warrant be registered in the name of, and delivered to, the undersigned at the address stated below:

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

By this exercise,

The undersigned hereby reaffirms its representations and warrants set forth forth in Section 5 of the Warrant as of the date hereof.

Dated: \_\_\_\_\_, \_\_\_\_\_

Signature: \_\_\_\_\_

(Signature must conform in all respects to the name of the Warrant Holder as specified on the face of the Warrant, without alteration, enlargement or any change whatsoever)

ASSIGNMENT

(To be executed by the Warrant Holder if he desires to effect a transfer of the Warrant)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_, whose Social Security or other identification number is \_\_\_\_\_ [residing/located] at \_\_\_\_\_ the attached Warrant, and appoints \_\_\_\_\_ residing at \_\_\_\_\_ the undersigned's attorney-in-fact to transfer said Warrant on the books of the Company, with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_

In the presence of:

\_\_\_\_\_

\_\_\_\_\_

(Signature must conform in all respects to the name of the Warrant Holder as specified on the face of the Warrant, without alteration, enlargement or any change whatsoever)

THIS REGISTRATION RIGHTS AGREEMENT, dated as of September 15, 1999 (this "Agreement"), is made by and between TITAN MOTORCYCLE CO. OF AMERICA, a Nevada corporation (the "Company"), and the person named on the signature page hereto (the "Initial Investor").

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

WHEREAS, in connection with the Subscription Agreement, dated as of September 15, 1999, between the Initial Investor and the Company (the "Subscription Agreement"), the Company has agreed, upon the terms and subject to the conditions of the Subscription Agreement, to issue and sell to the Initial Investor shares (the "Preferred Shares") of Series A Convertible Preferred Stock, \$.001 par value (the "Series A Preferred Stock"), of the Company as provided in the Subscription Agreement, which Preferred Shares are convertible into shares (the "Conversion Shares") of Common Stock, \$.001 par value (the "Common Stock"), of the Company, and to issue common stock purchase warrants (the "Warrants") to purchase shares (the "Warrant Shares") of Common Stock; and

WHEREAS, to induce the Initial Investor to execute and deliver the Subscription Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "1933 Act"), and applicable state securities laws with respect to the Conversion Shares and the Warrant Shares;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Initial Investor hereby agree as follows:

## 1. DEFINITIONS.

(a) As used in this Agreement, the following terms shall have the following meanings:

"Blackout Period" means the period of up to 30 consecutive days commencing on the day immediately after the date the Company notifies the Investors that they are required, pursuant to Section 4(d), to suspend offers and sales of Registrable Securities as a result of an event or circumstance described in Section 3(f)(1) during which period, by reason of Section 3(f)(2), the Company is not required to amend the Registration Statement or to supplement the prospectus contained therein; PROVIDED, HOWEVER, that in each case the Company shall have determined, in its reasonable judgment, that public disclosure of such event or circumstance at such time would be detrimental to the Company.

"Certificate of Designations" means the Certificate of Designations of the Series A Convertible Preferred Stock establishing and designating the Series A Preferred Stock and fixing the rights and preferences of such series as filed by the Company with the Secretary of State of the State of Nevada.

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"Computation Date" means, if a Registration Event occurs, any of (1) the date which is 30 days after such Registration Event occurs, if any Registration Event is continuing on such date, (2) each date which is 30 days after a Computation Date, if any Registration Event is continuing on such date, and (3) the date on which all Registration Events cease to continue.

"Investor" or "Investors" means the Initial Investor and any transferee or assignee who agrees to become bound by the provisions of this Agreement in accordance with Section 9 hereof.

"Majority Holders" means those persons who hold a majority of the shares of Series A Preferred Stock which are then outstanding, including such shares originally issued pursuant to the Subscription Agreement and the Other Subscription Agreement.

"Nasdaq" means the Nasdaq SmallCap Market.

"1934 Act" means the Securities Exchange Act of 1934, as amended.

"register," "registered," and "registration" refer to a registration effected by preparing and filing a Registration Statement or Statements in compliance with the 1933 Act and pursuant to Rule 415 under the 1933 Act or any successor rule providing for offering securities on a continuous basis ("Rule 415"), and the declaration or ordering of effectiveness of such Registration Statement by the SEC.

"Registrable Securities" means the Conversion Shares and the Warrant Shares.

"Registration Event" shall mean (1) the Company fails to file the Registration Statement which is required to be filed by the Company pursuant to Section 2(a) with the SEC within 30 days after the Closing Date, (2) the Registration Statement covering the Registrable Securities which is required to be filed by the Company pursuant to the first sentence of Section 2(a) hereof is not effective within 120 days after the Closing Date, (3) the Company fails to submit a request for acceleration of the effective date of the Registration Statement in accordance with Section 3(a), (4) the Registration Statement required to be filed by the Company pursuant to Section 2(a) shall cease to be available for use by any Investor who is named therein as a selling stockholder for any reason (including, without limitation, by reason of an SEC stop order, a material misstatement or omission in such Registration Statement or the information contained in such Registration Statement having become outdated)

other than a Blackout Period, (5) the Common Stock ceases to be listed for trading on any of the New York Stock Exchange, the American Stock Exchange, Inc., the Nasdaq National Market or the Nasdaq, or (6) a holder of shares of Series A Preferred Stock having become unable to convert any shares of Series A Preferred Stock in accordance with Section 10(a) of the Certificate of Designations (other than by reason of the 4.9% limitation on beneficial ownership set forth therein or a redemption or repurchase thereof).

"Registration Period" means the period from the Closing Date to the earliest of (i) the date which is five years after the SEC Effective Date, (ii) the date on which each Investor may sell all Registrable Securities owned by such Investor or which such Investor has any right to acquire without registration under the 1933 Act pursuant to subsection (k) of Rule 144, without restriction on the manner of sale or the volume of securities which may be sold in any period and without the requirement for the giving of any notice to, or the making of any filing with, the SEC and (iii) the date on which the Investors no longer beneficially own or have any right to acquire any Registrable Securities.

"Registration Statement" means a registration statement of the Company under the 1933 Act, including any amendment thereto.

"Rule 144" means Rule 144 promulgated under the 1933 Act or any other similar rule or regulation of the SEC that may at any time permit a holder of any securities to sell securities of the Company to the public without registration under the 1933 Act.

"SEC" means the Securities and Exchange Commission.

"SEC Effective Date" means the date the Registration Statement is declared effective by the SEC.

"SEC Filing Date" means the date the Registration Statement is first filed with the SEC pursuant to Section 2(a).

(b) Capitalized terms defined in the introductory paragraph or the recitals to this Agreement shall have the respective meanings therein provided. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Subscription Agreement.



## 2. REGISTRATION.

(a) MANDATORY REGISTRATION. (1) The Company shall prepare, and on or prior to the date which is 30 days after the Closing Date, file with the SEC a Registration Statement on Form S-3 which, on the date of filing with the SEC, covers the resale by the Initial Investor of a number of shares of Common Stock at least equal to the sum of (x) a number of shares of Common Stock equal to 175% of the number of shares of Common Stock issuable upon conversion of the Preferred Shares, determined as if the Preferred Shares, together with 24 months of accrued and unpaid dividends thereon, were converted in full at the Fixed Conversion Price (as defined in the Certificate of Designations) on the SEC Filing Date PLUS (y) the number of Warrant Shares (in each case determined without regard to the limitations on beneficial ownership contained in the proviso to the second sentence of Section 10(a) of the Certificate of Designations and Section 1.1(b) of the Warrants). If at any time the number of shares of Common Stock included in the Registration Statement required to be filed as provided in the first sentence of this Section 2(a) shall be insufficient to cover 125% of the number of shares of Common Stock issuable on conversion in full of the unconverted Preferred Shares plus the number of Warrant Shares issuable upon exercise of the unexercised portion of the Warrants, then promptly, but in no event later than 20 days after such insufficiency shall occur, the Company shall file with the SEC an additional Registration Statement on Form S-3 (which shall not constitute a post-effective amendment to the Registration Statement filed pursuant to the first sentence of this Section 2(a)), covering such number of shares of Common Stock as shall be sufficient to permit such conversion and exercise. For all purposes of this Agreement such additional Registration Statement shall be deemed to be the Registration Statement required to be filed by the Company pursuant to Section 2(a) of this Agreement, and the Company and the Investors shall have the same rights and obligations with respect to such additional Registration Statement as they shall have with respect to the initial Registration Statement required to be filed by the Company pursuant to this Section 2(a). The Registration Statement shall not include securities to be sold for the account of any selling securityholder other than the Investors and the investors contemplated by the registration rights agreement entered into by the Company in connection with the Other Subscription Agreement.

(2) Prior to the SEC Effective Date or during any time subsequent to the SEC Effective Date when the Registration Statement for any reason is not available for use by any Investor for the resale of any of Registrable Securities, the Company shall not file any other registration statement or any amendment thereto with the SEC under the 1933 Act or request the acceleration of the effectiveness of any other registration statement previously filed with the SEC, other than any registration statement on Form S-4 or Form S-8.

(b) CERTAIN OFFERINGS. If any offering pursuant to a Registration Statement pursuant to Section 2(a) hereof involves an underwritten offering, Investors who hold a majority in interest of the Registrable Securities subject to such underwritten offering shall have the right to select one legal counsel for the Investors and an investment banker or bankers and manager or managers to administer the offering, which investment banker or bankers or manager or managers shall be reasonably satisfactory to the Company. The Investors who hold the Registrable Securities to be included in such underwriting shall pay all underwriting discounts and commissions and other fees and expenses of such investment banker or bankers and manager or managers so selected in accordance with this Section 2(b) (other than fees and expenses relating to registration of Registrable Securities under federal or state securities laws, which are payable by the Company pursuant to Section 5 hereof) with respect to their Registrable Securities and the fees and expenses of such legal counsel so selected by the Investors.

(c) PAYMENTS BY THE COMPANY. If a Registration Event occurs, on each Computation Date the Company shall pay each Investor an amount in cash equal to 1.5% of the aggregate subscription price paid by such Investor for the Preferred Shares pursuant to the Subscription Agreement (pro rated for any period of less than 30 days). Each such payment shall be made by wire transfer in immediately available funds on each Computation Date to such account as shall be specified for such purpose by each Investor. Any such amount which is not paid when due shall bear interest at the rate of 14% per annum (or such other rate as shall be the maximum rate allowable by applicable law) until paid in full.

(d) PIGGY-BACK REGISTRATIONS. If at any time the Company shall determine to prepare and file with the SEC a Registration Statement relating to an offering for its own account or the account of others under the 1933 Act of any of its equity securities, other than on Form S-4 or Form S-8 or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans, the Company shall send to each Investor who is entitled to registration rights under this Section 2(d) written notice of such determination and, if within ten (10) days after receipt of such notice, such Investor shall so request in writing, the Company shall include in such Registration Statement all or any part of the Registrable Securities such Investor requests to be registered, except that if, in connection with any underwritten public offering for the account of the Company, the managing underwriter(s) thereof shall impose a limitation on the number of shares of Common Stock which may be included in the Registration Statement because, in such underwriter(s)' judgment, such limitation is necessary to effect an orderly public distribution of the securities to be sold by the Company, then the Company shall be obligated to include in such Registration Statement only such limited portion of the Registrable Securities with respect to which such Investor has requested inclusion hereunder. Any exclusion of Registrable Securities shall be made pro rata among the Investors seeking to include Registrable Securities, in proportion to the number of Registrable Securities sought to be included by such Investors; PROVIDED, HOWEVER, that the Company shall not exclude any Registrable Securities unless the Company has first excluded all outstanding securities the holders of which are not entitled by right to inclusion of securities in such Registration Statement; and PROVIDED FURTHER, HOWEVER, that, after giving effect to the immediately preceding proviso, any exclusion of Registrable Securities shall be made pro rata with holders of other securities having the right to include such securities in the Registration Statement, based on the number of securities for which registration is requested except to the extent such pro rata exclusion of such other securities is prohibited under any written agreement entered into by the Company

with the holder of such other securities prior to the date of this Agreement, in which case such other securities shall be excluded, if at all, in accordance with the terms of such agreement. No right to registration of Registrable Securities under this Section 2(d) shall be construed to limit any registration required under Section 2(a) hereof. The obligations of the Company under this Section 2(d) may be waived by Investors holding a majority in interest of the Registrable Securities and shall expire after the Company has afforded the opportunity for the Investors to exercise registration rights under this Section 2(d) for two registrations; PROVIDED, HOWEVER, that any Investor who shall have had any Registrable Securities excluded from any Registration Statement in accordance with this Section 2(d) shall be entitled to include in an additional Registration Statement filed by the Company the Registrable Securities so excluded. Notwithstanding any other provision of this Agreement, if the Registration Statement required to be filed pursuant to Section 2(a) of this Agreement shall have been ordered effective by the SEC and the Company shall have maintained the effectiveness of such Registration Statement as required by this Agreement and if the Company shall otherwise have complied in all material respects with its obligations under this Agreement, then the Company shall not be obligated to register any Registrable Securities on such Registration Statement referred to in this Section 2(d).

(e) ELIGIBILITY FOR FORM S-3. As of October 1, 1999, the Company will meet the requirements for the use of Form S-3 for registration of the Registrable Securities for resale by the Investors. The Company shall file all reports required to be filed by the Company with the SEC in a timely manner so as to maintain such eligibility for the use of Form S-3.

3. OBLIGATIONS OF THE COMPANY. In connection with the registration of the Registrable Securities, the Company shall:

(a) prepare promptly, and file with the SEC not later than 30 days after the Closing Date, a Registration Statement with respect to the number of Registrable Securities provided in Section 2(a), and thereafter to use its best efforts to cause each Registration Statement relating to Registrable Securities to become effective as soon as possible after such filing, and keep the Registration Statement effective pursuant to Rule 415 at all times during the Registration Period; submit to the SEC, within three Business Days after the Company learns that no review of the Registration Statement will be made by the staff of the SEC or that the staff of the SEC has no further comments on the Registration Statement, as the case may be, a request for acceleration of effectiveness of the Registration Statement to a time and date not later than 48 hours after the submission of such request; notify the Investors of the effectiveness of the Registration Statement on the date the Registration Statement is declared effective; and the Company represents and warrants to, and covenants and agrees with, the Investors that the Registration Statement (including any amendments or supplements thereto and prospectuses contained therein), at the time it is first filed with the SEC, at the time it is ordered effective by the SEC and at all times during which it is required to be effective hereunder (and each such amendment and supplement at the time it is filed with the SEC and at all times during which it is available for use in connection with the offer and sale of the Registrable Securities) shall not contain any untrue statement of a material fact or omit to state a material fact

required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading;

(b) prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statement and the prospectus used in connection with the Registration Statement as may be necessary to keep the Registration Statement effective at all times during the Registration Period, and, during the Registration Period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by the Registration Statement until such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in the Registration Statement;

(c) furnish to each Investor whose Registrable Securities are included in the Registration Statement and its legal counsel, (1) promptly after the same is prepared and publicly distributed, filed with the SEC or received by the Company, one copy of the Registration Statement and any amendment thereto, each preliminary prospectus and prospectus and each amendment or supplement thereto, each letter written by or on behalf of the Company to the SEC or the staff of the SEC and each item of correspondence from the SEC or the staff of the SEC relating to such Registration Statement (other than any portion of any thereof which contains information for which the Company has sought confidential treatment) and (2) such number of copies of a prospectus, including a preliminary prospectus, and all amendments and supplements thereto and such other documents, as such Investor may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Investor;

(d) use reasonable efforts to (i) register and qualify the Registrable Securities covered by the Registration Statement under such securities or blue sky laws of such jurisdictions as the Investors who hold a majority in interest of the Registrable Securities being offered reasonably request, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof at all times until the end of the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; PROVIDED, HOWEVER, that the Company shall not be required in connection therewith or as a condition thereto (I) to qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (II) to subject itself to general taxation in any such jurisdiction, (III) to file a general consent to service of process in any such jurisdiction, (IV) to provide any undertakings that cause more than nominal expense or burden to the Company or (V) to make any change in its Certificate of Incorporation or by-laws, which in each case the Board of Directors of the Company determines to be contrary to the best interests of the Company and its stockholders;

(e) in the event that the Registrable Securities are being offered in an underwritten offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the underwriters of such offering;

(f) (1) as promptly as practicable after becoming aware of such event or circumstance, notify each Investor of any event or circumstance of which the Company has knowledge (or in the case of an event giving rise to a Blackout Period, notify each Investor of the existence of such an event or circumstance without disclosing the substance thereof), as a result of which the prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and use its best efforts promptly to prepare a supplement or amendment to the Registration Statement to correct such untrue statement or omission, file such supplement or amendment with the SEC at such time as shall permit the Investors to sell Registrable Securities pursuant to the Registration Statement as promptly as practicable, and deliver a number of copies of such supplement or amendment to each Investor as such Investor may reasonably request;

(2) notwithstanding Section 3(f)(1) above, if at any time the Company notifies the Investors as contemplated by Section 3(f)(1) that the event giving rise to such notice relates to a development involving the Company which occurred subsequent to the later of (x) the SEC Effective Date and (y) the latest date prior to such notice on which the Company has amended or supplemented the Registration Statement, then the Company shall not be required to use best efforts to make such amendment during a Blackout Period; PROVIDED, HOWEVER, that (i) the aggregate number of days on which any Blackout Period is in effect may not exceed 30 days (whether or not consecutive) in any period of 12 consecutive months; (ii) no more than two Blackout Periods may commence in any period of 12 consecutive months; (iii) no Blackout Period may commence within 60 days after the end of an earlier Blackout Period; and (iv) if a Blackout Period continues for five or more days, on or before the fifth day thereof the Company shall deliver to each Investor a certified copy of a resolution of the Company's Board of Directors confirming that such Blackout Period complies with the definition thereof in Section 1(a);

(g) as promptly as practicable after becoming aware of such event, notify each Investor who holds Registrable Securities being sold (or, in the event of an underwritten offering, the managing underwriters) of the issuance by the SEC of any stop order or other suspension of effectiveness of the Registration Statement at the earliest possible time;

(h) permit a single firm of counsel designated as selling stockholders' counsel by the Investors who hold a majority in interest of the Registrable Securities being sold to review and comment on the Registration Statement and all amendments and supplements thereto a reasonable period of time prior to their filing with the SEC;

(i) make generally available to its security holders as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Rule 158 under the 1933 Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the effective date of the Registration Statement;

(j) in connection with any underwritten offering, at the request of the Investors who hold a majority in interest of the Registrable Securities being sold, furnish on the date that Registrable Securities are delivered to an underwriter, if any, for sale in connection with the Registration Statement (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters; and (ii) an opinion, dated such date, from counsel representing the Company for purposes of such Registration Statement, in form and substance as is customarily given in an underwritten public offering, addressed to the underwriters and the Investors; PROVIDED, in each case, that the Investors make any confirmations or agreements to or with the Company, its accountants or its counsel as are necessary or required by applicable professional requirements;

(k) make available for inspection by any Investor, any underwriter participating in any disposition pursuant to the Registration Statement, and any attorney, accountant or other agent retained by any such Investor or underwriter (collectively, the "Inspectors"), all pertinent financial and other records, pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be reasonably necessary to enable each Investor to exercise its due diligence responsibility, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request for purposes of such due diligence; PROVIDED, HOWEVER, that each Inspector shall hold in confidence and shall not make any disclosure (except to an Investor) of any Record or other information which the Company determines in good faith to be confidential, and the Inspectors are so notified or aware of this status, unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement, (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court or government body of competent jurisdiction or (iii) the information in such Records has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company shall not be required to disclose any confidential information in such Records to any Inspector until and unless such Inspector shall have entered into confidentiality agreements (in form and substance satisfactory to the Company) with the Company with respect thereto, substantially in the form of this Section 3(k). Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at the Company's own expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. The Company shall hold in confidence and shall not make any disclosure of information concerning an Investor provided to the Company pursuant to Section 4(e) hereof unless (i) disclosure of such information is

necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or governmental body of competent jurisdiction or (iv) such information has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to such Investor and allow such Investor, at such Investor's own expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information;

(l) use its best efforts (i) to cause all the Registrable Securities covered by the Registration Statement to be listed on the Nasdaq or such other principal securities market on which securities of the same class or series issued by the Company are then listed or traded or (ii) if securities of the same class or series as the Registrable Securities are not then listed on Nasdaq or any such other securities market, to cause all of the Registrable Securities covered by the Registration Statement to be listed on the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market;

(m) provide a transfer agent and registrar, which may be a single entity, for the Registrable Securities not later than the effective date of the Registration Statement;

(n) cooperate with the Investors who hold Registrable Securities being offered and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing Registrable Securities to be offered pursuant to the Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the managing underwriter or underwriters, if any, or the Investors may reasonably request and registered in such names as the managing underwriter or underwriters, if any, or the Investors may request; and, within three Business Days after a Registration Statement which includes Registrable Securities is ordered effective by the SEC, the Company shall deliver to the transfer agent for the Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) an instruction substantially in the form attached hereto as EXHIBIT 1 and shall cause legal counsel selected by the Company to deliver to the Investors opinions of such counsel in the forms attached hereto as EXHIBIT 2-A and EXHIBIT 2-B (with copies to the Company's transfer agent);

(o) during the period the Company is required to maintain effectiveness of the Registration Statement pursuant to Section 3(a), the Company shall not bid for or purchase any Common Stock or any right to purchase Common Stock or attempt to induce any person to purchase any such security or right if such bid, purchase or attempt would in any way limit the right of the Investors to sell Registrable Securities by reason of the limitations set forth in Regulation M under the 1934 Act; and

(p) take all other reasonable actions necessary to expedite and facilitate disposition by the Investors of the Registrable Securities pursuant to the Registration Statement.

4. OBLIGATIONS OF THE INVESTORS. In connection with the registration of the Registrable Securities, the Investors shall have the following obligations:

(a) It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least five days prior to the first anticipated filing date of the Registration Statement, the Company shall notify each Investor of the information the Company requires from each such Investor (the "Requested Information") if any of such Investor's Registrable Securities are eligible for inclusion in the Registration Statement. If at least one Business Day prior to the filing date the Company has not received the Requested Information from an Investor (a "Non-Responsive Investor"), then the Company may file the Registration Statement without including Registrable Securities of such Non-Responsive Investor but, until the Registration Statement is declared effective, the Company shall not be relieved of its obligation to file a Registration Statement with the SEC relating to the Registrable Securities of such Non-Responsive Investor promptly after such Non-Responsive Investor provides the Requested Information;

(b) Each Investor by such Investor's acceptance of the Registrable Securities agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of the Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from the Registration Statement;

(c) In the event Investors holding a majority in interest of the Registrable Securities being registered determine to engage the services of an underwriter, each Investor agrees to enter into and perform such Investor's obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the managing underwriter of such offering and take such other actions as are reasonably required in order to expedite or facilitate the disposition of the Registrable Securities, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from the Registration Statement;



(d) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(f) or 3(g), such Investor will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(f) or 3(g) and, if so directed by the Company, such Investor shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in such Investor's possession of the prospectus covering such Registrable Securities current at the time of receipt of such notice;

(e) No Investor may participate in any underwritten registration hereunder unless such Investor (i) agrees to sell such Investor's Registrable Securities on the basis provided in any underwriting arrangements approved by the Investors entitled hereunder to approve such arrangements, (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements and (iii) agrees to pay its pro rata share of all underwriting discounts and commissions and other fees and expenses of investment bankers and any manager or managers of such underwriting and legal expenses of the underwriters applicable with respect to its Registrable Securities, in each case to the extent not payable by the Company pursuant to the terms of this Agreement; and

(f) Each Investor agrees to take all reasonable actions necessary to comply with the prospectus delivery requirements of the 1933 Act applicable to its sales of Registrable Securities.

5. EXPENSES OF REGISTRATION. All reasonable expenses, other than underwriting discounts and commissions and other fees and expenses of investment bankers and other than brokerage commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees and the fees and disbursements of counsel for the Company and the Investors (to the extent provided in the Subscription Agreement), shall be borne by the Company, PROVIDED, HOWEVER, that the Investors shall bear the fees and out-of-pocket expenses of the one legal counsel selected by the Investors pursuant to Section 2(b) hereof.

6. INDEMNIFICATION. In the event any Registrable Securities are included in a Registration Statement under this Agreement:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Investor who holds such Registrable Securities, the directors, if any, of such Investor, the officers, if any, of such Investor, each person, if any, who controls any Investor within the meaning of the 1933 Act or the 1934 Act, any underwriter (as defined in the 1933 Act) for the Investors, the directors, if any, of such underwriter and the officers, if any, of such underwriter, and each person, if any, who controls any such underwriter within the meaning of the 1933 Act or the 1934 Act (each, an "Indemnified Person"), against any losses, claims, damages, liabilities or expenses (joint or several) incurred (collectively, "Claims") to which any of them may become subject under the 1933 Act, the 1934 Act or otherwise, insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon any of the following: (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any post-effective amendment thereof or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading or (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any state securities law or any rule or regulation under the 1933 Act, the 1934 Act or any state securities law (the matters in the foregoing clauses (i) through (iii) being, collectively, "Violations"). Subject to the restrictions set forth in Section 6(d) with respect to the number of legal counsel, the Company shall reimburse the Investors and the other Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (I) shall not apply to a Claim arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by any Indemnified Person or underwriter for such Indemnified Person expressly for use in connection with the preparation of the Registration Statement, the prospectus or any such amendment thereof or supplement thereto, if such prospectus was timely made available by the Company pursuant to Section 3(c) hereof; (II) with respect to any preliminary prospectus shall not inure to the benefit of any such person from whom the person asserting any such Claim purchased the Registrable Securities that are the subject thereof (or to the benefit of any person controlling such person) if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected in the prospectus, as then amended or supplemented, if such prospectus was timely made available by the Company pursuant to Section 3(c) hereof; and (III) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

(b) In connection with any Registration Statement in which an Investor is participating, each such Investor agrees to indemnify and hold harmless, to the same extent and in the same manner set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement, each person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act, any underwriter and any other stockholder selling securities pursuant to the Registration Statement or any of its directors or officers or any person who controls such stockholder or underwriter within the meaning of

the 1933 Act or the 1934 Act (collectively and together with an Indemnified Person, an "Indemnified Party"), against any Claim to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim arises out of or is based upon (i) any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement or (ii) a failure to comply with the prospectus delivery requirements of the 1933 Act; and such Investor will reimburse any legal or other expenses reasonably incurred by any Indemnified Party in connection with investigating or defending any such Claim; PROVIDED, HOWEVER, that the indemnity agreement contained in this Section 6(b) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld; PROVIDED, FURTHER, HOWEVER, that the Investor shall be liable under this Section 6(b) for only that amount of a Claim as does not exceed the amount by which the net proceeds to such Investor from the sale of Registrable Securities pursuant to such Registration Statement exceeds the cost of such Registrable Securities to such Investor. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(b) with respect to any preliminary prospectus shall not inure to the benefit of any Indemnified Party if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected on a timely basis in the prospectus, as then amended or supplemented.

(c) The Company shall be entitled to receive indemnities from underwriters, selling brokers, dealer managers and similar securities industry professionals participating in any distribution, to the same extent as provided above, with respect to information so furnished in writing by such persons expressly for inclusion in the Registration Statement.

(d) Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action (including any governmental action), such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel selected by the indemnifying party but reasonably acceptable to the Indemnified Person or the Indemnified Party, as the case may be; PROVIDED, HOWEVER, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. In such event, the Company shall pay for only one separate legal counsel for the Investors; such legal counsel shall be selected by the Investors holding a majority in interest of the Registrable Securities included in the Registration Statement to which the Claim relates. The failure to deliver

written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is prejudiced in its ability to defend such action. The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

7. CONTRIBUTION. To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; PROVIDED, HOWEVER, that (a) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6, (b) no seller of Registrable Securities guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any seller of Registrable Securities who was not guilty of such fraudulent misrepresentation and (c) contribution by any seller of Registrable Securities shall be limited in amount to the amount by which the net amount of proceeds received by such seller from the sale of such Registrable Securities exceeds the purchase price paid by such seller for such Registrable Securities.

8. REPORTS UNDER 1934 ACT. With a view to making available to the Investors the benefits of Rule 144, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act; and

(c) furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144 and the 1934 Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration.

9. ASSIGNMENT OF THE REGISTRATION RIGHTS. The rights to have the Company register Registrable Securities pursuant to this Agreement shall be automatically assigned by the Investors to an Affiliate (as such term is defined

in the Certificate of Designations) thereof or to any transferee of all or any portion of such securities which portion is not less than 100,000 shares of Common Stock (or to any transferee of all or any portion of the Preferred Shares or the Warrants which transfer is permitted by Sections 4(a) and 4(h) of the Subscription Agreement) only if: (a) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (b) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (i) the name and address of such transferee or assignee and (ii) the securities with respect to which such registration rights are being transferred or assigned, (c) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the 1933 Act and applicable state securities laws, and (d) at or before the time the Company receives the written notice contemplated by clause (b) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein. In connection with any such transfer the Company shall, at its sole cost and expense, promptly after such assignment take such actions as shall be reasonably acceptable to the Initial Investor and such transferee to assure that the Registration Statement and related prospectus are available for use by such transferee for sales of the Registrable Securities in respect of which the rights to registration have been so assigned. In connection with any such assignment, each Investor shall have the right to assign to such transferee such Investor's rights under the Subscription Agreement by notice of such assignment to the Company. Following such notice of assignment of rights under the Subscription Agreement, the Company shall be obligated to such transferee, and such transferee shall be obligated to the Company, to perform all of its covenants under the Subscription Agreement as if such transferee were the Buyer under the Subscription Agreement.

10. AMENDMENT OF REGISTRATION RIGHTS. Any provision of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Majority Holders. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company.

11. MISCELLANEOUS.

(a) A person or entity is deemed to be a holder of Registrable Securities whenever such person or entity owns of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more persons or entities with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from the registered owner of such Registrable Securities.

(b) Notices required or permitted to be given hereunder shall be in writing and shall be deemed to be sufficiently given when personally delivered (by hand, by courier, by telephone line facsimile transmission (with answer back confirmation) or other means) (i) if to the Company, at 2222 West Peoria Avenue,

Phoenix, Arizona 85029, Attention: Chief Executive Officer, telephone line facsimile transmission number (602) 331-0941, (ii) if to the Initial Investor, c/o Genesee International, Inc., 10500 N.E. 8th Street, Suite 1920, Bellevue, Washington 98004-4332, telephone line facsimile transmission number (425) 462-4645 and (iii) if to any other Investor, at such address as such Investor shall have provided in writing to the Company, or at such other address as each such party furnishes by notice given in accordance with this Section 11(b), and shall be effective upon receipt.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

(d) This Agreement shall be enforced, governed by and construed in accordance with the laws of the State of Arizona applicable to agreements made and to be performed entirely within such State. In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

(e) This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to the subject matter hereof.

(f) Subject to the requirements of Section 9 hereof, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.

(g) All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require.

(h) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) The Company acknowledges that any failure by the Company to perform its obligations under this Agreement, including, without limitation, the Company's obligations under Section 3(n), or any delay in such performance could result in damages to the Investors and the Company agrees that, in addition to any other liability the Company may have by reason of any such failure or delay, the Company shall be liable for all direct and consequential damages caused by any such failure or delay.

(j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(l) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by telephone line facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of day and year first above written.

TITAN MOTORCYCLE CO. OF AMERICA

By: /s/ Francis S. Keery

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Name: Francis S. Keery  
Title: Chief Executive Officer

ADVANTAGE FUND II LTD.

By: /s/

-----  
Name: Inter Caribbean Services Ltd.  
Title: Director

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EXHIBIT 1  
TO  
REGISTRATION  
RIGHTS AGREEMENT

[Company Letterhead]

[Date]

Signature Stock Transfer, Inc.,  
as Conversion Agent, Warrant Agent and Registrar  
14675 Midway Road  
Suite 221  
Dallas, Texas 75244

Ladies and Gentlemen:

This letter shall serve as our irrevocable authorization and direction to you [(1) to transfer or re-register the certificates for the shares of Common Stock, \$.001 par value (the "Common Stock"), of Titan Motorcycle Co. of America, a Nevada corporation (the "Company"), represented by certificate numbers \_\_\_\_\_ and \_\_\_\_\_ for an aggregate of \_\_\_\_\_ shares (the "Outstanding Shares") of Common Stock presently registered in the name of [Name of Investors] upon surrender of such certificate(s) to you, notwithstanding the legend appearing on such certificates, and (2)](1) to issue (a) shares (the "Conversion Shares") of

- -----  
(1) Omit if no conversions of Preferred Stock or exercises of Warrants have occurred before SEC registration is declared effective.

Common Stock to or upon the order of the holder from time to time on conversion of the shares (the "Preferred Shares") of Series A Convertible Preferred Stock, \$.001 par value, of the Company upon receipt by you of a Notice of Conversion of Series A Convertible Preferred Stock in the form enclosed herewith, and (b) shares (the "Warrant Shares") of Common Stock to or upon the order of the holder from time to time on exercise of the Common Stock Purchase Warrants (the "Warrants") exercisable for Common Stock issued by the Company upon receipt by you of a Subscription Form from such holder in the form enclosed herewith. [The transfer or re-registration of the certificates for the Outstanding Shares by you should be made at such time as you are requested to do so by the record holder of the Outstanding Shares. The certificate issued upon such transfer or re-registration should be registered in such name as requested by the holder of record of the certificate surrendered to you and should not bear any legend which would restrict the transfer of the shares represented thereby. In addition, you are hereby directed to remove any stop-transfer instruction relating to the Outstanding Shares.] Certificates for the Conversion Shares and Warrant Shares should not bear any restrictive legend and should not be subject to any stop-transfer restriction.

Contemporaneously with the delivery of this letter, the Company is delivering to you an opinion of Snell & Wilmer LLP as to registration of the resale of [the Outstanding Shares and]\* the Conversion Shares and Warrant Shares under the Securities Act of 1933, as amended.

Should you have any questions concerning this matter, please contact me.

Very truly yours,

TITAN MOTORCYCLE CO. OF AMERICA

By: \_\_\_\_\_

Name:

Title:

Enclosures

cc: [Names of Investors]

EXHIBIT 2-A  
TO  
REGISTRATION  
RIGHTS AGREEMENT

[Doc 2: S&W Opinion]

\_\_\_\_\_ -' \_\_\_\_\_

[Names and Addresses of Investors]

TITAN MOTORCYCLE CO. OF AMERICA  
SHARES OF COMMON STOCK

Ladies and Gentlemen:

We are special counsel to Titan Motorcycle Co. of America, a Nevada corporation (the "Company"), and we understand that the Company has sold to [Names of Investors] (the "Holders") an aggregate of 4,000 shares (the "Preferred Shares") of the Company's Series A Convertible Preferred Stock, \$.001 par value (the "Preferred Stock"), and issued to the Holders Common Stock Purchase Warrants (the "Warrants"). The Preferred Shares were sold, and the Warrants were issued, to the Holders pursuant to several Subscription Agreements, dated as of September \_\_, 1999, by and between the Holders and the Company (the "Subscription Agreements"). Pursuant to the several Registration Rights Agreements, dated as of September \_\_, 1999, by and between the Company and each Holder (the "Registration Rights Agreements") entered into in connection with the purchase by the Holders of the Preferred Shares, the Company agreed with each Holder, among other things, to register for resale (1) the shares (the "Conversion Shares") of Common Stock issuable upon conversion of the Preferred Shares and (2) the shares (the "Warrant Shares") of Common Stock issuable upon exercise of the Warrants under the Securities Act of 1933, as amended (the "1933 Act"), upon the terms provided in the Registration Rights Agreements. The Conversion Shares and the Warrant Shares are referred to herein collectively as the "Shares". Pursuant to the Registration Rights Agreements, on , 1999 the Company filed a Registration Statement on Form S-3 (File No. 333-\_\_\_\_\_) (the "Registration Statement") with the Securities and Exchange Commission (the "SEC") relating to the Shares, which names the Holders as selling stockholders thereunder.

[Other introductory and scope of examination language to be inserted]

Based on the foregoing, we are of the opinion that:

(1) The Registration Statement and the Prospectus contained therein (other than the financial statements and financial schedules and other financial and statistical information contained or incorporated by reference therein, as to which we have not been requested to and do not express any opinion) comply as to form in all material respects with the applicable requirements of the 1933 Act and the rules and regulations promulgated thereunder; and

(2) The Registration Statement has become effective under the 1933 Act and to our knowledge, no stop order proceedings with respect thereto have been instituted or threatened by the SEC. The Shares have been registered under the 1933 Act and may be resold by the respective Holders pursuant to the Registration Statement.

We have participated in the preparation of the Registration Statement and the Prospectus, including review and discussions with officers and other representatives of the Company, representatives of the independent public accountants for the Company, and your representatives at which the contents of the Registration Statement and the Prospectus contained therein and related matters were discussed, and, although we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement and the Prospectus contained therein, on the basis of the foregoing, nothing has come to our attention that leads us to believe either that the Registration Statement at the time the Registration Statement became effective contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus contained in the Registration Statement, as of its date, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (it being understood that we have not been requested to and do not express any view with respect to the financial statements and schedules and other financial and statistical data included or incorporated by reference in the Registration Statement or the Prospectus contained therein).

We express no opinion, and our comment in the foregoing paragraph does not apply to, any reports or filings made by the Company under the Securities Exchange Act of 1934 that are incorporated into the Registration Statement or Prospectus.

Paragraph (2) of this opinion may be relied upon by Signature Stock Transfer [INC.], as Transfer Agent, Warrant Agent and Registrar (the "Transfer Agent"), as if addressed to the Transfer Agent.

Very truly yours,

cc: Signature Stock Transfer [INC.],  
as Transfer Agent, Warrant Agent and Registrar

EXHIBIT 2-B  
TO  
REGISTRATION  
RIGHTS AGREEMENT

[Doc 1: Utah Counsel]

\_\_\_\_\_ , \_\_\_\_\_

[Names and Addresses of Investors]

TITAN MOTORCYCLE CO. OF AMERICA  
SHARES OF COMMON STOCK

Ladies and Gentlemen:

We are special counsel to Titan Motorcycle Co. of America, a Nevada corporation (the "Company"), and we understand that the Company has sold to [Names of Investors] (the "Holders") an aggregate of 4,000 shares (the "Preferred Shares") of the Company's Series A Convertible Preferred Stock, \$.001 par value (the "Preferred Stock"), and issued to the Holders Common Stock Purchase Warrants (the "Warrants"). The Preferred Shares were sold, and the Warrants were issued, to the Holders pursuant to several Subscription Agreements, dated as of September \_\_, 1999, by and between the Holders and the Company (the "Subscription Agreements"). Pursuant to the several Registration Rights Agreements, dated as of September \_\_, 1999, by and between the Company and each Holder (the "Registration Rights Agreements") entered into in connection with the purchase by the Holders of the Preferred Shares, the Company agreed with each Holder, among other things, to register for resale (1) the shares (the "Conversion Shares") of Common Stock issuable upon conversion of the Preferred Shares and (2) the shares (the "Warrant Shares") of Common Stock issuable upon exercise of the Warrants under the Securities Act of 1933, as amended (the "1933 Act"), upon the terms provided in the Registration Rights Agreements. The Conversion Shares and the Warrant Shares are referred to herein collectively as the "Shares". Pursuant to the Registration Rights Agreements, on , 1999 the Company filed a Registration Statement on Form S-3 (File No. 333-\_\_\_\_\_) (the "Registration Statement") with the Securities and Exchange Commission (the "SEC") relating to the Shares, which names the Holders as selling stockholders thereunder.

[Other introductory and scope of examination language to be inserted]

Based on the foregoing, we are of the opinion that since the Company became a reporting Company under the 1934 Act [on October 28, 1998], the Company has timely filed with the SEC all forms, reports and other documents ("SEC Reports") required to be filed with the SEC under the Securities Exchange Act of 1934, as amended (the "1934 Act"). All SEC Reports complied, when filed, in all material respects, with all applicable requirements of the 1933 Act and the 1934 Act;

In addition, we participated in the preparation of the SEC Reports, including review and discussions with officers and other representatives of the Company, and representatives of the independent public accountants for the Company, at which the contents of the SEC Reports and related matters were discussed, and, although we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the SEC Reports, on the basis of the foregoing, nothing has come to our attention that leads us to believe either that the SEC Reports (after giving effect to any updated changes to the information therein that may be set forth in the Registration Statement) at the time the Registration Statement became effective contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading (it being understood that we have not been requested to and do not express any view with respect to the financial statements and schedules and other financial and statistical data included or incorporated by reference in the SEC Reports) or the Registration Statement.

Very truly yours,

cc: Signature Stock Transfer, Inc.,  
as Transfer Agent, Warrant Agent and Registrar

THIS REGISTRATION RIGHTS AGREEMENT, dated as of September 15, 1999 (this "Agreement"), is made by and between TITAN MOTORCYCLE CO. OF AMERICA, a Nevada corporation (the "Company"), and the person named on the signature page hereto (the "Initial Investor").

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

WHEREAS, in connection with the Subscription Agreement, dated as of September 15, 1999, between the Initial Investor and the Company (the "Subscription Agreement"), the Company has agreed, upon the terms and subject to the conditions of the Subscription Agreement, to issue and sell to the Initial Investor shares (the "Preferred Shares") of Series A Convertible Preferred Stock, \$.001 par value (the "Series A Preferred Stock"), of the Company as provided in the Subscription Agreement, which Preferred Shares are convertible into shares (the "Conversion Shares") of Common Stock, \$.001 par value (the "Common Stock"), of the Company, and to issue common stock purchase warrants (the "Warrants") to purchase shares (the "Warrant Shares") of Common Stock; and

WHEREAS, to induce the Initial Investor to execute and deliver the Subscription Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "1933 Act"), and applicable state securities laws with respect to the Conversion Shares and the Warrant Shares;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Initial Investor hereby agree as follows:

## 1. DEFINITIONS.

(a) As used in this Agreement, the following terms shall have the following meanings:

"Blackout Period" means the period of up to 30 consecutive days commencing on the day immediately after the date the Company notifies the Investors that they are required, pursuant to Section 4(d), to suspend offers and sales of Registrable Securities as a result of an event or circumstance described in Section 3(f)(1) during which period, by reason of Section 3(f)(2), the Company is not required to amend the Registration Statement or to supplement the prospectus contained therein; PROVIDED, HOWEVER, that in each case the Company shall have determined, in its reasonable judgment, that public disclosure of such event or circumstance at such time would be detrimental to the Company.

"Certificate of Designations" means the Certificate of Designations of the Series A Convertible Preferred Stock establishing and designating the Series A Preferred Stock and fixing the rights and preferences of such series as filed by the Company with the Secretary of State of the State of Nevada.

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"Computation Date" means, if a Registration Event occurs, any of (1) the date which is 30 days after such Registration Event occurs, if any Registration Event is continuing on such date, (2) each date which is 30 days after a Computation Date, if any Registration Event is continuing on such date, and (3) the date on which all Registration Events cease to continue.

"Investor" or "Investors" means the Initial Investor and any transferee or assignee who agrees to become bound by the provisions of this Agreement in accordance with Section 9 hereof.

"Majority Holders" means those persons who hold a majority of the shares of Series A Preferred Stock which are then outstanding, including such shares originally issued pursuant to the Subscription Agreement and the Other Subscription Agreement.

"Nasdaq" means the Nasdaq SmallCap Market.

"1934 Act" means the Securities Exchange Act of 1934, as amended.

"register," "registered," and "registration" refer to a registration effected by preparing and filing a Registration Statement or Statements in compliance with the 1933 Act and pursuant to Rule 415 under the 1933 Act or any successor rule providing for offering securities on a continuous basis ("Rule 415"), and the declaration or ordering of effectiveness of such Registration Statement by the SEC.

"Registrable Securities" means the Conversion Shares and the Warrant Shares.

"Registration Event" shall mean (1) the Company fails to file the Registration Statement which is required to be filed by the Company pursuant to Section 2(a) with the SEC within 30 days after the Closing Date, (2) the Registration Statement covering the Registrable Securities which is required to be filed by the Company pursuant to the first sentence of Section 2(a) hereof is not effective within 120 days after the Closing Date, (3) the Company fails to submit a request for acceleration of the effective date of the Registration Statement in accordance with Section 3(a), (4) the Registration Statement required to be filed by the Company pursuant to Section 2(a) shall cease to be available for use by any Investor who is named therein as a selling stockholder for any reason (including, without limitation, by reason of an SEC stop order, a material misstatement or omission in such Registration Statement or the



information contained in such Registration Statement having become outdated) other than a Blackout Period, (5) the Common Stock ceases to be listed for trading on any of the New York Stock Exchange, the American Stock Exchange, Inc., the Nasdaq National Market or the Nasdaq, or (6) a holder of shares of Series A Preferred Stock having become unable to convert any shares of Series A Preferred Stock in accordance with Section 10(a) of the Certificate of Designations (other than by reason of the 4.9% limitation on beneficial ownership set forth therein or a redemption or repurchase thereof).

"Registration Period" means the period from the Closing Date to the earliest of (i) the date which is five years after the SEC Effective Date, (ii) the date on which each Investor may sell all Registrable Securities owned by such Investor or which such Investor has any right to acquire without registration under the 1933 Act pursuant to subsection (k) of Rule 144, without restriction on the manner of sale or the volume of securities which may be sold in any period and without the requirement for the giving of any notice to, or the making of any filing with, the SEC and (iii) the date on which the Investors no longer beneficially own or have any right to acquire any Registrable Securities.

"Registration Statement" means a registration statement of the Company under the 1933 Act, including any amendment thereto.

"Rule 144" means Rule 144 promulgated under the 1933 Act or any other similar rule or regulation of the SEC that may at any time permit a holder of any securities to sell securities of the Company to the public without registration under the 1933 Act.

"SEC" means the Securities and Exchange Commission.

"SEC Effective Date" means the date the Registration Statement is declared effective by the SEC.

"SEC Filing Date" means the date the Registration Statement is first filed with the SEC pursuant to Section 2(a).

(b) Capitalized terms defined in the introductory paragraph or the recitals to this Agreement shall have the respective meanings therein provided. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Subscription Agreement.

## 2. REGISTRATION.

(a) MANDATORY REGISTRATION. (1) The Company shall prepare, and on or prior to the date which is 30 days after the Closing Date, file with the SEC a Registration Statement on Form S-3 which, on the date of filing with the SEC, covers the resale by the Initial Investor of a number of shares of Common Stock at least equal to the sum of (x) a number of shares of Common Stock equal to 175% of the number of shares of Common Stock issuable upon conversion of the Preferred Shares, determined as if the Preferred Shares, together with 24 months of accrued and unpaid dividends thereon, were converted in full at the Fixed Conversion Price (as defined in the Certificate of Designations) on the SEC Filing Date PLUS (y) the number of Warrant Shares (in each case determined without regard to the limitations on beneficial ownership contained in the proviso to the second sentence of Section 10(a) of the Certificate of Designations and Section 1.1(b) of the Warrants). If at any time the number of shares of Common Stock included in the Registration Statement required to be filed as provided in the first sentence of this Section 2(a) shall be insufficient to cover 125% of the number of shares of Common Stock issuable on conversion in full of the unconverted Preferred Shares plus the number of Warrant Shares issuable upon exercise of the unexercised portion of the Warrants, then promptly, but in no event later than 20 days after such insufficiency shall occur, the Company shall file with the SEC an additional Registration Statement on Form S-3 (which shall not constitute a post-effective amendment to the Registration Statement filed pursuant to the first sentence of this Section 2(a)), covering such number of shares of Common Stock as shall be sufficient to permit such conversion and exercise. For all purposes of this Agreement such additional Registration Statement shall be deemed to be the Registration Statement required to be filed by the Company pursuant to Section 2(a) of this Agreement, and the Company and the Investors shall have the same rights and obligations with respect to such additional Registration Statement as they shall have with respect to the initial Registration Statement required to be filed by the Company pursuant to this Section 2(a). The Registration Statement shall not include securities to be sold for the account of any selling securityholder other than the Investors and the investors contemplated by the registration rights agreement entered into by the Company in connection with the Other Subscription Agreement.

(2) Prior to the SEC Effective Date or during any time subsequent to the SEC Effective Date when the Registration Statement for any reason is not available for use by any Investor for the resale of any of Registrable Securities, the Company shall not file any other registration statement or any amendment thereto with the SEC under the 1933 Act or request the acceleration of the effectiveness of any other registration statement previously filed with the SEC, other than any registration statement on Form S-4 or Form S-8.

(b) CERTAIN OFFERINGS. If any offering pursuant to a Registration Statement pursuant to Section 2(a) hereof involves an underwritten offering, Investors who hold a majority in interest of the Registrable Securities subject to such underwritten offering shall have the right to select one legal counsel for the Investors and an investment banker or bankers and manager or managers to administer the offering, which investment banker or bankers or manager or managers shall be reasonably satisfactory to the Company. The Investors who hold the Registrable Securities to be included in such underwriting shall pay all underwriting discounts and commissions and other fees and expenses of such investment banker or bankers and manager or managers so selected in accordance with this Section 2(b) (other than fees and expenses relating to registration of Registrable Securities under federal or state securities laws, which are payable by the Company pursuant to Section 5 hereof) with respect to their Registrable Securities and the fees and expenses of such legal counsel so selected by the Investors.

(c) PAYMENTS BY THE COMPANY. If a Registration Event occurs, on each Computation Date the Company shall pay each Investor an amount in cash equal to 1.5% of the aggregate subscription price paid by such Investor for the Preferred Shares pursuant to the Subscription Agreement (pro rated for any period of less than 30 days). Each such payment shall be made by wire transfer in immediately available funds on each Computation Date to such account as shall be specified for such purpose by each Investor. Any such amount which is not paid when due shall bear interest at the rate of 14% per annum (or such other rate as shall be the maximum rate allowable by applicable law) until paid in full.

(d) PIGGY-BACK REGISTRATIONS. If at any time the Company shall determine to prepare and file with the SEC a Registration Statement relating to an offering for its own account or the account of others under the 1933 Act of any of its equity securities, other than on Form S-4 or Form S-8 or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans, the Company shall send to each Investor who is entitled to registration rights under this Section 2(d) written notice of such determination and, if within ten (10) days after receipt of such notice, such Investor shall so request in writing, the Company shall include in such Registration Statement all or any part of the Registrable Securities such Investor requests to be registered, except that if, in connection with any underwritten public offering for the account of the Company, the managing underwriter(s) thereof shall impose a limitation on the number of shares of Common Stock which may be included in the Registration Statement because, in such underwriter(s)' judgment, such limitation is necessary to effect an orderly public distribution of the securities to be sold by the Company, then the Company shall be obligated to include in such Registration Statement only such limited portion of the Registrable Securities with respect to which such Investor has requested inclusion hereunder. Any exclusion of Registrable Securities shall be made pro rata among the Investors seeking to include Registrable Securities, in proportion to the number of Registrable Securities sought to be included by such Investors; PROVIDED, HOWEVER, that the Company shall not exclude any Registrable Securities unless the Company has first excluded all outstanding securities the holders of which are not entitled by right to inclusion of securities in such Registration Statement; and PROVIDED FURTHER, HOWEVER, that, after giving effect to the immediately preceding proviso, any exclusion of Registrable Securities shall be made pro rata with holders of other securities having the right to include such securities in the Registration Statement, based on the number of securities for which registration is requested except to the extent such pro rata exclusion of such other securities is prohibited under any written agreement entered into by the Company

with the holder of such other securities prior to the date of this Agreement, in which case such other securities shall be excluded, if at all, in accordance with the terms of such agreement. No right to registration of Registrable Securities under this Section 2(d) shall be construed to limit any registration required under Section 2(a) hereof. The obligations of the Company under this Section 2(d) may be waived by Investors holding a majority in interest of the Registrable Securities and shall expire after the Company has afforded the opportunity for the Investors to exercise registration rights under this Section 2(d) for two registrations; PROVIDED, HOWEVER, that any Investor who shall have had any Registrable Securities excluded from any Registration Statement in accordance with this Section 2(d) shall be entitled to include in an additional Registration Statement filed by the Company the Registrable Securities so excluded. Notwithstanding any other provision of this Agreement, if the Registration Statement required to be filed pursuant to Section 2(a) of this Agreement shall have been ordered effective by the SEC and the Company shall have maintained the effectiveness of such Registration Statement as required by this Agreement and if the Company shall otherwise have complied in all material respects with its obligations under this Agreement, then the Company shall not be obligated to register any Registrable Securities on such Registration Statement referred to in this Section 2(d).

(e) ELIGIBILITY FOR FORM S-3. As of October 1, 1999, the Company will meet the requirements for the use of Form S-3 for registration of the Registrable Securities for resale by the Investors. The Company shall file all reports required to be filed by the Company with the SEC in a timely manner so as to maintain such eligibility for the use of Form S-3.

3. OBLIGATIONS OF THE COMPANY. In connection with the registration of the Registrable Securities, the Company shall:

(a) prepare promptly, and file with the SEC not later than 30 days after the Closing Date, a Registration Statement with respect to the number of Registrable Securities provided in Section 2(a), and thereafter to use its best efforts to cause each Registration Statement relating to Registrable Securities to become effective as soon as possible after such filing, and keep the Registration Statement effective pursuant to Rule 415 at all times during the Registration Period; submit to the SEC, within three Business Days after the Company learns that no review of the Registration Statement will be made by the staff of the SEC or that the staff of the SEC has no further comments on the Registration Statement, as the case may be, a request for acceleration of effectiveness of the Registration Statement to a time and date not later than 48 hours after the submission of such request; notify the Investors of the effectiveness of the Registration Statement on the date the Registration Statement is declared effective; and the Company represents and warrants to, and covenants and agrees with, the Investors that the Registration Statement (including any amendments or supplements thereto and prospectuses contained therein), at the time it is first filed with the SEC, at the time it is ordered effective by the SEC and at all times during which it is required to be effective hereunder (and each such amendment and supplement at the time it is filed with the SEC and at all times during which it is available for use in connection with the offer and sale of the Registrable Securities) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading;

(b) prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statement and the prospectus used in connection with the Registration Statement as may be necessary to keep the Registration Statement effective at all times during the Registration Period, and, during the Registration Period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by the Registration Statement until such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in the Registration Statement;

(c) furnish to each Investor whose Registrable Securities are included in the Registration Statement and its legal counsel, (1) promptly after the same is prepared and publicly distributed, filed with the SEC or received by the Company, one copy of the Registration Statement and any amendment thereto, each preliminary prospectus and prospectus and each amendment or supplement thereto, each letter written by or on behalf of the Company to the SEC or the staff of the SEC and each item of correspondence from the SEC or the staff of the SEC relating to such Registration Statement (other than any portion of any thereof which contains information for which the Company has sought confidential treatment) and (2) such number of copies of a prospectus, including a preliminary prospectus, and all amendments and supplements thereto and such other documents, as such Investor may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Investor;

(d) use reasonable efforts to (i) register and qualify the Registrable Securities covered by the Registration Statement under such securities or blue sky laws of such jurisdictions as the Investors who hold a majority in interest of the Registrable Securities being offered reasonably request, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof at all times until the end of the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; PROVIDED, HOWEVER, that the Company shall not be required in connection therewith or as a condition thereto (I) to qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (II) to subject itself to general taxation in any such jurisdiction, (III) to file a general consent to service of process in any such jurisdiction, (IV) to provide any undertakings that cause more than nominal expense or burden to the Company or (V) to make any change in its Certificate of Incorporation or by-laws, which in each case the Board of Directors of the Company determines to be contrary to the best interests of the Company and its stockholders;

(e) in the event that the Registrable Securities are being offered in an underwritten offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the underwriters of such offering;

(f) (1) as promptly as practicable after becoming aware of such event or circumstance, notify each Investor of any event or circumstance of which the Company has knowledge (or in the case of an event giving rise to a Blackout Period, notify each Investor of the existence of such an event or circumstance without disclosing the substance thereof), as a result of which the prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and use its best efforts promptly to prepare a supplement or amendment to the Registration Statement to correct such untrue statement or omission, file such supplement or amendment with the SEC at such time as shall permit the Investors to sell Registrable Securities pursuant to the Registration Statement as promptly as practicable, and deliver a number of copies of such supplement or amendment to each Investor as such Investor may reasonably request;

(2) notwithstanding Section 3(f)(1) above, if at any time the Company notifies the Investors as contemplated by Section 3(f)(1) that the event giving rise to such notice relates to a development involving the Company which occurred subsequent to the later of (x) the SEC Effective Date and (y) the latest date prior to such notice on which the Company has amended or supplemented the Registration Statement, then the Company shall not be required to use best efforts to make such amendment during a Blackout Period; PROVIDED, HOWEVER, that (i) the aggregate number of days on which any Blackout Period is in effect may not exceed 30 days (whether or not consecutive) in any period of 12 consecutive months; (ii) no more than two Blackout Periods may commence in any period of 12 consecutive months; (iii) no Blackout Period may commence within 60 days after the end of an earlier Blackout Period; and (iv) if a Blackout Period continues for five or more days, on or before the fifth day thereof the Company shall deliver to each Investor a certified copy of a resolution of the Company's Board of Directors confirming that such Blackout Period complies with the definition thereof in Section 1(a);

(g) as promptly as practicable after becoming aware of such event, notify each Investor who holds Registrable Securities being sold (or, in the event of an underwritten offering, the managing underwriters) of the issuance by the SEC of any stop order or other suspension of effectiveness of the Registration Statement at the earliest possible time;

(h) permit a single firm of counsel designated as selling stockholders' counsel by the Investors who hold a majority in interest of the Registrable Securities being sold to review and comment on the Registration Statement and all amendments and supplements thereto a reasonable period of time prior to their filing with the SEC;

(i) make generally available to its security holders as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Rule 158 under the 1933 Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the effective date of the Registration Statement;

(j) in connection with any underwritten offering, at the request of the Investors who hold a majority in interest of the Registrable Securities being sold, furnish on the date that Registrable Securities are delivered to an underwriter, if any, for sale in connection with the Registration Statement (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters; and (ii) an opinion, dated such date, from counsel representing the Company for purposes of such Registration Statement, in form and substance as is customarily given in an underwritten public offering, addressed to the underwriters and the Investors; PROVIDED, in each case, that the Investors make any confirmations or agreements to or with the Company, its accountants or its counsel as are necessary or required by applicable professional requirements;

(k) make available for inspection by any Investor, any underwriter participating in any disposition pursuant to the Registration Statement, and any attorney, accountant or other agent retained by any such Investor or underwriter (collectively, the "Inspectors"), all pertinent financial and other records, pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be reasonably necessary to enable each Investor to exercise its due diligence responsibility, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request for purposes of such due diligence; PROVIDED, HOWEVER, that each Inspector shall hold in confidence and shall not make any disclosure (except to an Investor) of any Record or other information which the Company determines in good faith to be confidential, and the Inspectors are so notified or aware of this status, unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement, (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court or government body of competent jurisdiction or (iii) the information in such Records has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company shall not be required to disclose any confidential information in such Records to any Inspector until and unless such Inspector shall have entered into confidentiality agreements (in form and substance satisfactory to the Company) with the Company with respect thereto, substantially in the form of this Section 3(k). Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at the Company's own expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. The Company shall hold in confidence and shall not make any disclosure of information concerning an Investor provided to the Company pursuant to Section 4(e) hereof unless (i) disclosure of such information is

necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or governmental body of competent jurisdiction or (iv) such information has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to such Investor and allow such Investor, at such Investor's own expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information;

(l) use its best efforts (i) to cause all the Registrable Securities covered by the Registration Statement to be listed on the Nasdaq or such other principal securities market on which securities of the same class or series issued by the Company are then listed or traded or (ii) if securities of the same class or series as the Registrable Securities are not then listed on Nasdaq or any such other securities market, to cause all of the Registrable Securities covered by the Registration Statement to be listed on the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market;

(m) provide a transfer agent and registrar, which may be a single entity, for the Registrable Securities not later than the effective date of the Registration Statement;

(n) cooperate with the Investors who hold Registrable Securities being offered and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing Registrable Securities to be offered pursuant to the Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the managing underwriter or underwriters, if any, or the Investors may reasonably request and registered in such names as the managing underwriter or underwriters, if any, or the Investors may request; and, within three Business Days after a Registration Statement which includes Registrable Securities is ordered effective by the SEC, the Company shall deliver to the transfer agent for the Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) an instruction substantially in the form attached hereto as EXHIBIT 1 and shall cause legal counsel selected by the Company to deliver to the Investors opinions of such counsel in the forms attached hereto as EXHIBIT 2-A and EXHIBIT 2-B (with copies to the Company's transfer agent);

(o) during the period the Company is required to maintain effectiveness of the Registration Statement pursuant to Section 3(a), the Company shall not bid for or purchase any Common Stock or any right to purchase Common Stock or attempt to induce any person to purchase any such security or right if such bid, purchase or attempt would in any way limit the right of the Investors to sell Registrable Securities by reason of the limitations set forth in Regulation M under the 1934 Act; and



(p) take all other reasonable actions necessary to expedite and facilitate disposition by the Investors of the Registrable Securities pursuant to the Registration Statement.

4. OBLIGATIONS OF THE INVESTORS. In connection with the registration of the Registrable Securities, the Investors shall have the following obligations:

(a) It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least five days prior to the first anticipated filing date of the Registration Statement, the Company shall notify each Investor of the information the Company requires from each such Investor (the "Requested Information") if any of such Investor's Registrable Securities are eligible for inclusion in the Registration Statement. If at least one Business Day prior to the filing date the Company has not received the Requested Information from an Investor (a "Non-Responsive Investor"), then the Company may file the Registration Statement without including Registrable Securities of such Non-Responsive Investor but, until the Registration Statement is declared effective, the Company shall not be relieved of its obligation to file a Registration Statement with the SEC relating to the Registrable Securities of such Non-Responsive Investor promptly after such Non-Responsive Investor provides the Requested Information;

(b) Each Investor by such Investor's acceptance of the Registrable Securities agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of the Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from the Registration Statement;

(c) In the event Investors holding a majority in interest of the Registrable Securities being registered determine to engage the services of an underwriter, each Investor agrees to enter into and perform such Investor's obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the managing underwriter of such offering and take such other actions as are reasonably required in order to expedite or facilitate the disposition of the Registrable Securities, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from the Registration Statement;

(d) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(f) or 3(g), such Investor will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(f) or 3(g) and, if so directed by the Company, such Investor shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in such Investor's possession of the prospectus covering such Registrable Securities current at the time of receipt of such notice;

(e) No Investor may participate in any underwritten registration hereunder unless such Investor (i) agrees to sell such Investor's Registrable Securities on the basis provided in any underwriting arrangements approved by the Investors entitled hereunder to approve such arrangements, (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements and (iii) agrees to pay its pro rata share of all underwriting discounts and commissions and other fees and expenses of investment bankers and any manager or managers of such underwriting and legal expenses of the underwriters applicable with respect to its Registrable Securities, in each case to the extent not payable by the Company pursuant to the terms of this Agreement; and

(f) Each Investor agrees to take all reasonable actions necessary to comply with the prospectus delivery requirements of the 1933 Act applicable to its sales of Registrable Securities.

5. EXPENSES OF REGISTRATION. All reasonable expenses, other than underwriting discounts and commissions and other fees and expenses of investment bankers and other than brokerage commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees and the fees and disbursements of counsel for the Company and the Investors (to the extent provided in the Subscription Agreement), shall be borne by the Company, PROVIDED, HOWEVER, that the Investors shall bear the fees and out-of-pocket expenses of the one legal counsel selected by the Investors pursuant to Section 2(b) hereof.

6. INDEMNIFICATION. In the event any Registrable Securities are included in a Registration Statement under this Agreement:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Investor who holds such Registrable Securities, the directors, if any, of such Investor, the officers, if any, of such Investor, each person, if any, who controls any Investor within the meaning of the 1933 Act or the 1934 Act, any underwriter (as defined in the 1933 Act) for the Investors, the directors, if any, of such underwriter and the officers, if any, of such underwriter, and each person, if any, who controls any such underwriter within the meaning of the 1933 Act or the 1934 Act (each, an "Indemnified Person"), against any losses, claims, damages, liabilities or expenses (joint or several) incurred (collectively, "Claims") to which any of them may become subject under the 1933 Act, the 1934 Act or otherwise, insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon any of the following: (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any post-effective amendment thereof or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading or (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any state securities law or any rule or regulation under the 1933 Act, the 1934 Act or any state securities law (the matters in the foregoing clauses (i) through (iii) being, collectively, "Violations"). Subject to the restrictions set forth in Section 6(d) with respect to the number of legal counsel, the Company shall reimburse the Investors and the other Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (I) shall not apply to a Claim arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by any Indemnified Person or underwriter for such Indemnified Person expressly for use in connection with the preparation of the Registration Statement, the prospectus or any such amendment thereof or supplement thereto, if such prospectus was timely made available by the Company pursuant to Section 3(c) hereof; (II) with respect to any preliminary prospectus shall not inure to the benefit of any such person from whom the person asserting any such Claim purchased the Registrable Securities that are the subject thereof (or to the benefit of any person controlling such person) if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected in the prospectus, as then amended or supplemented, if such prospectus was timely made available by the Company pursuant to Section 3(c) hereof; and (III) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

(b) In connection with any Registration Statement in which an Investor is participating, each such Investor agrees to indemnify and hold harmless, to the same extent and in the same manner set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement, each person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act, any underwriter and any other stockholder selling securities pursuant to the Registration Statement or any of its directors or officers or any person who controls such stockholder or underwriter within the meaning of

the 1933 Act or the 1934 Act (collectively and together with an Indemnified Person, an "Indemnified Party"), against any Claim to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim arises out of or is based upon (i) any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement or (ii) a failure to comply with the prospectus delivery requirements of the 1933 Act; and such Investor will reimburse any legal or other expenses reasonably incurred by any Indemnified Party in connection with investigating or defending any such Claim; PROVIDED, HOWEVER, that the indemnity agreement contained in this Section 6(b) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld; PROVIDED, FURTHER, HOWEVER, that the Investor shall be liable under this Section 6(b) for only that amount of a Claim as does not exceed the amount by which the net proceeds to such Investor from the sale of Registrable Securities pursuant to such Registration Statement exceeds the cost of such Registrable Securities to such Investor. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(b) with respect to any preliminary prospectus shall not inure to the benefit of any Indemnified Party if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected on a timely basis in the prospectus, as then amended or supplemented.

(c) The Company shall be entitled to receive indemnities from underwriters, selling brokers, dealer managers and similar securities industry professionals participating in any distribution, to the same extent as provided above, with respect to information so furnished in writing by such persons expressly for inclusion in the Registration Statement.

(d) Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action (including any governmental action), such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel selected by the indemnifying party but reasonably acceptable to the Indemnified Person or the Indemnified Party, as the case may be; PROVIDED, HOWEVER, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. In such event, the Company shall pay for only one separate legal counsel for the Investors; such legal counsel shall be selected by the Investors holding a majority in interest of the Registrable Securities included in the Registration Statement to which the Claim relates. The failure to deliver written notice to the indemnifying party within a reasonable time of the

commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is prejudiced in its ability to defend such action. The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

7. CONTRIBUTION. To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; PROVIDED, HOWEVER, that (a) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6, (b) no seller of Registrable Securities guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any seller of Registrable Securities who was not guilty of such fraudulent misrepresentation and (c) contribution by any seller of Registrable Securities shall be limited in amount to the amount by which the net amount of proceeds received by such seller from the sale of such Registrable Securities exceeds the purchase price paid by such seller for such Registrable Securities.

8. REPORTS UNDER 1934 ACT. With a view to making available to the Investors the benefits of Rule 144, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act; and

(c) furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144 and the 1934 Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration.

9. ASSIGNMENT OF THE REGISTRATION RIGHTS. The rights to have the Company register Registrable Securities pursuant to this Agreement shall be automatically assigned by the Investors to an Affiliate (as such term is defined

in the Certificate of Designations) thereof or to any transferee of all or any portion of such securities which portion is not less than 100,000 shares of Common Stock (or to any transferee of all or any portion of the Preferred Shares or the Warrants which transfer is permitted by Sections 4(a) and 4(h) of the Subscription Agreement) only if: (a) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (b) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (i) the name and address of such transferee or assignee and (ii) the securities with respect to which such registration rights are being transferred or assigned, (c) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is

restricted under the 1933 Act and applicable state securities laws, and (d) at or before the time the Company receives the written notice contemplated by clause (b) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein. In connection with any such transfer the Company shall, at its sole cost and expense, promptly after such assignment take such actions as shall be reasonably acceptable to the Initial Investor and such transferee to assure that the Registration Statement and related prospectus are available for use by such transferee for sales of the Registrable Securities in respect of which the rights to registration have been so assigned. In connection with any such assignment, each Investor shall have the right to assign to such transferee such Investor's rights under the Subscription Agreement by notice of such assignment to the Company. Following such notice of assignment of rights under the Subscription Agreement, the Company shall be obligated to such transferee, and such transferee shall be obligated to the Company, to perform all of its covenants under the Subscription Agreement as if such transferee were the Buyer under the Subscription Agreement.

10. AMENDMENT OF REGISTRATION RIGHTS. Any provision of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Majority Holders. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company.

11. MISCELLANEOUS.

(a) A person or entity is deemed to be a holder of Registrable Securities whenever such person or entity owns of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more persons or entities with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from the registered owner of such Registrable Securities.

(b) Notices required or permitted to be given hereunder shall be in writing and shall be deemed to be sufficiently given when personally delivered (by hand, by courier, by telephone line facsimile transmission (with answer back confirmation) or other means) (i) if to the Company, at 2222 West Peoria Avenue,

Phoenix, Arizona 85029, Attention: Chief Executive Officer, telephone line facsimile transmission number (602) 331-0941, (ii) if to the Initial Investor, at 4111 East 37th Street North, Wichita, Kansas 67220, Attention: Josh Taylor, telephone line facsimile transmission number (316) 828-7947 and (iii) if to any other Investor, at such address as such Investor shall have provided in writing to the Company, or at such other address as each such party furnishes by notice given in accordance with this Section 11(b), and shall be effective upon receipt.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

(d) This Agreement shall be enforced, governed by and construed in accordance with the laws of the State of Arizona applicable to agreements made and to be performed entirely within such State. In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

(e) This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to the subject matter hereof.

(f) Subject to the requirements of Section 9 hereof, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.

(g) All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require.

(h) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) The Company acknowledges that any failure by the Company to perform its obligations under this Agreement, including, without limitation, the Company's obligations under Section 3(n), or any delay in such performance could result in damages to the Investors and the Company agrees that, in addition to any other liability the Company may have by reason of any such failure or delay, the Company shall be liable for all direct and consequential damages caused by any such failure or delay.

(j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(l) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by telephone line facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.



IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of day and year first above written.

TITAN MOTORCYCLE CO. OF AMERICA

By: /s/ Francis S. Keery

-----  
Name: Francis S. Keery  
Title: Chief Executive Officer

KOCH INVESTMENT GROUP LIMITED

By: /s/ Josh Taylor

-----  
Name: Josh Taylor  
Title: Vice President

EXHIBIT 1  
TO  
REGISTRATION  
RIGHTS AGREEMENT

[Company Letterhead]

[Date]

Signature Stock Transfer, Inc.,  
as Conversion Agent, Warrant Agent and Registrar  
14675 Midway Road  
Suite 221  
Dallas, Texas 75244

Ladies and Gentlemen:

This letter shall serve as our irrevocable authorization and direction to you [(1) to transfer or re-register the certificates for the shares of Common Stock, \$.001 par value (the "Common Stock"), of Titan Motorcycle Co. of America, a Nevada corporation (the "Company"), represented by certificate numbers \_\_\_\_\_ and \_\_\_\_\_ for an aggregate of \_\_\_\_\_ shares (the "Outstanding Shares") of Common Stock presently registered in the name of [Name of Investors] upon surrender of such certificate(s) to you, notwithstanding the legend appearing on such certificates, and (2)](1) to issue (a) shares (the "Conversion Shares") of

- -----  
(1) Omit if no conversions of Preferred Stock or exercises of Warrants have occurred before SEC registration is declared effective.

Common Stock to or upon the order of the holder from time to time on conversion of the shares (the "Preferred Shares") of Series A Convertible Preferred Stock, \$.001 par value, of the Company upon receipt by you of a Notice of Conversion of Series A Convertible Preferred Stock in the form enclosed herewith, and (b) shares (the "Warrant Shares") of Common Stock to or upon the order of the holder from time to time on exercise of the Common Stock Purchase Warrants (the "Warrants") exercisable for Common Stock issued by the Company upon receipt by you of a Subscription Form from such holder in the form enclosed herewith. [The transfer or re-registration of the certificates for the Outstanding Shares by you should be made at such time as you are requested to do so by the record holder of the Outstanding Shares. The certificate issued upon such transfer or re-registration should be registered in such name as requested by the holder of record of the certificate surrendered to you and should not bear any legend which would restrict the transfer of the shares represented thereby. In addition, you are hereby directed to remove any stop-transfer instruction relating to the Outstanding Shares.] Certificates for the Conversion Shares and Warrant Shares should not bear any restrictive legend and should not be subject to any stop-transfer restriction.

Contemporaneously with the delivery of this letter, the Company is delivering to you an opinion of Snell & Wilmer LLP as to registration of the resale of [the Outstanding Shares and]\* the Conversion Shares and Warrant Shares under the Securities Act of 1933, as amended.

Should you have any questions concerning this matter, please contact me.

Very truly yours,

TITAN MOTORCYCLE CO. OF AMERICA

By: \_\_\_\_\_  
Name:  
Title:

Enclosures

cc: [Names of Investors]

EXHIBIT 2-A  
TO  
REGISTRATION  
RIGHTS AGREEMENT

[Doc 2: S&W Opinion]

\_\_\_\_\_ -' \_\_\_\_\_

[Names and Addresses of Investors]

TITAN MOTORCYCLE CO. OF AMERICA  
SHARES OF COMMON STOCK

Ladies and Gentlemen:

We are special counsel to Titan Motorcycle Co. of America, a Nevada corporation (the "Company"), and we understand that the Company has sold to [Names of Investors] (the "Holders") an aggregate of 4,000 shares (the "Preferred Shares") of the Company's Series A Convertible Preferred Stock, \$.001 par value (the "Preferred Stock"), and issued to the Holders Common Stock Purchase Warrants (the "Warrants"). The Preferred Shares were sold, and the Warrants were issued, to the Holders pursuant to several Subscription Agreements, dated as of September \_\_, 1999, by and between the Holders and the Company (the "Subscription Agreements"). Pursuant to the several Registration Rights Agreements, dated as of September \_\_, 1999, by and between the Company and each Holder (the "Registration Rights Agreements") entered into in connection with the purchase by the Holders of the Preferred Shares, the Company agreed with each Holder, among other things, to register for resale (1) the shares (the "Conversion Shares") of Common Stock issuable upon conversion of the Preferred Shares and (2) the shares (the "Warrant Shares") of Common Stock issuable upon exercise of the Warrants under the Securities Act of 1933, as amended (the "1933 Act"), upon the terms provided in the Registration Rights Agreements. The Conversion Shares and the Warrant Shares are referred to herein collectively as the "Shares". Pursuant to the Registration Rights Agreements, on , 1999 the Company filed a Registration Statement on Form S-3 (File No. 333-\_\_\_\_\_) (the "Registration Statement") with the Securities and Exchange Commission (the "SEC") relating to the Shares, which names the Holders as selling stockholders thereunder.

[Other introductory and scope of examination language to be inserted]

Based on the foregoing, we are of the opinion that:

(1) The Registration Statement and the Prospectus contained therein (other than the financial statements and financial schedules and other financial and statistical information contained or incorporated by reference therein, as to which we have not been requested to and do not express any opinion) comply as to form in all material respects with the applicable requirements of the 1933 Act and the rules and regulations promulgated thereunder; and

(2) The Registration Statement has become effective under the 1933 Act and to our knowledge, no stop order proceedings with respect thereto have been instituted or threatened by the SEC. The Shares have been registered under the 1933 Act and may be resold by the respective Holders pursuant to the Registration Statement.

We have participated in the preparation of the Registration Statement and the Prospectus, including review and discussions with officers and other representatives of the Company, representatives of the independent public accountants for the Company, and your representatives at which the contents of the Registration Statement and the Prospectus contained therein and related matters were discussed, and, although we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement and the Prospectus contained therein, on the basis of the foregoing, nothing has come to our attention that leads us to believe either that the Registration Statement at the time the Registration Statement became effective contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus contained in the Registration Statement, as of its date, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (it being understood that we have not been requested to and do not express any view with respect to the financial statements and schedules and other financial and statistical data included or incorporated by reference in the Registration Statement or the Prospectus contained therein).

We express no opinion, and our comment in the foregoing paragraph does not apply to, any reports or filings made by the Company under the Securities Exchange Act of 1934 that are incorporated into the Registration Statement or Prospectus.

Paragraph (2) of this opinion may be relied upon by Signature Stock Transfer [INC.], as Transfer Agent, Warrant Agent and Registrar (the "Transfer Agent"), as if addressed to the Transfer Agent.

Very truly yours,

cc: Signature Stock Transfer [INC.],  
as Transfer Agent, Warrant Agent and Registrar

EXHIBIT 2-B  
TO  
REGISTRATION  
RIGHTS AGREEMENT

[Doc 1: Utah Counsel]

\_\_\_\_\_ , \_\_\_\_\_

[Names and Addresses of Investors]

TITAN MOTORCYCLE CO. OF AMERICA  
SHARES OF COMMON STOCK

Ladies and Gentlemen:

We are special counsel to Titan Motorcycle Co. of America, a Nevada corporation (the "Company"), and we understand that the Company has sold to [Names of Investors] (the "Holders") an aggregate of 4,000 shares (the "Preferred Shares") of the Company's Series A Convertible Preferred Stock, \$.001 par value (the "Preferred Stock"), and issued to the Holders Common Stock Purchase Warrants (the "Warrants"). The Preferred Shares were sold, and the Warrants were issued, to the Holders pursuant to several Subscription Agreements, dated as of September \_\_, 1999, by and between the Holders and the Company (the "Subscription Agreements"). Pursuant to the several Registration Rights Agreements, dated as of September \_\_, 1999, by and between the Company and each Holder (the "Registration Rights Agreements") entered into in connection with the purchase by the Holders of the Preferred Shares, the Company agreed with each Holder, among other things, to register for resale (1) the shares (the "Conversion Shares") of Common Stock issuable upon conversion of the Preferred Shares and (2) the shares (the "Warrant Shares") of Common Stock issuable upon exercise of the Warrants under the Securities Act of 1933, as amended (the "1933 Act"), upon the terms provided in the Registration Rights Agreements. The Conversion Shares and the Warrant Shares are referred to herein collectively as the "Shares". Pursuant to the Registration Rights Agreements, on , 1999 the Company filed a Registration Statement on Form S-3 (File No. 333-\_\_\_\_\_) (the "Registration Statement") with the Securities and Exchange Commission (the "SEC") relating to the Shares, which names the Holders as selling stockholders thereunder.

[Other introductory and scope of examination language to be inserted]

Based on the foregoing, we are of the opinion that since the Company became a reporting Company under the 1934 Act [on October 28, 1998], the Company has timely filed with the SEC all forms, reports and other documents ("SEC Reports") required to be filed with the SEC under the Securities Exchange Act of 1934, as amended (the "1934 Act"). All SEC Reports complied, when filed, in all material respects, with all applicable requirements of the 1933 Act and the 1934 Act;

In addition, we participated in the preparation of the SEC Reports, including review and discussions with officers and other representatives of the Company, and representatives of the independent public accountants for the Company, at which the contents of the SEC Reports and related matters were discussed, and, although we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the SEC Reports, on the basis of the foregoing, nothing has come to our attention that leads us to believe either that the SEC Reports (after giving effect to any updated changes to the information therein that may be set forth in the Registration Statement) at the time the Registration Statement became effective contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading (it being understood that we have not been requested to and do not express any view with respect to the financial statements and schedules and other financial and statistical data included or incorporated by reference in the SEC Reports) or the Registration Statement.

Very truly yours,

cc: Signature Stock Transfer, Inc.,  
as Transfer Agent, Warrant Agent and Registrar

SUBSCRIPTION AGREEMENT

DATED AS OF SEPTEMBER 15, 1999

BY AND BETWEEN

TITAN MOTORCYCLE CO. OF AMERICA

AND

ADVANTAGE FUND II LTD.

-----

SERIES A CONVERTIBLE PREFERRED STOCK

AND

COMMON STOCK PURCHASE WARRANTS

SUBSCRIPTION AGREEMENT

SERIES A CONVERTIBLE PREFERRED STOCK

AND

COMMON STOCK PURCHASE WARRANTS

TITAN MOTORCYCLE CO. OF AMERICA

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SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT, dated as of September 15, 1999, by and between TITAN MOTORCYCLE CO. OF AMERICA, a Nevada corporation (the "Company"), with headquarters located at 2222 West Peoria Avenue, Phoenix, Arizona 85029, and ADVANTAGE FUND II LTD., a British Virgin Islands corporation (the "Buyer").

W I T N E S S E T H:

WHEREAS, the Buyer wishes to purchase, upon the terms and subject to the conditions of this Agreement, shares of non-voting, convertible preferred stock of the Company which will be convertible into shares of Common Stock, \$.001 par value (the "Common Stock"), of the Company and in connection therewith the Company is to issue to the Buyer warrants to purchase shares of Common Stock as provided in this Agreement; and

WHEREAS, the Company and the Buyer are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Rule 506 of Regulation D ("Regulation D") as promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "1933 Act");

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

1. AGREEMENT TO SUBSCRIBE; PURCHASE PRICE.

(a) SUBSCRIPTION. The Buyer hereby agrees to purchase from the Company the number of shares (the "Preferred Shares") of Series A Convertible Preferred Stock, \$.001 par value (the "Preferred Stock"), of the Company set forth on the signature page of this Agreement, having the terms and conditions as set forth in the form of the Certificate of Designations of the Series A Convertible Preferred Stock attached hereto as ANNEX I (the "Certificate of Designations") at the price per share and for the aggregate purchase price set forth on the signature page of this Agreement (the "Purchase Price"). In connection with the purchase of the Preferred Shares by the Buyer, the Company shall issue to the Buyer, at the closing on the Closing Date (as defined herein), Common Stock Purchase Warrants in the form attached hereto as ANNEX II (the "Warrants") to purchase the number of shares of Common Stock set forth therein (subject to adjustment after issuance of the Warrants as provided in the Warrants). The shares of Common Stock issuable upon exercise of the Warrants are referred to herein as the "Warrant Shares." The Warrant Shares and the shares of Common Stock issuable upon conversion of the Preferred Shares are referred to herein collectively as the "Common Shares." The Common Shares and the Preferred Shares are referred to herein collectively as the "Shares." The Shares and the Warrants are referred to herein collectively as the "Securities."

(b) FORM OF PAYMENT. The Buyer shall pay the Purchase Price for the Preferred Shares by delivering good funds in United States Dollars to the escrow

agent (the "Escrow Agent") identified in the Joint Escrow Instructions attached hereto as ANNEX III (the "Joint Escrow Instructions"). Such delivery of funds shall be made against delivery by the Company of the certificates for the Preferred Shares and the Warrants registered in the name of the Buyer or its nominee. Promptly following payment by the Buyer to the Escrow Agent of the Purchase Price, but in any event prior to the Closing Date, the Company shall deliver certificates for the Preferred Shares and the Warrants, registered in the name of the Buyer or its nominee, to the Escrow Agent. The certificates for the Preferred Shares shall be delivered by the Company to the Escrow Agent on a delivery against payment basis at the closing. By signing this Agreement, the Buyer and the Company each agrees to all of the terms and conditions of, and becomes a party to, the Joint Escrow Instructions, all of the provisions of which are incorporated herein by this reference as if set forth in full.

(c) METHOD OF PAYMENT. Payment of the Purchase Price for the Preferred Shares shall be made by wire transfer of funds to:

Citibank, N.A.  
153 East 53rd Street  
New York, New York 10043  
ABA#021000089

For credit to A/C#37179446  
For credit to the account of Brian W. Pusch Attorney Escrow Account  
Reference: Advantage/Titan

Not later than 4:00 p.m., New York City time, on the date which is two Business Days after the Company shall have accepted this Agreement and returned a signed counterpart of this Agreement to the Buyer or its legal counsel, the Buyer shall deposit with the Escrow Agent an amount equal to the Purchase Price. As used in this Agreement, the term "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

## 2. BUYER REPRESENTATIONS, WARRANTIES, ETC.

The Buyer represents and warrants to, and covenants and agrees with, the Company as follows:

(a) PURCHASE FOR INVESTMENT. The Buyer is purchasing the Preferred Shares and acquiring the Warrants, and will acquire the Common Shares upon conversion of the Preferred Shares or exercise of the Warrants, for its own account for investment only and not with a view towards the public sale or distribution thereof;

(b) ACCREDITED INVESTOR. The Buyer is an "accredited investor" as that term is defined in Rule 501 of the General Rules and Regulations under the 1933 Act by reason of Rule 501(a)(3);

(c) REOFFERS AND RESALES. All subsequent offers and sales of the Securities by the Buyer shall be made pursuant to registration of the Securities being offered and sold under the 1933 Act or pursuant to an exemption from registration;

(d) COMPANY RELIANCE. The Buyer understands that the Preferred Shares are being offered and sold, the Warrants are being issued, and the Common Shares are being offered, in each case to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of the Buyer to acquire the Preferred Shares and the Warrants and to receive an offer of the Common Shares;

(e) INFORMATION PROVIDED. The Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Preferred Shares and the issuance of the Warrants and the offer of the Common Shares which have been requested by the Buyer; the Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company and have received satisfactory answers to any such inquiries; without limiting the generality of the foregoing, the Buyer has had the opportunity to obtain and to review the Company's (1) Annual Report on Form 10-KSB for the fiscal year ended January 2, 1999, as amended by Amendment No. 1 thereto on Form 10-KSB/A (the "1998 10-K"), (2) Quarterly Reports on Form 10-QSB for the fiscal quarters ended April 3, 1999 and July 3, 1999, (3) Current Reports on Form 8-K, dated December 28, 1998 and January 8, 1999 and (4) definitive proxy statement for the Company's 1999 Annual Meeting of Shareholders held on May 12, 1999, in each case as filed with the SEC (collectively, the "SEC Reports"); and the Buyer understands that its investment in the Shares involves a high degree of risk;

(f) ABSENCE OF APPROVALS. The Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Shares; and

(g) SUBSCRIPTION AGREEMENT. This Agreement, the Registration Rights Agreement, in the form attached hereto as ANNEX IV (the "Registration Rights Agreement"), and the Transfer Agent Agreement, in the form attached hereto as ANNEX V (the "Transfer Agent Agreement"), have been duly and validly authorized by the Buyer, this Agreement has been duly executed and delivered by the Buyer, and this Agreement is, and the Registration Rights Agreement and the Transfer Agent Agreement, when executed and delivered by the Buyer, will be, valid and binding agreements of the Buyer enforceable in accordance with their respective terms, subject as to enforceability to general principles of equity and to bankruptcy, insolvency, moratorium and other similar laws affecting the enforcement of creditors' rights generally.

(h) ABSENCE OF BROKERS, FINDERS, ETC. No broker, finder or similar person engaged by the Buyer is entitled to any commission, fee or other compensation in connection with the transactions contemplated by this Agreement and the Buyer shall pay, and indemnify and hold harmless the Company from, any claim made against the Company by any such person for any such commission, fee or other compensation.

### 3. COMPANY REPRESENTATIONS, WARRANTIES, ETC.

The Company represents and warrants to, and covenants and agrees with, the Buyer that:

(a) ORGANIZATION AND AUTHORITY. Each of the Company and its subsidiary, Titan Motorcycle GmbH, a corporation organized under the laws of Germany (the "Subsidiary"), is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and has all requisite corporate power and authority to (i) own, lease and operate its properties and to carry on its business as now being conducted, and (ii) to execute, deliver and perform its obligations under this Agreement, the Certificate of Designations, the Warrants, the Registration Rights Agreement, the Transfer Agent Agreement, and the other agreements to be executed and delivered by the Company in connection herewith, and to consummate the transactions contemplated hereby and thereby. Each of the Company and the Subsidiary is duly qualified to do business as a foreign corporation and is in good standing in all jurisdictions wherein such qualification is necessary and where failure so to qualify could have a material adverse effect on the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiary, taken as a whole. The Company has no subsidiaries or equity investment in any person other than the Subsidiary.

(b) CAPITALIZATION. The authorized capital stock of the Company consists of (a) 90,000,000 shares of Common Stock of which 17,147,333 shares were outstanding on September 14, 1999, all of which are fully paid and nonassessable; and (b) 10,000,000 shares of Preferred Stock, \$.001 par value, none of which are outstanding, and 4,000 shares of which will be designated as Series A Convertible Preferred Stock and will be issued pursuant to this Agreement and the other subscription agreement for the purchase of shares of Preferred Stock and the acquisition of common stock purchase warrants being entered into in connection herewith (the "Other Subscription Agreement"); and on the Closing Date there will be (x) no material increase from September 14, 1999 in the number of shares of Common Stock outstanding and (y) no issuances of preferred stock except as issued pursuant to this Agreement and the Other Subscription Agreement. As of September 14, 1999, the Company had outstanding options, warrants and similar rights entitling the holders to purchase 1,143,000 shares of Common Stock. Other than as set forth in the preceding sentence and on SCHEDULE 3(B) to this Agreement, the Company does not have outstanding any material amount of securities (or obligations to issue any such securities) convertible into, exchangeable for or otherwise entitling the holders thereof to acquire shares of Common Stock, except as disclosed in the SEC Reports. The Company has duly reserved from its authorized and unissued shares of Common Stock the full number of shares required for (a) all options, warrants, convertible securities and other rights to acquire shares of Common Stock which are outstanding and (b) all shares of Common Stock and options and other rights to acquire shares of Common Stock which may be issued or granted under the stock option and similar plans which have been adopted by the Company or the Subsidiary. No antidilution or similar adjustment affecting any outstanding class or series of securities will arise by reason of the issuance or conversion of the Preferred Shares or the issuance or exercise of the Warrants or the issuance or conversion of the shares of Preferred Stock and the issuance or exercise of the warrants to be issued pursuant to the Other Subscription Agreement. The outstanding shares of Common Stock and outstanding options, warrants and other securities convertible into, exchangeable for or otherwise

entitling the holder thereof to acquire shares of Common Stock have been duly authorized and validly issued. None of such outstanding shares of Common Stock, options, warrants and other securities has been issued in violation of the preemptive rights of any securityholder of the Company. The offers and sales of the outstanding shares of Common Stock and such options, warrants and other securities were at all relevant times either registered under the 1933 Act and applicable state securities laws or exempt from such requirements. No holder of any of the Company's securities has any rights, "demand," "piggy-back" or otherwise, to have such securities registered by reason of the intention to file, filing or effectiveness of the Registration Statement (as defined in the Registration Rights Agreement).

(c) CONCERNING THE SHARES AND THE COMMON STOCK. The Shares have been duly authorized. The Preferred Shares, when issued and paid for in accordance with this Agreement, and the Common Shares, when issued upon conversion of the Preferred Shares or upon exercise of the Warrants, as the case may be, will be duly and validly issued, fully paid and non-assessable and will not subject the holder thereof to personal liability by reason of being such holder. There are no preemptive or similar rights of any stockholder of the Company or any other person to acquire any of the Shares. The Company has duly reserved a sufficient number of shares of Common Stock for conversion of the shares of Preferred Stock and exercise of the Warrants and the warrants issuable in connection with the Other Subscription Agreement, and such shares shall remain so reserved (subject to reduction from time to time for shares of Common Stock issued upon conversion of shares of Preferred Stock or redemption or other permitted retirement of shares of Preferred Stock), and the Company shall from time to time reserve such additional shares of Common Stock as shall be required to be reserved pursuant to the Certificate of Designations, as long as the Preferred Stock is convertible, and pursuant to the Warrants, as long as the Warrants are exercisable. The Common Stock is listed for trading on the Nasdaq SmallCap Market ("Nasdaq") and (1) the Company and the Common Stock meet the criteria for continued listing and trading on Nasdaq; (2) the Company has not been notified since December 1, 1998 by Nasdaq of any failure or potential failure to meet the criteria for continued listing and trading on Nasdaq and (3) no suspension of trading in the Common Stock is in effect. The Company knows of no reason that the Common Shares will not be eligible for listing on Nasdaq.

(d) SUBSCRIPTION AGREEMENT AND OTHER TRANSACTION DOCUMENTS. This Agreement, the Certificate of Designations, the Registration Rights Agreement, the Warrants and the Transfer Agent Agreement and the other agreements and instruments contemplated hereby and thereby have been duly and validly authorized by the Company, this Agreement has been duly executed and delivered by the Company and this Agreement is, and the Registration Rights Agreement, the Warrants and the Transfer Agent Agreement and such other agreements, when executed and delivered by the Company, will be, valid and binding obligations of the Company enforceable in accordance with their respective terms, subject as to enforceability to general principles of equity and to bankruptcy, insolvency, moratorium and other similar laws affecting the enforcement of creditors' rights generally.

(e) NON-CONTRAVENTION. The execution and delivery by the Company of this Agreement and the other documents contemplated by this Agreement and the consummation by the Company of the issuance of the Preferred Shares and the Warrants as contemplated by this Agreement, and the other transactions

contemplated by this Agreement, the Certificate of Designations, the Registration Rights Agreement, the Warrants and the Transfer Agent Agreement do not and will not, with or without the giving of notice or the lapse of time, or both (i) result in any violation of any terms of the Articles of Incorporation, as amended, or By-laws of the Company or the Subsidiary, (ii) conflict with or result in a breach by the Company or the Subsidiary of any of the terms or provisions of, or constitute a default under, or result in the modification, amendment, termination or cancellation of, result in the acceleration of any obligation of the Company or the Subsidiary under, or result in the creation or imposition of any lien, security interest, charge or encumbrance upon any of the properties or assets of the Company or the Subsidiary pursuant to, any indenture, mortgage, deed of trust or other agreement or instrument to which the Company or the Subsidiary is a party or by which the Company or the Subsidiary or any of their respective properties or assets is bound or affected, except for such matters as to which consents have been obtained, (iii) violate or contravene any applicable law, rule or regulation or any applicable decree, judgment or order of any court, United States federal or state regulatory body, administrative agency or other governmental body having jurisdiction over the Company or the Subsidiary or any of their respective properties or assets or (iv) have any material adverse effect on any permit, certification, registration, approval, consent, license or franchise necessary for the Company or the Subsidiary to own or lease and operate any of their respective properties or to conduct any of their respective businesses or the ability of the Company or the Subsidiary to make use thereof.

(f) APPROVALS. No authorization, approval or consent of, or filing with, any court, governmental body, regulatory agency, self-regulatory organization, or stock exchange or market or the stockholders of the Company is required to be obtained or made by the Company for (1) the execution, delivery and performance by the Company of this Agreement, the Registration Rights Agreement, the Warrants, the Transfer Agent Agreement and the other agreements and instruments contemplated hereby and thereby, (2) the execution, filing and performance by the Company of the Certificate of Designations, (3) the issuance and sale of the Preferred Shares and the issuance of the Warrants as contemplated by this Agreement and (4) the issuance of Common Shares on conversion of the Preferred Shares or upon the exercise of the Warrants, other than (v) the filing of the notification for listing of additional shares with the Nasdaq pursuant to Section 4(e), (w) the filing of the Certificate of Designations with the Secretary of State of the State of Nevada, (x) registration of the resale of the Common Shares under the 1933 Act as contemplated by the Registration Rights Agreement, (y) as may be required under applicable state securities or "blue sky" laws and (z) filing of one or more Forms D with respect to the Securities as required under Regulation D.

(g) INFORMATION PROVIDED. The information referred to in Section 2(e) of this Agreement and the Company's press release, dated August 17, 1999, entitled "Titan Inks \$12 Million In New Orders," does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading, it being understood that, for purposes of this Section 3(g), any statement contained in such information shall be deemed to be modified or superseded for purposes of this Section 3(g) to the extent that a statement in any document included in such information which was prepared or filed with the SEC on a later date modifies or replaces such statement, whether or not such later prepared or filed statement so states. The Company has not filed any reports with the SEC under the Securities Exchange Act of 1934, as amended (the "1934 Act"), since January 2, 1999 other than the SEC Reports.



(h) ABSENCE OF CERTAIN CHANGES. Since January 2, 1999, there has been no material adverse change and no material adverse development in the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiary, taken as a whole, except as disclosed in the SEC Reports. Except as permitted by the following sentence or as and to the extent disclosed, reflected or reserved against in the financial statements of the Company and the notes thereto included in the SEC Reports or on SCHEDULE 3(H) to this Agreement, neither the Company nor the Subsidiary has any material (individually or in the aggregate) liabilities, debts or obligations whether accrued, absolute, contingent or otherwise, and whether due or to become due. Subsequent to January 2, 1999, neither the Company nor the Subsidiary has incurred any liabilities, debts or obligations of any nature whatsoever which are individually or in the aggregate material to the Company and the Subsidiary taken as a whole, other than those incurred in the ordinary course of their respective businesses or disclosed in the SEC Reports.

(i) ABSENCE OF CERTAIN PROCEEDINGS. Except as disclosed in the SEC Reports or on SCHEDULE 3(I) to this Agreement, there is no action, suit, proceeding, inquiry or investigation before or by any court, arbitrator, public board or body or governmental agency (collectively, an "Action") pending or, to the knowledge of the Company or the Subsidiary, threatened against the Company or the Subsidiary, in any such case wherein an unfavorable decision, ruling or finding would have a material adverse effect on business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiary, taken as a whole, or the transactions contemplated by this Agreement or any of the documents contemplated hereby or which would adversely affect the validity or enforceability of, or the authority or ability of the Company to perform its obligations under, this Agreement or any of such other documents; neither the Company or the Subsidiary nor any director or officer thereof is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty; the Company does not have pending before the SEC any request for confidential treatment of information and to the best of the Company's knowledge no such request will be made by the Company prior to the time the Registration Statement relating to the Common Shares which is contemplated by the Registration Rights Agreement is first ordered effective by the SEC; and there has not been, and to the best of the Company's knowledge there is not pending or contemplated, any investigation by the SEC involving the Company or any current or former director or officer of the Company.

(j) PROPERTIES. The Company and the Subsidiary have good title to or leasehold interests in all property real and personal (tangible and intangible) and other assets owned by them, free and clear of all security interests, charges, mortgages, liens or other encumbrances, except with respect to capital lease obligations and protective filings by lessors and except such as are described in the SEC Reports or such as do not materially interfere with the use of such property made, or proposed to be made, by the Company or the Subsidiary. The leases, licenses or other contracts or instruments under which the Company and the Subsidiary lease, hold or are entitled to use any property, real or personal, are valid, subsisting and enforceable with only such exceptions as do not materially interfere with the use of such property made, or proposed to be made, by the Company or the Subsidiary. Neither the Company nor the Subsidiary

has received notice of any material violation of any applicable law, ordinance, regulation, order or requirement relating to its owned or leased properties. The Company does not have any knowledge of, and the Company has not given or received any notice of, any pending conflicts with or infringement of the rights of others with respect to any Company Proprietary Rights (as defined herein) or with respect to any license of Company Proprietary Rights. Except as set forth on SCHEDULE 3(J) to this Agreement, no action, suit, arbitration, or legal, administrative or other proceeding or investigation is pending, or, to the best knowledge of the Company, threatened, which involves any Company Proprietary Rights. Neither the Company nor the Subsidiary is subject to any judgment, order, writ, injunction or decree of any court or any federal, state, local, foreign or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or any arbitrator, or has entered into or is a party to any contract which restricts or impairs the use of any such Company Proprietary Rights in a manner which would have a material adverse effect on the use by the Company or the Subsidiary of any of the Company Proprietary Rights. To the best knowledge of the Company, no Company Proprietary Rights and no services or products sold by the Company or the Subsidiary, conflict with or infringe upon any proprietary rights available to any third party. Neither the Company nor the Subsidiary has received written notice of any pending conflict with or infringement upon such third-party proprietary rights. Neither the Company nor the Subsidiary has entered into any consent, indemnification, forbearance to sue or settlement agreement with respect to Company Proprietary Rights other than in the ordinary course of business. No claims have been asserted by any person with respect to the validity of the Company's or the Subsidiary's ownership or right to use the Company Proprietary Rights and, to the best knowledge of the Company, there is no reasonable basis for any such claim to be successful. To the best knowledge of the Company, the Company Proprietary Rights are valid and enforceable. No registration relating to the Company Proprietary Rights has lapsed, expired or been abandoned or canceled or is the subject of cancellation or other adversarial proceedings, and all applications therefor are pending and are in good standing, except for such lapses, expirations, abandonments, cancellations, adversarial proceedings or failures to be in good standing which would not, singly or in the aggregate, have a material adverse effect on the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiary, taken as a whole. The Company and the Subsidiary have complied, in all material respects, with their respective contractual obligations relating to the protection of the Company Proprietary Rights used pursuant to licenses. To the best knowledge of the Company, no person is infringing on or violating the Company Proprietary Rights. As used herein, the term "Company Proprietary Rights" means all patents, patent applications, inventions, trademarks, trade names, applications for registration of trademarks, service marks, service mark applications, domain names, copyrights, know-how, manufacturing processes, formulae, trade secrets, licenses and rights in any thereof and any other intangible property and assets which are material to the businesses of the Company and the Subsidiary as now conducted, as proposed to be conducted or as described in this Agreement.

(k) LABOR RELATIONS. Except as disclosed in the SEC Reports, no material labor problem exists or, to the knowledge of the Company or the Subsidiary, is imminent with respect to any of the employees of the Company or the Subsidiary.

(l) SEC FILINGS. The Company has timely filed (subject to extensions granted pursuant to Rule 12b-25 under the 1934 Act) all required forms, reports

and other documents required to be filed by the Company with the SEC under the 1934 Act. All of such forms, reports and other documents complied, when filed, in all material respects, with all applicable requirements of the 1933 Act and the 1934 Act.

(m) ABSENCE OF BROKERS, FINDERS, ETC. No broker, finder or similar person is entitled to any commission, fee or other compensation by reason of the transactions contemplated by this Agreement other than Reedland Capital Partners and the Company shall pay, and indemnify and hold harmless the Buyer from, any claim made against the Buyer by such entity or any other person for any such commission, fee or other compensation.

(n) NO SOLICITATION. No form of general solicitation or general advertising was used by the Company or, to the best of its knowledge, any other person acting on behalf of the Company, in respect of or in connection with the offer and sale of the Securities. Neither the Company nor, to its knowledge, any person acting on behalf of the Company has, either directly or indirectly, sold or offered for sale to any person any of the Preferred Shares or the Warrants or, within the six months prior to the date hereof, any other similar security of the Company except as contemplated by this Agreement and the Other Subscription Agreement; and neither the Company nor any person authorized to act on its behalf will sell or offer for sale any shares of Preferred Stock or shares of Common Stock or Warrants, or solicit any offers to buy any shares of Preferred Stock or shares of Common Stock or Warrants, in each case so as thereby to cause the issuance or sale of any of the Shares or the issuance of the Warrants to be in violation of Section 5 of the 1933 Act.

(o) CERTAIN ISSUANCES OF SECURITIES. The Company has not issued any shares of Common Stock or shares of any series of preferred stock or other securities convertible into, exchangeable for or otherwise entitling the holder to acquire shares of Common Stock which are subject to Rule 4310(c)(25)(H) of the Nasdaq as in effect from time to time or any successor, replacement or similar provision thereof or of any other market on which the Common Stock is listed for trading (the "Stockholder Approval Rule") and which would be integrated with the sale of the Preferred Shares to the Buyer or the issuance of Common Shares upon conversion thereof or upon exercise of the Warrants for purposes of the Stockholder Approval Rule.

(p) ABSENCE OF RIGHTS AGREEMENT. The Company has not adopted a shareholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company.

#### 4. CERTAIN COVENANTS AND ACKNOWLEDGMENTS.

(a) TRANSFER RESTRICTIONS. The Company and the Buyer acknowledge and agree that (1) the Preferred Shares and the Warrants have not been and are not being registered under the provisions of the 1933 Act and, except as provided in the Registration Rights Agreement with respect to the resale of the Common Shares, the Common Shares have not been and are not being registered for resale under the 1933 Act, and the Securities may not be transferred unless (A) subsequently registered for resale thereunder or (B) the Buyer shall have delivered to the Company an opinion of counsel, reasonably satisfactory in form, scope and substance to the Company, to the effect that the Securities to be sold or

transferred may be sold or transferred pursuant to an exemption from such registration; (2) any resale of the Securities made in reliance on Rule 144 promulgated under the 1933 Act may be made only in accordance with the terms of said Rule and further, if said Rule is not applicable, any such resale of Securities under circumstances in which the seller, or the person through whom the sale is made, may be deemed to be an underwriter, as that term is used in the 1933 Act, may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (3) neither the Company nor any other person is under any obligation to register the Securities (other than pursuant to the Registration Rights Agreement) under the 1933 Act or to comply with the terms and conditions of any exemption thereunder (other than pursuant to Section 4(d) hereof and pursuant to the Registration Rights Agreement).

(b) RESTRICTIVE LEGEND. (1) The Buyer acknowledges and agrees that the Preferred Shares shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the Preferred Shares):

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended. The securities have been acquired for investment and may not be sold, transferred or assigned in the absence of an effective registration statement for the securities under the Securities Act of 1933, as amended, or an opinion of counsel reasonably acceptable to the Company that registration is not required under said Act.

The number of shares constituting the portion of the Maximum Share Amount, as defined in the Certificate of Designations of the Series A Convertible Preferred Stock (the "Certificate of Designations"), allocated to the shares represented by this certificate for purposes of conversion thereof is 2,572,050.

Section 10(b)(3)(a) of the Certificate of Designations permits a holder of the securities represented by this certificate to convert such securities in accordance with the Certificate of Designations without being required to surrender this certificate to the Company unless all of the securities represented hereby are so converted. Consequently, following conversion of any of the securities represented by this certificate, the number of shares represented by this certificate may be less than the number of shares stated hereon. Upon request of any proposed transferee of this certificate, the Company will provide confirmation of the number of shares evidenced by this certificate.

(2) The Buyer further acknowledges and agrees that the Warrants shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the Warrants):

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended. The securities have been acquired for investment and may not be resold, transferred or assigned in the absence of an effective registration statement for the securities under the Securities Act of 1933, as amended, or an opinion of counsel reasonably acceptable to the Company that registration is not required under said Act.

(3) The Buyer further acknowledges and agrees that until such time as the Common Shares have been registered for resale under the 1933 Act as contemplated by the Registration Rights Agreement, the certificates for the Common Shares may bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for the Common Shares):

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended. The securities have been acquired for investment and may not be resold, transferred or assigned in the absence of an effective registration statement for the securities under the Securities Act of 1933, as amended, or an opinion of counsel reasonably acceptable to the Company that registration is not required under said Act.

(4) Once the Registration Statement required to be filed by the Company pursuant to Section 2 of the Registration Rights Agreement has been declared effective, thereafter (1) upon request of the Buyer the Company will substitute certificates without restrictive legend for certificates for any Common Shares issued prior to the date such Registration Statement is declared effective by the SEC which bear such restrictive legend and remove any stop-transfer restriction relating thereto promptly, but in no event later than three Trading Days (as defined in the Certificate of Designations) after surrender of such certificates by the Buyer and (2) the Company shall not place any restrictive legend on certificates for Common Shares issued on conversion of the Preferred Shares or upon exercise of the Warrants or impose any stop-transfer restriction thereon.

(c) REGISTRATION RIGHTS AGREEMENT. The parties hereto agree to enter into the Registration Rights Agreement in the form attached hereto as ANNEX IV on or before the Closing Date.

(d) FORM D. The Company agrees to file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof to the Buyer promptly after such filing. The Buyer agrees to cooperate with the Company in connection with such filing and, upon request of the Company, to provide all information relating to the Buyer reasonably required for such filing.

(e) AUTHORIZATION FOR TRADING; REPORTING STATUS. On or before the Closing Date, the Company shall file a notification for listing of additional shares with the Nasdaq relating to the Common Shares and shall provide evidence of such filing to the Buyer. So long as the Buyer beneficially owns any of the Preferred Shares, the Warrants or the Common Shares, the Company shall file all reports required to be filed with the SEC pursuant to Section 13 or 15(d) of the 1934 Act and, except for a sale of the Company, merger or other business combination effected in accordance with the Certificate of Designations and the Warrants, the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would permit such termination.

(f) USE OF PROCEEDS. Neither the Company nor the Subsidiary owns or has any present intention of acquiring any "margin stock" as defined in Regulation G (12

CFR Part 207) of the Board of Governors of the Federal Reserve System ("margin stock"). The proceeds of sale of the Preferred Shares will be used for general working capital purposes and in the operation of the Company's business. None of such proceeds will be used, directly or indirectly (1) to make any loan to or investment in any other person (other than financing the Company's subsidiaries in the ordinary course of business or in connection with an acquisition of another corporation or business or assets of another corporation or business) or (2) for the purpose, whether immediate, incidental or ultimate, of purchasing or carrying any margin stock or for the purpose of maintaining, reducing or retiring any indebtedness which was originally incurred to purchase or carry any stock that is currently a margin stock or for any other purpose which might constitute the transactions contemplated by this Agreement a "purpose credit" within the meaning of such Regulation G. Neither the Company nor any agent acting on its behalf has taken or will take any action which might cause this Agreement or the transactions contemplated hereby to violate Regulation G, Regulation T or any other regulation of the Board of Governors of the Federal Reserve System or to violate the 1934 Act, in each case as in effect now or as the same may hereafter be in effect.

(g) BLUE SKY LAWS. On or before the Closing Date, the Company shall take such action as shall be necessary to qualify, or to obtain an exemption for, the Preferred Shares for sale to the Buyer and the Warrants for issuance to the Buyer pursuant to this Agreement and the Common Shares for issuance to the Buyer on conversion of the Preferred Shares and exercise of the Warrants under such of the securities or "blue sky" laws of jurisdictions as shall be applicable to the sale of the Preferred Shares and the issuance of the Warrants pursuant to this Agreement and the issuance to the Buyer of Common Shares on conversion of the Preferred Shares and exercise of the Warrants. The Company shall furnish copies of all filings, applications, orders and grants or confirmations of exemptions relating to such securities or "blue sky" laws on or prior to the Closing Date.

(h) CERTAIN EXPENSES. Whether or not the closing occurs, the Company shall pay or reimburse the Buyer for all reasonable expenses (including, without limitation, legal fees and expenses of counsel to the Buyer and the Buyer's due diligence expenses) not in excess of \$25,000 incurred by the Buyer in connection with this Agreement, the Registration Rights Agreement (including review of the Registration Statement) and the transactions contemplated hereby and thereby. In addition, the Company shall pay on demand all expenses incurred by the Buyer, including reasonable attorneys' fees and expenses, as a consequence of, or in connection with (1) the negotiation, preparation or execution of any amendment, modification or waiver of this Agreement, the Certificate of Designations, the Registration Rights Agreement, the Warrants, the Transfer Agent Agreement and the other agreements and instruments contemplated hereby and thereby requested by the Company, (2) any default or breach of any of the Company's obligations set forth in any of such agreements or instruments and (3) the enforcement or restructuring of any right of, including the collection of any payments due, the Buyer under any of such agreements or instruments, including any action or proceeding relating to such enforcement, or any order, injunction or other process seeking to restrain the Company from paying any amount due the Buyer, in which the Buyer prevails.

(i) CERTAIN ISSUANCES OF SECURITIES. (1) Unless the Company obtains the Stockholder Approval (as defined in the Certificate of Designations) or a waiver thereof from the Nasdaq, the Company will not issue any shares of Common Stock or shares of any other series of preferred stock or other securities convertible

into, exchangeable for, or otherwise entitling the holder to acquire, shares of Common Stock which would be subject to the requirements of the Stockholder Approval Rule and which would be integrated with the sale of the Preferred Shares and issuance of the Warrants to the Buyer or the issuance of Common Shares upon conversion of the Preferred Shares or upon exercise of the Warrants for purposes of the Stockholder Approval Rule.

(2) During the period from the date of this Agreement to the later of (i) the date which is one year after the Closing Date and (ii) the date on which the Registration Statement shall have been effective with the SEC for 270 consecutive days, the Company shall not offer, sell, contract to sell or issue (or engage any person to assist the Company in taking any such action) (A) any security (whether debt or equity) with conversion or exchange terms similar in nature to the conversion rights of the Preferred Stock, (B) any equity securities or securities convertible into, exchangeable for or otherwise entitling the holder to acquire, any Common Stock at a price below the market price of the Common Stock on the date of such issuance (or below an average market price for a reasonable period prior to such issuance) or (C) any equity securities or securities which by their terms are convertible into, exchangeable for or otherwise entitle the holder to acquire, any Common Stock at a price below the market price of the Common Stock on the date of conversion, exchange or other exercise thereof (or below an average market price for a reasonable period prior to such conversion, exchange or other exercise) (collectively, "Equity Securities"); PROVIDED, HOWEVER, that nothing in this Section 4(i)(2) shall prohibit the Company from issuing securities (v) which are equity (not debt) securities issued in a single transaction for aggregate gross consideration of up to \$5,000,000 and which (i) are purchased for or are convertible into or are exercisable for shares of Common Stock at a fixed price not more than 20% below the market price of the Common Stock on the date of issuance (or below an average market price for a reasonable period prior to such issuance), and (ii) are not subject to any future adjustment related to changes in the market price of the Common Stock pursuant to which additional shares or other securities may be issued, cash payments become due, or the conversion or exercise price of any convertible security may be reduced, other than pursuant to customary antidilution provisions for stock splits and similar events, (w) pursuant to compensation plans or arrangements for employees, directors, officers, advisers or consultants of the Company and in accordance with the terms of such plans as in effect as of the date of this Agreement or as thereafter approved by the Board of Directors of the Company, (x) upon exercise of conversion, exchange, purchase or similar rights issued, granted or given by the Company and outstanding as of the date of this Agreement and disclosed in the SEC Reports or this Agreement, (y) pursuant to a public offering underwritten on a firm commitment basis registered under the 1933 Act or (z) as part of a transaction involving a strategic alliance, acquisition of stock or assets, merger, collaboration, joint venture, partnership or other similar arrangement of the Company with another corporation, partnership or other business entity which is engaged in a business similar to or related to the business of the Company, so long as in the case of this clause (z) the Board of Directors by resolution duly adopted (and a copy of which shall be furnished to the Buyer promptly after adoption) determines that such issuance is fair to the holders of each class and series of capital stock of the Company and to the Buyer in respect of its equity interest in the Company that is represented by the Preferred Shares and the Warrants.

(3) Subject to the restrictions in Sections 4(i)(1) and 4(i)(2), during the period from the date of execution and delivery of this Agreement to the date which is 180 days after the later of (i) the date which is one year after the Closing Date and (ii) the date on which the Registration Statement shall have been effective with the SEC for 270 consecutive days, the Company shall not offer, sell, contract to sell or issue (or engage any person to assist the Company in taking any such action) any Equity Securities without giving the Buyer the first right to acquire the Equity Securities on the same terms as the Equity Securities are to be offered to other investors; PROVIDED, HOWEVER, that this Section 4(i)(3) shall not apply to the offer or sale of Equity Securities by the Company in the transactions, and subject to the conditions, set forth in clauses (v), (w), (x), (y) and (z) of the proviso to the first sentence of Section 4(i)(2) above. The Company shall give notice to the Buyer of the detailed terms of the Equity Securities proposed to be issued and, promptly after being requested by the Buyer, such other information as reasonably requested by the Buyer. Such request by the Buyer shall be made not later than five Business Days after receipt of such notice from the Company. The Buyer may, by notice to the Company, exercise such right of first refusal at any time until the later of (x) ten Business Days after such notice from the Company to the Buyer and (y) five Business Days after the Company provides such additional information as shall have been requested by the Buyer.

(j) CERTAIN SELLING RESTRICTIONS. So long as the Company is in compliance in all material respects with its obligations to the Buyer under this Agreement, the Certificate of Designations, the Warrants and the Registration Rights Agreement, during the 20 consecutive Trading Days (as defined in the Certificate of Designations) immediately preceding the Initial Reset Date (as defined in the Certificate of Designations) and each Biannual Reset Date (as defined in the Certificate of Designations), the Buyer agrees on its behalf and on behalf of its Affiliates (as defined in the Certificate of Designations) that it will not (1) sell any shares of Common Stock on Nasdaq or any other market where the Common Stock is then listed for trading unless such sale is made at or above 130% of the Fixed Conversion Price (as defined in the Certificate of Designations) or (2) engage in any short sales or other hedging transactions relating to the Common Stock.

(k) TRANSACTIONS WITH AFFILIATES. Except as set forth on SCHEDULE 4(K) to this Agreement, so long as any shares of Preferred Stock are outstanding the Company will not, and will not permit any subsidiary of the Company, directly or indirectly, to pay any funds to or for the account of, make any investment (whether by acquisition of stock or indebtedness, by loan, advance, transfer of property, guarantee or other agreement to pay, purchase or service, directly or indirectly, any indebtedness, or otherwise) in, lease, sell, transfer or otherwise dispose of any assets, tangible or intangible, to, or participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement with, any Affiliate of the Company except on terms to the Company or such subsidiary no less favorable than terms that could be obtained by the Company or such subsidiary from a person that is not an Affiliate of the Company, as determined in good faith by the Board of Directors of the Company.

(l) BEST EFFORTS. Each of the parties shall use its best efforts timely to satisfy each of the conditions to the other party's obligations to sell and purchase the Preferred Shares set forth in Section 7 or 8, as the case may be, of this Agreement on or before the Closing Date.



## 5. TRANSFER AGENT AGREEMENT; CONVERSION PROCEDURE.

(a) TRANSFER AGENT AGREEMENT. Prior to the Closing Date, the Company will (1) execute and deliver the Transfer Agent Agreement in the form attached hereto as ANNEX V and thereby irrevocably instruct, Signature Stock Transfer, Inc., as Transfer Agent and Registrar (the "Transfer Agent"), to issue certificates for the Common Shares from time to time upon conversion of the Preferred Shares and exercise of the Warrants in such amounts as specified from time to time to the Transfer Agent in the Notices of Conversion surrendered in connection with such conversions and referred to in Section 5(b) of this Agreement and the Form of Subscription in the form attached to the Warrants and (2) appoint the Transfer Agent the conversion agent for the Preferred Stock and the exercise agent for the Warrants. The certificates for the Common Shares may bear the restrictive legend specified in Section 4(b) of this Agreement prior to registration of the resale of the Common Shares under the 1933 Act. The certificates for the Common Shares shall be registered in the name of the Buyer or its designee and in such denominations to be specified by the Buyer in connection with each conversion of Preferred Shares or exercise of the Warrants. The Company warrants that no instruction other than (x) such instructions referred to in this Section 5, (y) stop transfer instructions to give effect to Section 4(a) prior to registration of the resale of the Common Shares under the 1933 Act and (z) the instructions required by Section 3(n) of the Registration Rights Agreement will be given by the Company to the Transfer Agent and that the Common Shares shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement. Nothing in this Section 5(a) shall limit in any way the Buyer's obligations and agreement to comply with the registration requirements of the 1933 Act upon resale of the Common Shares. If the Buyer provides the Company with an opinion of counsel, reasonably satisfactory in form, scope and substance to the Company and its legal counsel, that registration of a resale by the Buyer of any of the Securities is not required under the 1933 Act, the Company shall permit the transfer of such Securities and, in the case of the Common Shares, in accordance with clause (1)(B) of Section 4(a) of this Agreement, promptly instruct the Transfer Agent to issue upon transfer one or more share certificates in such name and in such denominations as specified by the Buyer within three Business Days after receipt of such opinion. Nothing in this Section 5(a) shall limit the obligations of the Company under Section 3(n) of the Registration Rights Agreement.

(b) CONVERSION PROCEDURE. In connection with the exercise of conversion rights relating to the Preferred Shares, the Buyer or any subsequent holder of the Preferred Shares shall complete, sign and furnish to the Transfer Agent a Notice of Conversion of Series A Convertible Preferred Stock in the form attached hereto as ANNEX VI (a "Conversion Notice") and shall provide a copy thereof to the Company, which actions shall be deemed to satisfy all requirements of the Certificate of Designations.

## 6. CLOSING DATE.

Subject to the satisfaction or waiver of the conditions set forth in Sections 7 and 8, the date and time of the issuance and sale of the Preferred Shares and the issuance of the Warrants (the "Closing Date") shall be 12:00 noon, New York City time, on or before the date which is three Business Days after the date the Buyer has deposited the Purchase Price with the Escrow Agent in accordance with Section 1(b), or such other mutually agreed to time. The closing shall occur on the Closing Date at the Law Offices of Brian W Pusch, Penthouse Suite, 29 West 57th Street, New York, New York 10019.

7. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL AND ISSUE.

The Buyer understands that the Company's obligation to sell the Preferred Shares and issue the Warrants to the Buyer pursuant to this Agreement is conditioned upon the satisfaction of the following conditions precedent on or before the Closing Date (any or all of which may be waived by the Company in its sole discretion):

(a) The receipt and acceptance by the Company of this Agreement as evidenced by execution of this Agreement by the Company and delivery of an executed counterpart of this Agreement to the Buyer or its legal counsel;

(b) Delivery by the Buyer to the Escrow Agent of good funds as payment in full of an amount equal to the Purchase Price for the Preferred Shares in accordance with Section 1(b) hereof; and

(c) The accuracy on the Closing Date of the representations and warranties of the Buyer contained in this Agreement as if made on the Closing Date and the performance by the Buyer on or before the Closing Date of all covenants and agreements of the Buyer required to be performed on or before the Closing Date.

8. CONDITIONS TO THE BUYER'S OBLIGATION TO PURCHASE.

The Company understands that the Buyer's obligation to purchase the Preferred Shares and acquire the Warrants on the Closing Date is conditioned upon the satisfaction of the following conditions precedent on or before the Closing Date (any or all of which may be waived by the Buyer in its sole discretion):

(a) Delivery by the Company to the Escrow Agent of the certificates for the Preferred Shares and the Warrants in accordance with this Agreement;

(b) The accuracy on the Closing Date of the representations and warranties of the Company contained in this Agreement as if made on the Closing Date and the performance by the Company on or before the Closing Date of all covenants and agreements of the Company required to be performed on or before the Closing Date, and receipt by the Buyer of a certificate, dated the Closing Date, of the Chief Executive Officer of the Company confirming such matters and such other matters as the Buyer may reasonably request;

(c) The receipt by the Buyer of confirmation of the filing with the Secretary of State of the State of Nevada of the Certificate of Designations;

(d) The receipt by the Buyer of a certificate, dated the Closing Date, of the Secretary of the Company certifying (1) the Articles of Incorporation, as amended, and By-Laws of the Company as in effect on the Closing Date and (2) all resolutions of the Board of Directors (and committees thereof) of the Company relating to this Agreement and the transactions contemplated hereby;

(e) The Transfer Agent shall have executed and delivered the Transfer Agent Agreement in the form attached hereto as ANNEX V; and

(f) Receipt by the Buyer on the Closing Date of (i) an opinion of Snell & Wilmer L.L.P., counsel for the Company, dated the Closing Date, in form, scope and substance reasonably satisfactory to the Buyer, to the effect set forth in ANNEX VII attached hereto and (ii) an opinion of James, Driggs, Walch, Santoro, Kearney, Johnson & Thompson, Nevada counsel to the Company, dated the Closing Date, in form, scope and substance reasonably satisfactory to the Buyer, to the effect set forth in ANNEX VIII attached hereto.

#### 9. MISCELLANEOUS.

(a) GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona.

(b) COUNTERPARTS. This Agreement may be executed in counterparts and by the parties hereto on separate counterparts, all of which together shall constitute one and the same instrument. A facsimile transmission of this Agreement bearing a signature on behalf of a party hereto shall be legal and binding on such party. Although this Agreement is dated as of the date first set forth above, the actual date of execution and delivery of this Agreement by each party is the date set forth below such party's signature on the signature page hereof. Any reference in this Agreement or in any of the documents executed and delivered by the parties hereto in connection herewith to (1) the date of execution and delivery of this Agreement by the Buyer shall be deemed a reference to the date set forth below the Buyer's signature on the signature page hereof, (2) the date of execution and delivery of this Agreement by the Company shall be deemed a reference to the date set forth below the Company's signature on the signature page hereof and (3) the date of execution and delivery of this Agreement or the date of execution and delivery of this Agreement by the Buyer and the Company shall be deemed a reference to the later of the dates set forth below the signatures of the parties on the signature page hereof.

(c) HEADINGS, ETC. The headings, captions and footers of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) SEVERABILITY. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement or the validity or enforceability of this Agreement in any other jurisdiction.

(e) AMENDMENTS. No amendment, modification, waiver, discharge or termination of any provision of this Agreement nor consent to any departure by the Buyer or the Company therefrom shall in any event be effective unless the same shall be in writing and signed by the Company and the holders of a majority in interest of the outstanding shares of Preferred Stock, and then shall be effective only in the specific instance and for the purpose for which given. No course of dealing between the parties hereto shall operate as an amendment of this Agreement.

(f) WAIVERS. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, or any course of dealings between the parties, shall not operate as a waiver thereof or an amendment hereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or exercise of any other right or power.

(g) NOTICES. Any notices required or permitted to be given under the terms of this Agreement shall be delivered personally (which shall include telephone line facsimile transmission with answer back confirmation) or by courier and shall be effective upon receipt, in the case of the Company addressed to the Company at its address shown in the introductory paragraph of this Agreement, Attention: Chief Executive Officer (telephone line facsimile transmission number (602) 331-0941) or, in the case of the Buyer, at its address or telephone line facsimile transmission number shown on the signature page of this Agreement, with a copy to Genesee International, Inc., 10500 N.E. 8th Street, Suite 1920, Bellevue, Washington 98004-4332 (telephone line facsimile transmission number (425) 462-4645) or such other address or telephone line facsimile transmission number as a party shall have provided by notice to the other party in accordance with this provision. The Buyer hereby designates as its address for any notice required or permitted to be given to the Buyer pursuant to the Certificate of Designations the address shown on the signature page of this Agreement, with a copy to: Advantage Fund II Ltd., c/o Genesee International, Inc., 10500 N.E. 8th Street, Suite 1920, Bellevue, Washington 98004-4332 (facsimile number (425) 462-4645), until the Buyer shall designate another address for such purpose.

(h) ASSIGNMENT. Prior to the Closing Date, the Buyer may not assign its rights and obligations under this Agreement. Any transfer of the Preferred Shares or the Warrants by the Buyer after the Closing Date shall be made in accordance with Section 4(a) and shall involve at least 1,000 shares of Preferred Stock and Warrants to purchase at least 93,242 shares of Common Stock (unless a lesser number of shares of Preferred Stock or Warrants is then outstanding); PROVIDED, HOWEVER, that there shall be no limitation on the number of shares of Preferred Stock or the number of shares of Common Stock represented by Warrants which are transferable to Affiliates of the Buyer. After the Closing Date, the Buyer shall have the right to assign its rights and obligations under this Agreement in connection with any transfer of the Buyer's rights under the Registration Rights Agreement by compliance with the provisions of Section 9 of the Registration Rights Agreement.

(i) SURVIVAL OF REPRESENTATIONS AND WARRANTIES. The respective representations, warranties, covenants and agreements of the Buyer and the Company contained in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement shall survive the delivery of and payment for the Preferred Shares and shall remain in full force and effect regardless of any investigation made by or on behalf of them or any person controlling or advising any of them.

(j) ENTIRE AGREEMENT. This Agreement and its Schedules and Annexes set forth the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, with respect thereto.

(k) TERMINATION. Either party shall have the right to terminate this Agreement by giving notice to the other party at any time at or prior to the Closing Date if:

(1) the other party shall have failed, refused, or been unable at or prior to the date of such termination of this Agreement to perform any of its obligations hereunder;

(2) any other condition of the terminating party's obligations hereunder is not fulfilled; or

(3) the closing shall not have occurred on a Closing Date on or before September 17, 1999, other than solely by reason of a breach of this Agreement by the terminating party.

Any such termination shall be effective upon the giving of notice thereof by the terminating party. Upon such termination, neither party shall have any further obligation to the other party hereunder; PROVIDED, HOWEVER, that each party shall remain liable for any breach of this Agreement or the other documents contemplated hereby which occurred on or prior to the date of such termination.

(l) FURTHER ASSURANCES. Each party to this Agreement will perform any and all acts and execute any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

(m) PUBLIC STATEMENTS, PRESS RELEASES, ETC. The Company and the Buyer shall have the right to approve before issuance any press releases or any other public statements with respect to the transactions contemplated hereby; PROVIDED, HOWEVER, that the Company shall be entitled, without the prior approval of the Buyer, to make any press release or other public disclosure with respect to such transactions as is required by applicable law or Nasdaq regulation (although the Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release and shall be provided with a copy thereof).

(n) CONSTRUCTION. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Buyer and the Company by their respective officers or other representatives thereunto duly authorized on the respective dates set forth below.

NUMBER OF SHARES: 3,000

PRICE PER SHARE: \$1,000.00

AGGREGATE PURCHASE PRICE: \$3,000,000.00

ADVANTAGE FUND II LTD.

By: /s/

-----  
Name: Inter Caribbean Services Ltd.  
Title: Director

Date: September 17, 1999  
-----

Address: c/o CITCO  
Kaya Flamboyen 9  
Curacao, Netherlands Antilles

Facsimile No.: 011-599-9732-2008

TITAN MOTORCYCLE CO. OF AMERICA

By: /s/ Francis S. Keery

-----  
Name: Francis S. Keery  
Title: Chief Executive Officer

Date: September 15, 1999  
-----

SUBSCRIPTION AGREEMENT

DATED AS OF SEPTEMBER 15, 1999

BY AND BETWEEN

TITAN MOTORCYCLE CO. OF AMERICA  
AND  
KOCH INVESTMENT GROUP LIMITED

-----

SERIES A CONVERTIBLE PREFERRED STOCK  
AND  
COMMON STOCK PURCHASE WARRANTS

SUBSCRIPTION AGREEMENT

SERIES A CONVERTIBLE PREFERRED STOCK  
AND  
COMMON STOCK PURCHASE WARRANTS

TITAN MOTORCYCLE CO. OF AMERICA

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SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT, dated as of September 15, 1999, by and between TITAN MOTORCYCLE CO. OF AMERICA, a Nevada corporation (the "Company"), with headquarters located at 2222 West Peoria Avenue, Phoenix, Arizona 85029, and KOCH INVESTMENT GROUP LIMITED, a Delaware corporation (the "Buyer").

W I T N E S S E T H:

WHEREAS, the Buyer wishes to purchase, upon the terms and subject to the conditions of this Agreement, shares of non-voting, convertible preferred stock of the Company which will be convertible into shares of Common Stock, \$.001 par value (the "Common Stock"), of the Company and in connection therewith the Company is to issue to the Buyer warrants to purchase shares of Common Stock as provided in this Agreement; and

WHEREAS, the Company and the Buyer are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Rule 506 of Regulation D ("Regulation D") as promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "1933 Act");

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

1. AGREEMENT TO SUBSCRIBE; PURCHASE PRICE.

(a) SUBSCRIPTION. The Buyer hereby agrees to purchase from the Company the number of shares (the "Preferred Shares") of Series A Convertible Preferred Stock, \$.001 par value (the "Preferred Stock"), of the Company set forth on the signature page of this Agreement, having the terms and conditions as set forth in the form of the Certificate of Designations of the Series A Convertible Preferred Stock attached hereto as ANNEX I (the "Certificate of Designations") at the price per share and for the aggregate purchase price set forth on the signature page of this Agreement (the "Purchase Price"). In connection with the purchase of the Preferred Shares by the Buyer, the Company shall issue to the Buyer, at the closing on the Closing Date (as defined herein), Common Stock Purchase Warrants in the form attached hereto as ANNEX II (the "Warrants") to purchase the number of shares of Common Stock set forth therein (subject to adjustment after issuance of the Warrants as provided in the Warrants). The shares of Common Stock issuable upon exercise of the Warrants are referred to herein as the "Warrant Shares." The Warrant Shares and the shares of Common Stock issuable upon conversion of the Preferred Shares are referred to herein collectively as the "Common Shares." The Common Shares and the Preferred Shares are referred to herein collectively as the "Shares." The Shares and the Warrants are referred to herein collectively as the "Securities."

(b) FORM OF PAYMENT. The Buyer shall pay the Purchase Price for the Preferred Shares by delivering good funds in United States Dollars to the escrow

agent (the "Escrow Agent") identified in the Joint Escrow Instructions attached hereto as ANNEX III (the "Joint Escrow Instructions"). Such delivery of funds shall be made against delivery by the Company of the certificates for the Preferred Shares and the Warrants registered in the name of the Buyer or its nominee. Promptly following payment by the Buyer to the Escrow Agent of the Purchase Price, but in any event prior to the Closing Date, the Company shall deliver certificates for the Preferred Shares and the Warrants, registered in the name of the Buyer or its nominee, to the Escrow Agent. The certificates for the Preferred Shares shall be delivered by the Company to the Escrow Agent on a delivery against payment basis at the closing. By signing this Agreement, the Buyer and the Company each agrees to all of the terms and conditions of, and becomes a party to, the Joint Escrow Instructions, all of the provisions of which are incorporated herein by this reference as if set forth in full.

(c) METHOD OF PAYMENT. Payment of the Purchase Price for the Preferred Shares shall be made by wire transfer of funds to:

Citibank, N.A.  
153 East 53rd Street  
New York, New York 10043  
ABA#021000089

For credit to A/C#37179446  
For credit to the account of Brian W. Pusch Attorney Escrow Account  
Reference: Koch/Titan

Not later than 4:00 p.m., New York City time, on the date which is two Business Days after the Company shall have accepted this Agreement and returned a signed counterpart of this Agreement to the Buyer or its legal counsel, the Buyer shall deposit with the Escrow Agent an amount equal to the Purchase Price. As used in this Agreement, the term "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

## 2. BUYER REPRESENTATIONS, WARRANTIES, ETC.

The Buyer represents and warrants to, and covenants and agrees with, the Company as follows:

(a) PURCHASE FOR INVESTMENT. The Buyer is purchasing the Preferred Shares and acquiring the Warrants, and will acquire the Common Shares upon conversion of the Preferred Shares or exercise of the Warrants, for its own account for investment only and not with a view towards the public sale or distribution thereof;

(b) ACCREDITED INVESTOR. The Buyer is an "accredited investor" as that term is defined in Rule 501 of the General Rules and Regulations under the 1933 Act by reason of Rule 501(a)(3);

(c) REOFFERS AND RESALES. All subsequent offers and sales of the Securities by the Buyer shall be made pursuant to registration of the Securities being offered and sold under the 1933 Act or pursuant to an exemption from registration;

(d) COMPANY RELIANCE. The Buyer understands that the Preferred Shares are being offered and sold, the Warrants are being issued, and the Common Shares are being offered, in each case to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of the Buyer to acquire the Preferred Shares and the Warrants and to receive an offer of the Common Shares;

(e) INFORMATION PROVIDED. The Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Preferred Shares and the issuance of the Warrants and the offer of the Common Shares which have been requested by the Buyer; the Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company and have received satisfactory answers to any such inquiries; without limiting the generality of the foregoing, the Buyer has had the opportunity to obtain and to review the Company's (1) Annual Report on Form 10-KSB for the fiscal year ended January 2, 1999, as amended by Amendment No. 1 thereto on Form 10-KSB/A (the "1998 10-K"), (2) Quarterly Reports on Form 10-QSB for the fiscal quarters ended April 3, 1999 and July 3, 1999, (3) Current Reports on Form 8-K, dated December 28, 1998 and January 8, 1999 and (4) definitive proxy statement for the Company's 1999 Annual Meeting of Shareholders held on May 12, 1999, in each case as filed with the SEC (collectively, the "SEC Reports"); and the Buyer understands that its investment in the Shares involves a high degree of risk;

(f) ABSENCE OF APPROVALS. The Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Shares; and

(g) SUBSCRIPTION AGREEMENT. This Agreement, the Registration Rights Agreement, in the form attached hereto as ANNEX IV (the "Registration Rights Agreement"), and the Transfer Agent Agreement, in the form attached hereto as ANNEX V (the "Transfer Agent Agreement"), have been duly and validly authorized by the Buyer, this Agreement has been duly executed and delivered by the Buyer, and this Agreement is, and the Registration Rights Agreement and the Transfer Agent Agreement, when executed and delivered by the Buyer, will be, valid and binding agreements of the Buyer enforceable in accordance with their respective terms, subject as to enforceability to general principles of equity and to bankruptcy, insolvency, moratorium and other similar laws affecting the enforcement of creditors' rights generally.

(h) ABSENCE OF BROKERS, FINDERS, ETC. No broker, finder or similar person engaged by the Buyer is entitled to any commission, fee or other compensation in connection with the transactions contemplated by this Agreement and the Buyer shall pay, and indemnify and hold harmless the Company from, any claim made against the Company by any such person for any such commission, fee or other compensation.

### 3. COMPANY REPRESENTATIONS, WARRANTIES, ETC.

The Company represents and warrants to, and covenants and agrees with, the Buyer that:

(a) ORGANIZATION AND AUTHORITY. Each of the Company and its subsidiary, Titan Motorcycle GmbH, a corporation organized under the laws of Germany (the "Subsidiary"), is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and has all requisite corporate power and authority to (i) own, lease and operate its properties and to carry on its business as now being conducted, and (ii) to execute, deliver and perform its obligations under this Agreement, the Certificate of Designations, the Warrants, the Registration Rights Agreement, the Transfer Agent Agreement, and the other agreements to be executed and delivered by the Company in connection herewith, and to consummate the transactions contemplated hereby and thereby. Each of the Company and the Subsidiary is duly qualified to do business as a foreign corporation and is in good standing in all jurisdictions wherein such qualification is necessary and where failure so to qualify could have a material adverse effect on the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiary, taken as a whole. The Company has no subsidiaries or equity investment in any person other than the Subsidiary.

(b) CAPITALIZATION. The authorized capital stock of the Company consists of (a) 90,000,000 shares of Common Stock of which 17,147,333 shares were outstanding on September 14, 1999, all of which are fully paid and nonassessable; and (b) 10,000,000 shares of Preferred Stock, \$.001 par value, none of which are outstanding, and 4,000 shares of which will be designated as Series A Convertible Preferred Stock and will be issued pursuant to this Agreement and the other subscription agreement for the purchase of shares of Preferred Stock and the acquisition of common stock purchase warrants being entered into in connection herewith (the "Other Subscription Agreement"); and on the Closing Date there will be (x) no material increase from September 14, 1999 in the number of shares of Common Stock outstanding and (y) no issuances of preferred stock except as issued pursuant to this Agreement and the Other Subscription Agreement. As of September 14, 1999, the Company had outstanding options, warrants and similar rights entitling the holders to purchase 1,143,000 shares of Common Stock. Other than as set forth in the preceding sentence and on SCHEDULE 3(B) to this Agreement, the Company does not have outstanding any material amount of securities (or obligations to issue any such securities) convertible into, exchangeable for or otherwise entitling the holders thereof to acquire shares of Common Stock, except as disclosed in the SEC Reports. The Company has duly reserved from its authorized and unissued shares of Common Stock the full number of shares required for (a) all options, warrants, convertible securities and other rights to acquire shares of Common Stock which are outstanding and (b) all shares of Common Stock and options and other rights to acquire shares of Common Stock which may be issued or granted under the stock option and similar plans which have been adopted by the Company or the Subsidiary. No antidilution or similar adjustment affecting any outstanding class or series of securities will arise by reason of the issuance or conversion of the Preferred Shares or the issuance or exercise of the Warrants or the issuance or conversion of the shares of Preferred Stock and the issuance or exercise of the warrants to be issued pursuant to the Other Subscription Agreement. The outstanding shares of Common Stock and outstanding options, warrants and other securities convertible into, exchangeable for or otherwise

entitling the holder thereof to acquire shares of Common Stock have been duly authorized and validly issued. None of such outstanding shares of Common Stock, options, warrants and other securities has been issued in violation of the preemptive rights of any securityholder of the Company. The offers and sales of the outstanding shares of Common Stock and such options, warrants and other securities were at all relevant times either registered under the 1933 Act and applicable state securities laws or exempt from such requirements. No holder of any of the Company's securities has any rights, "demand," "piggy-back" or otherwise, to have such securities registered by reason of the intention to file, filing or effectiveness of the Registration Statement (as defined in the Registration Rights Agreement).

(c) CONCERNING THE SHARES AND THE COMMON STOCK. The Shares have been duly authorized. The Preferred Shares, when issued and paid for in accordance with this Agreement, and the Common Shares, when issued upon conversion of the Preferred Shares or upon exercise of the Warrants, as the case may be, will be duly and validly issued, fully paid and non-assessable and will not subject the holder thereof to personal liability by reason of being such holder. There are no preemptive or similar rights of any stockholder of the Company or any other person to acquire any of the Shares. The Company has duly reserved a sufficient number of shares of Common Stock for conversion of the shares of Preferred Stock and exercise of the Warrants and the warrants issuable in connection with the Other Subscription Agreement, and such shares shall remain so reserved (subject to reduction from time to time for shares of Common Stock issued upon conversion of shares of Preferred Stock or redemption or other permitted retirement of shares of Preferred Stock), and the Company shall from time to time reserve such additional shares of Common Stock as shall be required to be reserved pursuant to the Certificate of Designations, as long as the Preferred Stock is convertible, and pursuant to the Warrants, as long as the Warrants are exercisable. The Common Stock is listed for trading on the Nasdaq SmallCap Market ("Nasdaq") and (1) the Company and the Common Stock meet the criteria for continued listing and trading on Nasdaq; (2) the Company has not been notified since December 1, 1998 by Nasdaq of any failure or potential failure to meet the criteria for continued listing and trading on Nasdaq and (3) no suspension of trading in the Common Stock is in effect. The Company knows of no reason that the Common Shares will not be eligible for listing on Nasdaq.

(d) SUBSCRIPTION AGREEMENT AND OTHER TRANSACTION DOCUMENTS. This Agreement, the Certificate of Designations, the Registration Rights Agreement, the Warrants and the Transfer Agent Agreement and the other agreements and instruments contemplated hereby and thereby have been duly and validly authorized by the Company, this Agreement has been duly executed and delivered by the Company and this Agreement is, and the Registration Rights Agreement, the Warrants and the Transfer Agent Agreement and such other agreements, when executed and delivered by the Company, will be, valid and binding obligations of the Company enforceable in accordance with their respective terms, subject as to enforceability to general principles of equity and to bankruptcy, insolvency, moratorium and other similar laws affecting the enforcement of creditors' rights generally.

(e) NON-CONTRAVENTION. The execution and delivery by the Company of this Agreement and the other documents contemplated by this Agreement and the consummation by the Company of the issuance of the Preferred Shares and the Warrants as contemplated by this Agreement, and the other transactions

contemplated by this Agreement, the Certificate of Designations, the Registration Rights Agreement, the Warrants and the Transfer Agent Agreement do not and will not, with or without the giving of notice or the lapse of time, or both (i) result in any violation of any terms of the Articles of Incorporation, as amended, or By-laws of the Company or the Subsidiary, (ii) conflict with or result in a breach by the Company or the Subsidiary of any of the terms or provisions of, or constitute a default under, or result in the modification, amendment, termination or cancellation of, result in the acceleration of any obligation of the Company or the Subsidiary under, or result in the creation or imposition of any lien, security interest, charge or encumbrance upon any of the properties or assets of the Company or the Subsidiary pursuant to, any indenture, mortgage, deed of trust or other agreement or instrument to which the Company or the Subsidiary is a party or by which the Company or the Subsidiary or any of their respective properties or assets is bound or affected, except for such matters as to which consents have been obtained, (iii) violate or contravene any applicable law, rule or regulation or any applicable decree, judgment or order of any court, United States federal or state regulatory body, administrative agency or other governmental body having jurisdiction over the Company or the Subsidiary or any of their respective properties or assets or (iv) have any material adverse effect on any permit, certification, registration, approval, consent, license or franchise necessary for the Company or the Subsidiary to own or lease and operate any of their respective properties or to conduct any of their respective businesses or the ability of the Company or the Subsidiary to make use thereof.

(f) APPROVALS. No authorization, approval or consent of, or filing with, any court, governmental body, regulatory agency, self-regulatory organization, or stock exchange or market or the stockholders of the Company is required to be obtained or made by the Company for (1) the execution, delivery and performance by the Company of this Agreement, the Registration Rights Agreement, the Warrants, the Transfer Agent Agreement and the other agreements and instruments contemplated hereby and thereby, (2) the execution, filing and performance by the Company of the Certificate of Designations, (3) the issuance and sale of the Preferred Shares and the issuance of the Warrants as contemplated by this Agreement and (4) the issuance of Common Shares on conversion of the Preferred Shares or upon the exercise of the Warrants, other than (v) the filing of the notification for listing of additional shares with the Nasdaq pursuant to Section 4(e), (w) the filing of the Certificate of Designations with the Secretary of State of the State of Nevada, (x) registration of the resale of the Common Shares under the 1933 Act as contemplated by the Registration Rights Agreement, (y) as may be required under applicable state securities or "blue sky" laws and (z) filing of one or more Forms D with respect to the Securities as required under Regulation D.

(g) INFORMATION PROVIDED. The information referred to in Section 2(e) of this Agreement and the Company's press release, dated August 17, 1999, entitled "Titan Inks \$12 Million In New Orders," does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading, it being understood that, for purposes of this Section 3(g), any statement contained in such information shall be deemed to be modified or superseded for purposes of this Section 3(g) to the extent that a statement in any document included in such information which was prepared or filed with the SEC on a later date modifies or replaces such statement, whether or not such later prepared or filed statement so states. The Company has not filed any reports with the SEC under the Securities Exchange Act of 1934, as amended (the "1934 Act"), since January 2, 1999 other than the SEC Reports.

(h) ABSENCE OF CERTAIN CHANGES. Since January 2, 1999, there has been no material adverse change and no material adverse development in the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiary, taken as a whole, except as disclosed in the SEC Reports. Except as permitted by the following sentence or as and to the extent disclosed, reflected or reserved against in the financial statements of the Company and the notes thereto included in the SEC Reports or on SCHEDULE 3(H) to this Agreement, neither the Company nor the Subsidiary has any material (individually or in the aggregate) liabilities, debts or obligations whether accrued, absolute, contingent or otherwise, and whether due or to become due. Subsequent to January 2, 1999, neither the Company nor the Subsidiary has incurred any liabilities, debts or obligations of any nature whatsoever which are individually or in the aggregate material to the Company and the Subsidiary taken as a whole, other than those incurred in the ordinary course of their respective businesses or disclosed in the SEC Reports.

(i) ABSENCE OF CERTAIN PROCEEDINGS. Except as disclosed in the SEC Reports or on SCHEDULE 3(I) to this Agreement, there is no action, suit, proceeding, inquiry or investigation before or by any court, arbitrator, public board or body or governmental agency (collectively, an "Action") pending or, to the knowledge of the Company or the Subsidiary, threatened against the Company or the Subsidiary, in any such case wherein an unfavorable decision, ruling or finding would have a material adverse effect on business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiary, taken as a whole, or the transactions contemplated by this Agreement or any of the documents contemplated hereby or which would adversely affect the validity or enforceability of, or the authority or ability of the Company to perform its obligations under, this Agreement or any of such other documents; neither the Company or the Subsidiary nor any director or officer thereof is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty; the Company does not have pending before the SEC any request for confidential treatment of information and to the best of the Company's knowledge no such request will be made by the Company prior to the time the Registration Statement relating to the Common Shares which is contemplated by the Registration Rights Agreement is first ordered effective by the SEC; and there has not been, and to the best of the Company's knowledge there is not pending or contemplated, any investigation by the SEC involving the Company or any current or former director or officer of the Company.

(j) PROPERTIES. The Company and the Subsidiary have good title to or leasehold interests in all property real and personal (tangible and intangible) and other assets owned by them, free and clear of all security interests, charges, mortgages, liens or other encumbrances, except with respect to capital lease obligations and protective filings by lessors and except such as are described in the SEC Reports or such as do not materially interfere with the use of such property made, or proposed to be made, by the Company or the Subsidiary. The leases, licenses or other contracts or instruments under which the Company and the Subsidiary lease, hold or are entitled to use any property, real or personal, are valid, subsisting and enforceable with only such exceptions as do not materially interfere with the use of such property made, or proposed to be made, by the Company or the Subsidiary. Neither the Company nor the Subsidiary



has received notice of any material violation of any applicable law, ordinance, regulation, order or requirement relating to its owned or leased properties. The Company does not have any knowledge of, and the Company has not given or received any notice of, any pending conflicts with or infringement of the rights of others with respect to any Company Proprietary Rights (as defined herein) or with respect to any license of Company Proprietary Rights. Except as set forth on SCHEDULE 3(J) to this Agreement, no action, suit, arbitration, or legal, administrative or other proceeding or investigation is pending, or, to the best knowledge of the Company, threatened, which involves any Company Proprietary Rights. Neither the Company nor the Subsidiary is subject to any judgment, order, writ, injunction or decree of any court or any federal, state, local, foreign or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or any arbitrator, or has entered into or is a party to any contract which restricts or impairs the use of any such Company Proprietary Rights in a manner which would have a material adverse effect on the use by the Company or the Subsidiary of any of the Company Proprietary Rights. To the best knowledge of the Company, no Company Proprietary Rights and no services or products sold by the Company or the Subsidiary, conflict with or infringe upon any proprietary rights available to any third party. Neither the Company nor the Subsidiary has received written notice of any pending conflict with or infringement upon such third-party proprietary rights. Neither the Company nor the Subsidiary has entered into any consent, indemnification, forbearance to sue or settlement agreement with respect to Company Proprietary Rights other than in the ordinary course of business. No claims have been asserted by any person with respect to the validity of the Company's or the Subsidiary's ownership or right to use the Company Proprietary Rights and, to the best knowledge of the Company, there is no reasonable basis for any such claim to be successful. To the best knowledge of the Company, the Company Proprietary Rights are valid and enforceable. No registration relating to the Company Proprietary Rights has lapsed, expired or been abandoned or canceled or is the subject of cancellation or other adversarial proceedings, and all applications therefor are pending and are in good standing, except for such lapses, expirations, abandonments, cancellations, adversarial proceedings or failures to be in good standing which would not, singly or in the aggregate, have a material adverse effect on the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiary, taken as a whole. The Company and the Subsidiary have complied, in all material respects, with their respective contractual obligations relating to the protection of the Company Proprietary Rights used pursuant to licenses. To the best knowledge of the Company, no person is infringing on or violating the Company Proprietary Rights. As used herein, the term "Company Proprietary Rights" means all patents, patent applications, inventions, trademarks, trade names, applications for registration of trademarks, service marks, service mark applications, domain names, copyrights, know-how, manufacturing processes, formulae, trade secrets, licenses and rights in any thereof and any other intangible property and assets which are material to the businesses of the Company and the Subsidiary as now conducted, as proposed to be conducted or as described in this Agreement.

(k) LABOR RELATIONS. Except as disclosed in the SEC Reports, no material labor problem exists or, to the knowledge of the Company or the Subsidiary, is imminent with respect to any of the employees of the Company or the Subsidiary.

(l) SEC FILINGS. The Company has timely filed (subject to extensions granted pursuant to Rule 12b-25 under the 1934 Act) all required forms, reports

and other documents required to be filed by the Company with the SEC under the 1934 Act. All of such forms, reports and other documents complied, when filed, in all material respects, with all applicable requirements of the 1933 Act and the 1934 Act.

(m) ABSENCE OF BROKERS, FINDERS, ETC. No broker, finder or similar person is entitled to any commission, fee or other compensation by reason of the transactions contemplated by this Agreement other than Reedland Capital Partners and the Company shall pay, and indemnify and hold harmless the Buyer from, any claim made against the Buyer by such entity or any other person for any such commission, fee or other compensation.

(n) NO SOLICITATION. No form of general solicitation or general advertising was used by the Company or, to the best of its knowledge, any other person acting on behalf of the Company, in respect of or in connection with the offer and sale of the Securities. Neither the Company nor, to its knowledge, any person acting on behalf of the Company has, either directly or indirectly, sold or offered for sale to any person any of the Preferred Shares or the Warrants or, within the six months prior to the date hereof, any other similar security of the Company except as contemplated by this Agreement and the Other Subscription Agreement; and neither the Company nor any person authorized to act on its behalf will sell or offer for sale any shares of Preferred Stock or shares of Common Stock or Warrants, or solicit any offers to buy any shares of Preferred Stock or shares of Common Stock or Warrants, in each case so as thereby to cause the issuance or sale of any of the Shares or the issuance of the Warrants to be in violation of Section 5 of the 1933 Act.

(o) CERTAIN ISSUANCES OF SECURITIES. The Company has not issued any shares of Common Stock or shares of any series of preferred stock or other securities convertible into, exchangeable for or otherwise entitling the holder to acquire shares of Common Stock which are subject to Rule 4310(c)(25)(H) of the Nasdaq as in effect from time to time or any successor, replacement or similar provision thereof or of any other market on which the Common Stock is listed for trading (the "Stockholder Approval Rule") and which would be integrated with the sale of the Preferred Shares to the Buyer or the issuance of Common Shares upon conversion thereof or upon exercise of the Warrants for purposes of the Stockholder Approval Rule.

(p) ABSENCE OF RIGHTS AGREEMENT. The Company has not adopted a shareholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company.

#### 4. CERTAIN COVENANTS AND ACKNOWLEDGMENTS.

(a) TRANSFER RESTRICTIONS. The Company and the Buyer acknowledge and agree that (1) the Preferred Shares and the Warrants have not been and are not being registered under the provisions of the 1933 Act and, except as provided in the Registration Rights Agreement with respect to the resale of the Common Shares, the Common Shares have not been and are not being registered for resale under the 1933 Act, and the Securities may not be transferred unless (A) subsequently registered for resale thereunder or (B) the Buyer shall have delivered to the Company an opinion of counsel, reasonably satisfactory in form, scope and substance to the Company, to the effect that the Securities to be sold or

transferred may be sold or transferred pursuant to an exemption from such registration; (2) any resale of the Securities made in reliance on Rule 144 promulgated under the 1933 Act may be made only in accordance with the terms of said Rule and further, if said Rule is not applicable, any such resale of Securities under circumstances in which the seller, or the person through whom the sale is made, may be deemed to be an underwriter, as that term is used in the 1933 Act, may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (3) neither the Company nor any other person is under any obligation to register the Securities (other than pursuant to the Registration Rights Agreement) under the 1933 Act or to comply with the terms and conditions of any exemption thereunder (other than pursuant to Section 4(d) hereof and pursuant to the Registration Rights Agreement).

(b) RESTRICTIVE LEGEND. (1) The Buyer acknowledges and agrees that the Preferred Shares shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the Preferred Shares):

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended. The securities have been acquired for investment and may not be sold, transferred or assigned in the absence of an effective registration statement for the securities under the Securities Act of 1933, as amended, or an opinion of counsel reasonably acceptable to the Company that registration is not required under said Act.

The number of shares constituting the portion of the Maximum Share Amount, as defined in the Certificate of Designations of the Series A Convertible Preferred Stock (the "Certificate of Designations"), allocated to the shares represented by this certificate for purposes of conversion thereof is 857,350.

Section 10(b)(3)(a) of the Certificate of Designations permits a holder of the securities represented by this certificate to convert such securities in accordance with the Certificate of Designations without being required to surrender this certificate to the Company unless all of the securities represented hereby are so converted. Consequently, following conversion of any of the securities represented by this certificate, the number of shares represented by this certificate may be less than the number of shares stated hereon. Upon request of any proposed transferee of this certificate, the Company will provide confirmation of the number of shares evidenced by this certificate.

(2) The Buyer further acknowledges and agrees that the Warrants shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the Warrants):

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended. The securities have been acquired for investment and may not be resold, transferred or assigned in the absence of an effective registration statement for the securities under the Securities Act of 1933, as amended, or an opinion of counsel reasonably acceptable to the Company that registration is not required under said Act.

(3) The Buyer further acknowledges and agrees that until such time as the Common Shares have been registered for resale under the 1933 Act as contemplated by the Registration Rights Agreement, the certificates for the Common Shares may bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for the Common Shares):

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended. The securities have been acquired for investment and may not be resold, transferred or assigned in the absence of an effective registration statement for the securities under the Securities Act of 1933, as amended, or an opinion of counsel reasonably acceptable to the Company that registration is not required under said Act.

(4) Once the Registration Statement required to be filed by the Company pursuant to Section 2 of the Registration Rights Agreement has been declared effective, thereafter (1) upon request of the Buyer the Company will substitute certificates without restrictive legend for certificates for any Common Shares issued prior to the date such Registration Statement is declared effective by the SEC which bear such restrictive legend and remove any stop-transfer restriction relating thereto promptly, but in no event later than three Trading Days (as defined in the Certificate of Designations) after surrender of such certificates by the Buyer and (2) the Company shall not place any restrictive legend on certificates for Common Shares issued on conversion of the Preferred Shares or upon exercise of the Warrants or impose any stop-transfer restriction thereon.

(c) REGISTRATION RIGHTS AGREEMENT. The parties hereto agree to enter into the Registration Rights Agreement in the form attached hereto as ANNEX IV on or before the Closing Date.

(d) FORM D. The Company agrees to file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof to the Buyer promptly after such filing. The Buyer agrees to cooperate with the Company in connection with such filing and, upon request of the Company, to provide all information relating to the Buyer reasonably required for such filing.

(e) AUTHORIZATION FOR TRADING; REPORTING STATUS. On or before the Closing Date, the Company shall file a notification for listing of additional shares with the Nasdaq relating to the Common Shares and shall provide evidence of such filing to the Buyer. So long as the Buyer beneficially owns any of the Preferred Shares, the Warrants or the Common Shares, the Company shall file all reports required to be filed with the SEC pursuant to Section 13 or 15(d) of the 1934 Act and, except for a sale of the Company, merger or other business combination effected in accordance with the Certificate of Designations and the Warrants, the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would permit such termination.

(f) USE OF PROCEEDS. Neither the Company nor the Subsidiary owns or has any present intention of acquiring any "margin stock" as defined in Regulation G (12

CFR Part 207) of the Board of Governors of the Federal Reserve System ("margin stock"). The proceeds of sale of the Preferred Shares will be used for general working capital purposes and in the operation of the Company's business. None of such proceeds will be used, directly or indirectly (1) to make any loan to or investment in any other person (other than financing the Company's subsidiaries in the ordinary course of business or in connection with an acquisition of another corporation or business or assets of another corporation or business) or (2) for the purpose, whether immediate, incidental or ultimate, of purchasing or carrying any margin stock or for the purpose of maintaining, reducing or retiring any indebtedness which was originally incurred to purchase or carry any stock that is currently a margin stock or for any other purpose which might constitute the transactions contemplated by this Agreement a "purpose credit" within the meaning of such Regulation G. Neither the Company nor any agent acting on its behalf has taken or will take any action which might cause this Agreement or the transactions contemplated hereby to violate Regulation G, Regulation T or any other regulation of the Board of Governors of the Federal Reserve System or to violate the 1934 Act, in each case as in effect now or as the same may hereafter be in effect.

(g) BLUE SKY LAWS. On or before the Closing Date, the Company shall take such action as shall be necessary to qualify, or to obtain an exemption for, the Preferred Shares for sale to the Buyer and the Warrants for issuance to the Buyer pursuant to this Agreement and the Common Shares for issuance to the Buyer on conversion of the Preferred Shares and exercise of the Warrants under such of the securities or "blue sky" laws of jurisdictions as shall be applicable to the sale of the Preferred Shares and the issuance of the Warrants pursuant to this Agreement and the issuance to the Buyer of Common Shares on conversion of the Preferred Shares and exercise of the Warrants. The Company shall furnish copies of all filings, applications, orders and grants or confirmations of exemptions relating to such securities or "blue sky" laws on or prior to the Closing Date.

(h) CERTAIN EXPENSES. Whether or not the closing occurs, the Company shall pay or reimburse the Buyer for all reasonable expenses (including, without limitation, legal fees and expenses of counsel to the Buyer and the Buyer's due diligence expenses) not in excess of \$25,000 incurred by the Buyer in connection with this Agreement, the Registration Rights Agreement (including review of the Registration Statement) and the transactions contemplated hereby and thereby. In addition, the Company shall pay on demand all expenses incurred by the Buyer, including reasonable attorneys' fees and expenses, as a consequence of, or in connection with (1) the negotiation, preparation or execution of any amendment, modification or waiver of this Agreement, the Certificate of Designations, the Registration Rights Agreement, the Warrants, the Transfer Agent Agreement and the other agreements and instruments contemplated hereby and thereby requested by the Company, (2) any default or breach of any of the Company's obligations set forth in any of such agreements or instruments and (3) the enforcement or restructuring of any right of, including the collection of any payments due, the Buyer under any of such agreements or instruments, including any action or proceeding relating to such enforcement, or any order, injunction or other process seeking to restrain the Company from paying any amount due the Buyer, in which the Buyer prevails.

(i) CERTAIN ISSUANCES OF SECURITIES. (1) Unless the Company obtains the Stockholder Approval (as defined in the Certificate of Designations) or a waiver thereof from the Nasdaq, the Company will not issue any shares of Common Stock or shares of any other series of preferred stock or other securities convertible

into, exchangeable for, or otherwise entitling the holder to acquire, shares of Common Stock which would be subject to the requirements of the Stockholder Approval Rule and which would be integrated with the sale of the Preferred Shares and issuance of the Warrants to the Buyer or the issuance of Common Shares upon conversion of the Preferred Shares or upon exercise of the Warrants for purposes of the Stockholder Approval Rule.

(2) During the period from the date of this Agreement to the later of (i) the date which is one year after the Closing Date and (ii) the date on which the Registration Statement shall have been effective with the SEC for 270 consecutive days, the Company shall not offer, sell, contract to sell or issue (or engage any person to assist the Company in taking any such action) (A) any security (whether debt or equity) with conversion or exchange terms similar in nature to the conversion rights of the Preferred Stock, (B) any equity securities or securities convertible into, exchangeable for or otherwise entitling the holder to acquire, any Common Stock at a price below the market price of the Common Stock on the date of such issuance (or below an average market price for a reasonable period prior to such issuance) or (C) any equity securities or securities which by their terms are convertible into, exchangeable for or otherwise entitle the holder to acquire, any Common Stock at a price below the market price of the Common Stock on the date of conversion, exchange or other exercise thereof (or below an average market price for a reasonable period prior to such conversion, exchange or other exercise) (collectively, "Equity Securities"); PROVIDED, HOWEVER, that nothing in this Section 4(i)(2) shall prohibit the Company from issuing securities (v) which are equity (not debt) securities issued in a single transaction for aggregate gross consideration of up to \$5,000,000 and which (i) are purchased for or are convertible into or are exercisable for shares of Common Stock at a fixed price not more than 20% below the market price of the Common Stock on the date of issuance (or below an average market price for a reasonable period prior to such issuance), and (ii) are not subject to any future adjustment related to changes in the market price of the Common Stock pursuant to which additional shares or other securities may be issued, cash payments become due, or the conversion or exercise price of any convertible security may be reduced, other than pursuant to customary antidilution provisions for stock splits and similar events, (w) pursuant to compensation plans or arrangements for employees, directors, officers, advisers or consultants of the Company and in accordance with the terms of such plans as in effect as of the date of this Agreement or as thereafter approved by the Board of Directors of the Company, (x) upon exercise of conversion, exchange, purchase or similar rights issued, granted or given by the Company and outstanding as of the date of this Agreement and disclosed in the SEC Reports or this Agreement, (y) pursuant to a public offering underwritten on a firm commitment basis registered under the 1933 Act or (z) as part of a transaction involving a strategic alliance, acquisition of stock or assets, merger, collaboration, joint venture, partnership or other similar arrangement of the Company with another corporation, partnership or other business entity which is engaged in a business similar to or related to the business of the Company, so long as in the case of this clause (z) the Board of Directors by resolution duly adopted (and a copy of which shall be furnished to the Buyer promptly after adoption) determines that such issuance is fair to the holders of each class and series of capital stock of the Company and to the Buyer in respect of its equity interest in the Company that is represented by the Preferred Shares and the Warrants.

(3) Subject to the restrictions in Sections 4(i)(1) and 4(i)(2), during the period from the date of execution and delivery of this Agreement to the date which is 180 days after the later of (i) the date which is one year after the Closing Date and (ii) the date on which the Registration Statement shall have been effective with the SEC for 270 consecutive days, the Company shall not offer, sell, contract to sell or issue (or engage any person to assist the Company in taking any such action) any Equity Securities without giving the Buyer the first right to acquire the Equity Securities on the same terms as the Equity Securities are to be offered to other investors; PROVIDED, HOWEVER, that this Section 4(i)(3) shall not apply to the offer or sale of Equity Securities by the Company in the transactions, and subject to the conditions, set forth in clauses (v), (w), (x), (y) and (z) of the proviso to the first sentence of Section 4(i)(2) above. The Company shall give notice to the Buyer of the detailed terms of the Equity Securities proposed to be issued and, promptly after being requested by the Buyer, such other information as reasonably requested by the Buyer. Such request by the Buyer shall be made not later than five Business Days after receipt of such notice from the Company. The Buyer may, by notice to the Company, exercise such right of first refusal at any time until the later of (x) ten Business Days after such notice from the Company to the Buyer and (y) five Business Days after the Company provides such additional information as shall have been requested by the Buyer.

(j) CERTAIN SELLING RESTRICTIONS. So long as the Company is in compliance in all material respects with its obligations to the Buyer under this Agreement, the Certificate of Designations, the Warrants and the Registration Rights Agreement, during the 20 consecutive Trading Days (as defined in the Certificate of Designations) immediately preceding the Initial Reset Date (as defined in the Certificate of Designations) and each Biannual Reset Date (as defined in the Certificate of Designations), the Buyer agrees on its behalf and on behalf of its Affiliates (as defined in the Certificate of Designations) that it will not (1) sell any shares of Common Stock on Nasdaq or any other market where the Common Stock is then listed for trading unless such sale is made at or above 130% of the Fixed Conversion Price (as defined in the Certificate of Designations) or (2) engage in any short sales or other hedging transactions relating to the Common Stock.

(k) TRANSACTIONS WITH AFFILIATES. Except as set forth on SCHEDULE 4(K) to this Agreement, so long as any shares of Preferred Stock are outstanding the Company will not, and will not permit any subsidiary of the Company, directly or indirectly, to pay any funds to or for the account of, make any investment (whether by acquisition of stock or indebtedness, by loan, advance, transfer of property, guarantee or other agreement to pay, purchase or service, directly or indirectly, any indebtedness, or otherwise) in, lease, sell, transfer or otherwise dispose of any assets, tangible or intangible, to, or participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement with, any Affiliate of the Company except on terms to the Company or such subsidiary no less favorable than terms that could be obtained by the Company or such subsidiary from a person that is not an Affiliate of the Company, as determined in good faith by the Board of Directors of the Company.

(l) BEST EFFORTS. Each of the parties shall use its best efforts timely to satisfy each of the conditions to the other party's obligations to sell and purchase the Preferred Shares set forth in Section 7 or 8, as the case may be, of this Agreement on or before the Closing Date.

## 5. TRANSFER AGENT AGREEMENT; CONVERSION PROCEDURE.

(a) TRANSFER AGENT AGREEMENT. Prior to the Closing Date, the Company will (1) execute and deliver the Transfer Agent Agreement in the form attached hereto as ANNEX V and thereby irrevocably instruct, Signature Stock Transfer, Inc., as Transfer Agent and Registrar (the "Transfer Agent"), to issue certificates for the Common Shares from time to time upon conversion of the Preferred Shares and exercise of the Warrants in such amounts as specified from time to time to the Transfer Agent in the Notices of Conversion surrendered in connection with such conversions and referred to in Section 5(b) of this Agreement and the Form of Subscription in the form attached to the Warrants and (2) appoint the Transfer Agent the conversion agent for the Preferred Stock and the exercise agent for the Warrants. The certificates for the Common Shares may bear the restrictive legend specified in Section 4(b) of this Agreement prior to registration of the resale of the Common Shares under the 1933 Act. The certificates for the Common Shares shall be registered in the name of the Buyer or its designee and in such denominations to be specified by the Buyer in connection with each conversion of Preferred Shares or exercise of the Warrants. The Company warrants that no instruction other than (x) such instructions referred to in this Section 5, (y) stop transfer instructions to give effect to Section 4(a) prior to registration of the resale of the Common Shares under the 1933 Act and (z) the instructions required by Section 3(n) of the Registration Rights Agreement will be given by the Company to the Transfer Agent and that the Common Shares shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement. Nothing in this Section 5(a) shall limit in any way the Buyer's obligations and agreement to comply with the registration requirements of the 1933 Act upon resale of the Common Shares. If the Buyer provides the Company with an opinion of counsel, reasonably satisfactory in form, scope and substance to the Company and its legal counsel, that registration of a resale by the Buyer of any of the Securities is not required under the 1933 Act, the Company shall permit the transfer of such Securities and, in the case of the Common Shares, in accordance with clause (1)(B) of Section 4(a) of this Agreement, promptly instruct the Transfer Agent to issue upon transfer one or more share certificates in such name and in such denominations as specified by the Buyer within three Business Days after receipt of such opinion. Nothing in this Section 5(a) shall limit the obligations of the Company under Section 3(n) of the Registration Rights Agreement.

(b) CONVERSION PROCEDURE. In connection with the exercise of conversion rights relating to the Preferred Shares, the Buyer or any subsequent holder of the Preferred Shares shall complete, sign and furnish to the Transfer Agent a Notice of Conversion of Series A Convertible Preferred Stock in the form attached hereto as ANNEX VI (a "Conversion Notice") and shall provide a copy thereof to the Company, which actions shall be deemed to satisfy all requirements of the Certificate of Designations.

## 6. CLOSING DATE.

Subject to the satisfaction or waiver of the conditions set forth in Sections 7 and 8, the date and time of the issuance and sale of the Preferred Shares and the issuance of the Warrants (the "Closing Date") shall be 12:00 noon, New York City time, on or before the date which is three Business Days after the date the Buyer has deposited the Purchase Price with the Escrow Agent in accordance with Section 1(b), or such other mutually agreed to time. The closing shall occur on the Closing Date at the Law Offices of Brian W Pusch, Penthouse Suite, 29 West 57th Street, New York, New York 10019.



7. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL AND ISSUE.

The Buyer understands that the Company's obligation to sell the Preferred Shares and issue the Warrants to the Buyer pursuant to this Agreement is conditioned upon the satisfaction of the following conditions precedent on or before the Closing Date (any or all of which may be waived by the Company in its sole discretion):

(a) The receipt and acceptance by the Company of this Agreement as evidenced by execution of this Agreement by the Company and delivery of an executed counterpart of this Agreement to the Buyer or its legal counsel;

(b) Delivery by the Buyer to the Escrow Agent of good funds as payment in full of an amount equal to the Purchase Price for the Preferred Shares in accordance with Section 1(b) hereof; and

(c) The accuracy on the Closing Date of the representations and warranties of the Buyer contained in this Agreement as if made on the Closing Date and the performance by the Buyer on or before the Closing Date of all covenants and agreements of the Buyer required to be performed on or before the Closing Date.

8. CONDITIONS TO THE BUYER'S OBLIGATION TO PURCHASE.

The Company understands that the Buyer's obligation to purchase the Preferred Shares and acquire the Warrants on the Closing Date is conditioned upon the satisfaction of the following conditions precedent on or before the Closing Date (any or all of which may be waived by the Buyer in its sole discretion):

(a) Delivery by the Company to the Escrow Agent of the certificates for the Preferred Shares and the Warrants in accordance with this Agreement;

(b) The accuracy on the Closing Date of the representations and warranties of the Company contained in this Agreement as if made on the Closing Date and the performance by the Company on or before the Closing Date of all covenants and agreements of the Company required to be performed on or before the Closing Date, and receipt by the Buyer of a certificate, dated the Closing Date, of the Chief Executive Officer of the Company confirming such matters and such other matters as the Buyer may reasonably request;

(c) The receipt by the Buyer of confirmation of the filing with the Secretary of State of the State of Nevada of the Certificate of Designations;

(d) The receipt by the Buyer of a certificate, dated the Closing Date, of the Secretary of the Company certifying (1) the Articles of Incorporation, as amended, and By-Laws of the Company as in effect on the Closing Date and (2) all resolutions of the Board of Directors (and committees thereof) of the Company relating to this Agreement and the transactions contemplated hereby;

(e) The Transfer Agent shall have executed and delivered the Transfer Agent Agreement in the form attached hereto as ANNEX V; and

(f) Receipt by the Buyer on the Closing Date of (i) an opinion of Snell & Wilmer L.L.P., counsel for the Company, dated the Closing Date, in form, scope and substance reasonably satisfactory to the Buyer, to the effect set forth in ANNEX VII attached hereto and (ii) an opinion of James, Driggs, Walch, Santoro, Kearney, Johnson & Thompson, Nevada counsel to the Company, dated the Closing Date, in form, scope and substance reasonably satisfactory to the Buyer, to the effect set forth in ANNEX VIII attached hereto.

#### 9. MISCELLANEOUS.

(a) GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona.

(b) COUNTERPARTS. This Agreement may be executed in counterparts and by the parties hereto on separate counterparts, all of which together shall constitute one and the same instrument. A facsimile transmission of this Agreement bearing a signature on behalf of a party hereto shall be legal and binding on such party. Although this Agreement is dated as of the date first set forth above, the actual date of execution and delivery of this Agreement by each party is the date set forth below such party's signature on the signature page hereof. Any reference in this Agreement or in any of the documents executed and delivered by the parties hereto in connection herewith to (1) the date of execution and delivery of this Agreement by the Buyer shall be deemed a reference to the date set forth below the Buyer's signature on the signature page hereof, (2) the date of execution and delivery of this Agreement by the Company shall be deemed a reference to the date set forth below the Company's signature on the signature page hereof and (3) the date of execution and delivery of this Agreement or the date of execution and delivery of this Agreement by the Buyer and the Company shall be deemed a reference to the later of the dates set forth below the signatures of the parties on the signature page hereof.

(c) HEADINGS, ETC. The headings, captions and footers of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) SEVERABILITY. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement or the validity or enforceability of this Agreement in any other jurisdiction.

(e) AMENDMENTS. No amendment, modification, waiver, discharge or termination of any provision of this Agreement nor consent to any departure by the Buyer or the Company therefrom shall in any event be effective unless the same shall be in writing and signed by the Company and the holders of a majority in interest of the outstanding shares of Preferred Stock, and then shall be effective only in the specific instance and for the purpose for which given. No course of dealing between the parties hereto shall operate as an amendment of this Agreement.

(f) WAIVERS. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, or any course of dealings between the parties, shall not operate as a waiver thereof or an amendment hereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or exercise of any other right or power.

(g) NOTICES. Any notices required or permitted to be given under the terms of this Agreement shall be delivered personally (which shall include telephone line facsimile transmission with answer back confirmation) or by courier and shall be effective upon receipt, in the case of the Company addressed to the Company at its address shown in the introductory paragraph of this Agreement, Attention: Chief Executive Officer (telephone line facsimile transmission number (602) 331-0941) or, in the case of the Buyer, at its address or telephone line facsimile transmission number shown on the signature page of this Agreement or such other address or telephone line facsimile transmission number as a party shall have provided by notice to the other party in accordance with this provision. The Buyer hereby designates as its address for any notice required or permitted to be given to the Buyer pursuant to the Certificate of Designations the address shown on the signature page of this Agreement until the Buyer shall designate another address for such purpose.

(h) ASSIGNMENT. Prior to the Closing Date, the Buyer may not assign its rights and obligations under this Agreement. Any transfer of the Preferred Shares or the Warrants by the Buyer after the Closing Date shall be made in accordance with Section 4(a) and shall involve at least 1,000 shares of Preferred Stock and Warrants to purchase at least 93,242 shares of Common Stock (unless a lesser number of shares of Preferred Stock or Warrants is then outstanding); PROVIDED, HOWEVER, that there shall be no limitation on the number of shares of Preferred Stock or the number of shares of Common Stock represented by Warrants which are transferable to Affiliates of the Buyer. After the Closing Date, the Buyer shall have the right to assign its rights and obligations under this Agreement in connection with any transfer of the Buyer's rights under the Registration Rights Agreement by compliance with the provisions of Section 9 of the Registration Rights Agreement.

(i) SURVIVAL OF REPRESENTATIONS AND WARRANTIES. The respective representations, warranties, covenants and agreements of the Buyer and the Company contained in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement shall survive the delivery of and payment for the Preferred Shares and shall remain in full force and effect regardless of any investigation made by or on behalf of them or any person controlling or advising any of them.

(j) ENTIRE AGREEMENT. This Agreement and its Schedules and Annexes set forth the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, with respect thereto.

(k) TERMINATION. Either party shall have the right to terminate this Agreement by giving notice to the other party at any time at or prior to the Closing Date if:

(1) the other party shall have failed, refused, or been unable at or prior to the date of such termination of this Agreement to perform any of its obligations hereunder;

(2) any other condition of the terminating party's obligations hereunder is not fulfilled; or

(3) the closing shall not have occurred on a Closing Date on or before September 17, 1999, other than solely by reason of a breach of this Agreement by the terminating party.

Any such termination shall be effective upon the giving of notice thereof by the terminating party. Upon such termination, neither party shall have any further obligation to the other party hereunder; PROVIDED, HOWEVER, that each party shall remain liable for any breach of this Agreement or the other documents contemplated hereby which occurred on or prior to the date of such termination.

(l) FURTHER ASSURANCES. Each party to this Agreement will perform any and all acts and execute any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

(m) PUBLIC STATEMENTS, PRESS RELEASES, ETC. The Company and the Buyer shall have the right to approve before issuance any press releases or any other public statements with respect to the transactions contemplated hereby; PROVIDED, HOWEVER, that the Company shall be entitled, without the prior approval of the Buyer, to make any press release or other public disclosure with respect to such transactions as is required by applicable law or Nasdaq regulation (although the Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release and shall be provided with a copy thereof).

(n) CONSTRUCTION. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Buyer and the Company by their respective officers or other representatives thereunto duly authorized on the respective dates set forth below.

NUMBER OF SHARES: 1,000

PRICE PER SHARE: \$1,000.00

AGGREGATE PURCHASE PRICE: \$1,000,000.00

KOCH INVESTMENT GROUP LIMITED

By: /s/ Josh Taylor

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Name: Josh Taylor  
Title: Vice President

Date: September 17, 1999

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Address: 4111 East 37th Street North  
Wichita, Kansas 67220

Facsimile No.: (316) 828-7947

TITAN MOTORCYCLE CO. OF AMERICA

By: /s/ Francis S. Keery

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Name: Francis S. Keery  
Title: Chief Executive Officer

Date: September 15, 1999