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BASIC AMENDMENT

CYBER NETWORKS, INC.

Amendment

12/28/01 D

Certificate of Status	0
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Page Count	12
Estimated Charge	\$43.75

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FAX AUDIT NO.: H01000124177

**ARTICLES OF AMENDMENT
TO THE AMENDED AND RESTATED ARTICLES OF INCORPORATION**

OF

CYBER NETWORKS, INC.

**Pursuant to Florida Statute 607.0821
And Florida Statute 607.0602**

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CYBER NETWORKS, INC., a corporation organized and existing under the Florida Business Corporation Act (the "Corporation"), does hereby certify:

THAT, pursuant to the authority conferred upon the Board of Directors by the Amended and Restated Articles of Incorporation of the Corporation filed on June 1, 2000, the Corporation caused certain articles of amendment to such Amended and Restated Articles of Incorporation to be filed with the Secretary of State of the State of Florida on June 7, 2000 setting forth the resolutions of the Board of Directors authorizing the issuance of up to 14,675,453 shares of the Corporation's authorized but unissued preferred stock, par value \$0.0001, to be designated the Series A Preferred Stock and setting forth the voting powers, designations, preferences and relative, and other rights of such series (such articles of amendment are referred to herein as the "Series A Certificate of Designation");

THAT, at the meeting held on December 24, 2001, the Board of Directors duly adopted the resolution set forth below providing for the designation and issuance of a series of up to 3,000,000 shares of Series B Preferred Stock, subject to the approval of such issuance by the holders of at least a majority of the outstanding shares of the Series A Preferred Stock;

THAT, by written consent dated as of December 24, 2001, the holders of more than a majority of the outstanding shares of the Series A Preferred Stock executed a written consent in lieu of meeting approving the proposed issuance of up to 3,000,000 shares of Series B Preferred Stock, such authorization making effective the above-described resolution of the Board of Directors, which resolution states as follows:

"NOW, THEREFORE, BE IT RESOLVED, that there shall be a series of shares of the Corporation's authorized but unissued preferred stock, par value \$0.0001, of the Corporation designated "Series B Preferred Stock"; that the number of authorized shares of such series shall be 3,000,000 and that the voting powers, designations, preferences and relative, and other rights of the shares of such Series B Preferred Stock shall be as follows:

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1. DIVIDEND RIGHTS.

(a) For purposes of interpretation of this Section 1 and of Section 1 of the Series A Certificate of Designation, the Series B Preferred shall be deemed to rank equally with, and be neither junior nor senior to the Series A Preferred Stock as to payment of dividends or upon liquidation. Holders of the Corporation's Series B Preferred Stock (the "Series B Preferred"), shall be entitled to receive cash dividends on a *pari passu* basis with the holders of the Series A Preferred Stock, when and as declared by the Board of Directors, but only out of funds that are legally available for distribution on an as-converted basis.

(b) So long as any shares of the Series B Preferred shall be outstanding, (i) no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any shares of Series A Preferred Stock or the Series B Preferred or on any shares of capital stock that rank junior to the Series B Preferred as to payment of dividends or upon liquidation, including, without limitation, the common stock ("Junior Stock") unless in any case an additional dividend shall be paid with respect to all outstanding shares of Series B Preferred in an amount per share equal to (on an as-converted to Common Stock basis) the amount paid or set aside for each share of such Series A Preferred Stock and, if applicable, Junior Stock and (ii) no dividend, whether in cash or in property, shall be paid or declared, nor shall any other distribution be made, on any shares of the Series B Preferred unless in any case an additional dividend shall be paid with respect to all outstanding shares of Series A Preferred Stock and Common Stock in an amount per share equal to (on an as-converted to Common Stock basis) the amount paid or set aside for each share of Series B Preferred. The provisions of this Section 1(b) shall not, however, apply to a dividend payable in Common Stock. So long as any shares of the Series B Preferred Stock shall be outstanding, no shares of any Junior Stock of the Corporation shall be purchased, redeemed, or otherwise acquired for value by the Corporation without the consent of the holders of at least fifty-one percent (51%) of the Series B Preferred then outstanding, (except for acquisitions of Junior Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer; provided, however, that without the approval, by vote or written consent, of the holders of at least fifty-one percent (51%) of the Series B Preferred, the total amount applied to the repurchase of shares of Junior Stock shall not exceed \$100,000 during any twelve-month period).

2. VOTING RIGHTS.

(a) **General Rights.** Except as otherwise provided herein or as required by law, the Series B Preferred shall be voted with the shares of the Common Stock of the Corporation and any other class or series of shares of Capital Stock voting with the Common Stock, and not as a separate class or along with the Series A Preferred Stock or other Series of Preferred Stock with respect to any special voting rights granted to such Series, at any annual or special meeting of stockholders of the Corporation, and may act

by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series B Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series B Preferred are convertible (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

(b) **Separate Vote of Series B Preferred.** In addition to any other vote or consent required herein or by law, a separate series vote or written consent of the holders of at least fifty-one percent (51%) of the outstanding Series B Preferred, shall be necessary for effecting or validating any amendment, alteration, or repeal of any provision of the Amended and Restated Articles of Incorporation or the by-laws of the Corporation that affects the voting powers, preferences, or other special rights or privileges, qualifications, limitations or restrictions of the Series B Preferred.

3. LIQUIDATION RIGHTS.

(a) For purposes of interpretation of this Section 3 and of Section 3 of the Series A Certificate of Designation, the Series B Preferred shall be deemed to rank equally with, and be neither junior nor senior to the Series A Preferred Stock as to payment upon liquidation. Upon my liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, after any payment in full of any distribution or payment due on any shares of capital stock that rank senior to the Series B Preferred as to payment of dividends or upon liquidation ("Senior Stock"); simultaneously with any distribution or payment made to the holders of the Series A Preferred Stock; and before any distribution or payment shall be made to the holders of any Junior Stock, the holders of Series B Preferred shall be entitled to be paid out of the assets of the Corporation an amount per share of Series B Preferred equal to the "Original Issue Price" (defined below) for such share plus all declared and unpaid dividends on such shares of Series B Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series B Preferred held by them. The Original Issue Price of the Series B Preferred shall be \$1.362820 per share; provided, however, that the rights of the holders of the Series B Preferred with respect to payment upon liquidation shall rank *pari passu* with the rights of the holders of Series A Preferred Stock, and if the amount available for payment on liquidation shall be insufficient to pay all amounts then due to the holders of the Series A Preferred Stock and the Series B Preferred in full, then the amount to be paid to the holders of the Series A Preferred Stock and the Series B Preferred stock shall be reduced by an amount calculated by multiplying the number of shares of Series A Preferred Stock or Series B Preferred held by each shareholder by a fraction, the numerator of which is the dollar amount of such shortfall and the denominator of which is the total number of issued and outstanding shares of Series A Preferred Stock and Series B Preferred.

(b) After payment of the full liquidation preference of the Series A Preferred Stock and the Series B Preferred as set forth in Section 3(a) above and to any shares of preferred stock ranking junior to the Series A Preferred and the Series B Preferred as to payment due upon liquidation, the remaining assets of the Corporation legally available

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for distribution, if any, shall be distributed ratably to each holder of the Common Stock.

(c) The following events shall be considered a liquidation under this Section 3:

- (i) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than fifty-one percent (51%) of the Corporation's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions in which in excess of fifty-one percent (51%) of the Corporation's voting power is Transferred (an "Acquisition"); or
- (ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation (an "Asset Transfer").

Nothing in this Section 3 shall limit the right of any holder of Series B Preferred to elect to convert any of such shares into Common Stock as set forth in Section 4(a) prior to any Acquisition or Asset Transfer, in which case such holder shall not receive the liquidation preference described in Section 3(a) with respect to such Series B Preferred so converted.

4. CONVERSION RIGHTS.

The holders of the Series B Preferred shall have the following rights with respect to the conversion of the Series B Preferred into shares of Common Stock (the "Conversion Rights").

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any shares of Series B Preferred may, at the option of the holder, be converted at any time into fully paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series B Preferred shall be entitled upon conversion shall be the product obtained by multiplying the applicable "Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series B Preferred being converted.

(b) **Series B Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series B Preferred shall be the quotient obtained by dividing the Original Issue Price of the Series B Preferred by the Conversion Price, calculated as provided in Section 4(c). Notwithstanding any provision of this Section 4 to the contrary, any adjustment in the conversion rate applicable to one series of Preferred Stock shall not, as such, result in an adjustment to the conversion rate of another series of Preferred Stock.

(c) **Conversion Price.** The conversion price for the Series B Preferred shall initially be the Original Issue Price of the Series B Preferred (the "Conversion Price"). Such initial Conversion Price shall be adjusted from time to time in accordance with this Section 4. All references to the Conversion Price herein shall mean the Conversion Price as so adjusted.

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(d) **Mechanics of Conversion.** Each holder of Series B Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed at the office of the Corporation or any transfer agent for the Series B Preferred, and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series B Preferred being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined in good faith by the Board of Directors as of the date of such conversion) any declared and unpaid dividends on the shares of Series B Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series B Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(e) **Adjustment for Stock Splits and Combination.** If the Corporation shall at any time or from time to time after the date that the first share of Series B Preferred is issued (the "Original Issue Date") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series B Preferred, the Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series B Preferred, the Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) **Adjustment for Common Stock Dividends and Distributions.** If the Corporation at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

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(g) **Adjustments for Other Dividends and Distributions.** If the Corporation at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, in each such event provision shall be made so that the holders of the Series B Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of the securities of the Corporation which they would have received had their Series B Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of the Series B Preferred or with respect to such other securities by their terms.

(h) **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series B Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 3(d) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Series B Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series B Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided therein or with respect to such other securities or property by the terms thereof.

(i) **Reorganizations, Mergers, Consolidations or Sales of Assets.** If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock (other than a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization provision shall be made so that the holders of the Series B Preferred shall thereafter be entitled to receive upon conversion of the Series B Preferred the number of shares of stock or other securities or property of the Corporation to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series B Preferred after the capital reorganization, to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of the Series B Preferred) shall be applicable after that event and be nearly equivalent as practicable.

(j) **Sale of Additional Shares.**

(i) If at any time or from time to time after the Original Issue Date, the Corporation issues or sells, or is deemed by the express provisions of this

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subsection (j) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), other than as a dividend or other distribution on any class of stock as provided in Section 4(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an Effective Price (as hereinafter defined) that is less than the then effective Conversion Price of Series B Preferred, then and in each such case the then existing Conversion Price shall be adjusted, as of the opening of business as the date of such issue or sale, to a price determined by multiplying the Conversion Price by a fraction (x) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) at the close of business on the original Issue Date, plus (b) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection (j)(ii)) by the Corporation subsequent to the Original Issue Date for the total number of Additional Shares of Common Stock issued subsequent to the Original Issue Date would purchase at such Conversion Price, and (y) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued; provided, however, that the Conversion Price for each share of Series B Preferred shall at no time exceed the Original Issue Price for such share of Series B Preferred (as adjusted for stock splits, combinations and similar events). For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series B Preferred could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible or exchangeable securities on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under this Section 4(j), the consideration received by the Corporation for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale but without deduction of any expenses payable by the Corporation, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as hereinafter defined) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

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(iii) For the purpose of the adjustment required under this Section 4(j), if the Corporation issues or sells any rights or options for the purchase of, or stock or other securities convertible into, or exchangeable for, Additional Shares of Common Stock (such convertible or exchangeable stock or securities being herein referred to as "Convertible Securities"), in each case the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise, conversion or exchange thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof, provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of and dilution or similar protective clauses, the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided further that if the minimum amount of consideration payable to the Corporation upon the exercise, conversion or exchange of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of anti-dilution adjustments, the Effective Price shall be recalculated using the figure in which such minimum amount of consideration is reduced; provided further that if the minimum amount of consideration payable to the Corporation upon the exercise, conversion or exchange of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise, conversion or exchange of such rights, options or Convertible Securities. No further adjustment of the Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of such rights or options or the conversion or exchange of any such Convertible Securities. If any such rights or options or the conversion or exchange privilege represented by any such Convertible Securities shall expire without having been exercised, the Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion or exchange of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all

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such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series A Preferred.

(iv) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 4(j), whether or not subsequently reacquired or retired by the Corporation other than (A) shares of Common Stock issued upon conversion of the Series A Preferred Stock or Series B Preferred; (B) up to 2,200,000 (as such number may be increased from time to time by virtue of an increase in the number of shares reserved for issuance under the Corporation's stock option or stock purchase plan which increase is approved by the Corporation's Board of Directors together with the approval of a majority of each of (X) the Series A Preferred Stock and (Y) the Series B Preferred, each voting as a separate class) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) after the Original Issue Date to employees, officers or directors of, or consultants or advisors to the Corporation or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board; (C) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Original Issue Date; (D) shares of equity securities issued in connection with lease financing arrangements or similar debt financing arrangements with institutional lenders that are unanimously approved by the Board; and (E) shares of Common Stock issued pursuant to a merger, consolidation, acquisition or similar business combination that is approved by holders of fifty-one percent (51%) of each of the outstanding Series A Preferred and the outstanding Series B Preferred, each voting as a separate class. The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under this Section 4(j), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this Section 4(j), for such Additional Shares of Common Stock.

(k) **Accountants' Certificate of Adjustment.** In each case of an adjustment or readjustment of the Conversion Price for the number of shares of Common Stock or other securities issuable upon the conversion of the Series B Preferred, the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series B Preferred at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Corporation for any Additional

Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series B Preferred.

(l) **Notices of Record Date.** Upon (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 3(d)) or other capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, or any Asset Transfer (as defined in Section 3(d)), or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Series B Preferred at least twenty (20) days prior to the record date specified therein a notice specifying (A) the date on which any such record is to be taken for the purpose of dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when 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 upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

In the event of any transaction which would constitute a liquidation giving rise to the liquidation rights set forth in Section 3 hereof, the Corporation's notice of such transaction required by this Section 4(l) shall include a calculation of due amount that would be distributed to the holders of each share of Series B Preferred through the application of the provisions of Section 3(a) and 3(b) hereof, as well as a calculation of the amount that would be distributed to the holders of each share of Series B Preferred if all outstanding shares of Series B Preferred were converted to Common Stock prior to the transaction pursuant to the conversion rights set forth in Section 4(a) hereof. The purpose of the foregoing calculation shall be to enable the holders of Series B Preferred to determine the amount receivable by the holders of each respective series in the event of such a transaction, and to determine the advisability of exercising the optional conversion rights set forth in Section 4(a).

(m) **Automatic Conversion.**

(i) Each share of Series B Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Conversion Price for such shares, at any time upon the affirmative election of the holders of more than fifty-one percent (51%) of the outstanding shares of Series B Preferred. Each share of Series B Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Conversion Price immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation in which (i) the per share price is at least \$5 (as adjusted for any stock dividend, stock split or stock combination

and the like), and (ii) the aggregate net cash proceeds to the Corporation included in such registration (after underwriting discounts, commissions and fees) are at least \$15 million. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(ii) Upon the occurrence of the event specified in paragraph (i) above, the outstanding shares of Series B Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered by the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series B Preferred are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series B Preferred, the holders of Series B Preferred shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series B Preferred thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series B Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(n) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series B Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series B Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined in good faith by the Board) on the date of conversion.

(o) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series B Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series B Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(p) **Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to

be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt request, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder at the address of such holder appearing on the books of the Corporation.

(g) **Payment of Taxes.** The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series B Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than in which the shares of Series B Preferred so converted were registered.

(r) **No Dilution or Impairment.** Without the consent of the holders of at least fifty-one percent (51%) of the then outstanding Series B Preferred, the Corporation shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series B Preferred against dilution or other impairment.

5. NO REISSUANCE OF PREFERRED STOCK.

No share or shares of Series B Preferred acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and in addition, the Articles of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized stock.

These Articles of Amendment shall be effective as of December 24, 2001. Except as hereby amended, the Amended and Restated Articles of Incorporation, as previously amended by the Articles of Amendment dated June 7, 2000, shall remain unchanged and in full force and effect."

IN WITNESS WHEREOF, the undersigned has executed and subscribed this Certificate as of this 26th day of December, 2001, and does affirm the foregoing as a true and correct copy of the resolutions adopted by the Board of Directors of the Corporation on December 24, 2001 regarding the designation of the Series B Preferred.

CYBER NETWORKS, INC.

By: 

Scott Shakespeare
Chairman, President and
Chief Executive Officer