

P96000101198



ACCOUNT NO. : 072100000032

REFERENCE : 679453 8796A

AUTHORIZATION :

COST LIMIT : \$ 96.25

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98 JAN 23 PM 3:48  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ORDER DATE : January 23, 1998

ORDER TIME : 12:10 PM

ORDER NO. : 679453-005

CUSTOMER NO: 8796A

CUSTOMER: Frank N. Fleischer, Esq.  
Schifino & Fleischer  
One Tampa City Center, #2700  
201 North Franklin Street  
Tampa, FL 33602

*Amend*

500002410485--8

DOMESTIC AMENDMENT FILING

NAME: THRUCOMM, INC.

EFFECTIVE DATE:

XX ARTICLES OF AMENDMENT  
RESTATED ARTICLES OF INCORPORATION  
Availability 1/23/98

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY  
PLAIN STAMPED COPY  
XX CERTIFICATE OF GOOD STANDING  
Verifyer

CONTACT PERSON: Cindy Harris  
W.P. Verifyer

EXAMINER'S INITIALS: *Don*

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DIVISION OF CORPORATION

**ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
THRUCOMM, INC.**

1. The name of the corporation is Thrucomm, Inc. (the "Corporation").
2. Pursuant to Sections 607.0602(4) and 607.1006 of the Florida Business Corporation Act, Article IV of the Articles of Incorporation of the Corporation, is hereby amended to read as follows:

**"ARTICLE IV-CAPITAL STOCK**

**Shares Authorized.** The aggregate number of shares of stock which the Corporation shall have authority to issue shall be one hundred twenty-five million (125,000,000) shares, of which one hundred million (100,000,000) shares shall be common stock, without par value (the "Common Stock"), and twenty-five million (25,000,000) shares shall be preferred stock with a par value of \$.001 per share (the "Preferred Stock").

**Preferred Stock.**

**A. In General.**

(i) Shares of Preferred Stock may be issued from time to time, in one or more series (each, a "Series"), with such designations, assigned values, preferences and relative, participating, optional or other rights, qualifications, limitation or restrictions thereof as shall be stated and expressed in the resolution or resolutions providing for the issue of each such Series, adopted by the Board of Directors of the Corporation (the "Board of Directors" or the "Board"), pursuant to the authority herein given, a copy of which resolution or resolutions shall have been set forth in a certificate (a "Certificate of Designation") made, executed, acknowledged, filed and recorded in the manner required by the laws of the State of Florida in order to make the same effective. Each Series shall consist of such number of shares as shall be stated in such resolution or resolutions providing for the creation, preferences, limitations, and relative rights of such Series.

(ii) All shares of a Series shall have preferences, limitations and relative rights identical with those of other shares of the same Series.

(iii) All shares of one Series shall have preferences, limitations and relative rights identical with those of other shares of another Series, except to the extent otherwise provided in the Certificate of Designation for a Series, which Certificate of Designation is contained in articles of amendment to these Articles of Incorporation,

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which articles of amendment have been delivered to the Department of State of the State of Florida for filing.

(iv) Except as limited by law or elsewhere in this Article IV, the preferences, limitations and relative rights of shares of a Series created under this Article IV shall be determined by the Board of Directors who shall have the power to decide the following terms:

- (a) whether the shares shall be participating;
- (b) the dividend rate or rates, if any, on the shares and the relation which dividends shall bear to the dividends payable on any other class or classes or on any other series of any class or classes of capital stock of the Corporation;
- (c) the terms and conditions upon which and the periods in respect to which any such dividends shall be payable;
- (d) whether and upon what conditions any dividends shall be cumulative, and if cumulative, the date or dates from which dividends shall accumulate;
- (e) whether the shares shall be limited in dividends, if any, or whether they shall participate in dividends over and above the dividend rate, if any, provided for the shares;
- (f) whether any such dividends shall be payable in cash, in shares of such Series, in shares of any other class or classes or of any other series of any class or classes of capital stock of the Corporation, or in other property, or in more than one of the foregoing;
- (g) whether the shares shall be redeemable or callable, the limitations and restrictions with respect to such redemption or call, the time or times of redemption, and the price or prices (which may be greater than par value) at which and the manner in which shares shall be redeemable or callable, including the manner of selecting shares for redemption if less than all shares are to be redeemed or called;
- (h) whether the shares shall be subject to the operation of a purchase, retirement or sinking fund, and, if so, whether and upon what conditions the purchase, retirement or sinking fund shall be cumulative on non-cumulative, and the extent to which and the manner in which the fund shall be applied to the purchase or redemption of the shares

for retirement or to other corporate purposes and the terms and provisions relative to the operation thereof;

- (i) the terms on which shares shall be convertible into or exchangeable for shares of any other class or classes of capital stock of the Corporation, and the price or prices or the rate or rates of conversion or exchange and the method, if any, of adjusting the same, and any other terms and conditions of such conversion or exchange;
- (j) the extent to which holders of shares shall be entitled to vote generally with respect to matters relating to the Corporation and the matters on which the holders of shares shall be entitled to vote as a class;
- (k) the preferences, in respect to the assets of the Corporation, upon liquidation or winding up of the Corporation including the amount (which may be greater than par value) payable to holders before any amount is payable to holders of Common Stock;
- (l) any other preferences, privileges and powers, and relative, participating, optional or other special rights and qualifications of or limitations or restrictions which the Board of Directors may deem advisable, provided they are not inconsistent with the provisions of these Articles of Incorporation.

**B. *Series Authorized.***

(i) The Corporation shall have the authority to issue one (1) share of each series of Mandatory Convertible Preferred Stock, Series A-P ("Series A-P Preferred Stock"), with such preferences, limitations and relative rights thereof as stated and expressed in the resolution providing for the issue of each such series, adopted by the Board of Directors, pursuant to the authority herein given, a copy of which resolution has been set forth in a Certificate of Designation and attached hereto as Appendix A.

(ii) The Corporation shall have the authority to issue one million, four hundred twenty-eight thousand, five hundred seventy-one (1,666,667) shares of Senior Convertible Preferred Stock, Series A, with such preferences, limitations and relative rights thereof as stated and expressed in the resolution providing for the issue of such series, adopted by the Board of Directors, pursuant to the authority herein given, a copy of which resolution has been set forth in a Certificate of Designation and attached hereto as Appendix B.

(iii) The Corporation shall have the authority to issue two million two hundred thousand (2,200,000) shares of Senior Convertible Preferred Stock, Series B, with such preferences, limitations and relative rights thereof as stated and expressed

in the resolution providing for the issue of such series, adopted by the Board of Directors, pursuant to the authority herein given, a copy of which resolution has been set forth in a Certificate of Designation and attached hereto as Appendix C."

3. At a joint meeting of Board of Directors and the shareholders of the Corporation held on December 31, 1997, adjourned and reconvened on January 5, 1998:

(i) the foregoing amendment relating to the Series A-P Preferred Stock was duly adopted by the Board of Directors and approved by the sole holder of the only outstanding share of Common Stock of the Corporation.

(ii) the foregoing amendments relating to the Series A and the Series B Senior Convertible Preferred Stock were duly adopted by the Board of Directors, and approved by the holders of Series A-P Preferred Stock, each such Series A-P voting separately as a class, which Series A-P are the only classes of the Corporation's authorized shares entitled to vote on the amendments relating to the Series A and the Series B Senior Convertible Preferred Stock. The favorable vote of such shareholders was sufficient for approval.

IN WITNESS WHEREOF, THRUCOMM, INC. has caused its corporate seal to be affixed hereunto and these Articles of Amendment to be duly executed by its President and attested to by its Secretary, this 22<sup>nd</sup> day of January, 1998.

THRUCOMM, INC.

By: 

Name: Mark J. Giannini

Title: President

[Corporate Seal]

Attest: 

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

Name: John F. Kolenda

Title: Secretary

Appendix "A"

CERTIFICATE OF DESIGNATION OF THE SERIES, PREFERENCES,  
LIMITATIONS AND RELATIVE RIGHTS OF THE

SERIES A-P  
MANDATORY CONVERTIBLE PREFERRED STOCK  
\$ .001 PAR VALUE

OF

THRUCOMM, INC.

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Pursuant to Section 607.0602 of the Florida Business Corporation Act

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The undersigned DOES HEREBY CERTIFY that the following resolutions were duly adopted by the Board of Directors (the "**Board of Directors**") of THRUCOMM, INC., a Florida corporation (the "**Corporation**"), at a meeting duly convened and held on December 31, 1997, duly adjourned and reconvened on January 5, 1998, at which a quorum was present and acted throughout:

WHEREAS, the Board of Directors of the Corporation is authorized, within the limitations and restrictions stated in the Articles of Incorporation of the Corporation (the "**Articles of Incorporation**"), to provide by resolution or resolutions for the issuance of shares of preferred stock of the Corporation, in one or more series with such voting powers, full or limited, or without voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions as shall be stated and expressed in a resolution or resolutions providing for the issue thereof adopted by the Board of Directors, and as are not stated and expressed in the Articles of Incorporation, or any amendment thereto, including (but without limiting the generality of the foregoing) such provisions as may be desired concerning voting, redemption, dividends, dissolution or the distribution of assets, conversion or exchange and such other subjects or matters as may be fixed by resolution or resolutions of the Board of Directors under the Florida Business Corporation Act; and

WHEREAS, it is the desire of the Board of Directors of the Corporation, pursuant to its aforesaid authority, to authorize and fix the terms of several series of preferred stock and the number of shares constituting such series;

NOW, THEREFORE, BE IT RESOLVED:

1. **Designation and Number of Shares.** There shall be hereby established sixteen (16) series of the preferred stock of the Corporation, each series with a par value \$.001 per share, designated as follows: (i) "Series A Mandatory Convertible Preferred Stock" (the "**Series A Preferred Stock**"), (ii) "Series B Mandatory Convertible Preferred Stock" (the "**Series B Preferred Stock**"), (iii) "Series C Mandatory Convertible Preferred Stock" (the "**Series C Preferred Stock**"), (iv) "Series D Mandatory Convertible Preferred Stock" (the "**Series D Preferred Stock**"), (v) "Series E Mandatory Convertible Preferred Stock" (the "**Series E Preferred Stock**"), (vi) "Series F Mandatory Convertible Preferred Stock" (the "**Series F Preferred Stock**"), (vii) "Series G Mandatory Convertible Preferred Stock" (the "**Series G Preferred Stock**"), (viii) "Series H Mandatory Convertible Preferred Stock" (the

"*Series H Preferred Stock*"), (ix) "Series I Mandatory Convertible Preferred Stock" (the "*Series I Preferred Stock*"), (x) "Series J Mandatory Convertible Preferred Stock" (the "*Series J Preferred Stock*"), (xi) "Series K Mandatory Convertible Preferred Stock" (the "*Series K Preferred Stock*"), (xii) "Series L Mandatory Convertible Preferred Stock" (the "*Series L Preferred Stock*"), (xiii) "Series M Mandatory Convertible Preferred Stock" (the "*Series M Preferred Stock*"), (xiv) "Series N Mandatory Convertible Preferred Stock" (the "*Series N Preferred Stock*"), (xv) "Series O Mandatory Convertible Preferred Stock" (the "*Series O Preferred Stock*"), (xvi) "Series P Mandatory Convertible Preferred Stock" (the "*Series P Preferred Stock*") (such series being hereinafter referred to collectively as the "*Preferred Stock*"). The authorized number of shares of each series of Preferred Stock shall be one (1), which number of shares may be increased from time to time by resolution of the Board of Directors, subject to paragraph 5(b)(iv) hereof.

## 2. Rank.

a. The Preferred Stock shall, with respect to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation, rank senior to the Corporation's common stock, no par value per share (the "*Common Stock*"). The Preferred Stock shall, with respect to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation, rank junior to the Corporation's Series A Senior Convertible Preferred Stock, par value \$.001 per share (the "*Series A Senior Preferred Stock*") and Series B Senior Convertible Preferred Stock, par value \$.001 per share (the "*Series B Senior Preferred Stock*").

b. All classes or series of Capital Stock of the Corporation simultaneously or hereafter created that does not expressly provide that it rank on a parity with or senior to the Preferred Stock with respect to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation, shall rank junior to the Preferred Stock, and together with all classes or series of Capital Stock of the Corporation which expressly provide that it rank junior to the Preferred Stock with respect to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation, all such Capital Stock are collectively referred to herein as "*Junior Stock*". All classes or series of Capital Stock of the Corporation simultaneously or hereafter created which expressly provide that it rank on a parity with the Preferred Stock with respect to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation are collectively referred to herein as "*Parity Stock*". All classes or series of Capital Stock of the Corporation simultaneously or hereafter created which expressly provide that it rank senior to the Preferred Stock with respect to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation are collectively referred to herein as "*Senior Stock*".

3. **Dividends or Distributions.** So long as any shares of Preferred Stock are outstanding, no dividend or distribution (except a dividend or distribution paid in Common Stock or any other Capital Stock of the Corporation ranking junior to the Preferred Stock as to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation) shall be declared or paid or set aside for payment on the Common Stock or on any other Capital Stock of the Corporation nor, except for the Series B Senior Preferred Stock, shall any Common Stock or other Capital Stock of the Corporation be redeemed, purchased or otherwise acquired for any consideration (or any moneys be

paid to or made available for a sinking fund for the redemption of any such shares) by the Corporation, except by conversion into, or exchange for, Common Stock or other Capital Stock of the Corporation ranking junior to the Preferred Stock as to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation.

#### 4. **Liquidation Rights.**

a. **Liquidation Preference.** In the event of any voluntary or involuntary liquidation, winding up and dissolution of the Corporation, the holders of shares of Preferred Stock then outstanding shall be entitled to be paid for each share held, out of the assets of the Corporation available for distribution to its shareholders (the "**Available Assets**"), before any payment shall be made or any assets distributed to the holders of any shares of Junior Stock. In addition to any distribution to the holders of shares of Preferred Stock upon liquidation, dissolution or winding up of the affairs of the Corporation, the holders of shares of Preferred Stock shall be entitled to receive twenty percent (20%) of the Available Assets otherwise payable to the holders of shares of Common Stock. The voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all the property or assets of the Corporation to, or a consolidation or merger of the Corporation with, one or more other corporation or corporations (whether or not the Corporation is the surviving corporation in such consolidation or merger) will not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary, within the meaning of the provisions of this paragraph 4.

b. **Liquidation Payment.** Upon any liquidation, dissolution or winding up of the Corporation, the holders of Preferred Stock shall be entitled to receive amount which shall be determined as follows (such distribution to each series of Preferred Stock, a "**Liquidation Payment**"):

(i) The excess, if any, of the Available Assets after any distribution of Available Assets to any holder of shares of the Capital Stock of the Corporation ranking senior to the Preferred Stock with respect to distributions of Available Assets (the "**Remainder Available Assets**"), shall be allocated in accordance with the calculations for determining the Datalinc Value and the Fastcom Value, (the result of such allocations of Remainder Available Assets, the "**Datalinc Liquidation Value**" and the "**Fastcom Liquidation Value**", respectively).

(ii) The Fastcom Liquidation Value shall be allocated to the holders of Series H-P Preferred Stock as follows: (A) First, *pari passu* to the holders of Series H, J, K, and M Preferred Stock to satisfy Earned Preferred Returns on such series, if any. (B) Second, *pari passu* to the holders of Series H-P Preferred Stock in accordance with the Conversion Rate of each such series before performing calculation (C), as set forth in paragraph 6(b) of this Certificate.

(iii) The Datalinc Liquidation Value shall be allocated to the holders of Series A-G Preferred Stock as follows: (A) First, to the holders of the Series A-E Preferred Stock as follows: 37.85% to the Series A Preferred Stock, 17.28% to the Series B Preferred Stock, 10.86% to the Series C Preferred Stock, 18.27% to the Series D Preferred Stock, and 15.47% to the Series E Preferred Stock, until the Series A-E Earned Preferred Returns have been paid

in full. (B) Second, *pari passu* to the holders of the Series A-G Preferred Stock in accordance with the Conversion Rate of each such series, before performing calculation (C).

Upon any such liquidation, winding up and dissolution, after the holders of each series of Preferred Stock shall have been paid in full each series' Liquidation Payment, the remaining Available Assets, if any, may be distributed to the holders of the Junior Stock.

d. **Notice.** Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of the Liquidation Payments and the place where said Liquidation Payments shall be payable, shall be given by mail, postage prepaid, not less than twenty (20) days prior to the payment date stated therein, to the holders of record of Preferred Stock, such notice to be addressed to each such holder at his post office address as shown by the records of the Corporation.

e. **Priority.** All of the preferential amounts to be paid to the holders of the Preferred Stock shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets of the Corporation to, the holders of Common Stock and any Junior Stock as to distributions upon liquidation.

## 5. **Voting Rights.**

a. **General.** Except as otherwise provided by law and in the Articles of Incorporation, the holders of Preferred Stock and Common Stock shall vote together as a single class on all matters to be voted on by the shareholders of the Corporation on the following bases: (1) each holder of Preferred Stock shall be entitled to one vote for each share of Common Stock which would be issuable to such holder upon the conversion of all of the shares of Preferred Stock so held on the record date for the determination of shareholders entitled to vote; and (2) each holder of Common Stock shall be entitled to one vote per share. In any case in which holders of Series A-P Preferred Stock shall be entitled to vote as separate classes pursuant to Florida law or this Certificate, (excluding the prior sentence hereof), each holder of each such series shall be entitled to one vote for each share of Preferred Stock.

b. **Shareholder Approvals.** So long as any of the shares of Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or the Articles of Incorporation and in addition to any other vote required by law, without the prior consent of the holders of the outstanding shares of Preferred Stock, given in person or by proxy, either in writing or at a special meeting called for that purpose, the Corporation will not:

(i) authorize or issue a new class of equity securities (or any equity or debt securities convertible into equity securities) ranking senior to or *pari passu* with the Preferred Stock;

(ii) authorize or effect any capital reorganization or reclassification of any securities (or securities convertible into other securities) into equity securities of the Corporation ranking senior to or *pari passu* with the Preferred Stock;

(iii) amend, alter or repeal this Certificate, the Articles of Incorporation, or the Bylaws of the Corporation in any manner so as to adversely affect the respective rights, privileges and preferences of the Preferred Stock; or

(iv) authorize the issuance of additional shares of Preferred Stock.

**6. Conversion of Preferred Stock.**

a. **General.** Subject to the terms and conditions of this paragraph 6, the Preferred Stock shall be mandatorily convertible into an aggregate of 6,733,333 fully paid and nonassessable whole shares of Common Stock (the "Underlying Shares"), upon the occurrence of a Mandatory Conversion Event and in the manner hereinafter provided.

b. **Conversion Rate.**

(i) Upon the occurrence of a Mandatory Conversion Event, each share of Preferred Stock shall be automatically converted into a number of Underlying Shares that is determined as to each series of Preferred Stock as follows:

**Series A Preferred Stock Conversion Rate.** The Series A Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) The addition of (a) the value of the Series A Earned Preferred Return, plus (b) 18.921% of the excess if any of the Datalinc Value and the net portion of the Fastcom Value allocated to the Series L Preferred Stock after the payment in full of all of the Earned Preferred Returns of the Series A-E Preferred Stock. (B) The division of the sum obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

**Series B Preferred Stock Conversion Rate.** The Series B Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) The addition of (a) the value of the Series B Earned Preferred Return, plus (b) 8.642% of the excess if any of the Datalinc Value and the net portion of the Fastcom Value allocated to the Series L Preferred Stock after the payment in full of all of the Earned Preferred Returns of the Series A-E Preferred Stock. (B) The division of the sum obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

**Series C Preferred Stock Conversion Rate.** The Series C Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) The addition of (a) the value of the Series C Earned Preferred Return, plus (b) 5.429% of the excess if any of the Datalinc Value and the net portion of the Fastcom Value allocated to the Series L Preferred Stock after the payment in full of all of the Earned Preferred Returns of the Series A-E Preferred Stock. (B) The division of the sum obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

*Series D Preferred Stock Conversion Rate.* The Series D Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) The addition of (a) the value of the Series D Earned Preferred Return, plus (b) 9.137% of the excess if any of the Datalinc Value and the net portion of the Fastcom Value allocated to the Series L Preferred Stock after the payment in full of all of the Earned Preferred Returns of the Series A-E Preferred Stock. (B) The division of the sum obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

*Series E Preferred Stock Conversion Rate.* The Series E Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) The addition of (a) the value of the Series E Earned Preferred Return, plus (b) 7.871% of the excess if any of the Datalinc Value and the net portion of the Fastcom Value allocated to the Series L Preferred Stock after the payment in full of all of the Earned Preferred Returns of the Series A-E Preferred Stock. (B) The division of the sum obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

*Series F Preferred Stock Conversion Rate.* The Series F Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) 4.0% of the excess if any of the Datalinc Value and the Fastcom Value after the payment in full of all of the Earned Preferred Returns of the Series A-E Preferred Stock. (B) The division of the number obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

*Series G Preferred Stock Conversion Rate.* The Series G Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) 46.0% of the excess if any of the Datalinc Value and the Fastcom Value after the payment in full of all of the Earned Preferred Returns of the Series A-E Preferred Stock. (B) The division of the number obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

*Series H Preferred Stock Conversion Rate.* The Series H Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) The addition of (a) the value of the Series H Earned Preferred Return, if any, plus (b) 2.184% of the Fastcom Value. (B) The division of the sum obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

*Series I Preferred Stock Conversion Rate.* The Series I Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) 0.546% of the Fastcom Value. (B) The division of the number obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

*Series J Preferred Stock Conversion Rate.* The Series J Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) The addition of (a) the value of the Series J Earned Preferred Return, if any, plus (b) 11.755% of the Fastcom Value. (B) The division of the sum obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

*Series K Preferred Stock Conversion Rate.*

(Series K - RESERVED)

*Series L Preferred Stock Conversion Rate.* The Series L Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) The difference between (a) 79.262% of the Fastcom Value, minus (b) the sum of any Series H, J, K, and M Earned Preferred Returns. (B) The division of the sum obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

*Series M Preferred Stock Conversion Rate.* The Series M Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) The addition of (a) the value of the Series M Earned Preferred Return, if any, plus (b) 0.01% of the Fastcom Value. (B) The division of the sum obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

*Series N Preferred Stock Conversion Rate.* The Series N Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) 2.356% of the Fastcom Value. (B) The division of the number obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

*Series O Preferred Stock Conversion Rate.* The Series O Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) 0.982% of the Fastcom Value. (B) The division of the number obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

*Series P Preferred Stock Conversion Rate.* The Series P Preferred Stock shall be converted into a number of Underlying Shares equal to the result obtained from the following calculations: (A) 1.0% of the Fastcom Value. (B) The division of the number obtained in calculation A by the Remainder Conversion Value. (C) The multiplication of the number obtained in calculation B by 6,733,333.

(ii) Upon the occurrence of a Mandatory Conversion Event, the Corporation shall forthwith file at each office designated to accept the conversion of Preferred Stock, a statement, signed by the President, any Vice President or the Treasurer of the Corporation,

showing in reasonable detail the calculation of the Conversion Rate as to each series of Preferred Stock. The Corporation shall also cause a notice setting forth such calculations to be sent by mail, first class, postage prepaid, to each record holder of Preferred Stock at his or its address appearing on the stock register.

c. ***Earned Preferred Returns.*** Upon a Mandatory Conversion Event, there shall be no Earned Preferred Returns on the Preferred Stock, except as set forth below:

***Series A Earned Preferred Return.*** The Earned Preferred Return on the Series A Preferred Stock shall be an amount equal to the aggregate Preferred Return on the Adjusted Capital Investment (as such terms are defined in the partnership agreement of Datalinc, Ltd.) of all holders of Datalinc's Series 100 Units, as accrued through the date of a Mandatory Conversion Event.

***Series B Earned Preferred Return.*** The Earned Preferred Return on the Series B Preferred Stock shall be an amount equal to the aggregate Preferred Return on the Adjusted Capital Investment (as such terms are defined in the partnership agreement of Datalinc, Ltd.) of all holders of Datalinc's Series 200 Units, as accrued through the date of a Mandatory Conversion Event.

***Series C Earned Preferred Return.*** The Earned Preferred Return on the Series C Preferred Stock shall be an amount equal to the aggregate Preferred Return on the Adjusted Capital Investment (as such terms are defined in the partnership agreement of Datalinc, Ltd.) of all holders of Datalinc's Series 300 Units, as accrued through the date of a Mandatory Conversion Event.

***Series D Earned Preferred Return.*** The Earned Preferred Return on the Series D Preferred Stock shall be an amount equal to the aggregate Preferred Return on the Adjusted Capital Investment (as such terms are defined in the partnership agreement of Datalinc, Ltd.) of all holders of Datalinc's Series 300E1 Units, as accrued from June 1, 1993 through the date of a Mandatory Conversion Event.

***Series E Earned Preferred Return.*** The Earned Preferred Return on the Series E Preferred Stock shall be an amount equal to the aggregate Preferred Return on the Adjusted Capital Investment (as such terms are defined in the partnership agreement of Datalinc, Ltd.) of all holders of Datalinc's Series 300E2 Units, as accrued from September 1, 1993 through the date of a Mandatory Conversion Event.

***Series H Earned Preferred Return.*** The Earned Preferred Return on the Series H Preferred Stock shall be a number equal to the Discounted Fastcom Value, if the Discounted Fastcom Value is equal to or greater than \$18,431,595. If the Discounted Fastcom Value is less than \$18,431,595, the Series H Earned Preferred Return shall be a number equal to the result obtained from the following calculations: (A) The division of 18,431,595 by the Discounted Fastcom Value. (B) The multiplication of the number obtained in calculation A by

2.184%. (C) The multiplication of the number obtained in calculation B by the Fastcom Value. (D) The Fastcom Value multiplied by 2.184%. (E) The difference between the numbers obtained in calculations C and D. The Series H Preferred Stock shall not be entitled to an Earned Preferred Return unless the Mandatory Conversion Event is an IPO.

*Series J Earned Preferred Return.* The Earned Preferred Return on the Series J Preferred Stock shall be a number equal to the Discounted Fastcom Value, if the Discounted Fastcom Value is equal to or greater than \$19,894,940. If the Discounted Fastcom Value is less than \$19,894,940, the Series J Earned Preferred Return shall be a number equal to the result obtained from the following calculations: (A) The division of 19,894,940 by the Discounted Fastcom Value. (B) The multiplication of the number obtained in calculation A by 11.757%. (C) The multiplication of the number obtained in calculation B by the Fastcom Value. (D) The Fastcom Value multiplied by 11.757%. (E) The difference between the numbers obtained in calculations C and D. The Series J Preferred Stock shall not be entitled to an Earned Preferred Return unless the Mandatory Conversion Event is an IPO.

*Series K Earned Preferred Return.*

(Series K - RESERVED)

*Series M Earned Preferred Return.* (i) The Series M Preferred Stock shall not be entitled to an Earned Preferred Return if the Conversion Value of the Corporation is less than \$30,000,000. The Series M Preferred Stock may be entitled to an Earned Preferred Return when the Conversion Value of the Corporation is at least \$30,000,000 (the "*Series M Conversion Value*"), however, the Series M Conversion Value is subject to an adjustment upwards if, within 6 months from August 26, 1997, the Corporation receives a capital infusion that is reflected as equity in the financial statements of Thrucomm (a "*Capital Infusion*"). Upon the occurrence of any Capital Infusion, the amount of the Series M Conversion Value shall be increased dollar for dollar by the amount of such Capital Infusion or Capital Infusions, however, the Series M Conversion Value shall not exceed \$35,000,000 (the "*Maximum Series M Conversion Value*"), and any further Capital Infusions shall not further increase the Series M Conversion Value.

(ii) If the Series M Preferred Stock is entitled, pursuant to the conditions set forth in subsection (i) of this Paragraph 6, to an Earn Preferred Return upon the occurrence of a Mandatory Conversion Event, the amount of the Series M Earned Preferred Return shall be a number equal to \$750,000 plus 4.3% of Datalinc's share of the Remainder Conversion Value, which number is the result of the following calculations: (A) The addition of (a) the Datalinc Value, (b) the portion of the Fastcom Value allocated to the Series L Preferred Stock, and (c) the portion of the Fastcom Value allocated to the Series M Stock, which amounts shall be mathematically discernable upon the occurrence of a Mandatory Conversion Event. (B) The sum of the Series A-E Earned Preferred Returns. (C) The difference between the numbers obtained in calculations A and B. (D) The difference between the number obtained in calculation C and \$750,000. (E) The multiplication of the number obtained in calculation D

by 4.3%. (F) The addition of the number obtained in calculation E and \$750,000. (G) The difference between the result obtained in calculation F and 0.01% of the Fastcom Value.

d. ***Conversion Preference.***

(i) The allocation of the Fastcom Value to the holders of Series H-P Preferred Stock shall be in the order as follows: (A) First, *pari passu* to the holders of Series H, J, K, and M Preferred Stock to satisfy Earned Preferred Returns on such series, if any. (B) Second, *pari passu* to the holders of Series H-P Preferred Stock in accordance with the Conversion Rate of each such series.

(ii) The allocation of the Datalinc Value to the holders of the Series A-G Preferred Stock shall be in the order which follows: (A) First, to the holders of the Series A-E Preferred Stock as follows: 37.85% to the Series A Preferred Stock, 17.28% to the Series B Preferred Stock, 10.86% to the Series C Preferred Stock, 18.27% to the Series D Preferred Stock, and 15.47% to the Series E Preferred Stock, until the Series A-E Earned Preferred Returns have been paid in full. (B) Second, *pari passu* to the holders of the Series A-G Preferred Stock in accordance with the Conversion Rate of each such series.

e. ***Issuance of Common Stock Certificates; Time Conversion Effected.***

(i) As soon as reasonably practicable following the receipt of the notice set forth in paragraph 6(b)(ii) above, each holder of Preferred Stock shall surrender to the Corporation at its principal offices, or to any transfer agent for the Corporation, (A) the certificate or certificates representing such shares of Preferred Stock to be converted and (B) transfer instrument or instruments satisfactory to the Corporation and sufficient to transfer such shares of Preferred Stock to the Corporation free of any adverse interest. Such notice shall also state the name or names (with addresses) in which the certificates for shares issuable upon such conversion shall be issued.

(ii) Promptly after the surrender of the certificate or certificates for the share or shares of the Preferred Stock to be converted, the Corporation shall issue and deliver, or cause to be issued and delivered, to such holder, registered in such name or names as such holder may direct, subject to compliance with applicable laws to the extent such designation shall involve a transfer, a certificate or certificates for the number of whole share of Common Stock issuable upon the conversion of such share or shares of Preferred Stock.

(iii) To the extent permitted by law, the conversion of the Preferred Stock shall be deemed to have been effected for all purposes including without limitation the taking of a record date for a meeting of the shareholders of the Corporation, at the close of business on the date on which certificate or certificates for share or shares of Preferred Stock have been surrendered as aforesaid in paragraph 6(e)(ii), and at such time the rights of the holder of such share or shares of Preferred Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such

conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

f. **Fractional Shares.** No fractional shares shall be issued upon conversion of the Preferred Stock into Common Stock. If any fractional interest in a share of Common Stock would, except for the provisions of this paragraph, be deliverable upon such conversion, in lieu of delivering the fractional share thereof, each fractional interest shall be rounded up to the nearest whole share of Common Stock.

g. **Reorganization; Reclassification.** If any capital reorganization or reclassification of the Capital Stock of the Corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive Capital Stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of a share or shares of Preferred Stock shall thereafter have the right to receive, upon the basis, terms and conditions specified herein, and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of the Preferred Stock, such shares of Capital Stock, securities or assets as may be issued 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 Common Stock immediately theretofore so receivable had such reorganization or reclassification not taken place, and in any such case, appropriate provision shall be made with respect to the rights and interests of such holder to the end that the provisions of this Certificate shall thereafter be applicable, as nearly as may be, in relation to any shares of Capital Stock, securities or assets thereafter deliverable upon conversion.

h. **Other Notices.** In case at any time there shall be any capital reorganization or reclassification of the Capital Stock of the Corporation, then the Corporation shall give, by first class mail, postage prepaid, return receipt requested, addressed to each holder of any shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, at least 30 days' prior written notice of the date when the same shall occur. Such notice shall specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization or reclassification.

i. **Stock to be Reserved.** The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issue upon the conversion of the Preferred Stock as provided pursuant to paragraph 6 herein, 6,733,333 shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Preferred Stock. The Corporation covenants that all shares of Common Stock, if any, which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges arising out of or by reason of the issue thereof. The Corporation will take all such action as may be necessary on its part to assure that all such shares of Common Stock, may be so issued without violation of any applicable law or regulation, or of any requirements of any national securities exchange upon which the Common Stock of the Corporation may be listed.

j. **No Reissuance of the Preferred Stock.** Shares of Preferred Stock which are converted into shares of Common Stock as provided herein shall not be reissued.

k. **Issue Tax.** The issuance of certificates for shares of Common Stock upon conversion of the Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation 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 of the holder of the Preferred Stock which is being converted.

l. **Closing of Books.** The Corporation will at no time close its transfer books against the transfer of any Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock in any manner which interferes with the timely conversion of such Preferred Stock.

7. **Miscellaneous.**

a. **Business Day.** If any payment shall be required by the terms hereof to be made on a day that is not a Business Day, such payment shall be made on the immediately succeeding Business Day.

b. **Exclusion of Other Rights.** Except as may otherwise be required by law, the shares of Preferred Stock shall not have any designations, preferences, limitations or relative rights, other than those specifically set forth in these resolutions (as such resolutions may be amended from time to time) and in the Articles of Incorporation of the Corporation.

c. **Headings.** The headings of the various sections and subsections hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

d. **Severability of Provisions.** If any right, preference or limitation of the Preferred Stock set forth in this Certificate (as such Certificate may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule or law or public policy, all other rights, preferences and limitations set forth in this Certificate (as so amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation, shall nevertheless remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

e. **Status of Reacquired Shares.** Shares of Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Florida) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be redesignated and reissued.

8. **Definitions.** As used in this Certificate of Designation, the following terms shall have the following meanings (with terms defined in the singular having comparable meanings when used in the plural and *vice versa*), unless the context otherwise requires:

"Articles of Incorporation" means the Articles of Incorporation of Thrucomm, Inc.

"Available Assets" shall have the meaning ascribed to it in paragraph 4(a) hereof.

"Board of Directors" shall have the meaning ascribed to it in the first recital hereof.

"Business Day" means any day except a Saturday, a Sunday, or any day on which banking institutions in New York, New York are required or authorized by law or other governmental action to be closed.

"Capital Infusion" shall have the meaning ascribed to it in paragraph 6(c)

"Capital Stock" means, with respect to any Person, (i) any and all shares, interests, participation, rights or other equivalents thereof (however designated and whether voting or non-voting) in such Person's capital stock, and (ii) any and all rights to purchase, warrants or options exchangeable for or convertible into such capital stock, including any debt security that is exchangeable for or convertible into such capital stock.

"Common Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Conversion Preference" means the order of distribution of Underlying Shares to the holders of Preferred Stock, as set forth in paragraph 6(d) hereof.

"Conversion Rate" means the number of Underlying Shares into which a share of Preferred Stock will be converted upon the occurrence of a Mandatory Conversion Event, determined as to each such series in the manner set forth in paragraph 6(b) of this Certificate.

"Conversion Value" means the value of Thrucomm, not less than \$20,000,000, as determined at the time of a Mandatory Conversion Event. If the Mandatory Conversion Event is an IPO, the Conversion Value shall be an amount equal to the result obtained from the following calculations: (A) the multiplication of the gross proceeds of the IPO by the inverse of the fraction of the Corporation's Common Stock sold in the IPO, and (B) the difference between the result obtained in calculation A and the gross proceeds of the IPO. If the Mandatory Conversion Event is a Sale or Merger, the Conversion Value shall be an amount equal to the aggregate consideration proposed to be received in the Sale or Merger. If the Mandatory Conversion Event is an Investment, the Conversion Value shall be an amount equal to the aggregate value received in the Investment.

"Corporation" means Thrucomm, Inc., a Florida corporation, and its successors and assigns.

"Datalinc" means Datalinc, Ltd., a Florida limited partnership.

"Datalinc Liquidation Value" means the portion of the Remainder Available Assets allocated to Datalinc, Ltd., determined at the time of a liquidation, winding up and dissolution of the

Corporation, as follows: If the Remainder Available Assets is less than \$30,000,000, the Datalinc Liquidation Value shall be \$9,000,000. If the Remainder Available Assets is greater than or equal to \$30,000,000, but less than \$60,000,000, the Datalinc Liquidation Value shall be an amount equal to the result obtained from the following calculations: (A) The difference between the Remainder Available Assets and \$30,000,000. (B) The result obtained in calculation A divided by the number five (5). (C) The sum of the result obtained in calculation B and \$9,000,000. If the Remainder Available Assets is greater than or equal to \$60,000,000, the Datalinc Liquidation Value shall be an amount equal to the result obtained from the following calculations: (A) The difference between the Remainder Available Assets and \$60,000,000. (B) The result obtained in calculation A divided by the number ten (10). (C) The sum of the result obtained in calculation B and \$15,000,000.

"Datalinc Value" means the portion of the Conversion Value allocated to Datalinc, Ltd., determined at the time of a Mandatory Conversion Event as follows: If the Remainder Conversion Value is less than \$30,000,000, the Datalinc Value shall be \$9,000,000. If the Remainder Conversion Value is greater than or equal to \$30,000,000, but less than \$60,000,000, the Datalinc Value shall be an amount equal to the result obtained from the following calculations: (A) The difference between the Remainder Conversion Value and \$30,000,000. (B) The result obtained in calculation A divided by the number five (5). (C) The sum of the result obtained in calculation B and \$9,000,000. If the Remainder Conversion Value is greater than or equal to \$60,000,000, the Datalinc Value shall be an amount equal to the result obtained from the following calculations: (A) The difference between the Remainder Conversion Value and \$60,000,000. (B) The result obtained in calculation A divided by the number ten (10). (C) The sum of the result obtained in calculation B and \$15,000,000.

"Discounted Fastcom Value" means an amount equal to the product of (i) .30 and (ii) the Fastcom Value.

"Dividend Payment Date" shall have the meaning ascribed to it in paragraph 3(a) hereof.

"Earned Preferred Return" means the number, determined as to a particular series of Preferred Stock in the manner set forth in paragraph 6(c) of this Certificate upon the occurrence of a Mandatory Conversion Event.

"Fastcom" means Fastcom, Ltd., a Florida limited partnership.

"Fastcom Liquidation Value" shall mean an amount equal to the difference between the Remainder Available Assets and the Datalinc Liquidation Value.

"Fastcom Value" shall mean an amount equal to the difference between the Remainder Conversion Value and the Datalinc Value.

"Investment" means the sale by the Corporation, to one or more investors in a single transaction, of a one-third or greater interest in the Corporation.

"IPO" means the consummation of an initial public offering of the Common Stock pursuant to an effective registration statement.

"Junior Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Mandatory Conversion Event" means the earliest to occur of the following: (i) the consummation of an initial public offering of the Common Stock pursuant to an effective registration statement, (ii) a Sale or the approval by the Board of Directors of a proposed Sale and the execution of a definitive agreement for such Sale which is conditioned upon the approval of the Corporation's shareholders, (iii) a Merger or the approval by the Board of Directors of a Merger and the execution of a definitive agreement for such Merger that is conditioned upon the approval of the Corporation's shareholders or (iv) the sale by the Corporation, to one or more investors in a single transaction, of a one-third or greater interest in the Common Stock or other securities exercisable for or convertible into Common Stock.

"Maximum Series M Conversion Value" shall have the meaning ascribed thereto in paragraph 6(c) hereof.

"Merger" means the merger of the Corporation with a non-affiliated entity, whereby the Corporation is not the surviving entity.

"Parity Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Preferred Stock" shall have the meaning ascribed to it in paragraph 1 hereof.

"Remainder Available Assets" shall have the meaning ascribed to it in paragraph 4(b)(i) hereof.

"Remainder Conversion Value " means the excess of the Conversion Value after any distribution of a portion of the Conversion Value to any person having an interest in the Corporation which interest is senior to the Preferred Stock with respect to distributions of the Conversion Value, and the interests of the Corporation's Series A Senior Convertible Preferred Stock, simultaneously or hereafter created, shall rank *pari passu* with the Preferred Stock with respect to distributions of the Conversion Value.

"Sale" means the sale of at least 80% of the Corporation's assets.

"Senior Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Series A Senior Preferred Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Series B Senior Preferred Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Series M Conversion Value" shall have the meaning ascribed thereto in paragraph 6(c) hereof.

"Underlying Shares" shall have the meaning ascribed to it in paragraph 6(a) hereof.

FURTHER RESOLVED, that the appropriate officers of the Corporation are hereby authorized to (i) execute and acknowledge this Certificate setting forth these resolutions and (ii) to cause articles of amendment to the Articles of Incorporation setting forth this Certificate to be delivered to the Department of State for filing, in accordance with the requirements of Section 607.0602(4) of the Florida Business Corporation Act of the State of Florida.

IN WITNESS WHEREOF, THRUCOMM, INC. has caused its corporate seal to be affixed hereunto and this Certificate to be duly executed by its President and attested to by its Secretary, this 22<sup>nd</sup> day of January, 1998.

THRUCOMM, INC.

By: 

Name: Mark J. Giannini

Title: President

[Corporate Seal]

Attest:

By: 

Name: John F. Kolenda

Title: Secretary

Appendix "B"

CERTIFICATE OF DESIGNATION OF THE SERIES, PREFERENCES,  
LIMITATIONS AND RELATIVE RIGHTS OF THE

SERIES A  
SENIOR CONVERTIBLE PREFERRED STOCK  
\$.001 PAR VALUE PER SHARE

OF

THRUCOMM, INC.

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Pursuant to Section 607.0602 of the Florida Business Corporation Act

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The undersigned DOES HEREBY CERTIFY that the following resolutions were duly adopted by the Board of Directors (the "Board of Directors") of THRUCOMM, INC., a Florida corporation (the "Corporation"), at a meeting duly convened and held on December 31, 1997 duly adjourned and reconvened on January 5, 1998, at which a quorum was present and acted throughout:

WHEREAS, the Board of Directors of the Corporation is authorized, within the limitations and restrictions stated in the Articles of Incorporation of the Corporation (the "Articles of Incorporation"), to provide by resolution or resolutions for the issuance of shares of preferred stock of the Corporation, in one or more series with such voting powers, full or limited, or without voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions as shall be stated and expressed in a resolution or resolutions providing for the issue thereof adopted by the Board of Directors, and as are not stated and expressed in the Articles of Incorporation, or any amendment thereto, including (but without limiting the generality of the foregoing) such provisions as may be desired concerning voting, redemption, dividends, dissolution or the distribution of assets, conversion or exchange and such other subjects or matters as may be fixed by resolution or resolutions of the Board of Directors under the Florida Business Corporation Act; and

WHEREAS, it is the desire of the Board of Directors of the Corporation, pursuant to its aforesaid authority, to authorize and fix the terms of a series of preferred stock and the number of shares constituting such series;

NOW, THEREFORE, BE IT RESOLVED:

1. Designation and Number of Shares. There shall be hereby established a single series of the preferred stock of the Corporation, the designation of which shall be "Series A Senior Convertible Preferred Stock", par value \$.001 per share (the "Series A Senior Preferred Stock"). The number of authorized shares constituting the Series A Senior Preferred Stock is 1,666,667.

2. Rank.

a. The Series A Senior Preferred Stock shall, with respect to dividend distributions and distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation, rank on a parity with the Corporation's Series B Senior Convertible Preferred Stock, par value \$.001 per share (the

"Series B Senior Preferred Stock"). The Series A Senior Preferred Stock shall, with respect to dividend distributions, rank on a parity with, and with respect to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation, rank senior to the Corporation's common stock, no par value per share (the "Common Stock"). The Series A Senior Preferred Stock shall, with respect to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation, rank senior to the Corporation's Series A-P, Mandatory Convertible Preferred Stock, par value \$.001 per share (collectively, the "Series A-P Preferred Stock").

b. All classes or series of Capital Stock of the Corporation simultaneously or hereafter created that do not expressly provide that it rank on a parity with or senior to the Series A Senior Preferred Stock with respect to dividend distributions or distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation shall rank junior to the Series A Senior Preferred Stock, and together with all classes or series of Capital Stock of the Corporation which expressly provide that it rank junior to the Series A Senior Preferred Stock with respect to dividend distributions or distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation are collectively referred to herein as "Junior Stock". All classes or series of Capital Stock of the Corporation hereafter created which expressly provide that it rank on a parity with the Series A Senior Preferred Stock with respect to dividend distributions or distribution of assets and rights upon the liquidation, winding up and dissolution of the Corporation are collectively referred to herein as "Parity Stock". All classes or series of Capital Stock of the Corporation simultaneously or hereafter created which expressly provide that it rank senior to the Series A Senior Preferred Stock with respect to dividend distributions or distribution of assets and rights upon the liquidation, winding up and dissolution of the Corporation are collectively referred to herein as "Senior Stock".

3. Dividends.

a. So long as any shares of Series A-P Preferred Stock are outstanding, no dividend or distribution (except a dividend or distribution paid in Common Stock or any other Capital Stock of the Corporation ranking junior to the Preferred Stock as to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation) shall be declared or paid or set aside for payment on the Common Stock, the Series A Senior Preferred Stock or on any other Capital Stock of the Corporation nor, except for the Series B Senior Preferred Stock, shall any Common Stock or other Capital Stock of the Corporation be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) by the Corporation, except by conversion into, or exchange for, Common Stock or other Capital Stock of the Corporation ranking junior to the Series A-P Preferred Stock as to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation.

b. —The holders of the outstanding shares of Series A Senior Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available therefor, dividends to the same extent as, on the same basis as, at the same rate as, and contemporaneously with, dividends when, as and if declared by the Board of Directors with respect to shares of Common Stock, as if such Series A Senior Preferred Stock had been converted into Common Stock, on the record date for determining the holders of Common Stock entitled to receive such dividend. Such dividends shall be paid on the dates specified by the Board of Directors as the dates for payment of dividends in respect of shares of Common Stock (each, a "Dividend Payment Date"). No interest or dividends shall be payable in respect of any dividends which may be in arrears. Each distribution on the Series A Senior Preferred Stock shall be payable to holders of record

as they appear on the stock books of the Corporation on such record dates, not less than ten (10) nor more than sixty (60) days preceding the related Dividend Payment Date, as shall be fixed by the Board of Directors.

c. All dividends paid with respect to shares of Series A Senior Preferred Stock pursuant to paragraph 3(a) shall be paid pro rata and in like manner to all of the holders entitled thereto.

d. Nothing herein contained shall in any way or under any circumstances be construed or deemed to require the Board of Directors to declare, or the Corporation to pay or set apart for payment, any dividends on shares of the Series A Senior Preferred Stock or Common Stock at any time.

e. (i) No full dividends shall be declared by the Board of Directors of the Corporation or paid or set apart for payment by the Corporation on any Parity Stock (including the Common Stock) unless, contemporaneously therewith, a like ratable dividend calculated in accordance with paragraph 3(a) hereof is declared and paid, or declared and a sum set apart sufficient for such payment, on the Series A Senior Preferred Stock, payable as set forth in paragraph 3(a) hereof. If any such dividends are not paid in full, as aforesaid, on the shares of the Series A Senior Preferred Stock and any other Parity Stock, all dividends declared upon shares of the Series A Senior Preferred Stock and any other Parity Stock shall be declared pro rata so that the amount of dividends declared per share on the Series A Senior Preferred Stock and such Parity Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series A Senior Preferred Stock and such Parity Stock bear to each other.

(ii) The Corporation shall not declare, pay or set apart for payment any dividend on any shares of Junior Stock or make any payment on account of, or set apart for payment money for a sinking or other similar fund for, the purchase, redemption or other retirement of, any shares of Junior Stock or any warrants, rights, calls or options exercisable for or convertible into any shares of Junior Stock, or make any distribution in respect thereof, either directly or indirectly, whether in cash, obligations or shares of the Corporation or other property, and shall not permit any of its Subsidiaries to purchase or redeem any shares of Junior Stock or any such warrants, rights, calls or options, unless all accrued and unpaid dividends have been or contemporaneously are declared and paid in cash, or declared and a sum in cash set apart sufficient for such payment, on the Series A Senior Preferred Stock (all such prohibited payments and other actions set forth above in this paragraph 3(d)(2) being collectively referred to as "Restricted Junior Payments"). The foregoing provisions will not prohibit any of the following: (a) the payment of dividends or other distributions on Junior Stock in the form of additional shares of Junior Stock (or the adjustment of the Liquidation Preference of such Junior Stock); and (b) the payment of any Restricted Junior Payment made with the affirmative vote or consent of the holders of a majority of the issued and outstanding shares of Series A Senior Preferred Stock, voting or consenting, as the case may be, as one class, provided that such holders do not also beneficially own shares of Junior Stock.

f. Subject to the foregoing provisions of this paragraph 3, the Corporation may declare, pay or set apart for payment dividends on any shares of Junior Stock or Parity Stock, or make any payments on account of or set apart for payment money for a sinking or other similar fund for, the purchase, redemption or other retirement of, any shares of Junior Stock or Parity Stock or any warrants, rights, calls or options exercisable for or convertible into any shares of Junior Stock or Parity Stock or make any distribution in respect thereof and the Corporation may permit any of its Subsidiaries to purchase or redeem any shares of Junior Stock or Parity Stock or such warrants, rights, calls or options, and the holders of the shares of the Series A Senior Preferred Stock shall not be entitled to share therein.

4. Liquidation Rights.

a. Liquidation Preference. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of shares of Series A Senior Preferred Stock then outstanding shall be entitled to be paid, for each share held, out of the assets of the Corporation available for distribution to its shareholders (the "Available Assets"), an amount equal to \$3.30 per share (the "Liquidation Preference"). The voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all the property or assets of the Corporation to, or a consolidation or merger of the Corporation with, one or more other corporation or corporations (whether or not the Corporation is the surviving corporation in such consolidation or merger) will not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary, within the meaning of the provisions of this paragraph 4, unless in each such case such sale or merger involves a plan of liquidation.

b. Liquidation Payment; Insufficient Funds. Upon any liquidation, dissolution or winding up of the Corporation, the holders of outstanding Series A Senior Preferred Stock shall be entitled to receive payment for each share held, out of the excess, if any, of the Available Assets after any distribution of the Available Assets to any holder of any shares Senior Stock with respect to distributions of Available Assets (the "Remainder Available Assets"), an amount in cash equal to the Liquidation Preference per share, plus all accumulated and unpaid dividends thereon to the date fixed for liquidation winding up and dissolution of the Corporation (the "Liquidation Payment"). If upon such liquidation, dissolution or winding up, the Remainder Available Assets to be distributed among the holders of the Series A Senior Preferred Stock shall be insufficient to permit payment in full of the Liquidation Payment to the holders of outstanding shares of the Series A Senior Preferred Stock and any preferential amount to be paid to the holders of Parity Stock with respect to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation, including the Series B Senior Preferred Stock, then the holders of such shares shall share ratably in such distribution of assets in accordance with the amount which would be payable on such distribution if the amounts to which the holders of outstanding shares of Series A Senior Preferred Stock and the holders of such Parity Stock are entitled, were paid in full.

c. Priority. All of the preferential amounts to be paid to the holders of the Series A Senior Preferred Stock shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets of the Corporation to, the holders of Series A-P Preferred Stock, the holders of Common Stock, and any other Junior Stock with respect to distributions upon liquidation.

d. Notice. Written notice of any liquidation, dissolution or winding up, stating a payment date, the amount of the Liquidation Payment and the place where said Liquidation Payment shall be payable, shall be given by mail, postage prepaid, not less than twenty (20) days prior to the payment date stated therein, to the holders of record of the Series A Senior Preferred Stock, such notice to be addressed to each such holder at his post office address as shown by the records of the Corporation.

5. Voting Rights.

a. In addition to any rights afforded by law, the holder of each share of Series A Senior Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Series A Senior Preferred Stock could then be converted on all matters as to which holders of Common Stock shall be entitled to vote, in the same manner and with the same effect as such holders of Common Stock, voting together with the holders of Common Stock, Series B Senior Preferred Stock and Series A-P Preferred Stock, as one class,

and, with respect to such vote, such holder shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation and applicable law.

b. So long as any shares of Series A Senior Preferred Stock are outstanding, the Corporation shall not, without the affirmative consent of a majority of the Series A Senior Preferred Stock amend, alter or repeal any of the provisions of its Articles of Incorporation which would in any way adversely affect the rights of the holders of Series A Senior Preferred Stock.

c. In any case in which the holders of Series A Senior Preferred Stock shall be entitled to vote as a separate class pursuant to Florida law or this Certificate of Designation (excluding paragraph 5(a) above), each holder of Series A Senior Preferred Stock shall be entitled to one vote for each share of Series A Senior Preferred Stock.

6. Conversion of Series A Senior Preferred Stock.

a. Optional Conversion. At any time and from time to time, each share of Series A Senior Preferred Stock may be converted, at the option of the holder thereof, in the manner hereinafter provided, into fully paid and nonassessable shares of Common Stock at its then effective Conversion Rate (as defined below); provided, however, that on any liquidation or winding up of the affairs of the Corporation, the right of conversion shall terminate at the close of business on the Business Day preceding the date fixed for payment of any amounts distributable on liquidation to the holders of Series A Senior Preferred Stock.

b. Conversion Rate. (i) The initial conversion rate for the Series A Senior Preferred Stock shall be one (1) share of Common Stock for each share of Series A Senior Preferred Stock surrendered for conversion (as in effect from time to time, the "Conversion Rate"). The Conversion Rate from time to time in effect is subject to adjustment as provided in paragraph 6(d) hereof.

(ii) Whenever the Conversion Rate shall be adjusted as provided in paragraph 6(d) hereof, the Corporation shall forthwith file at each office designated to accept the conversion of Series A Senior Preferred Stock, a statement, signed by the President, any Vice President or the Treasurer of the Corporation, showing in reasonable detail the facts requiring such adjustment and the Conversion Rate that will be effective after such adjustment. The Corporation shall also cause a notice setting forth any such adjustments to be sent by mail, first class, postage prepaid, to each record holder of Series A Senior Preferred Stock at his or its address appearing on the stock register.

c. Conversion Mechanics. (i) In order to exercise the foregoing conversion privilege, a holder of Series A Senior Preferred Stock shall surrender to the Corporation at its principal offices, or to any transfer agent for the Corporation, (A) the certificate(s) representing such shares of Series A Senior Preferred Stock to be converted, (B) transfer instrument(s) satisfactory to the Corporation and sufficient to transfer such shares of Series A Senior Preferred Stock to the Corporation free of any adverse interest, and (C) a written notice to the Corporation that such holder has elected to convert all such shares into Common Stock or, if less than all shares represented by such certificate are to be converted, the portion of the shares represented thereby to be converted. Such notice shall also state the name or names (with addresses) in which the certificates for shares issuable upon such conversion shall be issued. Series A Senior Preferred Stock shall be deemed converted for all purposes including without limitation the taking of a record date for a meeting of the stockholders of the Corporation, upon receipt by the Corporation or its transfer agent of the items listed in clauses (A), (B) and (C) above.

(ii) Upon conversion of any certificate evidencing Series A Senior Preferred Stock which is converted in part only, the Corporation shall cause to be executed and delivered to the holder thereof, at the expense of the Corporation, a new certificate evidencing the balance of the Series A Senior Preferred Stock which was not so converted.

(iii) The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock the full number of shares which all shares of Series A Senior Preferred Stock from time to time outstanding are convertible.

d. Anti-dilution Provisions. In order to prevent dilution of the rights granted hereunder, the Conversion Rate shall be subject to adjustment from time to time in accordance with this paragraph 6(d). Upon each adjustment of the Conversion Rate, the record holder of shares of Series A Senior Preferred Stock shall thereafter be entitled to acquire upon exercise, the number of shares of the Corporation's Common Stock equal to the Conversion Rate; provided that, notwithstanding anything in this paragraph 6(d) to the contrary, no adjustment shall be made to the Conversion Rate for (i) the issuance of any Series B Senior Preferred Stock pursuant to the Purchase Agreement or (ii) any dividend or distribution made on the Common Stock which is contemporaneously made to the holders of Series A Senior Preferred Stock pursuant to paragraph 3 hereof. To the extent that as a result of any conversion of the Series A Senior Preferred Stock the Corporation would be obligated to issue a fractional share of Common Stock (which shall be determined with respect to the aggregate number of shares of Common Stock held of record by each holder), then the Corporation shall issue a number of shares of Common Stock upon such conversion rounded to the nearest whole share.

(i) Certain Issuances of Securities. If the Corporation shall at any time after the initial date of issuance of the Series A Senior Preferred Stock, issue any shares of Common Stock, or convertible preferred stock, warrants, options, rights or other securities convertible into or exchangeable or exercisable for shares of Common Stock (collectively, the "Newly Issued Securities") for a consideration (paid in cash, securities or other property) per share less than the Trigger Value of such Newly Issued Securities, then the Conversion Rate shall be adjusted to an amount equal to (x) the Applicable Percentage (determined immediately prior to such issuance) of a fraction, the numerator of which equals the Fully Diluted Shares (after giving effect to the issuance of the Newly Issued Securities), and the denominator of which equals the number of shares of Series A Senior Preferred Stock then outstanding. For the purposes of any adjustment of the Conversion Rate pursuant to this clause (i), the following provisions shall be applicable:

(A) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash received by the Corporation therefor.

(B) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the "fair value" of such consideration as determined in the good faith judgment of the Board of Directors; provided, however, that the holders of a majority of the Series A Senior Preferred Stock may in good faith refer the question of valuation for final settlement to a nationally recognized investment banking firm designated by such holders, and the cost relating to the retention of such firm shall be borne by the Corporation.

(C) In the case of the issuance of (x) options to purchase or rights to subscribe for Common Stock, (y) securities by their terms convertible into or exchangeable for Common Stock or (z) options to purchase or rights to subscribe for such convertible or exchangeable securities:

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

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

(3) on any change in the number of shares or exercise price of Common Stock deliverable upon exercise of any such options or rights or conversions of or exchange for such convertible or exchangeable securities, other than a change resulting from the antidilution provisions thereof, the Conversion Rate shall forthwith be readjusted to such Conversion Rate as would have obtained had the adjustment made at the time of the issuance of such options, rights or securities not converted prior to such change been made upon the basis of such change; and

(4) on the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Rate shall forthwith be readjusted to such Conversion Rate had such options, rights, securities or options or rights related to such securities not been issued.

(D) In the case of the issuance of any of the types of securities referenced in clause (C) above in connection with the issue and sale of other securities of the Corporation together comprising one integral transaction in which no specific consideration is allocated to such securities by the parties thereto, the amount of consideration therefor shall be deemed to be the fair value as determined in good faith by the Board of Directors; provided, however, that the holders of a majority of the Series A Senior Preferred Stock may in good faith refer the question of valuation for final settlement to a nationally recognized investment banking firm designated by such holders, and the cost relating to the retention of such firm shall be borne by the Corporation.

(ii) Subdivision, Combination, Dividend or Distribution of Common Stock. In case the Corporation shall at any time (a) subdivide its outstanding shares of Common Stock into a greater number of shares of Common Stock, (b) combine its outstanding shares of Common Stock into a smaller number of shares or (c) declare a distribution (other than a dividend which the Series A Senior Preferred is entitled to pursuant

to Section 3 hereof) payable to its holders of Common Stock in additional shares of Common Stock, then the Conversion Rate in effect shall forthwith be adjusted to that ratio determined by multiplying the Conversion Rate in effect immediately prior to such subdivision, combination, grant, dividend or distribution by a fraction, the numerator of which shall be the total number of outstanding shares of Common Stock immediately after such subdivision, combination or distribution, and the denominator of which shall be the total number of outstanding shares of Common Stock immediately prior to such subdivision, combination or distribution.

(iii) Reorganization, Reclassification, Consolidation, Merger or Sale. If any capital reorganization or reclassification of the capital stock of the Corporation (except in respect of transactions described in paragraph 6(d)(ii)) or any consolidation or merger of the Corporation with another corporation, or the sale of all or substantially all its assets to another corporation, shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to, or in exchange for, Common Stock, then as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provision will be made whereby the holders of Series A Senior Preferred Stock 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 conversion of such Series A Senior Preferred Stock, such shares of stock, securities or assets (including cash) as may be issued or payable with respect to or in exchange for a number of outstanding shares of Common Stock equal to the number of shares of such stock immediately theretofore so receivable had such reorganization, reclassification, 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 such holder to the end that the provisions hereof (including, without limitation, provisions for adjustments of the Conversion Rate) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the conversion of Series A Senior Preferred Stock. In the event of a merger or consolidation of the Corporation as a result of which a greater or lesser number of shares of common stock of the surviving corporation are issuable to holders of Common Stock outstanding immediately prior to such merger or consolidation, the Conversion Rate in effect immediately prior to such merger or consolidation shall be adjusted in the same manner as though there were a subdivision or combination of the outstanding shares of Common Stock.

(iv) (A) If any event occurs of the type contemplated by the provisions of this paragraph 6(d) but not expressly provided for by such provisions, the Board of Directors will determine whether to make appropriate adjustments to the Conversion Rate as may be necessary fully to carry out the adjustments contemplated by this paragraph 6(d). In the event the Board of Directors is unable to make such determination, an appraiser shall be selected by the Board of Directors with the consent of the holder or holders of a majority (by number of shares) of Series A Senior Preferred Stock, which consent shall not be unreasonably withheld.

(B) The Corporation will not, by amendment of its Articles of Incorporation or bylaws or through any reorganization, transfer of assets, reclassification, merger, dissolution, issue or sale of securities or otherwise, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by the Corporation hereunder but will at all times in good faith assist in the carrying out of all the provisions hereof and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of the holders of Series A Senior Preferred Stock against impairment.

(v) In the event that (a) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights, (b) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, including any subdivision or

combination of its outstanding shares of Common Stock, or consolidation or merger of the Corporation with, or sale of all or substantially all of its assets to, another corporation or (c) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation, then, in connection with such event, the Corporation shall give to the holders of the Series A Senior Preferred Stock:

(A) at least twenty (20) days prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up; and

(B) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least twenty (20) days prior written notice of the date when the same shall take place.

Such notice in accordance with the foregoing clause (A) shall also specify, in the case of any such subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing clause (B) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be. Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of the Series A Senior Preferred Stock at the address of each such holder as shown on the books of the Corporation.

The foregoing anti-dilution provisions set forth in this paragraph 6(d) may be amended or waived, in whole or in part and in writing, by a majority of the holders of the Series A Senior Preferred Stock.

#### 7. Redemption.

a. Each share of Series A Senior Preferred Stock shall, at the sole election of the Corporation, be redeemed at any time after the closing of a Qualifying Public Offering and upon delivery of the notice set forth in paragraph 7(b), which notice shall conclusively evidence such election by the Corporation. The redemption price for the shares of Series A Senior Preferred Stock redeemed pursuant to this paragraph 7 shall be paid to each holder of Series A Senior Preferred Stock by certified check or by wire transfer of immediately available funds denominated in U.S. dollars to one or more accounts designated by such holder to the Corporation in an amount equal to the greater of the holder's pro rata share of the Fair Market Value of the Series A Senior Preferred Stock relating to the Common Stock into which the shares of Series A Senior Preferred Stock being redeemed are convertible, determined at the time of the notice set forth in paragraph 7(b). For purposes of this Certificate, "Fair Market Value" means either (i) the Market Price, if any (as defined below), of the Common Stock or (ii) if no Market Price exists, the value (which shall not take into effect any minority discounts) of the Common Stock as determined by the price per share of such Common Stock which the Corporation could obtain from a willing buyer (not a current employee, officer, consultant or director or any affiliate of any such Person) for such shares sold by the Corporation, as determined in good faith by the Board of Directors; provided, however, that the holder or holders of a majority (by number of shares) of the Series A Senior Preferred Stock may refer the question of valuation (which shall not take into effect any minority discounts) for final settlement to a nationally recognized investment banking firm designated by such holder or holders and reasonably acceptable to the Corporation; and provided, further, that if the parties cannot agree on such a firm, each party shall choose a nationally recognized investment banking firm, which shall choose a third firm which shall be nationally recognized and that third firm shall determine the Fair Market

Value, which determination shall be final and binding. The cost relating to retaining any investment banking firm(s) shall be borne by the Corporation. The parties agree to cooperate in the exercise of their obligations so that the Fair Market Value is determined in a timely manner. For purposes of this Certificate, the "Market Price" of any security shall mean the value determined in accordance with the following provisions:

(i) if such security is listed on a national securities exchange registered under the Exchange Act, a price equal to the volume weighted average of the closing sales prices for such security on such exchange for each day during the 20 trading days preceding the notice set forth in paragraph 7(b); and

(ii) if not so listed under clause (i) above and such security is quoted on the NASDAQ or other national quotation system, a price equal to the average of the volume weighted average of the closing bid and asked prices for such security quoted on such system each day during the 20 trading days preceding the notice set forth in paragraph 7(b).

b. If the Corporation elects to cause a redemption as set forth in paragraph 7(a), all holders of record of shares of Series A Senior Preferred Stock will be given at least 10 days' prior written notice of the date fixed and the place designated for redemption of all of such shares of Series A Senior Preferred Stock pursuant to this paragraph 7. Such notice will be sent by mail, first class, postage prepaid, or overnight courier to each record holder of shares of Series A Senior Preferred Stock at such holder's address appearing on the stock register. On or before the date fixed for redemption each holder of shares of Series A Senior Preferred Stock shall surrender his or its certificates or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive the redemption proceeds to which such holder is entitled pursuant to this paragraph 7. On the date fixed for redemption, all rights with respect to the Series A Senior Preferred Stock so redeemed will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefore, to receive the redemption proceeds into which such Series A Senior Preferred Stock has been redeemed, including payment of any accrued and unpaid dividends thereon. If so required by the Corporation, certificates surrendered for redemption shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his attorneys duly authorized in writing. All certificates evidencing shares of Series A Senior Preferred Stock which are required to be surrendered for redemption in accordance with the provisions hereof shall, from and after the date such certificates are so required to be surrendered, be deemed to have been retired and canceled and the shares of Series A Senior Preferred Stock represented thereby redeemed for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date.

8. Business Day. If any payment shall be required by the terms hereof to be made on a day that is not a Business Day, such payment shall be made on the immediately succeeding Business Day.

9. Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series A Senior Preferred Stock shall not have any designations, preferences, limitations or relative rights, other than those specifically set forth in these resolutions (as such resolutions may, subject to paragraph 5, be amended from time to time) and in the Articles of Incorporation.

10. Headings. The headings of the various sections and subsections hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

11. Definitions. As used in this Certificate of Designation, the following terms shall have the following meanings (with terms defined in the singular having comparable meanings when used in the plural and vice versa), unless the context otherwise requires:

"Applicable Percentage" means, as of any date of determination, the percentage of the Fully Diluted Shares represented by the number of shares of Common Stock issuable upon conversion of all then outstanding Series A Senior Preferred Stock.

"Articles of Incorporation" shall have the meaning ascribed to it in the second paragraph of this Certificate.

"Available Assets" shall have the meaning ascribed to it in paragraph 4(a) hereof.

"Board of Directors" shall have the meaning ascribed to it in the first paragraph of this Certificate.

"Business Day" means any day except a Saturday, a Sunday, or any day on which banking institutions in New York, New York are required or authorized by law or other governmental action to be closed.

"Capital Stock" means, with respect to any Person, any and all shares, interests, participation, rights in, or other equivalents (however designated and whether voting or non-voting) of, such Person's capital stock and any and all rights to purchase, warrants or options exchangeable for or convertible into such capital stock (including any debt security that is exchangeable for or convertible into such capital stock).

"Common Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Conversion Rate" shall have the meaning ascribed to it in paragraph 6(b) hereof.

"Corporation" means Thrucomm, Inc., a Florida corporation, and its successors and assigns.

"Exchange Act" shall mean the United States Securities Exchange Act of 1934, as amended.

"Fair Market Value" shall have the meaning ascribed to it in paragraph 7(a) hereof.

"Fully Diluted Shares" means, when used with reference to Common Stock, the number of shares of Common Stock outstanding at such date and Common Stock of the Corporation issuable in respect of any warrants, options or convertible securities.

"Junior Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Liquidation Payment" shall have the meaning ascribed to it in paragraph 4(b) hereof.

"Liquidation Preference" shall have the meaning ascribed to it in paragraph 4(a) hereof.

"Market Price" shall have the meaning ascribed to it in paragraph 7(a) hereof.

"Parity Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Purchase Agreement" means the Securities Purchase Agreement, dated as of January \_\_, 1998, among the Corporation and the Investors party thereto, relating to the issuance of the Series B Senior Preferred Stock.

"Qualifying Public Offering" shall mean the sale by one or more Persons in an underwritten offering registered under the Securities Act of any equity securities of the Corporation (or its successor) which results in aggregate gross proceeds from such sales (before underwriters' discounts and selling commissions) to the Corporation greater than or equal to \$15,000,000.

"Remainder Available Assets" shall have the meaning ascribed to it in paragraph 4(b) hereof.

"Restricted Junior Payments" shall have the meaning ascribed to it in paragraph 3 hereof.

"Securities Act" shall mean the United States Securities Act of 1933, as amended.

"Senior Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Series A Senior Preferred Stock" shall have the meaning ascribed to it in paragraph 1 hereof.

"Series A-P Preferred Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Series B Senior Preferred Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Subsidiary" means, with respect to any Person, (i) any Person more than fifty percent (50%) of the voting securities, having ordinary voting power, of which is owned directly or indirectly by such Person or by one or more other Subsidiaries of such Person or such Person in conjunction with one or more other Subsidiaries of such Person or (ii) any other Person more than fifty percent (50%) of the voting interest of which is owned directly or indirectly by such Person or by one or more Subsidiaries of such Person or by such Person in conjunction with one or more other Subsidiaries of such Person.

"Trigger Value" means, as of any date of determination with respect to the issuance of Newly Issued Securities, the amount determined by dividing \$33,000,000 by the number of Fully Diluted Outstanding Shares (prior to giving effect to the issuance of such Newly Issued Securities).

FURTHER RESOLVED, that the appropriate officers of the Corporation are hereby authorized to execute and acknowledge a certificate setting forth these resolutions and to cause such certificate to be filed and recorded, in accordance with the requirements of Section 607.0602(4) of the Florida Business Corporation Act.

IN WITNESS WHEREOF, THRUCOMM, INC. has caused its corporate seal to be affixed hereunto and this Certificate to be duly executed by its President and attested to by its Secretary, this 22<sup>nd</sup> day of January, 1998.

THRUCOMM, INC.

By:

Name: Mark J. Giannini

Title: President

[Corporate Seal]

Attest:

By:

Name: John F. Kolenda

Title: Secretary

Appendix "C"

CERTIFICATE OF DESIGNATION OF THE SERIES, PREFERENCES,  
LIMITATIONS AND RELATIVE RIGHTS OF THE

SERIES B  
SENIOR CONVERTIBLE PREFERRED STOCK  
\$.001 PAR VALUE PER SHARE

OF  
THRUCOMM, INC.

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Pursuant to Section 607.0602 of the Florida Business Corporation Act

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The undersigned DOES HEREBY CERTIFY that the following resolutions were duly adopted by the Board of Directors (the "Board of Directors") of THRUCOMM, INC., a Florida corporation (the "Corporation"), at a meeting duly convened and held on December 31, 1997, duly adjourned and reconvened on January 5, 1998, at which a quorum was present and acted throughout:

WHEREAS, the Board of Directors of the Corporation is authorized, within the limitations and restrictions stated in the Articles of Incorporation of the Corporation (the "Articles of Incorporation"), to provide by resolution or resolutions for the issuance of shares of preferred stock of the Corporation, in one or more series with such voting powers, full or limited, or without voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions as shall be stated and expressed in a resolution or resolutions providing for the issue thereof adopted by the Board of Directors, and as are not stated and expressed in the Articles of Incorporation, or any amendment thereto, including (but without limiting the generality of the foregoing) such provisions as may be desired concerning voting, redemption, dividends, dissolution or the distribution of assets, conversion or exchange and such other subjects or matters as may be fixed by resolution or resolutions of the Board of Directors under the Florida Business Corporation Act; and

WHEREAS, it is the desire of the Board of Directors of the Corporation, pursuant to its aforesaid authority, to authorize and fix the terms of a series of preferred stock and the number of shares constituting such series;

NOW, THEREFORE, BE IT RESOLVED:

1. Designation and Number of Shares. There shall be hereby established a single series of the preferred stock of the Corporation, the designation of which shall be "Series B Senior Convertible Preferred Stock", par value \$.001 per share (the "Series B Senior Preferred Stock"). The number of authorized shares constituting the Series B Senior Preferred Stock is 2,200,000.

2. Rank.

a. The Series B Senior Preferred Stock shall, with respect to dividend distributions and distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation, rank on a parity with the Corporation's Series A Senior Convertible Preferred Stock, par value \$.001 per share (the

"Series A Senior Preferred Stock"). The Series B Senior Preferred Stock shall, with respect to dividend distributions, rank on a parity with, and with respect to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation, rank senior to the Corporation's common stock, no par value per share (the "Common Stock"). The Series B Senior Preferred Stock shall, with respect to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation, rank senior to the Corporation's Series A-P, Mandatory Convertible Preferred Stock, par value \$.001 per share (collectively, the "Series A-P Preferred Stock").

b. All classes or series of Capital Stock of the Corporation simultaneously or hereafter created that do not expressly provide that it rank on a parity with or senior to the Series B Senior Preferred Stock with respect to dividend distributions or distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation shall rank junior to the Series B Senior Preferred Stock, and together with all classes or series of Capital Stock of the Corporation which expressly provide that it rank junior to the Series B Senior Preferred Stock with respect to dividend distributions or distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation are collectively referred to herein as "Junior Stock". All classes or series of Capital Stock of the Corporation hereafter created which expressly provide that it rank on a parity with the Series B Senior Preferred Stock with respect to dividend distributions or distribution of assets and rights upon the liquidation, winding up and dissolution of the Corporation are collectively referred to herein as "Parity Stock". All classes or series of Capital Stock of the Corporation simultaneously or hereafter created which expressly provide that it rank senior to the Series B Senior Preferred Stock with respect to dividend distributions or distribution of assets and rights upon the liquidation, winding up and dissolution of the Corporation are collectively referred to herein as "Senior Stock".

### 3. Dividends.

a. So long as any shares of Series A-P Preferred Stock are outstanding, no dividend or distribution (except a dividend or distribution paid in Common Stock or any other Capital Stock of the Corporation ranking junior to the Preferred Stock as to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation) shall be declared or paid or set aside for payment on the Common Stock, the Series B Senior Preferred Stock or on any other Capital Stock of the Corporation nor, except for the Series B Senior Preferred Stock, shall any Common Stock or other Capital Stock of the Corporation be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) by the Corporation, except by conversion into, or exchange for, Common Stock or other Capital Stock of the Corporation ranking junior to the Series A-P Preferred Stock as to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation.

b. The holders of the outstanding shares of Series B Senior Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available therefor, dividends to the same extent as, on the same basis as, at the same rate as, and contemporaneously with, dividends when, as and if declared by the Board of Directors with respect to shares of Common Stock, as if such Series B Senior Preferred Stock had been converted into Common Stock, on the record date for determining the holders of Common Stock entitled to receive such dividend. Such dividends shall be paid on the dates specified by the Board of Directors as the dates for payment of dividends in respect of shares of Common Stock (each, a "Dividend Payment Date"). No interest or dividends shall be payable in respect of any dividends which may be in arrears. Each distribution on the Series B Senior Preferred Stock shall be payable to holders of record

as they appear on the stock books of the Corporation on such record dates, not less than ten (10) nor more than sixty (60) days preceding the related Dividend Payment Date, as shall be fixed by the Board of Directors.

c. All dividends paid with respect to shares of Series B Senior Preferred Stock pursuant to paragraph 3(a) shall be paid pro rata and in like manner to all of the holders entitled thereto.

d. Nothing herein contained shall in any way or under any circumstances be construed or deemed to require the Board of Directors to declare, or the Corporation to pay or set apart for payment, any dividends on shares of the Series B Senior Preferred Stock or Common Stock at any time.

e. (i) No full dividends shall be declared by the Board of Directors of the Corporation or paid or set apart for payment by the Corporation on any Parity Stock (including the Common Stock) unless, contemporaneously therewith, a like ratable dividend calculated in accordance with paragraph 3(a) hereof is declared and paid, or declared and a sum set apart sufficient for such payment, on the Series B Senior Preferred Stock, payable as set forth in paragraph 3(a) hereof. If any such dividends are not paid in full, as aforesaid, on the shares of the Series B Senior Preferred Stock and any other Parity Stock, all dividends declared upon shares of the Series B Senior Preferred Stock and any other Parity Stock shall be declared pro rata so that the amount of dividends declared per share on the Series B Senior Preferred Stock and such Parity Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series B Senior Preferred Stock and such Parity Stock bear to each other.

(ii) The Corporation shall not declare, pay or set apart for payment any dividend on any shares of Junior Stock or make any payment on account of, or set apart for payment money for a sinking or other similar fund for, the purchase, redemption or other retirement of, any shares of Junior Stock or any warrants, rights, calls or options exercisable for or convertible into any shares of Junior Stock, or make any distribution in respect thereof, either directly or indirectly, whether in cash, obligations or shares of the Corporation or other property, and shall not permit any of its Subsidiaries to purchase or redeem any shares of Junior Stock or any such warrants, rights, calls or options, unless all accrued and unpaid dividends have been or contemporaneously are declared and paid in cash, or declared and a sum in cash set apart sufficient for such payment, on the Series B Senior Preferred Stock (all such prohibited payments and other actions set forth above in this paragraph 3(d)(2) being collectively referred to as "Restricted Junior Payments"). The foregoing provisions will not prohibit any of the following: (a) the payment of dividends or other distributions on Junior Stock in the form of additional shares of Junior Stock (or the adjustment of the Liquidation Preference of such Junior Stock); and (b) the payment of any Restricted Junior Payment made with the affirmative vote or consent of the holders of a majority of the issued and outstanding shares of Series B Senior Preferred Stock, voting or consenting, as the case may be, as one class, provided that such holders do not also beneficially own shares of Junior Stock.

f. Subject to the foregoing provisions of this paragraph 3, the Corporation may declare, pay or set apart for payment dividends on any shares of Junior Stock or Parity Stock, or make any payments on account of or set apart for payment money for a sinking or other similar fund for, the purchase, redemption or other retirement of, any shares of Junior Stock or Parity Stock or any warrants, rights, calls or options exercisable for or convertible into any shares of Junior Stock or Parity Stock or make any distribution in respect thereof and the Corporation may permit any of its Subsidiaries to purchase or redeem any shares of Junior Stock or Parity Stock or such warrants, rights, calls or options, and the holders of the shares of the Series B Senior Preferred Stock shall not be entitled to share therein.

4. Liquidation Rights.

a. Liquidation Preference. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of shares of Series B Senior Preferred Stock then outstanding shall be entitled to be paid, for each share held, out of the assets of the Corporation available for distribution to its shareholders (the "Available Assets"), an amount equal to \$.001 per share (the "Liquidation Preference"). The voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all the property or assets of the Corporation to, or a consolidation or merger of the Corporation with, one or more other corporation or corporations (whether or not the Corporation is the surviving corporation in such consolidation or merger) will not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary, within the meaning of the provisions of this paragraph 4, unless in each such case such sale or merger involves a plan of liquidation.

b. Liquidation Payment; Insufficient Funds. Upon any liquidation, dissolution or winding up of the Corporation, the holders of outstanding Series B Senior Preferred Stock shall be entitled to receive payment for each share held, out of the excess, if any, of the Available Assets after any distribution of the Available Assets to any holder of any shares Senior Stock with respect to distributions of Available Assets (the "Remainder Available Assets"), an amount in cash equal to the Liquidation Preference per share, plus all accumulated and unpaid dividends thereon to the date fixed for liquidation winding up and dissolution of the Corporation (the "Liquidation Payment"). If upon such liquidation, dissolution or winding up, the Remainder Available Assets to be distributed among the holders of the Series B Senior Preferred Stock shall be insufficient to permit payment in full of the Liquidation Payment to the holders of outstanding shares of the Series B Senior Preferred Stock and any preferential amount to be paid to the holders of Parity Stock with respect to distributions of assets and rights upon the liquidation, winding up and dissolution of the Corporation, including the Series A Senior Preferred Stock, then the holders of such shares shall share ratably in such distribution of assets in accordance with the amount which would be payable on such distribution if the amounts to which the holders of outstanding shares of Series B Senior Preferred Stock and the holders of such Parity Stock are entitled, were paid in full.

c. Priority. All of the preferential amounts to be paid to the holders of the Series B Senior Preferred Stock shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets of the Corporation to, the holders of Series A-P Preferred Stock, the holders of Common Stock, and any other Junior Stock with respect to distributions upon liquidation.

d. Notice. Written notice of any liquidation, dissolution or winding up, stating a payment date, the amount of the Liquidation Payment and the place where said Liquidation Payment shall be payable, shall be given by mail, postage prepaid, not less than twenty (20) days prior to the payment date stated therein, to the holders of record of the Series B Senior Preferred Stock, such notice to be addressed to each such holder at his post office address as shown by the records of the Corporation.

5. Voting Rights.

a. In addition to any rights afforded by law, the holder of each share of Series B Senior Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Series B Senior Preferred Stock could then be converted on all matters as to which holders of Common Stock shall be entitled to vote, in the same manner and with the same effect as such holders of Common Stock, voting together with the holders of Common Stock, Series A Senior Preferred Stock and Series A-P Preferred Stock, as one class,

and, with respect to such vote, such holder shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation and applicable law.

b. So long as any shares of Series B Senior Preferred Stock are outstanding, the Corporation shall not, without the affirmative consent of a majority of the Series B Senior Preferred Stock (i) amend, alter or repeal any of the provisions of its Articles of Incorporation which would in any way adversely affect the rights of the holders of Series B Senior Preferred Stock or (ii) issue any shares of Series B Senior Preferred Stock other than pursuant to the terms of the Purchase Agreement.

c. In any case in which the holders of Series B Senior Preferred Stock shall be entitled to vote as a separate class pursuant to Florida law or this Certificate of Designation (excluding paragraph 5(a) above), each holder of Series B Senior Preferred Stock shall be entitled to one vote for each share of Series B Senior Preferred Stock.

6. Conversion of Series B Senior Preferred Stock.

a. Optional Conversion. At any time and from time to time, each share of Series B Senior Preferred Stock may be converted, at the option of the holder thereof, in the manner hereinafter provided, into fully paid and nonassessable shares of Common Stock at its then effective Conversion Rate (as defined below); provided, however, that on any liquidation or winding up of the affairs of the Corporation, the right of conversion shall terminate at the close of business on the Business Day preceding the date fixed for payment of any amounts distributable on liquidation to the holders of Series B Senior Preferred Stock.

b. Conversion Rate. (i) The initial conversion rate for the Series B Senior Preferred Stock shall be one (1) share of Common Stock for each share of Series B Senior Preferred Stock surrendered for conversion (as in effect from time to time, the "Conversion Rate"). The Conversion Rate from time to time in effect is subject to adjustment as provided in paragraph 6(d) hereof.

(ii) Whenever the Conversion Rate shall be adjusted as provided in paragraph 6(d) hereof, the Corporation shall forthwith file at each office designated to accept the conversion of Series B Senior Preferred Stock, a statement, signed by the President, any Vice President or the Treasurer of the Corporation, showing in reasonable detail the facts requiring such adjustment and the Conversion Rate that will be effective after such adjustment. The Corporation shall also cause a notice setting forth any such adjustments to be sent by mail, first class, postage prepaid, to each record holder of Series B Senior Preferred Stock at his or its address appearing on the stock register.

c. Conversion Mechanics. (i) In order to exercise the foregoing conversion privilege, a holder of Series B Senior Preferred Stock shall surrender to the Corporation at its principal offices, or to any transfer agent for the Corporation, (A) the certificate(s) representing such shares of Series B Senior Preferred Stock to be converted, (B) transfer instrument(s) satisfactory to the Corporation and sufficient to transfer such shares of Series B Senior Preferred Stock to the Corporation free of any adverse interest, and (C) a written notice to the Corporation that such holder has elected to convert all such shares into Common Stock or, if less than all shares represented by such certificate are to be converted, the portion of the shares represented thereby to be converted. Such notice shall also state the name or names (with addresses) in which the certificates for shares issuable upon such conversion shall be issued. Series B Senior Preferred Stock shall be deemed converted for all purposes including without limitation the taking of a record date for a meeting of the stockholders of the

Corporation, upon receipt by the Corporation or its transfer agent of the items listed in clauses (A), (B) and (C) above.

(ii) Upon conversion of any certificate evidencing Series B Senior Preferred Stock which is converted in part only, the Corporation shall cause to be executed and delivered to the holder thereof, at the expense of the Corporation, a new certificate evidencing the balance of the Series B Senior Preferred Stock which was not so converted.

(iii) The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock the full number of shares which all shares of Series B Senior Preferred Stock from time to time outstanding are convertible.

d. Anti-dilution Provisions. In order to prevent dilution of the rights granted hereunder, the Conversion Rate shall be subject to adjustment from time to time in accordance with this paragraph 6(d). Upon each adjustment of the Conversion Rate, the record holder of shares of Series B Senior Preferred Stock shall thereafter be entitled to acquire upon exercise, the number of shares of the Corporation's Common Stock equal to the Conversion Rate; provided that, notwithstanding anything in this paragraph 6(d) to the contrary, no adjustment shall be made to the Conversion Rate for (i) the issuance of any Series B Senior Preferred Stock pursuant to the Purchase Agreement and (ii) any dividend or distribution made on the Common Stock which is contemporaneously made to the holders of Series B Senior Preferred Stock pursuant to paragraph 3 hereof. To the extent that as a result of any conversion of the Series B Senior Preferred Stock the Corporation would be obligated to issue a fractional share of Common Stock (which shall be determined with respect to the aggregate number of shares of Common Stock held of record by each holder), then the Corporation shall issue a number of shares of Common Stock upon such conversion rounded to the nearest whole share.

(i) Certain Issuances of Securities. If the Corporation shall at any time after the initial date of issuance of the Series B Senior Preferred Stock, issue any shares of Common Stock, or convertible preferred stock, warrants, options, rights or other securities convertible into or exchangeable or exercisable for shares of Common Stock (collectively, the "Newly Issued Securities") for a consideration (paid in cash, securities or other property) per share less than the Trigger Value of such Newly Issued Securities, then the Conversion Rate shall be adjusted to an amount equal to (x) the Applicable Percentage (determined immediately prior to such issuance) of a fraction, the numerator of which equals the Fully Diluted Shares (after giving effect to the issuance of the Newly Issued Securities), and the denominator of which equals the number of shares of Series B Senior Preferred Stock then outstanding. For the purposes of any adjustment of the Conversion Rate pursuant to this clause (i), the following provisions shall be applicable:

(A) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash received by the Corporation therefor.

(B) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the "fair value" of such consideration as determined in the good faith judgment of the Board of Directors of the Corporation; provided, however, that the holders of a majority of the Series B Senior Preferred Stock may in good faith refer the question of valuation for final settlement to a nationally recognized investment banking firm designated by such holders, and the cost relating to the retention of such firm shall be borne by the Corporation.

(C) In the case of the issuance of (x) options to purchase or rights to subscribe for Common Stock, (y) securities by their terms convertible into or exchangeable for Common Stock or (z) options to purchase or rights to subscribe for such convertible or exchangeable securities:

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

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

(3) on any change in the number of shares or exercise price of Common Stock deliverable upon exercise of any such options or rights or conversions of or exchange for such convertible or exchangeable securities, other than a change resulting from the antidilution provisions thereof, the Conversion Rate shall forthwith be readjusted to such Conversion Rate as would have obtained had the adjustment made at the time of the issuance of such options, rights or securities not converted prior to such change been made upon the basis of such change; and

(4) on the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Rate shall forthwith be readjusted to such Conversion Rate had such options, rights, securities or options or rights related to such securities not been issued.

(D) In the case of the issuance of any of the types of securities referenced in clause (C) above in connection with the issue and sale of other securities of the Corporation together comprising one integral transaction in which no specific consideration is allocated to such securities by the parties thereto, the amount of consideration therefor shall be deemed to be the fair value as determined in good faith by the Board of Directors; provided, however, that the holders of a majority of the Series B Senior Preferred Stock may in good faith refer the question of valuation for final settlement to a nationally recognized investment banking firm designated by such holders, and the cost relating to the retention of such firm shall be borne by the Corporation.

(ii) Subdivision, Combination, Dividend or Distribution of Common Stock. In case the Corporation shall at any time (a) subdivide its outstanding shares of Common Stock into a greater number of shares of Common Stock, (b) combine its outstanding shares of Common Stock into a smaller number of shares or (c) declare a distribution (other than a dividend which the Series B Senior Preferred is entitled to pursuant to Section 3 hereof) payable to its holders of Common Stock in additional shares of Common Stock, then the Conversion Rate in effect shall forthwith be adjusted to that ratio determined by multiplying the Conversion Rate in effect immediately prior to such subdivision, combination, grant, dividend or distribution by a fraction, the numerator of which shall be the total number of outstanding shares of Common Stock immediately after such subdivision, combination or distribution, and the denominator of which shall be the total number of outstanding shares of Common Stock immediately prior to such subdivision, combination or distribution.

(iii) Reorganization, Reclassification, Consolidation, Merger or Sale. If any capital reorganization or reclassification of the capital stock of the Corporation (except in respect of transactions described in paragraph 6(d)(ii)) or any consolidation or merger of the Corporation with another corporation, or the sale of all or substantially all its assets to another corporation, shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to, or in exchange for, Common Stock, then as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provision will be made whereby the holders of Series B Senior Preferred Stock 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 conversion of such Series B Senior Preferred Stock, such shares of stock, securities or assets (including cash) as may be issued or payable with respect to or in exchange for a number of outstanding shares of Common Stock equal to the number of shares of such stock immediately theretofore so receivable had such reorganization, reclassification, 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 such holder to the end that the provisions hereof (including, without limitation, provisions for adjustments of the Conversion Rate) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the conversion of Series B Senior Preferred Stock. In the event of a merger or consolidation of the Corporation as a result of which a greater or lesser number of shares of common stock of the surviving corporation are issuable to holders of Common Stock outstanding immediately prior to such merger or consolidation, the Conversion Rate in effect immediately prior to such merger or consolidation shall be adjusted in the same manner as though there were a subdivision or combination of the outstanding shares of Common Stock.

(iv) (A) If any event occurs of the type contemplated by the provisions of this paragraph 6(d) but not expressly provided for by such provisions, the Board of Directors will determine whether to make appropriate adjustments to the Conversion Rate as may be necessary fully to carry out the adjustments contemplated by this paragraph 6(d). In the event the Board of Directors is unable to make such determination, an appraiser shall be selected by the Board of Directors with the consent of the holder or holders of a majority (by number of shares) of Series B Senior Preferred Stock, which consent shall not be unreasonably withheld.

(B) The Corporation will not, by amendment of its Articles of Incorporation or bylaws or through any reorganization, transfer of assets, reclassification, merger, dissolution, issue or sale of securities or otherwise, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by the Corporation hereunder but will at all times in good faith assist in the carrying out of all the provisions hereof and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of the holders of Series B Senior Preferred Stock against impairment.

(v) In the event that (a) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights, (b) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, including any subdivision or combination of its outstanding shares of Common Stock, or consolidation or merger of the Corporation with, or sale of all or substantially all of its assets to, another corporation or (c) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation, then, in connection with such event, the Corporation shall give to the holders of the Series B Senior Preferred Stock:

(A) at least twenty (20) days prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up; and

(B) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least twenty (20) days prior written notice of the date when the same shall take place.

Such notice in accordance with the foregoing clause (A) shall also specify, in the case of any such subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing clause (B) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be. Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of the Series B Senior Preferred Stock at the address of each such holder as shown on the books of the Corporation.

The foregoing anti-dilution provisions set forth in this paragraph 6(d) may be amended or waived, in whole or in part and in writing, by a majority of the holders of the Series B Senior Preferred Stock.

#### 7. Redemption.

a. Each share of Series B Senior Preferred Stock shall, at the sole election of the Corporation, be redeemed at any time after the closing of a Qualifying Public Offering (as defined in the Purchase Agreement) and upon delivery of the notice set forth in paragraph 7(b), which notice shall conclusively evidence such election by the Corporation. The redemption price for the shares of Series B Senior Preferred Stock redeemed pursuant to this paragraph 7 shall be paid to an Investor by certified check or by wire transfer of immediately available funds denominated in U.S. dollars to one or more accounts designated by such Investor to the Corporation in an amount equal to the greater of the Investor's Pro Rata Share (as such term is defined in the Purchase Agreement) of (i) the Fair Market Value (as such term is defined in the Purchase Agreement) of the Series B Senior Preferred Stock relating to the Common Stock into which the shares of Series B Senior Preferred Stock being redeemed are convertible, determined at the time of the notice set forth in paragraph 7(b), or (ii) \$3,000,000.

b. If the Corporation elects to cause a redemption as set forth in paragraph 7(a), all holders of record of shares of Series B Senior Preferred Stock will be given at least 10 days' prior written notice of the date fixed and the place designated for redemption of all of such shares of Series B Senior Preferred Stock pursuant to this paragraph 7. Such notice will be sent by mail, first class, postage prepaid, or overnight courier

to each record holder of shares of Series B Senior Preferred Stock at such holder's address appearing on the stock register. On or before the date fixed for redemption each holder of shares of Series B Senior Preferred Stock shall surrender his or its certificates or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive the redemption proceeds to which such holder is entitled pursuant to this paragraph 7. On the date fixed for redemption, all rights with respect to the Series B Senior Preferred Stock so redeemed will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefore, to receive the redemption proceeds into which such Series B Senior Preferred Stock has been redeemed, including payment of any accrued and unpaid dividends thereon. If so required by the Corporation, certificates surrendered for redemption shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his attorneys duly authorized in writing. All certificates evidencing shares of Series B Senior Preferred Stock which are required to be surrendered for redemption in accordance with the provisions hereof shall, from and after the date such certificates are so required to be surrendered, be deemed to have been retired and canceled and the shares of Series B Senior Preferred Stock represented thereby redeemed for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date.

8. Business Day. If any payment shall be required by the terms hereof to be made on a day that is not a Business Day, such payment shall be made on the immediately succeeding Business Day.

9. Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series B Senior Preferred Stock shall not have any designations, preferences, limitations or relative rights, other than those specifically set forth in these resolutions (as such resolutions may, subject to paragraph 5, be amended from time to time) and in the Articles of Incorporation.

10. Headings. The headings of the various sections and subsections hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

11. Definitions. As used in this Certificate of Designation, the following terms shall have the following meanings (with terms defined in the singular having comparable meanings when used in the plural and vice versa), unless the context otherwise requires:

"Applicable Percentage" means, as of any date of determination, the percentage of the Fully Diluted Shares represented by the number of shares of Common Stock issuable upon conversion of all then outstanding Series B Senior Preferred Stock.

"Articles of Incorporation" shall have the meaning ascribed to it in the second paragraph of this Certificate.

"Available Assets" shall have the meaning ascribed to it in paragraph 4(a) hereof.

"Board of Directors" shall have the meaning ascribed to it in the first paragraph of this Certificate.

"Business Day" means any day except a Saturday, a Sunday, or any day on which banking institutions in New York, New York are required or authorized by law or other governmental action to be closed.

"Capital Stock" means, with respect to any Person, any and all shares, interests, participation, rights in, or other equivalents (however designated and whether voting or non-voting) of, such Person's capital stock and any and all rights to purchase, warrants or options exchangeable for or convertible into such capital stock (including any debt security that is exchangeable for or convertible into such capital stock).

"Common Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Conversion Rate" shall have the meaning ascribed to it in paragraph 6(b) hereof.

"Corporation" means Thrucomm, Inc., a Florida corporation, and its successors and assigns.

"Fully Diluted Shares" means, when used with reference to Common Stock, the number of shares of Common Stock outstanding at such date and Common Stock of the Corporation issuable in respect of any warrants, options or convertible securities.

"Junior Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Liquidation Payment" shall have the meaning ascribed to it in paragraph 4(b) hereof.

"Liquidation Preference" shall have the meaning ascribed to it in paragraph 4(a) hereof.

"Parity Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Purchase Agreement" means the Securities Purchase Agreement, dated as of January \_\_, 1998, among the Corporation and the Investors party thereto, relating to the issuance of the Series B Senior Preferred Stock.

"Remainder Available Assets" shall have the meaning ascribed to it in paragraph 4(b) hereof.

"Restricted Junior Payments" shall have the meaning ascribed to it in paragraph 3 hereof.

"Senior Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Series A Senior Preferred Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Series A-P Preferred Stock" shall have the meaning ascribed to it in paragraph 2 hereof.

"Series B Senior Preferred Stock" shall have the meaning ascribed to it in paragraph 1 hereof.

"Subsidiary" means, with respect to any Person, (i) any Person more than fifty percent (50%) of the voting securities, having ordinary voting power, of which is owned directly or indirectly by such Person or by one or more other Subsidiaries of such Person or such Person in conjunction with one

or more other Subsidiaries of such Person or (ii) any other Person more than fifty percent (50%) of the voting interest of which is owned directly or indirectly by such Person or by one or more Subsidiaries of such Person or by such Person in conjunction with one or more other Subsidiaries of such Person.

"Trigger Value" means, as of any date of determination with respect to the issuance of Newly Issued Securities, the amount determined by dividing \$33,000,000 by the number of Fully Diluted Outstanding Shares (prior to giving effect to the issuance of such Newly Issued Securities).

FURTHER RESOLVED, that the appropriate officers of the Corporation are hereby authorized to execute and acknowledge a certificate setting forth these resolutions and to cause such certificate to be filed and recorded, in accordance with the requirements of Section 607.0602(4) of the Florida Business Corporation Act.

IN WITNESS WHEREOF, THRUCOMM, INC. has caused its corporate seal to be affixed hereunto and this Certificate to be duly executed by its President and attested to by its Secretary, this 22<sup>nd</sup> day of January, 1998.

THRUCOMM, INC.

By: 

Name: Mark J. Giannini

Title: President

[Corporate Seal]

Attest:

By: 

Name: John F. Kolenda

Title: Secretary