

P97000028353

HOLLAND & KNIGHT
Requestor's Name
315 SOUTH CALHOUN STREET
Address
Tallahassee, Florida 32301
City/State/Zip Phone #
224-7000

Office Use Only

CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1. LOCAL net communications, Inc.
(Corporation Name) (Document #) Amended
2. _____
(Corporation Name) (Document #)
3. _____
(Corporation Name) (Document #)
4. _____
(Corporation Name) (Document #)

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98 DEC 14 PM 2:59
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

- ☒ Walk-in ☒ Pick up time 2:00 ☒ Certified Copy
☐ Mail-out ☐ Will wait ☐ Photocopy ☐ Certificate of Status

NEW FILINGS	
<input type="checkbox"/>	Praire
<input type="checkbox"/>	NonProfit
<input type="checkbox"/>	Limited Liability
<input type="checkbox"/>	Domestication
<input type="checkbox"/>	Other

AMENDMENTS	
<input checked="" type="checkbox"/>	Amendment
<input type="checkbox"/>	Resignation of R.A. Officer/ Director
<input type="checkbox"/>	Change of Registered Agent
<input type="checkbox"/>	Dissolution/Withdrawal
<input type="checkbox"/>	Merger

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OTHER FILINGS	
<input type="checkbox"/>	Annual Report
<input type="checkbox"/>	Fictitious Name
<input type="checkbox"/>	Name Reservation

REGISTRATION/ QUALIFICATION	
<input type="checkbox"/>	Foreign
<input type="checkbox"/>	Limited Partnership
<input type="checkbox"/>	Reinstatement
<input type="checkbox"/>	Trademark
<input type="checkbox"/>	Other

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00524, 00677
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Examiner's Initials	AR
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FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham
Secretary of State

December 14, 1998

Holland & Knight
315 South Calhoun St.
Tallahassee, FL 32301

SUBJECT: LOCALNET COMMUNICATIONS, INC.
Ref. Number: P97000028353

We have received your document for LOCALNET COMMUNICATIONS, INC. and your check(s) totaling \$53.75. However, the enclosed document has not been filed and is being returned for the following correction(s):

The name and title of the person signing the document must be noted beneath or opposite the signature.

Your document is missing page 8. You may want to include it when you resubmit this document.

If you have any questions concerning the filing of your document, please call (850) 487-6907.

Annette Ramsey
Corporate Specialist

Letter Number: 698A00058874

RESUBMITTED

HOLLAND & KNIGHT
WASHINGTON, D.C.
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ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
LOCALNET COMMUNICATIONS, INC.

98 DEC 14 PM 2:59
FILED
SEAL OF THE STATE
TALLAHASSEE, FLORIDA

The Articles of Incorporation of LocalNet Communications, Inc. (the "Company") have been amended redesignating the Company's existing Common Stock as Class A Common Stock and establishing the Company's Class B Common Stock, Class C Common Stock, Class B Cumulative Convertible Preferred Stock and Class C Cumulative Convertible Preferred Stock by resolution of the Board of Directors of the Company dated October 26, 1998 and approved by the shareholders on October 26, 1998.

1. The name of the corporation is LocalNet Communications, Inc.
2. Article III of the Articles of Incorporation of the Company is hereby deleted in its entirety and restated as follows:

"ARTICLE III

(a) The Company is authorized to issue a total of 1,282,000 shares of all classes of stock, consisting of (i) 1,000,000 shares of Class A Common Stock, one cent (\$.01) par value per share, (ii) 102,000 shares of Class B Common Stock, one cent (\$.01) par value per share, (iii) 80,000 shares of Class C Common Stock, one cent (\$.01) par value per share, (iv) 50,000 shares of Class B Cumulative Convertible Preferred Stock, one cent (\$.01) par value per share ("Class B Cumulative Convertible Preferred Stock"), and (v) 50,000 shares of Class C Cumulative Convertible Preferred Stock, one cent (\$.01) par value per share ("Class C Cumulative Convertible Preferred Stock").

(b) The Company's Common Stock outstanding pursuant to the Company's Articles of Incorporation prior to this Amendment are hereby redesignated as Class A Common Stock. Except for differences in voting for directors as set forth in Article VI, the Class A Common Stock, Class B Common Stock and Class C Common Stock (collectively "Common Stock") shall have identical rights, powers and limitations and shall have no preference in the distribution of dividends or assets. Any dividend declared or paid by the Company in respect of Common Stock shall be declared and paid in respect of each Class of Common Stock.

(c) The Class B Cumulative Convertible Preferred Stock and the Class C Cumulative Convertible Preferred Stock are sometimes collectively referred to as Preferred Stock.

(d) The shares of Preferred Stock shall have the following rights, preferences, powers, restrictions and limitations:

1. Dividends.

The holders of the Preferred Stock shall be entitled to receive, out of funds legally available therefor, cumulative dividends which accrue beginning the later of August 1, 2000, or the issue date of the share at the rate of \$7.00 per share per annum, payable quarterly beginning on the last day of September, 2000 and continuing on the last day of each of the next three calendar quarters, then at the rate of \$8.50 per share per annum payable quarterly on the last day of each calendar quarter for the next eight (8) calendar quarters, and thereafter at the rate of \$15.00 per share per annum, payable the last day of each and every calendar quarter (in each case subject to appropriate adjustments in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares). Dividends shall be paid at the Company's option, in cash or in the class of Preferred Stock in respect of which the dividend is being paid valued at the liquidation preference. Such dividends shall be payable in preference and priority to any payment of any cash dividend on Common Stock or any other shares of capital stock of the Company (such Common Stock and other inferior stock being collectively referred to as "Junior Stock"), when and as declared by the Board of Directors of the Company.

Such dividends shall accrue with respect to each share of Preferred Stock from the later of August 1, 2000, or the issue date of such share and thereafter shall be deemed to accrue from day to day whether or not earned or declared and whether or not there exists profits, surplus or other funds legally available for the payment of dividends, and shall be cumulative so that if such dividends on the Preferred Stock shall not have been paid, or declared and set apart for payment, the deficiency shall be fully paid or declared and set apart for payment before any dividend shall be paid or declared or set apart for any Junior Stock and before any purchase or acquisition of any Junior Stock is made by the Company. At the earlier of: (1) the redemption of the Preferred Stock or (2) the liquidation, sale or merger of the Company, any accrued but unpaid dividends and interest thereon shall be paid to the holders of record of outstanding shares of Preferred Stock. Accumulated cash dividends on the Preferred Stock shall bear interest at the annual rate of fifteen percent (15%), which interest shall be compounded on the last day of each calendar quarter.

The Company shall give written notice, sent by first class certified mail, postage prepaid and return receipt requested, specifying the date and amount of each dividend to be paid on Preferred Stock, at least 30 days in advance of the dividend payment date to all holders of record of the Preferred Stock as their names and addresses appear on the share register of the Company on the date of such notice. Each dividend shall be mailed to the holders of record of the Preferred Stock as their names and addresses appear on the share register of the Company on the corresponding dividend payment date. Anything contained in this Section 1 to the contrary notwithstanding, the holders of shares of Preferred Stock with respect to which dividends are to be paid in accordance with this Section shall have the right, exercisable at any time up to the close of business on the applicable dividend payment date to convert all or any part of such shares into

shares of Common Stock pursuant to Section 4 hereof and for such purpose such dividend shall not be deemed to have been paid or set apart at the date of such conversion.

2. Liquidation, Dissolution or Winding Up.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of shares of Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders, before any payment shall be made to the holders of Junior Stock by reason of their ownership thereof, an amount equal to \$100 per share of Preferred Stock plus the amount of any accrued but unpaid dividends (whether or not declared) and interest thereon. If upon any such liquidation, dissolution or winding up of the Company the remaining assets of the Company available for distribution to stockholders shall be insufficient to pay the holders of shares of Preferred Stock the full amount to which they shall be entitled, the holders of shares of Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Company in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

3. Voting.

(a) *Number of Votes; Voting with Common Stock.* Each holder of outstanding shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible (as adjusted from time to time pursuant to Section 4 hereof), at each meeting of stockholders of the Company (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Company for their action or consideration. Except as provided by law, or by the provisions of the following subsections of this Section 3, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

(b) *Adverse Effects.* The Company shall not amend, alter or repeal preferences, rights, powers or other terms of the Preferred Stock so as to affect adversely the Preferred Stock, without the written consent or affirmative vote of the holders of at least 66-2/3% of the then outstanding shares of each adversely affected class of Preferred Stock given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, without limiting the generality of the foregoing, the authorization or issuance of any class or series of Preferred Stock which is on a parity with or has preference or priority over the Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company shall be deemed to affect adversely the Preferred Stock.

(c) *Mergers, etc.* The consent of the holders of not less than 66-2/3% of the outstanding shares of each class of Preferred Stock, voting separately as a single class, in person or by proxy, either in writing without a meeting or at a special or annual meeting of shareholders called for the purpose, shall be necessary for the Company to sell all or substantially all of the Company's assets or effect any merger, consolidation, share exchange or similar transaction to which the Company is a party, or to enter into any other transaction resulting in the acquisition of a majority of the then outstanding voting stock of the Company by another corporation or entity.

(d) *Voting for Directors.* The holders of Class B Common Stock and Class B Cumulative Convertible Preferred Stock (collectively "Class B Stock"), voting as a separate class, shall be entitled by written consent and at any annual meeting of stockholders or any special meeting of stockholders at which directors are to be elected, to elect one director to the Company's Board of Directors. Such voting right may be exercised by consent in writing of the holders of a majority of the Class B Stock at the time outstanding or at a special meeting of holders of Class B Stock or at any annual or special stockholders' meeting. A special meeting for the exercise of such right shall be called by the Secretary of the Company within ten days after receipt of a written request therefor, signed by the holders of record of at least 10% of the votes of the then outstanding shares of Class B Stock.

The holders of Class C Common Stock and Class C Cumulative Convertible Preferred Stock (collectively "Class C Stock"), voting as a separate class, shall be entitled by written consent and at any annual meeting of stockholders or any special meeting of stockholders at which directors are to be elected, to elect one director to the Company's Board of Directors. Such voting right may be exercised by consent in writing of the holders of a majority of the Class C Stock at the time outstanding or at a special meeting of holders of Class C Stock or at any annual or special stockholders' meeting. A special meeting for the exercise of such right shall be called by the Secretary of the Company within ten days after receipt of a written request therefor, signed by the holders of record of at least 10% of the votes of the then outstanding shares of Class C Stock.

(e) *After Default.* If the Company at any time shall have failed to pay the full amount of accrued dividends (in cash or Preferred Stock) and interest thereon set forth in Section 1 hereof, or if the Company defaults in its obligations under any Registration Rights Agreement in favor of the holder of any Class B Common Stock, Class C Common Stock or Preferred Stock for a period of ten business days after notice from any holder, or if the Company purports to act in violation of the shareholder consent requirements set forth in Article IX of the Articles of Incorporation of the Company, the number of directors constituting the Board of Directors of the Company shall be increased by two (2) without further action by the Company or any other person and the holders of Class B Stock and the holders of Class C Stock, each voting as a separate class, shall be entitled by written consent or at the next annual meeting of stockholders

or the next special meeting of stockholders, or at a special meeting of holders of Class B Stock or Class C Stock, as the case may be, called as hereinafter provided, to each elect one additional director to fill such newly created directorships, without diminution of their right to participate with holders of Common Stock and holders, if any, of any other capital stock of the Company entitled to vote for the election of directors in the election of any other directors.

Whenever such voting right shall vest, it may be exercised initially by consent in writing of the holders of a majority of the Class B Stock or Class C Stock, respectively, at the time outstanding or at a special meeting of holders of Class B Stock or Class C Stock, respectively, or at any annual or special stockholders' meeting. A special meeting for the exercise of such right shall be called by the Secretary of the Company within ten days after receipt of a written request therefor, signed by the holders of record of at least 10% of the votes of the then outstanding shares of Class B Stock or Class C Stock, respectively.

(f) *Certain Provisions With Respect to Class B Stock or Class C Stock Directors.* Any director who shall have been elected by holders of Class B Stock or Class C Stock as a class pursuant to Subsection 3(d) or (e) hereof shall hold office, unless sooner terminated, until his successor is elected at the next annual meeting of stockholders, and during such term may be removed at any time, either for or without cause, only by the affirmative votes of holders of record of a majority of the votes of the then outstanding shares of the class of stock that elected such director.

Any vacancy caused by the death, resignation, or expiration of term of a director who shall have been elected pursuant to Subsection 3(d) or (e) hereof may be filled only by the holders of the classes of stock that elected such director by written consent, or at any annual or special meeting called for such purpose. Such meeting of the holders of the applicable classes shall be called by the Secretary of the Company at the earliest practicable date after any such death or resignation and in any event within ten days after receipt of a written request therefor, signed by the holders of record of at least 10% of the votes of the then outstanding shares entitled to vote for such director.

If at any time there are no shares of Class B Stock outstanding or no shares of Class C Stock outstanding, then the other class with shares outstanding may elect the directors that would otherwise be elected by the class with no shares outstanding.

4. Optional Conversion.

The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) *Right to Convert.* Each share of Class B Cumulative Convertible Preferred Stock shall be convertible, at the option of the holder thereof, without the payment of

additional consideration by the holder thereof, at any time, into such number of fully paid and nonassessable shares of Class B Common Stock as is determined by dividing the amount a holder of one share of Class B Cumulative Convertible Preferred Stock would be entitled to receive pursuant to Section 2 hereof upon the liquidation, dissolution or winding up of the Company by the Class B Conversion Price (as defined below) in effect at the time of conversion. The Class B Conversion Price at which shares of Class B Common Stock shall be deliverable upon conversion of Class B Cumulative Convertible Preferred Stock (the "Class B Conversion Price") shall initially be \$62.53. Such initial Class B Conversion Price, and the rate at which shares of Class B Cumulative Convertible Preferred Stock may be converted into shares of Class B Common Stock, shall be subject to adjustment as provided below.

Each share of Class C Cumulative Convertible Preferred Stock shall be convertible, at the option of the holder thereof, without the payment of additional consideration by the holder thereof, at any time, into such number of fully paid and nonassessable shares of Class C Common Stock as is determined by dividing the amount a holder of one share of Class C Cumulative Convertible Preferred Stock would be entitled to receive pursuant to Section 2 hereof upon the liquidation, dissolution or winding up of the Company by the Class C Conversion Price (as defined below) in effect at the time of conversion. The Class C Conversion Price at which shares of Class C Common Stock shall be deliverable upon conversion of Class C Cumulative Convertible Preferred Stock (the "Class C Conversion Price") shall initially be \$62.53 or such other amount as may be determined by the Board of Directors prior to the first issuance of a share of Class C Cumulative Convertible Preferred Stock. Such initial Class C Conversion Price, and the rate at which shares of Class C Cumulative Convertible Preferred Stock may be converted into shares of Class C Common Stock, shall be subject to adjustment as provided below.

In the event of a liquidation of the Company, the right to convert shall terminate immediately prior to the payment of any amounts distributable on liquidation to the holders of Preferred Stock.

(b) *Fractional Shares.* No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of fractional shares, the Company shall pay cash equal to such fraction multiplied by the then effective applicable Conversion Price.

(c) *Mechanics of Conversion.*

(i) In order to convert shares of Preferred Stock into shares of Class B Common Stock or Class C Common Stock, the holder shall surrender the certificate or certificates for such shares of Preferred Stock at the principal office of the Company, together with written notice that such holder elects to convert all or any number of the shares represented by such certificate or certificates.

Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Class B Common Stock or Class C Common Stock to be issued. If required by the Company, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Company, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the Company shall be the conversion date ("Conversion Date"). The Company shall, as soon as practicable after the Conversion Date, issue and deliver at the place requested by such holder, or to his nominees, a certificate or certificates for the number of shares of Class B Common Stock or Class C Common Stock, as applicable, to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Company shall at all times during which shares of the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Class B Common Stock and Class C Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Preferred Stock, the Company will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Class B Common Stock and Class C Common Stock at such adjusted Conversion Price.

(iii) All shares of Preferred Stock surrendered for conversion as herein provided shall no longer be deemed to be outstanding, and all rights with respect to such shares, including the rights, if any, to receive dividends, notices and to vote, shall immediately cease and terminate on the applicable Conversion Date, except only the right of the holders thereof to receive shares of Class B Common Stock or Class C Common Stock and cash in lieu of fractional shares in exchange therefore. Any shares of Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Company may from time to time take such appropriate action as may be necessary to reduce the number of shares of authorized Preferred Stock accordingly.

(iv) If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may at the option of any holder tendering Preferred Stock for conversion be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock

shall not be deemed to have converted such Preferred Stock until simultaneously with or immediately prior to the closing of the sale of securities.

(d) *Adjustments to Conversion Price for Diluting Issues.*

(i) *Special Definitions.* For purposes of this Subsection 4(d), the following definitions shall apply:

(A) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire any class of Common Stock or Convertible Securities.

(B) "Original Issue Date" shall mean the date on which the first share of Preferred Stock is first issued.

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

(D) "Additional Shares of Common Stock" shall mean all shares of any class of Common Stock issued (or, pursuant to Subsection 4(d)(iii) below, deemed to be issued) by the Company after the Original Issue Date, other than:

- (1) up to 21,400 shares of Class B Common Stock to be issued to Atlantic Teleservices, Ltd.; or
- (2) shares of Class C Cumulative Convertible Preferred Stock issued to Rock Creek Partners, Ltd. and/or its designees on or before November 7, 1998; or
- (3) shares of Preferred Stock issued as dividends pursuant to such outstanding Preferred Stock; or
- (4) shares of Common Stock issued upon conversion of shares of Preferred Stock.

(E) "Rights to Acquire Common Stock" (or "Rights") shall mean all rights whatever issued by the Company to acquire any class of Common Stock by exercise of a warrant, option or similar call or conversion of any existing instruments, in either case for consideration fixed, in amount or by formula, as of the date of issuance.

(ii) *No Adjustment of Conversion Price.* No adjustment of the number of shares of Common Stock into which the Preferred Stock is convertible shall be made, by adjustment in the applicable Conversion Price thereof: (a) unless the consideration per share (determined pursuant to Subsection 4(d)(v)) below for an Additional Share of Common Stock issued or deemed to be issued by the Company is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issue or deemed issuance of such additional shares, or (b) if prior to such issuance or deemed issuance, the Company receives written notice from holders of at least 66-2/3% of the then outstanding shares of the applicable class of Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock.

(iii) *Issue of Securities Deemed Issue of Additional Shares of Common Stock.* If the Company at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or other Rights to Acquire Common Stock, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options, Rights or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Subsection 4(d)(v) hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustment in the Conversion Price shall be made upon the subsequent issue of shares of Common Stock upon the exercise of such Rights or conversion or exchange of such Convertible Securities;

(B) Upon the expiration or termination of any unexercised Option or Right, the applicable Conversion Price shall not be readjusted, but the Additional Shares of Common Stock deemed issued as the result of the original issue of such Option or Right shall not be deemed issued for the purposes of any subsequent adjustment of the applicable Conversion Price; and

(C) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any Option, Right or Convertible Security, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the applicable Conversion Price then in effect shall forthwith be readjusted (but not upwards) to such applicable Conversion Price as would have obtained had the adjustment that was made upon the issuance of such Option, Right or Convertible Security not exercised or converted prior

to such change been made upon the basis of such change, but no further adjustment shall be made for the actual issuance of Common Stock upon the exercise or conversion of any such Option, Right or Convertible Security.

(iv) *Adjustment of Conversion Price upon Issuance of Additional Shares of Common Stock.* If the Company shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iii) hereof, but excluding shares issued as a dividend or distribution as provided in Subsection 4(f) hereof or upon a stock split or combination as provided in Subsection 4(e) hereof), without consideration or for a consideration per share less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue to a price (calculated to the nearest cent) to the amount of the consideration per share received by the Company for such Additional Shares of Common Stock.

Notwithstanding the foregoing, the applicable Conversion Price shall not be reduced (i) to an amount less than \$.01 per share or (ii) if the amount of such reduction would be an amount less than \$.01, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$.01 or more.

(v) *Determination of Consideration.* For purposes of this Subsection 4(d), the consideration received by the Company for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

- (1) insofar as it consists of cash, be computed at the aggregate of cash received by the Company, excluding amounts paid or payable for accrued interest or accrued dividends;
- (2) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Company's Board of Directors; and
- (3) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Company for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Company's Board of Directors.

(B) Options, Rights and Convertible Securities: The consideration per share received by the Company for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4(d)(iii), relating to Options, Rights and Convertible Securities, shall be determined by dividing

- the total amount, if any, received or receivable by the Company as consideration for the issue of such Options, Rights or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Company upon the exercise of such Options, Rights or the conversion or exchange of such Convertible Securities, by
- the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or Rights or the conversion or exchange of such Convertible Securities.

(e) *Adjustment for Stock Splits and Combinations.* If the Company shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, the applicable Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) *Adjustment for Certain Dividends and Distributions.* In the event the Company at any time or from time to time after the Original Issue Date shall make or issue a dividend or other distribution payable in Additional Shares of Common Stock, then and in each such event the Conversion Price shall be decreased as of the time of such issuance, by multiplying the applicable Conversion Price by a fraction;

- the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and
- the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

(g) *Adjustments for Other Dividends and Distributions.* In the event the Company at any time or from time to time after the Original Issue Date shall make or issue a dividend or other distribution payable in securities of the Company other than shares of Common Stock, then and in each such event provision shall be made so that the holders of shares of the Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Company that they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period given application to all adjustments called for during such period, under this paragraph with respect to the rights of the holders of the Preferred Stock.

(h) *Adjustment for Reclassification, Exchange, or Substitution.* If the Common Stock issuable upon the conversion of the Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, share exchange or sale of assets for below), then and in each such event the holder of each share of Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(i) *Adjustment for Merger or Reorganization, etc.* In case of any consolidation, merger or share exchange of the Company with or into another corporation or the sale of all or substantially all of the assets of the Company to another corporation to which the holders of Preferred Stock shall have consented in accordance with Section 3 hereof, then each share of Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Company deliverable upon conversion of such Preferred Stock would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock.

(j) *No Impairment.* The Company will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger,

share exchange, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(k) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of either Conversion Price pursuant to this Section 4, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment and showing in detail the facts upon which such adjustment or readjustment is based and shall file a copy of such certificate with its corporate records. The Company shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (1) such adjustments and readjustments, (2) the Conversion Price then in effect, and (3) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of the applicable class of Preferred Stock. Despite such adjustment or readjustment, the form of each or all stock certificate representing Preferred Stock, if the same shall reflect the initial or any subsequent conversion price, need not be changed in order for the adjustments or readjustments to be valued in accordance with the provisions of this Certificate of Designation, which shall control.

(1) *Notice of Record Date.* In the event:

1. that the Company declares a dividend (or any other distribution) on its Common Stock;
2. that the Company subdivides or combines its outstanding shares of Common Stock;
3. of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation, merger or share exchange of the Company into or with another corporation, or of the sale of all or substantially all of the assets of the Company; or
4. of the involuntary or voluntary dissolution, liquidation or winding up of the Company;

then the Company shall cause to be filed at its principal office and shall cause to be mailed to the holders of the Preferred Stock at their last addresses as shown on the

records of the Company, at least 20 days prior to the record date specified in (A) below or 20 days before the date specified in (B) below, a notice stating

(A) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as to which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(B) the date on which such reclassification, consolidation, merger, share exchange, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

5. Mandatory Conversion.

(a) *Mandatory Conversion After Initial Public Offering.* The Company may, at its option, require all (and not less than all) holders of shares of Preferred Stock then outstanding to convert their shares of Preferred Stock into shares of Class B Common Stock or Class C Common Stock, as applicable at the then effective conversion rate pursuant to Section 4 hereof at any time on or after completion of an underwritten public offering of Common Stock in which the Company receives at least the equivalent of the Redemption Price (computed as though the Company redeemed the Preferred Stock on the public offering date under Section 6(a) hereof) per share of Common Stock (as currently constituted) which Common Stock is listed on a national securities exchange or authorized for trading on the Nasdaq National Stock Market.

(b) *Notice.* All holders of record of shares of Preferred Stock then outstanding will be given at least 30 days' prior written notice of the date fixed and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice will be sent by first class or registered mail, postage prepaid, to each record holder of Preferred Stock at such holder's address last shown on the records of the Company.

6. Redemption of the Preferred Stock.

(a) *Optional Redemption; Notice.* If, after June 30, 2003, any shares of Preferred Stock shall be then outstanding, the Company may, at its option, exercisable at any time redeem (unless otherwise prevented by law) all (but not less than all) such outstanding shares at an amount per share equal to \$100 plus a premium equal to twenty-five percent (25%) per annum of such amount from the issue date to the Redemption Date (as defined below), compounded on each anniversary of the issue date (the "Redemption Price"). Thirty (30) days' prior notice by the Company of such redemption

shall be sent by first-class certified mail, postage prepaid and return receipt requested, by the Company to the holders of the shares of Preferred Stock to be redeemed at their respective addresses as the same shall appear on the books of the Company. Any holder may exercise his right to convert his shares to Common Stock as provided in Section 4 hereof at any time prior to the Redemption Date.

(b) *Deposit.* On or prior to the date of redemption contained in a notice pursuant to Subsection 6(a) hereof (the "Redemption Date"), the Company shall pay the Redemption Price to all holders of the Preferred Stock or deposit the Redemption Price of all shares of Preferred Stock with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of Preferred Stock, with irrevocable instructions and authority to the bank or trust corporation to pay the Redemption Price for such shares to their respective holders on or after the Redemption Date upon receipt of his share certificate or notification from the Company that such holder has surrendered his share certificate to the Company. As of the Redemption Date, the deposit shall constitute full payment of the Redemption Price to their holders, and from and after the Redemption Date the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the rights to receive from the bank or trust corporation payment of the Redemption Price of the shares, without interest, upon surrender of their certificates therefor. Such instructions shall also provide that any moneys deposited by the Company pursuant to this Section 6(b) for the redemption of shares thereafter converted into shares of the Company's Common Stock pursuant to Section 4 hereof prior to the Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any moneys deposited by the Company pursuant to this Section 6(b) remaining unclaimed at the expiration of two years following the Redemption Date shall thereafter be returned to the Company upon its request expressed in a resolution of its Board of Directors.

(c) *Cancellation of Redeemed Stock.* Any shares of Preferred Stock redeemed pursuant to this Section or otherwise acquired by the Company in any manner whatsoever shall be cancelled and shall not under any circumstances be reissued; the Company may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of the Company's capital stock.

(d) *Repurchase Prohibited.* The Company will not, and will not permit any affiliate (as defined in the Securities Exchange Act of 1934, as amended) of the Company to, purchase or acquire any shares of Preferred Stock otherwise than pursuant to (1) the terms of this Section 6, or (2) an offer made on the same terms to all holders of Preferred Stock at the time outstanding.

(e) *Right to Convert Unaffected.* Anything contained in this Section 6 to the contrary notwithstanding, the holders of shares of Preferred Stock to be redeemed in

accordance with this Section 6 shall have the right, exercisable at any time up to the close of business on the applicable Redemption Date (unless the Company is legally prohibited from redeeming such shares on such date, in which event such right shall be exercisable until the removal of such legal disability), to convert all or any part of such shares to be redeemed as herein provided into shares of the applicable class of Common Stock pursuant to Section 4 hereof.

7. Sinking Fund.

There shall be no sinking fund for the payment of dividends or liquidation preference on Preferred Stock or the redemption of any shares thereof."

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3. Article VI of the Articles of Incorporation of the Company is hereby deleted in its entirety and restated as follows:

"ARTICLE VI

The number of directors of this corporation shall be not less than three (3) nor more than seven (7). The holders of the Common Stock shall be entitled to elect not less than one (1) nor more than three (3) as fixed from time to time by the provisions of the Bylaws. The holders of the Class B Stock, voting as a class, and the holders of the Class C Stock, voting as a class, shall be entitled to elect directors as provided in Article III hereof."

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4. Article IX of the Articles of Incorporation of the Company is hereby amended by adding the following:

"(5) The Board of Directors shall establish the following committees, each of which shall be comprised of three members of the Board of Directors. At least one director elected by the holders of the Class B Stock and at least one director elected by the holders of the Class C Stock shall be members of each of the committees; provided, however, if there are no shares of the Class B Stock or no shares of the Class C Stock outstanding, then the other class shall elect two (2) members. The committees shall have the authority, power and responsibility set forth below:

a. Executive Committee. The executive committee shall review and submit to the Board of Directors its recommendation regarding all plans for expansion of the Company's business internationally, new product implementations, joint ventures and any other plan, item or expense not in the

ordinary course of the Company's business. Any presentation made to the executive committee for its review shall include a business plan describing all material aspects of such proposed action and pro forma financial statements describing the financial impact on the Company if such action is undertaken.

b. Compensation Committee. The compensation committee shall have exclusive authority to establish salaries, bonuses and other compensation arrangements for all Company employees, including the compensation packages offered to sales representatives. The compensation committee also shall have exclusive authority to administer the Company's stock option plans and establishing the terms and conditions of all stock options or awards granted thereunder or otherwise. Finally, the compensation committee shall have exclusive authority to approve any future revenue sharing arrangements and transactions with affiliates or related-parties.

c. Audit Committee. The audit committee shall be responsible for recommending independent auditors, reviewing with the independent auditors the scope of and results of the audit engagement, monitoring the Company's financial policies and control procedures, and reviewing and monitoring the provisions of non-audit services by the Company's auditors.

(6) Notwithstanding the foregoing, in addition to any other vote required by law, the consent of the holders of a majority of the then outstanding shares of Class B Stock and Class C Stock, each voting separately as a class, in person or by proxy, either in writing without a meeting or at a special or annual meeting of shareholders called for the purpose, shall be necessary for the Company to take any of the following actions:

a. issue additional equity securities, notes, bonds or any other securities, or issue options, warrants or other rights to purchase shares of capital stock of the Company, or any other security convertible into or exchangeable for shares of any series or class of stock of the Company (other than solely common stock issued solely for cash in connection with which neither the purchaser nor any affiliate receives any other consideration from the Company);

b. amend, alter or repeal its Articles of Incorporation or Bylaws;

c. make any loan (or series of related loans) in excess of \$50,000, incur any indebtedness for borrowed money not approved hereunder in the aggregate outstanding at any time in excess of \$50,000, or guarantee, directly or indirectly, any indebtedness of any other person;

d. make any expenditure (or series of related expenditures) or commitment(s) for any expenditure (or series of related expenditures) in excess of \$200,000;

e. consent to any liquidation, dissolution or winding up of the Company, or consolidate or merge the Company into or with any other entity or entities, or sell, mortgage or transfer all or substantially all its assets, or enter into any other transaction or series of transactions the effect of which would be a change in control of the Company;

f. purchase, redeem or otherwise acquire for any consideration, or set aside as a sinking fund for, any shares of capital stock of the Company or any warrants, options or other rights to purchase shares of capital stock of the Company;

g. declare any dividends on the Common Stock;

h. enter into any restructuring (other than a restructuring of operations without a material adverse financial effect) or recapitalization of the Company;

i. file a voluntary petition for liquidation or reorganization under federal or state bankruptcy, insolvency or receivership laws;

j. make any material change in the nature or character of the business of the Company as carried on at the date of these Articles of Incorporation; or

k. enter into any new employment agreement or amend any existing employment agreement between the Company and an officer in a manner adverse to the Company.

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5. The foregoing amendments to Articles of Incorporation were duly adopted by the board of directors on October 26, 1998, and by the shareholders by a vote of the shareholders sufficient for approval on October 26, 1998.

IN WITNESS WHEREOF, the undersigned President of this corporation has executed these Articles of Amendment on this 10th day of December, 1998.



President

Rudy C. Theale, Jr.