

P980000037682

CAPITAL CONNECTION, INC.

417 E. Virginia Street, Suite 1 • Tallahassee, Florida 32302
(850) 224-8870 • 1-800-342-8062 • Fax (850) 222-1222

Browne Communications
Corporation

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☒ Art of Inc. File

☐ LTD Partnership File

☐ Foreign Corp. File

☐ L.C. File

☐ Fictitious Name File

☐ Trade/Service Mark

☒ Merger File

☐ Art. of Amend. File

☐ RA Resignation

☐ Dissolution / Withdrawal

☐ Annual Report / Reinstatement

☐ Cert. Copy

☒ Photo Copy

☐ Certificate of Good Standing

☐ Certificate of Status

☐ Certificate of Fictitious Name

☐ Corp Record Search

☐ Officer Search

☐ Fictitious Search

☐ Fictitious Owner Search

☐ Vehicle Search

☐ Driving Record

☐ UCC 1 or 3 File

☐ UCC 11 Search

☐ UCC 11 Retrieval

☐ Courier

Signature

Requested by:

Name

Date

Time

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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DIVISION OF CORPORATIONS

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ARTICLES OF MERGER
Merger Sheet

MERGING: -----

BROWNIE COMMUNICATIONS CORPORATION, a Delaware corporation

INTO

COMSMART, INC., a Florida corporation, P98000037682.

File date: September 17, 1998

Corporate Specialist: Teresa Brown

**ARTICLES OF MERGER OF
BROWNIE COMMUNICATIONS CORPORATION
INTO COMSMART, INC.**

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FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of § 607.1105 of the Florida Business Corporation Act (the "FBCA") and § (IX)251 of Delaware General Corporation Law, and for the purpose of effecting the merger (the "Merger") of BROWNIE COMMUNICATIONS CORPORATION, a Delaware corporation ("Brownie"), into COMSMART, INC., a Florida corporation ("ComSmart" or the "Surviving Corporation"), Brownie and ComSmart have adopted these Articles of Merger (the "Articles") as follows:

1. The plan of merger between Brownie and ComSmart is set forth in The Agreement and Plan of Merger dated September 7, 1998 (the "Agreement"), attached hereto as Exhibit A and incorporated herein by reference as fully set forth therein.

2. The executed Agreement is on file at the office of the Surviving Corporation located at 17252 Balboa Point Way, Boca Raton, Florida 33487.

3. A copy of the Agreement will be furnished by the Surviving Corporation, on request and without cost, to any shareholder of either Brownie or ComSmart.

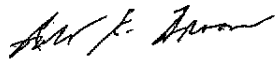
4. The Agreement was approved and adopted by the shareholders of Brownie on September 7, 1998.

5. The Agreement was approved and adopted by the shareholders of ComSmart on September 7, 1998.

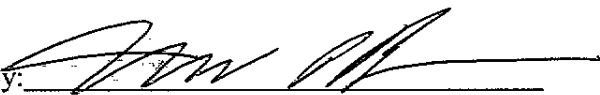
6. The Merger shall become effective at such time as the Secretary of State of the State of Delaware accepts the Agreement and Plan of Merger for record (the "Effective Time").

IN WITNESS WHEREOF, the parties have executed the Articles this 7th day of September, 1998.

BROWNIE COMMUNICATIONS
CORPORATION, a Delaware corporation

By: 
Robert E. Brown, President

COMSMART, INC., a Florida corporation

By: 
Michael P. Brown, President

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement") is entered into as of this 7th day of September, 1998 by and between BROWNIE COMMUNICATIONS CORP., a corporation duly organized and existing under the laws of the State of Delaware ("Brownie"), and COMSMART, INC., a corporation duly organized and existing under the laws of the State of Florida ("ComSmart").

W I T N E S S E T H:

WHEREAS, the respective boards of directors of Brownie and ComSmart have approved and have declared advisable the merger of Brownie with and into ComSmart (the "Merger") upon the terms and subject to the conditions set forth herein whereby each issued and outstanding share of the Common Stock of Brownie (the "Brownie Common Stock") not owned directly by Brownie will be converted into the right to receive one share of the Common Stock of ComSmart (the "ComSmart Common Stock") as more particularly set forth herein; and

WHEREAS, the parties desire to prescribe various conditions to the Merger;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, the parties hereby agree as follows:

1. The Merger.

1.1. The Merger. Upon the terms and subject to the conditions set forth in this Agreement and in accordance with provisions of the Florida Business Corporation Act ("FBCA") and Delaware General Corporation Law ("DGCL"), Brownie shall be merged with and into ComSmart at the Effective Time as hereinafter defined. Following the Effective Time, the separate corporate existence of Brownie shall cease and ComSmart shall be the surviving corporation (the "Surviving Corporation") and shall succeed to and assume all the rights and obligations of Brownie in accordance with the FBCA.

1.2. Closing. The closing of the Merger (the "Closing") will take place at the offices of Edward H. Gilbert, P.A., 5100 Town Center Circle, Boca Raton, Florida 33486 commencing at 10:00 a.m. on September 7, 1998 (the "Closing Date").

1.3. Effective Time. Subject to the provisions of this Agreement, as soon as is practicable on or after the Closing Date, the parties shall file articles of merger or other appropriate documents (in any such case, the "Articles of Merger") executed in accordance with the relevant provisions of the FBCA and DGCL and shall make all such other filings or recordings as are required under the FBCA and DGCL. The Merger shall become effective at such time as the Secretary of State of the State of Delaware accepts the Articles of Merger for record or at such subsequent date or time as Brownie and ComSmart shall agree and specify in the Articles of Merger (hereinafter the "Effective Time").

1.4. Effects of the Merger. The Merger shall have the effects as set forth in the applicable provisions of the FBCA.

1.5. Articles of Incorporation and Bylaws.

(a) The articles of incorporation of ComSmart as in effect immediately prior to the execution of this Agreement shall be the articles of incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

(b) The bylaws of ComSmart as in effect immediately prior to the execution of this Agreement shall be the bylaws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

1.6. Directors and Officers. The directors of ComSmart at the Effective Time shall be the directors of the Surviving Corporation until their respective successors are duly elected and qualified, and the officers of ComSmart at the Effective Time shall be the officers of the Surviving Corporation until their respective successors are duly elected and qualified.

2. Effects of the Merger on the Stock of the Constituent Corporations.

2.1. Effect on Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of Brownie or ComSmart or the holders of any securities of Brownie or ComSmart:

(a) Cancellation of Brownie-Owned Stock. Each share of Brownie Common Stock that is owned directly by Brownie shall automatically be cancelled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(b) Conversion of Brownie Common Stock. Each issued and outstanding share of Brownie Common Stock (other than shares to be cancelled in accordance with Paragraph 2.1.(a)) shall be converted into and represent one validly issued, fully paid and nonassessable share, \$.0001 par value, of ComSmart Common Stock (the "Merger Consideration"). As of the Effective Time, all such shares of Brownie Common Stock shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate or certificates which immediately prior to the Effective Time represented outstanding shares of Brownie Common Stock (the "Certificates") shall cease to have any rights with respect thereto, except the right to receive certificates representing the number of whole shares of ComSmart Common Stock into which such shares have been converted.

2.2. Exchange of Certificates.

(a) Exchange Fund. As of the Effective Time, ComSmart shall set aside, for the benefit of the holders of shares of Brownie Common Stock, Certificates representing the number of whole shares of ComSmart Common Stock issuable in exchange for outstanding shares of Brownie Common Stock pursuant to Paragraph 2.1 (the "Exchange Fund") for exchange in accordance with this Paragraph 2.

(b) Exchange Procedures. Promptly after the Effective Time, but in any event no later than five (5) business days thereafter, ComSmart shall mail to each holder of record of a Certificate whose shares were converted into the Merger Consideration pursuant to Paragraph 2.1:

(1) a letter of transmittal which shall specify that delivery shall be effected and the risk of loss and title to the Certificates shall pass only upon delivery of the Certificates to ComSmart, which delivery shall be in such form and have such other customary provisions as ComSmart may reasonably specify; and

(2) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration.

Upon surrender of a Certificate for cancellation to ComSmart, together with such letter of transmittal, duly executed, and such other documents as ComSmart may reasonably require, the holder of such Certificate shall be entitled to receive in exchange therefor a ComSmart Certificate representing the proper number of whole shares of ComSmart Common Stock that such holder has the right to receive pursuant to the provisions of this Paragraph 2, and the Certificate so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of Brownie Common Stock that is not registered in the transfer records of Brownie, a ComSmart Certificate representing the proper number of shares of ComSmart Common Stock may be issued to a person other than the person in whose name the Certificate so surrendered is registered if such Certificate shall be properly endorsed or otherwise be in proper form for transfer, and the person requesting such issuance shall pay any transfer or other nonincome taxes required by reason of the issuance of shares of ComSmart to a person other than the registered holder of such Certificate or establish to the satisfaction of ComSmart that such tax has been paid or is not applicable. Until surrendered as contemplated by this Paragraph 2.2, each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender ComSmart Certificates representing the number of whole shares of ComSmart Common Stock into which the shares of Brownie Common Stock formerly represented by such Certificate have been converted.

(c) Distributions With Respect to Unexchanged Shares. No dividends or other distributions with respect to ComSmart Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to the shares of ComSmart Common Stock represented thereby, and all such

dividends and other distributions shall be paid to ComSmart and shall be included in the Exchange Fund until the surrender of such Certificate in each case in accordance with this Paragraph 2. Subject to the effect of applicable escheat or similar laws, following any surrender of any such Certificate, there shall be paid to the holder of the ComSmart Certificate representing whole shares of ComSmart Common Stock issued in exchange therefor, without interest:

(1) At the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of ComSmart Common Stock; and

(2) At the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective time but prior to such surrender and with a payment date subsequent to such surrender payable with respect to such whole shares of ComSmart Common Stock.

ComSmart shall make available cash for these purposes.

(d) No Further Ownership Rights in Brownie Common Stock. All shares of ComSmart Common Stock issued upon the surrender for exchange of Certificates in accordance with the terms of this Paragraph 2 shall be deemed to have been issued in full satisfaction of all rights pertaining to the shares of Brownie Common Stock theretofore represented by such Certificates; subject, however, to the Surviving Corporation's obligation to pay any dividends or make any other distributions with a record date prior to the Effective Time that may have been authorized or made by Brownie on such shares of Brownie Common Stock that remain unpaid at the Effective Time, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Brownie Common Stock that were outstanding immediately prior to the Effective Time. If after the Effective Time Certificates are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged as provided in this Paragraph 2, except as otherwise provided by law.

(e) No Liability. Neither ComSmart nor Brownie shall be liable to any person in respect of any shares of ComSmart Common Stock (or dividends or distributions with respect thereto) or cash from the Exchange Fund in each case delivered to a public official pursuant to any applicable abandoned property, escheat or similar law. If any Certificate shall not have been surrendered prior to seven (7) years after the Effective Time (or immediately prior to such earlier date on which any Merger Consideration or any dividends or distributions payable to the holder of such Certificate would otherwise escheat to or become the property of any governmental body or authority), any such Merger Consideration or dividends or distributions in respect of such Certificate shall, to the extent permitted by applicable law, become the property of the Surviving Corporation, free and clear of all claims or interest of any person previously entitled thereto.

(f) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, and if required by the Surviving Corporation, the posting by such person of a bond in such reasonable amount as the Surviving Corporation may direct as indemnity against any claim that may be made against it with respect to such Certificate, ComSmart will issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration, and if applicable, any unpaid dividends and distributions on shares of ComSmart Common Stock deliverable in respect thereof pursuant to this Agreement.

3. Conditions to the Merger. The respective obligations of each party to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following conditions:

3.1. The holders of the issued and outstanding shares of Brownie Common Stock shall have duly approved the Merger in the manner required by applicable law.

3.2. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or enforced by any court or other tribunal or governmental body or authority that prohibits the consummation of the Merger substantially on the terms contemplated hereby. In the event any order, decree or injunction shall have been issued, each party shall use its reasonable efforts to remove any such order, decree or injunction.

4. Miscellaneous.

4.1. Benefit. This Agreement shall enure to the benefit to the parties thereto and their respective successors and assigns.

4.2. Entire Agreement. This Agreement, including all schedules and other instruments or documents referred to herein or delivered pursuant hereto which form a part hereof, contains the entire understanding of the parties hereto in respect of the subject matter contained herein. There are no representations, warranties, promises, covenants or undertakings other than those expressly set forth herein or therein. This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to the subject matter hereof. This Agreement may be amended only by a written agreement duly executed by the parties hereto. Any condition to a particular party's obligations hereunder may be waived in writing by such party.

4.3. Headings. The headings contained in this Agreement have been inserted for convenience and reference purposes only and shall not affect the meaning or interpretation hereof in any manner whatsoever.

4.4. Severability. If any of the terms, provisions or conditions contained in this Agreement shall be declared to be invalid or void in any judicial proceeding, this Agreement shall be honored and enforced to the extent of its validity, and those provisions not declared invalid shall remain in full force and effect.

4.5. Remedies. In the event of a breach or threatened breach by either party of its obligations hereunder, each party acknowledges that the other party may not have an adequate remedy at law and shall be entitled to such equitable and injunctive relief as may be available to restrain the other party from any violation of such obligations. Nothing herein shall be construed as prohibiting either party from pursuing any other remedies available for such breach or threatened breach, including the recovery of damages.

4.6. Exhibits and Schedules. All exhibits and schedules hereto shall be deemed to be a part hereof.

4.7. Notices. All notices, requests, demands and other communications required or permitted to be given hereunder shall be deemed given when actually received or on the following business day when sent by a recognized overnight delivery service (e.g., Federal Express) for next business day delivery addressed to each of the parties as follows:

If to Brownie: 17252 Balboa Point Way
Boca Raton, Florida 33487
Attn.: Robert E. Brown, President

If to ComSmart: 17252 Balboa Point Way
Boca Raton, Florida 33487
Attn.: Michael P. Brown, President

or to such other address, or the attention of such other party, as the parties shall advise the other by notice given in conformity herewith.

4.8. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, without giving effect to conflicts of law.

4.9. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

4.10. Expenses Each party shall bear its own expenses in connection with this Agreement and the transactions contemplated hereby except that Brownie shall reimburse ComSmart for one half of the legal fees and related costs incurred thereby in connection with such matters.

4.11. Assignments. This Agreement may not be assigned by either party.

4.12. Facsimile Signatures. Facsimile signatures on counterparts of this Agreement are hereby authorized and shall be acknowledged as if such facsimile signatures were an original execution, and this agreement shall be deemed as executed when an executed facsimile hereof is transmitted by a party to any other party.

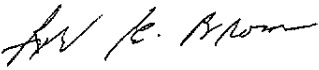
4.13. Litigation, Jurisdiction and Venue. In the event any action, suit or proceeding is instituted as a result of this Agreement, the prevailing party in such action, suit or proceeding shall be entitled to receive reimbursement of the costs of such action, suit or proceeding at all levels, including reasonable attorneys' fees. Further, in the event of the institution of any such action, suit or proceeding, each of the parties hereto hereby consents to the exclusive jurisdiction and venue of the courts of the State of Florida located in Palm Beach County, Florida and the United States District Court in and for the Southern District of Florida with respect to any matter relating to this Agreement and the performance of the parties' obligations hereunder and each of the parties hereto hereby further consents to the personal jurisdiction of such courts. Any action suit or proceeding brought by or on behalf of either of the parties hereto relating to such matters shall be commenced, pursued, defended and resolved only in such courts and any appropriate appellate court having jurisdiction to hear an appeal from any judgment entered in such courts. The parties hereby agree that service of process may be made in any manner permitted by the rules of such courts and the laws of the State of Florida.

4.14. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context otherwise requires. The word "including" shall mean including without limitation.

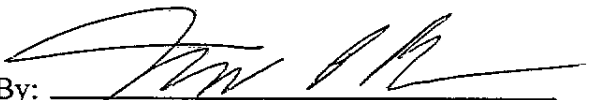
{signatures appear on the next page}

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

BROWNIE COMMUNICATIONS CORP.

By: 
Robert E. Brown, President

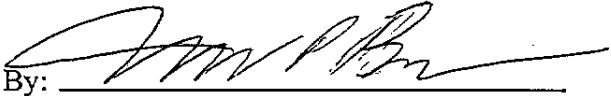
COMSMART, INC.

By: 
Michael P. Brown, President

CERTIFICATE

THE UNDERSIGNED, Michael P. Brown, as Secretary of Brownie Communications Corporation (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, does hereby certify that by Written Action of Shareholders in Lieu of a Special Meeting ("Written Action"), the foregoing Agreement and Plan of Merger (the "Agreement") between ComSmart, Inc. and the Corporation was duly adopted and approved by more than fifty percent (50%) of the issued and outstanding shares of common stock entitled to vote of the Corporation, which shares were properly represented and voted. There were no shares of preferred stock outstanding.

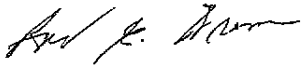
BROWNIE COMMUNICATIONS CORP.

By: 
Michael P. Brown, Secretary

CERTIFICATE

THE UNDERSIGNED, Robert E. Brown, as Secretary of ComSmart, Inc. (the "Corporation"), a corporation organized and existing under the laws of the State of Florida, does hereby certify that by Written Action of Shareholders in Lieu of a Special Meeting ("Written Action"), the foregoing Agreement and Plan of Merger (the "Agreement") between Brownie Communications Corporation and the Corporation was duly adopted and approved by more than fifty percent (50%) of the issued and outstanding shares of common stock entitled to vote of the Corporation, which shares were properly represented and voted. There were no shares of preferred stock outstanding.

COMSMART, INC.

By: 
Robert E. Brown, Secretary