

10-25-2002

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OFFICE OF RECORDS
U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
2002 OCT 22 PM 2:29

FINANCE SECTION

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

NVST.com, Inc 10.22.02

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State Washington
- Other _____

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)

Name: NVST, Inc.

Internal Address: _____

Street Address: 10900 NE 4th St., Suite 1800

City: Bellevue State: WA Zip: 98004

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Washington
- Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other _____

Execution Date: May 2, 2002

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

Serial # 78/042825

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: NVST, Inc

Internal Address: Attn: Larry Spokoiny

Street Address: 10900 NE 4th St., Suite 1800

City: Bellevue State: WA Zip: 98004

6. Total number of applications and registrations involved: 7

7. Total fee (37 CFR 3.41).....\$ 40

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: _____

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Larry Spokoiny

Name of Person Signing

Larry Spokoiny

Signature

Oct 14, 2002

Date

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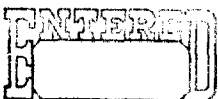
Total number of pages including cover sheet, attachments, and document:

10/24/2002 LMUELLER 00000079 78042825

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40.00

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231



TRADEMARK
REEL: 002604 FRAME: 0465

STATE OF WASHINGTON



SECRETARY OF STATE

NVST, INC.

C/O LARRY SPOKOINY
14450 NE 29TH PL STE 108
BELLEVUE WA 98007

AMENDMENT

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that documents meeting Washington statutory requirements have been filed and processed with the Secretary of State on behalf of:

NVST, INC.

A Washington Profit Corporation
UBI: 601 901 510
Filing Date: May 03, 2002

Previous Name:

NVST.COM, INC.

Amending and Restating Articles



Given under my hand and the seal of the State of Washington at Olympia, the State Capital.

Sam Reed, Secretary of State

TRADEMARK
REEL: 002604 FRAME: 0466

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION**

OF

NVST, INC.

ARTICLE 1. NAME

The name of this corporation is "NVST, Inc."

ARTICLE 2. SHARES

2.1. Authorized Shares. The Corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares of Common Stock that the Corporation is authorized to issue is Twenty Million (20,000,000), with a par value of \$0.001 per share. The total number of shares of Preferred Stock that the Corporation is authorized to issue is Fifteen Million (15,000,000), with a par value of \$0.001 per share. "*Series A Preferred Stock*" shall consist of Six Million Five Hundred Forty One Thousand Two Hundred Eighty (6,541,280) shares, and "*Series B Preferred Stock*" shall consist of Five Million Seven Hundred Thousand (5,700,000) shares.

2.2. Issuance of Preferred Stock in Series. The Preferred Stock may be issued from time to time in one or more series in any manner permitted by law and the provisions of these Amended and Restated Articles of Incorporation, as determined from time to time by the Board of Directors and stated in the resolution or resolutions providing for the issuance thereof prior to the issuance of any shares thereof. The Board of Directors shall have the authority to fix and determine and to amend, subject to the provisions hereof, the rights and preferences of the shares of any series that is wholly unissued or to be established. Unless otherwise specifically provided in the resolution establishing any series, the Board of Directors shall further have the authority, after the issuance of a series whose number it has designated, to amend the resolution establishing such series to decrease the number of shares of that series, but not below the number of shares of such series then outstanding. A statement of the powers, rights, preferences, privileges and restrictions granted to or imposed upon the respective classes and series of the shares of capital stock or the holders thereof is as follows:

2.2.1. *Dividends.* The holders of the Series A Preferred Stock and the Series B Preferred Stock shall be entitled to receive only upon resolution of the Board of Directors of the Corporation declaring and setting aside funds legally available therefor, non-cumulative dividends at the rate of eight percent (8%) of the original issue prices (as adjusted for any stock splits, stock dividends, recapitalizations or the like) per share, per annum on a pari passu basis or, if greater (as determined on a per annum basis and on an as converted basis), an amount equal to that paid on any other outstanding shares of this Corporation. The initial "Original Issue Prices"

shall be \$0.25 for the Series A Preferred Stock and \$0.3726 for the Series B Preferred Stock, payable in preference and priority to any payment of any dividend on Common Stock when, as and if declared by the Board of Directors.

In the event that the Corporation shall have declared but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Preferred Stock (as provided in paragraph 3 hereof), the Corporation shall, at the option of each holder, pay in cash to each holder of Preferred Stock subject to conversion the full amount of any such dividends or allow such dividends to be converted into Common Stock in accordance with, and pursuant to the terms specified in, paragraph 3 hereof.

2.2.2. *Liquidation Preference.*

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (a "Liquidating Event"), prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of the Common Stock by reason of their ownership of such stock (other than as provided in Section 2.2.2(a)(iii) below), all distributions of the assets or funds of the Corporation (the "Aggregate Liquidation Amount") shall be made in the order of priorities set forth below and shall be paid as promptly as reasonably practicable after the Liquidating Event:

(i) Series B Liquidation Preference. First (but subject to the provisions of Section 2.2.2(a)(iii) below), the holders of Series B Preferred Stock shall be entitled to receive for each outstanding share of Series B then held by them an amount equal to \$0.7452 plus declared but unpaid dividends on such shares (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like). If, upon the occurrence of a Liquidating Event, the Aggregate Liquidation Amount shall be insufficient to permit the payment of the full aforementioned preferential amount to the holders of Series B Preferred Stock under this paragraph (2)(a)(i), then the assets and funds of the Corporation legally available for distribution to shareholders by reason of their ownership of stock of the Corporation shall be distributed ratably among the holders of Series B Preferred Stock under this paragraph 2(a)(i).

(ii) Series A Liquidation Preference. Second (but subject to the provisions of Section 2.2.2(a)(iii) below), the holders of Series A Preferred Stock shall be entitled to receive for each outstanding share of Series A then held by them an amount equal to \$1.125 plus declared but unpaid dividends on such shares (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like). If, upon the occurrence of a Liquidating Event, the Aggregate Liquidation Amount shall be insufficient to permit the payment of the full aforementioned preferential amount to the holders of Series A Preferred Stock under this paragraph (2)(a)(ii), then the assets and funds of the Corporation legally available for distribution to shareholders by reason of their ownership of stock of the Corporation shall be distributed ratably among the holders of Series A Preferred Stock under this paragraph 2(a)(ii).

(iii) Employee Liquidation Preference. Subject to the provisions of Section 2.2.2(a)(iv) below, the Option Holders (as defined below) shall be entitled

to receive, ranking on parity as to the receipt of the respective preferential amounts for the holders of Series A Preferred Stock and Series B Preferred Stock, an aggregate amount equal to twenty percent (20%) of the Series A Liquidation Preference and the Series B Liquidation Preference paid pursuant to paragraphs 2.2.2(a)(i) and (ii) above (the "Employee Liquidation Preference"). For purposes of this Section 2.2.2(a)(iii), an Option Holder is any person that is an employee of or consultant to the Corporation as of the date of the filing of these Amended and Restated Articles with the Secretary of State or becomes an employee of or consultant to the Corporation after the date of filing of these Amended and Restated Articles with the Secretary of State. The Employee Liquidation Preference shall be distributed pro rata among the Option Holders based on the total number of vested options, warrants or other rights to purchase shares of Common Stock, (or shares of Common Stock if such options, warrants or other rights to purchase shares of Common Stock are exercised) held by each Option Holder at the time of the Liquidation Event. Immediately prior to the Liquidation Event, Option Holders shall immediately vest fifty percent (50%) of their respective remaining unvested options, warrants, or other rights to purchase shares of Common Stock.

(iv) Non-Payment of Employee Liquidation Preference.

Notwithstanding the provisions of paragraph 2.2.2(a)(iii), the Corporation shall not distribute the Employee Liquidation Preference:

A. in the event of the merger or consolidation of the Corporation into or with another corporation, or the effectuation of a statutory exchange of shares constituting a Change of Control (as defined below), to any Option Holder that is an employee of the Corporation, (y) if the Option Holder is offered continued employment with the surviving company (provided that such employment is comparable as to position, total compensation and location with such Option Holder's position, total compensation and location at the time of the Liquidating Event, as determined by the Board of Directors), and (z) the Option Holder declines to accept such employment; or

B. following (and Sections 2.2.2(a)(iii) and (iv) shall automatically terminate upon) the conversion of all of the Series A Preferred Stock and Series B Preferred Stock into Common Stock.

In the event the Employee Liquidation Preference is not distributed to an Option Holder pursuant to paragraph 2.2.2(a)(iv)(A) above, and the Option Holder's failure to accept employment with the surviving company materially adversely affects the purchase price paid by the surviving company in the Liquidating Event (as determined by the Board of Directors), the Employee Liquidation Preference allocable to such employee shall be distributed to the holders of Series A Preferred Stock and Series B Preferred Stock without regard to the provisions of Section 2.2.2(a)(iii). For purposes of paragraph 2.2.2(a)(iv)(A) above, the location of the Option Holder's employment with the surviving corporation shall be considered comparable if it is located within 30 miles of the Corporation's current location.

(b) After the payment or setting apart of payment to the holders of the Series A Preferred Stock, the Series B Preferred Stock (and the portion thereof payable to the Option Holders) of the preferential amounts so payable to them, the remaining assets, if any,

shall be distributed among the holders of Series A Preferred Stock, Series B Preferred Stock, Common Stock and any other series or class of preferred stock expressly entitled to further participate in such distribution pro rata based upon the number of shares of Common Stock outstanding and the number of shares of Common Stock which would be held by each such holder on an as-if-converted-to-Common basis calculated using then effective Conversion Price (which, for the Series A Preferred Stock and Series B Preferred Stock, is defined in Section 2.2.3(c) below).

(c) The merger or consolidation of the Corporation into or with another corporation, or the effectuation of a statutory exchange of shares, or the sale, lease or transfer of all or substantially all of the assets of the Corporation, shall be regarded as a Liquidation within the meaning of this Section 2. In any such case, the liquidation preference which the holders of Preferred Stock shall be entitled to receive shall be computed in the same manner as if the Corporation's available assets (valued at the value being given for the Corporation's shares or assets in such transaction) were actually being distributed to all shareholders in connection with such transaction (even though holders of Common Stock and other classes or series of preferred stock are not or may not be entitled to receive any actual distribution upon such deemed liquidation or dissolution). Notwithstanding the foregoing, the merger or consolidation of the Corporation into or with another corporation, or the effectuation of a statutory exchange of shares, in which the shareholders of the Corporation immediately prior to such transaction hold, immediately after such transaction, at least 50% of the general voting power of the surviving or acquiring entity (or a parent corporation thereof) by virtue of their ownership of the Corporation's equity securities, shall not be regarded as a Liquidation within the meaning of this Section 2. In addition and notwithstanding the foregoing, each holder of Preferred Stock shall have the right to elect the benefits of the provisions of Section 2.2.3(a) below or other applicable conversion provisions in lieu of receiving payment on Liquidation of the Corporation pursuant to this Section 2.2.2.

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

(a) *Optional Conversion.* Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the respective Original Issue Price of such shares of Preferred Stock by the Conversion Price at the time in effect for shares of such series of Preferred Stock.

(b) *Automatic Conversion.* Each share of Preferred Stock shall automatically be converted, without any further act of the Corporation or its shareholders, into validly issued, fully paid and nonassessable shares of Common Stock at the then effective Conversion Price of each such series immediately upon the consummation of a firm commitment underwritten public offering pursuant to an effective registration statement on Form S-1 under the Securities Act of 1933, as amended (the "*Securities Act*"), covering the offer and sale of Common Stock in which the aggregate price per share equals or exceeds Five Dollars (\$5.00) and the aggregate proceeds to the Corporation are not less than Twenty Million Dollars

(\$20,000,000) (exclusive of underwriting and commissions and registration expenses). In addition, each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into shares of Common Stock when a majority of each of the originally issued shares of the Series A Preferred Stock and Series B Preferred Stock have converted, as a single class, into shares of Common Stock. In the event of an automatic conversion pursuant to the first sentence of this Section 3(b), the person(s) entitled to receive the Common Stock issuable upon such conversion of Preferred Stock shall not be deemed to have converted such Preferred Stock into Common Stock until immediately prior to the closing of such underwritten public offering.

(c) *Conversion Rate.* Each share of Series A Preferred Stock or Series B Preferred Stock shall be converted into that number of shares of Common Stock as is determined by multiplying that number of shares of the applicable series of Preferred Stock being converted by the quotient of (A) \$0.25 in the case of the Series A Preferred and (B) \$0.3726 in the case of the Series B Preferred, divided by the Conversion Price (as defined below) in effect on the Conversion Date (as defined below) for such series (the "Conversion Rate"). The Conversion Price (the "Conversion Price") at which shares of Common Stock shall be issuable upon conversion of the Preferred Stock shall initially be \$0.25 for shares of Series A Preferred Stock (the "Series A Conversion Price"), and \$0.3726 for shares of Series B Preferred Stock (the "Series B Conversion Price"). The Conversion Price shall be subject to adjustment as set forth in Section 2.2.3(f) below. No payment or adjustment shall be made for any dividends on the Common Stock issuable upon such conversion.

(d) *Mechanics of Conversion.* A holder of any shares of Series A Preferred Stock or Series B Preferred Stock may exercise the conversion right specified in Section 2.2.3(a) as to any part thereof by surrendering to the Corporation or its transfer agent the certificate or certificates for the shares to be converted, accompanied by written notice stating that the holder elects to convert all or a specified portion of the shares represented thereby. Upon the occurrence of any of the events specified in Section 2.2.3(b), the outstanding shares of Series A Preferred Stock or Series B Preferred Stock, as the case may be, shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided that the Corporation shall not be obligated to issue to any such holder certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing the shares of Series A Preferred Stock or Series B Preferred Stock are delivered to the Corporation or any transfer agent of the Corporation.

Upon receipt of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any certificates evidencing shares of Preferred Stock and (in the case of loss, theft or destruction) upon delivery of an indemnity agreement (with surety if reasonably required) in an amount reasonably satisfactory to the Corporation, or (in the case of mutilation) upon surrender and cancellation of such certificates, the Corporation will issue, in lieu thereof, a new certificate of like tenor.

Conversion of shares of Series A Preferred Stock or Series B Preferred Stock shall be deemed to have been effected either on the date on which the event specified with respect to such Preferred Stock in Section 2.2.3(b) shall have occurred, or on the

date when delivery of notice of an election to convert and certificates for shares is made under Section 2.2.3(a), as the case may be, and such date is referred to herein with respect to each such series of Preferred Stock as the “*Conversion Date.*” Subject to the provisions of Section 2.2.3(f)(7), as promptly as practicable thereafter (and after surrender of the certificate or certificates representing shares of Series A Preferred Stock or Series B Preferred Stock, as the case may be, to the Corporation or its transfer agent in the case of conversions pursuant to Section 2.2.3(b)) the Corporation shall issue and deliver to such holder a certificate or certificates for the number of full shares of Common Stock to which such holder is entitled and any dividends on such series of Preferred Stock which such holder is entitled to receive, but has not yet received.

Subject to the provisions of Section 2.2.3(f)(7), the Person in whose name the certificate or certificates for Common Stock are to be issued shall be deemed to have become a holder of record of such Common Stock on the applicable Conversion Date. Upon conversion of only a portion of the number of shares covered by a certificate representing shares of Series A Preferred Stock or Series B Preferred Stock surrendered for conversion (in the case of conversion pursuant to Section 2.2.3(a)), the Corporation shall issue and deliver to the holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of such series of Preferred Stock representing the unconverted portion of the certificate so surrendered.

(e) *Fractional Shares.* No fractional shares of Common Stock or scrip shall be issued upon conversion of shares of Preferred Stock. If more than one share of Series A Preferred Stock or Series B Preferred Stock shall be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of each such series of Preferred Stock so surrendered by such holder. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of any shares of Series A Preferred Stock or Series B Preferred Stock, the Corporation shall round such fraction to the nearest whole share (such that any fraction equal or greater than one-half shall be rounded up and any fraction less than one-half shall be rounded down) and shall issue such additional share, if any, after such rounding.

(f) *General Conversion Price Adjustments for Diluting Issues.* The applicable Conversion Price for each series of Preferred Stock shall be subject to adjustment from time to time as follows:

(1) Common Stock or Preferred Stock Issued at a Price Less than the Series A Conversion Price or Series B Conversion Price. If the Corporation shall issue, after the date of original issuance of the Series A Preferred Stock or Series B Preferred Stock, Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price of a particular series of Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, then the Conversion Price for such series shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be an amount equal to the sum of (A) the number of shares of Common Stock deemed outstanding

immediately prior to such issuance (after giving effect to the conversion of Series A Preferred Stock or Series B Preferred Stock) and (B) the number of shares of Common Stock that the aggregate consideration, if any, received by the Corporation upon such issuance would purchase at the applicable Conversion Price, and the denominator of which shall be the total number of shares of Common Stock deemed outstanding immediately after such issuance (which includes the number of shares of Common Stock issuable upon conversion of shares of Series A Preferred Stock or Series B Preferred Stock and the shares of Additional Stock).

For the purposes of any such adjustment of the Conversion Price, the following provisions shall be applicable:

(A) Cash. In the case of the issuance of Common Stock for cash, the amount of the consideration received by the Corporation shall be deemed to be the amount of the cash proceeds received by the Corporation for such Common Stock before deducting therefrom any reasonable discounts, commissions, taxes or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(B) Consideration Other Than Cash. In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, including securities acquired in exchange therefor, the consideration other than cash shall be deemed to be the fair market value thereof as reasonably determined by the Board of Directors in good faith.

(C) Options and Convertible Securities. In the case of the issuance of (i) options, warrants or other rights to purchase or acquire Common Stock (whether or not at the time exercisable), (ii) securities by their terms convertible into or exchangeable for Common Stock (whether or not at the time so convertible or exercisable) or (iii) options, warrants or rights to purchase such convertible or exchangeable securities (whether or not at the time exercisable), other than options, warrants, rights or convertible or exchangeable securities which are not, or when exercised or converted would not constitute, Additional Stock as defined in Section 2.2.3(f)(2), the following provisions shall apply:

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

(ii) 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, warrants or other rights to purchase or acquire such convertible or exchangeable securities and the subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such securities were issued or such options, warrants or rights were issued and for a consideration equal to the consideration, if any,

received by the Corporation for any such securities and related options, warrants or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities and the exercise of any related options, warrants or rights (the consideration in each case to be determined in the manner provided in sub-clauses (A) and (B) above);

(iii) on any change in the number of shares of Common Stock deliverable upon exercise of any such options, warrants or rights or conversion of or exchange for such convertible or exchangeable securities or any change in the consideration to be received by the Corporation upon such exercise, conversion or exchange, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price for such series as then in effect shall forthwith be readjusted to such Conversion Price as would have been obtained had an adjustment been made upon the issuance of such options, warrants or rights not exercised prior to such change, or securities not converted or exchanged prior to such change, upon the basis of such change;

(iv) on the expiration or cancellation of any such options, warrants or rights, or the termination of the right to convert or exchange such convertible or exchangeable securities, if the Conversion Price for such series shall have been adjusted upon the issuance thereof, such Conversion Price shall forthwith be readjusted to such Conversion Price as would have been obtained had an adjustment been made upon the issuance of such options, warrants, rights or securities on the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options, warrants or rights, or upon the conversion or exchange of such securities; and

(v) if the Conversion Price for any series shall have been adjusted upon the issuance of any such options, warrants, rights or convertible or exchangeable securities, no further adjustment of the Conversion Price for such series shall be made for the actual issuance of Common Stock upon the exercise thereof;

provided, however, that no increase in the Conversion Price for any series shall be made pursuant to sub-clauses (i) or (ii) of this Section 2.2.3(f)(1)(C).

(2) Additional Stock. "Additional Stock" shall mean any shares of Common Stock or Preferred Stock issued (or deemed to have been issued pursuant to Section 2.2.3(f)(1)(C)(iii)) by the Corporation after the date of original issuance of the Series B Preferred Stock, other than shares of Common Stock issued by the Corporation (a) pursuant to stock options granted or authorized for future grant under the Corporation's stock option plan to Corporation officers, directors, employees and advisors pursuant to arrangements, plans or contracts approved by the Corporation's Board of Directors (which as of the date of the filing of these Amended and Restated Articles with the Secretary of State represents authorization for up to 3,924,768 shares); (b) upon conversion of shares of Series A Preferred Stock or Series B Preferred Stock, (c) in connection with commercial credit arrangements, equipment financings or similar transactions approved by the Board of Directors; (d) in connection with acquisition transactions unanimously approved by the Board of Directors; (e) the issuance of securities in a public offering unanimously approved the Board of Directors; (f) the issuance of securities

pursuant to currently outstanding options, warrants, or other rights to acquire securities of the Corporation; or (g) stock splits, stock dividends or like transactions to purchase that portion of such equity securities equal to (1) the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock held by each holder of Preferred Stock divided by (2) all of the Corporation's Common Stock then outstanding or issuable upon exercise of options or warrants or conversion of Preferred Stock.

(3) Stock Dividends. If the number of shares of Common Stock outstanding at any time after the date of issuance of the Series B Preferred Stock is increased by a stock dividend or other distribution on Common Stock payable in shares of Common Stock or by a subdivision, split-up or reclassification of outstanding shares of Common Stock, then immediately after the record date fixed for the determination of holders of Common Stock entitled to receive such stock dividend or the effective date of such subdivision, split-up or reclassification, as the case may be, the Conversion Price for such series of Preferred Stock shall be appropriately reduced so that the holder of any shares of Preferred Stock thereafter converted shall be entitled to receive the number of shares of Common Stock of the Corporation which he or she would have owned immediately following such action had such shares of Preferred Stock been converted immediately prior thereto.

(4) Combination of Stock. If the number of shares of Common Stock outstanding at any time after the date of issuance of the Series B Preferred Stock is decreased by a combination or reclassification of the outstanding shares of Common Stock, then, immediately after the effective date of such combination or reclassification, the Conversion Price for each series of Preferred Stock shall be appropriately increased so that the holder of any shares of Preferred Stock thereafter converted shall be entitled to receive the number of shares of Common Stock of the Corporation which he or she would have owned immediately following such action had such shares of Preferred Stock been converted immediately prior thereto.

(5) Capital Reorganization or Reclassification. If the Common Stock issuable upon the conversion of the Series A Preferred Stock or Series B Preferred Stock shall be changed into the same or 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 elsewhere in this Section 2.2.3(f)), then in each such event the holder of each share of such series 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 the holders of the number of shares of Common Stock into which such share of Preferred Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

(6) Merger or Consolidation. If at any time or from time to time there shall be an acquisition of the Corporation by another entity by means of merger, consolidation or otherwise, resulting in the exchange of the outstanding shares of the Corporation for securities or consideration issued or caused to be issued by the acquiring entity or any of its affiliates, but not resulting in a Liquidation within the meaning of Section 2.2.1, then, as a part of such acquisition, provision shall be made so that the holders of Series A Preferred Stock and

Series B Preferred Stock shall thereafter be entitled to receive upon conversion of such series of Preferred Stock, the number of shares of stock or other securities or property of the acquiring corporation resulting from such acquisition, to which such holder would have been entitled if such holder had converted its shares of such series of Preferred Stock immediately prior to such acquisition. In any such case appropriate adjustments shall be made in the application of the provisions of this Section 2.2.3(f) with respect to the rights of the holders of the Series A Preferred Stock or Series B Preferred Stock after such acquisition to the end that the provisions of this Section 2.2.3(f) (including adjustment of the Conversion Price for each such series then in effect and the number of shares issuable upon conversion of such series of Preferred Stock) shall be applicable after that event in as nearly equivalent a manner as may be practicable.

(7) Rounding of Calculations; Minimum Adjustment. All calculations under this Section 2.2.3(f) shall be made to the nearest cent or to the nearest one hundredth (1/100th) of a share, as the case may be. Any provision of this Section 2.2.3 to the contrary notwithstanding, no adjustment in the Conversion Price of any series shall be made if the amount of such adjustment would be less than one percent of the Conversion Price for such series then in effect, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate one percent or more of such Conversion Price then in effect.

(8) Timing of Issuance of Additional Common Stock Upon Certain Adjustments. In any case in which the provisions of this Section 2.2.3(f) shall require that an adjustment shall become effective immediately after a record date for an event, the Corporation may defer until the occurrence of such event (A) issuing to the holder of any share of such series of Preferred Stock converted after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the shares of Common Stock issuable upon such conversion before giving effect to such adjustment and (B) paying to such holder any amount of cash in lieu of a fractional share of Common Stock pursuant to Section 2.2.3(e); provided that the Corporation upon request shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares, and such cash, upon the occurrence of the event requiring such adjustment.

(g) Statement Regarding Adjustments. Whenever the Conversion Price for such series shall be adjusted as provided in Section 2.2.3(f), the Corporation shall forthwith file, at the office of any transfer agent for the Series A Preferred Stock or Series B Preferred Stock, as applicable, and at the principal office of the Corporation, a statement showing in detail the facts requiring such adjustment and the Conversion Price for such series that shall be in effect after such adjustment, and the Corporation shall also cause a copy of such statement to be sent by mail, first-class postage prepaid, to each holder of shares of Preferred Stock of such series of Preferred Stock at its address appearing on the Corporation's records. At the request of any holder of such series of Preferred Stock, each such statement shall be signed by the Corporation's independent public accountants. Where appropriate, such copy may be given in advance and may be included as part of a notice required to be mailed under the provisions of Section 2.2.3(h).

(h) Notice to Holders. In the event the Corporation shall propose to take any action of the type described in clause 2.2.3(f)(1), 2.2.3(f)(3), 2.2.3(f)(4), 2.2.3(f)(5) or 2.2.3(f)(6), the Corporation shall give notice to each holder of shares of Preferred Stock affected by such adjustment, in the manner set forth in Section 2.2.3(g), which notice shall specify the record date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Conversion Price for such series and the number, kind or class of shares or other securities or property which shall be deliverable or purchasable upon the occurrence of such action or deliverable upon conversion of shares of such Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least 15 days prior to the date so fixed, and in case of all other action, such notice shall be given at least 20 days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(i) Costs. The Corporation shall pay all documentary, stamp, transfer or other transactional taxes attributable to the issuance or delivery of shares of Common Stock of the Corporation upon conversion of any shares of Series A Preferred Stock or Series B Preferred Stock; provided that the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificate for such shares in a name other than that of the holder of the shares of such series of Preferred Stock in respect of which such shares are being issued.

(j) Reservation of Shares. The Corporation shall reserve at all times so long as any shares of Series A Preferred Stock or Series B Preferred Stock remain outstanding, free from preemptive rights, out of its treasury stock (if applicable) or its authorized but unissued shares of Common Stock, or both, solely for the purpose of effecting the conversion of the shares of such series of Preferred Stock, sufficient shares of Common Stock to provide for the conversion of all outstanding shares of such series of Preferred Stock.

(k) Approvals. If any shares of Common Stock to be reserved for the purpose of conversion of shares of Series A Preferred Stock or Series B Preferred Stock require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued or delivered upon conversion, then the Corporation will in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be. If, and so long as, any Common Stock into which the shares of Series A Preferred Stock or Series B Preferred Stock are then convertible is listed on any national securities exchange, the Corporation will, if permitted by the rules of such exchange, list and keep listed on such exchange, upon official notice of issuance, all shares of such Common Stock issuable upon conversion.

(l) Valid Issuance. All shares of Common Stock which may be issued upon conversion of the shares of Series A Preferred Stock or Series B Preferred Stock will be, upon issuance by the Corporation, duly and validly issued, fully paid and nonassessable and free

from all taxes, liens and charges with respect to the issuance thereof and the Corporation shall take no action which will cause a contrary result.

2.2.4. **Retirement of Shares.** Shares of Preferred Stock which have been issued and have been redeemed, repurchased or reacquired in any manner by the Corporation shall be retired and shall not be reissued.

2.2.5. **Certain Definitions.**

(a) The term "Person" as used herein means any corporation, partnership, trust, organization, association, other entity or individual.

(b) The term "outstanding," when used with reference to shares of stock, shall mean issued shares, excluding shares held by the Corporation or a subsidiary.

(c) All accounting terms used herein and not expressly defined herein shall have the meanings given to them in accordance with generally accepted accounting principles.

(d) The headings of the Sections, Subsections, clauses and subclauses herein are for convenience of reference only and shall not define, limit or affect any of the provisions hereof.

2.2.6. **Voting Rights and Directors.**

(a) *Vote Other than for Directors.* Except as otherwise required by law and as provided in Sections 2.2.6(b) and 2.2.7 below, the holders of Preferred Stock and the holders of Common Stock shall be entitled to notice of any shareholders' meeting and to vote as a single class upon any matter submitted to the shareholders for a vote, as follows: (i) each holder of Preferred Stock shall have one vote for each full share of Common Stock into which his or her shares of Preferred Stock would be convertible on the record date for the vote and (ii) the holders of Common Stock shall have one vote per share of Common Stock.

(b) *Number of Directors and Voting for Directors.* The authorized number of directors of the Corporation shall be fixed by the Corporation's Board of Directors and as set forth in the Corporation's Bylaws. The holders of shares of Series A Preferred Stock, voting as a class, shall be entitled to elect two (2) directors (the "Series A Directors"), the holders of shares of Series B Preferred Stock, voting as a class, shall be entitled to elect zero (0) directors, and the holders of the shares of Common Stock, voting as a class, shall be entitled to elect one (1) director (the "Common Director"). All remaining directors shall be elected by the holders of Common Stock and Preferred Stock, voting together as one class. Any vacancy in the Board of Directors occurring because of the death, resignation or removal of a director designated by a particular class or series of stock shall be filled by action of the remaining director or directors elected by the holders of such class or series, or in the absence of a action by such director or directors, then by the vote or written consent of the holders of a majority of such class or series. Any vacancy in the Board of Directors occurring because of the death,

resignation or removal of a director elected by the vote of both the Common Stock and the Preferred Stock may be filled by action of the remaining directors then in office, or in the absence of action by such directors, then by the vote or written consent of the holders of the Preferred Stock and the Common Stock voting as provided in subparagraph (a) above. A director may be removed from the Board of Directors with or without cause by the vote or consent of the holders of the outstanding class or series with voting power entitled to elect such director in accordance with the corporate law of the State of Washington.

2.2.7. *Shareholders Protective Provisions.*

(a) In addition to any other rights provided by law, so long as the Series A Preferred Stock and/or the Series B Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of both (i) the holders of not less than a majority of the outstanding Series A Preferred Stock, voting as a separate class and (ii) holders of not less than a majority of the outstanding Series B Preferred Stock, voting as a separate class:

(i) take any action which results in a redemption of any shares of Common Stock (other than pursuant to equity incentive agreements with service providers giving the Corporation the right to repurchase shares upon the termination of services);

(ii) increase or decrease the authorized number of directors of the Corporation;

(iii) take any action which results in the payment or declaration of any dividend on any shares of Common or Preferred Stock; or

(iv) take any action which results in any merger, other corporate reorganization, sale of control, or any transaction in which all or substantially all of the assets of the Corporation are sold.

(b) In addition to any other rights provided by law, so long as the Series A Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of Series A Preferred Stock, voting as a class:

(i) alter or change the rights, preferences or privileges of the Series A Preferred Stock;

(ii) increase or decrease (other than by a redemption or conversion approved by the Board of Directors) the authorized number of shares of Series A Preferred Stock;

(iii) authorize or issue shares of any class or series of stock (convertible or otherwise) having any preference as to dividends, voting rights, liquidation or assets superior to or on parity with the Series A Preferred Stock;

(iv) amend, alter, repeal or waive any provision of these Amended and Restated Articles or the Bylaws of the Corporation that adversely affects the rights, preferences or privileges of the Series A Preferred Stock.

(v) issue any voting securities of the Corporation other than (A) pursuant to the Corporation's Employee Stock Option Plan, (B) upon exercise of options or warrants outstanding on the date hereof or (C) upon conversion of (i) convertible securities outstanding on the date hereof; or (ii) shares of Series A Preferred Stock or Series B Preferred Stock; or

(vi) incur any debt after the date of the filing of these Amended and Restated Articles with the Secretary of State whereby the principal amount of the obligation is greater than \$100,000, or any secured debt.

(c) In addition to any other rights provided by law, so long as the Series B Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of Series B Preferred Stock, voting as a class:

(i) alter or change the rights, preferences or privileges of the Series B Preferred Stock;

(ii) increase or decrease (other than by a redemption or conversion approved by the Board of Directors) the authorized number of shares of Series B Preferred Stock;

(iii) authorize or issue shares of any class or series of stock (convertible or otherwise) having any preference as to dividends, voting rights, liquidation or assets superior to or on parity with the Series B Preferred Stock; or

(iv) amend, alter, repeal or waive any provision of these Amended and Restated Articles or the Bylaws of the Corporation that adversely affects the rights, preferences or privileges of the Series B Preferred Stock.

2.2.8. ***Redemption.***

(a) So long as any shares of Series A Preferred Stock are outstanding, holders of such shares shall have the right to demand, upon written request of holders of a majority of the shares of Series A Preferred Stock then outstanding (a "*Redemption Demand*"), that the Company redeem one hundred percent (100%) of such holders' shares at a price per share equal to the Original Issue Price thereof. This Redemption Demand right shall only be exercisable after six (6) years have elapsed from the date of the filing of these Amended and Restated Articles with the Secretary of State.

(b) Upon receipt of the certificate(s) representing the shares of Series A Preferred Stock being redeemed pursuant to Section 2.2.8(a) above, or delivery of written notice of the loss or destruction thereof and an indemnity agreement reasonably satisfactory to the Company held by the holder thereof (the “*Redeeming Holder*”), the Company shall immediately pay to the Redeeming Holder all amounts due pursuant to Section 2.2.8(a) above, in cash, by wire transfer or by bank-certified check.

(c) If the Company shall fail to discharge its obligations to redeem shares of Series A Preferred Stock pursuant to Section 2.2.8(a) above (each a “*Redemption Obligation*”), the Redemption Obligation shall be discharged, pro rata with respect to each holder of Series A Preferred Stock based on the number of shares of Series A Preferred Stock owned, as soon as the Company is permitted by law to discharge such Redemption Obligation, together with additional interest on the unpaid Redemption Obligation then due at the rate of ten percent (10%) per annum from the time of default in the payment of the Redemption Obligation. If and so long as any Redemption Obligation shall not fully be discharged, the Company shall not, directly or indirectly, make any distribution on, or purchase, redeem or satisfy any mandatory redemption, sinking fund or other similar obligation in respect of, any securities or warrants, or rights or options exercisable for any such securities.

(d) On and after any portion of the shares has been redeemed (unless default shall be made by the Company in the payment of the applicable portion of the amounts due pursuant to Section 2.2.8(a) above), all rights in respect of those shares actually redeemed shall cease and terminate, and such shares shall no longer be deemed to be outstanding, whether or not the certificate(s) representing such shares have been received by the Company.

(e) Except as expressly provided in this Section 2.2.8, the Corporation shall have no obligation to redeem any series or class of stock of the Company, in whole or in part. The Corporation may redeem its shares of capital stock only to the extent legally permissible.

ARTICLE 3. NO PREEMPTIVE RIGHTS

Except as may otherwise be provided by the Board of Directors, no preemptive rights shall exist with respect to shares of stock or securities convertible into shares of stock of this corporation.

ARTICLE 4. NO CUMULATIVE VOTING

At each election for directors, every shareholder entitled to vote at such election has the right to vote in person or by proxy the number of shares held by such shareholder for as many persons as there are directors to be elected. No cumulative voting for directors shall be permitted.

ARTICLE 5. BYLAWS

The Board of Directors shall have the power to adopt, amend or repeal the Bylaws or adopt new Bylaws. Nothing herein shall deny the concurrent power of the shareholders to adopt, alter, amend or repeal the Bylaws.

ARTICLE 6. REGISTERED AGENT AND OFFICE

The name of the registered agent of this corporation and the address of its initial registered office are as follows:

Larry Spokoiny, Esq.
10900 NE 4th Street, Suite 1800
Bellevue, WA 98004

ARTICLE 7. SHAREHOLDER ACTION BY WRITTEN CONSENT

An action required or permitted to be taken at a meeting of shareholders of the corporation may be taken without a meeting or a vote of shareholders by written consent of all or less than all of the shareholders entitled to vote on the action, to the fullest extent permitted by the Washington Business Corporation Act, as it may be amended from time to time. The corporation shall give written notice of action so taken, before the date on which the action becomes effective, to those shareholders who have not consented in writing; provided, however, that if such action would constitute a significant business transaction under RCW 23B.19.020, the notice shall be given no fewer than twenty days before the effective date of the action. Further, if nonvoting shareholders are otherwise entitled to notice of a meeting of shareholders to consider the action, then such notice shall also be given to all nonvoting shareholders. Any such notice shall include copies of all resolutions duly adopted by the shareholders consenting to the taking of the action.

ARTICLE 8. LIMITATION OF DIRECTORS' LIABILITY

A director shall have no liability to the corporation or its shareholders for monetary damages for conduct as a director, except for acts or omissions that involve intentional misconduct by the director, or a knowing violation of law by the director, or for conduct violating RCW 23B.08.310 (as may hereafter be amended or supplemented), or for any transaction from which the director will personally receive a benefit in money, property or services to which the director is not legally entitled. If the Washington Business Corporation Act is hereafter amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director shall be eliminated or limited to the full extent permitted by the Washington Business Corporation Act, as so amended. Any repeal or modification of this Article shall not adversely affect any right or protection of a director of the

corporation existing at the time of such repeal or modification for or with respect to an act or omission of such director occurring prior to such repeal or modification.

ARTICLE 9. INDEMNIFICATION OF DIRECTORS AND OFFICERS

A. Right to Indemnification. Any individual who is, was, or is threatened to be made a party to or is otherwise involved in (including without limitation as a witness) any threatened, pending, or completed action, suit, or other proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal, by reason of the fact that he or she is or was a director or officer of the Corporation or that, while a director or officer, he or she is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another corporation or of a partnership, joint venture, trust, employee benefit plan, or other enterprise, shall be indemnified and held harmless by the Corporation, to the full extent permissible by applicable law as then in effect, against all expenses and liabilities (including without limitation any obligation to pay any judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or expense incurred with respect to the proceeding, including attorneys' fees) actually and reasonably incurred or suffered by such individual in connection therewith; provided, however, that the corporation shall not indemnify any director from or on account of: (a) any act or omission of the director finally adjudged to be intentional misconduct or a knowing violation of law, (b) any conduct of the director finally adjudged to be in violation of RCW 23B.08.310 (as may hereafter be amended or supplemented), or (c) any transaction with respect to which it is finally adjudged that the director personally received a benefit in money, property, or services, to which the director was not legally entitled; and further provided that except as provided in the following paragraph with respect to proceedings seeking to enforce rights to indemnification, the corporation shall indemnify any such individual seeking indemnification in connection with a proceeding (or part thereof) initiated by such individual only if such proceeding (or part thereof) was, prior to its initiation, authorized by the Board of Directors of the corporation. The right to indemnification conferred in this paragraph shall be a contract right and shall include the right to be paid by the corporation for the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that the payment of such expenses in advance of the final disposition of a proceeding shall be made only upon delivery to the Corporation of a written undertaking, by or on behalf of the director or officer, in the form of a general unlimited obligation to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this paragraph or otherwise. The right to indemnification as provided herein shall continue as to an individual who was a director or officer as of the date of the filing of these Amended and Restated Articles with the Secretary of State and who thereafter has ceased to be a director or officer, and such right to indemnification shall inure to the benefit of his or her heirs, executors and administrators.

B. Right of Claimant to Apply for Court Order. If a claim made on the corporation for indemnification under the preceding paragraph of this Article is not paid in full by the corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for expenses incurred in defending a proceeding in advance of its final disposition, in which case the applicable period shall be twenty (20) days, the claimant may

at any time thereafter commence an action or otherwise petition a court to order the corporation to pay the unpaid amount of such claim and, to the extent successful in whole or in part, the claimant shall be entitled to be paid also the expense of obtaining such a court order. A claimant shall be presumed to be entitled to indemnification under this Article upon submission of a written claim to the Corporation or, in an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition, where the required undertaking has been tendered to the Corporation; and thereafter the Corporation shall have the burden of proof to overcome the presumption that the claimant is not so entitled. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its shareholders) to have made a determination prior to the filing of such petition that indemnification or reimbursement or advancement of expenses to the claimant is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its shareholders) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the action or create a presumption that the claimant is not so entitled.

C. Nonexclusivity of Rights. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article shall not be exclusive of any other right which any individual may have or hereafter acquire under any statute, provision of the Articles of Incorporation, Bylaws, agreement, vote of shareholders or disinterested directors or otherwise.

D. Insurance, Contracts and Funding. The Corporation may maintain insurance, at its expense, to protect itself and any director, trustee, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such individual against such expense, liability or loss under the Washington Business Corporation Act. Without further shareholder action, the Corporation may enter into contracts with any director or officer of the Corporation in furtherance of the provisions of this Article and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article.

E. Indemnification of Employees and Agents of the Corporation. From time to time by action of its Board of Directors, the Corporation may provide to employees and agents of the Corporation indemnification and payment of expenses in advance of the final disposition of a proceeding to the same extent provided to officers of the Corporation by the provisions of this Article or pursuant to rights granted in or provided by the Washington Business Corporation Act.

ARTICLE 10. SHAREHOLDER VOTING REQUIREMENT FOR CERTAIN TRANSACTIONS

To be adopted by the shareholders, an amendment of the Articles of Incorporation, a plan of merger or share exchange, the sale, lease, exchange, or other disposition of all, or substantially all, of the corporation's assets other than in the usual and regular course of business, or

dissolution of the corporation must be approved by the shareholders entitled to vote thereon by a majority of all the votes entitled to be cast.

EXECUTED this 30th day of April, 2002.

NVST, INC.

By: _____
Samantha Wilkinson, President