

TRADEMARK ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CHANGE OF NAME		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Hart Information Services, Inc.		09/21/2000	CORPORATION: TEXAS
RECEIVING PARTY DATA			
Name:	Hart InterCivic, Inc.		
Street Address:	15500 Wells Port Drive		
City:	Austin		
State/Country:	TEXAS		
Postal Code:	78728		
Entity Type:	CORPORATION: TEXAS		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	1589926	HART FORMS & SERVICES	
Registration Number:	2978082	ESLATE	
CORRESPONDENCE DATA			
Fax Number:	(858)458-3005		
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:	8584583000		
Email:	prosecutiondocketing@paulhastings.com		
Correspondent Name:	Ryan M. Enchelmayer		
Address Line 1:	P.O. Box 919092		
Address Line 2:	Paul, Hastings, Janofsky & Walker, LLP		
Address Line 4:	San Diego, CALIFORNIA 92191-9092		
ATTORNEY DOCKET NUMBER:	77083.00020		
NAME OF SUBMITTER:	Ryan M. Enchelmayer		
Signature:	/Ryan M. Enchelmayer/		

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Date:

06/30/2011

Total Attachments: 45

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**AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
HART INFORMATION SERVICES, INC.**

FILED
In the Office of the
Secretary of State of Texas
SEP 22 2000

ARTICLE I

Corporations Section

Hart Information Services, Inc., a Texas corporation (the "Corporation"), pursuant to the provisions of Article 4.07 of the Texas Business Corporation Act, hereby adopts these Amended and Restated Articles of Incorporation which accurately copy the Articles of Incorporation and all amendments and supplements thereto that are in effect to date and as further amended by such Amended and Restated Articles of Incorporation as hereinafter set forth and which contain no other change in any provision thereof, except that the number, names and addresses of the persons constituting the present Board of Directors are listed, in lieu of similar information concerning the initial Board of Directors, and the name and address of the incorporator is omitted.

ARTICLE II

The Articles of Incorporation, as amended, of the Corporation are amended by the Amended and Restated Articles of Incorporation as follows:

1. The text of ARTICLE ONE of the Corporation's Articles of Incorporation is amended to read as follows:

The name of the corporation is Hart InterCivic, Inc.

2. The Statement Establishing Series of Shares effective October 8, 1999 and titled "Certificate of Designation of Preferences of Series A Convertible Preferred Stock" is deleted from the Corporation's Articles of Incorporation and the text of ARTICLE FOUR of the Corporation's Articles of Incorporation is hereby amended to read as follows:

A. The corporation is authorized to issue two classes of stock to be designated, respectively, Common Stock ("Common Stock") and Preferred Stock ("Preferred Stock"). The total number of shares of all classes of stock that the corporation will have the authority to issue is 59,130,202 shares. The total number of shares of Common Stock that the corporation is authorized to issue is 39,000,000 shares, with a par value of \$0.01 per share. The total number of shares of Preferred Stock that the corporation is authorized to issue is 20,130,202 shares, with a par value of \$0.01 per share.

B. The Preferred Stock will consist of 3,252,242 shares of Series A Convertible Preferred Stock (the "Series A Preferred Stock") and 16,877,960 shares of Series B Preferred Stock (the "Series B Preferred Stock"). The designations, preferences, limitations, and relative rights, including voting rights, of the Series A Preferred Stock and Series B Preferred Stock are as follows:

1. Rank. The Series B Preferred Stock shall rank senior to the Series A Preferred Stock with respect to dividends and rights on liquidation, winding up and dissolution. The Series B Preferred Stock and the Series A Preferred Stock shall rank senior to the Common Stock, now or hereafter issued or outstanding, with respect to dividends and rights on liquidation, winding up and dissolution.

2. Dividends.

2A. The holders of the Series A Preferred Stock shall be entitled to receive, out of funds legally available therefor, when, as and if declared by the Board of Directors, dividends on each share of Series A Preferred Stock at the annual rate of \$0.16143 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares after the filing date hereof). The holders of the Series B Preferred Stock shall be entitled to receive, out of funds legally available therefor, when, as and if declared by the Board of Directors, cumulative preferential dividends on each share of Series B Preferred Stock equal to 15% per annum, compounded quarterly, of the stated value per share of \$1.9625 (as adjusted for any stock dividends, combinations or splits with respect to such shares after the filing date hereof) from the date of original issuance of such share. Dividends on the Series A and Series B Preferred Stock shall be cumulative and shall accrue on each share from day to day, commencing on the date of issuance of such share, whether or not earned or declared. Dividends accruing on each share of Series A and Series B Preferred Stock shall be added to the Liquidation Preference (as defined in paragraph 3A) of such share as they accrue and will remain a part thereof until such dividends are paid as provided herein. Accrued but unpaid dividends on each share of Series A Preferred Stock and Series B Preferred Stock shall be payable in cash when, as and if declared by the Board of Directors. Accrued and unpaid dividends on each share of Series A and Series B Preferred Stock shall be payable, whether or not declared by the Board of Directors, upon a Liquidation Event (as defined in paragraph 3A) as part of the Liquidation Preference of such share, as provided in part 3, or upon the redemption of such share as part of the Redemption Price (as defined in paragraph 4D) of such share, as provided in part 4, or in the case of a share of Series A Preferred Stock, upon conversion of such share, as and to the extent provided in part 6.

2B. No dividends shall be paid on any share of Series A Preferred Stock unless a dividend is paid in cash pursuant to the above provisions of paragraph 2A with respect to all outstanding shares of Series B Preferred Stock. No dividends shall be paid on any share of Common Stock unless a dividend (including the amount of any dividends paid pursuant to the above provisions of paragraph 2A) is paid with respect to all outstanding shares of Series A and Series B Preferred Stock in an amount for each such share of (i) Series A Preferred Stock equal to or greater than the aggregate amount of such dividends for all shares of Common Stock into which each such share of Series A Preferred Stock could then

be converted and (ii) Series B Preferred Stock equal to or greater than the aggregate amount of such dividends for all shares of Common Stock into which the unexercised Warrants held by the holder of such Series B Preferred Stock could then be exercised. "Warrants" means the Warrants to purchase Common Stock issued to the holders of the Series B Preferred Stock on the date of original issuance of the Series B Preferred Stock.

3. Liquidation Preference.

3A. In the event of any liquidation, dissolution or winding up of the Company, either voluntary or involuntary (a "Liquidation Event"), the holders of the Series B Preferred Stock shall be entitled to receive, prior and in preference to any payment or distribution and setting apart for payment or distribution of any of the assets or surplus funds of the Company to the holders of the Series A Preferred Stock, Common Stock or any other Equity Securities, an amount (the "Series B Liquidation Preference") for each share of Series B Preferred Stock then held by them equal to \$1.9625 (as adjusted for any stock dividends, combinations or splits with respect to such shares after the filing date hereof) plus accrued but unpaid dividends on such share of Series B Preferred Stock to and including the date of payment of such Series B Liquidation Preference. If, upon the occurrence of such event, the assets and funds legally available for distribution among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full Series B Liquidation Preference, then the entire assets and funds of the Company legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock based upon the aggregate Series B Liquidation Preferences of the shares of Series B Preferred Stock held by each such holder.

3B. In the event of any Liquidation Event, if the assets and funds of the Company legally available for distribution to the Company's shareholders exceed the aggregate Series B Liquidation Preference payable to the holders of Series B Preferred Stock pursuant to paragraph 3A, after the payments required by paragraph 3A shall have been made or irrevocably set apart for payment, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any payment or distribution and setting apart for payment or distribution of any of the remaining assets or surplus funds of the Company to the holders of the Common Stock or any other Equity Securities, an amount (the "Series A Liquidation Preference") for each share of Series A Preferred Stock then held by them equal to \$1.0762 (as adjusted for any stock dividends, combinations or splits with respect to such shares after the filing date hereof) plus accrued but unpaid dividends on such share of Series A Preferred Stock to and including the date of payment of such Series A Liquidation Preference. If, upon the occurrence of such event, the assets and funds legally available for distribution among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full Series A

Liquidation Preference, then the entire assets and funds of the Company legally available for distribution, after the payments required by paragraph 3A shall have been made or irrevocably set apart for payment, shall be distributed ratably among the holders of the Series A Preferred Stock based upon the aggregate Series A Liquidation Preferences of the shares of Series A Preferred Stock held by each such holder.

3C. If the assets and funds of the Company legally available for distribution to the Company's shareholders exceed the aggregate Series B and Series A Liquidation Preferences payable to the holders of Series B and Series A Preferred Stock pursuant to paragraphs 3A and 3B, then, after the payments required by paragraphs 3A and 3B shall have been made or irrevocably set apart for payment, the remaining assets and funds of the Company available for distribution to the Company's stockholders shall be distributed ratably among the holders of the Series A Preferred Stock and the holders of Common Stock in proportion to the number of shares then held by them (as if the Series A Preferred Stock were converted into the largest number of shares of Common Stock into which all shares of Series A Preferred Stock held by such holders could then be converted pursuant to part 6); provided, however, that if the Liquidation Event occurs prior to October 8, 2003, then the remaining assets and funds of the Company available for distribution to the Company's shareholders shall be distributed ratably among the holders of the Series A Preferred Stock and the holders of Common Stock in proportion to the number of shares then held by them (as if the Series A Preferred Stock were converted into the largest number of shares of Common Stock into which all shares of Series A Preferred Stock held by such holders could then be converted pursuant to part 6) until the aggregate amount of the payments made or irrevocably set apart for payment to the holders of Series A Preferred Stock pursuant to paragraph 3B and this paragraph 3C equals \$4.3048 per share of Series A Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares after the filing date hereof), and any remaining assets and funds of the Company available for distribution to the Company's stockholders shall be distributed ratably among the holders of the Common Stock in proportion to the number of shares then held by them.

3D. Unless otherwise agreed to by the vote or written consent of the holders of at least 66-2/3% of the Series A and Series B Preferred Stock then outstanding, voting together as a single class and not as separate series, (i) a consolidation or merger of the Company with or into one or more other corporations or other business organizations, in which the shareholders of the Company do not own a majority of the outstanding shares of the surviving entity or entities, (ii) the sale, lease or transfer of all or substantially all of the assets of the Company or (iii) any other form of corporate reorganization in which outstanding shares of the Company are exchanged for or converted into cash, securities of another corporation or business organization or other property shall be treated as a liquidation, dissolution or winding up of the Company within the

meaning of this part 3, and the holders of Series A and Series B Preferred Stock shall be entitled to receive at the closing of such transaction in cash, securities or other property (valued at Fair Market Value) in amounts as specified in paragraphs 3A, 3B and 3C above.

3E. The Company will give written notice of any liquidation, dissolution or winding up (or any transaction which might reasonably be deemed to be a liquidation, dissolution or winding up pursuant to paragraph 3D) to each holder of Series A Preferred Stock and each holder of Series B Preferred Stock not less than 20 days prior to the date stated therein for the distribution and payment of the amounts provided in this part 3. Each holder of Series A Preferred Stock may convert all or any portion of the Series A Preferred Stock into Common Stock pursuant to part 6 at any time on or prior to the date fixed in such notice for distribution and payment or the date of a merger, consolidation or sale of assets deemed to be a liquidation, dissolution or winding up of the Company as described in paragraph 3D.

4. Redemptions.

4A. The Company may, at its option, to the extent that it shall have funds legally available for such purpose, redeem at any time and from time to time all or any portion of the shares of Series B Preferred Stock then outstanding at a redemption price per share, in cash, equal to the Series B Liquidation Preference. If less than all of the shares of Series B Preferred Stock are to be redeemed by the Company, the redemption shall be made pro rata according to the relative number of shares of Series B Preferred Stock owned by all of the holders thereof. If the Company shall redeem shares of Series B Preferred Stock pursuant to this paragraph 4A, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 10 days nor more than 60 days prior to the redemption date, to each holder of record of the shares of Series B Preferred Stock at such holder's address as the same appears on the stock register of the Company, provided that neither the failure to give such notice nor any defect therein shall affect the validity of the giving of notice for the redemption of any share of Series B Preferred Stock to be redeemed except as to the holder to whom the Company has failed to give said notice or exchange and as to the holder whose notice was defective. Each such notice shall state: (i) the redemption date; (ii) the number of shares of Series B Preferred Stock to be redeemed; (iii) the redemption price per share; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on such redemption date.

4B. Immediately upon the earliest to occur of (i) a Change of Control (as defined herein below), (ii) any Material Default (as defined in the Investors' Rights Agreement, as amended, restated or otherwise modified from time to time), (iii) any sale or transfer to another person of more than a majority of the assets of the Corporation, or (iv) a registered public offering of the Company's Common Stock, the Company shall, to the extent that it shall have funds legally available for such purpose, redeem all outstanding shares of the Series B Preferred Stock in whole at a redemption price per share, in cash, equal to the Series B Liquidation Preference. For purposes of this paragraph 4B, a "Change of Control" means such time as a "person" or "group" within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended, other than any person or group comprised solely of the original signatories to the Amended and Restated Shareholders Agreement has become the beneficial owner, by way of merger, consolidation or otherwise, of more than 50% of the voting power of all classes of voting securities of the Company. Upon any mandatory redemption pursuant to this paragraph 4B, the Company shall, within 15 days, pay to each holder of Series B Preferred Stock the redemption price per share (as determined pursuant to this paragraph 4B) times the number of shares redeemed. Upon payment of the redemption price, each certificate representing shares of Series B Preferred Stock shall be deemed automatically cancelled and the shares of Series B Preferred Stock shall no longer be issued or outstanding. Each holder of shares of Series B Preferred Stock shall return any such certificate to the Company for cancellation as soon as practicable after payment in full of the redemption price thereon.

4C. At any time after (i) the fourth anniversary of the date that there is first issued a share of Series B Preferred Stock (the "First Issue Date"), the holders of at least 66-2/3% of the outstanding Series A Preferred Stock or Series B Preferred Stock (the "Requisite Holders" of the Series A or Series B Preferred Stock, as applicable), each voting separately and not as a single class, may elect to require the Company to redeem up to 33-1/3% of the outstanding Series A Preferred Stock or Series B Preferred Stock, (ii) the fifth anniversary of the First Issue Date, the Requisite Holders of the Series A or Series B Preferred Stock, each voting separately and not as a single class, may elect to require the Company to redeem up to 50% of the outstanding Series A Preferred Stock or Series B Preferred Stock, and (iii) the sixth anniversary of the First Issue Date, the Requisite Holders of Series A or Series B Preferred Stock, each voting separately and not as a single class, may elect to require the Company to redeem up to 100% of the outstanding Series A Preferred Stock or Series B Preferred Stock. Not less than 90 days prior to each of the anniversaries referred to clauses (i), (ii) and (iii) above, the Company shall give written notice by first class mail, postage prepaid, to each holder (at the close of business on the business day next preceding the date on which notice is given) of Series A or Series B Preferred Stock, at the address of such holder last shown on the records of the Company, notifying such holder of its right to elect to redeem the Series A or Series B Preferred Stock

pursuant to this paragraph 4C. The Requisite Holders of the Series A or Series B Preferred Stock may elect to require the Company to effect the redemptions referred to in clauses (i), (ii) and (iii) above (each, a "Mandatory Redemption") by giving written notice to the Company of such election and specifying a redemption date not less than 60 days after the notice (a "Mandatory Redemption Date"). Upon receipt of such notice, the Company shall, to the extent that it shall have funds legally available for such purpose, redeem from each holder of outstanding Series A or Series B Preferred Stock on such Mandatory Redemption Date up to that number of shares represented by that percentage of the shares of Series A or Series B Preferred Stock held of record by such holder as set forth in clause (i), (ii) or (iii), as applicable, above at a price per share equal to the Redemption Price (as defined in paragraph 4D). If any date fixed for redemption of shares pursuant to this paragraph 4C is a Saturday, Sunday or legal holiday, then such redemption shall occur on the first business day thereafter.

4D. On a Mandatory Redemption Date, to the extent that the Company shall have funds legally available for such purpose, each holder of shares of Series A or Series B Preferred Stock to be redeemed on such Mandatory Redemption Date shall be entitled to receive from the Company on such Mandatory Redemption Date for each share of Series A or Series B Preferred Stock to be redeemed on such Mandatory Redemption Date cash in an amount (the "Redemption Price") equal to the Series A or Series B Liquidation Preference for such share on such Mandatory Redemption Date.

4E. Not less than 15 nor more than 30 days prior to a Mandatory Redemption Date, the Company shall give written notice by first class mail, postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series A or Series B Preferred Stock to be redeemed, at the address of such holder last shown on the records of the Company, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder on such Mandatory Redemption Date, the Mandatory Redemption Date, the Redemption Price and the place at which payment may be obtained and calling upon such holder to surrender to the Company in the manner and at the place designated, its certificate or certificates representing the shares of Series A or Series B Preferred Stock to be redeemed on such Mandatory Redemption Date (the "Redemption Notice"). On or after the Mandatory Redemption Date, each holder of Series A or Series B Preferred Stock to be redeemed on such Mandatory Redemption Date shall surrender to the Company the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

4F. From and after a Mandatory Redemption Date, unless there shall have been a default in the timely payment of the Redemption Price, all rights of the holders of shares of Series A or Series B Preferred Stock designated for redemption in the Redemption Notice (except the right to receive the applicable Redemption Price, upon surrender of their certificate or certificates) and redeemed on such Mandatory Redemption Date shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever.

4G. Any shares of Series A and Series B Preferred Stock that are redeemed or otherwise acquired by the Company will be canceled and will not be reissued, sold or transferred. If fewer than the total number of shares of Series A or Series B Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of Series A or Series B Preferred Stock will be issued to the holder thereof without cost to such holder within a reasonable time after surrender of the certificate representing the redeemed shares.

4H. The Company shall also redeem shares of Series A and Series B Preferred Stock upon the terms and subject to the conditions set forth in Section 3F of the Investors' Rights Agreement.

4I. If the funds of the Company legally available for redemption of Series A and Series B Preferred Stock on any Mandatory Redemption Date or in a redemption effected pursuant to paragraphs 4B or 4H are insufficient to redeem the total number of shares of Series A and Series B Preferred Stock to be redeemed on such Mandatory Redemption Date or in such redemption, those funds that are legally available will be used first to redeem the maximum possible number of shares of Series B Preferred Stock, ratably among the holders of the shares of Series B Preferred Stock to be redeemed based upon the aggregate Redemption Price of such shares held by each such holder, and second to redeem the maximum possible number of shares of Series A Preferred Stock, ratably among the holders of the shares of Series A Preferred Stock to be redeemed based upon the aggregate Redemption Price of such shares held by each such holder. The shares of Series A or Series B Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Series A or Series B Preferred Stock, such funds will immediately be used to redeem the balance of the shares that the Company has become obligated to redeem on any Mandatory Redemption Date or pursuant to paragraphs 4B or 4H but that it has not redeemed, ratably among the holders of such shares, as set forth in the preceding sentence, and such funds will not be used for any other purpose, including to redeem any shares of Series A or

Series B Preferred Stock that the Company is obligated to redeem on any subsequent Mandatory Redemption Date.

4J. Neither the Company nor any Subsidiary will redeem, purchase or otherwise acquire any shares of Series A or Series B Preferred Stock except as expressly authorized herein or in the Investors' Rights Agreement or pursuant to a purchase offer made pro-rata to all holders of shares of Series A Preferred Stock and all holders of shares of Series B Preferred Stock on the basis of the aggregate Redemption Price of such shares of Series A or Series B Preferred Stock owned by each such holder. This paragraph 4J shall not be deemed to limit or restrict the repurchase by the Company of the Warrants or shares of Common Stock issued upon exercise of the Warrants.

5. Voting Rights.

5A. The holders of shares of Series A Preferred Stock shall be entitled to vote with the holders of the Common Stock on all matters submitted to a vote of shareholders of the Company, except as otherwise provided herein or in the Act. Each holder of shares of Series A Preferred Stock shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which all shares of Series A Preferred Stock held of record by such holder could then be converted pursuant to part 6 at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is first executed. The holders of shares of Series A and Series B Preferred Stock shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Company.

5B. The holders of shares of Series B Preferred Stock shall not be entitled to vote on any matter submitted to a vote of shareholders of the Company except as provided in Paragraphs 3D, 4C, 5C, 5D, 5E or as specifically provided by law.

5C. So long as at least 1,084,080 shares of Series A Preferred Stock and at least 5,519,965 shares of Series B Preferred Stock remain outstanding (in each case, as adjusted for any stock split, stock dividend, combination or other recapitalization) (the "Requisite Number" of shares of Series A Preferred Stock or Series B Preferred Stock, respectively), without the affirmative vote of the holders of at least 66-2/3% of the outstanding Series A Preferred Stock and outstanding Series B Preferred Stock, voting together as a single class and not as separate series, except as provided below, the Company shall not:

(i) authorize or issue additional shares of Series A or Series B Preferred Stock other than as provided in the Purchase Agreements or pursuant to the Bridge Warrants;

(ii) increase or decrease the total number of authorized shares of Series A or Series B Preferred Stock;

(iii) authorize or issue, or obligate itself to issue any Equity Securities ranking senior to the Series A or Series B Preferred Stock as to dividend or redemption rights, liquidation preferences, conversion rights, voting rights or otherwise;

(iv) declare or pay any dividends or any other distribution to any holders of the capital stock of the Company, other than to holders of Series A or Series B Preferred Stock as provided herein;

(v) effect a redemption or repurchase of any shares of capital stock of the Company, except for (a) the redemption of shares of Series A or Series B Preferred Stock as expressly authorized herein or in the Investors' Rights Agreement, or (b) the repurchase at cost of shares of Common Stock from employees, directors, officers, and consultants of the Company or any Subsidiary pursuant to any stock option, stock bonus, stock purchase, incentive plan, or other agreement pursuant to which the Company has the right or option to repurchase or acquire such shares upon the occurrence of certain events, including, without limitation, upon the termination of employment by or services to the Company or such Subsidiary;

(vi) create or allow to exist any Subsidiary other than a wholly-owned Subsidiary;

(vii) make any change in the number of directors comprising the Board of Directors to other than seven directors; provided, however, that the approval of the holders of the Series A and Series B Preferred Stock shall not be required to increase the number of directors comprising the Board of Directors as provided in Section 1A of the Shareholders Agreement; or

(viii) adopt any stock option, stock bonus, stock purchase or similar incentive plan or arrangement other than an Approved Plan or amend any Approved Plan unless such amendment is approved by a majority of the Board of Directors.

If fewer than the Requisite Number of shares of Series A Preferred Stock or Series B Preferred Stock remain outstanding, the holders of Series A Preferred Stock or Series B Preferred Stock, as applicable, shall not be entitled to vote on such matter. If the Requisite Number of shares of Series A Preferred Stock remain

outstanding but fewer than the Requisite Number of shares of Series B Preferred Stock remain outstanding, the holders of Series A Preferred Stock shall vote as a separate class. If the Requisite Number of shares of Series B Preferred Stock remain outstanding but fewer than the Requisite Number of shares of Series A Preferred Stock remain outstanding, the holders of Series B Preferred Stock shall vote as a separate class.

5D. Without the affirmative vote of the holders of at least 66-2/3% of the outstanding Series A and Series B Preferred Stock, voting together as a single class and not as separate series, the Company shall not:

(i) effect any sale, lease, assignment, transfer, exchange or other conveyance of all or substantially all of the assets of the Company or any Subsidiary, or any consolidation, conversion or merger involving the Company with or into one or more other corporations or other business organizations, in which the shareholders of the Company do not own a majority of the outstanding shares of the surviving entity or entities; or

(ii) effect any share exchange, reclassification or other change of any stock, or any recapitalization, or any dissolution, liquidation or winding up of the Company or, unless the obligations of the Company under an agreement are expressly conditional upon the requisite approval of the holders of the Series A and Series B Preferred Stock as provided for herein, make any agreement or become obligated to do so;

5E. Without the affirmative vote of the holders of at least 66-2/3% of the outstanding Series A Preferred Stock, if such holders would be affected by items (i) through (iv) below, or Series B Preferred Stock, if such holders would be affected by items (i) through (iv) below, each voting separately and not as a single class, the Company shall not:

(i) amend its Articles of Incorporation or Bylaws if such amendment would adversely affect the rights, preferences or privileges provided for herein for the benefit of any shares of the Series A or Series B Preferred Stock, as applicable;

(ii) authorize or issue, or obligate itself to issue, any other Equity Securities ranking senior to or on a parity with the Series A or Series B Preferred Stock, as applicable, as to dividend or redemption rights, liquidation preferences, conversion rights, voting rights or otherwise, other than pursuant to the Bridge Warrants;

(iii) effect a redemption or repurchase of any shares of capital stock of the Company, except for (a) the redemption of shares of Series A or Series B Preferred Stock as expressly authorized herein or in the Investors' Rights

Agreement, or (b) the repurchase at cost of shares of Common Stock from employees, directors, officers, and consultants of the Company or any Subsidiary pursuant to any stock option, stock bonus, stock purchase, incentive plan, or other agreement pursuant to which the Company has the right or option to repurchase or acquire such shares upon the occurrence of certain events, including, without limitation, upon the termination of employment by or services to the Company or such Subsidiary; or

(iv) increase or decrease the total number of authorized shares of Series A or Series B Preferred Stock, as applicable, other than as provided in the Purchase Agreements.

6. Conversion.

6A. Conversion Procedure.

(i) Any holder of shares of Series A Preferred Stock may convert at any time all or any portion of the shares of Series A Preferred Stock (including any fraction of a share) held by such holder into a number of shares of Common Stock computed by multiplying the number of shares of Series A Preferred Stock to be converted by \$1.0762 and dividing the result by the "Conversion Price" (as defined below) then in effect.

(ii) Each conversion of shares of Series A Preferred Stock will be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the shares of Series A Preferred Stock to be converted, together with properly executed conversion instructions or stock powers, have been surrendered for conversion at the principal office of the Company. At such time as such conversion has been effected, the rights of the holder of such shares of Series A Preferred Stock as such holder will cease and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock are to be issued upon such conversion will be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(iii) As soon as possible after a conversion has been effected (but in any event within five business days in the case of subparagraphs (a) and (b) below), the Company will deliver to the converting holder:

(a) a certificate or certificates representing the number of shares of Common Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified;

(b) a certificate representing any shares of Series A Preferred Stock which were represented by the certificate or certificates delivered to the Company in connection with such conversion but which were not converted; and

(c) cash or a certificate or certificates representing shares of Common Stock in payment of accrued but unpaid dividends as and to the extent provided in paragraph 6A(vi).

(iv) The issuance of certificates for shares of Common Stock upon conversion of shares of Series A Preferred Stock will be made without charge to the holders of such shares of Series A Preferred Stock for any issuance tax in respect thereof or other cost incurred by the Company in connection with such conversion and the related issuance of shares of Common Stock. Upon conversion of each share of Series A Preferred Stock, the Company will take all such actions as are necessary in order to insure that the Common Stock issuable with respect to such conversion will be validly issued, fully paid and nonassessable.

(v) If any fractional interest in a share of Common Stock would, except for the provisions of this subparagraph (v), be deliverable upon any conversion of shares of Series A Preferred Stock, the Company, in lieu of delivering the fractional share therefor, will pay an amount to the holder thereof equal to the Fair Market Value of such fractional interest as of the date of conversion.

(vi) All dividends that have accrued from and after October 8, 2003 on shares of Series A Preferred Stock to be converted and that are unpaid upon conversion of such shares shall be payable, out of funds legally available therefor, upon conversion of such shares in cash or, at the option of a majority of the Board of Directors, in shares of Common Stock having a Fair Market Value as of the date of conversion equal to the amount of such accrued but unpaid dividends. The Company shall not be under any obligation to pay dividends that have accrued prior to October 8, 2003 on shares of Series A Preferred Stock upon or after the conversion of such shares.

6B. Conversion Price.

(i) The initial "Conversion Price" will be \$1.0762 per share of Series A Preferred Stock. In order to prevent dilution of the conversion rights granted under this subdivision, the Conversion Price also will be subject to adjustment from time to time pursuant to this paragraph 6B.

(ii) If and whenever, after the filing of these Amended and Restated Articles of Incorporation, the Company issues or sells, or is deemed to

have issued or sold, any shares of its Common Stock for consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, or any Equity Securities, Options or Convertible Securities in which the total consideration per share (as determined in accordance with paragraph 6C hereof) is less than the Conversion Price in effect immediately prior to the time of such issue or sale, then immediately upon such issue or sale the Conversion Price of a share of Series A Preferred Stock will be reduced to the price determined by multiplying the Conversion Price by a fraction, the numerator of which shall be (a) the number of shares of Common Stock outstanding immediately prior to such issue or sale (assuming the exercise or conversion of all Options (as defined below) and Convertible Securities (as defined below) that are then exercisable or convertible, including, without limitation, all Options outstanding under any Approved Plan and all outstanding shares of Series A Preferred Stock), plus (b) the number of shares of Common Stock which the aggregate consideration received by the Company for the total number of additional shares of Common Stock so issued or sold would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue or sale (assuming the exercise or conversion of all Options and Convertible Securities that are then exercisable or convertible, including, without limitation, all Options outstanding under any Approved Plan and all outstanding shares of Series A Preferred Stock) plus the number of additional shares of Common Stock so issued. For example, if after the original date of issuance of the shares of Series A Preferred Stock, the Company issues 2,000,000 shares of Common Stock for consideration per share of \$1.00, and assuming that at such time there are 12,442,000 outstanding shares of Common Stock and 5,182,242 shares of Common Stock issuable upon exercise and conversion of currently exercisable or convertible Options and Convertible Securities (including shares of Common Stock issuable upon conversion of the outstanding shares of Series A Preferred Stock), the Conversion Price immediately would be reduced to the price determined by multiplying \$1.0762, the Conversion Price then in effect, by the following fraction:

$$\begin{aligned}
 &= \frac{17,624,242 + \$2,000,000}{\$1.0762} \\
 &= \frac{17,624,242 + 2,000,000}{19,624,242} \\
 &= \frac{17,624,242 + 1,858,390.6337}{19,624,242} \\
 &= \frac{19,482,632.6337}{19,624,242}
 \end{aligned}$$

= 0.9928

resulting in an adjusted Conversion Price of \$1.0685 (\$1.0762 x 0.9928).

(iii) Notwithstanding the foregoing, the Company shall not be required to make any adjustment to the Conversion Price by reason of the issuance of Common Stock when such issuance is (a) upon conversion of shares of Series A Preferred Stock, (b) as a dividend or distribution on the Series A or Series B Preferred Stock, (c) pursuant to any Approved Plan, (d) in connection with an acquisition transaction, building or equipment lease transaction, strategic alliance or partnering arrangement that is approved by the Board of Directors (including the affirmative vote of at least one Purchaser Director) or (e) upon issuance or exercise of the Warrants (including Warrants issued upon exercise of the Bridge Warrants) or Bridge Warrants.

6C. Effect on Conversion Price of Certain Events. For purposes of determining the adjusted Conversion Price under paragraph 6B, the following will be applicable:

(i) If the Company in any manner issues or grants any options, warrants or similar rights to purchase or acquire Common Stock ("Options") or securities convertible or exchangeable, with or without consideration, into or for Common Stock ("Convertible Securities") and the price per share for which Common Stock is issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities is less than the Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options will be deemed to be outstanding and to have been issued and sold by the Company for such price per share. For purposes of this paragraph, the "price per share for which Common Stock is issuable" will be determined by dividing (a) the total amount, if any, received or receivable by the Company as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Company upon exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Company upon the issuance or sale of such Convertible Securities and the conversion or exchange thereof, by (b) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options. No further adjustment of the Conversion Price will be made when Convertible Securities are actually issued upon the exercise of such Options or when Common Stock is actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(ii) If the Company in any manner issues or sells any Convertible Securities and the price per share for which Common Stock is issuable upon such conversion or exchange is less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the maximum number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities will be deemed to be outstanding and to have been issued and sold by the Company for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" will be determined by dividing (a) the total amount received or receivable by the Company as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof, by (b) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. No further adjustment of the Conversion Price will be made when Common Stock is actually issued upon the conversion or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustments of the Conversion Price had been or are to be made pursuant to other provisions of this part 6, no further adjustment of the Conversion Price will be made by reason of such issue or sale.

(iii) If the purchase price provided for in any Options, the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock changes at any time, the Conversion Price in effect at the time of such change will be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold.

(iv) Upon the expiration of any Option or the termination of any right to convert or exchange any Convertible Security without the exercise of any such Option or right, the Conversion Price then in effect hereunder will be adjusted to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Security, to the extent outstanding immediately prior to such expiration or termination, never been issued.

(v) If any Common Stock, Option or Convertible Security is issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount received by the Company therefor. In case any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration

other than cash received by the Company will be the Fair Market Value thereof as of the date of receipt. If any Common Stock, Option or Convertible Security is issued in connection with any merger in which the Company is the surviving corporation, the amount of consideration therefor will be deemed to be the Fair Market Value of such portion of the net assets and business of the non-surviving corporation as is attributable to such Common Stock, Options or Convertible Securities, as the case may be.

(vi) In case any Option is issued in connection with the issue or sale of other securities of the Company, together comprising one integrated transaction in which no specific consideration is allocated to such Option by the parties thereto, the Option will be deemed to have been issued for a consideration of \$0.01.

(vii) The number of shares of Common Stock outstanding at any given time does not include shares owned or held by or for the account of the Company or any Subsidiary, and the disposition of any shares so owned or held will be considered an issue or sale of Common Stock.

(viii) If the Company takes a record of the holders of Common Stock for the purpose of entitling them (a) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (b) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or upon the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

6D. Subdivision or Combination of Common Stock. If the Company at any time after the filing of these Amended and Restated Articles of Incorporation, subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced, and if the Company at any time combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased.

6E. Certain Events. If any event occurs of the type contemplated by the provisions of this part 6 but not expressly provided for by such provisions, then the Board of Directors will make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of shares of Series A Preferred Stock; provided that no such adjustment will increase the Conversion Price as otherwise determined pursuant to this part 6 or decrease the

number of shares of Common Stock issuable upon conversion of each share of Series A Preferred Stock.

6F. Notices.

(i) Immediately upon any adjustment of the Conversion Price, the Company will give written notice thereof to all holders of shares of Series A Preferred Stock.

(ii) The Company will give written notice to all holders of shares of Series A Preferred Stock at least 10 days prior to the date on which the Company closes its books or takes a record (a) with respect to any dividend or distribution upon Common Stock, (b) with respect to any pro rata subscription offer to holders of Common Stock or (c) for determining rights to vote with respect to any matter referred to in paragraphs 5C, 5D or 5E hereof.

6G. Automatic Conversion. All of the outstanding shares of Series A Preferred Stock shall be converted into Common Stock at the Conversion Price then in effect without any further action on the part of the Company or any holder of Series A Preferred Stock, upon the earlier of (i) the election of the holders of at least 66-2/3% of the outstanding shares of Series A Preferred Stock or (ii) at the time of and subject to the closing and funding of a Qualified Public Offering.

7. Registration of Transfer.

The Company will keep at its principal office a register for the registration of shares of Series A and Series B Preferred Stock. Upon the surrender of any certificate representing shares of Series A or Series B Preferred Stock at such place, the Company will, at the request of the record holder of such certificate, execute and deliver (at the Company's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of Series A or Series B Preferred Stock represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of Series A or Series B Preferred Stock as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate, and dividends will accrue on the shares of Series A or Series B Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such shares of Series A or Series B Preferred Stock represented by the surrendered certificate.

8. Replacement.

Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series A or Series B Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Company or, in the case of any mutilation, upon surrender of such certificate the Company will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Series A or Series B Preferred Stock represented by such lost, stolen, destroyed or mutilated certificate, and dividends will accrue on the shares of Series A or Series B Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

9. Definitions.

“Approved Plan” means the Company’s 1999 Stock Incentive Plan, and any other written stock option, stock purchase or similar incentive plan approved by a majority of the Board of Directors.

“Board of Directors” means the board of directors of the Company.

“Bridge Warrants” means the warrants to purchase additional securities of the Company originally held by Triton Venture Partners L.P. and RES Partners, Ltd. dated May 15, 2000, May 25, 2000 and July 12, 2000, respectively.

“Common Stock” means the common stock, par value \$0.01, and any capital stock of any class of the Company hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Company.

“Equity Security” means any stock or similar security, including, without limitation, securities containing equity features and securities containing profit participation features, or any security convertible or exchangeable, with or without consideration, into or for any stock or similar security, or any security carrying any warrant or right to subscribe for or purchase any stock or similar security, or any such warrant or right.

“Fair Market Value” means the fair market value as determined by a majority of the Board of Directors.

“Investors’ Rights Agreement” means the Amended and Restated Investors’ Rights Agreement, dated as of the date of original issuance of the

Series B Preferred Stock, by and among the Company and certain of its stockholders, as such agreement may from time to time be amended in accordance with its terms.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Purchase Agreements" means the Series A Convertible Preferred Stock Purchase Agreement, dated as of October 8, 1999, by and among the Company and certain investors, as such agreement may from time to time be amended in accordance with its terms, and the Series B Purchase Agreement.

"Purchaser Directors" means the directors designated by the holders of Series A Preferred Stock and the directors designated by the holders of the Series B Preferred Stock pursuant to the Shareholders Agreement.

"Qualified Public Offering" means any underwritten offering by the Company of shares of Common Stock to the public pursuant to an effective registration statement under the Securities Act of 1933, then in effect, or any comparable statement under any similar federal statute then in force, in which the aggregate cash proceeds to be received by the Company from such offering (after deducting underwriting discounts, expenses and commissions) are at least \$25,000,000 and the public offering price is at least \$6.45 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares after the filing date hereof).

"Shareholders Agreement" means the Amended and Restated Shareholders Agreement, dated as of the date of original issuance of the Series B Preferred Stock, by and among the Company and its stockholders, as such agreement may from time to time be amended in accordance with its terms.

"Series B Purchase Agreement" means the Securities Purchase Agreement, dated as of the date of original issuance of the Series B Preferred Stock, by and among the Company and certain investors, as such agreement may from time to time be amended in accordance with its terms.

"Subsidiary" means any corporation more than 50% of the outstanding voting securities of which are owned by the Company or any Subsidiary, directly or indirectly, or a partnership or limited liability company in which the Company or any Subsidiary is a general partner or manager or holds interests entitling it to receive more than 50% of the profits or losses of the partnership or limited liability company.

"Warrants" has the meaning set forth in paragraph 2B.

10. Amendment and Waiver.

No amendment, modification or waiver of this Article Four will be binding or effective with respect to any provision of these terms without the affirmative vote of the holders of at least 66-2/3% of the shares of Series A Preferred Stock and Series B Preferred Stock outstanding at the time such action is taken, voting together as a single class and not as separate series (subject to any more protective requirements contained in part 5 hereof); provided that no such action will change (a) the rate at which or the manner in which dividends on the shares of a series of preferred stock accrue or the times at which such dividends become payable, (b) the amount payable to holders of a series of preferred stock or the participation by the holders of shares of a series of preferred stock in payments or distributions of any assets or surplus funds of the Company upon the liquidation, dissolution or winding up of the Company, (c) the amount payable on redemption of the shares of a series of preferred stock or the times at which redemption of shares of a series of preferred stock is to occur, (d) the percentage required to approve any change described in this part 10, without (i) the affirmative vote of the holders of all the shares of Series A Preferred Stock then outstanding, voting as a separate class, as to such matters directly affecting the Series A Preferred Stock and (ii) the affirmative vote of the holders of all the shares of Series B Preferred Stock then outstanding, voting as a separate class, as to such matters directly affecting the Series B Preferred Stock; and provided, further that no change in the terms of this part 10 may be accomplished by merger or consolidation of the Company with another corporation unless the Company has obtained the prior approval of the applicable percentage of the shares of Series A Preferred Stock and Series B Preferred Stock then outstanding.

11. Notices.

Except as otherwise expressly provided herein, all notices referred to herein shall be in writing and shall be delivered in the manner specified in the Series B Purchase Agreement.

3. The text of ARTICLE SIX of the Corporation's Articles of Incorporation is hereby amended to read as follows:

The street address of its registered office is 15500 Wells Port Drive, Austin, Texas 78728, and the name of its registered agent at such address is David E. Hart.

4. ARTICLE THIRTEEN of the Corporation's Articles of Incorporation is hereby deleted.

ARTICLE III

Each such amendment made by the Amended and Restated Articles of Incorporation has been effected in conformity with the provisions of the Texas Business Corporation Act and such Amended and Restated Articles of Incorporation and each such amendment made by the Amended and Restated Articles of Incorporation were duly adopted by the shareholders of the Corporation on September 21, 2000.

ARTICLE IV

The number of shares of the Corporation outstanding at the time of the adoption of these Amended and Restated Articles of Incorporation was 6,246,000 shares of Common Stock and 1,626,121 shares of Series A Preferred Stock. The number of shares entitled to vote on these Amended and Restated Articles of Incorporation was (a) 7,872,121 shares, consisting of 6,246,000 shares of Common Stock and 1,626,121 shares of Series A Preferred Stock, voting together as a single class, and (b) 1,626,121 shares of Series A Preferred Stock voting as a separate class. All of the shareholders have signed a written consent to the adoption of such Amended and Restated Articles of Incorporation as so amended pursuant to Article 9.10 of the Texas Business Corporation Act.

ARTICLE V

The manner in which any exchange, reclassification or cancellation of issued shares provided for in the amendments shall be effected is as follows:

Each issued Corporation share of Common Stock, \$0.05 par value per share, will automatically become two shares of Corporation Common Stock, \$0.01 par value per share, upon filing of these Articles of Amendment with the Texas Secretary of State.

Each issued Corporation share of Series A Preferred Stock, \$0.05 par value per share, will automatically become two shares of Corporation Series A Preferred Stock, \$0.01 par value per share, upon filing of these Articles of Amendment with the Texas Secretary of State.

ARTICLE VI

The manner in which the amendments effect a change in the amount of stated capital, upon filing of these Articles of Amendment with the Texas Secretary of State, is as follows:

The stated capital per share of the Common Stock is reduced from \$0.05 per share to \$0.01 per share as a result of the amendments. The number of shares of Common Stock outstanding is increased from 6,246,000 shares to 12,492,000 shares as a result of the two for one stock split provided for in effecting the amendments. The

total stated capital of the Common Stock is reduced from \$312,300 immediately before the amendments to \$124,920 immediately after the amendments.

The stated capital per share of the Series A Preferred Stock is reduced from \$0.05 per share to \$0.01 per share as a result of the amendments. The number of shares of Series A Preferred Stock outstanding is increased from 1,626,121 shares to 3,252,242 shares as a result of the two for one stock split provided for in effecting the amendments. The total stated capital of the Series A Preferred Stock is reduced from \$81,306.05 immediately before the amendments to \$32,522.42 immediately after the amendments.

No shares of Series B Preferred Stock were authorized or outstanding before the amendments. Accordingly, there was no change in stated capital with respect to Series B Preferred Stock.

The aggregate amount of stated capital immediately before the amendments, including issued Common Stock and Series A Preferred Stock, was \$393,606.05. The aggregate amount of stated capital, including issued Common Stock and Series A Preferred Stock, as changed by the amendments, is \$157,442.42.

ARTICLE VII

The Articles of Incorporation and all amendments and supplements thereto are hereby superseded by the following Restated Articles of Incorporation which accurately copy the entire text thereof and as amended as above set forth:

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF HART INTERCIVIC, INC.

ARTICLE ONE

The name of the corporation is Hart InterCivic, Inc.

ARTICLE TWO

The period of its duration is perpetual.

ARTICLE THREE

The purpose for which the corporation is organized is to engage in any or all lawful acts, activities, or businesses for which a corporation may be organized under the Texas Business Corporation Act.

ARTICLE FOUR

A. The corporation is authorized to issue two classes of stock to be designated, respectively, Common Stock ("Common Stock") and Preferred Stock ("Preferred Stock"). The total number of shares of all classes of stock that the corporation will have the authority to issue is 59,130,202 shares. The total number of shares of Common Stock that the corporation is authorized to issue is 39,000,000 shares, with a par value of \$0.01 per share. The total number of shares of Preferred Stock that the corporation is authorized to issue is 20,130,202 shares, with a par value of \$0.01 per share.

B. The Preferred Stock will consist of 3,252,242 shares of Series A Convertible Preferred Stock (the "Series A Preferred Stock") and 16,877,960 shares of Series B Preferred Stock (the "Series B Preferred Stock"). The designations, preferences, limitations, and relative rights, including voting rights, of the Series A Preferred Stock and Series B Preferred Stock are as follows:

1. Rank. The Series B Preferred Stock shall rank senior to the Series A Preferred Stock with respect to dividends and rights on liquidation, winding up and dissolution. The Series B Preferred Stock and the Series A Preferred Stock shall rank senior to the Common Stock, now or hereafter issued or outstanding, with respect to dividends and rights on liquidation, winding up and dissolution.

2. Dividends.

2A. The holders of the Series A Preferred Stock shall be entitled to receive, out of funds legally available therefor, when, as and if declared by the Board of Directors, dividends on each share of Series A Preferred Stock at the annual rate of \$0.16143 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares after the filing date hereof). The holders of the Series B Preferred Stock shall be entitled to receive, out of funds legally available therefor, when, as and if declared by the Board of Directors, cumulative preferential dividends on each share of Series B Preferred Stock equal to 15% per annum, compounded quarterly, of the stated value per share of \$1.9625 (as adjusted for any stock dividends, combinations or splits with respect to such shares after the filing date hereof) from the date of original issuance of such share. Dividends on the Series A and Series B Preferred Stock shall be cumulative and shall accrue on each share from day to day, commencing on the date of issuance of such share, whether or not earned or declared. Dividends accruing on each share of Series A and Series B Preferred Stock shall be added to the Liquidation Preference (as defined in paragraph 3A) of such share as they accrue and will remain a part thereof until such dividends are paid as provided herein. Accrued but unpaid dividends on each share of Series A Preferred Stock and Series B Preferred Stock shall be payable in cash when, as and if declared by the Board of Directors. Accrued and unpaid dividends on each share of Series A and Series B Preferred Stock shall be payable, whether or not declared by the Board of Directors, upon a Liquidation Event (as defined in paragraph 3A) as part of the Liquidation Preference of such share, as provided in part 3, or upon the redemption of such share as part of the Redemption Price (as defined in paragraph 4D) of such share, as provided in part 4, or in

the case of a share of Series A Preferred Stock, upon conversion of such share, as and to the extent provided in part 6.

2B. No dividends shall be paid on any share of Series A Preferred Stock unless a dividend is paid in cash pursuant to the above provisions of paragraph 2A with respect to all outstanding shares of Series B Preferred Stock. No dividends shall be paid on any share of Common Stock unless a dividend (including the amount of any dividends paid pursuant to the above provisions of paragraph 2A) is paid with respect to all outstanding shares of Series A and Series B Preferred Stock in an amount for each such share of (i) Series A Preferred Stock equal to or greater than the aggregate amount of such dividends for all shares of Common Stock into which each such share of Series A Preferred Stock could then be converted and (ii) Series B Preferred Stock equal to or greater than the aggregate amount of such dividends for all shares of Common Stock into which the unexercised Warrants held by the holder of such Series B Preferred Stock could then be exercised. "Warrants" means the Warrants to purchase Common Stock issued to the holders of the Series B Preferred Stock on the date of original issuance of the Series B Preferred Stock.

3. Liquidation Preference.

3A. In the event of any liquidation, dissolution or winding up of the Company, either voluntary or involuntary (a "Liquidation Event"), the holders of the Series B Preferred Stock shall be entitled to receive, prior and in preference to any payment or distribution and setting apart for payment or distribution of any of the assets or surplus funds of the Company to the holders of the Series A Preferred Stock, Common Stock or any other Equity Securities, an amount (the "Series B Liquidation Preference") for each share of Series B Preferred Stock then held by them equal to \$1.9625 (as adjusted for any stock dividends, combinations or splits with respect to such shares after the filing date hereof) plus accrued but unpaid dividends on such share of Series B Preferred Stock to and including the date of payment of such Series B Liquidation Preference. If, upon the occurrence of such event, the assets and funds legally available for distribution among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full Series B Liquidation Preference, then the entire assets and funds of the Company legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock based upon the aggregate Series B Liquidation Preferences of the shares of Series B Preferred Stock held by each such holder.

3B. In the event of any Liquidation Event, if the assets and funds of the Company legally available for distribution to the Company's shareholders exceed the aggregate Series B Liquidation Preference payable to the holders of Series B Preferred Stock pursuant to paragraph 3A, after the payments required by paragraph 3A shall have been made or irrevocably set apart for payment, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any payment or distribution and setting apart for payment or distribution of any of the remaining assets or surplus funds of the Company to the holders of the Common Stock or any other Equity Securities, an amount (the "Series A Liquidation Preference") for each share of Series A Preferred Stock then held by them equal to \$1.0762 (as adjusted for any stock dividends, combinations or splits with respect to such shares after the

filing date hereof) plus accrued but unpaid dividends on such share of Series A Preferred Stock to and including the date of payment of such Series A Liquidation Preference. If, upon the occurrence of such event, the assets and funds legally available for distribution among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full Series A Liquidation Preference, then the entire assets and funds of the Company legally available for distribution, after the payments required by paragraph 3A shall have been made or irrevocably set apart for payment, shall be distributed ratably among the holders of the Series A Preferred Stock based upon the aggregate Series A Liquidation Preferences of the shares of Series A Preferred Stock held by each such holder.

3C. If the assets and funds of the Company legally available for distribution to the Company's shareholders exceed the aggregate Series B and Series A Liquidation Preferences payable to the holders of Series B and Series A Preferred Stock pursuant to paragraphs 3A and 3B, then, after the payments required by paragraphs 3A and 3B shall have been made or irrevocably set apart for payment, the remaining assets and funds of the Company available for distribution to the Company's stockholders shall be distributed ratably among the holders of the Series A Preferred Stock and the holders of Common Stock in proportion to the number of shares then held by them (as if the Series A Preferred Stock were converted into the largest number of shares of Common Stock into which all shares of Series A Preferred Stock held by such holders could then be converted pursuant to part 6); provided, however, that if the Liquidation Event occurs prior to October 8, 2003, then the remaining assets and funds of the Company available for distribution to the Company's shareholders shall be distributed ratably among the holders of the Series A Preferred Stock and the holders of Common Stock in proportion to the number of shares then held by them (as if the Series A Preferred Stock were converted into the largest number of shares of Common Stock into which all shares of Series A Preferred Stock held by such holders could then be converted pursuant to part 6) until the aggregate amount of the payments made or irrevocably set apart for payment to the holders of Series A Preferred Stock pursuant to paragraph 3B and this paragraph 3C equals \$4.3048 per share of Series A Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares after the filing date hereof), and any remaining assets and funds of the Company available for distribution to the Company's stockholders shall be distributed ratably among the holders of the Common Stock in proportion to the number of shares then held by them.

3D. Unless otherwise agreed to by the vote or written consent of the holders of at least 66-2/3% of the Series A and Series B Preferred Stock then outstanding, voting together as a single class and not as separate series, (i) a consolidation or merger of the Company with or into one or more other corporations or other business organizations, in which the shareholders of the Company do not own a majority of the outstanding shares of the surviving entity or entities, (ii) the sale, lease or transfer of all or substantially all of the assets of the Company or (iii) any other form of corporate reorganization in which outstanding shares of the Company are exchanged for or converted into cash, securities of another corporation or business organization or other property shall be treated as a liquidation, dissolution or winding up of the Company within the meaning of this part 3, and the holders of Series A and Series B Preferred Stock shall be entitled to receive at the closing of such transaction in cash, securities or other property (valued at Fair Market Value) in amounts as specified in paragraphs 3A, 3B and 3C above.

3E. The Company will give written notice of any liquidation, dissolution or winding up (or any transaction which might reasonably be deemed to be a liquidation, dissolution or winding up pursuant to paragraph 3D) to each holder of Series A Preferred Stock and each holder of Series B Preferred Stock not less than 20 days prior to the date stated therein for the distribution and payment of the amounts provided in this part 3. Each holder of Series A Preferred Stock may convert all or any portion of the Series A Preferred Stock into Common Stock pursuant to part 6 at any time on or prior to the date fixed in such notice for distribution and payment or the date of a merger, consolidation or sale of assets deemed to be a liquidation, dissolution or winding up of the Company as described in paragraph 3D.

4. Redemptions.

4A. The Company may, at its option, to the extent that it shall have funds legally available for such purpose, redeem at any time and from time to time all or any portion of the shares of Series B Preferred Stock then outstanding at a redemption price per share, in cash, equal to the Series B Liquidation Preference. If less than all of the shares of Series B Preferred Stock are to be redeemed by the Company, the redemption shall be made pro rata according to the relative number of shares of Series B Preferred Stock owned by all of the holders thereof. If the Company shall redeem shares of Series B Preferred Stock pursuant to this paragraph 4A, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 10 days nor more than 60 days prior to the redemption date, to each holder of record of the shares of Series B Preferred Stock at such holder's address as the same appears on the stock register of the Company, provided that neither the failure to give such notice nor any defect therein shall affect the validity of the giving of notice for the redemption of any share of Series B Preferred Stock to be redeemed except as to the holder to whom the Company has failed to give said notice or exchange and as to the holder whose notice was defective. Each such notice shall state: (i) the redemption date; (ii) the number of shares of Series B Preferred Stock to be redeemed; (iii) the redemption price per share; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on such redemption date.

4B. Immediately upon the earliest to occur of (i) a Change of Control (as defined herein below), (ii) any Material Default (as defined in the Investors' Rights Agreement, as amended, restated or otherwise modified from time to time), (iii) any sale or transfer to another person of more than a majority of the assets of the Corporation, or (iv) a registered public offering of the Company's Common Stock, the Company shall, to the extent that it shall have funds legally available for such purpose, redeem all outstanding shares of the Series B Preferred Stock in whole at a redemption price per share, in cash, equal to the Series B Liquidation Preference. For purposes of this paragraph 4B, a "Change of Control" means such time as a "person" or "group" within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended, other than any person or group comprised solely of the original signatories to the Amended and Restated Shareholders Agreement has become the beneficial owner, by way of merger, consolidation or otherwise, of more than 50% of the voting power of all classes of voting securities of the Company. Upon any mandatory redemption

pursuant to this paragraph 4B, the Company shall, within 15 days, pay to each holder of Series B Preferred Stock the redemption price per share (as determined pursuant to this paragraph 4B) times the number of shares redeemed. Upon payment of the redemption price, each certificate representing shares of Series B Preferred Stock shall be deemed automatically cancelled and the shares of Series B Preferred Stock shall no longer be issued or outstanding. Each holder of shares of Series B Preferred Stock shall return any such certificate to the Company for cancellation as soon as practicable after payment in full of the redemption price thereon.

4C. At any time after (i) the fourth anniversary of the date that there is first issued a share of Series B Preferred Stock (the "First Issue Date"), the holders of at least 66-2/3% of the outstanding Series A Preferred Stock or Series B Preferred Stock (the "Requisite Holders" of the Series A or Series B Preferred Stock, as applicable), each voting separately and not as a single class, may elect to require the Company to redeem up to 33-1/3% of the outstanding Series A Preferred Stock or Series B Preferred Stock, (ii) the fifth anniversary of the First Issue Date, the Requisite Holders of the Series A or Series B Preferred Stock, each voting separately and not as a single class, may elect to require the Company to redeem up to 50% of the outstanding Series A Preferred Stock or Series B Preferred Stock, and (iii) the sixth anniversary of the First Issue Date, the Requisite Holders of Series A or Series B Preferred Stock, each voting separately and not as a single class, may elect to require the Company to redeem up to 100% of the outstanding Series A Preferred Stock or Series B Preferred Stock. Not less than 90 days prior to each of the anniversaries referred to clauses (i), (ii) and (iii) above, the Company shall give written notice by first class mail, postage prepaid, to each holder (at the close of business on the business day next preceding the date on which notice is given) of Series A or Series B Preferred Stock, at the address of such holder last shown on the records of the Company, notifying such holder of its right to elect to redeem the Series A or Series B Preferred Stock pursuant to this paragraph 4C. The Requisite Holders of the Series A or Series B Preferred Stock may elect to require the Company to effect the redemptions referred to in clauses (i), (ii) and (iii) above (each, a "Mandatory Redemption") by giving written notice to the Company of such election and specifying a redemption date not less than 60 days after the notice (a "Mandatory Redemption Date") Upon receipt of such notice, the Company shall, to the extent that it shall have funds legally available for such purpose, redeem from each holder of outstanding Series A or Series B Preferred Stock on such Mandatory Redemption Date up to that number of shares represented by that percentage of the shares of Series A or Series B Preferred Stock held of record by such holder as set forth in clause (i), (ii) or (iii), as applicable, above at a price per share equal to the Redemption Price (as defined in paragraph 4D). If any date fixed for redemption of shares pursuant to this paragraph 4C is a Saturday, Sunday or legal holiday, then such redemption shall occur on the first business day thereafter.

4D. On a Mandatory Redemption Date, to the extent that the Company shall have funds legally available for such purpose, each holder of shares of Series A or Series B Preferred Stock to be redeemed on such Mandatory Redemption Date shall be entitled to receive from the Company on such Mandatory Redemption Date for each share of Series A or Series B Preferred Stock to be redeemed on such Mandatory Redemption Date cash in an amount (the "Redemption Price") equal to the Series A or Series B Liquidation Preference for such share on such Mandatory Redemption Date.

4E. Not less than 15 nor more than 30 days prior to a Mandatory Redemption Date, the Company shall give written notice by first class mail, postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series A or Series B Preferred Stock to be redeemed, at the address of such holder last shown on the records of the Company, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder on such Mandatory Redemption Date, the Mandatory Redemption Date, the Redemption Price and the place at which payment may be obtained and calling upon such holder to surrender to the Company in the manner and at the place designated, its certificate or certificates representing the shares of Series A or Series B Preferred Stock to be redeemed on such Mandatory Redemption Date (the "Redemption Notice"). On or after the Mandatory Redemption Date, each holder of Series A or Series B Preferred Stock to be redeemed on such Mandatory Redemption Date shall surrender to the Company the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

4F. From and after a Mandatory Redemption Date, unless there shall have been a default in the timely payment of the Redemption Price, all rights of the holders of shares of Series A or Series B Preferred Stock designated for redemption in the Redemption Notice (except the right to receive the applicable Redemption Price, upon surrender of their certificate or certificates) and redeemed on such Mandatory Redemption Date shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever.

4G. Any shares of Series A and Series B Preferred Stock that are redeemed or otherwise acquired by the Company will be canceled and will not be reissued, sold or transferred. If fewer than the total number of shares of Series A or Series B Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of Series A or Series B Preferred Stock will be issued to the holder thereof without cost to such holder within a reasonable time after surrender of the certificate representing the redeemed shares.

4H. The Company shall also redeem shares of Series A and Series B Preferred Stock upon the terms and subject to the conditions set forth in Section 3F of the Investors' Rights Agreement.

4I. If the funds of the Company legally available for redemption of Series A and Series B Preferred Stock on any Mandatory Redemption Date or in a redemption effected pursuant to paragraphs 4B or 4H are insufficient to redeem the total number of shares of Series A and Series B Preferred Stock to be redeemed on such Mandatory Redemption Date or in such redemption, those funds that are legally available will be used first to redeem the maximum

possible number of shares of Series B Preferred Stock, ratably among the holders of the shares of Series B Preferred Stock to be redeemed based upon the aggregate Redemption Price of such shares held by each such holder, and second to redeem the maximum possible number of shares of Series A Preferred Stock, ratably among the holders of the shares of Series A Preferred Stock to be redeemed based upon the aggregate Redemption Price of such shares held by each such holder. The shares of Series A or Series B Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Series A or Series B Preferred Stock, such funds will immediately be used to redeem the balance of the shares that the Company has become obligated to redeem on any Mandatory Redemption Date or pursuant to paragraphs 4B or 4H but that it has not redeemed, ratably among the holders of such shares, as set forth in the preceding sentence, and such funds will not be used for any other purpose, including to redeem any shares of Series A or Series B Preferred Stock that the Company is obligated to redeem on any subsequent Mandatory Redemption Date.

4J Neither the Company nor any Subsidiary will redeem, purchase or otherwise acquire any shares of Series A or Series B Preferred Stock except as expressly authorized herein or in the Investors' Rights Agreement or pursuant to a purchase offer made pro-rata to all holders of shares of Series A Preferred Stock and all holders of shares of Series B Preferred Stock on the basis of the aggregate Redemption Price of such shares of Series A or Series B Preferred Stock owned by each such holder. This paragraph 4J shall not be deemed to limit or restrict the repurchase by the Company of the Warrants or shares of Common Stock issued upon exercise of the Warrants

5. Voting Rights

5A. The holders of shares of Series A Preferred Stock shall be entitled to vote with the holders of the Common Stock on all matters submitted to a vote of shareholders of the Company, except as otherwise provided herein or in the Act. Each holder of shares of Series A Preferred Stock shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which all shares of Series A Preferred Stock held of record by such holder could then be converted pursuant to part 6 at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is first executed. The holders of shares of Series A and Series B Preferred Stock shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Company

5B. The holders of shares of Series B Preferred Stock shall not be entitled to vote on any matter submitted to a vote of shareholders of the Company except as provided in Paragraphs 3D, 4C, 5C, 5D, 5E or as specifically provided by law.

5C. So long as at least 1,084,080 shares of Series A Preferred Stock and at least 5,519,965 shares of Series B Preferred Stock remain outstanding (in each case, as adjusted for any stock split, stock dividend, combination or other recapitalization) (the "Requisite Number" of shares of Series A Preferred Stock or Series B Preferred Stock, respectively),

without the affirmative vote of the holders of at least 66-2/3% of the outstanding Series A Preferred Stock and outstanding Series B Preferred Stock, voting together as a single class and not as separate series, except as provided below, the Company shall not:

(i) authorize or issue additional shares of Series A or Series B Preferred Stock other than as provided in the Purchase Agreements or pursuant to the Bridge Warrants;

(ii) increase or decrease the total number of authorized shares of Series A or Series B Preferred Stock;

(iii) authorize or issue, or obligate itself to issue any Equity Securities ranking senior to the Series A or Series B Preferred Stock as to dividend or redemption rights, liquidation preferences, conversion rights, voting rights or otherwise;

(iv) declare or pay any dividends or any other distribution to any holders of the capital stock of the Company, other than to holders of Series A or Series B Preferred Stock as provided herein;

(v) effect a redemption or repurchase of any shares of capital stock of the Company, except for (a) the redemption of shares of Series A or Series B Preferred Stock as expressly authorized herein or in the Investors' Rights Agreement, or (b) the repurchase at cost of shares of Common Stock from employees, directors, officers, and consultants of the Company or any Subsidiary pursuant to any stock option, stock bonus, stock purchase, incentive plan, or other agreement pursuant to which the Company has the right or option to repurchase or acquire such shares upon the occurrence of certain events, including, without limitation, upon the termination of employment by or services to the Company or such Subsidiary;

(vi) create or allow to exist any Subsidiary other than a wholly-owned Subsidiary;

(vii) make any change in the number of directors comprising the Board of Directors to other than seven directors; provided, however, that the approval of the holders of the Series A and Series B Preferred Stock shall not be required to increase the number of directors comprising the Board of Directors as provided in Section 1A of the Shareholders Agreement; or

(viii) adopt any stock option, stock bonus, stock purchase or similar incentive plan or arrangement other than an Approved Plan or amend any Approved Plan unless such amendment is approved by a majority of the Board of Directors.

If fewer than the Requisite Number of shares of Series A Preferred Stock or Series B Preferred Stock remain outstanding, the holders of Series A Preferred Stock or Series B Preferred Stock, as applicable, shall not be entitled to vote on such matter. If the

Requisite Number of shares of Series A Preferred Stock remain outstanding but fewer than the Requisite Number of shares of Series B Preferred Stock remain outstanding, the holders of Series A Preferred Stock shall vote as a separate class. If the Requisite Number of shares of Series B Preferred Stock remain outstanding but fewer than the Requisite Number of shares of Series A Preferred Stock remain outstanding, the holders of Series B Preferred Stock shall vote as a separate class.

5D. Without the affirmative vote of the holders of at least 66-2/3% of the outstanding Series A and Series B Preferred Stock, voting together as a single class and not as separate series, the Company shall not:

(i) effect any sale, lease, assignment, transfer, exchange or other conveyance of all or substantially all of the assets of the Company or any Subsidiary, or any consolidation, conversion or merger involving the Company with or into one or more other corporations or other business organizations, in which the shareholders of the Company do not own a majority of the outstanding shares of the surviving entity or entities; or

(ii) effect any share exchange, reclassification or other change of any stock, or any recapitalization, or any dissolution, liquidation or winding up of the Company or, unless the obligations of the Company under an agreement are expressly conditional upon the requisite approval of the holders of the Series A and Series B Preferred Stock as provided for herein, make any agreement or become obligated to do so;

5E. Without the affirmative vote of the holders of at least 66-2/3% of the outstanding Series A Preferred Stock, if such holders would be affected by items (i) through (iv) below, or Series B Preferred Stock, if such holders would be affected by items (i) through (iv) below, each voting separately and not as a single class, the Company shall not:

(i) amend its Articles of Incorporation or Bylaws if such amendment would adversely affect the rights, preferences or privileges provided for herein for the benefit of any shares of the Series A or Series B Preferred Stock, as applicable;

(ii) authorize or issue, or obligate itself to issue, any other Equity Securities ranking senior to or on a parity with the Series A or Series B Preferred Stock, as applicable, as to dividend or redemption rights, liquidation preferences, conversion rights, voting rights or otherwise, other than pursuant to the Bridge Warrants;

(iii) effect a redemption or repurchase of any shares of capital stock of the Company, except for (a) the redemption of shares of Series A or Series B Preferred Stock as expressly authorized herein or in the Investors' Rights Agreement, or (b) the repurchase at cost of shares of Common Stock from employees, directors, officers, and consultants of the Company or any Subsidiary pursuant to any stock option, stock bonus,

stock purchase, incentive plan, or other agreement pursuant to which the Company has the right or option to repurchase or acquire such shares upon the occurrence of certain events, including, without limitation, upon the termination of employment by or services to the Company or such Subsidiary; or

(iv) increase or decrease the total number of authorized shares of Series A or Series B Preferred Stock, as applicable, other than as provided in the Purchase Agreements.

6. Conversion.

6A. Conversion Procedure.

(i) Any holder of shares of Series A Preferred Stock may convert at any time all or any portion of the shares of Series A Preferred Stock (including any fraction of a share) held by such holder into a number of shares of Common Stock computed by multiplying the number of shares of Series A Preferred Stock to be converted by \$1.0762 and dividing the result by the "Conversion Price" (as defined below) then in effect.

(ii) Each conversion of shares of Series A Preferred Stock will be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the shares of Series A Preferred Stock to be converted, together with properly executed conversion instructions or stock powers, have been surrendered for conversion at the principal office of the Company. At such time as such conversion has been effected, the rights of the holder of such shares of Series A Preferred Stock as such holder will cease and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock are to be issued upon such conversion will be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby

(iii) As soon as possible after a conversion has been effected (but in any event within five business days in the case of subparagraphs (a) and (b) below), the Company will deliver to the converting holder:

(a) a certificate or certificates representing the number of shares of Common Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified;

(b) a certificate representing any shares of Series A Preferred Stock which were represented by the certificate or certificates delivered to the Company in connection with such conversion but which were not converted; and

(c) cash or a certificate or certificates representing shares of Common Stock in payment of accrued but unpaid dividends as and to the extent provided in paragraph 6A(vi).

(iv) The issuance of certificates for shares of Common Stock upon conversion of shares of Series A Preferred Stock will be made without charge to the holders of such shares of Series A Preferred Stock for any issuance tax in respect thereof or other cost incurred by the Company in connection with such conversion and the related issuance of shares of Common Stock. Upon conversion of each share of Series A Preferred Stock, the Company will take all such actions as are necessary in order to insure that the Common Stock issuable with respect to such conversion will be validly issued, fully paid and nonassessable.

(v) If any fractional interest in a share of Common Stock would, except for the provisions of this subparagraph (v), be deliverable upon any conversion of shares of Series A Preferred Stock, the Company, in lieu of delivering the fractional share therefor, will pay an amount to the holder thereof equal to the Fair Market Value of such fractional interest as of the date of conversion.

(vi) All dividends that have accrued from and after October 8, 2003 on shares of Series A Preferred Stock to be converted and that are unpaid upon conversion of such shares shall be payable, out of funds legally available therefor, upon conversion of such shares in cash or, at the option of a majority of the Board of Directors, in shares of Common Stock having a Fair Market Value as of the date of conversion equal to the amount of such accrued but unpaid dividends. The Company shall not be under any obligation to pay dividends that have accrued prior to October 8, 2003 on shares of Series A Preferred Stock upon or after the conversion of such shares.

6B. Conversion Price.

(i) The initial "Conversion Price" will be \$1.0762 per share of Series A Preferred Stock. In order to prevent dilution of the conversion rights granted under this subdivision, the Conversion Price also will be subject to adjustment from time to time pursuant to this paragraph 6B.

(ii) If and whenever, after the filing of these Amended and Restated Articles of Incorporation, the Company issues or sells, or is deemed to have issued or sold, any shares of its Common Stock for consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, or any Equity Securities, Options or Convertible Securities in which the total consideration per share (as determined in accordance with paragraph 6C hereof) is less than the Conversion Price in effect immediately prior to the time of such issue or sale, then immediately upon such issue or sale the Conversion Price of a share of Series A Preferred Stock will be reduced to the price determined by multiplying the Conversion Price by a fraction, the numerator of which shall be (a) the number of shares of Common Stock outstanding

immediately prior to such issue or sale (assuming the exercise or conversion of all Options (as defined below) and Convertible Securities (as defined below) that are then exercisable or convertible, including, without limitation, all Options outstanding under any Approved Plan and all outstanding shares of Series A Preferred Stock), plus (b) the number of shares of Common Stock which the aggregate consideration received by the Company for the total number of additional shares of Common Stock so issued or sold would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue or sale (assuming the exercise or conversion of all Options and Convertible Securities that are then exercisable or convertible, including, without limitation, all Options outstanding under any Approved Plan and all outstanding shares of Series A Preferred Stock) plus the number of additional shares of Common Stock so issued. For example, if after the original date of issuance of the shares of Series A Preferred Stock, the Company issues 2,000,000 shares of Common Stock for consideration per share of \$1.00, and assuming that at such time there are 12,442,000 outstanding shares of Common Stock and 5,182,242 shares of Common Stock issuable upon exercise and conversion of currently exercisable or convertible Options and Convertible Securities (including shares of Common Stock issuable upon conversion of the outstanding shares of Series A Preferred Stock), the Conversion Price immediately would be reduced to the price determined by multiplying \$1.0762, the Conversion Price then in effect, by the following fraction:

$$\begin{aligned}
 &= \frac{17,624,242 + \frac{\$2,000,000}{\$1.0762}}{17,624,242 + 2,000,000} \\
 &= \frac{17,624,242 + 1,858,390.6337}{19,624,242} \\
 &= \frac{19,482,632.6337}{19,624,242} \\
 &= 0.9928
 \end{aligned}$$

resulting in an adjusted Conversion Price of \$1.0685 (\$1.0762 x 0.9928).

(iii) Notwithstanding the foregoing, the Company shall not be required to make any adjustment to the Conversion Price by reason of the issuance of Common Stock when such issuance is (a) upon conversion of shares of Series A Preferred Stock, (b) as a dividend or distribution on the Series A or Series B Preferred Stock, (c) pursuant to any Approved Plan, (d) in connection with an acquisition transaction, building or equipment lease transaction, strategic alliance or partnering arrangement that is approved by the Board of Directors (including the affirmative vote of at least one Purchaser Director) or (e) upon issuance or exercise of the Warrants (including Warrants issued upon exercise of the Bridge Warrants) or Bridge Warrants.

6C. Effect on Conversion Price of Certain Events. For purposes of determining the adjusted Conversion Price under paragraph 6B, the following will be applicable:

(i) If the Company in any manner issues or grants any options, warrants or similar rights to purchase or acquire Common Stock ("Options") or securities convertible or exchangeable, with or without consideration, into or for Common Stock ("Convertible Securities") and the price per share for which Common Stock is issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities is less than the Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options will be deemed to be outstanding and to have been issued and sold by the Company for such price per share. For purposes of this paragraph, the "price per share for which Common Stock is issuable" will be determined by dividing (a) the total amount, if any, received or receivable by the Company as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Company upon exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Company upon the issuance or sale of such Convertible Securities and the conversion or exchange thereof, by (b) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options. No further adjustment of the Conversion Price will be made when Convertible Securities are actually issued upon the exercise of such Options or when Common Stock is actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(ii) If the Company in any manner issues or sells any Convertible Securities and the price per share for which Common Stock is issuable upon such conversion or exchange is less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the maximum number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities will be deemed to be outstanding and to have been issued and sold by the Company for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" will be determined by dividing (a) the total amount received or receivable by the Company as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof, by (b) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. No further adjustment of the Conversion Price will be made when Common Stock is actually issued upon the conversion or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustments of the Conversion Price had

been or are to be made pursuant to other provisions of this part 6, no further adjustment of the Conversion Price will be made by reason of such issue or sale.

(iii) If the purchase price provided for in any Options, the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock changes at any time, the Conversion Price in effect at the time of such change will be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold.

(iv) Upon the expiration of any Option or the termination of any right to convert or exchange any Convertible Security without the exercise of any such Option or right, the Conversion Price then in effect hereunder will be adjusted to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Security, to the extent outstanding immediately prior to such expiration or termination, never been issued.

(v) If any Common Stock, Option or Convertible Security is issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount received by the Company therefor. In case any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Company will be the Fair Market Value thereof as of the date of receipt. If any Common Stock, Option or Convertible Security is issued in connection with any merger in which the Company is the surviving corporation, the amount of consideration therefor will be deemed to be the Fair Market Value of such portion of the net assets and business of the non-surviving corporation as is attributable to such Common Stock, Options or Convertible Securities, as the case may be.

(vi) In case any Option is issued in connection with the issue or sale of other securities of the Company, together comprising one integrated transaction in which no specific consideration is allocated to such Option by the parties thereto, the Option will be deemed to have been issued for a consideration of \$0.01.

(vii) The number of shares of Common Stock outstanding at any given time does not include shares owned or held by or for the account of the Company or any Subsidiary, and the disposition of any shares so owned or held will be considered an issue or sale of Common Stock.

(viii) If the Company takes a record of the holders of Common Stock for the purpose of entitling them (a) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (b) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date will be deemed

to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or upon the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

6D. Subdivision or Combination of Common Stock. If the Company at any time after the filing of these Amended and Restated Articles of Incorporation, subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced, and if the Company at any time combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased.

6E. Certain Events. If any event occurs of the type contemplated by the provisions of this part 6 but not expressly provided for by such provisions, then the Board of Directors will make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of shares of Series A Preferred Stock; provided that no such adjustment will increase the Conversion Price as otherwise determined pursuant to this part 6 or decrease the number of shares of Common Stock issuable upon conversion of each share of Series A Preferred Stock.

6F. Notices.

(i) Immediately upon any adjustment of the Conversion Price, the Company will give written notice thereof to all holders of shares of Series A Preferred Stock.

(ii) The Company will give written notice to all holders of shares of Series A Preferred Stock at least 10 days prior to the date on which the Company closes its books or takes a record (a) with respect to any dividend or distribution upon Common Stock, (b) with respect to any pro rata subscription offer to holders of Common Stock or (c) for determining rights to vote with respect to any matter referred to in paragraphs 5C, 5D or 5E hereof.

6G. Automatic Conversion. All of the outstanding shares of Series A Preferred Stock shall be converted into Common Stock at the Conversion Price then in effect without any further action on the part of the Company or any holder of Series A Preferred Stock, upon the earlier of (i) the election of the holders of at least 66-2/3% of the outstanding shares of Series A Preferred Stock or (ii) at the time of and subject to the closing and funding of a Qualified Public Offering.

7. Registration of Transfer

The Company will keep at its principal office a register for the registration of shares of Series A and Series B Preferred Stock. Upon the surrender of any certificate representing shares of Series A or Series B Preferred Stock at such place, the Company will, at the request of the record holder of such certificate, execute and deliver (at the Company's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of Series A or Series B Preferred Stock represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of Series A or Series B Preferred Stock as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate, and dividends will accrue on the shares of Series A or Series B Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such shares of Series A or Series B Preferred Stock represented by the surrendered certificate.

8. Replacement.

Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series A or Series B Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Company or, in the case of any mutilation, upon surrender of such certificate the Company will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Series A or Series B Preferred Stock represented by such lost, stolen, destroyed or mutilated certificate, and dividends will accrue on the shares of Series A or Series B Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

9. Definitions.

"Approved Plan" means the Company's 1999 Stock Incentive Plan, and any other written stock option, stock purchase or similar incentive plan approved by a majority of the Board of Directors.

"Board of Directors" means the board of directors of the Company.

"Bridge Warrants" means the warrants to purchase additional securities of the Company originally held by Triton Venture Partners L.P. and RES Partners, Ltd. dated May 15, 2000, May 25, 2000 and July 12, 2000, respectively.

"Common Stock" means the common stock, par value \$0.01, and any capital stock of any class of the Company hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Company.

"Equity Security" means any stock or similar security, including, without limitation, securities containing equity features and securities containing profit participation features, or any security convertible or exchangeable, with or without consideration, into or for any stock or similar security, or any security carrying any warrant or right to subscribe for or purchase any stock or similar security, or any such warrant or right.

"Fair Market Value" means the fair market value as determined by a majority of the Board of Directors.

"Investors' Rights Agreement" means the Amended and Restated Investors' Rights Agreement, dated as of the date of original issuance of the Series B Preferred Stock, by and among the Company and certain of its stockholders, as such agreement may from time to time be amended in accordance with its terms.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Purchase Agreements" means the Series A Convertible Preferred Stock Purchase Agreement, dated as of October 8, 1999, by and among the Company and certain investors, as such agreement may from time to time be amended in accordance with its terms, and the Series B Purchase Agreement.

"Purchaser Directors" means the directors designated by the holders of Series A Preferred Stock and the directors designated by the holders of the Series B Preferred Stock pursuant to the Shareholders Agreement.

"Qualified Public Offering" means any underwritten offering by the Company of shares of Common Stock to the public pursuant to an effective registration statement under the Securities Act of 1933, then in effect, or any comparable statement under any similar federal statute then in force, in which the aggregate cash proceeds to be received by the Company from such offering (after deducting underwriting discounts, expenses and commissions) are at least \$25,000,000 and the public offering price is at least \$6.45 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares after the filing date hereof).

"Shareholders Agreement" means the Amended and Restated Shareholders Agreement, dated as of the date of original issuance of the Series B Preferred Stock, by and among the Company and its stockholders, as such agreement may from time to time be amended in accordance with its terms.

"Series B Purchase Agreement" means the Securities Purchase Agreement, dated as of the date of original issuance of the Series B Preferred Stock, by and among the Company and certain investors, as such agreement may from time to time be amended in accordance with its terms.

"Subsidiary" means any corporation more than 50% of the outstanding voting securities of which are owned by the Company or any Subsidiary, directly or indirectly, or a partnership or limited liability company in which the Company or any Subsidiary is a general partner or manager or holds interests entitling it to receive more than 50% of the profits or losses of the partnership or limited liability company.

"Warrants" has the meaning set forth in paragraph 2B.

10. Amendment and Waiver.

No amendment, modification or waiver of this Article Four will be binding or effective with respect to any provision of these terms without the affirmative vote of the holders of at least 66-2/3% of the shares of Series A Preferred Stock and Series B Preferred Stock outstanding at the time such action is taken, voting together as a single class and not as separate series (subject to any more protective requirements contained in part 5 hereof); provided that no such action will change (a) the rate at which or the manner in which dividends on the shares of a series of preferred stock accrue or the times at which such dividends become payable, (b) the amount payable to holders of a series of preferred stock or the participation by the holders of shares of a series of preferred stock in payments or distributions of any assets or surplus funds of the Company upon the liquidation, dissolution or winding up of the Company, (c) the amount payable on redemption of the shares of a series of preferred stock or the times at which redemption of shares of a series of preferred stock is to occur, (d) the percentage required to approve any change described in this part 10, without (i) the affirmative vote of the holders of all the shares of Series A Preferred Stock then outstanding, voting as a separate class, as to such matters directly affecting the Series A Preferred Stock and (ii) the affirmative vote of the holders of all the shares of Series B Preferred Stock then outstanding, voting as a separate class, as to such matters directly affecting the Series B Preferred Stock; and provided, further that no change in the terms of this part 10 may be accomplished by merger or consolidation of the Company with another corporation unless the Company has obtained the prior approval of the applicable percentage of the shares of Series A Preferred Stock and Series B Preferred Stock then outstanding.

11. Notices.

Except as otherwise expressly provided herein, all notices referred to herein shall be in writing and shall be delivered in the manner specified in the Series B Purchase Agreement.

ARTICLE FIVE

The corporation will not commence business until it has received for the issuance of shares consideration of the value of One Thousand Dollars (\$1,000.00), consisting of money, labor done or property actually received.

ARTICLE SIX

The street address of its registered office is 15500 Wells Port Drive, Austin, Texas 78728, and the name of its registered agent at such address is David E. Hart.

ARTICLE SEVEN

The number of directors constituting the present Board of Directors is five, and the names and addresses of the persons who are to serve as Directors until the next annual meeting of shareholders or until their successors are elected and qualified are:

<u>Name</u>	<u>Address</u>
William L. Hart	2005 Manana Street Austin, Texas 78730
David E. Hart	15500 Wells Port Drive Austin, Texas 78728
J. Britt Kauffman	15500 Wells Port Drive Austin, Texas 78728
Sam Smith	12108 Edgestone Road Dallas, Texas 75230-2342
Laura J. Kilcrease	6801 N. Capital of Texas Hwy Bldg. 2 – Suite 225 Austin, TX 78731

ARTICLE EIGHT

Cumulative voting for the election of directors is expressly denied and prohibited.

ARTICLE NINE

No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, solely because the director or officer is present at or participates in the meeting of the board of directors or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

(a) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes the contract or transaction by the

affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(b) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or

(c) The contract or transaction is fair as to the corporation as of the time it is authorized, approved, or ratified by the board of directors, a committee thereof, or the shareholders.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

This provision shall not be construed to invalidate a contract or transaction which would be valid in the absence of this provision or to subject any director or officer to any liability that he would not be subject to in the absence of this provision.

ARTICLE TEN

No holder of any shares of any class or series of stock (whether now or hereafter authorized) of the corporation, or of options, warrants or other rights to purchase shares of any class or series of stock or other securities (whether now or hereafter authorized) of the corporation, will, as such holder, have any preemptive or preferential right to receive, purchase, or subscribe to (a) any unissued or treasury shares of any class or series of stock (whether now or hereafter authorized) of the corporation, (b) any unissued bonds, debentures, obligations, evidences of indebtedness, or other securities of the corporation convertible into or exchangeable for, or carrying or accompanied by any rights to receive, purchase, or subscribe to, any such unissued or treasury shares of any class or series of stock (whether now or hereafter authorized) of the corporation, (c) any right of subscription to or to receive, or any warrant or option for the purchase of, any of the foregoing securities, or (d) any other securities that may be issued or sold by the corporation.

ARTICLE ELEVEN

The corporation shall indemnify any person who was, is, or is threatened to be made a named defendant or respondent in a proceeding (as hereinafter defined) because the person (i) is or was a director or officer of the corporation or (ii) while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, to the fullest extent that a corporation may grant indemnification to a director under the Texas Business Corporation Act, as the same exists or may hereafter be amended. Such right shall be a contract right and as such shall run to the benefit of any director or officer who is elected and accepts the position of director or officer of the corporation or elects to continue to serve as a director or officer of the corporation while this Article Eleven is in effect. Any repeal or amendment of this Article

Eleven shall be prospective only and shall not limit the rights of any such director or officer or the obligations of the corporation with respect to any claim arising from or related to the services of such director or officer in any of the foregoing capacities prior to any such repeal or amendment of this Article Eleven. Such right shall include the right to be paid or reimbursed by the corporation for expenses incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the Texas Business Corporation Act, as the same exists or may hereafter be amended. If a claim for indemnification or advancement of expenses hereunder is not paid in full by the corporation within 90 days after a written claim has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall also be entitled to be paid the expenses of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense are not permitted under the Texas Business Corporation Act, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its board of directors or any committee thereof, special legal counsel, or shareholders) to have made its determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the claimant is permissible in the circumstances nor an actual determination by the corporation (including its board of directors or any committee thereof, special legal counsel, or shareholders) that such indemnification or advancement is not permissible, shall be a defense to the action or create a presumption that such indemnification or advancement is not permissible. In the event of the death of any person having a right of indemnification under the foregoing provisions, such right shall inure to the benefit of his heirs, executors, administrators, and personal representatives. The rights conferred above shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, bylaw, resolution of shareholders or directors, agreement, or otherwise.

The corporation may additionally indemnify any person covered by the grant of mandatory indemnification contained above to such further extent as is permitted by law and may indemnify any other person to the fullest extent permitted by law.

To the extent permitted by then applicable law, the grant of mandatory indemnification to any person pursuant to this Article Eleven shall extend to proceedings involving the negligence of such person.

As used herein, the term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

ARTICLE TWELVE

To the fullest extent permitted by applicable law, a director of the corporation shall not be liable to the corporation or its shareholders for monetary damages for an act or omission in the director's capacity as a director, except that this Article Twelve does not eliminate or limit the liability of a director of the corporation to the extent the director is found liable for:

(a) a breach of the director's duty of loyalty to the corporation or its shareholders; or

(b) an act or omission not in good faith that constitutes a breach of duty of the director to the corporation or an act or omission that involves intentional misconduct or a knowing violation of the law, or

(c) a transaction from which the director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or

(d) an act or omission for which the liability of a director is expressly provided by an applicable statute; or

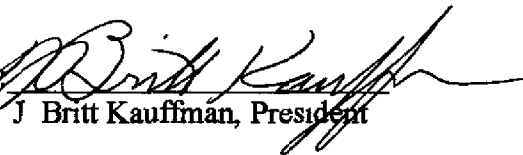
(e) an act related to an unlawful stock repurchase or payment of a dividend.

Any repeal or amendment of this Article Twelve by the shareholders of the corporation shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the corporation arising from an act or omission occurring prior to the time of such repeal or amendment. In addition to the circumstances in which a director of the corporation is not personally liable as set forth in the foregoing provisions of this Article Twelve, a director shall not be liable to the corporation or its shareholders to such further extent as permitted by any law hereafter enacted, including without limitation any subsequent amendment to the Texas Miscellaneous Corporation Laws Act or the Texas Business Corporation Act.

The foregoing provisions of this Article Twelve shall not authorize the elimination or limitation of the liability of a director of the corporation for any act or omission occurring prior to August 31, 1987

Dated. September 21, 2000.

HART INFORMATION SERVICES, INC.

By 
J. Britt Kauffman, President