

the jury. The only reasoned path to **resolution** of the case through reconciliation of the jury's otherwise inconsistent answers is that **followed** by the trial court to grant judgment for the defendants on the basis of no causation.

Alternatively, conceding for the sake of argument that there could be some basis for finding causation of damage to plaintiff in a conspiratorial refusal by Gulf Coast to remake a valid boundary agreement, the decision of this court should be that the jury's answers to interrogatories were internally inconsistent and that a new trial is required. *Guidry v. Kern M'fg Co.*, 598 F.2d 402 (5th Cir.1979); Wright and Miller Federal Practice and Procedure Civil § 2510. But the majority enters its own verdict on inconsistent findings remade at the appellate level. This is wrong.

Lack of Antitrust Injury—Still more wrong is the court's approval of the use of the Sherman Act in this dispute to wound one who competed on the city's terms and reward a summer soldier who did not. The antitrust laws were not intended to restore losses caused by business mistakes or free market forces. Affiliated Capital, for reasons of its own, did not seek a cable TV franchise until others interested had legally agreed on market areas. That default is the sole **proximate** cause of its failure to get a franchise.

I concur in the result reached in Part VI of the majority opinion as to the mayor's qualified immunity. I also agree with the view expressed in Judge Higginbotham's concurring opinion that the majority's decision should not be read as a ruling that cities must use competitive bidding to award contracts and franchises. Such a ruling would drastically impede the development of a law of municipal antitrust liability which accords proper deference to municipal decision-making.

I **respectfully** dissent from the partial reversal of the judgment.



Thomas SALINAS, et al., Plaintiffs-Appellants Cross-Appellee,

and

Chester **Torry**,
Plaintiff-Intervener-Appellant
Cross-Appellee,

and

Stuart M. Nelkin and Warren
Weir, Appellants,

v.

ROADWAY EXPRESS, INC., et al.,
Defendants-Appellee,

Roadway Express, Inc., **Defendant-Appellee** Cross-Appellant.

No. 81-1623.

United States Court of Appeals,
Fifth Circuit.

July 16, 1984.

Black and Mexican-American truck drivers brought class action employment discrimination suit against trucking company, alleging that company violated Title VII by favoring white employees for higher paying position of road driver while non-whites were relegated to lower paying position of city driver. The United States **District** Court for the Western District of Texas, Manuel H. Real, J. (sitting by designation), held that a prima facie case of employment discrimination **was** established, but that such activity by company ceased on January 1, 1968, and awarded retroactive seniority to ten class members and **attorneys'** fees to class counsel, but denied back pay. Drivers appealed and trucking company cross-appealed. The Court of Appeals, Johnson, Circuit Judge, held that: (1) remand was required to establish factual basis for district court's finding that January 1, 1968 constituted class membership cutoff date; (2) trial court erred in denying back pay on ground that evidence failed to demonstrate in any quantifiable way a means by which back pay could be awarded; (3) court erred in excluding class mem-

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The State of Texas

SECRETARY OF STATE
CERTIFICATE OF INCORPORATION

OF

NORTH STAR COMMUNICATIONS, INC.

Charter No. 1077446

The undersigned, as Secretary of State of Texas, hereby certifies that Articles of Incorporation for the above corporation duly signed pursuant to the provisions of the Texas Business Corporation Act, have been received in this Office and are found to conform to law.

ACCORDINGLY the undersigned, as such Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Certificate of Incorporation and attaches hereto a copy of the Articles of Incorporation.

Issuance of this Certificate of Incorporation does not authorize the use of a corporate name in this State in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated May 18, 1988.



James M. Quinn
Secretary of State

dlo

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FILED
In the Office of the
Secretary of State of Texas

MAY 18 1988

Corporations Section

ARTICLES OF INCORPORATION
of
NORTH STAR COMMUNICATIONS, INC.

The undersigned, a **natural** person eighteen (**18**) years of age or more, acting as **incorporator** of a corporation under the **Texas** Business Corporation Act, does hereby adopt the following Articles of Incorporation for such corporation.

ARTICLE ONE

The name of the corporation is North Star Communications, **Inc**

ARTICLE TWO

The period of the corporation's duration is perpetual.

ARTICLE THREE

The purpose for which the corporation is organized is to engage in any lawful business for which corporations may be organized under **the** laws of the State of Texas.

ARTICLE FOUR

The **aggregate** number of **shares** of **stock** which **the** corporation shall have authority to **issue** is **10,000** shares of **common stock** of the par value of \$0.10 each.

ARTICLE FIVE

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

ARTICLE SIX

No shareholder shall be ~~entitled~~ as a matter of right to subscribe for, purchase, or receive ~~additional~~ unissued or treasury ~~shares~~ of any class of the *corporation*, whether now or later authorized, or ~~any~~ bonds, debentures, warrants, options or other securities convertible into or entitling the holder ~~to~~ purchase shares. Such additional shares, bonds, debentures, warrants, options or other securities convertible into or entitling the holder ~~to~~ purchase shares may be issued or disposed of as the Board of Directors in its absolute discretion deems advisable.

ARTICLE SEVEN

At each election for directors of the *corporation*, each shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, only the number of shares owned by him for as many persons as there are directors to be elected, and no shareholder shall ever have the right or be permitted to cumulate his votes on ~~any~~ basis, ~~any~~ and all rights of cumulative voting being hereby expressly denied.

ARTICLE EIGHT

The address of the initial registered ~~office~~ of the *corporation* is 3900 Essex Lane, Suite 1100, Houston, Texas 77027 and the name of its initial registered agent at such address ~~is~~ Clive Runnells, Jr..

ARTICLE NINE

The number of directors constituting the initial Board of Directors is **three**, and the ~~names and~~ addresses of the persons who are to serve as directors until the first annual meeting of the shareholders or until their ~~successors~~ are elected and qualified **are:**

NAME	ADDRESS
Clive Runnells, Jr.	3900 Essex Lane, Suite 1100 Houston, Texas 77027

Michael A Wickizer

3900 Essex Lane, Suite 1100
Houston, Texas 77027

J. H. Landrum

1905 West Loop
El Campo, Texas 77437

ARTICLE TEN

Upon resolution adopted by the Board of Directors, the corporation shall be entitled to purchase shares of its own capital stock to the extent of the aggregate of the available unrestricted capital surplus and available unrestricted reduction surplus.

ARTICLE ELEVEN

The name and address of the incorporator is:

NAME

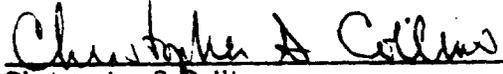
ADDRESS

Christopher S. Collins

4200 Texas Commerce Tower
Houston, Texas 77002

IN WITNESS WHEREOF, the undersigned incorporator has hereunto set his hand this

17th day of May, 1988.



Christopher S. Collins

BYLAWS

OF

NORTH STAR COMMUNICATIONS, INC.

Dated: May 18, 1988

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NORTH STAR COMMUNICATIONS, INC.

B Y L A W S

ARTICLE 1

Offices

Section 1.1 Principal Office. The principal **office** of the Corporation shall be in the City of Houston, Texas.

Section 1.2 Registered Office. The registered **office** of the Corporation required by the Texas Business Corporation Act to be maintained in the State of Texas, may be, but need not be, identical with the principal office, and the address of the registered office may be changed from time to time by the Board of Directors.

Section 1.3 Other Offices. The Corporation may also have **offices** at such other places, both within and without the State of Texas, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE 11

Meetings of Shareholders

Section 2.1 Place of Meetings. The Board of Directors may designate any place, either within or without the State of Texas, as the place of meeting for any annual **meeting or for any special meeting called by the Board.** A waiver of notice signed by all shareholders entitled to vote at a meeting may designate any place, either within or without the State of Texas, as the place for the holding of such meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal **office** of the Corporation.

Section 2.2 Annual Meeting. The annual meeting of shareholders commencing with the year 1989 shall be held at such time, on such day and at such place as may be designated by **the** Board of Directors, at which time the shareholders shall elect a Board of Directors and transact such other business as may properly be brought before the meeting.

Section 2.3 Special Meetings. Special meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by law or by the Articles of Incorporation, may be called by **(a) the** Chairman of the Board, if one shall be elected, **(b)** the President, if a Chairman of the Board is not elected, **(c)** the Board of Directors or **(d)** the holders of at least ten percent, **(10%)** of all of the shares entitled to vote at the meetings. Business transacted at all special meetings shall be confined **to** the purpose or purposes stated in the call.

Section 2.4 Notice of Meetings. Written or printed notice of all meetings of shareholders stating the place, day and hour thereof, and in the case of a special meeting the purpose or **purposes** for which the meeting is called, shall be personally delivered or mailed, not less than ten **(10)** days nor more than sixty **(60)** days prior to the date of the meeting, **to** the shareholders of record entitled to vote at such meeting. **If** mailed, the notice shall be addressed to the shareholders as their addresses appear on the stock transfer books of the Corporation and the postage shall be prepaid. Personal delivery of any such notice to any **officer** of a corporation or association, or to any member of a partnership, shall constitute delivery of such notice to such corporation, association or partnership.

Section 2.5 Voting Lists. The officer or agent having charge of the stock transfer books for shares of the Corporation shall make, at least **ten (10)** days before each meeting of the shareholders, a complete list of shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of each and the number of shares held by each, which list, for a period of ten **(10)** days **prior to such meeting, shall** be kept on file at the registered **office** of the Corporation and shall be subject **to** inspection by any shareholders at **any time during** usual business **hours. Such** list shall also be produced and kept open at the time and **place of the meeting and shall be subject to the inspection of any shareholder for the duration of the meeting.**

The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. Failure to comply with this Section 2.5 with respect to any meeting of shareholders shall not affect the validity of any action taken at such meeting.

Section 2.6 Quorum. The holders of a majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the shareholders for the transaction of business, except as otherwise provided by law, by the Articles of Incorporation or by these Bylaws. If, however, such quorum shall **not** be present or represented at any meeting of the shareholders, the shareholders entitled to vote at such meeting, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present or represented, At such adjourned meeting at which a quorum shall be present or represented any business **may** be transacted which might have been transacted at the meeting as originally convened. The shareholders present at a duly **organized** meeting at which a quorum was present may continue to transact business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum present.

Section 2.7 Organization. (a) The Chairman of the Board, if one shall be elected, shall **preside** at all meetings of the shareholders, In the absence of the Chairman of the Board or should one not be elected, **the President or, in his absence, a Vice President shall preside. In the absence of all of these officers, any shareholder or the duly appointed proxy of any shareholder may call the meeting to order and a chairman shall be elected from among the shareholders present.**

(b) **The Secretary of the Corporation shall act as secretary at all meetings of the shareholders. In his absence an Assistant Secretary shall so act and in the absence of all of these officers the presiding officer may appoint any person to act as secretary of the meeting.**

Section 2.8 Proxies. (a) **At any meeting of the shareholders every shareholder entitled to vote at such meeting shall be entitled to vote in person or by proxy executed in writing by such**

shareholder or by his duly authorized attorney-in-fact. Proxies shall be filed with the Secretary immediately after the meeting has been called to order.

(b) No proxy shall be valid after eleven (11) months from the date of its execution **unless** such proxy otherwise provides.

(c) Each proxy shall be revocable before it has been voted unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest, including the appointment as proxy of (i) a **pledgee**, (ii) a person who purchased or agreed to purchase, or owns or holds an option to purchase, the shares, (iii) a creditor of the Corporation who extended its credit under terms requiring the appointment, (iv) an employee of the Corporation whose employment contract requires the appointment or (v) a party to a voting agreement created under the Texas Business Corporation Act. A revocable proxy shall be deemed to have been revoked if the Secretary of the Corporation shall have received at or before the meeting instructions of revocation or a proxy bearing a later date, which instructions or proxy shall have been duly executed and dated in writing by the shareholder.

(d) In the event that any instrument in writing shall designate two (2) or more persons to act as proxies, a majority of such persons present at the meeting or, if only one shall be present, then that one, shall have and may exercise all of the powers conferred by such written instrument upon all the persons so designated unless the instrument shall otherwise provide.

Section 2.9 Voting of Shares. Except as otherwise provided by law, the Articles of incorporation or these Bylaws, each shareholder shall be entitled at each meeting of shareholders to one (1) vote on each matter submitted to a vote at such meeting for each share having voting rights registered in his name on the books of the Corporation at the time of the closing of the stock transfer books (or at the record date) for such meeting. When a quorum is present at any meeting (and notwithstanding the subsequent withdrawal of enough shareholders to leave less than a quorum present) the vote of holders of a **majority** of the shares entitled to vote, present in person or represented by proxy, shall decide any matter submitted to such meeting, unless the matter is one

upon which by law or by express provision of the Articles of Incorporation or of these Bylaws the vote of a greater number is required, in which case the vote of such greater number shall govern and control the decision of such matter.

Section 2.10 Voting of Shares by Certain Holders, (a) Shares standing in the name of another corporation may be voted by such officer, agent or proxy as the bylaws of such corporation may authorize or, in the absence of such authorization, as the board of directors of such corporation may determine.

(b) Shares held by an administrator, executor, guardian or conservator may be voted by him so long as such shares forming a part of **an** estate are in the possession and form a part of the estate being served by him, either in person or **by** proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted **by** him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of **such** shares into his name **as trustee.**

(c) Shares standing in the name of a receiver may **be** voted **by** such receiver, and shares held by or under the control of a receiver may **be** voted by such receiver without the transfer thereof into his name if authority to do so be contained in an appropriate order of the court **by** which such receiver was appointed.

(d) A shareholder whose shares are pledged shall **be** entitled to vote **such** shares until the shares have **been** transferred into the name of the **pledgee**, and thereafter the **pledgee** shall be entitled to vote the shares so transferred.

(e) Shares of the Corporation's stock (i) owned by the Corporation itself, (ii) owned by **another corporation, the majority of the voting stock of which is owned or controlled by the Corporation,** or (iii) held **by** the Corporation in a fiduciary capacity shall **not** be voted, directly or **indirectly, at any meeting, and shall not be counted in determining the total number of outstanding shares at any given time.**

Section 2.11 Election of Directors. At each election for Directors, each shareholder entitled to vote at such election shall, unless otherwise provided by the Articles of Incorporation or **by** applicable law, have the right to vote the number of shares owned by him for 8s many persons as there are to be elected and for whose election he has a right, to vote. Unless otherwise provided by the Articles of Incorporation, no **shareholder shall** have the right or be permitted to cumulate his votes on any **basis**.

Section 2.12 Telephone Meetings. Shareholders may participate in and hold a meeting of the shareholders by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear **each** other **and** participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 2.13 Action Without Meeting. Any action required by any provision of law or of the Articles of Incorporation or these Bylaws to be **taken** at a meeting of the shareholders or **any** action which may be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect **to the subject** matter thereof, **and** such consent shall have the same force and effect 8s 8 unanimous vote of the shareholders.

ARTICLE III

Directors

Section 3.1 Number and Qualification. The **Board** of Directors **shall be composed of not less than one (1) nor more than seven (7) members** who shall be elected **annually by the shareholders**. **Subject to any limitations specified by law or in the Articles of Incorporation, the number of Directors** may be increased or decreased by resolution adopted **by a majority** of the Board of Directors **No decrease in the number of Directors shall have the effect of shortening the** term of any

incumbent Director. Directors **need not be** residents of the **State** of Texas or shareholders of the Corporation.

Section 3.2 Election and Term of Office. The Directors shall **be** elected at the **annual** meeting of the shareholders (except as provided in Sections 3.3 and 3.4). Each Director elected shall hold **office** until his successor shall be elected at an appropriate **annual** meeting of the shareholders and shall qualify, **or** until his death, resignation or removal in the manner hereinafter provided.

Section 3.3 Resignation. Any Director may resign at any time **by** giving **written** notice **to** the President or Secretary. Such resignation shall take effect at the time specified therein, **and** unless otherwise specified therein, **the** acceptance of such resignation shall not be **necessary** to make it effective.

Section 3.4 Removal. At any special meeting of the shareholders called expressly for that **purpose**, any Director or Directors, including the entire Board of Directors, may **be** removed, either with or without cause, and another person or persons may **be** elected to serve for the remainder of his or their term **by** a vote of the holders of a majority of all shares outstanding and entitled **to vote** at an election of directors. **In** case any vacancy so created shall not be filled by the shareholders at **such** meeting, such vacancy may be filled by **the** Directors as provided in Section 3.5.

Section 3.6 Vacancies. (a) Any vacancy occurring in the **Board of Directors** (**except by reason of an increase in the number** of Directors) may be filled in accordance **with** subsection (c) of this Section 3.5 or may be filled by the **affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors.** A Director elected to fill a vacancy shall be elected for the **unexpired term** of his predecessor in office.

(b) A directorship to be filled by reason of an increase in the number of Directors may be filled in accordance with subsection (c) of this Section 3.5 or may be filled by the Board of Directors for a term of office continuing only until the next election of one (1) or more Directors by the

shareholders; *provided, however, that the Board of Directors may not fill more than two (2) such directorships during the period between any two (2) successive annual meetings of shareholders.*

(c) Any vacancy occurring in the **Board** of Directors or any directorship to be filled by reason of an increase in the number of Directors may **be filled by** election at an annual or special meeting of shareholders called for that purpose.

Section 3.6 General Powers. The property, business and **affairs** of the Corporation shall **be managed by** the Board of Directors. **In** addition to the powers and authorities expressly conferred upon them by these Bylaws, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not **by law or by** the Articles of Incorporation or by these Bylaws directed or required to **be exercised or done by the** shareholders.

Section 3.7 Compensation. Directors as such shall not receive any stated salary for their services, but by resolution of the Board, a fixed sum for expenses of attendance, if any, may be allowed for attendance at any regular or special meeting of the Board, provided that nothing herein contained shall be construed to preclude any Director from serving the Corporation in any **other** capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

ARTICLE IV

Meetings of the Board

Section 4.1 Place of Meetings. The Directors of the Corporation may hold their meetings, both regular and special, either within or without the State **of Texas**.

Section 4.2 Annual Meeting. The first meeting of each newly elected Board shall be held immediately following **the adjournment of the annual meeting of the shareholders and no notice of such meeting shall be necessary to the newly elected Directors in order legally to constitute the meeting, provided a quorum shall be present, or they may meet at such time and place as shall be fixed by the consent in writing of all of the Directors.**

Section 4.3 Regular Meetings. Regular meetings of the Board, in addition to the annual meetings referred to in Section 4.2, may be held without notice at such time and place as shall from time to time be determined by the Board.

Section 4.4 Special Meetings. Special meetings of the Board may be called by the Chairman of the Board, if one shall be elected, or by the President, if a Chairman of the Board is not elected, on one (1) day's notice (oral or written) to each Director. Special meetings shall be called by the President or the Secretary on like notice on the written request of any Director. **Neither** the purpose of, nor the business to be transacted at, any special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 4.5 Quorum and Action. At all meetings of the Board, the presence of a majority of the Directors shall be necessary and **sufficient** to constitute a quorum for the transaction of business and the act of a majority of the Directors at any meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law, the Articles of Incorporation or these Bylaws. If a quorum shall not be present at any meeting of Directors, the Directors present may adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present.

Section 4.6 Presumption of Assent to Action. A Director who is present at a meeting of the Board at which **action on any corporate matter is taken shall be presumed to have assented to the action** taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 4.7 **Telephone Meetings.** Directors may participate in and hold a meeting of **the Board** of Directors by **means** of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person **participates** in the meeting for the **express** purpose of objecting **to** the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.6 Action Without Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors, or any committee thereof, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the Board of Directors, or committee, as the case may be, and such consent shall have the same force and effect as a unanimous vote at a meeting.

ARTICLE V

Committees of the Board

Section 5.1 Membership and Authorities. The Board of Directors, by **resolution** adopted by a majority of the full Board, may designate one (1) or **more** Directors to constitute an Executive Committee and such other committees, as the Board may determine, each of which committees to the **extent provided** in such resolution, shall have and may exercise all of the authority of the Board of Directors in the business and affairs of **the Corporation**, except in those cases where the authority of the Board of Directors is specifically denied **to the Executive Committee or such other committee or committees** by **applicable law, the Articles of Incorporation or these Bylaws.** The **designation** of an Executive **Committee** or other committee and the delegation **thereto of authority** shall not operate to relieve **the Board of Directors, or any member thereof,** of any responsibility imposed upon it or him by law. The members of each such committee shall serve at the pleasure of the Board.

Section 5.2 Minutes and Rules of Procedure. Each committee designated by the Board shall keep regular minutes of its proceedings and report the same to the Board when required. Subject to the provisions of these Bylaws, the members of any committee may fix such committee's own rules of procedure.

Section 6.3 Vacancies. The Board of Directors shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve, any committee.

Section 5.4 Telephone Meetings. Members of any committee designated by the Board may participate in or hold a meeting by use of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 5.5 Action Without Meeting. Any action required or permitted to be taken at a meeting of any committee designated by the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the committee, and such consent shall have the same force and effect as a unanimous vote at a meeting.

ARTICLE VI

Officers

Section 6.1 Number. The officers of the Corporation shall be a President and a Secretary. The Board of Directors may also elect a Chairman of the Board, one (1) or more Vice Presidents, a Treasurer, one (1) or more Assistant Secretaries and one (1) or more Assistant Treasurers. One (1) person may hold any two (2) or more of these offices.

Section 6.2 Election, Term of Office and Qualification. The Board of Directors shall elect officers, none of whom need be a member of the Board, except for the Chairman of the Board, if one shall be elected, at its first meeting after each annual meeting of shareholders. Each

officer so elected shall hold **office** until his **successor shall have been** duly elected and **qualified** or until his **death**, resignation or removal in the manner hereinafter provided.

Section 6.3 Subordinate Officers. The Board of Directors may appoint **such** other **officers** and agents as it shall **deem necessary** who shall hold their **offices** for such terms, have such authority and **perform such** duties as the Board of Directors may from time to time determine. The Board of Directors may delegate to any committee or **officer** the power to appoint any such subordinate **officer** or agent. No subordinate **officer** appointed **by** any committee or superior officer as aforesaid shall **be** considered as an officer of the Corporation, the officers of the Corporation being limited to the **officers** elected or appointed as such by the Board of Directors.

Section 6.4 Resignation. **Any officer** may resign at any time by giving written notice thereof to the Board of Directors or to the President or Secretary of the Corporation. Any such resignation shall take effect at the time **specified** therein and, **unless** otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.5 Removal. Any officer elected or appointed by the Board of Directors may **be** removed at any time with or without cause by the affirmative vote of a majority of the whole Board of Directors. Any other officer **may** be removed at any time with or without cause **by** the Board of Directors or **by any** committee or superior officer in whom such power of removal may **be** conferred by the Board of Directors. The removal of any officer shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an **officer** or agent shall not of itself create **any** contract rights.

Section 6.6 Vacancies. A vacancy in any **office** shall **be filled for the unexpired portion** of the term by the Board **of Directors, but in case of a vacancy occurring in an office filled by a** committee or superior officer in accordance with the provisions of Section 6.3, such vacancy may be filled by such committee **or superior officer**.

Section 6.7 The Chairman of the Board. **The Chairman of the Board, if one** shall be elected, **or the chief executive officer** of the Corporation, **shall preside at all meetings of the**

shareholders and Directors, shall be ex officio a member of all standing committees, shall have general and active management of the business of the Corporation, shall have the general supervision and direction of all other officers of the Corporation with full power to see that their duties are properly performed **and shall** see that all orders and resolutions of the Board of Directors are carried into effect. He may sign, with any other proper **officer**, certificates for shares of the Corporation and any deeds, bonds, mortgages, contracts and other documents which the Board of Directors has authorized to be executed, except where required **by** law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated **by the** Board of Directors or these Bylaws, to some other officer or agent of the Corporation. In addition, the Chairman of the Board shall perform whatever duties and shall exercise all powers that are given to him by the Board of Directors.

Section 6.8 The President. If no Chairman of the Board shall be elected, the President shall **be the** chief executive **officer** of the Corporation and shall have the powers and duties of the Chairman of the Board as set forth in Section 6.7. **In** the absence of the Chairman of the Board, if one shall be elected, the President shall preside at all meetings of the shareholders and Directors. He may sign, with any other proper officer, certificates for shares of the Corporation and **any** deeds, bonds, mortgages, contracts and other documents which the Board of **Directors** has authorized to be executed, except where required by law to be otherwise signed and executed and except where the signing and execution thereof shall **be** expressly delegated by the Board of Directors or these Bylaws to some other **officer or agent** of the Corporation. In addition, the President shall perform whatever duties and shall exercise all the powers that are given to him **by the** Board of Directors or by the Chairman of the Board, if one shall **be elected**.

Section 6.9 The Vice Presidents. The Vice Presidents shall perform the duties as are given to them by these Bylaws and as may from time to time be assigned to them by the Board of Directors, by the Chairman of the Board, if one shall be elected, or by the President, if a Chairman of the Board is not elected, and may sign, with any other proper **officer, certificates** for shares of the

Corporation. At ~~the~~ request of ~~the~~ President, or in his absence or disability, the **Vice President**, designated by the President (or in the absence of such designation, the senior Vice President). shall perform the duties and exercise the powers of the President.

Section 6.10 The Secretary. The **Secretary**, when available, shall attend all **meetings** of the Board of Directors and all meetings of ~~the~~ shareholders and record all votes and the minutes of **all** proceedings in a book to be kept for ~~that~~ purpose and shall perform like duties for the Executive Committee and standing committees when required. He shall give, or cause ~~to~~ be given, notice of all meetings of the shareholders and special meetings of the Board of Directors as required by law or **these** Bylaws, be custodian of the corporate records and have general charge of the stock books of the Corporation and shall perform such other duties as may be prescribed by the Board of Directors, by the Chairman of the Board, if **one** shall be elected, or by the President, if no Chairman of the Board is elected, under whose supervision he shall be. He may sign, with any other proper **officer**, certificates for shares of the Corporation and shall keep in safe custody ~~the~~ seal of the Corporation, and, when authorized by the Board, **affix** the same to any instrument requiring it and, when so **affixed**, it shall be attested by his signature or by the signature of the Treasurer or an Assistant Secretary.

Section 6.1 I Assistant Secretaries. The Assistant Secretaries shall perform the duties as are given to them by these Bylaws or as may from time to time be assigned to them by the Board of **Directors or by the Secretary**. At the request of the Secretary, or in his absence **or disability**, ~~the~~ **Assistant Secretary**, designated **by the Secretary** (or in the absence of such designation the senior **Assistant Secretary**), **shall perform the duties** and exercise the powers of the Secretary.

Section 6.12 The Treasurer. The Treasurer shall have the custody and **be** responsible **for all corporate funds and securities and** shall keep full **and** accurate **accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chairman of the**

Board, if one shall be elected, the President and the **Directors**, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Corporation. He may sign, with any other proper officer, certificates for shares of the Corporation.

Section 6.13 Assistant Treasurers. The Assistant Treasurers shall perform the duties as are given to them by these Bylaws or as may from time to time be assigned to them by the Board of Directors or by the Treasurer. At the request of the Treasurer, or in his absence or disability, the Assistant Treasurer, designated by the Treasurer (~~or in~~ the absence of such designation, the senior Assistant Treasurer), shall perform the duties and exercise the powers of the Treasurer.

Section 6.14 Treasurer's Bond. If required by the Board of Directors, the Treasurer and any Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from **office**, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 6.15 Salaries. The salary or other compensation of **officers** shall be fixed from time to time by ~~the~~ Board of Directors. The Board of Directors may delegate to any **committee** or **officer** the power to fix from time to time the salary or other compensation of subordinate **officers** and agents appointed in accordance with the provisions of Section 6.3.

ARTICLE VII

Corporate Shares

Section 7.1 Share Certificates. (a) The certificates representing shares of the Corporation shall be in such form, not inconsistent with statutory provisions and the Articles of Incorporation, as shall be approved by the Board of Directors. The **certificates** shall be signed by the Chairman of the Board, if one shall be elected, the President or a Vice President and a Secretary or

Assistant Secretary, or **such other or** additional officers as may be prescribed from time ~~to~~ time by the Board of Directors, and may be **sealed** with the corporate **seal** or a facsimile thereof. The signatures of such **officer or officers** upon a certificate may be facsimiles, if the **certificate** is **countersigned by** a transfer agent, or registered **by** a registrar, either of which is other than the Corporation itself or an employee of the Corporation. In case any **officer** who has signed *or* whose facsimile signature has **been** placed upon a certificate shall have ceased **to** be such **officer** before **such certificate** is issued, it may be issued with the same effect as if he **were such officer** at the date of its issuance.

(b) If the Corporation is authorized to issue shares of more than one **(1)** class or more than one **(1)** series of any class, there shall be set forth on the face or back of the certificate or certificates, which the Corporation shall issue **to** represent shares of such class or series of stock, **such** legends *or* statements as may be required **by** applicable law or the Articles of Incorporation or as may be approved **by** the Board of Directors.

(c) In the event the Corporation has, by its Articles of **Incorporation**, limited or denied the preemptive right of shareholders of any class or series of stock, there shall be set forth **on the face or** back of the certificate or certificates, which the Corporation shall issue to represent shares of **such** class or series of **stock**, such legends or statements as shall **be** required **by** applicable law or **the Articles** of Incorporation or as may be approved by the Board of Directors.

(d) All certificates for each class or series of **stock** shall be consecutively numbered and **the name of the person owning the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the Corporation's books.**

(e) All certificates surrendered **to** the Corporation shall **be** cancelled, and, except as provided in Section 7.2 with **respect** to lost, destroyed or mutilated **certificates, no new certificate shall be issued until the former certificate for the same number of shares has been surrendered and cancelled.**

Section 7.2 **Loot Certificates, etc.** The Board of Directors may direct a new certificate or certificates **to** be issued in place of any certificate or certificates theretofore issued by the

Corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by **the** person claiming the certificate of stock to be lost or destroyed. In **authorizing** such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issue thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or indemnify the Corporation as the Board of Directors may prescribe.

Section 7.3 Transfer of Shares. Subject to any restrictions upon transfer, upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer and satisfaction of the Corporation that the requested transfer complies with the provisions of applicable state and federal laws and regulations and any agreements to which the Corporation is a party, the Corporation shall issue a new certificate to the **person** entitled thereto, cancel the old **certificate** and record the transaction upon its books.

Section 7.4 Ownership of Shares. The Corporation shall be entitled to treat and recognize the holder of record of any share or shares as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Texas.

Section 7.5 Closing of Transfer Books. For the purpose of determining shareholders entitled to notice of or **to** vote at any meeting of shareholders or any adjournment thereof, or entitled **to** receive a distribution **by the** Corporation (other than a distribution involving a purchase or **redemption by the Corporation** of its own shares) or a share dividend, or in order to make a determination of shareholders for any other proper purpose, the Board of Directors may provide that the stock transfer books shall be closed for a stated period but **not to exceed, in any case, sixty (60) days.** If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten **(10) days**