

# P95000072059

## ADORNO & ZEDER

A PROFESSIONAL ASSOCIATION

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WORLD WIDE WEB <http://www.adorno.com>

July 23, 1998

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(305) 858-4777

### VIA FEDERAL EXPRESS

Tracking Number - 3507164673

Susan Payne  
Amendments Section  
Florida Department of State  
Division of Corporations  
409 East Gaines Street  
Tallahassee, Florida 32399

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-07/28/98--01013--014  
\*\*\*\*\*87.50 \*\*\*\*\*87.50

Re: HP AMERICA, INC.

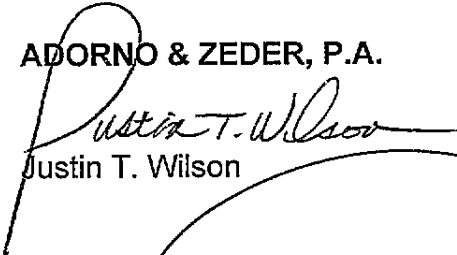
Dear Susan:

Enclosed please find a manually executed Articles of Amendment of HP America, Inc., along with a check in the amount of \$87.50 made payable to the Florida Department of State. Please file this document as soon as possible and provide the undersigned with a certified copy thereafter.

Thank you in advance for your attention to this matter. Please call me directly at (305) 860-7098 if you have any questions.

Sincerely,

ADORNO & ZEDER, P.A.

  
Justin T. Wilson

encl.

Amend  
38 7/28/98

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
98 JUL 24 PM 1:41

**ARTICLES OF AMENDMENT  
TO  
THE ARTICLES OF INCORPORATION  
OF  
HP AMERICA, INC.**

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS

98 JUL 24 PM 1:41

Pursuant to the provisions of the Florida Business Corporation Act, the undersigned, Chairman of the Board of Directors of HP AMERICA, INC. (the "Corporation"), hereby executes, for and on behalf of the Corporation, the following Articles of Amendment to its Articles of Incorporation:

FIRST:       The name of the Corporation is HP America, Inc.

SECOND:   Pursuant to the provisions set forth in Article III of the Articles of Incorporation of the Corporation, as amended (the "Articles"), the attached Exhibit to the Articles, entitled "Statement of Designations, Powers, Preferences and Rights of Series C Convertible Preferred Stock", was duly adopted by unanimous written consent of the Board of Directors on June 30, 1998, in the manner prescribed by the Florida Business Corporation Act, and did not require Shareholder action.

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to the Articles of Incorporation to be executed this 30th day of June, 1998.

HP AMERICA, INC.,  
a Florida corporation

By:   
Jeffrey I. Binder,  
Chairman of the Board of Directors

**HP AMERICA, INC.**  
**STATEMENT OF DESIGNATIONS,**  
**POWERS, PREFERENCES AND RIGHTS OF**  
**SERIES C CONVERTIBLE PREFERRED STOCK**

There is hereby established a series of 2,000,000 shares of Preferred Stock, par value \$0.01 per share, designated as Series C Convertible Preferred Stock (the "Series C Preferred Stock") with the following properties:

- A. **Rank.** The Series C Preferred Stock shall rank senior to the Company's Common Stock, par value \$.001 per share (the "Common Stock"), junior and subordinate to the Company's existing Series A Convertible Preferred Stock, and pari passu with the Company's Series B Convertible Preferred Stock.
- B. **Dividends.** The holders of Series C Preferred Stock shall not be entitled to receive cash dividends of the Company.
- C. **Voting Rights.** The holders of Series C Preferred Stock shall be entitled to vote upon any matter relating to the business or affairs of the Company or for any other legal purpose; provided, however, should the issuance of shares of the Series C Preferred Stock result in any holder thereof being a holder of 5 percent or more of the voting stock of the Company, then only the number of shares of the Series C Preferred Stock owned by such holder which equals 4.99 percent of the voting stock of the Company shall be permitted to vote and the remainder of such shares of Series C Preferred Stock shall be non-voting until the State of Florida, Department of Insurance approves such holder to be an owner of 5 percent or more of such voting stock, at which time then all of the shares of Series C Preferred Stock held by such holder shall be voting; further, provided, that should such holder transfer some or all of its shares of Series C Preferred Stock to another person, any of such transferred shares of Series C Preferred Stock, which when aggregated with any other shares of Series C Preferred Stock of such transferee are less than 5% of the voting stock of the Company, shall be voting. The Company covenants to use its best efforts to obtain the aforementioned regulatory approval provided that the subject holder furnishes all biographical and related information which may be required for such approval.
- D. **Conversion Adjustment.** If the Company shall at any time after the issuance of the Series C Preferred Stock: (1) pay a dividend on its Common Stock in Common Stock; (2) subdivide its outstanding shares of Common Stock into a larger number of shares or combine its outstanding shares of Common Stock into a smaller number of shares by reclassification or otherwise; (3) issue by reclassification of its shares of Common Stock any

shares or other securities of the Company; then, the conversion rate in effect immediately prior thereto shall be adjusted so that each share of Series C Preferred Stock shall thereafter be convertible into the number of shares of Common Stock that the holder of a share of Series C Preferred Stock would have been entitled to receive after the happening of any of the events described above had such share of Series C Preferred Stock been converted immediately prior to the happening of such event. An adjustment made pursuant to this paragraph shall become effective retroactively to the record date in the case of a dividend and shall become effective on the effective date in the case of a subdivision or combination.

If the Company shall distribute to all holders of shares of Common Stock any assets (other than any dividend payable solely in cash out of retained earnings), any rights to subscribe or any evidence of indebtedness or other securities of the Company (other than Common Stock), then in each case the conversion rate of the Series C Preferred Stock shall be adjusted to take into account the fair market value (as determined in a resolution adopted by the Board of Directors of the Company, which shall be conclusive evidence of such fair market value) of the portion of the assets or evidence of indebtedness or securities so distributed or of such subscription rights applicable to one share of Common Stock. Such adjustment shall become effective retroactively immediately after the record date with respect to such distribution.

In case of any capital reorganization or any reclassification of the capital stock of the Company or in case of the consolidation or merger of the Company with another corporation (other than a merger not involving any reclassification, conversion, or exchange of Common Stock to which the Company is the surviving corporation), or in case of any sale or conveyance of all or substantially all of the assets of the Company, each share of Series C Preferred Stock shall thereafter be convertible into the number of shares of stock (of any class or classes) or other securities or assets receivable upon such capital reorganization, reclassification, consolidation, merger, sale or conveyance, as the case may be, as a holder of the number of shares of Common Stock into which such share of Series C Preferred Stock was convertible immediately prior to such capital reorganization, reclassification, consolidation, merger, sale or conveyance is entitled; and, in any case, appropriate adjustment (as determined by the Board of Directors of the Company) shall be made in the application of the provisions herein set forth with respect to rights and interests thereafter of the holder of the Series C Preferred Stock, to the end that the provisions set forth herein (including the specified changes in and other adjustments of the conversion rate) shall thereafter be applicable, as near as reasonably practical, in relation to any

share of stock or other securities or other property thereafter deliverable upon the conversion of the Series C Preferred Stock.

If the Company shall at any time sell for cash any equity or convertible debt securities at a price per share or conversion price per share, respectively, which is less than the price per Common Share upon conversion as adjusted for any prior change in the conversion rate under this section, then the conversion rate shall be adjusted in the following way:

(i) the "price per Common Share" as used above shall be \$3.00,

(ii) upon the issuance of shares or convertible debt the new conversion rate of the Series C Preferred Stock shall be the conversion rate prior to the issuance of the shares or convertible debt multiplied by a fraction the numerator of which is the total shares of Common Stock outstanding after the issuance (treating shares obtainable upon conversion of debt as outstanding) and the denominator of which is the sum of (x) the total shares of Common Stock outstanding prior to the issuance and (y) the equivalent number of full price shares issued in the sale (treating shares obtainable upon conversion of debt as outstanding). The "equivalent number of full price shares" shall be the total number of shares issued (treating shares obtainable upon conversion of debt as outstanding) multiplied by a fraction the numerator of which is sale price per share (or conversion price per share for convertible debt) and the denominator of which is the then effective price per Common Share as defined in sub-section (i), above, before the issuance of the new shares or convertible debt; for example, if 10,000,000 shares are outstanding, two million new shares are sold at \$2.00 per share, and the price per share of Common Stock (as calculated in sub-section (i)) is \$2.50, and the conversion rate is 1.5 shares of Common Stock for every share of Series C Preferred Stock, then the number of "equivalent full price shares" is 2,000,000 multiplied by  $(\$2.00/\$2.50)$ , or 1,600,000, and the adjusted conversion rate is 1.5 multiplied by  $(12,000,000/11,600,000)$ , or approximately 1.55172.

Whenever the conversion rate is adjusted as herein provided, the Company shall forthwith send a written notice of the new conversion rate to each record holder of the Series C Preferred Stock and shall file with any

transfer agent or agents for the Series C Preferred Stock appointed as the Board of Directors may have determined a certificate signed by the Chairman, President or one of the Vice Presidents of the Company and by its Treasurer, Secretary or an Assistant Secretary or Assistant Treasurer, stating the adjusted conversion rate determined as provided above and in reasonable detail the facts requiring such adjustment. Such transfer agent(s) shall be under no duty to make any inquiry or investigation as to the statements contained in any such certificate or as to the manner in which any computation was made, but may accept such certificate as conclusive evidence of the statements therein contained, and each transfer agent shall be fully protected with respect to any and all acts done or action taken or suffered by it in reliance thereon. No transfer agent in its capacity as transfer agent shall be deemed to have any knowledge with respect to any change of capital structure of the Company unless and until it receives a notice thereof pursuant to the provisions of this paragraph and in default of any such notice each transfer agent may conclusively assume that there has been no such change.

The Company will pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Series C Preferred Stock pursuant hereto. The Company shall not, however, be required to pay any tax which may be due in respect of any transfer involved in the issue and delivery of Common Stock in a name other than that in which the Series C Preferred Stock so converted was registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Company the amount of any such tax, or has established, to the satisfaction of the Company, that such tax has been paid.

Anything else herein to the contrary notwithstanding, no adjustments shall be made to the conversion rate in connection with the: (i) exercise of the Company's warrants which existed prior to the issuance of the Series C Preferred Stock, (ii) grant or issuance of up to 2,000,000 shares of Common Stock pursuant to the exercise of stock options under the Company's Stock Option Plan (inclusive of all currently outstanding options), provided that the exercise price of such options is not less than the fair market value of the shares of Common Stock subject thereto on the date of grant, (iii) issuance of 2,421,250 shares of Common Stock upon exercise of currently outstanding stockholder options not issued under the Option Plan. Shares of Common Stock at any time owned or held by, or for the account of, the Company shall not be deemed to be outstanding, (iv) issuance of shares of Common Stock upon conversion of the presently issued and outstanding Series A and Series B Convertible Preferred Stock, (v) issuance of any

shares of the Company's stock pursuant to any adjustment required by this provision or any other anti-dilution provision which relates to any warrant, option, series of preferred stock or any other right granted by the Company if such issuance would cause a further adjustment to any other issuance of stock.

No adjustment in the number of shares of Common Stock convertible hereunder shall be required unless the adjustment would require an increase or decrease of at least one tenth of one percent in the number of shares of Common Stock upon conversion. Any adjustments which by reason of this paragraph are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this paragraph shall be made to the nearest one-hundredth of a share or to the nearest cent, as the case may be.

- E. **Conversion Rights.** The shares of Series C Preferred Stock shall be convertible, at the option of the holders thereof, upon ten days' written notice to the Company at any time at the office of any duly appointed transfer agent for the Series C Preferred Stock and at such other office or offices, if any, as the Board of Directors of the Company may determine, into fully paid and non-assessable shares of Common Stock at a conversion rate of one share of Common Stock for each share of Series C Preferred Stock tendered by the holder for conversion, provided, however, that in the case of redemption of any shares of Series C Preferred Stock, such right of conversion shall cease and terminate, as to the shares called for redemption, at the close of business on the day prior to the date fixed for redemption.

Before any holder of Series C Preferred Stock shall be entitled to convert the Series C Preferred Stock into Common Stock, he shall surrender the certificate or certificates for such Series C Preferred Stock, at any office hereinabove mentioned, which certificate or certificates shall be duly endorsed to the Company or in blank or accompanied by proper instruments of transfer of the Company or in blank, unless the Company shall waive such requirement, and shall give notice to the Company at any of said offices that he elects so to convert said Series C Preferred Stock, and shall state in writing therein the name or names in which he wishes the certificate or certificates for Common Stock to be issued.

The Company, will, as soon as practicable after such surrender of certificates for Series C Preferred Stock accompanied by the written notice and the statement above prescribed, issue and deliver at the office of any transfer agent appointed as aforesaid, or at such other office or offices, if any, to the person for whose account such Series C Preferred Stock was so surrendered or to his nominee or nominees, certificates for the number of

shares of Common Stock to which he shall be entitled. Subject to the following provisions of this paragraph, such conversion shall be deemed to have been made as of the date of such surrender of the Series C Preferred Stock to be converted and the rights of the converting holder of the shares of the Series C Preferred Stock as such holder shall cease and the person or persons in whose name or names the certificates for shares of Common Stock upon conversion of such Series C Preferred Stock are to be issued shall be treated for all purposes as the record holder or holders of such Common Stock at the close of business on such date. The Company shall not be required to convert, and no surrender of Series C Preferred Stock shall be effective for the purpose, while the stock transfer books of the Company are closed for any purpose, but the surrender of Series C Preferred Stock for conversion during any period while such books are so closed shall become effective for conversion immediately upon the reopening of such books, as if the conversion had been made on the date such Series C Preferred Stock was surrendered, and at the conversion rate in effect at the date of such surrender. In the event of any liquidation, dissolution or winding up of the affairs of the Company, all conversion rights of the holders of Series C Preferred Stock shall terminate on the date fixed by resolution of the Board of Directors of the Company, which date shall not be later than 10 days nor earlier than 20 days prior to such liquidation, dissolution or winding up.

The Company shall at all times reserve and keep available, out of its authorized and unissued shares of Common Stock, or other stock or securities deliverable upon conversion pursuant to this section, solely for the purpose of effecting the conversion of the Series C Preferred Stock, such number of shares as shall from time to time be sufficient to effect the conversion of all shares of Series C Preferred Stock from time to time outstanding. The Company shall from time to time, in accordance with the laws of Florida, increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued shall not be sufficient to permit the conversion of all the then outstanding Series C Preferred Stock

- F. **Automatic Conversion.** The shares of Series C Preferred Stock shall be automatically converted into shares of Common Stock on the date the Company's stock is approved for listing on The NASDAQ Stock Market or any nationally recognized stock exchange where shares are publicly traded.
- G. **Liquidation Rights.** In the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holder of any Common Stock in respect to



distribution of assets, the holders of the Series C Preferred Stock shall be entitled to receive \$3.00 per share.

In the event the assets of the Company available for distribution to the holders of shares of the Series C Preferred Stock upon dissolution, liquidation or winding up of the Company shall be insufficient to pay in full all amounts to which such holders are entitled pursuant to the immediately preceding paragraph, no such distribution shall be made on account of the Common Stock, except that a proportionate distributive amount shall be paid on account of the shares of the Series C Preferred Stock, ratably, in proportion to the full distribution, liquidation or winding up. No payments shall be made to the holders of the Series C Preferred Stock until all payments have been made to the holders of the Series A Convertible Preferred Stock upon the dissolution, liquidation or winding up of the Company.

- H. **Status of Converted Shares.** Any shares of the Series C Preferred Stock that shall have been converted shall after such conversion have the status of authorized but unissued shares of Preferred Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board of Directors.