

Filing Fee: \$150.00
License Fee: \$15.00 minimum (§7-1.1-124)

ID Number: 107304



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Office of the Secretary of State
Corporations Division
100 North Main Street
Providence, Rhode Island 02903-1335

BUSINESS CORPORATION

~~DOMESTIC~~ ORIGINAL APPLICATION FOR CERTIFICATE OF AUTHORITY

Pursuant to the provisions of Section 7-1.1-103 of the General Laws, 1956, as amended, the undersigned corporation hereby applies for a Certificate of Authority to transact business in the State of Rhode Island, and for that purpose submits the following statement:

1. The name of the corporation is Gadzooks, Inc.
2. It is incorporated under the laws of Texas
3. The name which it elects to use in Rhode Island is Gadzooks, Inc.

(If the corporation does not contain the word "corporation," "company," "incorporated," or "limited" or an abbreviation of one of such words, insert the name of the corporation with the word or abbreviation which it elects to add thereto for use in Rhode Island.)

4. The date of its incorporation is 12/30/82 and the period of its duration is perpetual
5. The address of its principal office in the state or country under the laws of which it is incorporated is 4121 International Parkway, Carrollton, Texas 75007
6. The address of its proposed registered office in Rhode Island is 123 Dyer Street 10 Weymouth St
(Street)
Providence, RI 02903 and the name of its proposed registered agent in
(City/Town) (Zip Code)
Rhode Island at that address is C T CORPORATION SYSTEM

7. The specific purpose or purposes which it proposes to pursue in the transaction of business in Rhode Island are:
Any and all lawful business for which corporations may transact in the State of Rhode Island, including the retail sale of clothing and business ancillary thereto.

8. The names and respective addresses of the directors and officers are: See Exhibit "A" attached hereto.

Name

Address

Director	_____	_____
Director	_____	_____
President	_____	_____
Vice President	_____	_____
Secretary	_____	_____
Treasurer	_____	_____

FILED

JUL 08 1999

By CET 103

RECEIVED
STATE SECRETARY
JUL 08 1999

9. The aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, is:

<u>Number of Shares</u>	<u>Class</u>	<u>Series</u>	<u>Par Value or Statement that Shares are without Par Value</u>
25,000,000	Common	-	\$0.01 per share
1,000,000	Preferred	-	\$1.00 per share

10. The aggregate number of its issued shares, itemized by classes, par value shares, shares without par value, and series, if any, within a class, is:

<u>Number of Shares</u>	<u>Class</u>	<u>Series</u>	<u>Par Value or Statement that Shares are without Par Value</u>
8,896,736	Common	-	\$0.01 per share

11. An estimate, expressed as a percentage, of the proportion that the estimated value of the property of the corporation to be located within this state during the following year bears to the value of all property of the corporation to be owned during the following year, wherever located 0.5%; and an estimate, expressed as a percentage, of the proportion that the gross amount of business to be transacted by the corporation at or from places of business in this state during the following year bears to the gross amount thereof which will be transacted by the corporation during the following year 0.2%.

12. An estimate of the value of all property to be owned by it for the following year, wherever located is \$ 47,000,000

13. An estimate of the value of its property to be located within Rhode Island during the following year is \$ 250,000

14. An estimate of the gross amount of business to be transacted by it during the following year is \$ 245,000,000

15. An estimate of the gross amount of business to be transacted by it at or from places of business in Rhode Island during the following year is \$ 600,000.

16. This application is accompanied by certified copies of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

Dated 6/25, 19 99

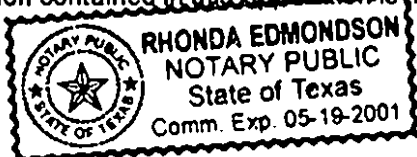
Gadzooks, Inc.
(Exact Corporate Name of Corporation Making Application)

By [Signature]
☒ President or ☐ Vice President (check one)

AND
By [Signature]
☐ Secretary or ☒ Assistant Secretary (check one)

STATE OF TEXAS
COUNTY OF Denton

In Dallas, TX, on this 23 day of JUN, 19 99, personally appeared before me [Signature], an officer of the corporation, who, under oath, verified that the information contained in this Application is true and accurate.



[Signature]
Notary Public
My Commission Expires: _____

EXHIBIT "A"

Directors:

<u>Title</u>	<u>Name</u>	<u>Address</u>
Director	Gerald R. Szczepanski	4121 International Parkway Carrollton, TX 75007
Director	Lawrence H. Titus, Jr.	1717 Northview Drive Miami Beach, FL 33140
Director	G. Michael Machens	5080 Spectrum Drive, Suite 805 West Addison, TX 75001
Director	Robert E.M. Nourse	3281 Padaro Lane Carpinteria, CA 93013
Director	Ron G. Stegall	701 Loch Lomond Drive Arlington, TX 76012

Officers:

<u>Title</u>	<u>Name</u>	<u>Address</u>
Chairman of the Board, President and CEO	Gerald R. Szczepanski	4121 International Parkway Carrollton, TX 75007
Vice President-Finance and Secretary	James A. Motley	4121 International Parkway Carrollton, TX 75007
Senior Vice President – Store Operations	James F. Wimpres	4121 International Parkway Carrollton, TX 75007
Vice President – Real Estate	William S. Kotch	4121 International Parkway Carrollton, TX 75007
Vice President – General Merchandising Manager	Paula Y. Masters	4121 International Parkway Carrollton, TX 75007
Vice President – Planning and Allocation	Jeffrey P. Krainess	4121 International Parkway Carrollton, TX 75007



TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
CAROLE KEETON RYLANDER • COMPTROLLER • AUSTIN, TEXAS 78774

CERTIFICATION OF ACCOUNT STATUS

THE STATE OF TEXAS

COUNTY OF TRAVIS

I, Carole Keeton Rylander, Comptroller of Public Accounts of the State of Texas, DO
HEREBY CERTIFY that according to the records of this office

GADZOOKS INC

is, as of this date, in good standing with this office having no franchise tax reports or
payments due at this time.

This certificate is valid through the date that the next franchise tax report will be due 12-
31-1999.

This certificate is valid for the purpose of conversion when the converted entity is subject
to franchise tax as required by law.

This certificate is not valid for the purpose of dissolution, merger or withdrawal.

GIVEN UNDER MY HAND AND SEAL
OF OFFICE in the City of Austin,
this 30th day of June, 1999 A.D.

A handwritten signature in cursive script that reads "Carole Keeton Rylander".

CAROLE KEETON RYLANDER
Comptroller of Public Accounts

Charter/COA NO.: 006372932-0
Form 05-304 (Rev. 9-97/9)

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Carole Kecton Rylander
Texas Comptroller of Public Accounts

[Texas Taxes](#) / Certification of Account Status

Franchise Tax Certification of Account Status

[Return to: New Corporation Search](#) | [Corporation Search Results](#)

To generate a certificate suitable for filing with the Secretary of State,
click Letter of Corporate Standing and use your browser print function.

(Certificates for 6.06 dissolution are NOT available through this Web site at this time.)

[Letter of Corporate Standing](#) | [Officers and Directors Info](#)

Company Information	GADZOOKS INC 4121 INTERNATIONAL PKWY CARROLLTON, TX 75007-1910
Status	CORPORATION IS IN GOOD STANDING NOT FOR MERG/WITHDRAWL THROUGH 12- 31-1999
Registered Agent	GERALD R SZCZEPANSKI 4121 INTERNATIONAL PARKWAY CARROLLTON, TX 75007
State of Incorporation	TX
Charter/COA Number	006372932-0
Charter/COA Date	12-30-1982
Charter/COA Type	DOMESTIC PROFIT
Corporate Status	ACTIVE
Corporate Date	05-11-1985
Next Report Due	2000 ON 05-16-2000

ca-003(Rev. 12-11-98)

For help, see Detailed Instructions

Should you require assistance concerning the corporate information presented,
please contact tax.help@cpa.state.tx.us. Comments or questions on the Web

application should be sent to: stuart.greenfield@cpa.state.tx.us

Carole Kecton Rylander - Texas Comptroller of Public Accounts

Window on State Government



The State of Texas

SECRETARY OF STATE

**IT IS HEREBY CERTIFIED, that Articles of Incorporation of
GADZOOKS, INC.**

**were filed in this office and a certificate of incorporation was issued on
DECEMBER 30, 1982;**

**IT IS FURTHER CERTIFIED, that no certificate of dissolution has been
issued, and the corporation is still in existence.**

**IT IS FURTHER CERTIFIED, that a diligent search of the records of this office
reveals that the following described documents are on file
as of this date for such corporation:**

**ARTICLES OF INCORPORATION
ARTICLES OF AMENDMENT
CHANGE OF REGISTERED OFFICE AND/OR AGENT**

**DECEMBER 30, 1982
OCTOBER 5, 1983
JUNE 27, 1991**

*IN TESTIMONY WHEREOF, I have hereunto
signed my name officially and caused to be
impressed hereon the Seal of State at my office in
the City of Austin, on June 30, 1999.*



Elton Bomer
Secretary of State

PH



The State of Texas

SECRETARY OF STATE

Continued From Page One

ASSUMED NAME CERTIFICATE

RESTATED ARTICLES OF INCORPORATION

CHANGE OF REGISTERED OFFICE AND/OR AGENT

ARTICLES OF AMENDMENT

CHANGE OF REGISTERED OFFICE AND/OR AGENT

ARTICLES OF MERGER

RESTATED ARTICLES OF INCORPORATION

ARTICLES OF AMENDMENT

RESTATED ARTICLES OF INCORPORATION

CHANGE OF REGISTERED OFFICE AND/OR AGENT

STATEMENT OF RESOLUTIONS

JANUARY 30, 1992

JANUARY 30, 1992

NOVEMBER 13, 1992

NOVEMBER 13, 1992

DECEMBER 23, 1992

DECEMBER 31, 1992

MAY 26, 1994

SEPTEMBER 28, 1995

OCTOBER 10, 1995

JULY 8, 1997

SEPTEMBER 10, 1998



IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, on June 30, 1999.

Elton Bomer
Secretary of State

PH



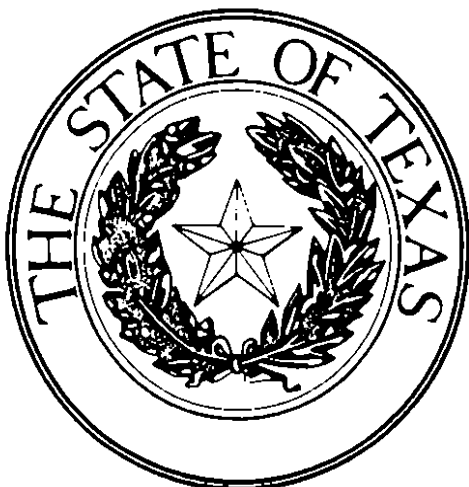
The State of Texas

SECRETARY OF STATE

IT IS HEREBY CERTIFIED that the attached is/are true and correct copies of the following described document(s) on file in this office:

**GADZOOKS, INC.
CHARTER #637293-00**

ARTICLES OF INCORPORATION	DECEMBER 30, 1982
ARTICLES OF AMENDMENT	OCTOBER 5, 1983
CHANGE OF REGISTERED OFFICE AND/OR AGENT	JUNE 27, 1991
ASSUMED NAME CERTIFICATE	JANUARY 30, 1992
RESTATED ARTICLES OF INCORPORATION	JANUARY 30, 1992
CHANGE OF REGISTERED OFFICE AND/OR AGENT	NOVEMBER 13, 1992
ARTICLES OF AMENDMENT	NOVEMBER 13, 1992
CHANGE OF REGISTERED OFFICE AND/OR AGENT	DECEMBER 23, 1992
ARTICLES OF MERGER	DECEMBER 31, 1992
RESTATED ARTICLES OF INCORPORATION	MAY 26, 1994
ARTICLES OF AMENDMENT	SEPTEMBER 28, 1995
RESTATED ARTICLES OF INCORPORATION	OCTOBER 10, 1995
CHANGE OF REGISTERED OFFICE AND/OR AGENT	JULY 8, 1997
STATEMENT OF RESOLUTIONS	SEPTEMBER 10, 1998



IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, on June 30, 1999.

Elton Bomer
Secretary of State

PH

ARTICLES OF INCORPORATION

OF

T I T S K I, INC.

ARTICLE ONE

The name of the corporation is T I T S K I, Inc.

ARTICLE TWO

The period of its duration is perpetual.

ARTICLE THREE

The purpose for which the corporation is organized is the transaction of any or all lawful business for which corporations may be incorporated under the Texas Business Corporation Act.

ARTICLE FOUR

The aggregate number of shares which the corporation shall have authority to issue is 100,000 of the par value of One Dollar (\$1.00) each.

ARTICLE FIVE

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

ARTICLE SIX

The street address of its initial registered office is 8300 Woodcreek, Waco, Texas 76710, and the name of its registered agent at such address is Jerry Szczepanski.

ARTICLE SEVEN

The number of directors constituting the initial Board of Directors is two, 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:

Jerry Szczepanski

8300 Woodcreek
Waco, Texas 76710

Larry Titus

3908 Old Mill Rd.
Waco, Texas 76710

FILED
Office of the
State of Texas

DEC 30 1982

Clerk E
Corporations Section

ARTICLE EIGHT

The name and address of the incorporator is:

Jerry Szczepanski

8300 Woodcreek
Waco, Texas 76710



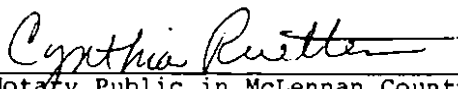
Jerry Szczepanski, Incorporator

THE STATE OF TEXAS }

COUNTY OF McLENNAN }

BEFORE ME, a notary public, on this day personally appeared
Jerry Szczepanski, known to me to be the person whose name is
subscribed to the foregoing document and, being by me first duly
sworn, declared that the statements therein contained are true
and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 29th day of
December, A.D., 1982.



Notary Public in McLennan County,
Texas
10-29-85

ARTICLES OF AMENDMENT
BY THE SHAREHOLDERS
TO THE ARTICLES OF INCORPORATION
OF
TITSKI, INC.
A TEXAS CORPORATION

FILED
In the Office of the
Secretary of State of Texas
OCT 05 1983
Clerk II U
Corporations Section

Pursuant to the provisions of Article 4.04 of the Texas Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation, which amended Articles provide for a change of corporate name.

ARTICLE I

The current name of the corporation is TITSKI, INC.

ARTICLE II

The following amendments to the Articles of Incorporation were adopted on the 19th day of September, 1983.

"Article I of the Articles of Incorporation are hereby amended to read as follows: The name of the corporation is TITAN ENTERPRISES, INC."

ARTICLE III

The number of shares of the corporation outstanding at the time of such adoption was 100, and the number of shares entitled to vote thereon was 100.

ARTICLE IV

The number of shares voted for such amendment was 100, and the number of shares voted against such amendment was zero (0).

Dated: September 19, 1983.

TITAN ENTERPRISES, INC.

By: Gerald R. Szczepanski
GERALD R. SZCZEPANSKI,
President

By: Larry Titus
LARRY TITUS, Secretary

THE STATE OF TEXAS *

*

COUNTY OF McLENNAN *

I, BILLY H. DAVIS, JR., a Notary Public, do hereby certify that on this the 30 day of September, 1983, personally appeared before me GERALD R. SZCZEPANSKI and LARRY TITUS, who declared to me that they are the President and Secretary, respectively, of the corporation, and being first duly sworn, acknowledged that they signed the foregoing document in the capacities therein set forth, and declared the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year before written.

Billy H. Davis, Jr.
Notary Public in and for
The State of Texas
My commission expires: 4-3-84

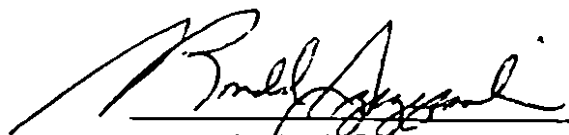
STATEMENT OF CHANGE OF REGISTERED OFFICE
OR REGISTERED AGENT OR BOTH
BY A PROFIT CORPORATION

FILED
the Office of the
Secretary of State of Texas
JUN 27 1991
Corporations Section

1. The name of the corporation is Titan Enterprises Inc.
TAXPAYER # 1-74-2258813-1
2. The address, including street and number, of its present registered office as shown in the records of the Secretary of State of Texas before filing this statement is 8300 Woodcreek WACO, TX
3. The address, including street and number, to which its registered office is to be changed is 2300 Springwood Richardson, TX

(Give new address or state "no change")
4. The name of its present registered agent, as shown in the records of the Secretary of State of the State of Texas, before filing this statement is JERRY SZCZEPANSKI
5. The name of its new registered agent is No Change

(Give new name or state "no change")
6. The address of its registered office and the address of the office of its registered agent, as changed, will be identical.
7. Such change was authorized by: (Check One)
☐ A. The Board of Directors.
☒ B. An officer of the corporation so authorized by the Board of Directors.

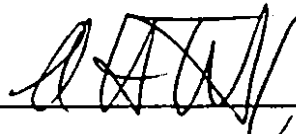

An Authorized Officer

FILED
In the Office of the
Secretary of State of Texas

ASSUMED NAME CERTIFICATE
FOR AN INCORPORATED BUSINESS OR PROFESSION

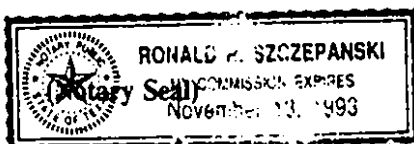
JAN 30 1992

1. The assumed name under which the business or professional service is to be conducted or rendered is ^{Corporations Section} Gadzooks.
2. The name of the incorporated business or profession as stated in its Articles of Incorporation or comparable document is Titan Enterprises, Inc..
3. The state, country or other jurisdiction under the laws of which it was incorporated is Texas, and the address of its registered or similar office in that jurisdiction is 888 South Greenville Avenue, Suite 300, Richardson, Texas 75081.
4. The period, not to exceed ten years, during which the assumed name will be used is 10 years.
5. The corporation is a business corporation.
6. If the corporation is required to maintain a registered office in Texas, the address of the registered office is 888 South Greenville Avenue, Suite 300, Richardson, Texas 75081 and the name of its registered agent at such address is Gerald R. Szczepanski. The address of the principal office (if not the same as the registered office) is N/A.
7. If the corporation is not required to or does not maintain a registered office in Texas, the office address in Texas is N/A and the office address elsewhere is N/A.
8. The county or counties where business or professional services are being or are to be conducted or rendered under such assumed name are [if applicable, use the designation "ALL.": ALL.



Signature of officer, representative of
attorney-in-fact of the corporation

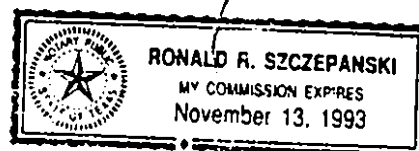
Before me on this 27 day of January, 1992, personally appeared Darryl Titus
and acknowledged to me that he executed the foregoing certificate for the purposes therein expressed.



147538D



Notary Public in and for the State of Texas



ARTICLES
OF
AMENDMENT
TO THE
ARTICLES OF INCORPORATION
OF
TITAN ENTERPRISES, INC.

FILED
In the Office of the
Secretary of State of Texas
JAN 30 1992
Corporations Section

ARTICLE ONE

Titan Enterprises, Inc. (the "Corporation"), pursuant to the provisions of Article 4.07 of the Texas Business Corporation Act, hereby adopts the attached Restated Articles of Incorporation that accurately copy the Articles of Incorporation and all amendments thereto that are in effect to date and as further amended by these Articles of Amendment to the Articles of Incorporation ("these Articles") as hereinafter set forth and which contain no other change in any provision thereof.

ARTICLE TWO

The Articles of Incorporation of the Corporation are hereby amended by these Articles as follows:

ARTICLE FOUR is amended to increase the number of authorized shares of capital stock, to authorize the issuance of preferred stock, to decrease the par value of certain classes of authorized capital stock, to specify the dividend, voting, liquidation, redemption, conversion, first refusal and other rights of the shareholders, to state restrictions on the Corporation when specified amounts of preferred stock are outstanding, and to state the consequences of noncompliance with these restrictions.

ARTICLE FIVE is amended to eliminate the provisions concerning the receipt of adequate capital and to add provisions prohibiting cumulative voting.

ARTICLE SIX is amended to state the current address of the registered office and agent.

ARTICLE SEVEN is amended to allow the election of directors of the Corporation in the manner determined in accordance with the Bylaws of the Corporation.

ARTICLE EIGHT is added to modify the provisions relating to personal liability of the directors of the Corporation.

ARTICLE NINE is added to provide for indemnification of the Corporation's directors, officers, employees and agents.

ARTICLE TEN is added to allow for shareholder action by less than unanimous written consent.

ARTICLE ELEVEN is added to prohibit any preemptive or preferential right to purchase or subscribe for any shares of capital stock of the Corporation.

ARTICLE TWELVE is added to authorize the Board of Directors to change the Bylaws.

ARTICLE THREE

Each such amendment made by these Articles has been effected in conformity with the provisions of the Texas Business Corporation Act and such Articles of Incorporation and each such amendment made by these Articles were duly adopted by the shareholders of the Corporation on the 29th day of January, 1992. The number of shares of capital stock of the Corporation outstanding at the time these Articles were adopted was 4,756.9 shares of Common Stock. The number of shares of capital stock outstanding and entitled to vote on the adoption of these Articles was 4,756.9.

ARTICLE FOUR

The amendment to ARTICLE FOUR effects a change in the par value of the Common Stock of the Corporation and effects a stock split of the Common Stock in the approximate ratio of 945.99423 to 1. The shares of the current holders of the Common Stock, par value \$1.00 per share, will become shares of Common Stock, par value \$.01 per share, as follows:

<u>Holder</u>	<u>Number of shares of Common Stock par value, \$1.00 per share</u>	<u>Number of shares of Common Stock, par value, \$.01 per share</u>
Gerald Szczepanski	2200	2,081,186
Lawrence Titus	2200	2,081,186
Billy Davis, Jr.	23.8	22,515
Gary Goodsell	23.8	22,515
Willis Lokken	23.8	22,515
Paul Loth	23.8	22,515
Causey Mason	23.8	22,515
Tommy Orr	47.6	45,029

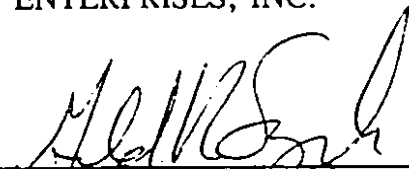
Andy Restivo	23.8	22,515
Rudy Schlacher	23.8	22,515
Louis Sesso	23.8	22,515
Joe Ward	23.8	22,515
Arthur M. Tolson, Jr.	7.9	7,473
Gene T. Hey	7.9	7,473
Harry Tolson	31.7	29,989
Carter H. Compton	<u>47.6</u>	<u>45,029</u>
	<u>4,756.9</u>	<u>4,500,000</u>

ARTICLE FIVE

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

EXECUTED as of the 29th day of January, 1992.

TITAN ENTERPRISES, INC.

By 
Gerald R. Szczepanski, President

1 3 1 1 2 1 1 1 2 4

**RESTATED ARTICLES OF INCORPORATION
OF
TITAN ENTERPRISES, INC.**

ARTICLE ONE

The name of the Corporation is TITAN ENTERPRISES, INC.

ARTICLE TWO

The period of its duration is perpetual.

ARTICLE THREE

The purpose for which the Corporation is organized is the transaction of any or all lawful business for which corporations may be incorporated under the Texas Business Corporation Act.

ARTICLE FOUR

The corporation is authorized to issue two classes of shares designated "Common Stock" and "Class A Cumulative Convertible Preferred Stock," respectively. The Class A Cumulative Convertible Preferred Stock shall hereinafter be referred to as "Preferred Stock." The number of shares of Common Stock authorized to be issued is 25,000,000 with par value of \$.01 per share and the number of shares of Preferred Stock authorized to be issued is 8,000,000 with par value of \$.10 per share.

The rights, preferences, privileges and restrictions granted to and imposed upon the Common Stock and the Preferred Stock are set forth below in this Article Four.

Subject to the rights of the holders of the Preferred Stock, the Common Stock shall be entitled to dividends out of funds legally available therefor, when, as and if declared and paid to the holders of Common Stock, and upon liquidation, dissolution or winding up of the Corporation, to share ratably in the assets of the Common Stock.

Section 1. Definitions. For purposes of this Article Four the following definitions shall apply:

"Affiliate" shall mean any Person which directly or indirectly controls, is controlled by, or is under common control with, the indicated Person.

"Approved Plan" shall mean a plan approved by a majority of the Board for the sale, grant, award or issuance to management, directors or employees of, or consultants to, the Corporation of shares of Common Stock or options to purchase such shares pursuant to which plan any such sale, grant, award or issuance must be approved by the Board or a committee of the Board prior to such sale, grant, award or issuance. The majority of the Board so approving

such a plan must include a majority of the members of the Board nominated by the holders of Preferred Stock pursuant to the Shareholders Agreement.

"Arrearage" and "Arrearage Payment Event" shall have the respective meanings assigned to such terms in Section 2(a)(iii) of this Article Four.

"Board" shall mean the Board of Directors of the Corporation.

"Commitment Date" shall mean January 31, 1992.

"Common Stock" shall mean the Common Stock of the Corporation.

"Conversion Price" shall mean the initial Conversion Price per share of \$1.00, as adjusted from time to time as provided by Section 6 of this Article Four. Pursuant to the provisions of Section 6(b) of this Article Four, separate series of the Preferred Stock may be created with different Conversion Prices. If such series are created, the term "Conversion Price" shall mean the Conversion Price for each such series.

"Conversion Stock" shall mean the unissued Common Stock into which the Preferred Stock is convertible and the Common Stock issued upon such conversion.

"Corporation" shall mean this corporation.

"Equity Security" shall mean 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 to or purchase any stock or similar security, or any such warrant or right.

"Event of Noncompliance" shall have the meaning assigned to it in Section 10 of this Article Four.

"First Closing" shall have the meaning set forth in the Purchase Agreement.

"Indebtedness" shall mean any obligation of the Corporation or any Subsidiary, contingent or otherwise, which under generally accepted accounting principles is required to be shown on the balance sheet of the Corporation or such Subsidiary as a liability. Any obligation secured by a Lien on, or payable out of the proceeds of or production from, property of the Corporation or any Subsidiary shall be deemed to be Indebtedness even though such obligation is not assumed by the Corporation or Subsidiary.

"Indebtedness for Borrowed Money" shall mean (a) all Indebtedness in respect of money borrowed including, without limitation, Indebtedness which represents the unpaid

amount of the purchase price of any property and is incurred in lieu of borrowing money or using available funds to pay such amounts and not constituting an account payable or expense accrual incurred or assumed in the ordinary course of business of the Corporation or any Subsidiary, (b) all Indebtedness evidenced by a promissory note, bond or similar written obligation to pay money, or (c) all such Indebtedness guaranteed by the Corporation or any Subsidiary or for which the Corporation or any Subsidiary is otherwise contingently liable.

"Initial Public Offering" shall mean the first underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offering and sale of Common Stock for the account of the Corporation on a firm commitment basis in which the aggregate gross proceeds received by the Corporation at the public offering price equals or exceeds \$10,000,000 and the public offering price equals or exceeds \$3.00 per share of Common Stock (appropriately adjusted for subdivisions and combinations of shares of Common Stock and dividends on Common Stock payable in shares of Common Stock subsequent to the Commitment Date).

"Lien" shall mean any mortgage, pledge, security interest, encumbrance, lien or charge of any kind, including, without limitation, any conditional sale or other title retention agreement, any lease in the nature thereof and the filing of or agreement to give any financing statement under the uniform commercial code of any jurisdiction and including any lien or charge arising by statute or other law.

"Majority of the Preferred Stock" shall mean more than 50% of the outstanding shares of Preferred Stock.

"New Securities" shall mean any Equity Securities of the Corporation; provided, however, that "New Securities" does not include: (i) the Common Stock issued or issuable on conversion of the Preferred Stock; (ii) stock issued pursuant to any rights or agreements including without limitation any security convertible or exchangeable, with or without consideration, into or for any stock, options and warrants, provided that the rights of first refusal established by Section 9 of this Article Four applied with respect to the initial sale or grant by the Corporation of such rights or agreements; (iii) any Equity Security that is issued by the Corporation as part of any public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended; (iv) shares of Common Stock issued in connection with any stock split, stock dividend or recapitalization of the Corporation; (v) securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of all or substantially all of the assets, or other reorganization whereby the Corporation after the transaction owns not less than fifty-one percent (51%) of the voting power of such corporation; (vi) shares of Common Stock issued to management, directors or employees of, or consultants to, the Corporation or any Subsidiary pursuant to Approved Plans; (vii) shares of Common Stock issued to management, directors or employees of, or consultants to, the Corporation or any Subsidiary under options outstanding as of the Commitment Date; (viii) shares of Common Stock

issued under options granted pursuant to Approved Plans and (ix) shares of Preferred Stock issued upon the Second Closing (as defined in the Purchase Agreement).

"Person" shall include all natural persons, corporations business trusts, associations, companies, partnerships, joint ventures and other entities and governments and agencies and political subdivisions.

"Preferred Stock" shall mean the Class A Cumulative Convertible Preferred Stock of the Corporation.

"Purchase Agreement" shall mean the Purchase Agreement dated as January 31, 1992, among the Corporation, Gerald R. Szczepanski, Lawrence H. Titus, Jr., and the investors listed on Exhibit A thereto, including all schedules and exhibits thereto, as such Purchase Agreement may be from time to time amended, modified or supplemented.

"Remaining Arrearages" shall mean, as of the date of conversion or redemption, as the case may be, of the Preferred Stock in question, all Arrearages which have existed with respect to such Preferred Stock through the date of such conversion or redemption less all dividends declared with respect to the elimination of such Arrearages to the extent such dividends have record dates on or prior to the conversion or redemption, as the case may be.

"Shareholders Agreement" shall mean the Shareholders Agreement dated as of January 31, 1992 among the Corporation, Gerald R. Szczepanski, Lawrence H. Titus, Jr. and certain holders of Preferred Stock, as such Shareholder Agreement may be from time to time amended, modified or supplemented.

"Significant Subsidiary" shall mean any subsidiary which would constitute a significant subsidiary within the meaning of Rule 1-02 of Regulation S-X promulgated by the Securities and Exchange Commission as in effect and interpreted by said Commission on the Commitment Date.

"Subsidiary" shall mean any corporation, partnership, joint venture, association or other business entity at least fifty percent (50%) of the outstanding voting stock or voting interest of which is at the time owned directly or indirectly by the Corporation or by one or more of such subsidiary entities, or both.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

Section 2. Dividends.

(a) Right to Dividends. The holders of the then outstanding Preferred Stock shall be entitled to receive, when and as declared by the Board, and out of any funds legally available

therefor, cumulative dividends at the annual rate of \$0.08 per share, payable quarterly in cash on the first day of April, July, October, and January of each year commencing April 1, 1992. Dividends on the Preferred Stock shall accumulate and accrue on each such share from the date of its original issue and shall accrue from day to day thereafter, whether or not earned or declared. Such dividends shall be cumulative so that, except as provided in Section 2(b) of this Article Four, if such dividends in respect of any previous or current quarterly dividend period, at the annual rate specified above, shall not have been paid or declared and a sum sufficient for the payment thereof set apart, the deficiency shall first be fully paid before any dividend or other distribution shall be paid or declared and set apart for the Common Stock.

If any dividends in respect of any one or more previous or current quarterly dividend periods, at the annual rate specified above, shall not have been paid or declared and a sum sufficient for the payment thereof set apart at the earliest of

(i) the closing of the Initial Public Offering,

(ii) any sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets of the Corporation or any of its Significant Subsidiaries, or any consolidation or merger involving the Corporation or any of its Significant Subsidiaries, or the sale (whether or not the Corporation is the seller) in one transaction or a series of related transactions of securities of the Corporation representing (or upon conversion, exchange or exercise thereof, entitled to acquire securities of the Corporation representing) 50% or more of the total combined voting power of all securities of the Corporation then outstanding, or

(iii) January 31, 1997,

(each event referred to in such clauses (i), (ii) and (iii) above being referred to as an "Arrearage Payment Event") the Board shall forthwith declare, and the Corporation shall pay, such dividends as are necessary to eliminate entirely such arrearages (the "Arrearages") to the maximum extent possible permitted by the amount of funds of the Corporation legally available therefor; dividends accruing thereafter shall be paid quarterly in cash on the first day of January, April, July, and October of each year commencing upon the occurrence of an Arrearage Payment Event. The payment of any dividend arrearage pursuant to this paragraph shall not affect in any way the accrual of dividends pursuant to this Section 2(a).

(b) Priority. Unless full dividends on the Preferred Stock for all past dividend periods and the then current dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart, (1) no dividend whatsoever other than a dividend payable solely in Common Stock shall be paid or declared, and no distribution shall be made, on any Common Stock, and (2) no shares of Common Stock shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for

a sinking fund for the purchase, redemption or acquisition thereof; provided, however, that this restriction shall not apply to (i) the payment of a dividend on the Common Stock in an amount not to exceed \$3,500,000 immediately subsequent to the First Closing as contemplated in the Purchase Agreement, (ii) the repurchase of shares of Common Stock in an amount not to exceed \$2,000,000 immediately subsequent to the Second Closing as contemplated in the Purchase Agreement or (iii) the repurchase of shares of Common Stock from directors or employees of or consultants or advisers to the Corporation or any Subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, including without limitation the termination of employment by or service to the Corporation or any Subsidiary.

Section 3. Liquidation Rights of Preferred.

(a) Preference. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its shareholders, whether such assets are capital, surplus, or earnings, before any payment or declaration and setting apart for payment of any amount shall be made in respect of the Common Stock, an amount equal to \$1.00 per share plus an amount equal to all accrued and unpaid dividends thereon, whether or not earned or declared, to and including the date full payment shall be tendered to the holders of the Preferred Stock with respect to such liquidation, dissolution or winding up, and no more. If upon any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed to the holders of the Preferred Stock shall be insufficient to permit the payment to such shareholders of the full preferential amounts aforesaid, then all of the assets of the Corporation shall be distributed ratably to the holders of the Preferred Stock on the basis of the number of shares of Preferred Stock held.

(b) Remaining Assets. If the assets of the Corporation available for distribution to the Corporation's shareholders exceed the aggregate amount payable to the holders of the Preferred Stock pursuant to Section 3(a) hereof, then after the payments required by Section 3(a) shall have been made or irrevocably set apart, such assets shall be distributed equally among the holders of the Preferred Stock (as if fully converted into Common Stock) and the holders of Common Stock on a per share basis.

(c) Reorganization. A consolidation or merger of the Corporation with or into any other corporation or corporations, other than with a wholly-owned Subsidiary of the Corporation, or sale, lease or transfer of all or substantially all of the assets of the Corporation, other than to a wholly-owned Subsidiary of the Corporation, shall be deemed a liquidation, dissolution, or winding up of the Corporation as those terms are used in Section 3(a); provided however, that upon the occurrence of any such event, if the assets available for distribution to the Corporation's shareholders exceed the aggregate amount payable to the holders of the

Preferred Stock pursuant to Section 3(a) hereof, such excess assets shall be distributed equally among the holders of Common Stock on a per share basis.

Section 4. Redemptions.

(a) Shareholder Optional Redemption. At any time on or after January 31, 1997, the holder or holders of a Majority of the shares of Preferred Stock then outstanding may require the Corporation to redeem all or any portion of the outstanding shares of such Preferred Stock held by such holder or holders at the Redemption Price by delivery of written notice to the Corporation (the "Shareholder Notice"). The Corporation will give prompt written notice of such election to the other holders of Preferred Stock (but in any event within 10 days after the receipt by the Corporation of the Shareholder Notice), and each such other holder of such Preferred Stock will have until twenty days after the receipt by the Corporation of the Shareholder Notice to request redemption (by written notice given to the Corporation) of all or any portion of such Preferred Stock owned by such holder. Upon receipt of such election, the Corporation will be obligated to redeem the number of shares of Preferred Stock specified therein at the Redemption Price in twelve equal quarterly installments, with the first such installment due within 60 days after the receipt by the Corporation of the Shareholder Notice and subsequent installments due every three months thereafter.

If the Corporation shall fail to discharge all or any part of any redemption obligation pursuant to this subsection (a) because insufficient funds are legally available therefor, the entire amount legally available for the payment of such obligation shall be used to redeem the shares of the holders of the Preferred Stock ratably in proportion to the full number of shares which they would otherwise be entitled to have redeemed, and the balance of such redemption obligation shall be discharged as soon as the Corporation shall have funds legally available to permit such redemption, at which time the Board shall promptly fix a date for such redemption and so notify the holders of such shares in writing.

(b) Price. The redemption price of the Preferred Stock (the "Redemption Price") shall be an amount per share equal to \$1.00 plus all accrued and unpaid dividends thereon, whether or not earned or declared, to and including the applicable Redemption Date (as hereinafter defined). Even though the Redemption Price and Conversion Price are both initially \$1.00, they have no connection with, or relationship to, one another.

(c) Redemption Notice. The Corporation shall, not less than 30 days nor more than 60 days prior to the date fixed for redemption ("Redemption Date"), mail written notice ("Redemption Notice"), postage prepaid, to each holder of shares of record of Preferred Stock to be redeemed at such holder's post office address last shown on the records of the Corporation. The Redemption Notice shall state:

(i) The total number of shares of Preferred Stock which the Corporation intends to redeem;

(ii) The number of shares of Preferred Stock held by the holder which the Corporation intends to redeem;

(iii) The Redemption Date and Redemption Price;

(iv) That the holder's right to convert the Preferred Stock will terminate on the Redemption Date; and

(v) The time, place and manner in which the holder is to surrender to the Corporation the certificate or certificates representing the shares of Preferred Stock to be redeemed.

(d) Surrender of Stock. On or before the Redemption Date, each holder of Preferred Stock to be redeemed, unless the holder has exercised his right to convert the shares as provided in Section 6 of this Article Four, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for 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 cancelled and retired. In the event less than all of the shares represented by such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(e) Dividends After Redemption Date. No shares of Preferred Stock are entitled to any dividends accruing after the date on which the Redemption Price for such shares of Preferred Stock is paid. On such date all rights of the holder or holders of such shares of Preferred Stock will cease, and such shares will not be deemed to be outstanding.

Section 5. Voting Rights.

(a) Preferred Stock. Each holder of shares of Preferred Stock shall be entitled to vote on all matters and, except as otherwise expressly provided herein, shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which all shares of Preferred Stock held by such holder could be converted, pursuant to the provisions of Section 6 of this Article Four, at the record date for the determination of the shareholders 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. This provision for determination of the number of votes to which each holder of Preferred Stock is entitled shall also apply in all cases in which the holders of shares of Preferred Stock have the right to vote separately as a class.

(b) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(c) Election of Majority of Directors. The foregoing notwithstanding, if one or more of the following events or conditions ("Conditions") shall have occurred and be continuing and if the holders of the Preferred Stock shall not have elected, by virtue of any voting rights of such holders as holders of Preferred Stock other than as set forth in this Section 5(c), a majority of the members of the Board as constituted at the time of the occurrence of any of the Conditions:

(i) the Corporation shall pay dividends on Common Stock or any other stock in violation of Section 2(b) of this Article Four;

(ii) the Corporation shall fail to pay dividends to any holder of any shares of Preferred Stock in violation of Section 2(a) of this Article Four;

(iii) the Corporation or any Subsidiary shall fail to make payment when due or within any applicable grace period with respect to any Indebtedness for Borrowed Money having an aggregate principal amount of at least \$100,000, unless such failure is being contested in good faith by the Corporation and for which an adequate reserve has been set aside, or the Corporation or such Subsidiary, as the case may be, shall have received waivers thereunder;

(iv) any event or condition shall exist which has the effect of accelerating or permitting anyone to accelerate the maturity of any Indebtedness referred to in the immediately preceding clause (iii), unless the Corporation or such Subsidiary, as the case may be, shall have received waivers thereunder;

(v) the Corporation or any Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(vi) an involuntary case or other proceeding shall be commenced against the Corporation or any Subsidiary seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 days; or an order for relief shall be

entered against the Corporation or any Subsidiary under the federal bankruptcy laws as now or hereafter in effect;

(vii) a final judgment or order for the payment of money in excess of \$100,000 shall be rendered against the Corporation or any Subsidiary and such judgment or order shall continue unsatisfied and unstayed for a period of 60 days or a bond has not been posted to cover the amount of such judgment; or

(viii) at any time after a Redemption Date any redemption obligation of the Corporation pursuant to Section 4(a) of this Article Four has not been discharged in full (whether or not the Corporation has sufficient legally available funds to discharge such obligation);

then, and in every such event, (x) the Corporation shall give within 10 days after the occurrence thereof written notice thereof to each holder of Preferred Stock; (y) if each and every such event shall not have been cured (a failure to give notice shall be deemed cured when such notice is given) within 30 days after the occurrence thereof, the number of directors constituting the Board shall thereupon be automatically increased by such number as will be necessary to constitute a majority of the total number of the members, after giving effect to such increase, of such Board, and the holders of the Preferred Stock shall have, in addition to the other voting rights provided herein, the exclusive and special right, voting separately as a combined class, to elect directors to fill such newly created directorships (and to fill any vacancy in such directorships until such time as the special voting rights provided by this Section 5(c) shall terminate as set forth below). The special voting right provided by this Section 5(c) shall continue until such time as each event giving rise to such special right shall have been cured or shall cease to exist or until all of the outstanding shares of Preferred Stock shall have been redeemed or converted into shares of Common Stock, subject, prior to such redemption or conversion, to revesting in the event of the occurrence of any of the foregoing events giving rise to such special right. At such time as the special voting right provided by this Section 5(c) terminates, the terms of the additional directors elected by the holders of Preferred Stock pursuant to this Section 5(c) shall terminate and the number of directors constituting the Board shall then be decreased to such number as constituted the whole Board immediately prior to the occurrence of the event giving rise to such special voting right. The special voting right provided in this Section 5(c) shall not preclude or affect the exercise of any other rights or remedies provided hereby or by agreement, by law or otherwise upon the occurrence of any event giving rise to such special right.

The directors to be elected (or if such directors have been previously elected and any vacancy shall exist, such vacancy to be filled) by the holders of Preferred Stock (voting as a class) shall be elected (or filled) at (i) annual meetings of the shareholders of the Corporation, or (ii) a special meeting of the holders of Preferred Stock for the purpose of electing such directors (or filling any such vacancy), to be called by the Secretary of the Corporation upon the written request of the holders of record of 10% or more of the number of shares of Preferred

Stock then outstanding; provided, however, that if the Secretary of the Corporation shall fail to call any such meeting within 10 days after any such request, such meeting may be called by any holder of Preferred Stock designated for that purpose by the holders of record of 10% or more of the number of shares of Preferred Stock then outstanding. At any meeting or at any adjournment thereof held for the purpose of electing directors at which the holders of shares of Preferred Stock shall have the special voting right provided by this Section 5(c), the presence, in person or by proxy, of the holders of the equivalent of a majority of the shares of Preferred Stock then outstanding shall be required to constitute a quorum for the election of any director by the holders of the Preferred Stock exercising such special right. The special right of holders of shares of Preferred Stock under this Section 5(c) may be exercised by the written consent of the holders of shares of Preferred Stock then outstanding in accordance with the law of the Corporation's jurisdiction of incorporation at such time. Except as hereinbefore provided, the directors elected by the holders of Preferred Stock shall serve until the next annual meeting of shareholders and until their successors shall have been elected and qualified.

(d) Vacancies. The foregoing notwithstanding, in the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Preferred Stock pursuant to Section 5(c) of this Article Four, the remaining director or directors so elected by the holders of the Preferred Stock may, by affirmative vote of a majority thereof (or the remaining director so elected if there is only one such director), elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of the Preferred Stock, or any director so elected as provided in the next preceding sentence hereof, shall be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a Majority of the Preferred Stock.

Section 6 Conversion.

The holders of Preferred Stock shall have the following conversion rights:

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holders thereof, at any time or from time to time and on or prior to the Redemption Date, into fully paid and nonassessable shares of Common Stock.

(b) Conversion Price. Each share of Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing \$1.00 by the Conversion Price per share in effect at the time of conversion. The initial Conversion Price per share shall be \$1.00. Such initial Conversion Price shall be subject to adjustment from time to time as provided below.

(i) Notwithstanding the foregoing paragraph or any other provision of this Article Four, in the event the purchase price of the Common Stock to be repurchased by the Corporation with the proceeds from the sale of the Preferred

Preferred Stock held by each such holder to the Corporation at its principal office. After the surrender of such certificate(s), the Corporation will deliver:

(1) upon the occurrence of the events described in subparagraph (i), a certificate or certificates representing the number of shares of Second Closing Preferred Stock held by each such holder and the shares of Second Closing Preferred Stock represented by such certificates will be designated as a new series of Preferred Stock;

(2) upon the occurrence of the events described in subparagraph (ii), a certificate or certificates representing the number of shares of Preferred Stock held by each such holder which were, as a consequence of such holder's failure to purchase its pro rata portion of securities to be acquired in the Second Closing, subject to an adjustment of the Conversion Price with respect to such shares of Preferred Stock as set forth in Section 6(b)(ii) of this Article Four, and the shares of Preferred Stock represented by such certificate(s) will be designated as a new series of Preferred Stock; and

(3) a certificate or certificates representing the number of shares of Preferred Stock held by each such holder which were not subject to any adjustment to the Conversion Price under this Section 6(b)(i) or Section 6(b)(ii) of this Article Four with respect to such shares of Preferred Stock, and the shares of Preferred Stock represented by such certificate(s) will be designated as a new series of Preferred Stock.

(iv) Each new series of Preferred Stock created pursuant to the provisions of this Section 6(b) will be designated as a series of the original Preferred Stock (i.e., each new series of Preferred Stock will be designated as Series A-1, Series A-2, and so on). All such series will be identical in all respects hereunder except for the different Conversion Prices for each such series determined pursuant to this Section 6(b), and will continue to be deemed to be such Preferred Stock which was originally designated hereunder.

(c) Mechanics of Conversion. Each holder of Preferred Stock who desires to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or Common Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Preferred Stock being converted. Thereupon the Corporation shall promptly issue and deliver at such office to

such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate representing the shares of Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. Each holder of Preferred Stock who converts any shares of Preferred Stock shall be entitled to, and the Corporation shall promptly pay in cash, all unpaid dividends with respect to such converted shares of Preferred Stock, which unpaid dividends have accrued subsequent to the first occurrence of an Arrearage Payment Event, whether or not earned or declared, to and including the time of conversion. Except as set forth in Section 12.2 of the Purchase Agreement, a holder of Preferred Stock who converts any shares of Preferred Stock shall not be entitled to any Remaining Arrearages with respect to the Preferred Stock so converted.

(d) Adjustment for Stock Splits and Combinations. If the Corporation at any time or from time to time after the Commitment Date effects a subdivision of the outstanding Common Stock, the Conversion Price then in effect immediately before the subdivision shall be proportionately decreased, and conversely, if the Corporation at any time or from time to time after the Commitment Date combines the outstanding shares of Common Stock into a smaller number of shares, the Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this subsection (d) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(e) Adjustment for Certain Dividends and Distributions. If the Corporation at any time or from time to time after the Commitment Date makes or issues, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this subsection (e) as of the time of actual payment of such dividends or distributions.

(f) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Commitment Date makes or issues, or fixes a record

date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation which they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 6 with respect to the rights of the holders of the Preferred Stock.

(g) Adjustments for Reclassification, Exchange and Substitution. In the event that at any time or from time to time after the Commitment Date, the Common Stock issuable upon the conversion of the Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets, provided for elsewhere in this Section 6), then and in any such event each holder of Preferred Stock shall have the right thereafter to convert such Preferred Stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change, by holders of the maximum number of shares of Common Stock into which such shares of Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein.

(h) Reorganizations, Mergers, Consolidations or Sales of Assets. Subject to Section 3 of this Article Four, if at any time or from time to time after the Commitment Date there is a capital reorganization of the Common Stock (other than a recapitalization, subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 6) or a merger or consolidation of the Corporation with or into another corporation, or the sale of all or substantially all of the Corporation's properties and assets to any other person, then, as a part of such reorganization, merger, consolidation or sale, provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Corporation, or of the successor corporation resulting from such merger or consolidation or sale, to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, merger, consolidation, or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 6 with respect to the rights of the holders of the Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this Section 6 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent as may be practicable.

(i) Sale of Shares Below Conversion Price.

(1) Subject to the provisions of subsection (i)(2) below, if at any time or from time to time after the Commitment Date, the Corporation issues or sells, or is deemed by the express provisions of this subsection (i) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), other than as a dividend or other distribution on any class of stock as provided in subsection (e) above and other than upon a subdivision or combination of shares of Common Stock as provided in subsection (d) above, for an Effective Price (as hereinafter defined) less than the then existing Conversion Price for any series of Preferred Stock, then and in each such case the then existing Conversion Price of such series shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying that Conversion Price by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock outstanding at the close of business on the day next preceding the date of such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (or by the express provisions hereof deemed to have been received) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date of such issue after giving effect to such issue of Additional Shares of Common Stock.

For the purpose of the calculation described in this subsection (i), the number of shares of Common Stock outstanding shall include (A) the number of shares of Common Stock into which the then outstanding shares of Preferred Stock could be fully converted on the date next preceding the issue or sale of Additional Shares of Common Stock and (B) the number of shares of Common Stock which could be obtained through the conversion of all Convertible Securities (as hereinafter defined) which were convertible on the day next preceding the issue or sale of Additional Shares of Common Stock.

(2) For the purpose of making any adjustment required under this subsection (i), the consideration received by the Corporation for any issue or sale of securities shall (A) to the extent it consists of cash be computed at the net amount of cash received by the Corporation after deduction of any expenses payable by the Corporation and any underwriting or similar commissions, compensation, or concessions paid or allowed by the Corporation in connection with such issue or sale, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as reasonably determined in good faith by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities (as hereinafter defined) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold

together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(3) For the purpose of the adjustment required under this subsection (i), if the Corporation issues or sells any rights or options for the purchase of, or stock or other securities convertible or exchangeable, with or without consideration, into or for, Additional Shares of Common Stock (such convertible or exchangeable stock or securities being hereinafter referred to as "Convertible Securities") and if the Effective Price of such Additional Shares of Common Stock is less than the Conversion Price then in effect, then in each case the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise, conversion or exchange thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof. No further adjustment of the Conversion Price, adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion or exchange of any such Convertible Securities.

If any such rights or options or the conversion or exchange privilege represented by any such Convertible Securities shall expire without having been exercised, the Conversion Price adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion or exchange of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted or exchanged,

plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities.

(4) For the purpose of the adjustment required under this subsection (i), if the Corporation issues or sells any rights or options for the purchase of Convertible Securities and if the Effective Price of the Additional Shares of Common Stock underlying such Convertible Securities is less than the Conversion Price then in effect, then in each such case the Corporation shall be deemed to have issued at the time of the issuance of such rights or options the maximum number of Additional Shares of Common Stock issuable upon conversion or exchange of the total amount of Convertible Securities covered by such rights or options and to have received as consideration for the issuance of such Additional Shares of Common Stock an amount equal to the amount of consideration, if any, received by the Corporation for the issuance of such rights or options, plus the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options and plus the minimum amount of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange of such Convertible Securities. No further adjustment of the Conversion Price, adjusted upon the issuance of such rights or options, shall be made as a result of the actual issuance of the Convertible Securities upon the exercise of such rights or options or upon the actual issuance of Additional Shares of Common Stock upon the conversion or exchange of such Convertible Securities. The provisions of paragraph (3) above for the readjustment of the Conversion Price upon the expiration of rights or options or the rights of conversion or exchange of Convertible Securities shall apply mutatis mutandis to the rights, options and Convertible Securities referred to in this paragraph (4).

(5) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation after the Commitment Date, whether or not subsequently reacquired or retired by the Corporation, other than (i) shares of Common Stock issued upon conversion of the Preferred Stock (including any Preferred Stock issued after the Commitment Date pursuant to the Purchase Agreement) and (ii) shares of Common Stock issued to management, directors or employees of, or consultants to, the Corporation pursuant to Approved Plans. For purposes of the definition of "Additional Shares of Common Stock", the sale or other disposition of any Common Stock of the Corporation after the Commitment Date theretofore held in its treasury shall be deemed to be an issuance thereof.

The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of

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Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under this subsection (i), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this subsection (i), for such Additional Shares of Common Stock.

(j) Accountants' Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price or the number of shares of Common Stock or other securities issuable upon conversion of the Preferred Stock, the Corporation, at its expense, shall cause independent public accountants of recognized standing selected by the Corporation (who may be the independent public accountants then auditing the financial statements of the Corporation) to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of the Preferred Stock at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (1) the consideration received or deemed to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (2) the Conversion Price at the time in effect, (3) the number of Additional Shares of Common Stock and (4) the type and amount, if any, of other property which at the time would be received upon conversion of the Preferred Stock.

(k) Notices of Record Date. In the event of (i) any taking by the Corporation of record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, or any transfer of all or substantially all of the assets of the Corporation to any other Person or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Preferred Stock at least thirty (30) days prior to the record date specified therein, a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (3) the date, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up.

(l) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock based on the then effective Conversion Price immediately upon the closing of the Initial Public Offering, and the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the

of notice so given by cable, telegram, facsimile transmission, telex or personal delivery, on the date of actual transmission or, as the case may be, personal delivery.

(p) Payment of Taxes. The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Preferred Stock, including without limitation any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered.

(q) No Dilution or Impairment. The Corporation shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against dilution or other impairment.

(r) Rounding of Calculations; Minimum Adjustment. All calculations under this Section 6 shall be made to the nearest one thousandth (1/1,000th) cent or to the nearest one thousandth (1/1,000th) of a share, as the case may be. Any provision of this Section 6 to the contrary notwithstanding, no adjustment in the Conversion Price shall be made if the amount of such adjustment would be less than \$0.001, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any such subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.001 or more.

Section 7. Restrictions and Limitations.

(a) So long as at least 600,000 shares of Preferred Stock remain outstanding (as appropriately adjusted for any stock dividends payable in shares of Preferred Stock and combinations, subdivisions and split-ups of the shares of Preferred Stock), the Corporation shall not, and shall not permit any Subsidiary to, without the vote or written consent by the holders of a Majority of the Preferred Stock:

(1) Redeem, purchase or otherwise acquire for value, any share or shares of Preferred Stock otherwise than by redemption in accordance with Section 4 or Section 10 of this Article Four;

(2) Purchase, redeem or otherwise acquire for value (or pay into or set aside as a sinking fund for such purpose) any of the Common Stock; provided, however, that this restriction shall not apply to (i) the shares of Common Stock to be purchased by the Corporation pursuant to the Purchase Agreement, or (ii)

the repurchase of shares of Common Stock from directors or employees of or consultants or advisers to the Corporation or any Subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, including the termination of employment by or service to the Corporation or any Subsidiary;

(3) Authorize or issue, or obligate itself to issue, any other Equity Security senior to or on a parity with the Preferred Stock as to dividend or redemption rights, liquidation preferences, conversion rights, voting rights or otherwise;

(4) Declare or pay any dividends on or declare or make any other distribution, direct or indirect (other than a dividend payable solely in shares of Common Stock), on account of the Common Stock or set apart any sum for any such purpose; provided however, that nothing herein shall prevent the Corporation from (i) purchasing shares of its Common Stock pursuant to the Purchase Agreement, or (ii) paying a dividend on the Common Stock in an amount not to exceed \$3,500,000 immediately subsequent to the First Closing as contemplated in the Purchase Agreement;

(5) Increase or decrease (other than by redemption or conversion) the total number of authorized shares of Preferred Stock;

(6) Enter any agreement, contract or understanding or otherwise incur any obligation which by its terms would violate, be in conflict with, restrict or burden the rights of the holders of Preferred Stock hereunder or the Corporation's performance of the terms of its Articles of Incorporation;

(7) Acquire any business (as determined in accordance with Rule 11-01(d) of Regulation S-X promulgated by the Securities and Exchange Commission as in effect and interpreted by said Commission on the Commitment Date) by purchase, lease, assignment or other transfer or conveyance of assets, property or securities or by merger, consolidation or form of business combination or otherwise, or enter into a joint venture or partnership with any other entity, or, unless the obligations of the Corporation under an agreement are expressly conditioned upon the requisite approval of the holders of a Majority of the Preferred Stock as provided for herein, make any agreement or become obligated to do so;

(8) Effect any sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets of the Corporation or any of its Significant Subsidiaries, or any consolidation or merger involving the Corporation or any of its Significant Subsidiaries, or any reclassification or other change of any stock,

or any recapitalization, or any dissolution, liquidation, or winding up of the Corporation or, unless the obligations of the Corporation under an agreement are expressly conditioned upon the requisite approval of the holders of a Majority of the Preferred Stock as provided for herein, make any agreement or become obligated to do so; or

(9) Permit any Subsidiary to issue or sell, or obligate itself to issue or sell, except to the Corporation or any wholly-owned Subsidiary, any stock of such Subsidiary.

(b) So long as at least 600,000 shares of Preferred Stock remain outstanding (as appropriately adjusted for any stock dividends payable in shares of Preferred Stock and combinations, subdivisions and split-ups of the shares of Preferred Stock), the Corporation shall not amend its Articles of Incorporation or By-Laws without the approval, by vote or written consent, of the holders of a Majority of the Preferred Stock except that any amendment which changes the initial Conversion Price from \$1.00 (exclusive of any amendment relating to any provision hereof providing for an adjustment to such initial Conversion Price) shall require the approval, by vote or written consent, of 80% or more of the Preferred Stock. Notwithstanding any provisions contained in the Corporation's Articles of Incorporation, the provisions of this Section 7(b) may not be amended without the vote or written consent of the holders of 80% or more of the Preferred Stock.

(c) So long as any shares of Preferred Stock are outstanding, the Corporation shall not increase the number of outstanding shares of Preferred Stock by means of a stock dividend payable in shares of Preferred Stock or by a subdivision or split-up of the shares of Preferred Stock. Notwithstanding any provisions contained in the Corporation's Articles of Incorporation, the provisions of this Section 7(c) may not be amended without the vote or written consent of the holders of a Majority of the Preferred Stock.

Section 8. No Reissuance of Preferred Stock.

No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

Section 9. Rights of First Refusal.

(a) Each holder of Preferred Stock and each Executive Shareholder (as defined in the Shareholders Agreement) (so long as he continues to be employed by the Corporation) shall, together, have the right of first refusal to purchase, pro rata, all (or any part of) New Securities that the Corporation may, from time to time, propose to sell and issue after the first date of issuance of the Preferred Stock. Each such holder's pro rata share of New Securities, for the

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purposes of this right of first refusal, is the ratio of the number of shares of Common Stock held by such holder at the time the New Securities are offered (treating the Preferred Stock as if it were fully converted) to the total number of shares of Common Stock held by all holders thereof having a right of first refusal under this Section 9 (treating the Preferred Stock as if it were fully converted).

(b) If the Corporation proposes to undertake an issuance of New Securities, it shall give each holder of Preferred Stock and each Executive Shareholder having a right of first refusal under this Section 9 written notice of its intention, describing the type of New Securities, the price, and the general terms and conditions upon which the Corporation proposes to issue the same. Each such holder shall have 20 days from the giving of such notice to agree to purchase its pro rata share of New Securities for the price and upon the terms and conditions specified in the notice by giving written notice to the Corporation and stating therein the quantity of New Securities to be purchased. The Corporation shall give each holder of Preferred Stock and each Executive Shareholder having a right of first refusal under this Section 9 written notice on the date following such 20 day period as to any New Securities with respect to which holders having a right of first refusal under this Section 9 have not exercised their right of first refusal. Each such holder shall have a right of over allotment such that if any holder having a right of first refusal under this Section 9 fails to exercise its rights hereunder to purchase its pro rata portion of the New Securities, the other such holders may purchase the nonpurchasing holder's portion on a pro rata basis, by agreeing in writing to purchase such New Securities within 10 days after the end of such first 20 day period.

(c) If the holders of Preferred Stock and the Executive Shareholders fail to exercise in full such rights within such 30 days, the Corporation shall have 120 days thereafter to sell the New Securities in respect of which such holders' rights were not exercised, at a price and upon general terms and conditions no more favorable to the purchasers thereof than specified in the Corporation's notice to the holders pursuant to Section 9(b) of this Article Four. If the Corporation has not sold the New Securities within such 120 days, the Corporation shall not thereafter issue or sell any New Securities, without first offering such securities to the holders of Preferred Stock and the Executive Shareholders in the manner provided above.

(d) The rights of first refusal established by this Section 9 shall terminate upon the closing of, and shall not be applicable to, the Initial Public Offering.

(e) A holder of Preferred Stock shall not be entitled to exercise any right of first refusal pursuant to this Section 9 unless (i) such holder acquired shares of Preferred Stock from the Corporation upon the original issuance thereof, (ii) such holder is a partner in or an Affiliate of a Person who acquired shares of Preferred Stock from the Corporation upon the original issuance thereof, or (iii) if such holder did not acquire shares of Preferred Stock from the Corporation upon the original issuance thereof, such holder is an immediate or remote transferee of a Person who acquired shares of Preferred Stock from the Corporation upon the original issuance thereof and such holder holds, immediately after such transfer, a number of shares of

Preferred Stock not less than the greater of (i) 50% of the number of shares of Preferred Stock purchased by such Person and (ii) 5% of the total shares of Preferred Stock sold under the Purchase Agreement.

Section 10. Events of Noncompliance.

(a) Definition. An Event of Noncompliance will be deemed to have occurred if:

(i) the Corporation fails to pay, when payment shall be required pursuant hereto, the full amount of dividends accrued on the Preferred Stock, including, without limitation, (i) the payment on the occurrence of an Arrearage Payment Event of the dividends which are accrued and unpaid as of the date of the first occurrence of an Arrearage Payment Event and (ii) subsequent to the occurrence of an Arrearage Payment Event, the payment of current quarterly dividends on the Preferred Stock, whether or not such payment is legally permissible; provided that such failure to pay shall constitute an Event of Noncompliance so long as the designees of the holders of Preferred Stock constitute a majority of the Board only if the failure is attributable solely to the fact that the Corporation does not have sufficient funds legally available to make such payment;

(ii) the Corporation fails to make any redemption payment with respect to the Preferred Stock which it is obligated to make hereunder, whether or not such payment is legally permissible; provided that such failure to pay shall constitute an Event of Noncompliance so long as the designees of the holders of Preferred Stock constitute a majority of the Board only if the failure is attributable solely to the fact that the Corporation does not have sufficient funds legally available to make such payment;

(iii) the Corporation breaches or otherwise fails to perform or observe any other covenant or agreement set forth herein or in the Purchase Agreement; provided that such breach or failure to perform shall not constitute an Event of Noncompliance so long as the designees of the holders of Preferred Stock constitute a majority of the Board if (a) the Board is responsible for such breach or failure or (b) the Board is in a position to prevent such breach or failure and it fails to take action to do so;

(iv) any representation or warranty contained in the Purchase Agreement or required to be furnished to any holder of Preferred Stock pursuant to the Purchase Agreement, or any information contained in writing furnished by the Corporation or any Subsidiary to any holder of Preferred Stock, is false or misleading on the date made or furnished; or

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adjustment pursuant to this subparagraph (b)(ii)) by 5% of what the Conversion Price would have been immediately prior to any adjustment made pursuant to this subparagraph (b)(ii); provided, however, that in no event shall there be more than four adjustments to the Conversion Price as a result of an Event of Noncompliance resulting from any particular false or misleading representation, warranty or information of the type described in Section 10(a)(iv) of this Article Four; and, provided further, that no reductions in the Conversion Price resulting from any particular Event of Noncompliance of the type described in Section 10(a)(iv) of this Article Four shall occur unless holders of a Majority of the Preferred Stock notify the Corporation of such Event of Noncompliance within the earlier to occur of (i) one year after becoming aware of such Event of Noncompliance and (ii) three years after the representation, warranty or information which forms the basis of such Event of Noncompliance was made or furnished. In no event will any Conversion Price adjustment be rescinded.

For example, assume that the Conversion Price of the Preferred Stock is \$1.00. If Events of Noncompliance are in existence for an aggregate of 90 days (whether or not such days are successive), the Conversion Price would be reduced immediately by 5% of \$1.00, or \$.05, for a new Conversion Price of \$.95. If Events of Noncompliance exist for an additional 90 days (whether or not such days are successive), the existing Conversion Price would be reduced by 5% of what the Conversion Price would have been if there had been no previous adjustment pursuant to this subparagraph (i.e., \$1.00), or \$.05, for a new Conversion Price of \$.90. Then assume that there is a two-for-one stock split, in which case the Conversion Price would be decreased pursuant to Section 6(d) of this Article Four from \$.90 to \$.45 and assume that Events of Noncompliance exist for an additional 90 days. In this case, the Conversion Price would be reduced by 5% of what the Conversion Price would have been immediately prior to such adjustment if there had been no previous adjustments pursuant to this subparagraph (i.e. \$.50), or \$.025, for a new Conversion Price of \$.425.

(iii) If any Event of Noncompliance exists, each holder of Preferred Stock will also have any other rights which such holder may have been afforded under any contract or agreement at any time and any other rights which such holder may have pursuant to applicable law.

Section 11. Waivers. With the written consent of a Majority of the Preferred Stock, the obligations of the Corporation and the rights of the holders of the Preferred Stock under Section 10 of this Article Four may be waived (either generally or in a particular instance, either retroactively or prospectively and either for a specified period of time or indefinitely). Upon the effectuation of each such waiver, the Corporation shall promptly give written notice thereof to the holders of Preferred Stock who have not previously consented thereto in writing."

ARTICLE FIVE

Shareholders of the Corporation will not have the right of cumulative voting for the election of directors or for any other purpose.

ARTICLE SIX

The street address of the Corporation's registered office is 888 South Greenville Avenue, Suite 300, Richardson, Texas 75081, and the name of the Corporation's registered agent at such address is Gerald R. Szczepanski.

ARTICLE SEVEN

The number of directors will be determined in accordance with the Bylaws of the Corporation.

ARTICLE EIGHT

To the fullest extent permitted by the Texas Miscellaneous Corporation Laws Act, as the same exists or may hereafter be amended, 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.

Any repeal or modification of this Article Eight shall not increase the personal liability of any director of the Corporation for any act or occurrence taking place before such repeal or modification, or otherwise adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification. The provisions of this Article Eight shall not be deemed to limit or preclude indemnification of a director by the Corporation for any liability of a director which has not been eliminated by the provisions of this Article Eight.

ARTICLE NINE

The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral 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 (whether or not by or in the right of the Corporation), by reason of the fact that he is or was a director, officer, employee or agent of the Corporation or 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 corporation, partnership, joint venture, sole proprietorship, trust, nonprofit entity, employee benefit plan or other enterprise, against all judgments, penalties (including excise and similar taxes), fines, settlements and reasonable expenses (including

ARTICLE FIVE

Shareholders of the Corporation will not have the right of cumulative voting for the election of directors or for any other purpose.

ARTICLE SIX

The street address of the Corporation's registered office is 888 South Greenville Avenue, Suite 300, Richardson, Texas 75081, and the name of the Corporation's registered agent at such address is Gerald R. Szczepanski.

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The number of directors will be determined in accordance with the Bylaws of the Corporation.

ARTICLE EIGHT

To the fullest extent permitted by the Texas Miscellaneous Corporation Laws Act, as the same exists or may hereafter be amended, 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.

Any repeal or modification of this Article Eight shall not increase the personal liability of any director of the Corporation for any act or occurrence taking place before such repeal or modification, or otherwise adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification. The provisions of this Article Eight shall not be deemed to limit or preclude indemnification of a director by the Corporation for any liability of a director which has not been eliminated by the provisions of this Article Eight.

ARTICLE NINE

The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral 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 (whether or not by or in the right of the Corporation), by reason of the fact that he is or was a director, officer, employee or agent of the Corporation or 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 corporation, partnership, joint venture, sole proprietorship, trust, nonprofit entity, employee benefit plan or other enterprise, against all judgments, penalties (including excise and similar taxes), fines, settlements and reasonable expenses (including

attorneys' fees and expenses and court costs) actually and reasonably incurred by him in connection with such action, suit or proceeding to the fullest extent permitted by any applicable law, and such indemnity shall inure to the benefit of the heirs, executors and administrators of any such person so indemnified pursuant to this Article Nine. The right to indemnification under this Article Nine shall be a contract right and shall not be deemed exclusive of any other right to which those seeking indemnification may be entitled under any law, bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Any repeal or amendment of this Article Nine by the shareholders of the Corporation or by changes in applicable law shall, to the extent permitted by applicable law, be prospective only, and shall not adversely affect any right of any person to indemnification and advancement of expenses existing at the time of such repeal or amendment.

ARTICLE TEN

Any action which would otherwise be taken at any annual or special meeting of shareholders may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent will be given to those shareholders who did not consent in writing to the action.

ARTICLE ELEVEN

Subject to the provisions of Article Four, no shareholder of the Corporation will, solely by reason of his holding shares of any class, have any preemptive or preferential right to purchase or subscribe for any shares of the Corporation, now or hereafter to be authorized, or any notes, debentures, bonds or other securities convertible into or carrying warrants, rights or options to purchase shares of any class, now or hereafter to be authorized, whether or not the issuance of any such shares or such notes, debentures, bonds or other securities would adversely affect the dividend, voting or any other rights of such shareholder. Subject to the provisions of Article Four, the Board of Directors may authorize the issuance of, and the Corporation may issue, shares of any class of the Corporation, or any notes, debentures, bonds or other securities convertible into or carrying warrants, rights or options to purchase any such shares, without offering any shares of any class to the existing holders of any class of stock of the Corporation.

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ARTICLE THIRTEEN

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EXECUTED as of the 29th day of January, 1992.

TITAN ENTERPRISES, INC.

By Gerald R. Szczepanski
Gerald R. Szczepanski, President

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STATEMENT OF CHANGE OF REGISTERED OFFICE BY
TITAN ENTERPRISES, INC.

FILED
In the Office of the
Secretary of State of Texas

NOV 13 1992

1. The name of the corporation is Titan Enterprises, Inc. The corporation's charter number is 637293.
2. The address of the CURRENT registered office as shown in the records of the Texas secretary of state is:

888 South Greenville Avenue, Suite 300
Richardson, Texas 75081
3. The address of the NEW registered office is:

4801 Spring Valley, Suite 102B
~~Carrollton, Texas 75006~~
DALLAS, TEXAS 75234
4. The name of the CURRENT registered agent as shown in the records of the Texas secretary of state is Gerald R. Szczepanski.
5. The registered agent will not change.
6. Following the changes shown above, the address of the registered office and the address of the office of the registered agent will continue to be identical, as required by law.
7. The changes shown above were authorized by an officer of the corporation so authorized by the board of directors.

Dated this 13th day of November, 1992.

Marty R. Starnitz
An Authorized Officer

ARTICLES OF AMENDMENT
TO THE
ARTICLES OF INCORPORATION
OF
TITAN ENTERPRISES, INC.

FILED
In the Office of the
Secretary of State of Texas

NOV 13 1992
Corporations Section

Pursuant to the provisions of Article 4.04 of the Texas Business Corporation Act, the undersigned corporation adopts the following articles of amendment to its articles of incorporation:

ARTICLE ONE

The name of the corporation is Titan Enterprises, Inc.

ARTICLE TWO

The following amendment to the articles of incorporation was adopted by the shareholders of the corporation on November 12, 1992. The amendment amends Article One of the Restated Articles of Incorporation dated January 30, 1992 and the full text of Article One as amended is as follows:

ARTICLE ONE. The name of the Corporation is Gadzooks, Inc.

ARTICLE THREE

The number of shares of the corporation outstanding at the time of such adoption was 10,5000,000; and the number of shares entitled to vote thereon was 10,500,000.

ARTICLE FOUR

The shareholders holding 7,912,370 of the outstanding shares of the corporation, such number of shares representing not less than the minimum number of votes required to amend the Articles of Incorporation, have signed a consent in writing pursuant to Article 9.10(A) of the Texas Business Corporation Act adopting said amendment and the written notice required by Article 9.10(A) of the Texas Business Corporation Act has been given.

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**STATEMENT OF CHANGE OF REGISTERED OFFICE BY
GADZOOKS, INC.**

FILED
In the Office of the
Secretary of State of Texas

DEC 23 1992

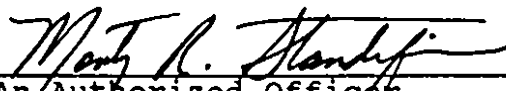
Corporations Section

1. The name of the corporation is Gadzooks, Inc. corporation's charter number is 637293.
2. The address of the CURRENT registered office as shown in the records of the Texas secretary of state is:

4801 Spring Valley, Suite 108B
Dallas, Texas 75234
3. The address of the NEW registered office is:

4801 Spring Valley, Suite 108B
Dallas, Texas 75244
4. The name of the CURRENT registered agent as shown in the records of the Texas secretary of state is Gerald R. Szczepanski.
5. The registered agent will not change.
6. Following the changes shown above, the address of the registered office and the address of the office of the registered agent will continue to be identical, as required by law.
7. The changes shown above were authorized by an officer of the corporation so authorized by the board of directors.

Dated this 21st day of December, 1992.


An/Authorized Officer

FILED
In the Office of the
Secretary of State of Texas

ARTICLES OF MERGER OF
GADZOOKS, INC. OF LOUISIANA AND
GADZOOKS, INC. OF TENNESSEE
WITH AND INTO GADZOOKS, INC.

DEC 31 1992

Corporations Section

Pursuant to the provisions of Article 5.16 of the Texas Business Corporation Act, Gadzooks, Inc., a Texas corporation, adopts the following Articles of Merger:

ARTICLE I

The name of the parent corporation is Gadzooks, Inc.

The names of the two subsidiaries which are hereby merged with and into the parent corporation are Gadzooks, Inc. of Louisiana and Gadzooks, Inc. of Tennessee.

ARTICLE II

Each of the corporations listed above is organized under the laws of the State of Texas.

ARTICLE III

The outstanding capital stock of Gadzooks, Inc. of Louisiana consists of 1,081 shares of Common Stock, par value \$1.00 per share, all of which are owned by Gadzooks, Inc.

The outstanding capital stock of Gadzooks, Inc. of Tennessee consists of 1,081 shares of Common Stock, par value \$1.00 per share, all of which are owned by Gadzooks, Inc.

ARTICLE IV

On December 28, 1992 the Board of Directors of Gadzooks, Inc. executed a Unanimous Consent in Lieu of Meeting approving the merger of Gadzooks, Inc. of Louisiana and Gadzooks, Inc. of Tennessee with and into Gadzooks, Inc. pursuant to Article 5.16 of the Texas Business Corporation Act (the "Merger"). A copy of the Unanimous Consent in Lieu of Meeting is attached hereto as Exhibit A.

ARTICLE V

The effective time and date of the Merger is 11:59 p.m. December 31, 1992.

Dated: December 28, 1992

GADZOOKS, INC.

By: Marty R. Standiford
Its: Vice President - Treasurer & Chief Financial Officer

CONSENT IN LIEU OF MEETING
OF THE BOARD OF DIRECTORS OF
GADZOOKS, INC.

The undersigned, being all of the members of the board of directors (the "Board of Directors") of GADZOOKS, INC., a Texas corporation (the "Company"), do hereby consent that when all of us shall have signed this Consent, or identical counterparts thereof, the following resolutions shall then be deemed to be adopted, to the same extent and to have the same force and effect as if adopted by an unanimous vote at a formal meeting of the Board of Directors duly called and held for the purpose of acting upon the proposal to adopt the resolutions, all in accordance with Article 9.10(B) of the Texas Business Corporation Act:

WHEREAS, the Board of Directors deems it to be in the Company's best interest to merge (i) Gadzooks, Inc. of Louisiana, a Texas corporation and a wholly-owned subsidiary of the Company and (ii) Gadzooks, Inc. of Tennessee, a Texas corporation and a wholly-owned subsidiary of the Company with and into the Company pursuant to Article 5.16 of the Texas Business Corporation Act (the "Merger"); and

WHEREAS, in connection with the Merger, articles of merger in the form attached hereto as Exhibit A (the "Articles of Merger") have been prepared;

RESOLVED, that the form of Articles of Merger, as heretofore presented to all of the members of the Board of Directors, be and hereby is approved; and

FURTHER RESOLVED, that the officers of the Company be, and each hereby is authorized, empowered and directed in the name of and on behalf of the Company to execute, deliver and perform the Articles of Merger in order to effect the Merger; and

FURTHER RESOLVED, that the officers be, and each hereby is authorized, empowered and directed in the name of and on behalf of the Company to cause the Articles of Merger to be

filed with the Secretary of State and to do such other acts and things as the officer so acting shall deem to be necessary or desirable in the consummation of the transactions herein contemplated; and

FURTHER RESOLVED, that the Secretary and any other officer of the Company are authorized and directed to certify and furnish copies as may be necessary of this and the foregoing resolutions and statements as to the incumbency of the corporate offices of the Company and under the corporate seal, if requested, and any person receiving such a certified copy or statement is and shall be authorized to rely upon the contents thereof; and

FURTHER RESOLVED, that the officers of the Company be, and each hereby is authorized, empowered and directed to take or cause to be taken all such further action and to sign, execute, acknowledge, certify, deliver, accept, record and file all such further instruments in the name and on behalf of the Company as in his or her judgment shall be necessary, desirable or advisable in order to carry out the intent of and to accomplish the purposes of the foregoing resolutions.

This Consent may be executed in one or more counterparts, each of which shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the undersigned have set their hands to be effective the ____ day of December, 1992.

Alan Crites

Craig Foley

G. Michael Machens

2 1 512 476 3866

SENT BY: AUSTIN, TEXAS

:12-30-92 : 3:56PM : AKIN GUMP HALER FELD-

5124820228:# 4/ 7


Gerald R. Szczepanski


Lawrence H. Titus, Jr.

SENT BY: AUSTIN, TEXAS

12-30-92 3:56PM JAKIN GUMP HAUER FELD-

5124820228:# 6/ 7

filed with the Secretary of State and to do such other acts and things as the officer so acting shall deem to be necessary or desirable in the consummation of the transactions herein contemplated; and

FURTHER RESOLVED, that the Secretary and any other officer of the Company are authorized and directed to certify and furnish copies as may be necessary of this and the foregoing resolutions and statements as to the incumbency of the corporate offices of the Company and under the corporate seal, if requested, and any person receiving such a certified copy or statement is and shall be authorized to rely upon the contents thereof; and

FURTHER RESOLVED, that the officers of the Company be, and each hereby is authorized, empowered and directed to take or cause to be taken all such further action and to sign, execute, acknowledge, certify, deliver, accept, record and file all such further instruments in the name and on behalf of the Company as in his or her judgment shall be necessary, desirable or advisable in order to carry out the intent of and to accomplish the purposes of the foregoing resolutions.

This Consent may be executed in one or more counterparts, each of which shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the undersigned have set their hands to be effective the 13th day of December, 1992.

Alan Crites

Craig Foley

G. Michael Machans

filed with the Secretary of State and to do such other acts and things as the officer so acting shall deem to be necessary or desirable in the consummation of the transactions herein contemplated; and

FURTHER RESOLVED, that the Secretary and any other officer of the Company are authorized and directed to certify and furnish copies as may be necessary of this and the foregoing resolutions and statements as to the incumbency of the corporate offices of the Company and under the corporate seal, if requested, and any person receiving such a certified copy or statement is and shall be authorized to rely upon the contents thereof; and

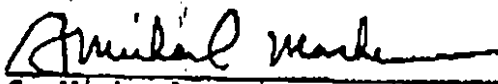
FURTHER RESOLVED, that the officers of the Company be, and each hereby is authorized, empowered and directed to take or cause to be taken all such further action and to sign, execute, acknowledge, certify, deliver, accept, record and file all such further instruments in the name and on behalf of the Company as in his or her judgment shall be necessary, desirable or advisable in order to carry out the intent of and to accomplish the purposes of the foregoing resolutions.

This Consent may be executed in one or more counterparts, each of which shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the undersigned have set their hands to be effective the ____ day of December, 1992.

Alan Crites

Craig Foley



G. Michael Machens



TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

JOHN SHARP • COMPTROLLER • AUSTIN, TEXAS 78774

WS2H17

CERTIFICATION OF ACCOUNT STATUS

THE STATE OF TEXAS I

COUNTY OF TRAVIS I

I, John Sharp, Comptroller of Public Accounts of the State of Texas, DO HEREBY CERTIFY

that according to the records of this office

GADZOOKS INC OF LOUISIANA

is, as of this date, in good standing with this office for the purpose of merger, withdrawal of an out-of-state corporation or dissolution under Article 6.01 of the Texas Business Corporation Act having filed the required franchise tax reports and having paid the franchise tax computed to be due thereunder through DECEMBER 31, 1992

This certificate is not valid for the purpose of dissolution under Article 6.06 of the Texas Business Corporation Act or withdrawal of a limited liability company.

GIVEN UNDER MY HAND AND
SEAL OF OFFICE in the City of
Austin, this 29TH day of
 , 19 92 A.D.
DECEMBER

A handwritten signature in cursive script, reading "John Sharp", is written over the printed name and title.

JOHN SHARP
Comptroller of Public Accounts



TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

JOHN SHARP • COMPTROLLER • AUSTIN, TEXAS 78774

SWS2H17

CERTIFICATION OF ACCOUNT STATUS

THE STATE OF TEXAS I

COUNTY OF TRAVIS I

I, John Sharp, Comptroller of Public Accounts of the State of Texas, DO HEREBY CERTIFY

that according to the records of this office

GADZOOKS INC OF TENNESSEE

is, as of this date, in good standing with this office for the purpose of merger, withdrawal of an out-of-state corporation or dissolution under Article 6.01 of the Texas Business Corporation Act having filed the required franchise tax reports and having paid the franchise tax computed to be due thereunder through DECEMBER 31, 1992

This certificate is not valid for the purpose of dissolution under Article 6.06 of the Texas Business Corporation Act or withdrawal of a limited liability company.

GIVEN UNDER MY HAND AND
SEAL OF OFFICE in the City of
Austin, this 29TH day of
DECEMBER , 19 92 A.D.

A handwritten signature in cursive script, reading "John Sharp", is written over the printed name and title.

JOHN SHARP
Comptroller of Public Accounts

**RESTATED ARTICLES OF INCORPORATION
WITH AMENDMENTS
OF
GADZOOKS, INC.**

FILED
In the Office of the
Secretary of State of Texas

MAY 26 1994

Corporations Section

ARTICLE ONE

Gadzooks, Inc. (the "Corporation"), pursuant to the provisions of Article 4.07 of the Texas Business Corporation Act, hereby adopts the attached Restated Articles of Incorporation that accurately copy the Corporation's Restated Articles of Incorporation and all amendments thereto that are in effect to date and as further amended by these Articles of Amendment to the Articles of Incorporation ("these Articles") as hereinafter set forth and which contain no other change in any provision thereof.

ARTICLE TWO

The Articles of Incorporation of the Corporation are hereby amended by these Articles as follows:

ARTICLE FOUR is amended and restated as set forth in the attached Restated Articles of Incorporation to increase the number of authorized shares of capital stock, to authorize the issuance of a new class of preferred stock, to specify the dividend, voting, liquidation, redemption, conversion, first refusal and other rights of the shareholders, to state restrictions on the Corporation when specified amounts of preferred stock are outstanding, and to state the consequences of noncompliance with these restrictions.

ARTICLE THREE

Each such amendment made by these Articles has been effected in conformity with the provisions of the Texas Business Corporation Act and such Restated Articles of Incorporation and each such amendment made by these Articles were duly adopted by the shareholders of the Corporation on the 24th day of May, 1994. The number of shares of capital stock of the Corporation outstanding at the time these Articles were adopted was 3,166,667 shares of Common Stock, 6,000,000 shares of Class A Cumulative Convertible Preferred Stock --Series A-1 and 2,000,000 shares of Class A Cumulative Convertible Preferred Stock -- Series A-2 (collectively, "Class A Preferred Stock"). The number of shares of capital stock outstanding and entitled to vote on the adoption of these Articles was 11,166,667. The Class A Preferred Stock was entitled to vote as a separate class on the adoption of these articles.

outstanding and entitled to vote on the adoption of these Articles was 11,166,667. The Class A Preferred Stock was entitled to vote as a separate class on the adoption of these articles.

ARTICLE FOUR

Shareholders holding 2,929,076 of the outstanding shares of Common Stock and 5,000,000 of the outstanding shares of Class A Preferred Stock of the Corporation, such number of shares representing not less than the minimum number of votes required to amend the Articles of Incorporation, have signed a consent in writing pursuant to Article 9.10(A) of the Texas Business Corporation Act adopting said amendment and the written notice required by Article 9.10(A) of the Texas Business Corporation Act has been given.

ARTICLE FIVE

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

EXECUTED as of the 26th day of May, 1994.

GADZOOKS, INC.

By Monty R. Standifer
Monty R. Standifer, Vice President

**RESTATED ARTICLES OF INCORPORATION OF
GADZOOKS, INC.**

ARTICLE ONE

The name of the Corporation is GADZOOKS, INC.

ARTICLE TWO

The period of its duration is perpetual.

ARTICLE THREE

The purpose for which the Corporation is organized is the transaction of any or all lawful business for which corporations may be incorporated under the Texas Business Corporation Act.

ARTICLE FOUR

The corporation is authorized to issue three classes of shares designated "Common Stock," "Class A Cumulative Convertible Preferred Stock" and "Class B Cumulative Convertible Preferred Stock," respectively. The Class A Cumulative Convertible Preferred Stock -- Series A-1 shall hereinafter be referred to as the "Series A-1 Preferred Stock," the Class A Cumulative Convertible Preferred Stock -- Series A-2 shall hereinafter be referred to as the "Series A-2 Preferred Stock," the Series A-1 Preferred Stock and the Series A-2 Preferred Stock shall hereinafter collectively be referred to as the "Class A Preferred Stock," the Class B Cumulative Convertible Preferred Stock shall hereinafter be referred to as the "Class B Preferred Stock" and the Class A Preferred Stock and the Class B Preferred Stock shall hereinafter collectively be referred to as the "Preferred Stock." The number of shares of Common Stock authorized to be issued is 25,000,000 with par value of \$.01 per share, the number of shares of Class A Preferred Stock authorized to be issued is 8,000,000 with par value of \$.10 per share consisting of 6,000,000 shares of Series A-1 Preferred Stock and 2,000,000 shares of Series A-2 Preferred Stock and the number of shares of Class B Preferred Stock authorized to be issued is 628,572 with par value of \$.10 per share.

The rights, preferences, privileges and restrictions granted to and imposed upon the Common Stock and the Preferred Stock are set forth below in this Article Four. All shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock are identical in all respects hereunder except for the different Conversion Prices of each such series determined pursuant to Section 6(b) of this Article Four.

Subject to the rights of the holders of the Preferred Stock, the Common Stock shall be entitled to dividends out of funds legally available therefor, when, as and if declared and paid to the holders of Common Stock, and upon liquidation, dissolution or winding up of the Corporation, to share ratably in the assets of the Corporation.

Section 1. Definitions. For purposes of this Article Four the following definitions shall apply:

"Affiliate" shall mean any Person which directly or indirectly controls, is controlled by, or is under common control with, the indicated Person.

"Approved Plan" shall mean a plan approved by a majority of the Board for the sale, grant, award or issuance to management, directors or employees of, or consultants to, the Corporation of shares of Common Stock or options to purchase such shares pursuant to which plan any such sale, grant, award or issuance must be approved by the Board or a committee of the Board prior to such sale, grant, award or issuance. The majority of the Board so approving such a plan must include a majority of the members of the Board nominated by the holders of Preferred Stock pursuant to the Shareholders Agreement.

"Arrearage" and "Arrearage Payment Event" shall have the respective meanings assigned to such terms in Section 2(a)(iii) of this Article Four.

"Board" shall mean the Board of Directors of the Corporation.

"Class A Preferred Stock" shall mean the collective reference to the Series A-1 Preferred Stock and the Series A-2 Preferred Stock.

"Class A Purchase Agreement" shall mean the Purchase Agreement dated as of January 31, 1992 among the Corporation, Gerald R. Szczepanski, Lawrence H. Titus, Jr., and the Investors listed on Exhibit A thereto, including all schedules and exhibits thereto, as such Class A Purchase Agreement may be from time to time amended, modified or supplemented.

"Class B Conversion Price" shall mean the initial conversion price for the Class B Preferred Stock of \$1.75 per share, as adjusted from time to time as provided by Section 6 of this Article IV.

"Class B Preferred Stock" shall mean the Class B Cumulative Convertible Preferred Stock of the Corporation.

"Class B Purchase Agreement" shall mean the Purchase Agreement dated as of May 26, 1994 among the Corporation, Gerald R. Szczepanski, Lawrence H. Titus, Jr. and the Investors listed on Exhibit A thereto, including all schedules and exhibits thereto, as such Class B Purchase Agreement may be amended from time to time, modified or supplemented.

"Commitment Date" shall mean, with respect to the Series A-1 Preferred Stock, January 31, 1992, with respect to the Series A-2 Preferred Stock, May 6, 1994, and, with respect to the Class B Preferred Stock, May 26, 1994.

"Common Stock" shall mean the Common Stock of the Corporation.

"Conversion Price" shall mean (i) with respect to the Series A-1 Preferred Stock, the initial Series A-1 Conversion Price per share of \$1.00, as adjusted from time to time as

provided by Section 6 of this Article IV, (ii) with respect to the Series A-2 Preferred Stock, the initial Series A-2 Conversion Price per share of \$1.50, as adjusted from time to time as provided by Section 6 of this Article IV, and (iii) with respect to the Class B Preferred Stock, the initial Class B Conversion Price per share of \$1.75, as adjusted from time to time as provided by Section 6 of this Article IV.

"Conversion Stock" shall mean the unissued Common Stock into which the Preferred Stock is convertible and the Common Stock issued upon such conversion.

"Corporation" shall mean this corporation.

"Equity Security" shall mean 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 to or purchase any stock or similar security, or any such warrant or right.

"Event of Noncompliance" shall have the meaning assigned to it in Section 10 of this Article Four.

"Indebtedness" shall mean any obligation of the Corporation or any Subsidiary, contingent or otherwise, which under generally accepted accounting principles is required to be shown on the balance sheet of the Corporation or such Subsidiary as a liability. Any obligation secured by a Lien on, or payable out of the proceeds of or production from, property of the Corporation or any Subsidiary shall be deemed to be Indebtedness even though such obligation is not assumed by the Corporation or Subsidiary.

"Indebtedness for Borrowed Money" shall mean (a) all Indebtedness in respect of money borrowed including, without limitation, Indebtedness which represents the unpaid amount of the purchase price of any property and is incurred in lieu of borrowing money or using available funds to pay such amounts and not constituting an account payable or expense accrual incurred or assumed in the ordinary course of business of the Corporation or any Subsidiary, (b) all Indebtedness evidenced by a promissory note, bond or similar written obligation to pay money, or (c) all such Indebtedness guaranteed by the Corporation or any Subsidiary or for which the Corporation or any Subsidiary is otherwise contingently liable.

"Initial Public Offering" shall mean the first underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offering and sale of Common Stock for the account of the Corporation on a firm commitment basis in which the aggregate gross proceeds received by the Corporation at the public offering price equals or exceeds \$10,000,000 and the public offering price equals or exceeds \$3.50 per share of Common Stock (appropriately adjusted for subdivisions and combinations of shares of Common Stock and dividends on Common Stock payable in shares of Common Stock subsequent to the Commitment Date for the Class B Preferred Stock).

"Lien" shall mean any mortgage, pledge, security interest, encumbrance, lien or charge of any kind, including, without limitation, any conditional sale or other title retention

agreement, any lease in the nature thereof and the filing of or agreement to give any financing statement under the uniform commercial code of any jurisdiction and including any lien or charge arising by statute or other law.

"Majority of the Preferred Stock" shall mean more than 50% of the outstanding shares of Preferred Stock.

"New Securities" shall mean any Equity Securities of the Corporation; provided, however, that "New Securities" does not include: (i) the Common Stock issued or issuable on conversion of the Preferred Stock; (ii) stock issued pursuant to any rights or agreements including without limitation any security convertible or exchangeable, with or without consideration, into or for any stock, options and warrants, provided that the rights of first refusal established by Section 9 of this Article Four applied with respect to the initial sale or grant by the Corporation of such rights or agreements; (iii) any Equity Security that is issued by the Corporation as part of any public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended; (iv) shares of Common Stock issued in connection with any stock split, stock dividend or recapitalization of the Corporation; (v) securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of all or substantially all of the assets, or other reorganization whereby the Corporation after the transaction owns not less than fifty-one percent (51%) of the voting power of such corporation; (vi) shares of Common Stock issued to management, directors or employees of, or consultants to, the Corporation or any Subsidiary pursuant to Approved Plans; (vii) shares of Common Stock issued to management, directors or employees of, or consultants to, the Corporation or any Subsidiary under options outstanding as of the Commitment Date for the Class B Preferred Stock; and (viii) shares of Common Stock issued under options granted pursuant to Approved Plans.

"Person" shall include all natural persons, corporations business trusts, associations, companies, partnerships, joint ventures and other entities and governments and agencies and political subdivisions.

"Preferred Stock" shall mean the collective reference to the Class A Preferred Stock and the Class B Preferred Stock.

"Purchase Agreements" shall mean the collective reference to the Class A Purchase Agreement and the Class B Purchase Agreement.

"Redemption Price" shall mean, with respect to Class A Preferred Stock, the Class A Redemption Price set forth in Section 4(b) of this Article IV and, with respect to Class B Preferred Stock, the Class B Redemption Price set forth in Section 4(b) of this Article IV.

"Remaining Arrearage" shall mean, as of the date of conversion or redemption, as the case may be, of the Preferred Stock in question, all Arrearages which have existed with respect to such Preferred Stock through the date of such conversion or redemption less all dividends declared with respect to the elimination of such Arrearage to the extent such dividends have record dates on or prior to the conversion or redemption, as the case may be.

"Series A-1 Conversion Price" shall mean the initial conversion price for the Series A-1 Preferred Stock of \$1.00 per share, as adjusted from time to time as provided by Section 6 of this Article IV.

"Series A-1 Preferred Stock" shall mean the Class A Cumulative Convertible Preferred Stock -- Series A-1 of the Corporation.

"Series A-2 Conversion Price" shall mean the initial conversion price for the Series A-2 Preferred Stock of \$1.50 per share, as adjusted from time to time as provided by Section 6 of this Article IV.

"Series A-2 Preferred Stock" shall mean the Class A Cumulative Convertible Preferred Stock -- Series A-2 of the Corporation.

"Shareholders Agreement" shall mean the Shareholders Agreement dated as of January 31, 1992 among the Corporation, Gerald R. Szczepanski, Lawrence H. Titus, Jr., and certain holders of Preferred Stock, as such Shareholder Agreement has been amended and may subsequently be from time to time amended, modified or supplemented.

"Significant Subsidiary" shall mean any subsidiary which would constitute a significant subsidiary within the meaning of Rule 1-02 of Regulation S-X promulgated by the Securities and Exchange Commission as in effect and interpreted by said Commission on the Commitment Date for the Class B Preferred Stock.

"Subsidiary" shall mean any corporation, partnership, joint venture, association or other business entity at last fifty percent (50%) of the outstanding voting stock or voting interest of which is at the time owned directly or indirectly by the Corporation or by one or more of such subsidiary entities, or both.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

Section 2. Dividend.

(a) Dividend Right. The holders of the then outstanding Class A Preferred Stock shall be entitled to receive, when and as declared by the Board, and out of any funds legally available therefor, cumulative dividends at the annual rate of \$0.08 per share, payable quarterly in cash on the first day of April, July, October, and January of each year commencing April 1, 1992. The holders of the then outstanding Class B Preferred Stock shall be entitled to receive, when and as declared by the Board, and out of funds legally available therefore, cumulative dividends at the annual rate of \$0.14 per share, payable quarterly in cash on the first day of April, July, October and January of each year commencing July 1, 1994. Dividends on the Preferred Stock shall accumulate and accrue on each such share from the date of its original issue and shall accrue from day to day thereafter, whether or not earned or declared. Such dividends shall be cumulative so that, except as provided in Section 2(b) of this Article Four, if such dividends in respect of any previous or current quarterly dividend period, at the annual rate specified above, shall not have been paid or declared and a sum sufficient for the payment

thereof set apart, the deficiency shall first be fully paid before any dividend or other distribution shall be paid or declared and set apart for the Common Stock.

If any dividends in respect of any one or more previous or current quarterly dividend periods, at the annual rate specified above, shall not have been paid or declared and a sum sufficient for the payment thereof set apart at the earliest of

(i) the closing of the Initial Public Offering,

(ii) any sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets of the Corporation or any of its Significant Subsidiaries, or any consolidation or merger involving the Corporation or any of its Significant Subsidiaries, or the sale (whether or not the Corporation is the seller) in one transaction or a series of related transactions of securities of the Corporation representing (or upon conversion, exchange or exercise thereof, entitled to acquire securities of the Corporation representing) 50% or more of the total combined voting power of all securities of the Corporation then outstanding, or

(iii) January 31, 1997,

(each event referred to in such clauses (i), (ii) and (iii) above being referred to as an "Arrearage Payment Event") the Board shall forthwith declare, and the Corporation shall pay, such dividends as are necessary to eliminate entirely such arrearage (the "Arrearage") to the maximum extent possible permitted by the amount of funds of the Corporation legally available therefor; dividends accruing thereafter shall be paid quarterly in cash on the first day of January, April, July, and October of each year commencing upon the occurrence of an Arrearage Payment Event. The payment of any dividend arrearage pursuant to this paragraph shall not affect in any way the accrual of dividends pursuant to this Section 2(a).

(b) Priority. Each share of each class of Preferred Stock shall rank equally in all respects with each share of each other class of Preferred Stock with respect to dividends; provided, however, that the Corporation shall not declare or pay dividends which are insufficient to pay all accrued dividends on each class of Preferred Stock outstanding unless such dividends are declared and paid to each class of Preferred Stock pro rata based on the accrued dividends with respect to such class as a percentage of accrued dividends for all classes of Preferred Stock. Unless full dividends on the Preferred Stock for all past dividend periods and the then current dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart, (1) no dividend whatsoever other than a dividend payable solely in Common Stock shall be paid or declared, and no distribution shall be made, on any Common Stock, and (2) no shares of Common Stock shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from directors or employees of or consultants or advisers to the Corporation or any Subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, including without limitation the termination of employment by or service to the Corporation or any Subsidiary.

Section 3. Liquidation Rights of Preferred.

(a) Preference. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its shareholders, whether such assets are capital, surplus, or earnings, before any payment or declaration and setting apart for payment of any amount shall be made in respect of the Common Stock, an amount equal to (i), with respect to Class A Preferred Stock, \$1.00 per share plus an amount equal to all accrued and unpaid dividends thereon, whether or not earned or declared, to and including the date full payment shall be tendered to the holders of the Class A Preferred Stock with respect to such liquidation, dissolution or winding up, and no more, and (ii), with respect to Class B Preferred Stock, \$1.75 per share plus an amount equal to all accrued and unpaid dividends thereon, whether or not earned or declared, to and including the date full payment shall be tendered to the holders of the Class B Preferred Stock with respect to such liquidation, dissolution or winding up, and no more. If upon any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed to the holders of all classes of Preferred Stock shall be insufficient to permit the payment of the full respective preferential amounts to the holders of all such classes of Preferred Stock, then all of the assets of the Corporation shall be distributed among the classes and series of Preferred Stock pro rata based on the full preferential amounts due with respect to each such class and series as a percentage of the full preferential amounts due to all classes and series of Preferred Stock.

(b) Remaining Assets. If the assets of the Corporation available for distribution to the Corporation's shareholders exceed the aggregate amount payable to the holders of the Preferred Stock pursuant to Section 3(a) hereof, then after the payments required by Section 3(a) shall have been made or irrevocably set apart, such assets shall be distributed equally among the holders of the Preferred Stock (as if fully converted into Common Stock) and the holders of Common Stock on a per share basis.

(c) Reorganization. A consolidation or merger of the Corporation with or into any other corporation or corporations, other than with a wholly-owned Subsidiary of the Corporation, or sale, lease or transfer of all or substantially all of the assets of the Corporation, other than to a wholly-owned Subsidiary of the Corporation, shall be deemed a liquidation, dissolution, or winding up of the Corporation as those terms are used in Section 3(a); provided however, that upon the occurrence of any such event, if the assets available for distribution to the Corporation's shareholders exceed the aggregate amount payable to the holders of the Preferred Stock pursuant to Section 3(a) hereof, such excess assets shall be distributed equally among the holders of Common Stock on a per share basis.

Section 4. Redemptions.

(a) Shareholder Optional Redemption. At any time on or after January 31, 1997, the holder or holders of a Majority of the shares of Preferred Stock then outstanding may require the Corporation to redeem all or any portion of the outstanding shares of such Preferred Stock held by such holder or holders at the Redemption Price by delivery of written notice to the Corporation (the "Shareholder Notice"). The Corporation will give prompt written notice of such

election to the other holders of Preferred Stock (but in any event within 10 days after the receipt by the Corporation of the Shareholder Notice), and each such other holder of such Preferred Stock will have until twenty days after the receipt by the Corporation of the Shareholder Notice to request redemption (by written notice given to the Corporation) of all or any portion of such Preferred Stock owned by such holder. Upon receipt of such election, the Corporation will be obligated to redeem the number of shares of Preferred Stock specified therein at the Redemption Price in twelve equal quarterly installments, with the first such installment due within 60 days after the receipt by the Corporation of the Shareholder Notice and subsequent installments due every three months thereafter.

If the Corporation shall fail to discharge all or any part of any redemption obligation pursuant to this subsection (a) because insufficient funds are legally available therefor, the entire amount legally available for the payment of such obligation shall be used to redeem the shares of the holders of the Preferred Stock ratably in proportion to the full number of shares which they would otherwise be entitled to have redeemed, and the balance of such redemption obligation shall be discharged as soon as the Corporation shall have funds legally available to permit such redemption, at which time the Board shall promptly fix a date for such redemption and so notify the holders of such shares in writing.

(b) Price. The redemption price of the Class A Preferred Stock (the "Class A Redemption Price") shall be an amount per share equal to \$1.00 plus all accrued and unpaid dividends thereon, whether or not earned or declared, to and including the applicable Redemption Date (as hereinafter defined) and the redemption price of the Class B Preferred Stock (the "Class B Redemption Price") shall be an amount per share equal to \$1.75 plus all accrued and unpaid dividends thereon, whether or not earned or declared, to and including the applicable Redemption Date. Even though the Class A Redemption Price and the Series A-1 Conversion Price are both initially \$1.00, they have no connection with, or relationship to, one another. Even though the Class B Redemption Price and the Class B Conversion Price are both initially \$1.75, they have no connection with, or relationship to, one another.

(c) Redemption Notice. The Corporation shall, not less than 30 days nor more than 60 days prior to the date fixed for redemption ("Redemption Date"), mail written notice ("Redemption Notice"), postage prepaid, to each holder of shares of record of Preferred Stock to be redeemed at such holder's post office address last shown on the records of the Corporation. The Redemption Notice shall state:

- (i) The total number of shares of each class of Preferred Stock which the Corporation intends to redeem;
- (ii) The number of shares of each class of Preferred Stock held by the holder which the Corporation intends to redeem;
- (iii) The Redemption Date and Redemption Price;
- (iv) That the holder's right to convert the Preferred Stock will terminate on the Redemption Date; and

(v) The time, place and manner in which the holder is to surrender to the Corporation the certificate or certificates representing the shares of Preferred Stock to be redeemed.

(d) Surrender of Stock. On or before the Redemption Date, each holder of Preferred Stock to be redeemed, unless the holder has exercised his right to convert the shares as provided in Section 6 of this Article Four, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for 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 cancelled and retired. In the event less than all of the shares represented by such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(e) Dividend After Redemption Date. No shares of Preferred Stock are entitled to any dividends accruing after the date on which the Redemption Price for such shares of Preferred Stock is paid. On such date all right of the holder or holders of such shares of Preferred Stock will cease, and such shares will not be deemed to be outstanding.

Section 5. Voting Rights.

(a) Preferred Stock. Each holder of shares of Preferred Stock shall be entitled to vote on all matters and, except as otherwise expressly provided herein, shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which all shares of Preferred Stock held by such holder could be converted, pursuant to the provisions of Section 6 of this Article Four, at the record date for the determination of the shareholders 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. This provision for determination of the number of votes to which each holder of Preferred Stock is entitled shall also apply in all cases in which the holders of shares of Preferred Stock have the right to vote separately as a class.

(b) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(c) Election of Majority of Directors. The foregoing notwithstanding, if one or more of the following event or conditions ("Conditions") shall have occurred and be continuing and if the holders of the Preferred Stock shall not have elected, by virtue of any voting rights of such holders as holders of Preferred Stock other than as set forth in this Section 5(c), a majority of the members of the Board as constituted at the time of the occurrence of any of the Conditions:

(i) the Corporation shall pay dividends on Common Stock or any other stock in violation of Section 2(b) of this Article Four;

(ii) the Corporation shall fail to pay dividends to any holder of any shares of Preferred Stock in violation of Section 2(a) of this Article Four;

(iii) the Corporation or any Subsidiary shall fail to make payment when due or within any applicable grace period with respect to any Indebtedness for Borrowed Money having an aggregate principal amount of at least \$100,000, unless such failure is being contested in good faith by the Corporation and for which an adequate reserve has been set aside, or the Corporation or such Subsidiary, as the case may be, shall have received waivers thereunder;

(iv) any event or condition shall exist which has the effect of accelerating or permitting anyone to accelerate the maturity of any Indebtedness referred to in the immediately preceding clause (iii), unless the Corporation or such Subsidiary as the case may be, shall have received waivers thereunder;

(v) the Corporation or any Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debt under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(vi) an involuntary case or other proceeding shall be commenced against the Corporation or any Subsidiary seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 days; or an order for relief shall be entered against the Corporation or any Subsidiary under the federal bankruptcy laws as now or hereafter in effect;

(vii) a final judgment or order for the payment of money in excess of \$100,000 shall be rendered against the Corporation or any Subsidiary and such judgment or order shall continue unsatisfied and unstayed for a period of 60 days or a bond has not been posted to cover the amount of such judgment; or

(viii) at any time after a Redemption Date any redemption obligation of the Corporation pursuant to Section 4(a) of this Article Four has not been discharged in full (whether or not the Corporation has sufficient legally available funds to discharge such obligation);

then, and in every such event, (x) the Corporation shall give within 10 days after the occurrence thereof written notice thereof to each holder of Preferred Stock; (y) if each and every such event shall not have been cured (a failure to give notice shall be deemed cured when such notice is given) within 30 days after the occurrence thereof, the number of directors constituting the

Board shall thereupon be automatically increased by such number as will be necessary to constitute a majority of the total number of the members, after giving effect to such increase, of such Board, and the holders of the Preferred Stock shall have, in addition to the other voting rights provided herein, the exclusive and special right, voting separately as a combined class, to elect directors to fill such newly created directorships (and to fill any vacancy in such directorships until such time as the special voting right provided by this Section 5(c) shall terminate as set forth below). The special voting right provided by this Section 5(c) shall continue until such time as each event giving rise to such special right shall have been cured or shall cease to exist or until all of the outstanding shares of Preferred Stock shall have been redeemed or converted into shares of Common Stock, subject, prior to such redemption or conversion, to revesting in the event of the occurrence of any of the foregoing events giving rise to such special right. At such time as the special voting right provided by this Section 5(c) terminates, the terms of the additional directors elected by the holders of Preferred Stock pursuant to this Section 5(c) shall terminate and the number of directors constituting the Board shall then be decreased to such number as constituted the whole Board immediately prior to the occurrence of the event giving rise to such special voting right. The special voting right provided in this Section 5(c) shall not preclude or affect the exercise of any other rights or remedies provided hereby or by agreement, by law or otherwise upon the occurrence of any event giving rise to such special right.

The directors to be elected (or if such directors have been previously elected and any vacancy shall exist, such vacancy to be filled) by the holders of Preferred Stock (voting as a class) shall be elected (or filled) at (i) annual meetings of the shareholders of the Corporation, or (ii) a special meeting of the holders of Preferred Stock for the purpose of electing such directors (or filling any such vacancy), to be called by the Secretary of the Corporation upon the written request of the holders of record of 10% or more of the number of shares of Preferred Stock then outstanding; provided, however, that if the Secretary of the Corporation shall fail to call any such meeting within 10 days after any such request, such meeting may be called by any holder of Preferred Stock designated for that purpose by the holders of record of 10% or more of the number of shares of Preferred Stock then outstanding. At any meeting or at any adjournment thereof held for the purpose of electing directors at which the holders of shares of Preferred Stock shall have the special voting right provided by this Section 5(c), the presence, in person or by proxy, of the holders of the equivalent of a majority of the shares of Preferred Stock then outstanding shall be required to constitute a quorum for the election of any director by the holders of the Preferred Stock exercising such special right. The special right of holders of shares of Preferred Stock under this Section 5(c) may be exercised by the written consent of the holders of shares of Preferred Stock then outstanding in accordance with the law of the Corporation's jurisdiction of incorporation at such time. Except as hereinbefore provided, the directors elected by the holders of Preferred Stock shall serve until the next annual meeting of shareholders and until their successors shall have been elected and qualified.

(d) Vacancies. The foregoing notwithstanding, in the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Preferred Stock pursuant to Section 5(c) of this Article Four, the remaining director or directors so elected by the holders of the Preferred Stock may, by affirmative vote of a majority thereof (or the remaining director so elected if there is only one such director), elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall

be vacant. Any director who shall have been elected by the holders of the Preferred Stock, or any director so elected as provided in the next preceding sentence hereof, shall be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a Majority of the Preferred Stock.

Section 6. Conversion.

The holders of Preferred Stock shall have the following conversion right:

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time or from time to time and on or prior to the Redemption Date, into fully paid and nonassessable shares of Common Stock.

(b) Conversion Price. Each share of Series A-1 Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing \$1.00 by the Series A-1 Conversion Price per share in effect at the time of conversion. The initial Series A-1 Conversion Price per share shall be \$1.00 and shall be subject to adjustment from time to time as provided below. Each share of Series A-2 Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing \$1.00 by the Series A-2 Conversion Price per share in effect at the time of conversion. The initial Series A-2 Conversion Price shall be \$1.50 and shall be subject to adjustment from time to time as provided below. Each share of Class B Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing \$1.75 by the Class B Conversion Price per share in effect at the time of conversion. The initial Class B Conversion Price shall be \$1.75 and shall be subject to adjustment from time to time as provided below.

(c) Mechanics of Conversion. Each holder of Preferred Stock who desires to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or Common Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Preferred Stock being converted. Thereupon the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate representing the shares of Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. Each holder of Preferred Stock who converts any shares of Preferred Stock shall be entitled to, and the Corporation shall promptly pay in cash, all unpaid dividends with respect to such converted shares of Preferred Stock, which unpaid dividends have accrued subsequent to the first occurrence of an Arrearage Payment Event, whether or not earned or declared, to and including the time of conversion. Except as set forth in Section 12.2 of the Purchase Agreements, a holder of Preferred Stock who converts any shares of Preferred Stock shall not be entitled to any Remaining Arrearage with respect to the Preferred Stock so converted.

(d) Adjustment for Stock Split and Combinations. If the Corporation at any time or from time to time after the Commitment Date for a class or series of Preferred Stock effects a subdivision of the outstanding Common Stock, the Conversion Price for such Class or series of Preferred Stock then in effect immediately before the subdivision shall be proportionately decreased, and conversely, if the Corporation at any time or from time to time after the Commitment Date for a class of Preferred Stock combines the outstanding shares of Common Stock into a smaller number of shares, the Conversion Price for such class or series of Preferred Stock then in effect immediately before the combination shall be proportionately increased. Any adjustment under this subsection (d) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(e) Adjustment for Certain Dividends and Distribution. If the Corporation at any time or from time to time after the Commitment Date for a class or series of Preferred Stock makes or issues, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Conversion Price for such class or series of Preferred Stock then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Conversion Price for such class or series of Preferred Stock then in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price for such class or series of Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price for such class or series of Preferred Stock shall be adjusted pursuant to this subsection (e) as of the time of actual payment of such dividends or distributions.

(f) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Commitment Date for a class or series of Preferred Stock makes or issues, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of such class or series of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation which they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustment called for during such period under this Section 6 with respect to the rights of the holders of the Preferred Stock.

(g) Adjustments for Reclassification, Exchange and Substitution. In the event that at any time or from time to time after the Commitment Date for any class or series of Preferred Stock, the Common Stock issuable upon the conversion of such class or series of Preferred Stock

outstanding at the close of business on the day next preceding the date of such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (or by the express provisions hereof deemed to have been received) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date of such issue after giving effect to such issue of Additional Shares of Common Stock.

For the purpose of the calculation described in this subsection (i), the number of shares of Common Stock outstanding shall include (A) the number of shares of Common Stock into which the then outstanding shares of Preferred Stock could be fully converted on the date next preceding the issue or sale of Additional Shares of Common Stock and (B) the number of shares of Common Stock which could be obtained through the conversion of all Convertible Securities (as hereinafter defined) which were convertible on the day next preceding the issue or sale of Additional Shares of Common Stock.

(2) For the purpose of making any adjustment required under this subsection (i), the consideration received by the Corporation for any issue or sale of securities shall (A) to the extent it consists of cash be computed at the net amount of cash received by the Corporation after deduction of any expenses payable by the Corporation and any underwriting or similar commissions, compensation, or concessions paid or allowed by the Corporation in connection with such issue or sale, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as reasonably determined in good faith by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities (as hereinafter defined) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(3) For the purpose of the adjustment required under this subsection (i), if the Corporation issues or sells any rights or options for the purchase of, or stock or other securities convertible or exchangeable, with or without consideration, into or for, Additional Shares of Common Stock (such convertible or

exchangeable stock or securities being hereinafter referred to as "Convertible Securities") and if the Effective Price of such Additional Shares of Common Stock is less than the Conversion Price of any class or series of Preferred Stock then in effect, then in each case the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise, conversion or exchange thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amount of consideration, if any, payable to the Corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amount of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof. No further adjustment of the Conversion Price for such class or series of Preferred Stock, adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion or exchange of any such Convertible Securities.

If any such rights or options or the conversion or exchange privilege represented by any such Convertible Securities shall expire without having been exercised, the Conversion Price for such class or series of Preferred Stock adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such right or options or right of conversion or exchange of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities.

(4) For the purpose of the adjustment required under this subsection (i), if the Corporation issues or sells any rights or options for the purchase of Convertible Securities and if the Effective Price of the Additional Shares of Common Stock underlying such Convertible Securities is less than the Conversion Price for any class or series of Preferred Stock then in effect, then in each such case the Corporation shall be deemed to have issued at the time of the issuance of such rights or options the maximum number of Additional Shares of Common Stock issuable upon conversion or exchange of the total amount of Convertible Securities covered by such rights or options and to have received as consideration for the issuance of such Additional Shares of Common Stock an amount equal to the amount of consideration, if any, received by the Corporation for the issuance of such rights or options, plus the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options and plus the minimum amount of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange of such Convertible Securities. No further adjustment of the Conversion Price for a class or series of Preferred Stock, adjusted upon the issuance of such rights or options, shall be made as a result of the actual issuance of the Convertible Securities upon the exercise of such rights or options or upon the actual issuance of Additional Shares of Common Stock upon the conversion or exchange of such Convertible Securities. The provisions of paragraph (3) above for the readjustment of the Conversion Price for a class or series of Preferred Stock upon the expiration of rights or options or the rights of conversion or exchange of Convertible Securities shall apply mutatis mutandis to the rights, options and Convertible Securities referred to in this paragraph (4).

(5) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation after the Commitment Date for any class or series of Preferred Stock, whether or not subsequently reacquired or retired by the Corporation, other than (i) shares of Common Stock issued upon conversion of the Preferred Stock, (ii) shares of Common Stock issued pursuant to the Class B Purchase Agreement, and (iii) shares of Common Stock issued to management, directors or employees of, or consultants to, the Corporation pursuant to Approved Plans. For purposes of the definition of "Additional Shares of Common Stock", the sale or other disposition of any Common Stock of the Corporation after the Commitment Date for any class or series of Preferred Stock theretofore held in its treasury shall be deemed to be an issuance thereof.

The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under this subsection (i), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this subsection (i), for such Additional Shares of Common Stock.

(j) Accountants' Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price of any class or series of Preferred Stock or the number of shares of Common Stock or other securities issuable upon conversion of any class or series of Preferred Stock, the Corporation, at its expense, shall cause independent public accountants of recognized standing selected by the Corporation (who may be the independent public accountants then auditing the financial statements of the Corporation) to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Preferred Stock at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the fact upon which such adjustment or readjustment is based, including a statement of (1) the consideration received or deemed to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (2) the Conversion Price for each class or series of Preferred Stock at the time in effect, (3) the number of Additional Shares of Common Stock and (4) the type and amount, if any, of other property which at the time would be received upon conversion of the Preferred Stock.

(k) Notices of Record Date. In the event of (i) any taking by the Corporation of record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, or any transfer of all or substantially all of the assets of the Corporation to any other Person or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Preferred Stock at least thirty (30) days prior to the record date specified therein, a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (3) the date, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up.

(l) Automatic Conversion. Each share of each class or series of Preferred Stock shall automatically be converted into shares of Common Stock based on the then effective Conversion Price for such class or series of Preferred Stock immediately upon the closing of the Initial Public Offering, and all outstanding shares of Preferred Stock shall be converted automatically

without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation and its counsel to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred Stock, the holders of Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Preferred Stock or Common Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, and the Corporation shall promptly pay accrued and unpaid dividends on the shares of Preferred Stock being converted, whether or not earned or declared, to and including the date of such conversion.

(m) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. If more than one share of Preferred Stock shall be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Preferred Stock so surrendered. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the product of such fraction multiplied by the fair market value of one share of the Corporation's Common Stock on the date of conversion as reasonably determined in the good faith judgment of the Board.

(n) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(o) Notices. All notices and other communications required by the provisions of this Section 6 shall be in writing and shall be deemed to have been duly given if delivered personally, mailed by certified mail (return receipt requested) or sent by overnight delivery service, cable, telegram, facsimile transmission or telex to each holder of record at the address of such holder appearing on the books of the Corporation. Notice so given shall, in the case of notice so given by mail, be deemed to be given and received on the fourth calendar day after posting, in the case of overnight delivery service, on the date of actual delivery and, in the case of notice so given by cable, telegram, facsimile transmission, telex or personal delivery, on the date of actual transmission or, as the case may be, personal delivery.

(p) Payment of Taxes. The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Preferred Stock, including without limitation any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered.

(q) No Dilution or Impairment. The Corporation shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against dilution or other impairment.

(r) Rounding of Calculations; Minimum Adjustment. All calculations under this Section 6 shall be made to the nearest one thousandth (1/1,000th) cent or to the nearest one thousandth (1/1,000th) of a share, as the case may be. Any provision of this Section 6 to the contrary notwithstanding, no adjustment in any Conversion Price shall be made if the amount of such adjustment would be less than \$0.001, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any such subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.001 or more.

Section 7. Restrictions and Limitations.

(a) So long as at least 850,000 shares of Preferred Stock remain outstanding (as appropriately adjusted for any stock dividends payable in shares of Preferred Stock and combinations, subdivisions and split-ups of the shares of Preferred Stock), the Corporation shall not, and shall not permit any Subsidiary to, without the vote or written consent by the holders of a Majority of the Preferred Stock:

(1) Redeem, purchase or otherwise acquire for value, any share or shares of Preferred Stock otherwise than by redemption in accordance with Section 4 or Section 10 of this Article Four;

(2) Purchase, redeem or otherwise acquire for value (or pay into or set aside as a sinking fund for such purpose) any of the Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from directors or employees of or consultants or advisers to the Corporation or any Subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, including the termination of employment by or service to the Corporation or any Subsidiary;

(3) Authorize or issue, or obligate itself to issue, any other Equity Security senior to or on a parity with the Preferred Stock as to dividend or

redemption rights, liquidation preferences, conversion rights, voting rights or otherwise;

(4) Declare or pay any dividends on or declare or make any other distribution, direct or indirect (other than a dividend payable solely in shares of Common Stock), on account of the Common Stock or set apart any sum for any such purpose;

(5) Increase or decrease (other than by redemption or conversion) the total number of authorized shares of Preferred Stock;

(6) Enter any agreement, contract or understanding or otherwise incur any obligation which by its terms would violate, be in conflict with, restrict or burden the rights of the holders of Preferred Stock hereunder or the Corporation's performance of the terms of its Articles of Incorporation;

(7) Acquire any business (as determined in accordance with Rule 11-01(d) of Regulation S-X promulgated by the Securities and Exchange Commission as in effect and interpreted by said Commission on the Commitment Date for the Class B Preferred Stock) by purchase, lease, assignment or other transfer or conveyance of asset, property or securities or by merger, consolidation or form of business combination or otherwise, or enter into a joint venture or partnership with any other entity, or, unless the obligations of the Corporation under an agreement are expressly conditioned upon the requisite approval of the holders of a Majority of the Preferred Stock as provided for herein, make any agreement or become obligated to do so;

(8) Effect any sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets of the Corporation or any of its Significant Subsidiaries, or any consolidation or merger involving the Corporation or any of its Significant Subsidiaries, or any reclassification or other change of any stock, or any recapitalization, or any dissolution, liquidation, or winding up of the Corporation or, unless the obligations of the Corporation under an agreement are expressly conditioned upon the requisite approval of the holders of a Majority of the Preferred Stock as provided for herein, make any agreement or become obligated to do so; or

(9) Permit any Subsidiary to issue or sell, or obligate itself to issue or sell, except to the Corporation or any wholly-owned Subsidiary, any stock of such Subsidiary.

(10) So long as at least 850,000 shares of Preferred Stock remain outstanding (as appropriately adjusted for any stock dividends payable in shares of Preferred Stock and combinations, subdivisions and split-ups of the shares of Preferred Stock), the Corporation shall not amend its Articles of Incorporation or By-Laws without the approval, by vote or written consent, of the holders of a Majority of the Preferred Stock except that (i) any amendment which changes the initial Series A-1 Conversion Price

from \$1.00 (exclusive of any amendment relating to any provision hereof providing for an adjustment to such initial Series A-1 Conversion Price) shall require the approval, by vote or written consent, of 80% or more of the Series A-1 Preferred Stock, (ii) any amendment which changes the initial Series A-2 Conversion Price from \$1.50 (exclusive of any amendment relating to any provision hereof providing for an adjustment to such initial Series A-2 Conversion Price) shall require the approval, by vote or written consent, of 80% or more of the Series A-2 Preferred Stock, and (iii) any amendment which changes the initial Class B Conversion Price from \$1.75 (exclusive of any amendment relating to any provision hereof providing for an adjustment to such initial Class B Conversion Price) shall require the approval, by vote or written consent, of 80% or more of the Class B Preferred Stock. Notwithstanding any provisions contained in the Corporation's Articles of Incorporation, the provisions of this Section 7(b) may not be amended without the vote or written consent of the holders of 80% or more of each class and series of Preferred Stock voting separately.

(11) So long as any shares of Preferred Stock are outstanding, the Corporation shall not increase the number of outstanding shares of Preferred Stock by means of a stock dividend payable in shares of Preferred Stock or by a subdivision or split-up of the shares of Preferred Stock. Notwithstanding any provisions contained in the Corporation's Articles of Incorporation, the provisions of this Section 7(c) may not be amended without the vote or written consent of the holders of a Majority of the Preferred Stock.

Section 8. No Reissuance of Preferred Stock.

No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

Section 9. Rights of First Refusal.

(a) Each holder of Preferred Stock and each Executive Shareholder (as defined in the Shareholders Agreement) (so long as he continues to be employed by the Corporation) shall, together, have the right of first refusal to purchase, pro rata, all (or any part of) New Securities that the Corporation may, from time to time, propose to sell and issue after the first date of issuance of the Preferred Stock. Each such holder's pro rata share of New Securities, for the purposes of this right of first refusal, is the ratio of the number of shares of Common Stock held by such holder at the time the New Securities are offered (treating the Preferred Stock as if it were fully converted) to the total number of shares of Common Stock held by all holders thereof having a right of first refusal under this Section 9 (treating the Preferred Stock as if it were fully converted).

(b) If the Corporation proposes to undertake an issuance of New Securities, it shall give each holder of Preferred Stock and each Executive Shareholder having a right of first refusal under this Section 9 written notice of its intention, describing the type of New Securities, the price, and the general terms and conditions upon which the Corporation proposes to issue the same. Each such holder shall have 20 days from the giving of such notice to agree to

purchase its pro rata share of New Securities for the price and upon the terms and conditions specified in the notice by giving written notice to the Corporation and stating therein the quantity of New Securities to be purchased. The Corporation shall give each holder of Preferred Stock and each Executive Shareholder having a right of first refusal under this Section 9 written notice on the date following such 20 day period as to any New Securities with respect to which holders having a right of first refusal under this Section 9 have not exercised their right of first refusal. Each such holder shall have a right of over allotment such that if any holder having a right of first refusal under this Section 9 fails to exercise its right hereunder to purchase its pro rata portion of the New Securities, the other such holders may purchase the nonpurchasing holder's portion on a pro rata basis, by agreeing in writing to purchase such New Securities within 10 days after the end of such first 20 day period.

(c) If the holders of Preferred Stock and the Executive Shareholders fail to exercise in full such rights within such 30 days, the Corporation shall have 120 days thereafter to sell the New Securities in respect of which such holders' right were not exercised, at a price and upon general terms and conditions no more favorable to the purchasers thereof than specified in the Corporation's notice to the holders pursuant to Section 9(b) of this Article Four. If the Corporation has not sold the New Securities within such 120 days, the Corporation shall not thereafter issue or sell any New Securities, without first offering such securities to the holders of Preferred Stock and the Executive Shareholders in the manner provided above.

(d) The rights of first refusal established by this Section 9 shall terminate upon the closing of, and shall not be applicable to, the Initial Public Offering.

(e) A holder of Preferred Stock shall not be entitled to exercise any right of first refusal pursuant to this Section 9 unless (i) such holder acquired shares of Preferred Stock from the Corporation upon the original issuance thereof, (ii) such holder is a partner in or an Affiliate of a Person who acquired shares of Preferred Stock from the Corporation upon the original issuance thereof, or (iii) if such holder did not acquire shares of Preferred Stock from the Corporation upon the original issuance thereof, such holder is an immediate or remote transferee of a Person who acquired shares of Preferred Stock from the Corporation upon the original issuance thereof and such holder holds, immediately after such transfer, a number of shares of Preferred Stock not less than the greater of (i) 50% of the number of shares of Preferred Stock purchased by such Person and (ii) 5% of the total shares of Preferred Stock sold under the Purchase Agreements.

Section 10. Events of Noncompliance.

(a) Definition. An Event of Noncompliance will be deemed to have occurred if:

(i) the Corporation fails to pay, when payment shall be required pursuant hereto, the full amount of dividends accrued on the Preferred Stock, including, without limitation, (i) the payment on the occurrence of an Arrearage Payment Event of the dividends which are accrued and unpaid as of the date of the first occurrence of an Arrearage Payment Event and (ii) subsequent to the occurrence of an Arrearage Payment Event, the payment of current quarterly dividends on the Preferred Stock, whether or not such payment is legally

permissible; provided that such failure to pay shall constitute an Event of Noncompliance so long as the designees of the holders of Preferred Stock constitute a majority of the Board only if the failure is attributable solely to the fact that the Corporation does not have sufficient funds legally available to make such payment;

(ii) the Corporation fails to make any redemption payment with respect to the Preferred Stock which it is obligated to make hereunder, whether or not such payment is legally permissible; provided that such failure to pay shall constitute an Event of Noncompliance so long as the designees of the holders of Preferred Stock constitute a majority of the Board only if the failure is attributable solely to the fact that the Corporation does not have sufficient funds legally available to make such payment;

(iii) the Corporation breaches or otherwise fails to perform or observe any other covenant or agreement set forth herein or in the Purchase Agreements; provided that such breach or failure to perform shall not constitute an Event of Noncompliance so long as the designees of the holders of Preferred Stock constitute a majority of the Board if (a) the Board is responsible for such breach or failure or (b) the Board is in a position to prevent such breach or failure and it fails to take action to do so;

(iv) any representation or warranty contained in the Purchase Agreements or required to be furnished to any holder of Preferred Stock pursuant to the Purchase Agreements, or any information contained in writing furnished by the Corporation or any Subsidiary to any holder of Preferred Stock, is false or misleading on the date made or furnished; or

(v) the Corporation or any Subsidiary makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or an order, judgment or decree is entered into adjudicating the Corporation or any Subsidiary bankrupt or insolvent; or any order for relief with respect to the Corporation or any Subsidiary is entered under the Federal Bankruptcy Code; or the Corporation or any Subsidiary petitions or applies to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or any Subsidiary or any substantial part of the assets of the Corporation or any Subsidiary, or commences any proceeding (other than a proceeding for the voluntary liquidation and dissolution of a Subsidiary) relating to the Corporation or any Subsidiary under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or any such petition or application is filed, or any such proceeding is commenced, against the Corporation or any Subsidiary and either (a) the Corporation or any such Subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein or (b) such petition, application or proceeding is not dismissed within 60 days;

(b) Consequences of Certain Events of Noncompliance.

(i) If an Event of Noncompliance has occurred, the holder or holders of a Majority of the Preferred Stock then outstanding may demand (by written notice delivered to the Corporation) immediate redemption of all or any portion of the Preferred Stock owned by such holder or holders at a price per share equal to the Redemption Price determined pursuant to Section 4 hereof. The Corporation will give prompt written notice of such election to the other holders of Preferred Stock (but in any event within 10 days after receipt of the initial demand for redemption), and each such other holder may demand immediate redemption of all or any portion of such holder's Preferred Stock by giving written notice thereof to the Corporation within 15 days after receipt of the Corporation's notice. The Corporation will redeem all Preferred Stock as to which rights under this paragraph have been exercised within 30 days after receipt of the initial demand for redemption. The rights granted to the holders of Preferred Stock under this subparagraph (b)(i) are subject to revesting upon each occurrence of an Event of Noncompliance.

(ii) If Events of Noncompliance exist for an aggregate of 90 days (whether or not such days are successive), the Conversion Price of each class and series of Preferred Stock will be reduced immediately by 5% of the Conversion Price for such class or series of Preferred Stock in effect immediately prior to such adjustment. Thereafter, the Conversion Price of such class and series of Preferred Stock will be reduced automatically at the end of each succeeding period during which Events of Noncompliance have existed for an aggregate of 90 days (whether or not such days are successive but measured beginning from the date of the previous adjustment pursuant to this subparagraph (b)(ii)) by 5% of what the Conversion Price for such class or series of Preferred Stock would have been immediately prior to any adjustment made pursuant to this subparagraph (b)(ii); provided, however, that in no event shall there be more than four adjustments to the Conversion Price of any class or series of Preferred Stock as a result of an Event of Noncompliance resulting from any particular false or misleading representation, warranty or information of the type described in Section 10(a)(iv) of this Article Four; and, provided further, that no reductions in the Conversion Price of any class or series of Preferred Stock resulting from any particular Event of Noncompliance of the type described in Section 10(a)(iv) of this Article Four shall occur unless holders of a Majority of the Preferred Stock notify the Corporation of such Event of Noncompliance within the earlier to occur of (i) one year after becoming aware of such Event of Noncompliance and (ii) three years after the representation, warranty or information which forms the basis of such Event of Noncompliance was made or furnished. In no event will any Conversion Price adjustment be rescinded.

For example, assume that the Conversion Price of the Series A-1 Preferred Stock is \$1.00. If Events of Noncompliance are in existence for an aggregate of 90 days (whether or not such days are successive), the Series A-1 Conversion Price would be reduced immediately by 5% of \$1.00, or \$.05, for a new

Series A-1 Conversion Price of \$.95. If Events of Noncompliance exist for an additional 90 days (whether or not such days are successive), the existing Series A-1 Conversion Price would be reduced by 5% of what the Series A-1 Conversion Price would have been if there had been no previous adjustment pursuant to this subparagraph (i.e., \$1.00), or \$.05, for a new Series A-1 Conversion Price of \$.90. Then assume that there is a two-for-one stock split, in which case the Series A-1 Conversion Price would be decreased pursuant to Section 6(d) of this Article Four from \$.90 to \$.45 and assume that Events of Noncompliance exist for an additional 90 days. In this case, the Series A-1 Conversion Price would be reduced by 5% of what the Series A-1 Conversion Price would have been immediately prior to such adjustment if there had been no previous adjustments pursuant to this subparagraph (i.e. \$.50), or \$.025, for a new Series A-1 Conversion Price of \$.425.

(iii) If any Event of Noncompliance exists, each holder of Preferred Stock will also have any other rights which such holder may have been afforded under any contract or agreement at any time and any other rights which such holder may have pursuant to applicable law.

Section 11. Waivers. With the written consent of a Majority of the Preferred Stock, the obligations of the Corporation and the rights of the holders of the Preferred Stock under Section 10 of this Article Four may be waived (either generally or in a particular instance, either retroactively or prospectively and either for a specified period of time or indefinitely). Upon the effectuation of each such waiver, the Corporation shall promptly give written notice thereof to the holders of Preferred Stock who have not previously consented thereto in writing.

ARTICLE FIVE

Shareholders of the Corporation will not have the right of cumulative voting for the election of directors or for any other purpose.

ARTICLE SIX

The street address of the Corporation's registered office is 4801 Spring Valley Road, Suite 108-B, Dallas, Texas 75234, and the name of the Corporation's registered agent at such address is Gerald R. Szczepanski.

ARTICLE SEVEN

The number of directors will be determined in accordance with the Bylaws of the Corporation. The names and addresses of the persons currently serving as directors are as follows:

Gerald R. Szczepanski
4801 Spring Valley Road, Suite 108B
Dallas, Texas 75244

Lawrence H. Titus, Jr.
4801 Spring Valley Road, Suite 108B
Dallas, Texas 75244

Howard Goldstein
153 E. 53rd Street, 23rd Floor
New York, New York 10022

G. Michael Machens
15110 Dallas Parkway, Suite 310
Dallas, Texas 75248

Alan Crites
One Galleria Tower
13355 Noel Road, Suite 1375
Dallas, Texas 75240

Robert E.M. Nourse
550 Bailey Avenue, Suite 700
Fort Worth, Texas 76107

ARTICLE EIGHT

To the fullest extent permitted by the Texas Miscellaneous Corporation Laws Act, as the same exists or may hereafter be amended, 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.

Any repeal or modification of this Article Eight shall not increase the personal liability of any director of the Corporation for any act or occurrence taking place before such repeal or modification, or otherwise adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification. The provisions of this Article Eight shall not be deemed to limit or preclude indemnification of a director by the Corporation for any liability of a director which has not been eliminated by the provisions of this Article Eight.

ARTICLE NINE

The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to 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 (whether or not by or in the right of the Corporation), by reason of the fact that he is or was a director, officer, employee or agent of the Corporation or 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 corporation, partnership, joint venture, sole proprietorship, trust,

nonprofit entity, employee benefit plan or other enterprise, against all judgments, penalties (including excise and similar taxes), fines, settlement and reasonable expenses (including attorneys' fees and expenses and court costs) actually and reasonably incurred by him in connection with such action, suit or proceeding to the fullest extent permitted by any applicable law, and such indemnity shall inure to the benefit of the heirs, executors and administrators of any such person so indemnified pursuant to this Article Nine. The right to indemnification under this Article Nine shall be a contract right and shall not be deemed exclusive of any other right to which those seeking indemnification may be entitled under any law, bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Any repeal or amendment of this Article Nine by the shareholders of the Corporation or by changes in applicable law shall, to the extent permitted by applicable law, be prospective only, and shall not adversely affect any right of any person to indemnification and advancement of expenses existing at the time of such repeal or amendment.

ARTICLE TEN

Any action which would otherwise be taken at any annual or special meeting of shareholders may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent will be given to those shareholders who did not consent in writing to the action.

ARTICLE ELEVEN

Subject to the provisions of Article Four, no shareholder of the Corporation will, solely by reason of his holding shares of any class, have any preemptive or preferential right to purchase or subscribe for any shares of the Corporation, now or hereafter to be authorized, or any notes, debentures, bonds or other securities convertible into or carrying warrants, rights or options to purchase shares of any class, now or hereafter to be authorized, whether or not the issuance of any such shares or such notes, debentures, bonds or other securities would adversely affect the dividend, voting or any other rights of such shareholder. Subject to the provisions of Article Four, the Board of Directors may authorize the issuance of, and the Corporation may issue, shares of any class of the Corporation, or any notes, debentures, bonds or other securities convertible into or carrying warrants, rights or options to purchase any such shares, without offering any shares of any class to the existing holders of any class of stock of the Corporation.

ARTICLE TWELVE

The Board of Directors is expressly authorized to alter, amend or repeal the Bylaws of the Corporation or to adopt new Bylaws.

ARTICLE THIRTEEN

Any action of the Corporation that under the provisions of the Texas Business Corporation Act would, but for this Article Thirteen, be required to be authorized by the affirmative vote of the holders of any specified portion of the outstanding shares of the Corporation shall require the approval of the holders of only a majority of the outstanding shares of the Corporation.

EXECUTED as of the 26th day of May, 1994.

GADZOOKS, INC.

By Monty R. Standifer
Monty R. Standifer, Vice President

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IN WITNESS WHEREOF, Gadzooks, Inc. has caused this Articles of Amendment to be signed, on its behalf, by Monty R. Standifer, its Senior Vice President, Chief Financial Officer, Treasurer and Secretary, this 27th day of September, 1995.

GADZOOKS, INC.

By: Monty R. Standifer
Monty R. Standifer
Senior Vice President, Chief Financial
Officer, Treasurer and Secretary

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**SECOND RESTATED ARTICLES OF INCORPORATION
WITH AMENDMENTS
OF
GADZOOKS, INC.**

FILED
In the Office of the
Secretary of State of Texas
OCT 10 1995
Corporations Section

ARTICLE ONE

Gadzooks, Inc. (the "Corporation"), pursuant to the provisions of Article 4.07 of the Texas Business Corporation Act, hereby adopts the attached Second Restated Articles of Incorporation which accurately copy the Corporation's Restated Articles of Incorporation and all amendments thereto that are in effect to date and as further amended by these Second Restated Articles of Incorporation as hereinafter set forth and which contain no other change in any provision thereof.

ARTICLE TWO

The Restated Articles of Incorporation of the Corporation are hereby amended by these Second Restated Articles of Incorporation as follows:

ARTICLE FOUR is amended to decrease the number of authorized shares of preferred stock to 1,000,000, to authorize undesignated preferred stock and to cancel all other classes of preferred stock and eliminate all of the rights, preferences, and privileges thereto.

ARTICLE SEVEN is amended to provide for the election of directors to staggered three-year terms and to set forth the expiration of the term of each director currently serving on the Board of Directors.

ARTICLE TEN has been deleted and replaced in its entirety by a provision that prohibits shareholder action without a meeting, except in certain circumstances.

ARTICLE FOURTEEN has been added which provides for disinterested director approval and fair price provisions or approval by a super-majority of shareholders for certain business combinations.

ARTICLE FIFTEEN has been added which makes interested party transactions not per se invalid.

ARTICLE THREE

Each such amendment made by these Second Restated Articles of Incorporation has been effected in conformity with the provisions of the Texas Business Corporation Act and such Second Restated Articles of Incorporation and each such amendment made by the Second Restated Articles of Incorporation were duly adopted by the shareholders of the Corporation on the 4th day of October, 1995.

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ARTICLE FOUR

The number of shares of capital stock outstanding and entitled to vote on the adoption of these Second Restated Articles of Incorporation as so amended was 9,664,137. Shareholders holding 9,110,232 of the outstanding shares of capital stock of the Corporation, such number of shares representing not less than the minimum number of votes required to amend the Restated Articles of Incorporation, have signed a consent in writing pursuant to Article 9.10(A) of the Texas Business Corporation Act adopting the Second Restated Articles of Incorporation as so amended and the written notice required by Article 9.10(A) of the Texas Business Corporation Act has been given.

ARTICLE FIVE

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

**SECOND RESTATED ARTICLES OF INCORPORATION
GADZOOKS, INC.**

ARTICLE ONE

The name of the Corporation is GADZOOKS, INC.

ARTICLE TWO

The period of its duration is perpetual.

ARTICLE THREE

The purpose for which the Corporation is organized is the transaction of any or all lawful business for which corporations may be incorporated under the Texas Business Corporation Act.

ARTICLE FOUR

The aggregate number of shares of capital stock that the Corporation shall have authority to issue is 26,000,000, of which (1) 25,000,000 shares shall be Common Stock, having a par value of \$0.01 per share; and (2) 1,000,000 shares shall be Preferred Stock, having a par value of \$1.00 per share. Unless specifically provided otherwise herein or as specified by the Board of Directors pursuant to the next succeeding paragraph of this Article Four, the holders of such shares shall be entitled to one vote for each share held in any shareholder vote in which any of such shareholders is entitled to participate.

The Board of Directors may determine the powers, designations, preferences and relative, participating, optional or other special rights, including voting rights, and the qualifications, limitations or restrictions thereof, of each class of capital stock and of each series within any such class and may increase or decrease the number of shares within each such class or series; provided, however, that the Board of Directors may not decrease the number of shares within a class or series to less than the number of shares within such class or series that are then issued and may not increase the number of shares within a series above the total number of authorized shares of the applicable class for which the powers, designations, preferences and rights have not otherwise been set forth herein.

On September 28, 1995, the Corporation effected a 3.15 to 1 reverse stock split of its Common Stock as follows:

Each 3.15 shares of Common Stock issued and outstanding immediately prior to the reverse stock split becoming effective shall, without any action on the part of the respective holders thereof, be converted into 1.0 share of Common Stock, and each stock certificate representing shares of Common Stock that was issued and outstanding immediately prior to the time reverse stock split became effective shall represent such number of shares of Common Stock as equals the quotient obtained by dividing the number of shares represented by such certificate immediately prior to such reverse stock

split becoming effective by 3.15. Fractional shares that exist as a result of the foregoing shall be purchased by the Corporation at a price of \$13.00 per share.

ARTICLE FIVE

Shareholders of the Corporation will not have the right of cumulative voting for the election of directors or for any other purpose.

ARTICLE SIX

The street address of the Corporation's registered office is 4801 Spring Valley Road, Suite 108B, Dallas, Texas 75234, and the name of the Corporation's registered agent at such address is Gerald R. Szczepanski.

ARTICLE SEVEN

The number of directors will be determined in accordance with the Bylaws of the Corporation. The directors shall be divided into three classes as nearly equal in number as possible and one class shall be elected at each annual meeting of shareholders to hold office for a three-year term. The names and addresses of the persons currently serving as directors are as follows:

	<u>Term Expires</u>
Lawrence H. Titus, Jr. 4801 Spring Valley Road, Suite 108B Dallas, Texas 75244	1996
G. Michael Machens 5080 Spectrum Drive, Suite 700 West Dallas, Texas 75248	1996
Gerald R. Szczepanski 4801 Spring Valley Road, Suite 108B Dallas, Texas 75244	1997
Alan W. Crites 3000 Sand Hill Road Building 3, Suite 255 Menlo Park, California 94025	1997
Robert E.M. Nourse 550 Bailey Street, Suite 700 Fort Worth, Texas 76107	1998

ARTICLE EIGHT

To the fullest extent permitted by the Texas Miscellaneous Corporation Laws Act, as the same exists or may hereafter be amended, 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.

Any repeal or modification of this Article Eight shall not increase the personal liability of any director of the Corporation for any act or occurrence taking place before such repeal or modification, or otherwise adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification. The provisions of this Article Eight shall not be deemed to limit or preclude indemnification of a director by the Corporation or any liability of a director which has not been eliminated by the provisions of this Article Eight.

ARTICLE NINE

The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative 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 (whether or not by or in the right of the Corporation), by reason of the fact that he is or was a director, officer, employee or agent of the Corporation or 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 corporation, partnership, joint venture, sole proprietorship, trust, nonprofit entity, employee benefit plan or other enterprise, against all judgments, penalties (including excise and similar taxes), fines, settlement and reasonable expenses (including attorneys' fees and expenses and court costs) actually and reasonably incurred by him in connection with such action, suit or proceeding to the fullest extent permitted by any applicable law, and such indemnity shall inure to the benefit of the heirs, executors and administrators of any such person so indemnified pursuant to this Article Nine. The right to indemnification under this Article Nine shall be a contract right and shall not be deemed exclusive of any other right to which those seeking indemnification may be entitled under any law, bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Any repeal or amendment of this Article Nine by the shareholders or the Corporation or by changes in applicable law shall, to the extent permitted by applicable law, be prospective only, and shall not adversely affect any right of any person to indemnification and advancement of expenses existing at the time of such repeal or amendment.

ARTICLE TEN

All actions of the shareholders must be taken at an annual or special meeting of shareholders and may not be taken by a consent or consents in writing; provided, however, that if at any time the Corporation has ten or fewer shareholders, any action by such shareholders may be taken by unanimous consent.

ARTICLE ELEVEN

Subject to the provisions of Article Four, no shareholder of the Corporation will, solely by reason of his holding shares of any class, have any preemptive or preferential right to purchase or subscribe for any shares of the Corporation, now or hereafter to be authorized, or any notes, debentures, bonds or other securities convertible into or carrying warrants, rights or options to purchase shares of any class, now or hereafter to be authorized, whether or not the issuance of any such shares or such notes, debentures, bonds or other securities would adversely affect the dividend, voting or any other rights of such shareholder. Subject to the provisions of Article Four, the Board of Directors may authorize the issuance of, and the Corporation may issue, shares of any class of the Corporation, or any notes, debentures, bonds or other securities convertible into or carrying warrants, rights or options to purchase any such shares, without offering any shares of any class to the existing holders of any class of stock of the Corporation.

ARTICLE TWELVE

The Board of Directors is expressly authorized to alter, amend or repeal the Bylaws of the Corporation or to adopt new Bylaws.

ARTICLE THIRTEEN

Except as provided in Article Fourteen below, any action of the Corporation that under the provisions of the Texas Business Corporation Act would, but for this Article Thirteen, be required to be authorized by the affirmative vote of the holders of any specified portion of the outstanding shares of the Corporation shall require the approval of the holders of only a majority of the outstanding shares of the Corporation.

ARTICLE FOURTEEN

A. Approval of Certain Business Combinations. A Business Combination (as hereinafter defined) during the three-year period immediately following the date that a shareholder became an Interested Shareholder (as hereinafter defined) shall require (i) only the affirmative vote as is required by law and any other provision of these Second Restated Articles of Incorporation, if all of the conditions specified in Paragraphs 1, 2, 3 or 4 of this Section A are met, or (ii) in addition to any affirmative vote required by law or these Second Restated Articles of Incorporation, the affirmative vote of the holders of at least 66-2/3% of the voting power of the then outstanding shares of capital stock of the Corporation that are entitled to vote generally in the election of directors (referred to in this Article Fourteen as the "Voting Stock") and that are not owned by the Interested Shareholder, voting together as a single class (it being understood that for the purposes of this Article Fourteen, each share of the Voting Stock shall have the number of votes granted to it pursuant to Article Four of these Second Restated Articles of Incorporation). Such an affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law.

1. Approval by Disinterested Directors. The Business Combination or the transaction that resulted in the shareholder becoming an Interested Shareholder shall have been approved by a majority of the Disinterested Directors (as hereinafter defined).

2. Price and Procedure Requirements. All of the following conditions shall have been met:

(a) The aggregate amount of the cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination of the consideration other than cash to be received per share by holders of shares of Common Stock in such Business Combination shall be at least equal to the higher of the following:

(i) (if applicable) the highest price per share (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Shareholder (as hereinafter defined) for any shares of Common Stock or the common stock of any Predecessor Corporation (as hereinafter defined) acquired by it (1) within the three-year period immediately prior to the first public announcement of the terms of the proposed Business Combination (the "Announcement Date") or (2) in the transaction in which it became an Interested Shareholder, whichever is higher; and

(ii) the Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Interested Shareholder became an Interested Shareholder (such later date is referred to in this Article Fourteen as the "Determination Date"), whichever is higher.

(b) The aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash to be received by holders of shares of any class of outstanding Voting Stock other than Common Stock shall be at least equal to the highest of the following (it being intended that the requirements of this Paragraph 2(b) shall be required to be met with respect to every class of outstanding Voting Stock, whether or not the Interested Shareholder has previously acquired any shares of a particular class of Voting Stock):

(i) (if applicable) the highest price per share (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Shareholder for any shares of such class of Voting Stock or a substantially identical class of stock of any Predecessor Corporation acquired by it (1) within the three-year period immediately prior to the Announcement Date or (2) in the transaction in which it became an Interested Shareholder, whichever is higher;

(ii) (if applicable) the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled to in the event of any voluntary or involuntary liquidation, dissolution, or winding up of the Corporation; and

(iii) the Fair Market Value per share of such class of Voting Stock on the Announcement Date or on the Determination Date, whichever is higher.

(c) The consideration to be received by holders of a particular class of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form as the Interested Shareholder has previously paid for shares of such class of Voting Stock or stock of a Predecessor Corporation. If the Interested Shareholder has paid for shares of any class of Voting Stock or stock of a Predecessor Corporation with varying forms of consideration, the form of consideration for such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock or stock of a Predecessor Corporation previously acquired by it. The price determined in accordance with Paragraphs 2(a) and 2(b) of this Section A shall be subject to appropriate adjustment in the event of any special dividend or other disposition of material assets (other than in the ordinary course of business), stock dividend, stock split, combination of shares, or similar event. Whether a specific form of consideration satisfies this subsection shall be determined by vote of a majority of the Disinterested Directors.

(d) After such Interested Shareholder has become an Interested Shareholder and prior to the consummation of such Business Combination: (i) except as approved by a majority of the Disinterested Directors, there shall have been no failure to declare and pay at the regular date therefor any quarterly dividends (whether or not cumulative) on any outstanding capital stock having preference over the Common Stock as to dividends or upon liquidation; (ii) there shall have been (1) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Disinterested Directors, and (2) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization, or any similar transaction that has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Disinterested Directors; and (iii) such Interested Shareholder shall not have become the beneficial owner of any additional shares of Voting Stock except as part of the transaction that results in such Interested Shareholder becoming an Interested Shareholder.

(e) After such Interested Shareholder has become an Interested Shareholder, such Interested Shareholder shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guaranties, pledges, or other financial assistance or any tax credits or other tax advantages provided to or by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise.

(f) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Exchange Act (as

hereinafter defined) and the rules and regulations thereunder (or any subsequent provisions replacing the Exchange Act, rules, or regulations) shall have been mailed to shareholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy information is required to be mailed pursuant to the Exchange Act or subsequent provisions).

3. Acquisition of 85% of the Voting Stock. Upon consummation of the transaction that resulted in the shareholder becoming an Interested Shareholder, the Interested Shareholder owned at least 85% of the Voting Stock of the Corporation outstanding at the time such transaction commenced.

4. Previously Proposed Business Combinations. The Business Combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or notice required hereunder of a proposed transaction that (i) constitutes one of the transactions described in the second sentence of this Paragraph; (ii) is with or by a person who either was not an Interested Shareholder during the previous three years or who became an Interested Shareholder with the approval of the Board of Directors; and (iii) is approved or not opposed by a majority of the Disinterested Directors then in office (but not less than one). The proposed transactions referred to in the preceding sentence are limited to (1) a merger or consolidation of the Corporation; (2) a sale, lease, exchange, mortgage, pledge, transfer, or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Corporation or of any Subsidiary (as hereinafter defined) (other than to any wholly-owned Subsidiary or to the Corporation) having an aggregate Fair Market Value equal to 50% or more of either the aggregate Fair Market Value of all the assets of the Corporation determined on a consolidated basis or the aggregate Fair Market Value of all the outstanding capital stock of the Corporation; or (3) a proposed tender or exchange offer for 50% or more of the outstanding capital stock of the Corporation. The Corporation shall give not less than 20 days notice to all Interested Shareholders prior to the consummation of any of the transactions described in clauses (1) or (2) of the second sentence of this Paragraph.

B. Certain Definitions. For purposes of this Article Fourteen:

1. "Business Combination" shall mean any transaction that is referred to in any one or more of the following clauses (a) through (e):

(a) any merger or consolidation of the Corporation or any Subsidiary with (i) any Interested Shareholder or (ii) any other corporation (whether or not itself an Interested Shareholder) that is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Shareholder; or

(b) any sale, lease, exchange, mortgage, pledge, transfer, or other disposition (in one transaction or a series of transactions) to or with any Interested Shareholder or any Affiliate of any Interested Shareholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value equal to

10% or more of either the Fair Market Value of all the assets of the Corporation determined on a consolidated basis or the aggregate Fair Market Value of all the outstanding capital stock of the Corporation; or

(c) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or series of transactions) of any securities of either the Corporation or any Subsidiary to any Interested Shareholder or any Affiliate of an Interested Shareholder in exchange for cash, securities, or other property (or a combination thereof), except (i) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into capital stock of the Corporation or any Subsidiary, which securities were outstanding prior to the time that the Interested Shareholder became an Interested Shareholder, (ii) pursuant to a dividend or distribution paid or made, or the exercise, exchange, or conversion of securities exercisable for, exchangeable for or convertible into capital stock of the Corporation or any Subsidiary, which security is distributed, pro rata, to all holders of a class or series of capital stock of the Corporation subsequent to the time the Interested Shareholder became such, (iii) pursuant to an exchange offer by the Corporation to purchase capital stock made on the same terms to all holders of such capital stock, or (iv) any issuance or transfer of capital stock by the Corporation, provided, however, that in no case under (i) through (iv) shall there be an increase in the Interested Shareholder's proportionate share of the capital stock of any class or series of the Corporation or of the Voting Stock of the Corporation; or

(d) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of any Interested Shareholder or any Affiliate of any Interested Shareholder; or

(e) any reclassification of securities (including any reverse stock split) or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Shareholder) that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of Equity Security (as hereinafter defined) of the Corporation or any Subsidiary that is directly or indirectly owned by any Interested Shareholder or any Affiliate of any Interested Shareholder.

2. "Person" shall mean any individual, firm, or corporation, or other entity.

3. "Interested Shareholder" shall mean any Person (other than the Corporation or any employee benefit plan of the Corporation or any Subsidiary) that:

(a) is the beneficial owner, directly or indirectly, of 15% or more of the voting power of the outstanding Voting Stock; or

(b) is an assignee of or has otherwise succeeded to any shares of Voting Stock or of capital stock of any Predecessor Corporation that were at any

time within the three-year period immediately prior to the date of determination beneficially owned by any Interested Shareholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933, as amended.

4. A person shall be a "beneficial owner" of any stock that:

(a) such Person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns directly or indirectly; or

(b) such Person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement, or understanding or upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement, or understanding; or

(c) is beneficially owned, directly or indirectly, by any other Person with which such Person or any of its Affiliates or Associates has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of any shares of such capital stock.

5. For the purpose of determining whether a Person is an Interested Shareholder pursuant to Paragraph 3 of this Section B, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of Paragraph 4 of this Section B but shall not include any other shares of Voting Stock that may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise.

6. "Affiliate" and "Associate" shall have the meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date hereof.

7. "Subsidiary" means any corporation of which a majority of any class of Equity Security is owned, directly or indirectly, by the Corporation; provided, however, that for purposes of the definition of Interested Shareholder set forth in Paragraph 3 of this Section B, the term "Subsidiary" shall mean only a corporation of which a majority of each class of Equity Security is owned, directly or indirectly, by the Corporation.

8. "Disinterested Director" means (i) any member of the Board of Directors who is unaffiliated with the Interested Shareholder and who was a member of the Board of Directors immediately before the time that the Interested Shareholder became an Interested Shareholder and (ii) any successor of a Disinterested Director who is unaffiliated with the Interested Shareholder, and is recommended to succeed a Disinterested Director by a majority of Disinterested Directors then on the Board of Directors.

9. "Fair Market Value" means: (a) in the case of capital stock, (i) the highest closing sale price of a share of capital stock during the 30-day period immediately preceding the date of determination on the principal United States securities exchange on which such capital stock is listed, or (ii) if such capital stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such capital stock during the 30-day period immediately preceding the date of determination on the National Association of Securities Dealers, Inc., Automated Quotations System or any similar system then in use, or (iii) if no such quotations are available, the fair market value on the date in question of a share of such capital stock as determined by a majority of the Disinterested Directors in good faith; or (b) in the case of property other than cash or stock, the fair market value of such property on the date of determination as determined by a majority of the Disinterested Directors in good faith.

10. In the event of any Business Combination in which the Corporation survives, the phrase "consideration other than cash to be received" as used in Paragraphs 2(a) and 2(b) of Section A of this Article Fourteen shall include the shares of Common Stock and the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

11. "Equity Security" shall have the meaning ascribed to such term in Section 3(a)(11) of the Exchange Act, as in effect on the date hereof.

12. A "Predecessor Corporation" includes any corporation of which the Corporation was at one time a wholly-owned subsidiary, or of which the Corporation would be deemed to be a legal successor in interest (by contract or by merger or other operation of law).

13. "Announcement Date" shall have the meaning set forth in Section A(2)(a)(i) of this Article Fourteen.

14. "Determination Date" shall have the meaning set forth in Section A(2)(a)(ii) of this Article Fourteen.

15. "Voting Stock" shall have the meaning set forth in the first paragraph of Section A of this Article Fourteen.

16. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

C. Powers of the Board of Directors. A majority of the Disinterested Directors shall have the power and duty to determine for the purposes of this Article Fourteen, on the basis of information known to them after reasonable inquiry, (1) whether a Person is an Interested Shareholder, (2) the number of shares of Voting Stock beneficially owned by any Person, (3) whether a Person is an Affiliate or Associate of another, and (4) whether the assets that are the subject of any Business Combination have an aggregate Fair Market Value equal to 10% or more of either the Fair Market Value of all the assets of the Corporation determined on a consolidated basis or the aggregate Fair Market Value of all the outstanding capital stock of the Corporation.

A majority of the Disinterested Directors shall have the further power to interpret all of the terms and provisions of this Article Fourteen.

D. No Effect on Fiduciary Obligations of Interested Shareholders. Nothing contained in this Article Fourteen shall be construed to relieve any Interested Shareholder from any fiduciary obligation imposed by law.

E. Amendment of Article Fourteen. Notwithstanding any other provisions of these Second Restated Articles of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, these Second Restated Articles of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of 80% or more of the outstanding Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provision inconsistent with, this Article Fourteen or any provision hereof.

ARTICLE FIFTEEN

No contract or other transaction between the Corporation and any other corporation and no other acts of the Corporation with relation to any other corporation shall, in the absence of fraud, in any way be invalidated or otherwise affected by the fact that any one or more of the directors or officers of the Corporation are pecuniarily or otherwise interested in, or are directors or officers of, such other corporation. Any director or officer of the Corporation individually, or any firm or association of which any director or officer may be a member, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Corporation, provided that the fact that he individually or as a member of such firm or association is such a party or is so interested shall be disclosed or shall have been known to the Board of Directors or a majority of such members thereof as shall be present at any meeting of the Board of Directors at which action upon any such contract or transaction shall be taken; and any director of the Corporation who is also a director or officer of such other corporation or who is such a party or so interested may be counted in determining the existence of a quorum at any meeting of the Board of Directors which shall authorize any such contract or transaction and may vote thereat to authorize any such contract or transaction, with like force and effect as if he were not such a director or officer of such other corporation or not so interested. Any director of the Corporation may vote upon any contract or any other transaction between the Corporation and any subsidiary or affiliated corporation without regard to the fact that he is also a director or officer of such subsidiary or affiliated corporation.

Any contract, transaction, act of the Corporation or of the directors, which shall be ratified at any annual meeting of the shareholders of the Corporation, or at any special meeting of the shareholders of the Corporation, or at any special meeting called for such purpose, shall, insofar as permitted by law, be as valid and as binding as though ratified by every shareholder of the Corporation; provided, however, that any failure of the shareholders to approve or ratify any such contract, transaction or act, when and if submitted, shall not be deemed in any way to invalidate the same or deprive the Corporation, its directors, officers or employees, of its or their right to proceed with such contract, transaction or act.

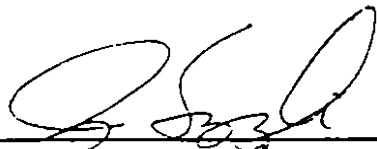
ARTICLE SIXTEEN

The Corporation will not commence business until it has received for the issuance of its shares consideration of the value of \$1,000.00, consisting of money, labor done, or property actually received.

Subject to any express agreement which may from time to time be in effect, any shareholder, director or officer of the Corporation may carry on and conduct in his own right and for his own personal account, or as a partner in any partnership, or as a joint venturer in any joint venture, or as an officer, director or shareholder of any corporation, or as a participant in any syndicate, pool, trust or association, any business which competes with the business of the Corporation and shall be free in all such capacities to make investments in any kind of property in which the Corporation may make investments.

EXECUTED as of the 9th day of October, 1995.

GADZOOKS, INC.

By: 
Name: JERRY SZCLERPANIK
Title: CEO

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FILED

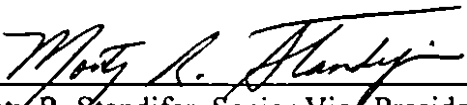
In the Office of the
Secretary of State of Texas

STATEMENT OF CHANGE OF REGISTERED OFFICE

JUL 08 1997

Corporations Section

1. The name of the entity is Gadzooks, Inc.
The entity's charter number is 006372932-0.
2. The registered office address as presently shown in the records of the Texas Secretary of State is 4801 Spring Valley Road, Suite 108B, Dallas, Texas 75234.
3. The address of the new registered office is 4121 International Parkway, Carrollton, Texas 75007.
4. The name of the registered agent as presently shown in the records of the Texas Secretary of State is Gerald R. Szczepanski.
5. The registered agent will not change.
6. Following the changes shown above, the address of the registered office and the address of the office of the registered agent will continue to be identical, as required by law.
7. The changes shown above were authorized by an officer of the corporation so authorized by the Board of Directors.



Monty R. Standifer, Senior Vice President,
Chief Financial Officer, Treasurer and Secretary

STATEMENT OF RESOLUTIONS
ESTABLISHING
SERIES A JUNIOR PARTICIPATING PREFERRED STOCK
of
GADZOOKS, INC.

FILED
In the Office of the
Secretary of State of Texas

SEP 10 1998

Corporations Section

To: The Secretary of State
of the State of Texas:

Pursuant to the provisions of Article 2.13 of the Texas Business Corporation Act (the "TBCA"), the undersigned corporation submits the following statement for the purpose of establishing and designating a series of shares and fixing and determining the preferences, limitations and relative rights of the series:

1. The name of the corporation is GADZOOKS, INC.
2. The following resolution, establishing and designating a series of shares and fixing and determining the relative rights and preferences of the series, was duly adopted by all necessary action of the corporation on September 3, 1998:

RESOLVED, that the Board of Directors of GADZOOKS, INC. (the "Company") hereby designates 25,000 shares of the Company's Preferred Stock, \$1.00 par value, as Series A Junior Participating Preferred Stock with the designation, preferences, limitations, and relative rights as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as "Junior Participating Preferred Stock, Series A" (the "Series A Preferred Stock") and the number of shares constituting the Series A Preferred Stock shall be 25,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Company convertible into Series A Preferred Stock.

Section 2. Dividends and Distributions.

(A) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference to the holders of Common Stock, par value \$0.01 per share (the "Common Stock"), of the Company, and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of January, April, July and October in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment hereinafter set forth, 1000 times the aggregate per share amount of

all cash dividends, and 1000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Company shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Company shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 50 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 1000 votes on all matters submitted to a vote of the shareholders of the Company. In the event the Company shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision

or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Statement of Resolutions establishing a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Company having general voting rights shall vote together as one class on all matters submitted to a vote of shareholders of the Company.

(C) Except as set forth herein, or as otherwise provided by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Company shall not:

declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that the Company may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Company ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A

Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Company shall not permit any subsidiary of the Company to purchase or otherwise acquire for consideration any shares of stock of the Company unless the Company could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Company in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Articles of Incorporation, or in any other Statement of Resolutions establishing a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Company, no distribution shall be made (1) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received \$1000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, provided that the holders of shares of Series A Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1000 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (2) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Company shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (1) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Company shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then