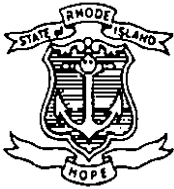


Filing Fee \$50.00

ID Number: 22216



**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**

**ARTICLES OF AMENDMENT TO THE  
ARTICLES OF INCORPORATION**  
(To Be Filed In Duplicate Original)

Pursuant to the provisions of Section 7-1.1-56 of the General Laws, 1956, as amended, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

1. The name of the corporation is Ross-Simons of Warwick, Inc.
2. The shareholders of the corporation (or, where no shares have been issued, the board of directors of the corporation) on May 7 2002, in the manner prescribed by Chapter 7-1.1 of the General Laws, 1956, as amended, adopted the following amendment(s) to the Articles of Incorporation:

[Insert Amendment(s)]

(If additional space is required, please list on separate attachment)

Article Fourth of the Articles of Incorporation, as amended, is further amended as recited  
on Exhibit A attached hereto.

Article Fifth of the Articles of Incorporation, as amended, is further amended by  
deleting same in its entirety and shall read: "NONE".

3. The number of shares of the corporation outstanding at the time of such adoption was 8,608,755; and the number of shares entitled to vote thereon was 8,608,755.
4. The designation and number of outstanding shares of each class entitled to vote thereon as a class were as follows: (If inapplicable, insert "none.")

<u>Class</u>	<u>Number of Shares</u>
<u>Class A Common</u>	<u>8,603,755</u>
<u>Series A Preferred</u>	<u>5,000</u>

FILED  
MAY 09 2002  
By [Signature]  
2757

5. The number of shares voted for such amendment was 8,481,415 ; and the number of shares voted against such amendment was -0-

6. The number of shares of each class entitled to vote thereon as a class voted for and against such amendment, respectively, was: (If inapplicable, insert "none.")

Class	Number of Shares Voted	
	For	Against
Class A Common	8,476,415	-0-
Series A Preferred	5,000	-0-

7. The manner, if not set forth in such amendment, in which any exchange, reclassification, or cancellation of issued shares provided for in the amendment shall be effected, is as follows: (If no change, so state)

The manner is set forth in the amendment as attached in Exhibit A.

8. The manner in which such amendment effects a change in the amount of stated capital, and the amount (expressed in dollars) of stated capital as changed by such amendment, are as follows: (If no change, so state)

No change

9. As required by Section 7-1.1-57 of the General Laws, the corporation has paid all fees and franchise taxes.

10. Date when amendment is to become effective upon filing.

(not prior to, nor more than 30 days after, the filing of these articles of amendment)

Date: 5/9/02

Ross-Simons of Warwick, Inc.

Print Corporate Name

By [Signature]

☒ President or ☐ Vice President (check one)

By [Signature]

☐ Secretary or ☒ Assistant Secretary (check one)

STATE OF Rhode Island  
COUNTY OF Providence

In Cranston, on this 9<sup>th</sup> day of May, 2002 personally appeared before me Dwight S. Ross who, being by me first duly sworn, declared that he/she is the President of the corporation and that he/she signed the foregoing document as such officer of the corporation, and that the statements herein contained are true.

Notary Public  
My Commission Expires: 3/23/03

## Fee Calculations for Articles of Amendment DOMESTIC BUSINESS

CORP ID# 22216

NAME OF CORPORATION ROSS-SIMONS OF WARWICK, INC.

CONTACT \_\_\_\_\_ Phone \_\_\_\_\_

ADDRESS \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

Total number of authorized shares currently of record: 12,000,000

Total number of authorized shares with increase: 13,200,000

LICENSE FEE \$2,400.00

FILING FEE \$50.00

TOTAL FEE \$2,450.00

Comments

\_\_\_\_\_

## EXHIBIT A

### TO ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION

Article FOURTH, as amended, is hereby deleted in its entirety and the following substituted therefor:

#### "FOURTH: CAPITAL STOCK

A. Classes of Stock. The aggregate number of shares which the corporation has the authority to issue is 13,200,000 shares, consisting of (i) 11,995,000 shares of Class A Common Stock with a par value of \$0.01 per share (the "**Common Stock**"), (ii) 5,000 shares of Series A Preferred Stock with a par value of \$0.01 per share (the "**Series A Preferred Stock**"), and (iii) 1,200,000 shares of Series B Preferred Stock with a par value of \$0.01 per share (the "**Series B Preferred Stock**" and, collectively with the Series A Preferred Stock, the "**Preferred Stock**").

#### B. Rights, Preferences and Restrictions of Preferred Stock.

##### 1. Dividend Provisions.

(a) The holders of shares of Series B Preferred Stock shall be entitled to receive quarterly dividends, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) on Series A Preferred Stock or Common Stock of the corporation, payable on September 1, December 1, March 1 and June 1 of each year (each a "**Dividend Date**"), in an amount per share equal to 2.5% of the Series B Liquidation Preference (as hereinafter defined) per share (the "**Series B Dividend**"). All dividends paid with respect to the shares of Series B Preferred Stock shall be paid *pro rata* to the holders entitled thereto.

(b) After the Series B Dividend has been declared and paid, or set apart for payment, the holders of Series A Preferred Stock shall be entitled to receive quarterly dividends, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) on the Common Stock, payable on each Dividend Date, in an amount per share equal to 5% of the Series A Liquidation Preference (as hereinafter defined) per share (the "**Series A Dividend**"). All dividends paid with respect to the shares of Series A Preferred Stock shall be paid *pro rata* to the holders entitled thereto.

(c) Each dividend shall be payable if, as and when declared by the Board of Directors from legally available assets and shall be fully cumulative and shall accrue (whether or not declared) on a daily basis from the last Dividend Date and, if not declared and paid in cash, shall be added to the Series A Liquidation Preference or the Series B Liquidation Preference, as the case may be, on the next Dividend Date. Dividends on the shares of Preferred Stock shall be paid to the holders of record at the

close of business on the date specified by the Board of Directors at the time such dividend is declared; provided, however, that such date shall not be more than 60 days nor less than 10 days prior to the relevant Dividend Date.

(d) So long as any shares of Series A Preferred Stock or Series B Preferred Stock shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Common Stock or other equity securities to which any of the Preferred Stock ranks prior (collectively, "**Junior Securities**"), nor shall any shares of any Junior Securities be purchased, redeemed, or otherwise acquired for value by the corporation (except for acquisitions of Common Stock by the corporation pursuant to agreements which permit the corporation to repurchase such shares upon termination of services to the corporation) until all dividends set forth in this Section B.1 shall have been paid or declared and set apart. In the event dividends are paid on any Junior Securities, an additional dividend shall be paid with respect to all outstanding shares of Preferred Stock in an amount equal per share (on an as-if-converted to Common Stock basis for the Series B Preferred Stock) to the amount paid or set aside for each Junior Security. The provisions of this Section 1(d) shall not, however, apply to a dividend or distribution payable solely in Junior Securities.

## 2. Liquidation Preference.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the corporation, holders of the shares of Series B Preferred Stock then outstanding shall be entitled to receive, prior and in preference to any distribution of any of the assets of the corporation to the holders of Series A Preferred Stock and Common Stock, by reason of their ownership thereof, out of the assets of the corporation available for distribution to its shareholders, an amount in cash per share equal to the greater of (1) (i) \$5.00 (the "**Original Series B Issue Price**") plus (ii) the amount of all dividends that have been added to the Series B Liquidation Preference pursuant to Section B.1(c) of this Article Fourth (collectively, the "**Series B Liquidation Preference**"), plus (iii) an amount in cash equal to all accrued but unpaid dividends thereon not theretofore added to the Series B Liquidation Preference to the date fixed for liquidation, dissolution or winding up, before any payment shall be made or any assets distributed to the holders of Series A Preferred Stock or Common Stock or (2) the amount such holder would have received as a holder of Common Stock if such holder had converted such share of Series B Preferred Stock into shares of Common Stock. If the assets of the corporation are not sufficient to pay in full the liquidation payments payable to holders of the outstanding shares of Series B Preferred Stock, then the holders of all such shares shall share ratably and proportionately in such distribution of assets in accordance with the amount that would be payable on such distribution if the amounts to which holders of the outstanding shares of Series B Preferred Stock are entitled were paid in full.

(b) Upon completion of the distribution required by subsection (a) of this Section 2, if assets remain in the corporation, holders of the shares of Series A Preferred Stock then outstanding shall be entitled to receive, prior and in preference to

any distribution of any of the assets of the corporation to the holders of Common Stock, by reason of their ownership thereof, out of the assets of the corporation available for distribution to its shareholders an amount in cash per share equal to (i) \$1,000, plus (ii) the amount of all dividends that have been added to the Series A Liquidation Preference pursuant to Section B.1(c) of this Article Fourth (collectively, the “**Series A Liquidation Preference**”), plus (iii) an amount in cash equal to all accrued but unpaid dividends thereon not theretofore added to the Series A Liquidation Preference to the date fixed for liquidation, dissolution or winding up, before any payment shall be made or any assets distributed to the holders of Common Stock. If the assets of the corporation are not sufficient to pay in full the liquidation payments payable to holders of the outstanding shares of Series A Preferred Stock, then the holders of all such shares shall share ratably and proportionately in such distribution of assets in accordance with the amount that would be payable on such distribution if the amounts to which holders of the outstanding shares of Series A Preferred Stock are entitled were paid in full.

(c) Upon completion of the distributions required by subsections (a) and (b) of this Section 2, all of the remaining assets of the corporation available for distribution to shareholders shall be distributed among the holders of Common Stock pro rata based on the number of shares of Common Stock held by each.

### 3. Change of Control Redemption of Preferred Stock

(a) Change of Control. If at any time after the first issuance of shares of Preferred Stock, there shall occur a Change of Control (as hereinafter defined), then, subject to Section B.3(a)(3) of this Article Fourth, the holders of the shares of Preferred Stock shall have the redemption rights hereinafter set forth. As used herein, “**Change of Control**” shall mean (i) prior to an IPO (as hereinafter defined), the failure by Freeman Spogli & Co. LLC, a Delaware limited liability company (“**FS&C**”) and its Affiliates (as hereinafter defined) to collectively own, directly or indirectly, beneficially and of record, shares representing at least 45% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the corporation; (ii) after an IPO, the failure by FS&C and its Affiliates to collectively own, directly or indirectly, beneficially and of record, shares representing at least 15% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the corporation; (iii) after an IPO, any person or entity or group (within the meaning of Rule 13d-5 under the United States Securities Exchange Act of 1934 as in effect on the date hereof), other than FS&C and its Affiliates, shall beneficially own, directly or indirectly, shares of capital stock of the corporation representing a percentage of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the corporation that is greater than the percentage thereof represented by shares owned by FS&C and its Affiliates or (iv) occupation of a majority of the seats (other than vacant seats) on the Board of Directors of the corporation by persons who are not Continuing Directors (as hereinafter defined). For purposes of the foregoing, any shares of capital stock of the corporation that are held by any person or entity shall, to the extent that FS&C or any of its Affiliates has the power to direct the voting of such shares, be deemed to be owned, beneficially and of record, by FS&C. For purposes hereof, “**Affiliate**” shall mean, with respect to a

specified person or entity, another person or entity that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person or entity specified; **"Continuing Directors"** shall mean the directors of the corporation on the date of, and after giving effect to, the consummation of the transactions contemplated by the Recapitalization Agreement dated as of June 22, 2000 by and among the corporation, FS&C and the sellers identified therein, and each other director if, in each case, such other director's nomination for election to the board of directors of the corporation is recommended by a majority of the then Continuing Directors or such other director receives the vote of FS&C or its applicable Affiliate in his or her election by the shareholders of the corporation; **"Control"** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ability to exercise voting power, by contract or otherwise and **"Controlling"** and **"Controlled"** have meanings correlative thereto; and **"IPO"** shall mean the issuance by the corporation of shares of its common stock to the public pursuant to a bona fide underwritten public offering, resulting in the receipt by the corporation of at least \$70,000,000 of gross cash proceeds;

(1) If the corporation will not be the surviving corporation following a proposed Change of Control, the corporation shall notify the holders of Preferred Stock in writing of the possibility of such Change of Control at least 15 days prior to the occurrence thereof, shall offer to purchase for cash (x) any and all outstanding shares of Series B Preferred Stock at a price equal to 100% of the Series B Liquidation Preference per share, plus accrued and unpaid dividends from the last dividend payment date to the date of redemption to the extent not theretofore added to the Series B Liquidation Preference and (y) any and all outstanding shares of Series A Preferred Stock at a price equal to 101% of the Series A Liquidation Preference per share, plus accrued and unpaid dividends from the last dividend payment date to the date of redemption to the extent not theretofore added to the Series A Liquidation Preference, in either case, simultaneously with (and as a condition to) the occurrence of the Change of Control, and shall purchase at such time all shares of Preferred Stock with respect to which the holders have accepted such offer; provided that if the funds of the corporation legally available for redemption of the Preferred Stock are insufficient to redeem the total number of shares of Preferred Stock to be redeemed on such date, those funds that are legally available will be used first to redeem the maximum possible number of shares of Series B Preferred Stock ratably among the holders of such shares to be redeemed based upon their holdings of Series B Preferred Stock with respect to which such holders have accepted the offer and second to redeem the maximum possible number of shares of Series A Preferred Stock ratably among the holders of such shares to be redeemed based upon their holdings of Series A Preferred Stock with respect to which such holders have accepted the offer. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the corporation are legally available for the redemption of shares of Preferred Stock such funds will immediately be used

to redeem the balance of the shares which the corporation has become obliged to redeem but which it has not redeemed utilizing the same priority with respect to shares of Preferred Stock that were previously redeemed pursuant to this Section B.3(1) of this Article Fourth.

(2) If the corporation is or will be the surviving corporation following such Change of Control, the corporation shall notify the holders of the Preferred Stock in writing of the possibility or occurrence of such Change of Control, as the case may be, no later than five days following the later of (x) the date of such Change of Control and (y) the date the corporation becomes aware of the fact that such Change of Control has occurred, shall offer to purchase for cash (x) any and all outstanding shares of Series B Preferred Stock at a price equal to 100% of the Series B Liquidation Preference per share, plus accrued and unpaid dividends from the last dividend payment date to the date of redemption to the extent not theretofore added to the Series B Liquidation Preference and (y) any and all outstanding shares of Series A Preferred Stock at a price equal to 101% of the Series A Liquidation Preference per share, plus accrued and unpaid dividends from the last dividend payment date to the date of redemption to the extent not theretofore added to the Series A Liquidation Preference, in either case, at a date not less than 15 nor more than 60 days following the date of such notice and shall purchase at such date all shares of Preferred Stock with respect to which the holders have accepted such offer; provided that if the funds of the corporation legally available for redemption of the Preferred Stock are insufficient to redeem the total number of shares of Preferred Stock to be redeemed on such date, those funds that are legally available will be used first to redeem the maximum possible number of shares of Series B Preferred Stock ratably among the holders of such shares to be redeemed based upon their holdings of Series B Preferred Stock with respect to which such holders have accepted the offer and second to redeem the maximum possible number of shares of Series A Preferred Stock ratably among the holders of such shares to be redeemed based upon their holdings of Series A Preferred Stock with respect to which such holders have accepted the offer. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the corporation are legally available for the redemption of shares of Preferred Stock such funds will immediately be used to redeem the balance of the shares which the corporation has become obliged to redeem but which it has not redeemed utilizing the same priority with respect to shares of Preferred Stock that were previously redeemed pursuant to this Section B.3(2) of this Article Fourth.

(3) Notwithstanding anything contained in these Articles of Incorporation, if the provisions of any agreement or instrument governing any indebtedness of the corporation for borrowed money ("**Indebtedness**") would prohibit the corporation from redeeming or offering to redeem the Preferred Stock, or if the consummation of such a redemption or offer to redeem would cause a default or event of default under any such agreement or instrument, then

(a) the corporation shall not be entitled to purchase or redeem, or offer to purchase or redeem, the Preferred Stock and (b) the holders of shares of the Preferred Stock shall not be entitled to require the corporation to purchase or redeem, or offer to purchase or redeem, the Preferred Stock, in each case until the earlier of (i) the mandatory redemption date for such series of Preferred Stock set out in Section B.4 of this Article Fourth and (ii) the date on which all such Indebtedness has been repaid in full in cash (and all commitments to lend thereunder have been terminated) or the holders of such Indebtedness consent to the redemption. The only remedy the holders of shares of Preferred Stock shall have as a result of the corporation's failure to redeem or offer to redeem the Preferred Stock or the corporation's failure to comply with any other provision of these Articles of Incorporation shall, in the case of the Series A Preferred Stock, be an increase in the Series A Dividend payable on each Dividend Date to 5.1%, and shall, in the case of the Series B Preferred Stock, be an increase in the Series B Dividend payable on each Dividend Date to 2.8%.

(b) Notice of Change of Control Redemption. The notice of redemption from the corporation to the holders of shares of Preferred Stock shall state:

(1) that a Change of Control may occur or has occurred, as the case may be, and that each holder of shares of Preferred Stock has the right to require the corporation to redeem any or all of such shares at the redemption price;

(2) the anticipated date for redemption, which shall be no later than the date specified in whichever of Section B.3(a)(1) or Section B.3(a)(2) of this Article Fourth is applicable;

(3) a description of the Change in Control; and

(4) that the holder is to surrender to the corporation, in the manner and at the place designated, the certificate or certificates representing shares of Preferred Stock with respect to which the holder has accepted the corporation's redemption offer.

4. Mandatory Redemption by the Corporation.

(a) Redemption.

(1) All outstanding shares of Series A Preferred Stock shall be redeemed on the eighth anniversary of the first issuance of the shares of Series A Preferred Stock (the "**Series A Redemption Date**"), at a redemption price equal to the Series A Liquidation Preference per share plus accrued and unpaid dividends from the last dividend payment date to Series A Redemption Date to the extent not theretofore added to the Series A Liquidation Preference (the "**Series A Redemption Price**"); provided that if any shares of Series B Preferred Stock are outstanding on such date, the Series A Redemption Date shall be the

first date following such date that no shares of Series B Preferred Stock are outstanding.

(2) At any time after the fifth anniversary of the first issuance of the shares of Series B Preferred Stock, upon the request of holders of a majority of the outstanding Series B Preferred Stock, all of the outstanding shares of Series B Preferred Stock shall be redeemed (the date of such redemption, "**Series B Redemption Date**"), at a redemption price equal to the Series B Liquidation Preference per share plus accrued and unpaid dividends from the last dividend payment date to the Series B Redemption Date to the extent not theretofore added to the Series B Liquidation Preference (the "**Series B Redemption Price**").

(b) Notice of Mandatory Redemption of Preferred Stock. The notice of redemption from the corporation to the holders of shares of Preferred Stock shall state:

(1) the date fixed for redemption, which shall be the Series A Redemption Date if Series A Preferred Stock is to be redeemed and the Series B Redemption Date if Series B Preferred Stock is to be redeemed; and

(2) that the holder is to surrender to the corporation, in the manner and at the place designated, its certificate or certificates representing its shares of Series A Preferred Stock or Series B Preferred Stock, as the case may be.

(c) Payment Upon Mandatory Redemption.

(1) Series B Preferred Stock. The Series B Redemption Price shall be payable in cash on the Series B Redemption Date, upon surrender of the certificates representing the shares of Series B Preferred Stock. If the funds of the corporation legally available for redemption of the Series B Preferred Stock on the Series B Redemption Date are insufficient to redeem the total number of shares of Series B Preferred Stock to be redeemed on such date, those funds that are legally available will be used to redeem the maximum possible number of shares of Series B Preferred Stock ratably among the holders of such shares to be redeemed based upon their holdings of Series B Preferred Stock. The shares of Series B Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the corporation are legally available for the redemption of shares of Series B Preferred Stock such funds will immediately be used to redeem the balance of the shares which the corporation has become obliged to redeem on the Series B Redemption Date but which it has not redeemed.

(2) Series A Preferred Stock. The Series A Redemption Price shall be payable in cash on the Series A Redemption Date, upon surrender of the certificates representing the shares of Series A Preferred Stock. If the funds of the corporation legally available for redemption of the Series A Preferred Stock on

the Series A Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock to be redeemed on such date, those funds that are legally available will be used to redeem the maximum possible number of shares of Series A Preferred Stock ratably among the holders of such shares to be redeemed based upon their holdings of Series A Preferred Stock. The shares of Series A Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the corporation are legally available for the redemption of shares of Series A Preferred Stock such funds will immediately be used to redeem the balance of the shares which the corporation has become obliged to redeem on the Series A Redemption Date but which it has not redeemed.

5. Optional Redemption by the Corporation.

(a) Redemption. So long as no shares of Series B Preferred Stock are then outstanding, the corporation may, subject to Section B.3(a)(3) of this Article Fourth, redeem the Series A Preferred Stock, in whole or in part, at any time, at a redemption price per share equal to the percentages of the Series A Liquidation Preference set forth below, plus accrued and unpaid dividends from the last dividend payment date to the date of redemption to the extent not theretofore added to the Series A Liquidation Preference, if redeemed during the 12-month period beginning July 31 of the years indicated below.

<u>Year</u>	<u>Redemption Prices</u>
2000	120%
2001	117 <sup>1</sup> / <sub>2</sub> %
2002	115%
2003	112 <sup>1</sup> / <sub>2</sub> %
2004	110%
2005	107 <sup>1</sup> / <sub>2</sub> %
2006	105%
2007	102 <sup>1</sup> / <sub>2</sub> %

(b) Notice of Optional Redemption. Notice of redemption pursuant to Section B.5(a) of this Article Fourth shall be mailed at least 15 days before the redemption date by first class mail to each holder whose Series A Preferred Stock is to be redeemed at such holder's registered address. The notice of redemption from the corporation to the holders of shares of Series A Preferred Stock shall state:

(1) the date fixed for redemption which shall be not less than 15 nor more than 60 days following the date of such notice;

(2) the number of shares of Series A Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of shares to be redeemed from such holder; and

(3) that the holder is to surrender to the corporation, in the manner and at the place designated, its certificate or certificates representing its shares of Series A Preferred Stock.

(c) Pro Rata Basis. If less than all of the outstanding shares of Series A Preferred Stock are to be redeemed pursuant to Section B.5(a) of this Article Fourth, the corporation shall select those shares to be redeemed pro rata (with any fractional shares being rounded to the nearest whole share).

6. Conversion. The holders of Series A Preferred Stock do not have conversion rights. The holders of Series B Preferred Stock shall have the following conversion rights (the “**Conversion Rights**”):

(a) Right to Convert. On the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Series B Preferred Stock, each share of Series B Preferred Stock shall be convertible at the office of the corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (x)(i) the Series B Liquidation Preference, plus (ii) all accrued but unpaid dividends to the date the certificate is surrendered for conversion to the extent not theretofore added to the Series B Liquidation Preference by (y) the Conversion Price in effect on the date the certificate is surrendered for conversion. The “**Conversion Price**” shall initially be \$5.00; provided, however, that the Conversion Price shall be subject to adjustment as set forth in Section B.6(d) of this Article Fourth.

(b) Automatic Conversion. Each share of Series B Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for the Series B Preferred Stock immediately upon the corporation’s sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 or Form SB-2 under the Securities Act of 1933, as amended.

(c) Mechanics of Conversion. Before any holder of Series B Preferred Stock shall be entitled to convert the same into shares of Common Stock, he, she or it shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for the Series B Preferred Stock, and shall give written notice to the corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series B Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series B Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or

holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, the conversion may, at the option of any holder tendering Series B Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Series B Preferred Stock shall not be deemed to have converted such Series B Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments. The Conversion Price shall be subject to adjustment from time to time as follows:

(1) In the event the corporation should at any time or from time to time after the date upon which any shares of Series B Preferred Stock are first issued fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "**Common Stock Equivalents**") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series B Preferred Stock shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(2) If the number of shares of Common Stock outstanding at any time after the date upon which any shares of Series B Preferred Stock are first issued is decreased by a reverse split or other combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series B Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event the corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section B.6(d)(1) of this Article Fourth, then, in each such case for the purpose of this Section B.6(e), the holders of Series B Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the corporation into which their shares of Series B

Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the corporation entitled to receive such distribution.

(f) Recapitalizations, Reclassifications and Reorganizations. If at any time or from time to time the Common Stock issuable upon conversion of the Series B Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by recapitalization, reclassification, reorganization, merger, consolidation or otherwise (other than a subdivision or combination transaction provided for elsewhere in this Section B.6) provision shall be made so that the holders of Series B Preferred Stock shall thereafter be entitled to receive upon conversion of any shares of Series B Preferred Stock the number of shares of stock or other securities or property of the corporation or otherwise to which a holder of Common Stock is entitled upon such recapitalization, reclassification, reorganization, merger, consolidation or other event. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section B.6 with respect to the rights of the holders of Series B Preferred Stock after the recapitalization, reclassification, reorganization or other event, to the end that the provisions of this Section B.6 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series B Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) No Impairment. The corporation will not, by amendment of its Article of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek 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 the carrying out of all the provisions of this Section B.6 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series B Preferred Stock against impairment.

(h) No Fractional Shares and Certificate as to Adjustments.

(1) No fractional shares shall be issued upon the conversion of any share or shares of the Series B Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share (with one-half being rounded upward). Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series B Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(2) Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section B.6, the corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the

facts upon which such adjustment or readjustment is based. The corporation shall, upon the written request at any time of any holder of Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series B Preferred Stock.

(i) Notices of Record Date. In the event of any taking by the corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the corporation shall mail to each holder of Series B Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) 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 Series B 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 Series B 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 Series B Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series B 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to its Articles of Incorporation.

7. Status of Reacquired Shares. Shares of Preferred Stock that have been issued and reacquired or redeemed in any manner shall (upon compliance with any applicable provisions of the laws of the State of Rhode Island) have the status of authorized and unissued shares of preferred stock undesignated as to series and may be redesignated and reissued.

8. Voting Rights.

(a) The holders of record of the shares of Series A Preferred Stock shall not be entitled to any voting rights, except as herein provided and as provided by the Rhode Island Business Corporation Act. So long as any shares of Series A Preferred Stock are outstanding, a class vote of two-thirds of the shares of Series A Preferred Stock then outstanding shall be required to (w) amend, alter or repeal any provision of the Articles of Incorporation (by merger or otherwise) so as to adversely affect the preferences, rights or powers of the Series A Preferred Stock (including, without

limitation, any change to the dividend payable on the Series A Preferred Stock or the Series A Liquidation Preference), (x) issue any series of equity securities senior or pari passu, with respect to dividend rights and rights on liquidation, winding up and dissolution, to the Series A Preferred Stock (other than the Series B Preferred Stock), (y) authorize or permit any subsidiary to issue any shares of preferred stock, or (z) declare or pay any dividend, whether in cash or property, with respect to any Junior Securities, make any other distribution on any Junior Securities, or purchase, redeem, or otherwise acquire for value any Junior Securities, except for dividends or distributions payable solely in Junior Securities or acquisitions of Common Stock by the corporation pursuant to agreements which permit the corporation to repurchase such shares upon termination of services to the corporation.

(b) The holder of each share of Series B Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series B Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the corporation, and shall be entitled to vote, together with holders of Common Stock as a single class, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series B Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). So long as any shares of Series B Preferred Stock are outstanding, a class vote of a majority of the shares of Series B Preferred Stock then outstanding shall be required to (w) amend, alter or repeal any provision of the Articles of Incorporation (by merger or otherwise) so as to adversely affect the preferences, rights or powers of the Series B Preferred Stock (including, without limitation, any change to the dividend payable on the Series B Preferred Stock or the Series B Liquidation Preference), (x) issue any series of equity securities senior or pari passu, with respect to dividend rights and rights on liquidation, winding up and dissolution, to the Series B Preferred Stock, (y) authorize or permit any subsidiary to issue any shares of preferred stock or (z) declare or pay any dividend, whether in cash or property, with respect to any Junior Securities, make any other distribution on any Junior Securities, or purchase, redeem, or otherwise acquire for value any Junior Securities, except for dividends or distributions payable solely in Junior Securities or acquisitions of Common Stock by the corporation pursuant to agreements which permit the corporation to repurchase such shares upon termination of services to the corporation..

9. Board Right. Upon certification from the holder of a majority of outstanding shares of Series A Preferred Stock (the "**Majority Holder**") that there is no other agreement or arrangement pursuant to which the Majority Holder is permitted to designate one or more members of the Board of Directors, the corporation shall increase the size of the Board of Directors by one member and the Majority Holder shall be permitted to appoint such director.

10. Reports. So long as any shares of the Preferred Stock are outstanding, the corporation will furnish the holders thereof with any quarterly and annual financial reports that the corporation is required to file with the Securities and Exchange Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 or, in the event the corporation is not required to file such reports, the same reports as are provided to the holders of the Common Stock or the corporation's senior lenders.

11. Notices Generally. Whenever it is provided herein that any notice, request, consent, approval or other communication shall or may be given to or served upon the corporation or any holder of shares of any series of Preferred Stock, each such notice, request, consent, approval or other communication shall be in writing and shall (i) if the Preferred Stock of such series is held by fewer than 15 persons, either be delivered in person or by telecopy or by air courier guaranteeing second business day delivery, and (ii) if the Preferred Stock of such series is held by 15 or more persons, also be delivered by first class mail, in either case directed to the party to receive the same at its address stated below:

(a) If to any holder of shares of Preferred Stock of such series, at his, her or its last known address appearing on the books of the corporation maintained for such purposes.

(b) If to the corporation, at:

Ross-Simons of Warwick, Inc.  
9 Ross Simons Drive  
Cranston, Rhode Island 02920

or at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Every notice, request, consent, approval or other communication hereunder shall be deemed to have been duly given or served on the date on which personally delivered, or on the date actually received, if sent by telecopy or overnight courier service, with receipt acknowledged.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the corporation, the assets of the corporation shall be distributed as provided in Section B.2(c) of this Article Fourth.

3. Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.