

165169

Florida Department of State
Division of Corporations
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MERGER OR SHARE EXCHANGE
BOSTON PROPER, INC.

Certificate of Status	0
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Page Count	11
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Merger

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ARTICLES OF MERGER

The following Articles of Merger are being submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105 of the Florida Statutes.

FIRST: The name and jurisdiction of the surviving corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u>
Boston Proper, Inc.	Florida	165169

SECOND: The name and jurisdiction of the merging corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u>
Harbor DTC, Inc.	Florida	P11000070254

THIRD: The Plan of Merger is attached.

FOURTH: The merger shall become effective upon the filing of these Articles of Merger with the Florida Department of State.

FIFTH: The Plan of Merger was adopted by the shareholders of Boston Proper, Inc., the surviving corporation, on August 29, 2011.

SIXTH: The Plan of Merger was adopted by the sole shareholder of Harbor DTC, Inc., the merging corporation, on August 15, 2011.

[Signature page to follow]

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SEVENTH: SIGNATURES FOR EACH CORPORATION:

Name of Corporation

Signature of an Officer
or Director

Typed or Printed Name of
Individual and Title

Boston Proper, Inc.



SHERYL CLARK

Harbor DTC, Inc.

SEVENTH: SIGNATURES FOR EACH CORPORATION:

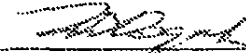
Name of Corporation

Signature of an Officer
or Director

Typed or Printed Name of
Individual and Title

Boston Proper, Inc.

Harbor DTC, Inc.

_____

Director

TODD VOGESEW

PLAN OF MERGER

The following plan of merger is submitted in compliance with section 607.1101, Florida Statutes.

First: The name and jurisdiction of the surviving corporation (the "Surviving Corporation") is as follows:

<u>Name</u>	<u>Jurisdiction</u>
Boston Proper, Inc.	Florida

Second: The name and jurisdiction of the merging corporation (the "Merging Corporation") is as follows:

<u>Name</u>	<u>Jurisdiction</u>
Harbor DTC, Inc.	Florida

Third: The merger shall become effective upon the filing of these Articles of Merger with the Florida Department of State (the "Effective Time").

Fourth: The terms and conditions of the merger are as follows:

The Merging Corporation shall be merged with and into the Surviving Corporation which shall be the surviving entity at the Effective Time and which shall continue to exist as a corporation under the laws of the State of Florida. The Surviving Corporation shall succeed to all rights, assets, liabilities and obligations of the Merging Corporation, and the separate existence of the Merging Corporation shall cease at the Effective Time. The Articles of Incorporation of the Surviving Corporation shall be amended and restated on the effective date of the merger in accordance with the Amended and Restated Articles of Incorporation attached hereto as Exhibit A. The Bylaws of the Surviving Corporation shall be amended and restated at the Effective Time of the merger.

Fifth: The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the Surviving Corporation, in whole or in part, into cash or other property are as follows:

At the Effective Time, by virtue of the merger and without any action on the part of the holders thereof, each share of common stock and preferred stock of the Surviving Corporation issued and outstanding immediately prior to the Effective Time shall be cancelled automatically in exchange for the applicable consideration set forth in the Agreement and Plan of Merger, dated as of August 16, 2011, by and among Chico's FAS, Inc., Merging Corporation, Surviving Corporation, and the Shareholder Representatives named therein. Each share of common stock of the Merging Corporation issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and nonassessable share of the Surviving Corporation.

Exhibit A

**Amended and Restated Articles of Incorporation
of
Boston Proper, Inc.**

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
BOSTON PROPER, INC.**

In accordance with Section 607.1007 of the Florida Statutes, the articles of incorporation of Boston Proper, Inc., a Florida corporation, are hereby amended and restated (the "*Amended and Restated Articles*") to read in their entirety as follows:

ARTICLE I. NAME

The name of the corporation (the "*Corporation*") shall be: Boston Proper, Inc.

ARTICLE II. PRINCIPAL OFFICE

The principal place of business and the mailing address of the Corporation shall be 6500 Park of Commerce Boulevard, Boca Raton, Florida 33487.

ARTICLE III. PURPOSE

The Corporation may engage in any activity or business permitted under the laws of the United States and the State of Florida.

ARTICLE IV. AUTHORIZED SHARES

The aggregate number of shares which the Corporation has the authority to issue is One Thousand (1,000) shares of common stock, with a par value of \$0.01 per share.

ARTICLE V. EFFECTIVE DATE

These Amended and Restated Articles shall be effective upon their filing with the Florida Department of State.

ARTICLE VI. INDEMNIFICATION

Section 1. Nature of Indemnity. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "*proceeding*"), by reason of the fact that s/he (or a person of whom s/he is the legal representative), is or was a director or officer of the Corporation or a director (or member of a similar governing body) or officer of any of its subsidiaries (any of the foregoing persons, a "*Mandatory Indemnitee*") shall be indemnified and held harmless by the Corporation to the fullest extent which it is empowered to do so by the Florida Business Corporation Act, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) (the "*FBCA*") against all expense, liability and loss (including, without limitation, attorneys' fees actually and reasonably incurred by such person in connection with such proceeding) and such indemnification shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in Section 2 of this Article Sixth, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the Board of Directors. The right to

indemnification conferred in this Article Sixth shall be a contract right and, subject to Sections 2 and 5 of this Article Sixth, shall include, without limitation, the right to payment by the Corporation of the expenses incurred in defending any such proceeding in advance of its final disposition. The Corporation may, by action of the Board of Directors, provide indemnification to any person who is or was serving as an employee, fiduciary or agent of the Corporation, or any person other than a Mandatory Indemnitee who is or was serving at the request of the Corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including, without limitation, service with respect to employee benefit plans (whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, fiduciary or agent or in any other capacity while serving as a director, officer, employee, fiduciary or agent) (any of the foregoing persons, an "*Optional Indemnitee*") with the same scope and effect as the foregoing indemnification of Mandatory Indemnitees.

Section 2. Procedure for Indemnification. Any indemnification of any Mandatory Indemnitee described in Section 1 of this Article Sixth or advance of expenses under Section 5 of this Article Sixth shall be made promptly, and in any event within 30 days, upon the written request of the Mandatory Indemnitee. If a determination by the Corporation that the Mandatory Indemnitee is entitled to indemnification pursuant to this Article Sixth is required, and the Corporation fails to respond within sixty days to a written request for indemnity, the Corporation shall be deemed to have approved the request. If the Corporation denies a written request for indemnification or advancing of expenses, in whole or in part, or if payment in full pursuant to such request is not made within 30 days, the right to indemnification or advances as granted by this Article Sixth shall be enforceable by the Mandatory Indemnitee in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the FBCA for the Corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the Corporation. Neither the failure of the Corporation (including, without limitation, the Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because s/he has met the applicable standard of conduct set forth in the FBCA, nor an actual determination by the Corporation (including, without limitation, its Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 3. Nonexclusively of Article Sixth. The rights to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article Sixth shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the certificate of incorporation, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

Section 4. Insurance. The Corporation shall purchase and maintain insurance on its own behalf and on behalf of any Mandatory Indemnitee or Optional Indemnitee, whether or not the Corporation would have the power to indemnify such person against such liability under this Article Sixth.

Section 5. Expenses. Expenses incurred by any Mandatory Indemnitee described in Section 1 of this Article Sixth in defending a proceeding shall be paid by the Corporation in advance of such proceeding's final disposition upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that s/he is not entitled to be indemnified by the Corporation.

Such expenses incurred by Optional Indemnitees may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

Section 6. Contract Rights. The provisions of this Article Sixth shall be deemed to be a contract right between the Corporation and each Mandatory Indemnitee who serves in any applicable capacity at any time while this Article Sixth and the relevant provisions of the FBCA or other applicable law are in effect, and any repeal or modification of this Article Sixth or any such law shall not affect any rights or obligations then existing with respect to any state of facts or proceeding then existing.

Section 7. Merger or Consolidation. For purposes of this Article Sixth, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including, without limitation, any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, fiduciaries and agents, so that any person who is or was a director, officer, employee, fiduciary or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, fiduciary or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article Sixth with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

Section 8. Effect of Repeal or Modification. Any repeal or modification of this Article Sixth shall not adversely affect any right or protection of a Mandatory Indemnitee existing at the time of such repeal or modification.

ARTICLE VII. LIABILITY

To the fullest extent permitted by the FCBA, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. Any repeal or modification of this Article Seventh shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VIII. BYLAWS

The power to adopt, alter, amend, or repeal bylaws shall be vested in the board of directors and the shareholders, except that the board of directors may not amend or repeal any bylaws adopted by the shareholders if the shareholders specifically provide that the bylaw is not subject to amendment or repeal by the directors.

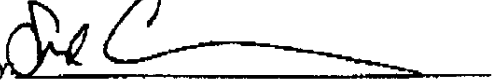
ARTICLE IX. AMENDMENTS

Subject to Articles Sixth and Seventh, the Corporation reserves the right to amend, alter, change, or repeal any provision in these Amended and Restated Articles in the manner prescribed by law, and all rights conferred on shareholders are subject to this reservation. Every amendment shall be approved by the board of directors, proposed by them to the shareholders, and approved at a shareholders' meeting by the holders of a majority of the shares entitled to vote on the matter or in such other manner as may be provided by law.

[Signature page to follow]

The board of directors of the Corporation recommended by unanimous vote at a meeting of the board of directors dated August 15, 2011 that the shareholders of the Corporation adopt the foregoing Amended and Restated Articles, and (i) a majority of the outstanding shares of Company Common Stock, Series B Preferred Stock and Series C Preferred Stock, voting together as a single class, (ii) at least sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of Series B Preferred Stock, voting as a separate class, and (iii) at least seventy-five percent (75%) of the outstanding shares of Series C Preferred Stock, voting as a separate class, approved the foregoing Amended and Restated Articles by written consent dated as of August 29, 2011.

BOSTON PROPER, INC.

By 
Sheryl Clark, President and Chief Executive Officer

**CERTIFICATE TO AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
BOSTON PROPER, INC.**

The undersigned, Sheryl Clark, President and Chief Executive Officer of Boston Proper, Inc., a Florida corporation (the "Corporation"), does hereby certify as follows:

1. The amendment and restatement of the Corporation's articles of incorporation as attached hereto requires shareholder approval.

2. The board of directors of the Corporation recommended by unanimous vote at a meeting of the board of directors dated August 15, 2011 that the shareholders of the Corporation approve, and (i) a majority of the outstanding shares of Company Common Stock, Series B Preferred Stock and Series C Preferred Stock, voting together as a single class, (ii) at least sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of Series B Preferred Stock, voting as a separate class, and (iii) at least seventy-five percent (75%) of the outstanding shares of Series C Preferred Stock, voting as a separate class, approved by written consent dated as of August 29, 2011 the amendment and restatement of the Corporation's articles of incorporation as attached hereto in accordance with Sections 607.1003 and 607.1006 of the Florida Statutes, the number of votes cast for the amendment by the shareholders being sufficient for such approval.

3. The undersigned officer of the Corporation has been duly authorized to submit these Amended and Restated Articles of Incorporation of the Corporation to the Florida Department of State for filing in accordance with Section 607.1007, Florida Statutes.

BOSTON PROPER, INC.

By: 

Sheryl Clark, President and Chief Executive
Officer