

FROM
Division of Corporations

(THU) 9.28'00 12:47/ST.12:46/NO. 4863333128 P. 1

P00000059000

Florida Department of State

Division of Corporations

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Katherine Harris, Secretary of State

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BASIC AMENDMENT

CL ACQUISITION CORP.

Certificate of Status	1
Certified Copy	0
Page Count	08
Estimated Charge	\$43.75

AMEND
KRP 9/29
10

SEPTEMBER 29, 2000

CL ACQUISITION CORP.
1310 E 9TH AVENUE
TAMPA, FL 33605

SUBJECT: CL ACQUISITION CORP.
REF: P00000059000

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KAREN GIBSON
CORPORATE SPECIALIST

FAX AUD. #: H00000051518
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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

CL ACQUISITION CORP.

Pursuant to Sections 607.1006 and 607.1007 of the Florida Business Corporation Act (the "FBCA"), CL ACQUISITION CORP. adopts these Amended and Restated Articles of Incorporation:

FIRST: The name of the Corporation is CL ACQUISITION CORP.

SECOND: The Corporation's Articles of Incorporation are amended and restated in their entirety to read as follows:

ARTICLE I. NAME

The name of the Corporation is CREATIVE LOAFING, INC.

ARTICLE II. BUSINESS AND ACTIVITIES

The Corporation may, and is authorized to, engage in any activity or business now or hereafter permitted under the laws of the United States and of the State of Florida.

ARTICLE III. CAPITAL STOCK

3.1 Authorized Shares. The total number of shares of all classes of capital stock that the Corporation shall have the authority to issue shall be 1,500,000 shares of Common Stock having a par value of \$0.001 per share ("Common Stock"). The Common Stock shall be divided into 4 classes, as follows:

(A) Class A Common Stock. There shall be authorized 155,628 shares of the Class A Common Stock (the "Class A Common Stock").

(B) Class B Common Stock. There shall be authorized 267,817 shares of the Class B Common Stock (the "Class B Common Stock").

(C) Class C Common Stock. There shall be authorized 76,555 shares of the Class C Common Stock (the "Class C Common Stock").

(D) Class D Common Stock. There shall be authorized 1,000,000 shares of the Class D Common Stock (the "Class D Common Stock").

3.2 Common Stock.

(A) Relative Rights. Except as otherwise provided in these Articles of Incorporation, each share of Common Stock shall have the same rights as and be identical in all respects to all the other shares of Common Stock.

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(B) Voting Rights.

(1) Each share of Class A Common Stock shall be entitled to 4.77 votes per share, and each share of Class B Common Stock and Class C Common Stock shall be entitled to one (1) vote per share.

(2) Except as otherwise provided in these Articles of Incorporation, each share of Class A Common Stock, Class B Common Stock and Class C Common Stock shall be entitled to vote for all corporate purposes.

(3) Each share of Class D Common Stock shall not be entitled to any vote for the election of directors of the Corporation or for any other corporate purposes.

(C) Preemptive Rights.

(1) Except as provided herein to the contrary, no shareholder of the Corporation shall have any preferential or preemptive right to subscribe for or purchase from the Corporation any new or additional shares of capital stock, or securities convertible into shares of capital stock, of the Corporation, whether now or hereafter authorized.

(2) Upon the decision of the Board of Directors of the Corporation to issue new or additional shares of capital stock, or securities convertible into or exercisable for shares of capital stock, of the Corporation, the holders of the Class B Common Stock shall have preemptive rights to acquire a portion of any or all such new or additional shares of capital stock, or securities convertible into or exercisable for shares of capital stock, of the Corporation upon the following terms and conditions:

- (i) The proportion of new or additional shares of capital stock, or securities convertible into or exercisable for shares of capital stock, of the Corporation that the holders of the Class B Common Stock shall have a right to acquire shall be a fraction having a numerator equal to the sum of the number of shares of Common Stock, capital stock and capital stock that would be held by the holders of the Class B Common Stock upon the exercise of all outstanding options, warrants and rights to acquire capital stock of the Corporation held by holders of the Class B Common Stock and having a denominator equal to the sum of the number of shares of Common Stock and capital stock of the Corporation issued and outstanding and the number of shares of capital stock of the Corporation that would be issued and outstanding upon the exercise of all outstanding options, warrants and rights to acquire capital stock of the Corporation.

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- (ii) Preemptive rights must be exercised within thirty (30) days of the date that the Corporation tenders written notice to the holders of the Class B Common Stock of the proposed issuance of any new or additional shares of capital stock, or securities convertible into or exercisable for shares of capital stock, of the Corporation (the "Shareholder Notice"). The Shareholder Notice shall contain a detailed description of the securities proposed to be issued and the price at which such securities are proposed to be offered. The preemptive rights provided for herein may be exercised in whole or in part. Unless a holder of the Class B Common Stock, within thirty (30) days of the date that the Corporation tenders the Shareholder Notice, tenders to the Corporation written notice that such holder of Class B Common Stock will exercise the preemptive rights, in whole or in part, accompanied by payment for the securities in immediately available funds, the preemptive rights shall terminate and the Corporation may offer the securities as described in the Shareholder Notice free of any preemptive rights.
- (iii) The preemptive rights of the holders of the Class B Common Stock shall not apply to issuances of Common Stock pursuant to the exercise of options granted to employees of the Corporation pursuant to employee stock option plans approved by the holders of the Class B Common Stock or the exercise of warrants granted by the Corporation and approved by the holders of the Class B Common Stock.

(D) Consent. The following corporate actions shall not be authorized except upon the approval of the members of the Board of Directors of the Corporation elected by Class B Shareholder(s):

- (1) any amendment of the Articles of Incorporation or Bylaws of the Corporation;
- (2) the declaration or payment of any dividend on, or other payment with respect to, the capital stock of the Corporation;
- (3) any increase in the salary or bonus compensation paid to any of the seven (7) highest paid executive employees of the Corporation, or any employee or

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consultant who has a written employment or consulting agreement with the Corporation, in excess of five percent (5%) per annum; and

(4) the adoption of any employee stock option plan and any awards thereunder.

(E) Dividends. The holders of record of the Common Stock shall be entitled to receive dividends, when, as, and if declared by the Board of Directors of the Corporation, out of any assets legally available for the payment of dividends thereon.

(F) Dissolution, Liquidation, Winding Up. In the event of any dissolution, liquidation, or winding up of the Corporation, whether voluntary or involuntary, the holders of record of the Common Stock then outstanding shall become entitled to participate, pro rata based on the number of shares of Common Stock held by each such holder, in the distribution of assets of the Corporation remaining after the Corporation shall have paid or provided for payment of all debts and liabilities of the Corporation.

ARTICLE IV. BOARD OF DIRECTORS

4.1 Number and Term. The number of directors of the Corporation shall be fixed at eight (8). Each director shall serve until such director's successor is duly elected and qualified or until such director's earlier death, resignation, or removal. At each annual meeting of the shareholders, the successors to the directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of the shareholders and until their successors shall have been duly elected and qualified or until such director's earlier death, resignation, or removal.

4.2 Voting.

(1) The holders of issued and outstanding shares of Class B Common Stock shall be entitled to vote for the election of such number of the members of the Board of Directors of the Corporation as equals (i) eight (8) multiplied by (ii) a fraction having as its numerator, the number of shares of Common Stock held by the holders of Class B Common Stock and having as its denominator, the total number of issued and outstanding shares of Common Stock, provided that the result of the fraction shall be rounded up to the nearest integer if it contains a remainder that is equal to five tenths (.5) or more and shall be rounded down to the nearest integer if it contains a remainder that is less than five tenths (.5).

(2) The holders of issued and outstanding shares of Class A Common Stock shall be entitled to vote for the election of such number of the members of the Board of Directors of the Corporation as equals (i) eight (8) minus (ii) the number of members of the Board of Directors of the Corporation that the holders of Class B Common Stock are entitled to elect pursuant to Section 4.2(1) hereof.

4.3 Removal.

(A) Removal For Cause. Any director or directors may be removed from office at any time for cause (as defined in Section 4.3(B) hereof) by the affirmative vote, at

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a special meeting of the shareholders called for such a purpose, of not less than sixty-six and two-thirds percent (66 2/3%) of the total number of votes of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, but only if notice of such proposed removal was contained in the notice of such meeting. At least thirty (30) days prior to such special meeting of the shareholders, written notice shall be sent to the director or directors whose removal will be considered at such meeting.

(B) "Cause" Defined. For the purposes of this Section 4.3, "cause" shall mean (i) misconduct as a director of the Corporation or any subsidiary of the Corporation that involves dishonesty with respect to a substantial or material corporate activity or corporate assets, or (ii) conviction of an offense punishable by one or more years of imprisonment (other than minor regulatory infractions and traffic violations that do not materially and adversely affect the Corporation).

(C) Removal Without Cause. Any director or directors may be removed from office at any time without cause in accordance with procedures set forth in the Bylaws of the Corporation; provided, however, that any director elected by a shareholder group entitled to separately vote in the election of directors may be removed without cause only by the vote of the majority of the total number of votes of the shares then outstanding of the class of Common Stock entitled to elect such director, voting together as a single class.

(D) Vacancies. Any vacancy on the Board of Directors of the Corporation resulting from removal of a director or otherwise shall be filled only by a vote of the majority of the total number of votes of the shares then outstanding of the class of Common Stock entitled to elect such vacated director, voting together as a single class.

4.4 Exercise of Business Judgment. In discharging his or her duties as a director of the Corporation, a director may consider such factors as the director considers relevant, including the long-term prospects and interests of the Corporation and its shareholders, the social, economic, legal, or other effects of any corporate action or inaction upon the employees, suppliers, or customers of the Corporation or its subsidiaries, the communities and society in which the Corporation or its subsidiaries operate, and the economy of the State of Florida and the United States.

ARTICLE V. ACTION BY SHAREHOLDERS

5.1 Call For Special Meeting. Special meetings of the shareholders of the Corporation may be called at any time, but only by (a) the Chairman of the Board of the Corporation, (b) a majority of the directors in office, although less than a quorum, (c) the holders of at least twenty-five percent (25%) of the total number of votes of any class of outstanding shares of capital stock of the Corporation entitled to vote in the election of directors, voting together as a single class, and (d) the holders of at least fifty-one percent (51%) of the total number of shares of the Class D Common Stock; provided, however, that such holders of Class D Common Stock may only call for any such special meeting two (2) times in any calendar year.

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5.2 Shareholder Action by Written Consent. Any action required or permitted to be taken by the shareholders of the Corporation must be effected at a duly called annual or special meeting of the shareholders, and may not be effected by any consent in writing by such shareholders, unless such written consent is signed by the holders of all the shares of Common Stock entitled to vote thereon.

ARTICLE VI. INDEMNIFICATION

6.1 Provision of Indemnification. The Corporation shall, to the fullest extent permitted or required by the FBCA, including any amendments thereto (but in the case of any such amendment, only to the extent such amendment permits or requires the Corporation to provide broader indemnification rights than to such amendment), indemnify all of the Corporation's officers and directors, all of the officers and directors of all of the Corporation's domestic subsidiaries, and all persons rendering services to the Corporation's foreign subsidiaries in capacities as officers and directors or in equivalent, identical, or similar capacities (hereinafter collectively the "Officers" and "Directors" of the Corporation), against any and all liabilities and advance any and all reasonable Expenses incurred thereby in any proceeding to which any such Director or Officer is a Party or in which such Director or Officer is deposed or called to testify as a witness because he or she is or was a Director or Officer of the Corporation or any of the Corporation's domestic or foreign subsidiaries. The rights to indemnification granted hereunder shall not be deemed exclusive of any other rights to indemnification against Liabilities or the advancement of Expenses which a Director or Officer may be entitled under any written agreement, Board of Director's resolution, vote of shareholders, the FBCA, or otherwise. The Corporation may, but shall not be required to, supplement the foregoing rights to indemnification against Liabilities and advancement of Expenses by the purchase of insurance on behalf of any one or more of its Directors or Officers, whether or not the Corporation would be obligated to indemnify or advance expenses to such Director or Officer under this Article VI. For purposes of this Article VI, the term "Directors" includes former directors of the Corporation or any of the Corporation's domestic or foreign subsidiaries and any director who is or was serving at the request of the Corporation or any of the Corporation's domestic or foreign subsidiaries as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, including without limitation, any employee benefit plan (other than in the capacity as an agent separately retained and compensated for the provisions of goods or services to the enterprise, including without limitation, attorneys at law, accountants, and financial consultants). The term "Officers" includes all of those individuals who are or were at any time officers of the Corporation or any of the Corporation's domestic or foreign subsidiaries and not merely those individuals who are or were at any time "executive officers" of the Corporation or any of the Corporation's domestic or foreign subsidiaries as defined in Securities and Exchange Commission Rule 3b-7 promulgated under the Securities Exchange Act of 1934, as amended. All of the capitalized terms used in this Article VI and not otherwise defined herein have the meaning set forth in Section 607.0850 of the FBCA. The provisions of this Article VI are intended solely for the benefit of the indemnified parties described herein, their heirs and personal representatives, and shall not create any rights in favor of third parties. No amendment to or repeal of this Article VI shall diminish the rights of indemnification provided for herein prior to such amendment or repeal.

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ARTICLE VII. AMENDMENTS

7.1 Articles of Incorporation. Notwithstanding any other provision of these Articles of Incorporation or the Bylaws of the Corporation (and notwithstanding that a lesser percentage may be specified by law), the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the total number of votes of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required (unless separate voting by classes is required by the FBCA, in which event the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the number of shares of each class or series entitled to vote as a class shall be required), to amend or repeal, or to adopt any provision inconsistent with the purpose or intent of, Articles III, IV, V, VI, or this Article VII of these Articles of Incorporation or the Bylaws; provided, however, that the affirmative vote of a majority of the shares of the Class B Common Stock outstanding, voting as a class, shall be required to amend the Articles of Incorporation of the Corporation. Notice of any such proposed amendment, repeal, or adoption shall be contained in the notice of the meeting at which it is to be considered. Subject to the provisions set forth herein, the Corporation reserves the right to amend, alter, repeal, or rescind any provision contained in these Articles of Incorporation in the manner now or hereafter prescribed by law.

7.2 Bylaws. The shareholders of the Corporation may adopt or amend a bylaw which fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by the FBCA. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum or voting requirement and be adopted by the same vote and voting groups required to take action under the quorum or voting requirement then in effect or proposed to be adopted, whichever is greater.

ARTICLE VIII. REGISTERED OFFICE AND AGENT

The address of the Registered Office of the Corporation is 1310 East 9th Avenue, Tampa, Florida 33605, and the Registered Agent at such address is Benjamin A. Eason.

ARTICLE IX. PRINCIPAL OFFICE AND MAILING ADDRESS

The address of the Principal Office of the Corporation and its mailing address is 1310 East 9th Avenue, Tampa, Florida 33605. The location of the Principal Office and the mailing address shall be subject to change as may be provided in the Bylaws.

THIRD: The foregoing amendment and restatement of the Corporation's Articles of Incorporation amends the Corporation's Articles of Incorporation and was adopted and approved by a majority of the shareholders of the Corporation by a written consent of shareholders pursuant to Section 607.0704 of the FBCA, and the number of votes cast by the shareholders was sufficient for approval.

FOURTH: Shares of the Corporation's Common Stock issued prior to the date of filing of these Amended and Restated Articles of Incorporation shall be converted automatically into shares of Common Stock as follows: (i) each share of common stock held by Benjamin A. Eason shall be converted into 1/100 share of the Class A Common Stock; and (ii) each share of

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FIFTH: The foregoing amendment and restatement of the Corporation's Articles of Incorporation will become effective upon the filing of these Amended and Restated Articles of Incorporation with the Florida Department of State.

IN WITNESS WHEREOF, these Amended and Restated Articles of Incorporation have been signed on behalf of the Corporation this 28th day of September, 2000.


Benjamin A. Eason
President

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**ACCEPTANCE OF APPOINTMENT
BY REGISTERED AGENT**

THE UNDERSIGNED, having been named in Article 8 of the foregoing Amended and Restate Articles of Incorporation as the registered agent at the office designated therein, hereby accepts such appointment and agrees to act in such capacity. The undersigned hereby states that it is familiar with, and hereby accepts, the obligations set forth in Section 607.0505, Florida Statutes, and the undersigned will further comply with any other provisions of law made applicable to it as the registered agent of CL Acquisition Corp.

DATED: September 28, 2000.



Benjamin A. Eason
1310 East 9th Avenue
Tampa, Florida 33605