

OFFICE OF THE SECRETARY OF STATE
STATE OF ILLINOIS



Whereas, ARTICLES OF AMENDMENT AND RESTATED ARTICLES TO THE ARTICLES OF INCORPORATION OF CUM ACQUISITION CORP.

INCORPORATED UNDER THE LAWS OF THE STATE OF ILLINOIS HAVE BEEN FILED IN THE OFFICE OF THE SECRETARY OF STATE AS PROVIDED BY THE BUSINESS CORPORATION ACT OF ILLINOIS, IN FORCE JULY 1, A.D. 1984.

Now Therefore, I, Jim Edgar, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby issue this certificate and attach hereto a copy of the Application of the aforesaid corporation.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois,

at the City of Springfield, this 4th day of JANUARY AD 19 90 and of the Independence of the United States the two hundred and 14th.

Jim Edgar
SECRETARY OF STATE

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JIM EDGAR
Secretary of State
State of Illinois

File #
This Space For Use By
Secretary of State

Date 7/14/90
License Fee \$
Franchise Tax \$ 100.00
Filing Fee \$
Clerk

Submit in Duplicate

Remit payment in Check or Money
Order, payable to "Secretary of
State".

DO NOT SEND CASH!

ARTICLES OF AMENDMENT

Pursuant to the provisions of "The Business Corporation Act of 1983", the undersigned corporation hereby adopts these Articles of Amendment to its Articles of Incorporation.

ARTICLE ONE The name of the corporation is CMW Acquisition Corp. (Note 1)

ARTICLE TWO The following amendment of the Articles of Incorporation was adopted on December 29, 1989 in the manner indicated below. ("X" one box only.)

- By a majority of the incorporators, provided no directors were named in the articles of incorporation and no directors have been elected; or by a majority of the board of directors, in accordance with Section 10.11, the corporation having issued no shares as of the time of adoption of this amendment; (Note 2)
- By a majority of the board of directors, in accordance with Section 10.15, shares having been issued but shareholder action not being required for the adoption of the amendment; (Note 3)
- By the shareholders, in accordance with Section 10.20, a resolution of the board of directors having been duly adopted and submitted to the shareholders. At a meeting of shareholders, not less than the minimum number of votes required by statute and by the articles of incorporation were voted in favor of the amendment; (Note 4)
- By the shareholders, in accordance with Sections 10.20 and 7.10, a resolution of the board of directors having been duly adopted and submitted to the shareholders. A consent in writing has been signed by shareholders having not less than the minimum number of votes required by statute and by the articles of incorporation. Shareholders who have not consented in writing have been given notice in accordance with Section 7.10; (Note 4)
- By the shareholders, in accordance with Sections 10.20 and 7.10, a resolution of the board of directors have been duly adopted and submitted to the shareholders. A consent in writing has been signed by all the shareholders entitled to vote on this amendment. (Note 4)

(INSERT AMENDMENT)

(Any article being amended is required to be set forth in its entirety.) (Suggested language for an amendment to change the corporate name is: RESOLVED, that the Articles of Incorporation be amended to read as follows:)

(New Name)

All changes other than name, include on page 2
(over)

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(see attached pages 2A through 2F)

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AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
CMW ACQUISITION CORP.

[Page 2]
Resolution

RESOLVED, that ARTICLE ONE is hereby restated as follows:

ARTICLE ONE: The name of the Corporation is CMW ACQUISITION CORP.; it was originally incorporated in the State of Illinois on September 6, 1989.

RESOLVED, that ARTICLE TWO is hereby restated as follows:

ARTICLE TWO: The name of the Corporation's registered agent and his registered office are, respectively, Thomas W. Rissman, and 6 West Hubbard Street, Suite 500, Chicago, Illinois 60610, located in Cook County.

RESOLVED, that ARTICLE THREE is hereby restated as follows:

ARTICLE THREE: The purpose or purposes for which the Corporation is organized are to engage in any lawful act or activity for which corporations may be organized under the Illinois Business Corporation Act of 1983, as amended (the "Act").

RESOLVED, that ARTICLE FOUR is hereby amended as follows:

ARTICLE FOUR: The authorized capital stock of the Corporation is 1,000,000 shares of common stock, \$.01 par value per share ("Common Stock"), and 10,000 shares of preferred stock, \$.01 par value per share ("Preferred Stock").

The preferences, qualifications, limitations, restrictions and the special or relative rights in respect of the shares of each class are as follows:

1. Cumulative voting shall be denied.
2. Preemptive rights shall be denied.

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3. Common Stock.

a. Dividends. Subject to the prior rights of the holders of the Preferred Stock to be paid dividends at the rate of \$100.00 per share per year, each holder of shares of Common Stock shall be entitled to share in dividends ratably with all other holders of shares of Common Stock then outstanding, when, if and as such dividends are declared and paid.

b. Voting Rights.

i. Except as expressly provided by the Act, the holders of Common Stock shall not be entitled to vote until the later to occur of:

A. the first date on which 80% of the Initial Preferred Shares shall have been redeemed by the Corporation in accordance with Section 4(b) hereof, or the date which is sixty (60) days after the last day of the first fiscal quarter in which the shareholders' equity (which for this purpose includes redeemable Preferred Stock) of the Corporation is equal to \$75 million, whichever is earlier; and

B. December 31, 1994.

ii. When the holders of Common Stock shall be granted the right to vote pursuant to Section 4(b)(i) hereof, each holder of Common Stock shall be entitled to vote on all matters upon which shareholders are entitled to vote under the Act and each holder of Common Stock entitled to vote at any time shall have one vote for each share of Common Stock held of record. Whenever any holders of Common Stock shall be entitled to vote, all such holders shall vote as one class.

c. Liquidation Rights of Common Stock. Upon any liquidation, dissolution or winding up of the Corporation, after payment in full of all amounts to which the holders of the Preferred Stock then outstanding are entitled to receive pursuant to Section 4(d) below, each holder of Common Stock then outstanding shall be entitled to share in any distribution of the remaining assets of the Corporation ratably with all other holders of shares of Common Stock then outstanding in accordance with their holdings of such shares.

4. Preferred Stock.

a. Dividends.

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i. Rate. The holders of the Preferred Stock shall be entitled to receive dividends thereon, if, when and as such dividends are declared and paid, on a cumulative basis, at the rate of \$100.00 per share per year in accordance with and subject to the provisions of this Section 4, and no more. In connection with redemptions of Preferred Stock pursuant to Section 4(b) hereof, dividends shall be declared and paid as provided therein.

ii. Accrual. Dividends shall accrue from the date of issuance of the shares of Preferred Stock to which they relate and shall continue to accrue from day to day, whether or not earned or declared and whether or not there shall be (at the time such dividends are calculated or become payable or at any other time) profits, surplus or other funds of the Corporation legally available for the payment of dividends.

iii. Partial Dividend Payment. If at any time the Corporation shall pay less than the total amount of all dividends then accrued and payable on the Preferred Stock, such payment shall be distributed to all holders of shares of Preferred Stock ratably in accordance with their holdings of such shares.

iv. Priority. Dividends on the Preferred Stock shall be payable before any dividends shall be declared or paid upon or set aside for any other series or class of capital stock of the Corporation, so that if at any time dividends upon the Preferred Stock at the rate of \$100.00 per share per year calculated cumulatively on a daily basis from the date of issuance shall not have been paid thereon or declared and set apart therefor, the amount of the deficiency shall be fully paid or declared and set aside for payment, but without interest, before any distribution, whether by dividend or otherwise, shall be declared or paid upon or set aside for, any shares of any other series or class of the Corporation's capital stock.

b. Redemption by the Corporation.

1. Redemption Right. Unless prevented from doing so by an applicable restriction of law or any applicable provision of these Amended and Restated Articles of Incorporation or of any provision in an agreement now or hereafter existing relating to indebtedness for borrowed money of the Corporation, unless such provision is waived, the Corporation may, at any time, and from time to time, and at its election, redeem, for \$1000.00 per share plus an amount equal to all dividends accrued and unpaid thereon to the date on which such redemption is made (the "Redemption Price"), all or any portion of the shares of Preferred Stock then outstanding (the "Affected Shares").

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ii. Partial Redemption to be Made Ratably.

Subject to the proviso contained in Section 4(b)(i) above, if the Corporation redeems only a portion of the shares of Preferred Stock then outstanding, it shall redeem such shares held by all holders of Preferred Stock ratably in accordance with their holdings of such shares.

iii. Redemption Notice. The Corporation shall make any redemption pursuant to this Section 4(b) by written notice, given not less than twenty (20) nor more than fifty (50) days before the date fixed in such notice for redemption, by mail or delivery to each holder of shares of Preferred Stock at his or its address as the same appears on the Corporation's books.

iv. Method for Redemption. On or before the redemption date stated in the redemption notice described above in Section 4(b)(iii), each holder of Affected Shares shall surrender to the Corporation, at its office or at such place as it may designate in the redemption notice, his or its certificate or certificates evidencing a number of shares of Preferred Stock at least equal to the number of Affected Shares held by him or it. Upon such surrender, the holder thereof shall be entitled to receive prompt payment of the Redemption Price (and accrued and unpaid dividends thereon, if any, pursuant to Section 4(a)) and a certificate representing the balance, if any, of shares of Preferred Stock covered by the surrendered certificate or certificates but as to which the redemption notice does not extend.

v. Effect of Redemption. When and if (x) the Corporation shall have given the redemption notice in the manner described in Section 4(b)(iii) above, (y) the Corporation shall have set apart all funds necessary to pay the Redemption Price for the Affected Shares, and (z) all such funds shall be available for the sole purpose of paying the amount due in respect of all Affected Shares contingent only upon the surrender of the certificates for the Affected Shares duly endorsed to the Corporation; then on and after the date fixed for redemption, the Affected Shares shall no longer be outstanding and all rights with respect to such shares shall forthwith cease except the right of the former holder thereof to receive the Redemption Price, without interest.

c. Reissuance Prohibited. The Corporation shall not reissue any shares of Preferred Stock which shall have been redeemed or reacquired by the Corporation in any manner after the original issue thereof and all such shares so redeemed or required shall be cancelled and shall cease to be a part of the authorized shares of the Corporation.

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d. Liquidation Rights. Upon any liquidation, dissolution or winding up of the Corporation, the holders of Preferred Stock shall be entitled to be paid \$1000.00 per share plus an amount equal to all dividends accrued but unpaid thereon to the date of final payment or dissolution, whether or not the Corporation shall have a surplus or earnings available for dividends. If the assets of the Corporation upon liquidation should be insufficient to permit payment to the holder of Preferred Stock of their full preferential amounts as herein provided, then such assets shall be distributed ratably among the holders of Preferred Stock in accordance with their holdings of such shares. No payments shall be made and no assets shall be distributed to the holders of any other series or class of capital stock of the Corporation upon liquidation unless and until the holders of Preferred Stock shall have received payment of the full amounts aforesaid.

e. Voting Rights.

i. Except as set forth in Section 4(e)(ii) hereof, each holder of Preferred Stock shall be entitled to vote on all matters which shareholders are entitled to vote under the Act, and shall have one vote for each share of Preferred Stock held of record. Whenever any holders of Preferred Stock shall be entitled to vote, all such holders shall vote as one class.

ii. The voting rights of the holders of Preferred Stock set forth above in Section 4(e)(i) shall terminate and shall automatically vest in the holders of Common Stock of the Corporation upon the earlier to occur of:

A. the first date on which 80% of the shares of Preferred Stock subscribed for pursuant to the Subscription Agreement, to be executed in connection with the closing for the purchase by CMW Acquisition Corp. of the assets of the East-West Line of the Chicago, Missouri & Western Railway Company, among CMW Acquisition Corp. and the purchasers identified in Exhibit 1 thereto, subject to adjustment for all stock splits, stock dividends and other recapitalizations affecting said shares subsequent to the execution of the Subscription Agreement (the "Initial Preferred Shares"), shall have been redeemed by the Corporation in accordance with Section 4(b); or

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B. sixty (60) days after the last day of the first fiscal quarter in which the shareholders' equity (which for this purpose includes redeemable Preferred Stock) of the Corporation is equal to \$75 million;

but in no event shall the voting rights of the holders of Preferred Stock terminate prior to December 31, 1994.

RESOLVED that ARTICLE FIVE is hereby amended as follows:

ARTICLE FIVE: The number of shares to be issued initially, and the consideration to be received by the Corporation therefor, are:

<u>Class</u>	<u>Par Value per share</u>	<u>Number of shares proposed to be issued</u>	<u>Consideration to be received therefor</u>
Common	\$.01	1,000	\$1,000

As of the date hereof, no shares of common stock, no par value per share, have been issued.

RESOLVED, that ARTICLE SIX is hereby restated as follows:

ARTICLE SIX: The number of directors constituting the initial board of directors of the Corporation is one and the name and address of the person who is to serve as a director until the first annual meeting of shareholders or until his successor be elected and qualified is:

<u>Name</u>	<u>Residential Address</u>
Mort Lowenthal	787 Seventh Avenue New York, NY 10019-6016

RESOLVED, that ARTICLE SEVEN through ARTICLE TEN are hereby adopted as follows:

ARTICLE SEVEN: The Corporation shall indemnify all directors and officers of the Corporation to the fullest extent permitted by law.

ARTICLE EIGHT: The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Amended and Restated Articles of Incorporation in the manner now or hereafter prescribed by law and all rights and powers conferred herein on shareholders and directors are subject to such reservation.

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ARTICLE NINE: Notwithstanding any provision of the Act now or hereafter in force, or the By-Laws of the Corporation, any action that but for this Article Nine would require the approval by the affirmative vote or consent of the holders of two-thirds (2/3) of the outstanding shares of stock entitled to vote thereon shall instead be approved upon the affirmative vote or consent of the holders of a majority of the outstanding shares of stock entitled to vote thereon.

ARTICLE TEN: The shareholders shall have the right to adopt new By-Laws and amend, alter, change or repeal any provision contained in existing By-Laws in the manner now or hereafter prescribed by law.

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ARTICLE THREE

The manner, if not set forth in the amendment, in which any exchange, reclassification or cancellation of issued shares, or a reduction of the number of authorized shares of any class below the number of issued shares of that class, provided for or effected by this amendment, is as follows: (If not applicable, insert "No change")

no change

ARTICLE FOUR

(a) The manner, if not set forth in the amendment, in which said amendment effects a change in the amount of paid-in capital* is as follows: (If not applicable, insert "No change")

no change

(b) The amount of paid-in capital* as changed by this amendment is as follows: (If not applicable, insert "No change")

no change

	Before Amendment	After Amendment
Paid-in Capital	\$ 0	\$ 0

The undersigned corporation has caused this statement to be signed by its duly authorized officers, each of whom affirm, under penalties of perjury, that the facts stated herein are true.

Dated December 28, 19 89

CMW ACQUISITION CORP.

(Exact Name of Corporation)

attested by [Signature]
(Signature of Secretary or Assistant Secretary)

by [Signature]
(Signature of President or Vice President)

Thomas W. Rissman, Secretary
(Type or Print Name and Title)

J. Reilly McCarren, President
(Type or Print Name and Title)

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* "Paid-in Capital" replaces the terms Stated Capital and Paid-in Surplus and is equal to the total of these accounts.

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File No. _____

Form BCA-1030

ARTICLES OF AMENDMENT

Filing Fee \$26.00

Filing Fee for Re-Signed Articles \$100.00

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JAN 04 1999

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RETURN TO:

Corporation Department
Secretary of State
Springfield, Illinois 62756
Telephone 217 - 782-0981

C-1723

Handwritten notes and signatures

SECRETARY OF STATE COUNTY RECORDER

JAN 04 1999
#11 # 2787 02/01/99 11:30:00
\$27.00

amendment.

NOTE 5: When shareholder approval is by written consent, all shareholders must be given notice of the proposed amendment at least 5 days before the consent is signed. If the amendment is adopted, shareholders who have not signed the consent must be promptly notified of the passage of the amendment.

The articles of incorporation may supersede the 2/3 vote requirement by specifying any smaller or larger vote requirement not less than a majority of the outstanding shares entitled to vote and not less than a majority within each class when class voting applies. (§ 10.20)

To be adopted, the amendment must receive the affirmative vote or consent of the holders of at least 2/3 of the outstanding shares entitled to vote on the amendment (but if class voting applies, then also at least a 2/3 vote within each class as required).

Shareholder approval may be (1) by vote at a shareholders' meeting (either annual or special) or (2) by consent, in writing, without a meeting.

NOTE 4: All amendments not adopted under § 10.10 or § 10.15 require (1) that the board of directors adopt a resolution setting forth the proposed amendment and (2) that the shareholders approve the amendment.

(f) to restrict the articles of incorporation as currently amended. (§ 10.15)

(e) to reduce the authorized shares of any class pursuant to a cancellation statement filed in accordance with § 9.05.

(d) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name, or by adding a geographical attribution to the name;

(c) to split the issued whole shares and unissued authorized shares by multiplying them by a whole number, so long as no class or series is adversely affected thereby;

(b) to remove the name and address of the initial registered agent and registered office, provided a statement pursuant to § 5.15 is also filed;

(a) to remove the names and addresses of directors named in the articles of incorporation;

NOTE 3: Directors may adopt amendments without shareholder approval in only six instances, as follows:

NOTE 2: Incorporators are permitted to adopt amendments ONLY before any shares have been issued and before any directors have been named or elected. (§ 10.10)

NOTE 1: State the true exact corporate name as it appears on the records of the office of the Secretary of State, BEFORE any amendments herein reported.

NOTES AND INSTRUCTIONS

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