

mb 3-10-99

Docket No.:

03-22-1999

DEPARTMENT OF COMMERCE
Patent and Trademark Office



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03-10-1999

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Documents or copy thereof.

U.S. Patent & TMO/TM Mail Rcpt Dt. #10

Honorable Commissioner of Patents and Trademark

1. Name of conveying party(ies):

Pryor Resources, Inc.

- Individual(s)
- General Partnership
- Corporation-State **Kansas**
- Other

- Association
- Limited Partnership

Additional names(s) of conveying party(ies) Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: **26 January 1999**

2. Name and address of receiving party(ies):

Name: **Pryor Holdings, Inc.**

Internal Address:

Street Address: **2000 Shawnee Mission Parkway**

City: **Shawnee Mission** State: **KS** ZIP: **66205**

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State **Kansas**
- Other

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from Additional name(s) & address(es) Yes N

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,389,835	1,448,437	1,735,879
1,398,926	1,450,098	1,740,293
1,401,622	1,466,749	1,804,387

Additional numbers Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: **Thomas H. Van Hoozer**

Internal Address: **Hovey, Williams, Timmons & Collins**

Street Address: **2405 Grand Boulevard, Suite 400**

City: **Kansas City** State: **MO** ZIP: **64108**

6. Total number of applications and registrations involved:.....

9

7. Total fee (37 CFR 3.41):..... \$ **\$240.00**

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

19-0522

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01 FC:481 40.00 DP
02 FC:482 200.00 DP

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Thomas H. Van Hoozer

Name of Person Signing

Thomas H. Van Hoozer
Signature

March 8, 1999
Date

TRADEMARK
REEL: 1870 FRAME: 0736

Ron Thornburgh
Secretary of State



2nd Floor, State Capitol
300 S.W. 10th Ave.
Topeka, KS 66612-1594
(785) 296-4564

STATE OF KANSAS

January 28, 1999

LINDA CATHERS
THE CORPORATION COMPANY, INC.

RE: PRYOR HOLDINGS, INC.

ID #: 81-372-5

To The Corporation

A certified copy of the amendment that was recently filed in the Corporations Division of our office is enclosed.

Every corporation in Kansas is assigned an identification number. Use of this number in any correspondence with our office will give us immediate access to your file and enable us to offer you faster, more efficient service. Your corporation's identification number is at the top of this letter.

ch

Administration (785) 296-4564
FAX (785) 291-3051
Corporations (785) 296-4564
FAX (785) 296-4570

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**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
PRYOR RESOURCES, INC.
UNDER SECTION 17-6605 OF THE
KANSAS GENERAL CORPORATION CODE**

The undersigned, being, respectively the President and the Assistant Secretary of Pryor Resources, Inc., do hereby certify as follows:

1. The name of the Corporation is Pryor Resources, Inc. before the name change effected by these Amended and Restated Articles of Incorporation.

2. The Articles of Incorporation were originally filed with the Secretary of State of Kansas on June 28, 1983.

3. The Articles of Incorporation of the Corporation as now in full force and effect are hereby amended and restated to effect the following changes as authorized by Sections 17-6602 and 17-6605 of the Kansas General Corporation Code (the "KGCC"):

(a) To change the name of the Corporation to "Pryor Holdings, Inc."

(b) To increase the number of shares of common stock which the corporation shall have the authority to issue, all of which are \$1.00 par value, from two thousand (2,000) shares, 896.405 of which are issued and 1,103.595 are unissued to 5,000,000 shares at \$0.01 par value, of which, 750,000 are issued at a par value of \$0.01 and 4,250,000 are unissued at a par value of \$0.01. The rate of change for the issued shares will be 836.676 to 1. The rate of change for the unissued shares will be 3,851.05 to 1.

(c) To authorize 150,000 new shares of preferred stock, \$.01 par value per share, and having the designations, relative rights, preferences and limitations as set forth in Article VI of this Restated Articles of Incorporation;

(d) To add a new Article X relating to the obligations of the Corporation to indemnify officers, directors and employees of the Corporation;

(e) To add a new Article XI relating to the limitation of personal liability of directors of the Corporation; and

(f) To add a new Article XII relating to the regulation and conduct of the business of the Corporation.

4. To effect the foregoing amendments the Articles of Incorporation are hereby amended and restated in its entirety to read as follows (as so amended and restated, the "Articles of Incorporation"):

ARTICLE I

The name of the Corporation is Pryor Holdings, Inc.

ARTICLE II

The principal office of the Corporation is located in the County of Johnson, State of Kansas.

ARTICLE III

Michael B. Hays is designated as the registered agent of the Corporation in the State of Kansas, and process against the Corporation may be served upon such registered agent at 2000 Shawnee Mission Parkway, Mission Woods, Johnson County, Kansas 66205.

ARTICLE IV

The nature of the business of the Corporation and the purposes for which it is organized are to engage in any lawful act or activity for which for profit corporations may be organized under the Kansas General Corporation Code ("KGCC").

ARTICLE V

5.1. Capital Stock.

(a) Classes. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 5,150,000, of which (a) 5,000,000 shares shall be common stock, \$.01 par value per share ("Common Stock") and (b) 150,000 shares shall be Class A Convertible Preferred Stock, \$.01 par value per share ("Class A Preferred"); provided, that all of the outstanding shares of Class A Preferred shall be redeemed for cash or converted into shares of Common Stock in accordance with the provisions of Article VI hereof on or prior to the closing date (the "Closing Date") of the Corporation's Initial Public Offering (as hereinafter defined); and, provided further, that following the Closing Date, the Corporation shall not issue any shares of Class A Preferred except as provided in Section 6.2.

(b) **No Preemptive Rights.** No stockholder of the Corporation shall have any preemptive rights to purchase, subscribe for or otherwise acquire any capital stock or other securities of the Corporation, whether now or hereafter authorized, and any and all preemptive rights hereby are denied.

(c) **Conversion of Issued and Outstanding Shares of Common Stock.** Effective as of the date these Amended and Restated Articles of Incorporation are filed with the Secretary of State of the State of Kansas, the Corporation shall effect a conversion of the issued and outstanding shares of Common Stock whereby each outstanding share of Common Stock held by each holder on the date hereof, shall be split, converted, reclassified and reconstituted into (i) 836.676 shares of Common Stock, par value \$.01 per share and (ii) 83.339 shares of Class A Preferred, par value \$.01 per share; provided, that the number of authorized shares of Common Stock and Class A Preferred of the Corporation set forth in Section 5.1(a) above shall not be affected by such adjustment, and the number of shares of Common Stock which the Corporation shall have authority to issue shall remain as 5,000,000; and, provided, further, that the par value of the Common Stock shall be changed to \$.01 par value per share, and the stated capital of the Corporation shall be adjusted to reflect the combination of the issued and outstanding shares of Common Stock as provided in this Section 5.1(c). Fractional shares may not be issued. All shares of Common Stock owned by any stockholder of this Corporation shall be aggregated to the last full share. After the effectiveness of this provision, the holder of any fractional share of the Common Stock of this Corporation may, upon submitting to the secretary of this Corporation the original stock certificate or certificates therefore, be entitled to receive a cash payment in lieu of such fractional share, which payment shall be determined with reference to the fair value of such fraction of a share as of the effective date hereof.

5.2. Common Stock. The powers, designations, preferences and relative participating, optional or other special rights and the qualifications, limitations and restrictions of the Common Stock are as follows:

(a) **Dividends.** Subject to the rights of the holders of Class A Preferred, the holders of the Common Stock shall be entitled to receive when, as, and if declared by the Board of Directors of the Corporation (the "**Board**"), out of funds legally available therefor, dividends payable in cash, stock or otherwise.

(b) **Distributions Upon Liquidation.** In the event of a voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and after the holders of Class A Preferred have received the full preferential amounts (if any) to which such holders are entitled, the holders of Common Stock shall be entitled to share in the distribution of any remaining assets available for distribution to the holders of Common Stock.

(c) **Voting Rights.** Subject to the voting rights granted to the holders of Class A Preferred, the holders of Common Stock shall be entitled to one (1) vote per share in voting or consenting on the election of directors and for all other corporate purposes.

ARTICLE VI

6.1. Class A Preferred Stock; Number Authorized. The Corporation shall have authority to issue 150,000 shares of Class A Preferred, which shares shall have the powers, designations, rights and preferences set forth in this Article VI.

6.2. Dividends. When and as declared by the Board and to the extent permitted under the KGCC, the Corporation shall pay cumulative dividends to the holders of the Class A Preferred prior to the payment of any dividends on the Common Stock as provided in this Section 6.2. If and when declared, dividends on each share of the Class A Preferred (a "Share") shall be paid in cash or in additional Shares (valued at the Liquidation Value (as hereinafter defined) thereof) and shall accrue on a daily basis at the rate of 15.0% per annum of the sum of the Liquidation Value thereof plus all accumulated and unpaid dividends thereon from and including the date of issuance of such Share to and including the first to occur of (i) the date on which the Liquidation Value of such Share (plus all accrued and unpaid dividends thereon) is paid to the holder thereof in connection with the liquidation of the Corporation or the redemption of such Share by the Corporation or (ii) the date on which such Share otherwise is acquired by the Corporation. Such dividends shall accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends, and such dividends shall be cumulative such that all accrued and unpaid dividends shall be fully paid or declared with funds irrevocably set apart for payment before any dividends, distributions, redemptions or other payments may be made with respect to any Junior Securities (as hereinafter defined). The date on which the Corporation initially issues any Share shall be deemed to be its "date of issuance" regardless of the number of times transfer of such Share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such Share.

6.3. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), subject to the rights of the holders of the any class of preferred stock senior in liquidation to the Class A Preferred, each holder of Shares shall be entitled to be paid, before any distribution or payment is made upon any Junior Securities, an amount in cash equal to the aggregate Liquidation Value of all Shares held by such holder (plus all accrued and unpaid dividends thereon), and the holders of Shares shall not be entitled to any further payment. If, upon any such liquidation, dissolution or winding up of the Corporation, the Corporation's assets to be distributed among the holders of Shares are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid under this Section 6.3, then the entire assets available to be distributed to the Corporation's stockholders, after payment in full of the liquidation value of any class of preferred stock senior to the Class A Preferred, shall be distributed pro rata among such holders based upon the aggregate Liquidation Value (plus all accrued and unpaid dividends) of Shares held by each such holder. Not less than thirty (30) days prior to the payment date stated therein, the Corporation shall mail written notice of any such liquidation, dissolution or winding up to each record holder of Shares, setting forth in reasonable detail the amount of

proceeds to be paid with respect to each Share and each share of Common Stock in connection with such liquidation, dissolution or winding up.

6.4. Priority of Class A Preferred on Dividends and Redemptions. As long as any Shares remain outstanding, without the prior written consent of the holders of a majority of the outstanding Shares (the "Majority Holders"), the Corporation shall not, nor shall it permit any Subsidiary (as hereinafter defined) to, redeem, purchase or otherwise acquire directly or indirectly any Junior Securities, nor shall the Corporation directly or indirectly pay or declare any dividend or make any distribution upon any Junior Securities; provided that the Corporation may repurchase shares of Common Stock or Shares, or both, from present or former employees of the Corporation and its Subsidiaries.

6.5. Redemptions. Subject to any limitations or prohibitions set forth in the Financing Documents (as hereinafter defined) then outstanding:

(a) **Optional Redemptions.** To the extent permitted under the KGCC, the Corporation may at any time and from time to time redeem all or any portion of the Shares then outstanding. Upon any such redemption, the Corporation shall pay a price per Share equal to the Liquidation Value thereof, plus all accrued and unpaid dividends thereon.

(b) **Redemption in Connection with Public Offering.** The Corporation shall, at the request of the Majority Holders by written notice (the "Redemption Notice") given to the Corporation no more than ninety (90) nor less than fifteen (15) days prior to the Closing Date apply up to fifty percent (50%) of the net cash proceeds from an Initial Public Offering remaining after deduction of all discounts, underwriters' commissions and other reasonable expenses to redeem Shares at a price per Share equal to the Liquidation Value thereof, plus all accrued and unpaid dividends thereon. In the event that the Majority Holders, execute a Redemption Notice, the Corporation promptly shall provide notice of its receipt of the Redemption Notice to each other holder of Shares, and each such other holder of Shares shall have ten (10) days after receipt thereof to give notice to the Corporation of such stockholder's intent to have a portion of such stockholder's Shares redeemed by the Corporation, which portion shall be determined by multiplying the total number of Shares then held by such stockholder times a fraction, the numerator of which shall be the number of Shares held by the Majority Holders to be redeemed pursuant to the Redemption Notice and the denominator of which shall be the total number of Shares then held by the Majority Holders. Effective as of the Closing Date at the time of or immediately prior to the closing of the Initial Public Offering, the Corporation shall redeem (i) the number of Shares held by the Majority Holders as set forth in such Redemption Notice and (ii) a proportionate number (as determined in accordance with the immediately preceding sentence of this Section 6.5(b)) of Shares held by each other holder of Shares who provides notice to the Corporation of such stockholder's intent to have a portion of such stockholder's Shares so redeemed; provided, however, that the total number of Shares to be redeemed in connection with an Initial Public Offering pursuant to this Section 6.5(b) shall not exceed the number of Shares having an aggregate Liquidation Value, after giving effect to all accrued and unpaid dividends then owed on such Shares, equal to fifty percent (50%) of the net cash proceeds from such Initial Public

Offering remaining after deduction of all discounts, underwriters' commissions and other reasonable expenses. Also effective as of the Closing Date, each outstanding Share (other than Shares to be redeemed pursuant to this Section 6.5(b)) shall be converted into shares of Common Stock at the time of or immediately prior to the closing of the Initial Public Offering as provided in Section 6.7 and (ii) no Share shall accrue any dividends after the Closing Date.

(c) **Redemption Payments.** For each Share which is to be redeemed hereunder, the Corporation shall be obligated on the Redemption Date (as hereinafter defined) to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such Share) an amount in immediately available funds equal to the Liquidation Value of such Share, plus all accrued and unpaid dividends thereon. If the funds of the Corporation legally available for redemption of Shares on any Redemption Date are insufficient to redeem the total number of Shares to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of Shares pro rata among the holders of the Shares to be redeemed based upon the aggregate Liquidation Value of such Shares held by each such holder, plus all accrued and unpaid dividends thereon. At any time thereafter when additional funds of the Corporation are legally available for the redemption of Shares, such funds immediately shall be used to redeem the balance of the Shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

(d) **Notice of Redemption.** Except as otherwise provided herein, the Corporation shall mail written notice of each redemption of any Shares to each record holder thereof not more than sixty (60) nor less than ten (10) days prior to the date on which such redemption is to be made. In case fewer than the total number of Shares represented by any certificate are redeemed, a new certificate representing the number of unredeemed Shares shall be issued to the holder thereof without cost to such holder within five (5) business days after surrender of the certificate representing the redeemed Shares.

(e) **Determination of the Number of Each Holder's Shares to be Redeemed.** Except for redemptions effected in connection with an Initial Public Offering as provided in Section 6.5(b) hereof, the number of Shares to be redeemed from each holder thereof in redemptions hereunder shall be the number of Shares determined by multiplying the total number of Shares to be redeemed times a fraction, the numerator of which shall be the total number of Shares then held by such holder and the denominator of which shall be the total number of Shares then outstanding.

(f) **Dividends After Redemption.** With respect to any Share to be redeemed in connection with an Initial Public Offering as provided in Section 6.5(b) hereof, (i) no such Share shall be entitled to any dividends accruing after the Closing Date and (ii) all rights of the holder of such Share shall cease, and such Share no longer shall be deemed to be issued and outstanding, as of the Closing Date. With respect to any other Share redeemed hereunder, (i) no such Share shall accrue any dividends after the date on which the Liquidation Value of such Share (plus all accrued and unpaid dividends thereon) is paid to the holder of

such Share and (ii) all rights of the holder of such Share shall cease, and such Share no longer shall be deemed to be issued and outstanding, as of such date.

(g) **Redeemed or Otherwise Acquired Shares.** Any Shares which are redeemed or otherwise acquired by the Corporation shall be canceled and retired to authorized but unissued shares and shall not be reissued, sold or transferred.

(h) **Payment of Accrued Dividends.** The Corporation may not redeem any Shares, unless all dividends accrued on the outstanding Shares through the immediately preceding Dividend Reference Date have been declared and paid in full.

(i) **Special Redemptions.**

(i) If a Change in Ownership (as hereinafter defined) has occurred or the Corporation obtains knowledge that a Change in Ownership is proposed to occur, the Corporation shall give prompt written notice of such Change in Ownership describing in reasonable detail the material terms and date of consummation thereof to each holder of Shares; provided, that (a) in any event such notice shall not be given later than five (5) days after the occurrence of such Change in Ownership and (b) the Corporation shall give each holder of Shares prompt written notice of any material change in the terms or timing of such transaction. The Majority Holders may require the Corporation to redeem all or any portion of the Shares owned by such holders at a price per Share equal to the Liquidation Value thereof, plus all accrued and unpaid dividends thereon, by giving written notice to the Corporation of such election prior to the later of (i) fifteen (15) days after receipt of the Corporation's notice and (ii) five (5) days prior to the consummation of the Change in Ownership (the "**Expiration Date**"). The Corporation shall give prompt written notice of any such election to all other holders of Shares within five (5) days after the receipt thereof, and each such holder shall have until the later of (A) the Expiration Date or (B) ten (10) days after receipt of such second notice to request redemption hereunder (by giving written notice to the Corporation) of the same portion of the Shares owned by such holder as that proposed to be redeemed by the Majority Holders requesting such redemption.

Upon receipt of such election(s), the Corporation shall be obligated to redeem the aggregate number of Shares specified therein on the later of (a) the occurrence of the Change in Ownership or (b) five (5) days after the Corporation's receipt of all of such election(s). If any proposed Change in Ownership does not occur, all requests for redemption in connection therewith automatically shall be rescinded, or if there has been a material change in the terms or the timing of the transaction, any holder of Shares may rescind such holder's request for redemption by delivering written notice thereof to the Corporation prior to the consummation of the transaction.

The term "**Change in Ownership**" means any sale, transfer or issuance or series of sales, transfers or issuances of shares of Common Stock, or any combination of any of the foregoing, by the Corporation or any holders thereof which results in any Person (as hereinafter defined) or group of Persons (as the term "group" is used under the Securities

Exchange Act of 1934, as amended (the "Exchange Act")), other than Thayer Equity Investors IV, L.P. and its Affiliates (as the term "Affiliate" is defined in the Exchange Act), owning more than fifty percent (50%) of the Common Stock outstanding immediately following the time of such sale, transfer or issuance or series of sales, transfers or issuances, or any combination of any of the foregoing; provided, however, that in no event shall the consummation of an Initial Public Offering constitute a Change in Ownership.

(ii) If a Fundamental Change (as hereinafter defined) is proposed to occur, the Corporation shall give written notice of such Fundamental Change describing in reasonable detail the material terms and date of consummation thereof to each holder of Shares not more than forty-five (45) days nor less than fifteen (15) days prior to the consummation of such Fundamental Change, and the Corporation shall give each holder of Shares prompt written notice of any material change in the terms or timing of such transaction. The Majority Holders may require the Corporation to redeem all or any portion of the Shares owned by such holders at a price per Share equal to the Liquidation Value thereof, plus all accrued and unpaid dividends thereon, by giving written notice to the Corporation of such election prior to the later of (a) ten (10) days prior to the consummation of the Fundamental Change or (b) ten (10) days after receipt of notice from the Corporation. The Corporation shall give prompt written notice of such election to all other holders of Shares (but in any event on or before the fifth (5th) day prior to the consummation of the Fundamental Change), and each such holder shall have until two (2) days after the receipt of such notice to request redemption (by written notice given to the Corporation) of the same portion of the Shares owned by such holder as that proposed to be redeemed by the Majority Holders requesting such redemption.

Upon receipt of such election(s), the Corporation shall be obligated to redeem the aggregate number of Shares specified therein upon the consummation of such Fundamental Change. If any proposed Fundamental Change does not occur, all requests for redemption in connection therewith shall be automatically rescinded, or if there has been a material change in the terms or the timing of the transaction, any holder of Shares may rescind such holder's request for redemption by delivering written notice thereof to the Corporation prior to the consummation of the transaction.

(iii) The term "Fundamental Change" means (a) any sale or transfer of more than fifty percent (50%) of the assets of the Corporation and its Subsidiaries on a consolidated basis (measured either by book value in accordance with generally accepted accounting principles consistently applied or by fair market value determined in the reasonable good faith judgment of the Board) in any transaction or series of transactions (other than sales in the ordinary course of business) and (b) any merger or consolidation to which the Corporation is a party, except for a merger in which the Corporation is the surviving corporation or the surviving corporation was previously a wholly owned subsidiary of the Corporation and (i) the terms of the Class A Preferred are not changed or all outstanding Shares are exchanged for either cash or substantially identical securities or other property, and (ii) after giving effect to such merger or consolidation, the holders of the Corporation's outstanding capital stock possessing a majority of the voting power (under ordinary circumstances) to elect a majority of the Board immediately prior to the merger or

consolidation shall continue after the merger or consolidation to own the surviving corporation's outstanding capital stock possessing the voting power (under ordinary circumstances) to elect a majority of such surviving corporation's board of directors.

6.6. Voting Rights.

(a) Except as otherwise provided herein and as otherwise required by applicable law, the Class A Preferred shall vote separately, as a single class, on all matters for which holders of Common Stock shall have voting rights; and each holder of Shares shall be entitled to notice of all stockholders meetings at the same time and in the same manner as notice is given to all stockholders entitled to vote at such meetings.

(b) The Corporation shall not, without the consent of the holders of more than fifty percent (50%) of the outstanding Shares voting as a single class: (i) issue any class or series of equity security ranking senior to or in parity with the Class A Preferred as to payment of dividends or any payment on any liquidation of the Corporation or (ii) amend the Articles of Incorporation or Bylaws of the Corporation (the "Bylaws") in any manner which would impair or reduce the rights of the Class A Preferred or enter into any agreement (other than the Financing Documents) that would restrict the Corporation's right to perform under the Stockholders' Agreement (as hereinafter defined).

6.7. Conversion.

(a) On or prior to the Closing Date of an IPO Event, each outstanding Share not theretofore redeemed or subject to an election for redemption pursuant to Section 6.5 shall automatically convert into the number of shares of fully paid and nonassessable Common Stock obtained by dividing (x) the then applicable Liquidation Value (plus all accrued but unpaid dividends thereon) by (y) the price per share to the public of the Common Stock sold by the Corporation in the Initial Public Offering as set forth in the final prospectus relating thereto.

(b) The Corporation shall provide the holders of Shares with written notice of the Initial Public Offering at least fifteen (15) days prior to the Closing Date. Such notice shall specify the estimated initial public offering price of the Common Stock.

(c) The conversion of all Shares into shares of Common Stock shall be effected by the surrender of the certificate or certificates evidencing the Share or Shares to be converted (the "Converting Shares"), duly assigned to the Corporation or endorsed in blank, at the principal office of the corporation (or such other office or agency of the Corporation as the Corporation may designate by written notice to the holders of Shares) at any time during its usual business hours. Promptly after such surrender and the receipt of such written notice, the Corporation shall issue and deliver a certificate or certificates evidencing the shares of Common Stock issuable upon such conversion (the "Converted Shares"). Such conversion, to the extent permitted by law, shall be deemed to have been effected as of the Closing Date at a time immediately prior to the closing of the Initial Public Offering, and at such time the rights of the holders of all Converting Shares as such holders shall cease, and the person or

persons in whose name or names the certificate or certificates evidencing the Converted Shares are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the Converted Shares. Upon issuance of Converted Shares in accordance with this Section 6.7(c), such Converted Shares shall be deemed to be duly authorized, validly issued, fully paid and nonassessable.

(d) The Corporation shall take all such corporate and other actions as from time to time may be necessary to insure that there is an adequate number of shares of Common Stock authorized but unissued or held as treasury shares to allow the conversion of all outstanding Shares.

No fractional Converted Shares shall be issued by the Corporation. In lieu thereof, the Corporation shall pay each holder of a fractional Converted Share an amount in cash equal to the product of (x) the applicable fraction of the fractional Converted Share and (y) the price per share to the public of the Common Stock sold by the Corporation in the Initial Public Offering as set forth in the final prospectus relating thereto.

6.8. Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of Shares. Upon the surrender of any certificate representing Shares at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing, in the aggregate, the number of Shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of Shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Shares represented by such new certificate from the date to which dividends have been fully paid on such Shares represented by the surrendered certificate.

6.9. Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Shares, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation, or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Shares represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Shares represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

6.10. Definitions.

(a) "Change in Ownership" has the meaning set forth in Section 6.5(i) hereof.

(b) **“Financial Institutions”** means, at any date, the financial institutions party to the Financing Documents on such date.

(c) **“Financing”** means the Financing as defined in the Recapitalization Agreement.

(d) **“Financing Documents”** means all agreements, instruments and other documents executed or delivered in connection with the Financing, in each case as amended, supplemented or otherwise modified from time to time, including all substitutions therefor and replacements or refinancings thereof.

(e) **“Fundamental Change”** has the meaning set forth in Section 6.5(i) hereof.

(f) **“Initial Public Offering”** means the first offering by the Corporation of its capital stock or equity securities to the public pursuant to an effective registration statement under the Securities Act of 1933, as then in effect, or any comparable statement under any similar federal statute then in force, with net proceeds to the Corporation of at least \$15,000,000.

(g) **“Junior Securities”** means any capital stock or other equity securities of the Corporation, except for the Class A Preferred.

(h) **“Liquidation Value”** of any Share as of any particular date shall be equal to \$1,000.00.

(i) **“Payoff Date”** any date upon which (i) all of the liabilities and obligations of the Financial Institutions under the Financing Documents shall have expired, been satisfied or otherwise terminated, and (ii) the Financial Institutions shall have received the indefeasible payment in full, in cash, of the then outstanding obligations and liabilities of the Corporation and its Subsidiaries under the Financing Documents, in each case whether fixed, contingent, now existing or hereafter arising, created, assumed, incurred or acquired.

(j) **“Person”** means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

(k) **“Recapitalization Agreement”** means the Recapitalization Agreement, dated as of January 25, 1999, by and among the Corporation and certain investors, as such agreement may from time to time be amended in accordance with its terms.

(l) **“Redemption Date”** as to any Share means the date specified in the notice of any redemption at the Corporation’s option or at the holder’s option or the applicable date specified herein in the case of any other redemption; provided that no such date shall be a Redemption Date unless the Liquidation Value of such Share (plus all accrued and unpaid

dividends thereon) is actually paid in full on such date, and if not so paid in full, the Redemption Date shall be the date on which such amount is fully paid; provided, however, that with respect to redemptions effected in connection with an Initial Public Offering as provided in Section 6.5(b) hereof, the Redemption Date shall be the date fixed by the Corporation, which date shall be not more than five (5) days after the Corporation's receipt of the proceeds of the Initial Public Offering.

(m) "Stockholders' Agreement" means the Stockholders' Agreement as defined in the Recapitalization Agreement.

(n) "Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or shall control the managing general partner of such limited liability company, partnership, association or other business entity.

6.11. Amendment and Waiver. No amendment, modification or waiver shall be binding or effective with respect to any provision of this Article VI without the prior written consent of the holders of at least eighty-five percent (85%) of the Shares outstanding at the time such action is taken; provided, that no change in the terms of this Article VI may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of the applicable percentage of the Shares then outstanding which would be required to approve such change without such merger or consolidation. Notwithstanding anything to the contrary contained herein, no amendment, supplement, modification or waiver shall be binding with respect to any provision of Section 6.13 hereof or any provision of this sentence, in each case without the prior written consent of the agent for the Financial Institutions under the Financial Documents.

6.12. Notices. Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing, and shall be deemed to have been given when delivered personally or sent by facsimile or seventy-two (72) hours after deposited in the United States mail, first class, postage prepaid, or twenty-four (24) hours after being sent by reputable overnight courier service, charges prepaid, and shall be deemed to have been given when so mailed or sent (i) to the Corporation, at its principal executive offices and (ii) to any

stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

6.13. Financing. Notwithstanding anything to the contrary contained in these Articles of Incorporation, at any time prior to the Payoff Date, no holder of Shares shall have any right to receive, demand or cause to become due or payable any payment in respect of such Shares to the extent that such payment would not be permitted under the Financing Documents at such time.

ARTICLE VII

7.1. Power of Board and Qualification of Directors. The business of the Corporation shall be managed by the Board. Each director shall be at least 18 years of age.

7.2. Number of Directors. The number of directors of the Corporation shall be fixed from time to time in the manner provided in the Bylaws and may be increased or decreased from time to time in the manner provided in the Bylaws.

7.3. Resignations. Any director of the Corporation may resign at any time by giving written notice to the Board or to the Chairman of the Board or to the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE VIII

The Board of Directors of the Corporation is expressly authorized to make, alter, or repeal the Bylaws of the Corporation, but such authorization shall not divest the stockholders of the power, nor limit their power, to adopt, amend, or repeal Bylaws.

ARTICLE IX

9.1. Action by Written Consent of Stockholders Prior to the Closing Date. Prior to the Closing Date, any action required or permitted to be taken by the stockholders of the Corporation may be effected by a written consent signed by the holders of all of the shares of capital stock of the Corporation entitled to vote on such proposed action.

9.2. No Action by Written Consent of Stockholders After the Closing Date. From and after the Closing Date, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such stockholders as provided in the Bylaws and may not be effected by any consent in writing by any such stockholders.

ARTICLE X

The Corporation shall, to the fullest extent permitted by Kansas law as in effect from time to time, indemnify any person against all liability and expense (including attorneys' fees) incurred by reason of the fact that he is or was a director or officer of the Corporation or, while serving at the request of the Corporation as a director, officer, partner or trustee of, or in any similar managerial or fiduciary position of, or as an employee or agent of, another corporation, partnership, joint venture, trust, association, or other entity. Expenses (including attorneys' fees) incurred in defending an action, suit, or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit, or proceeding to the fullest extent and under the circumstances permitted by Kansas law. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, fiduciary, or agent of the Corporation against any liability asserted against and incurred by such person in any such capacity or arising out of such person's position, whether or not the Corporation would have the power to indemnify against such liability under the provisions of this Article X. The indemnification provided by this Article X shall not be deemed exclusive of any other rights to which those indemnified may be entitled under this Articles of Incorporation, any bylaw, agreement, vote of stockholders or disinterested directors, statute, or otherwise, and shall inure to the benefit of their heirs, executors, and administrators. The provisions of this Article X shall not be deemed to preclude the Corporation from indemnifying other persons from similar or other expenses and liabilities as the board of directors or the stockholders may determine in a specific instance or by resolution of general application. Any repeal or modification of this Article X by the stockholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or modification.

ARTICLE XI

A director of the Corporation shall, to the maximum extent permitted by the KGCC, have no personal liability to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the KGCC hereafter is amended to eliminate or further limit the liability of a director, then a director of the Corporation, in addition to the circumstances in which a director is not personally liable as set forth in the preceding sentence, shall have no such liability to the fullest extent permitted by the amended KGCC. Any repeal or modification of this Article XI by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE XII

The Corporation shall have authority, to the fullest extent now or hereafter permitted by the KGCC, or by any other applicable law, and to the extent and in the manner provided in the Bylaws, to enter into any contract or transaction with one or more of its

directors or officers, or with any corporation, partnership, joint venture, trust, association, or other entity in which one or more of its directors or officers are directors or officers, or have a financial interest, notwithstanding such relationships and notwithstanding the fact that the director or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction.

ARTICLE XIII

The duration of the Corporation is to be perpetual.

5. These Amended and Restated Articles of Incorporation provides for the following change of shares:

Issued Shares: These Amended and Restated Articles of Incorporation provides for a change of the 896.405 issued common shares of \$1.00 par value. Resulting from this change are 750,000 issued common shares of \$.01 par value and 74,706 shares of Class A Preferred Stock of \$.01 par value. The terms of the change are as follows: all of the issued common shares shall be converted into Common Stock and Class A Preferred Stock at the rate of 836.676 shares of Common Stock, par value \$.01 per share and 83.339 shares of Class A Preferred Stock, par value \$.01 per share, for each such 1 issued common share of \$1.00 par value outstanding on the date of this Amended and Restated Articles of Incorporation.

Unissued shares: These Amended and Restated Articles of Incorporation provides for a change of the 1,103.595 unissued common shares of \$1.00 par value. Resulting from this change are 4,250,000 unissued common shares of \$.01 par value and 75,294 unissued shares of Class A Preferred Stock of \$.01 par value.

6. These Amended and Restated Articles of Incorporation have been approved by the unanimous written consent of the Board and by the unanimous written consent of the holders of the outstanding shares of the Corporation's capital stock.

IN WITNESS WHEREOF, the undersigned have executed these Amended and Restated Articles of Incorporation as of this 26th day of January, 1999 and we affirm the statements contained herein are true under the penalties of perjury.



Name: Philip R. Love
Title: President



Name: Michael B. Hays
Title: Assistant Secretary

DISTRICT OF COLUMBIA)
) SS.

I, Carolyn Silva-Capriccio, a Notary Public, do hereby certify that on the 26th day of January, 1999, personally appeared before me PHILIP R. LOVE and MICHAEL B. HAYS, who being first duly sworn, acknowledged and declared that they are the persons who signed the foregoing document as President and Assistant Secretary, respectively, and that the statements therein contained are true.



Notary Public

My commission expires:

November 30, 2003

CERTIFICATE OF THE KANSAS SECRETARY OF STATE

Registration No. 81-372-5

I hereby certify the above and foregoing to be true and correct copy of the original filed with the Kansas Secretary of State. Certified on this date: Jan 28, 1999.

RON THORNBURGH, Secretary of State

SCHEDULE A

<u>Mark</u>	<u>Reg. No.</u>
EVELYN WOOD READING DYNAMICS AND DESIGN	1,389,835
READING DYNAMICS	1,398,926
EVELYN WOOD	1,401,622
DESIGN (PERSON READING BOOK)	1,448,437
DESIGN (PERSON READING BOOK)	1,450,098
FREQUENT PRYOR CLUB	1,466,749
THE EXCEPTIONAL ASSISTANT	1,735,879
FRED PRYOR	1,740,293
EVELYN WOOD STUDY DYNAMICS	1,804,387

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

Tab settings → → → ▼ ▼ ▼ ▼ ▼ ▼ ▼ ▼

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Pryor Resources, Inc.

- Individual(s)
- General Partnership
- Corporation-State **Kansas**
- Other _____

- Association
- Limited Partnership

Additional names(s) of conveying party(ies) Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other _____
- Merger
- Change of Name

Execution Date: **26 January 1999**

2. Name and address of receiving party(ies):

Name: **Pryor Holdings, Inc.**

Internal Address: _____

Street Address: **2000 Shawnee Mission Parkway**

City: **Shawnee Mission** State: **KS** ZIP: **66205**

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State **Kansas**
- Other _____

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from Additional name(s) & address(es) Yes N

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,389,835	1,448,437	1,735,879
1,398,926	1,450,098	1,740,293
1,401,622	1,466,749	1,804,387

Additional numbers Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: **Thomas H. Van Hoozer**

Internal Address: **Hovey, Williams, Timmons & Collins**

Street Address: **2405 Grand Boulevard, Suite 400**

City: **Kansas City** State: **MO** ZIP: **64108**

6. Total number of applications and registrations involved:.....

9

7. Total fee (37 CFR 3.41):.....\$ **\$240.00**

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

19-0522

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Thomas H. Van Hoozer

Name of Person Signing

Thomas H. Van Hoozer
Signature

March 8, 1999
Date

TRADEMARK