

FILED EFFECTIVE

FIFTH ARTICLES OF AMENDMENT
TO THE
FIRST AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
PERSONAL SHOPPER, INC.

2004 SEP 20 AM 11:22

SECRETARY
STATE OF IDAHO

The undersigned, Laura Silsby, hereby certifies that:

1. She is the duly elected and acting President and Chief Executive Officer of PERSONAL SHOPPER, INC., an Idaho corporation (the "**Corporation**").

2. Pursuant to Section 30-1-602 of the Idaho Business Corporation Act (the "**IBCA**") and the authority given by the Corporation's First Amended and Restated Articles of Incorporation, the Board of Directors of the Corporation has duly adopted the following recitals and resolutions:

WHEREAS, the First Amended and Restated Articles of Incorporation of the Corporation provide for a class of shares known as Preferred Stock, issuable from time to time in one or more series; and

WHEREAS, the Board of Directors of the Corporation, pursuant to its authority as aforesaid, desires to fix the terms of Series B of said Preferred Stock, the number of shares constituting such Series B and the rights, preferences, privileges and restrictions of such Series B.

NOW, THEREFORE, Be It Resolved, that the Board of Directors deems it advisable to adopt, and hereby adopts, the following Fifth Articles of Amendment to the First Amended and Restated Articles of Incorporation, as follows:

FIRST: The name of the Corporation is PERSONAL SHOPPER, INC. (the "**Corporation**").

SECOND: The following amendments to the First Amended and Restated Articles of Incorporation were adopted by the Board of Directors effective as of August 31, 2004, in accordance with the provisions of the IBCA, and shareholder action was not required.

THIRD: *Article IV* of the First Amended and Restated Articles of Incorporation (the "**Articles**") is hereby amended in its entirety to read as follows:

ARTICLE IV

4.1 The Corporation is authorized to issue two classes of capital stock, which shall be designated respectively "**Common Stock**" and "**Preferred Stock**." The total number of shares which the Corporation shall have the authority to issue is 150,000,000 shares, each with a par value of \$0.001 per share. The number of shares of Common Stock Authorized is 100,000,000 shares. The number of shares of Preferred Stock authorized is 50,000,000 shares, (i) 10,258,677 shares of which are designated as

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Series A Convertible Preferred Stock (the “**Series A Preferred**”), and (ii) 5,000,000 shares of which are designated as Series B Convertible Preferred Stock (the “**Series B Preferred**”).

4.2 Except as provided in this *Article IV*, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Company (voting together on an as-if-converted basis).

4.3 The Preferred Stock may be issued from time to time in one or more series. The Corporation’s Board of Directors (the “**Board of Directors**”) is authorized, within the limitations and restrictions stated in these Articles of Incorporation, to determine and alter the rights, preferences, privileges and restrictions granted to or imposed upon the Preferred Stock or any series thereof with respect to any wholly-unissued series of Preferred Stock, and to fix the number of shares constituting any such series and the designation thereof (each, a “**Preferred Stock Designation**”). Subject to compliance with applicable protective voting rights which have been or may be granted to the Preferred Stock or series thereof in a Preferred Stock Designation or the Corporation’s Articles of Incorporation or otherwise (“**Protective Provisions**”), but notwithstanding any other rights of the Preferred Stock or any series thereof, the rights, privileges, preferences and restrictions of any such additional series may be subordinate to, *pari passu* with (including, without limitation, inclusion in provisions with respect to acquisition preferences, dividend rights, rights and preferences upon dissolution and liquidation, conversion features, redemption and/or approval of matters by vote or written consent and any other relative, participating, optional, or other special powers preferences, rights, qualifications, or restrictions thereof), or senior to, any of those of any present or future class or series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of any series, prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series. No shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

4.4 Except as may otherwise be provided in a Preferred Stock Designation, the holders of Common Stock will be entitled to one vote on each matter submitted to a vote at a meeting of stockholders for each share of Common Stock held of record by such holder as of the record date for such meeting.

4.5 The rights, privileges, preferences and restrictions of the Preferred Stock are as follows (the term “**Preferred Stock**” as used below includes the then outstanding shares of Series A Preferred and Series B Preferred):

Section A. Dividend Rights. Holders of Preferred Stock shall be entitled to receive cash dividends when, as and if declared by the Board of Directors, out of any assets that are legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate per share declared by the Board of Directors or, if greater (as determined on an as-converted basis), an amount equal to that paid on the Common Stock. Such dividends shall not be

cumulative. After payment of such dividends, any additional dividends declared shall be distributed among all holders of Preferred Stock and all holders of Common Stock in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were converted into Common Stock at the then effective Conversion Rate for each series of Preferred Stock.

Section B. Liquidation Rights. In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, distributions to the shareholders of the Corporation shall be made in the following manner:

B.1 The holders of Series A Preferred shall be entitled to be paid out of the assets of the Corporation, prior and in preference to any payment or distribution out of the assets of the Corporation to the holders of the Series B Preferred or the Common Stock or any other class or series of capital stock of the Corporation, an amount per share equal to **\$1.00** (the “**Series A Original Issue Price**”) (as adjusted for any stock dividends, combinations, splits, recapitalization and the like with respect to such shares) plus an amount equal to all declared but unpaid dividends on such share to the date fixed for distribution (the “**Series A Liquidation Preference**”). If the assets and funds thus distributed to the holders of the Series A Preferred shall be insufficient to permit payment to such holders of the full aforesaid preferential amount, the entire assets of the Corporation legally available for distribution shall be distributed ratably to the holders of the Series A Preferred in proportion to the aggregate Series A Liquidation Preference of the shares of Series A Preferred then held by them.

B.2 Thereafter, the holders of Series B Preferred shall be entitled to be paid out of the assets of the Corporation, prior and in preference to any payment or distribution out of the assets of the Corporation to the holders of the Common Stock or any other class or series of capital stock of the Corporation (other than the Series A Preferred), an amount per share equal to **\$1.30** (the “**Series B Original Issue Price**”) (as adjusted for any stock dividends, combinations, splits, recapitalization and the like with respect to such shares) plus an amount equal to all declared but unpaid dividends on such share to the date fixed for distribution (the “**Series B Liquidation Preference**”). If the assets and funds thus distributed to the holders of the Series B Preferred shall be insufficient to permit payment to such holders of the full aforesaid preferential amount, the entire assets of the Corporation legally available for distribution shall be distributed ratably to the holders of the Series B Preferred in proportion to the aggregate Series B Liquidation Preference of the shares of Series B Preferred then held by them.

B.3 Thereafter, any remaining assets of the Corporation legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and the holders of Preferred Stock on an as-if-converted to Common Stock basis.

B.4 The following events shall be considered a liquidation under this *Section B*, provided such event has been approved by the holders of a majority of the then outstanding Common Stock voting as a separate class:

- (a) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the shareholders of the Corporation immediately prior to such consolidation, merger or reorganization own less than fifty percent (50%) of the Corporation’s voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related

transactions in which in excess of fifty percent (50%) of the Corporation's voting power is transferred (an "*Acquisition*"); or

(b) a sale, lease, transfer or other disposition of all or substantially all of the assets of the Corporation (an "*Asset Transfer*").

B.5 Whenever the distribution provided for in this *Section B* shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors; provided, however, that any securities to be delivered to the holders of Series A Preferred, Series B Preferred and/or Common Stock pursuant to this *Section B* shall be valued as follows:

(a) Securities not subject to investment letter or other similar restrictions on free marketability: (i) if traded on a securities exchange or the Nasdaq National or SmallCap Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) days prior to the date of distribution; (ii) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) days prior to the date of distribution; and (iii) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Company.

(b) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be make an appropriate discount from the market value, determined as above in (a)(i), (ii) or (iii) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

Section C. Voting Rights.

C.1 General Rights. Except as otherwise required by law or pursuant to any other provision hereof, each holder of shares of Preferred Stock shall have the right to one vote for each share of Common Stock into which such shares of Preferred Stock could then be converted (with any fractional share determined on an aggregate conversion basis being rounded to the nearest whole share) at the record date for determination of stockholders entitled to vote on such matters. With respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the by-laws of this Corporation, and shall be entitled to vote, except as otherwise provided herein, together with holders of Common Stock, and not separately as a class, with respect to any question upon which holders of Common Stock have the right to vote.

C.2 Separate Vote of Series A Preferred. For so long as at least 1,000,000 shares of Series A Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of a majority in interest of the outstanding Series A Preferred shall be necessary for effecting or validating the following actions:

(a) Any amendment, alteration or repeal of any provision of the Articles or Bylaws of the Corporation that affects adversely the voting powers, preferences or other special rights or privileges, qualifications, limitations, or restrictions of the Series A Preferred; or

(b) Any authorization, whether by reclassification or otherwise, in the authorized amount of any class of shares or series of equity securities of the Corporation ranking on a parity with or senior to the Series A Preferred in right of redemption, liquidation, preference, voting or dividends.

C.3 Separate Vote of Series B Preferred. For so long as at least 1,000,000 shares of Series B Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of a majority in interest of the outstanding Series B Preferred shall be necessary for effecting or validating the following actions:

(a) Any amendment, alteration or repeal of any provision of the Articles or Bylaws of the Corporation that affects adversely the voting powers, preferences or other special rights or privileges, qualifications, limitations, or restrictions of the Series B Preferred; or

(b) Any authorization, whether by reclassification or otherwise, in the authorized amount of any class of shares or series of equity securities of the Corporation ranking on a parity with or senior to the Series B Preferred in right of redemption, liquidation, preference, voting or dividends.

Section D. Conversion Rights. The holders of the Preferred Stock shall have the following rights with respect to the conversion of the Preferred Stock into shares of Common Stock (the "**Conversion Rights**"):

D.1 Optional Conversion.

(a) **Conversion Rights.** Subject to and in compliance with the provisions of this *Section D*, any shares of Preferred Stock may, at the option of the holder thereof, be converted at any time after issuance into such number of fully-paid and nonassessable shares of Common Stock as is determined by, (i) in the case of the Series A Preferred, the product obtained by multiplying the "**Series A Conversion Rate**" then in effect (determined as provided below) by the number of shares of Series A Preferred being converted, and (ii) in the case of the Series B Preferred, the product obtained by multiplying the "**Series B Conversion Rate**" then in effect (determined as provided below) by the number of shares of Series B Preferred being converted.

(b) **Conversion Rate.** The conversion rate in effect at any time for conversion of (i) the Series A Preferred (the "**Series A Conversion Rate**") shall be the quotient obtained by dividing the Series A Original Issue Price by the "**Series A Conversion Price**," calculated as provided below, and (ii) the Series B Preferred (the "**Series B Conversion Rate**") shall be the quotient obtained by dividing the Series B Original Issue Price by the "**Series B Conversion Price**," calculated as provided below.

(c) **Conversion Price.** The conversion price (i) for the Series A Preferred (the "**Series A Conversion Price**") shall initially be the Series A Original Issue Price (\$1.00), and (ii) for the Series B Preferred (the "**Series B Conversion Price**") shall initially be the Series B Original Issue Price (\$1.30). The term "**Conversion Price**" as used herein shall refer to the Series A Conversion Price and the Series B Conversion Price. Such Conversion Prices shall be adjusted from time to time in

accordance with this *Section D*. All references to the respective Conversion Price of the Preferred Stock herein shall mean the Conversion Price as so adjusted.

D.2 Automatic Conversion. Each share of a class or series of Preferred Stock issued and outstanding shall automatically be converted into shares of Common Stock, based on the then-effective Conversion Price, (A) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation; (B) upon the conversion or redemption of at least 67% of the shares of a class or series of Preferred Stock originally issued and outstanding; or (C) upon the written consent of that number of holders of shares of a class or series of Preferred Stock which, when added to the number of shares of that class or series of Preferred Stock redeemed or converted into Common Stock, equals 67% of the shares of that class or series of Preferred Stock originally issued and outstanding. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of *Section D.3(a)*.

D.3 Mechanics of Conversion.

(a) Each holder of Preferred Stock who desires to convert the same into shares of Common Stock pursuant to this *Section D* shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Preferred Stock being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Preferred Stock being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. If the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering capital stock for conversion as permitted herein, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the shares issuable upon such conversion shall not be deemed to have converted such shares until immediately prior to the closing of such sale of securities.

(b) Upon the occurrence of an event specified in *Section D.2* above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided, however*, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred Stock, the holders of Preferred Stock shall surrender the

certificates representing such shares at the office of the Corporation or any transfer agent for the Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of *Section D.3(a)* above.

D.4 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the date the first share of Series B Preferred is issued (the "**Original Issue Date**") effect a subdivision of the outstanding Common Stock, the Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Corporation shall at any time or from time to time combine the outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this *Section D.4* shall become effective at the close of business on the date the subdivision or combination becomes effective.

D.5 Adjustment for Common Stock Dividends and Distributions. If the Corporation at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock or any other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "**Common Stock Equivalents**"), in each such event the Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction (1) the *numerator* of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the *denominator* of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock and/or Common Stock Equivalents (assuming the conversion, exchange or exercise into or for Common Stock) issuable in payment of such dividend or distribution; *provided, however*, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this *Section D.5* to reflect the actual payment of such dividend or distribution.

D.6 Adjustments for Other Dividends and Distributions. If the Corporation at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (including such dividends) or securities of the Corporation other than Common Stock Equivalents, in each such event provision shall be made so that the holders of the Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities, indebtedness or assets which they would have received had their Preferred Stock been converted into Common stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this

Section D with respect to the rights of the holders of the Preferred Stock or with respect to such other securities by their terms.

D.7 Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of each series of Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in *Section B.4* above, or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this *Section D*), in any such event each holder of such series of Convertible Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which the shares of such series of Convertible Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

D.8 Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock (other than an Acquisition or Asset Transfer as defined in *Section B.4* above, or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this *Section D*), as a part of such capital reorganization, provision shall be made so that the holders of any series of Preferred Stock thereafter shall be entitled to receive upon conversion of such series of Preferred Stock the number of shares of stock or other securities or property of the Corporation to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this *Section D* with respect to the rights of the holders of such series of Preferred Stock after the capital reorganization to the end that the provisions of this *Section D* (including adjustment of the Conversion Price with respect to such series of Preferred Stock, as applicable, then in effect and the number of shares issuable upon conversion of such series of Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

D.9 Adjust of Conversion Price for Dilutive Issuances. The Conversion Price of the Series A Preferred and Series B Preferred shall be subject to adjustment from time to time as follows:

(a) If at any time or from time to time after the Original Issue Date, the Corporation issues or sells, or is deemed by the express provisions of this *Section D.9* to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), other than as a dividend or other distribution on any class of stock as provided in *Section D.5* above, and other than a subdivision or combination of shares of Common Stock as provided in *Section D.4* above, for an Effective Price (as hereinafter defined) (i) in the case of the Series A Preferred, less than the Conversion Price then in effect for the Series A Preferred, and (ii) in the case of the Series B Preferred, less than the Conversion Price then in effect for the Series B Preferred, then and in each such case the Conversion Price then in effect for the Series A Preferred and/or Series B Preferred, as applicable, shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the then existing Conversion Price for such Series A Preferred or Series B Preferred by a fraction (A) the *numerator* of which shall be the sum of (1) the number of shares of Common Stock deemed outstanding (as defined

below) immediately prior to such issue or sale, plus (2) the number of shares of Common Stock which the aggregate consideration received (as defined in *Section D.4(b)*) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Conversion Price then in effect for such series of Preferred Stock, and (B) the *denominator* of which shall be the sum of (1) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (2) the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Preferred Stock could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities on the day immediately preceding the given date.

(b) For the purpose of making any adjustment required under this *Section D.9*, the consideration received by the Corporation for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale but without deduction of any expenses payable by the Corporation, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as hereinafter defined) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(c) For the purpose of the adjustment required under this *Section D.9*, if the Corporation issues or sells any rights or options for the purchase of or stock or other securities convertible into Additional Shares of Common Stock (such convertible stock or being herein referred to as "***Convertible Securities***") and if the Effective Price of such Additional Shares of Common Stock is (A) in the case of Series A Preferred, less than the Conversion Price then in effect for the Series A Preferred, and (B) in the case of Series B Preferred, less than the Conversion Price then in effect for the Series B Preferred, in each case the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; *provided*, that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses; *provided, further*, that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events

other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided, further*, that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Conversion Price for the Series A Preferred and/or Series B Preferred, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Conversion Price for such series of Preferred Stock, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Commons Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series A Preferred or Series B Preferred.

(d) ***“Additional Shares of Common Stock”*** shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this *Section D.9*, whether or not subsequently reacquired or retired by the Corporation *other than* (1) shares of Common Stock issued upon conversion of the Preferred Stock; (2) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalization and the like) issued or to be issued to employees, officers or directors of, or consultants or advisors to, the Corporation or any subsidiary pursuant to stock purchase or Stock option plans or other arrangements that are approved by the Board of Directors; (3) shares of Common stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Original Issue Date; (4) shares of Common stock or options, warrants or convertible securities issued pursuant to any equipment leasing arrangement, or debt financing from a bank or similar financial institution; and (5) shares of Common Stock or options, warrants or convertible securities issued pursuant to a merger, consolidation or acquisition of a business or assets of a business. The ***“Effective Price”*** of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under this *Section D.9*, into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this *Section D.9*, for such Additional Shares of Common Stock.

D.10 Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Preferred Stock, if the Preferred Stock is then convertible pursuant to this *Section D*, the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the

provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Preferred Stock at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate, setting forth (1) such adjustments and readjustments, (2) the Conversion Price at the time in effect, and (3) the number of Common Stock and the type and amount, if any, of other property which at the time would be received upon conversion of the Preferred Stock.

D.11 Notice of Record Date. Upon (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in *Section B.4* or other capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, or any Asset Transfer (as defined in *Section B.4*), or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Preferred Stock at least twenty (20) days prior to the record date specified therein a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, (3) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

D.12 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of any series of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of a series of Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board) on the date of conversion.

D.13 Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

D.14 Notices. Any notice required by the provisions of this *Section D* shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not,

then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

D.15 Payment of Taxes. The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Preferred Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered.

D.16 No Dilution or Impairment. The Corporation shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against dilution or other impairment.

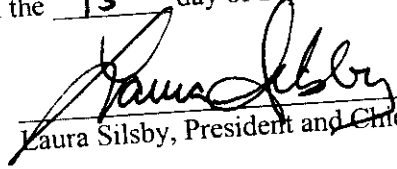
Section E. No Redemption.

The Corporation shall be under no obligation to redeem all or any portion of the Series A Preferred or Series B Preferred at any time.

FOURTH: The foregoing amendments do not provide for an exchange, reclassification, or cancellation of issued shares and does not effect a change in the amount of stated capital.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused these Fifth Articles of Amendment to be executed in duplicate at Boise, Idaho on the 13th day of September, 2004.



Laura Silsby, President and Chief Executive Officer