

FILED/EFFECTIVE

IDAHO SECRETARY OF STATE
02/28/2000 09:00
TX: 50434 CT: 20522 MH: 233993
1 @ 30.00 = 30.00 AMEND PROS
55 PM '00
C130898

**FIRST AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
EFUNZ.COM, INC.**

The undersigned, Jim Hammons and Paul M. Boyd, hereby certify that:

1. They are the duly elected and acting President and Corporate Secretary, respectively, of EFUNZ.COM, INC., an Idaho corporation (the "Corporation").
2. The Articles of Incorporation of this Corporation were originally filed with the Secretary of State of the State of Idaho on October 22, 1999.
3. The Articles of Incorporation of this Corporation shall be amended and restated to read in full as follows:

ARTICLE I

The name of the Corporation shall be **EFUNZ.COM, INC.**

ARTICLE II

The Corporation shall have perpetual existence, and the nature of the business or purposes to be conducted or promoted by the Corporation is to: provide an internet-based online shopping platform and related services, and to transact any and all other lawful business for which corporations may be organized under the IBCA.

ARTICLE III

The address of the registered office of the Corporation in the State of Idaho is 5421 Kendall, Boise, Idaho 83704. The name of its registered agent such address is Laura Silsby.

ARTICLE IV

4.1 The Corporation is authorized to issue two classes of capital stock, to be designated respectively "Common Stock" and "Preferred Stock." The total number of shares which the Corporation shall have the authority to issue is One Hundred Fifty Million (150,000,000) shares, each with a par value of \$0.001 per share. One Hundred Million (100,000,000) shares shall be Common Stock and Fifty Million (50,000,000) shares shall be Preferred Stock.

4.2 The Preferred Stock authorized by these First Amended and Restated Articles of Incorporation may be issued from time to time in one or more series. Four Million Two

Hundred Thousand (4,200,000) shares shall be designed "Series A Preferred Stock." The rights, preferences, privileges and restrictions imposed on the Series A Preferred Stock are as set forth below in this Section 4.2. The Corporation's Board of Directors (the "Board of Directors") is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock, and 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.

SECTION 1. DESIGNATION.

Hereby designated as "Series A Preferred Stock" are 4,200,000 shares of the Convertible Preferred Stock, Series A, of the Corporation, with the powers, rights, preferences, qualifications, limitations and restrictions specified herein.

SECTION 2. DIVIDEND RIGHTS.

(a) Holders of Series A Preferred Stock, in preference to the holders of Common Stock, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends equal to the "Original Issue Price" per annum on each outstanding share of Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalization and the like with respect to such shares). The Original Issue Price of the Series A Preferred Stock shall be \$1.00 per share. Such dividends shall be payable only when, as and if declared by the Board of Directors. The Board of Directors shall not, under any circumstances, be required to declare or pay dividends to the holders of Series A Preferred Stock.

(b) So long as any shares of Series A Preferred Stock shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other

distribution be made, on the Common Stock, nor shall any shares of the Common Stock of the Corporation be purchased, redeemed, or otherwise acquired for value by the Corporation (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer) until all dividends set forth in Section 2(a) above on the Series A Preferred Stock shall have been paid or declared and set apart. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Series A Preferred Stock in an amount equal per share (on and as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. The provisions of this Section 2(b) shall not, however, apply to (i) a dividend payable in Common Stock; (ii) the acquisition of shares of any Common Stock in exchange for shares of any other capital stock; or (iii) any repurchase of any outstanding securities of the Corporation that is approved by the Corporation's Board of Directors.

SECTION 3. VOTING RIGHTS.

(a) **General Rights.** Except as otherwise provided herein or as required by law, the Series A Preferred Stock shall be voted with the shares of the Common Stock of the Corporation and not as a separate class, at any annual or special meeting of shareholders of the Corporation, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series A Preferred Stock shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series A Preferred Stock are convertible (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

(b) **Separate Vote of Series A Preferred Stock.** For so long as at least 1,000,000 shares of Series A Preferred Stock 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 Stock shall be necessary for effecting or validating the following actions:

(i) 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 Stock; or

(ii) 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 Stock in right of redemption, liquidation, preference, voting or dividends.

SECTION 4.

LIQUIDATION RIGHTS.

(a) Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of Common Stock, the holders of Series A Preferred Stock shall be entitled to be paid out of the assets of the Corporation an amount per share of Series A Preferred Stock equal to the Original Issue Price, reduced by the amount of any cash dividends previously declared and paid on such Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalization and the like with respect to such shares) for each share of Series A Preferred Stock held by them.

(b) After the payment of the full liquidation preference of the Series A Preferred Stock as set forth in Section 4(a) above, the remaining assets of the Corporation legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and Series A Preferred Stock.

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

(i) 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

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

(d) If, upon any liquidation, distribution or winding up, the assets of the Corporation shall be insufficient to make payment in full to all holders of Series A Preferred Stock of the liquidation preference set forth in Section 4(a) above, then such assets shall be distributed among the holders of Series A Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

SECTION 5.

CONVERSION RIGHTS.

The holders of Series A Preferred Stock shall have the following rights with respect to the conversion of the Series A Preferred Stock into shares of Common Stock (the "Conversion Rights"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5, any shares of Series A Preferred Stock may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the "Series A Conversion Rate" then in effect (determined as provided in Section 5(b) below) by the number of shares of Series A Preferred Stock being converted.

(b) **Series A Conversion Rate.** The conversion rate in effect at any time for conversion of the Series A Preferred Stock (the "Series A Conversion Rate") shall be the quotient obtained by dividing the Original Issue Price of the Series A Preferred Stock by the "Series A Conversion Price," calculated as provided in Section 5 (c) below.

(c) **Conversion Price.** The conversion price for the Series A Preferred Stock shall initially be the Original Issue Price of the Series A Preferred Stock (the "Series A Conversion Price"). Such initial Series A Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series A Conversion Price herein shall mean the Series A Conversion Price as so adjusted.

(d) **Mechanics of Conversion.** Each holder of Series A Preferred Stock who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series A 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 Series A 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 Series A 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 Series A 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.

(e) **Adjustment for Stock Splits and Combinations.** If the Corporation shall at any time or from time to time after the date that the first share of Series A Preferred Stock is issued (the "Original Issue Date") effect a subdivision of the outstanding Common Stock, the Series A 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 after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares, the Series A Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(e) shall

become effective at the close of business on the date the subdivision or combination becomes effective.

(f) **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, in each such event the Series A 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 Series A 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 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 Series A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

(g) **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 the Corporation other than shares of Common Stock, in each such event provision shall be made so that the holders of the Series A Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of other securities of the Corporation which they would have received had their Series A 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 5 with respect to the rights of the holders of the Series A Preferred Stock or with respect to such other securities by their terms.

(h) **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 the Series A Preferred Stock is changed into the same or a different number of shares or any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 4(c), a recapitalization, subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this section 5), in any such event each holder of Series A 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 such shares of Series A 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.

(i) **Reorganization, 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 Corporation (other than an Acquisition or Asset Transfer as defined in Section 4(c), a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 5), as a part of such capital reorganization, provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A 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 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 5 with respect to the rights of the holders of Series A Preferred Stock after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Series A Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(j) **Sale of Shares Below Series A Conversion Price.**

(i) 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 subsection (j) 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 5(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 5(e) above, for an Effective Price (as hereinafter defined) less than the then effective Series A Conversion Price, then and in each such case the then existing Series A Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series A Conversion Price by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection (j)(ii) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series A Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus 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 Series A 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.

(ii) For the purpose of making any adjustment required under this Section 5(j), 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.

(iii) For the purpose of the adjustment required under this Section 5(j), 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 less than the Series A Conversion Price, 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 Series A Conversion Price, 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 Series A Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series A 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 Stock.

(iv) "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 5(j), whether or not subsequently reacquired or retired by the Corporation *other than* (1) shares of Common Stock issued upon conversion of the Series A Preferred Stock; (2) shares of Common Stock and/or options, and the Common Stock issued pursuant to such options (as adjusted for any stock dividends, combinations, splits, recapitalization and the like) issued or to be issued pursuant to a stock option plan that has been approved by the Board; (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 5(j), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this Section 5(j), for such Additional Shares of Common Stock.

(k) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series A Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series A Preferred Stock, if the Series A

Preferred Stock is then convertible pursuant to this Section 5, 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 Series A 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, including a statement of (1) the consideration received or deemed to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (2) the Series A Conversion Price at the time in effect, (3) the number of Additional Shares of Common Stock and (4) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred Stock.

(l) **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 4(d) 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 4(d)), or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Series A 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.

(m) **Automatic Conversion.**

(i) Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective Series A Conversion Price, (A) at such time as each holder of Series A Preferred Stock has received cumulative cash dividends equal to the Original Issue Price for each share of Series A Preferred Stock held by such holder; (B) 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; (C) upon the conversion or redemption of at least 67% of the shares of Series A Preferred Stock originally issued and outstanding; or (D) upon the written consent of that number of holders of shares of Series A Preferred Stock which, when added to the number of shares of Series A Preferred Stock redeemed or converted into Common Stock, equals 67% of the

shares of Series A 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 5(d)

(ii) Upon the occurrence of the event specified in paragraph (i) above, the outstanding shares of Series A 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 Series A 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 Series A Preferred Stock, the holders of Series A Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series A 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 Series A 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 5(d).

(n) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A 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.

(o) **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 Series A 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 Series A 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 Series A 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.

(p) **Notices.** Any notice required by the provisions of this Section 5 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.

(q) **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 Series A 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 Series A Preferred Stock so converted were registered.

(r) **No Dilution or Impairment.** The Corporation shall not amend its Restated 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 Series A Preferred Stock against dilution or other impairment.

SECTION 6. NO REDEMPTION.

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

SECTION 7. NO REISSUANCE OF SERIES A PREFERRED STOCK.

No share or shares of Series A Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

4.3 The Corporation shall from time to time in accordance with the IBCA increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance shall not be sufficient to permit conversion of the Preferred Stock.

4.5 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.

ARTICLE V

5.1 All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation managed under the direction of, its Board of Directors, subject to any limitation set forth in a Preferred Stock Designation or a shareholder agreement authorized under Section 30-1-732 of the Idaho Business Corporation Act (the "IBCA").

5.3 The number of directors constituting the Board of Directors shall be determined in the manner specified in the Bylaws. In the absence of such a provision in the Bylaws, the Board shall consist of the number of directors constituting the initial Board of Directors.

ARTICLE VI

Except as may be set forth in a Preferred Stock Designation, no shareholder of this Corporation shall have any preemptive rights with respect to (i) any shares of any class of stock of the Corporation, whether now or hereafter authorized, (ii) any warrants, rights, or options to purchase any such shares, or (iii) any obligations convertible into any such shares or into warrants, rights or options to purchase any such shares.

ARTICLE VII

Except as may be set forth in a Preferred Stock Designation, the shareholders of the Corporation shall not be entitled to cumulative voting at any election of Directors.

ARTICLE VIII

Except as may be set forth in a Preferred Stock Designation, the Board of Directors is authorized to make, adopt, amend, alter or repeal the Bylaws of the Corporation. The shareholders shall also have power to make, adopt, amend, alter or repeal the Bylaws of the Corporation.

ARTICLE IX

This Corporation reserves the right to amend or repeal any of the provisions contained in these Articles of Incorporation in any manner now or hereafter permitted by law, and the rights of the stockholders of this Corporation are granted subject to this reservation.

ARTICLE X

To the full extent permitted by the Act or any other applicable laws as presently or hereafter in effect, no director of the Corporation shall be personally liable to the Corporation or its shareholders for or with respect to any acts or omissions in the performance of his or her duties as a director of the Corporation. No amendment to or repeal of this *Article X* shall apply to or have any effect on the liability or alleged liability of any director of the

Corporation for or with respect to any acts or omissions of such director occurring prior to the effective date of such amendment or repeal.

ARTICLE XI

Each person who is or was or had agreed to become a director, officer, employee or agent of the Corporation (including the heirs, executors, administrators or estate of such person), shall be indemnified by the Corporation to the full extent permitted by the Act or any other applicable laws presently or hereafter in effect. Without limiting the generality or effect of the foregoing, the Corporation may enter into one or more agreements with any person which provide for indemnification greater or different than that provided in this *Article XI*. No amendment to or repeal of this *Article XI* shall apply to or have any effect on the right to indemnification permitted or authorized hereunder for or with respect to any acts or omissions of such director, officer, employee or agent occurring prior to the effective date of such amendment or repeal.

4. The foregoing First Amended and Restated Articles of Incorporation have been duly adopted by this Corporation's Board of Directors and stockholders on February 21, 2000, in accordance with Section 30-1-1003 and Section 30-1-1007 of the IBCA.


5. The designation, number of outstanding shares, number of shares entitled to vote, and number of votes represented at the meeting is as follows:

| <u>Number of Shares Designation</u> | <u>Number of Shares Outstanding</u> | <u>Number of Shares Entitled to Vote</u> | <u>Represented at Meeting</u> |
|---|---|--|-------------------------------|
| Common Stock | 8,600,000 | 8,600,000 | 8,600,000 |

6. The total number of votes cast for the First Amended and Restated Articles by the holders of Common Stock was 8,600,000 the number of votes cast against the Amended and Restated Articles was 0, and the number of votes cast by the holders of Common Stock was sufficient for approval by that voting group.

7. The foregoing First Amended and Restated Articles of Incorporation do not provide for an exchange, reclassification or cancellation of issued shares.

Executed at Boise, Idaho on February 28, 2000.



Jim Hammons, President



Paul M. Boyd, Corporate Secretary