

# State of Idaho

## Department of State

### CERTIFICATE OF INCORPORATION OF

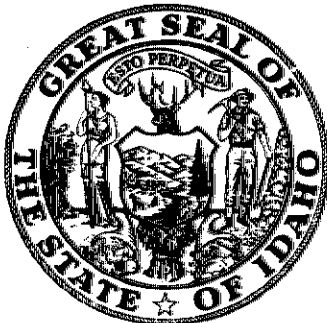
SMITH'S ELECTRIC MOTORS, INC.

File number C 117876

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of Incorporation for the incorporation of the above named corporation, duly signed pursuant to the provisions of the Idaho Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Incorporation and attach hereto a duplicate original of the Articles of Incorporation.

Dated: January 16, 1997



*Pete T. Cenarrusa*  
SECRETARY OF STATE

By *Alisa Hartley*

**ARTICLES OF INCORPORATION**

**OF**

**SMITH'S ELECTRIC MOTORS, INC.**

THE UNDERSIGNED, being over the age of twenty- one (21) years, and for the purpose of forming a corporation under the Idaho Business Corporation Act, hereby certifies and adopts in triplicate the following Articles of Incorporation:

**ARTICLES I. NAME**

The name of this corporation shall be Smith's Electric Motors, Inc. and its existence shall be perpetual.

**ARTICLE II. PURPOSES**

The purposes and objects of this corporation are as follows:

1. To sell retail or wholesale, demolish, repair, alter, install, build, manufacture, renovate, and service electric motors.
2. To engage in generally and carry on any lawful business or trade which may, in the judgement of the Board of Directors, at any time be necessary, useful or advantageous to this corporation.
3. In furtherance of and not in limitation of the general powers conferred by the laws of the State of Idaho, it is expressly provided that this corporation shall also have the following powers:
  - (a). To acquire by purchase or otherwise and to own, hold, cancel, reissue, sell, pledge and otherwise deal in the stock of this corporation, provided that the money or property the corporation shall not be used for purchase of shares of its own stock when such use would cause any impairment of the capital of the corporation. The corporation shall not be entitled to vote,

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either directly or indirectly, on any shares of its own stock which it may hold.

(b). To acquire by purchase or otherwise and to own, hold, cancel, reissue, sell, pledge and otherwise deal in the bonds, debentures, notes and other securities and obligations of this corporation.

(c). To borrow money and give security therefore.

(d). To enter into, make, perform and carry out contracts of every kind for any lawful purposes pertaining to its business, with any individual, entity, firm, association, or corporation, or with any governmental, municipal, or public authority, domestic or foreign.

(e). To do everything necessary, proper, convenient, or incidental to the accomplishment of the purposes and objects of this corporation, or which is calculated directly or indirectly to promote the welfare or interests of the corporation or enhance the value or render profitable any of its property or rights.

(f). To do any and all of the things in this article set forth to the same extent a natural person might or could do, and in any part of the world, as principals, agents, contractors, trustees, or otherwise, either alone or in company with others.

PROVIDED HOWEVER, that nothing herein contained shall be deemed to authorize the corporation to carry on any business, to exercise any power or to do any act which a corporation formed under the Uniform Business Corporation Act of the State of Idaho, or any amendment thereto or substitute therefor, may not at the time lawfully carry on or do.

### **ARTICLE III. PRE-EMPTIVE RIGHTS**

Shareholders of this corporation shall have a pre-emptive right to acquire additional shares offered for sale by the corporation.

### **ARTICLE IV. REGISTERED OFFICE AND AGENT**

The name of the Registered Agent of the corporation is Cody Smith. The street address of the Registered Office, which is also the address of the Registered Agent, is 410 Miller Street, Lewiston, ID 83501.

## **ARTICLE V. CAPITAL STOCK**

1. The total number of shares of stock authorized and which may be issued by this corporation and the par value thereof is as follows:

### **COMMON STOCK**

Total number of shares authorized 5,000

Total capital stock	\$50,000	Par Value	\$10.00
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2. The corporation reserves the right to amend, alter, change or repeal any provisions contained in its Articles of Incorporation in any manner now or hereafter prescribed by statute. All rights of stockholders of the corporation are granted subject to this reservation.

## **ARTICLE VI. PAID IN CAPITAL**

The amount of paid-in capital with which the corporation will begin business is Five Hundred Dollars (\$500.00).

## **ARTICLE VII. DIRECTORS**

1. The number of directors of the corporation shall be two (2). The number of directors may be changed from time to time by amending the By-Laws.

2. In furtherance of and not in limitation of the powers conferred by the laws of the State of Idaho, the Board of Directors is expressly authorized to make, alter and repeal the By-Laws of the corporation, subject to the power of the stockholders of the corporation to change or repeal such By-Laws.

3. The corporation may enter into contracts and otherwise transact business as vendor, purchaser, or otherwise, with its directors, officers, and stockholders and with corporations, associations, firms and entities in which they are or may become interested as directors, officers, shareholders, members or otherwise, as though such adverse interests did not exist, even though the vote, action or presence of such director, officer or stockholder may be necessary to obligate the corporation upon such contracts or transactions; and in the absence of fraud no such contract or transaction shall be avoided and no such director officer or stockholder shall be held liable to account to the corporation, by reason of such adverse interests or by reasons of any fiduciary relationship to the corporation arising out of such office or stock ownership, for any profit or benefit realized by him through any such contract or transaction; provided that in the case of directors and officers of the corporation (but not in the case of stockholders who are not directors or officers) the nature of the

interest of such director or officer, though not necessarily the details or extent thereof, be disclosed or known to the Board of Directors of the corporation, at the meeting thereof at which such contract or transaction is authorized or confirmed. A general notice that a director or officer of the corporation is interested in any corporation, association, firm or entity shall be sufficient disclosure as to such contracts and transactions with that corporation, association, firm or entity.

4. Any contract, transaction, or act of the corporation or of the directors or of any officers of the corporation which shall be ratified by a majority of a quorum of the stockholders of the corporation at any annual meeting or any special meeting called for such purpose, shall insofar as permitted by law, be as valid and as binding as though ratified by every stockholder of the corporation.

5. The first directors of this corporation shall be as follows:

Lorry J. Smith, 1612 Burrell Ave, Lewiston, Idaho 83501.  
Cody C. Smith, 3423 7th Street E, Lewiston, Idaho 83501.

The term of the first directors shall be until the first annual meeting of the stockholders of the corporation and until their successors are elected and qualified. The first annual meeting shall be held on the following date: May 15, 1998.

## **ARTICLE VIII. INCORPORATORS**

The names and addresses of each of the incorporators shall be as follows:

Lorry J. Smith, 1612 Burrell Ave, Lewiston, Idaho 83501.  
Cody C. Smith, 3423 7th Street E, Lewiston, Idaho 83501

## **ARTICLE IX. INDEMNIFICATION**

1. **INDEMNITEE.** The term "Indemnitee" as used in this Article 9 shall mean any person who was or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any actual or threatened action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a director or officer of the corporation or, being or having been a director or officer, he or she is or was serving at the request of the corporation as a director, trustee, officer, employee, or agent of another corporation or a partnership, joint venture, trust, or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, trustee, officer, employee, or agent or in any other capacity while serving as a director, trustee, officer, employee, or agent.

## **2. RIGHT TO INDEMNIFICATION.**

(a) **SCOPE.** Each Indemnitee shall be indemnified and held harmless by the corporation, to the full extent permitted by applicable law as then in effect, against all expenses, liability, and loss (including attorneys' fees, judgements, fines, penalties, and amounts to be paid in settlement) actually and reasonably incurred or suffered by such person in connection therewith. Except as provided in Section 2.b below, the determination otherwise required by Title 30; Chapter 1; General Business Corporations; 30-1-54, shall not be required in connection with indemnification pursuant to this Section 2.a.

(b) **EXCEPTIONS.** Such right of indemnification shall not exist where the act or omission of the Indemnitee involves (i) intentional misconduct or a knowing violation of the law, (ii) a violation of Title 30; Chapter 1; General Business Corporations; 30-1-54 (as now in effect or as it may hereafter be amended), or (iii) any transaction in which the Indemnitee has received or will receive a benefit in money, property, or services to which he or she is not legally entitled. Such right of indemnification shall also not exist where the act or omission of the Indemnitee involves recklessness or gross negligence, unless the corporation elects by resolution of its shareholders to provide such indemnification pursuant to Title 30; Chapter 1; General Business Corporations; 30-1-54 (as now in effect or as it may hereafter be amended).

(c) **CONTINUATION AFTER SEPARATION.** Such right of indemnification shall continue as to a person who has ceased to be a director, trustee, officer, employee, or agent and shall inure to the benefit of his or her heirs, executors, and administrators.

(d) **PROCEEDING BY INDEMNITEE.** Except as provided in Section 9.3 such right of indemnification shall not exist where the Indemnitee seeks indemnification in connection with a proceeding (or part thereof) initiated by such Indemnitee unless such proceeding (or part thereof) was authorized by the Board of Directors prior to its initiation.

(e) **CONTRACT RIGHT; EXPENSES.** The right of indemnification conferred in this Section 9.2 shall be a contract right and shall include the right to have the corporation pay the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that the payment of such expenses in advance of the final disposition of a proceeding shall be made only upon delivery to the corporation of an undertaking, by or on behalf of the Indemnitee, to repay all amounts so advanced if it shall ultimately be determined that the Indemnitee is not entitled to be indemnified under this Section 9.2 or otherwise.

**3. RIGHT OF CLAIMANT TO BRING SUIT.** If a claim under Section 9.2 is not paid in full by the corporation within sixty (60) days after a written claim has been received by the corporation, except in the case of a claim for expenses incurred in defending a proceeding in advance of its final disposition, in which case the applicable period shall be

twenty (20) days, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, to the extent successful in whole or in part, the claimant shall also be entitled to reimbursement for the expenses of prosecuting such claim. The claimant shall be presumed to be entitled to indemnification under this Article 9 upon submission of a written claim (and, in an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition, where the required undertaking has been tendered to the corporation). and thereafter the corporation shall have the burden of proving by a preponderance of the evidence that the claimant is not so entitled. Neither the failure of the corporation (including the Board of Directors, independent legal counsel, or its shareholders) to have made a determination prior to the commencement of such action that indemnification of or reimbursement or advancement of expenses to the claimant is proper in the circumstances nor an actual determination by the corporation (including the Board of Directors, independent legal counsel, or its shareholders) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses shall be a defense to the action or create a presumption that the claimant is not so entitled.

**4. NON-EXCLUSIVITY OF RIGHTS.** The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article 9 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Articles of Incorporation, Bylaws, agreement, vote or consent of shareholders or disinterested directors, or otherwise.

**5. INSURANCE, CONTRACT, AND FUNDING.** The corporation may maintain insurance at its own expense to protect itself and any Indemnitee against any expense, liability, or loss against which the corporation has the power to indemnify pursuant to this Article 9. In addition, the corporation may maintain insurance against such expense, liability, or loss whether or not the corporation would have the power to provide indemnification under the Idaho Business Corporation Act. The corporation may, without further shareholder action, enter into contracts with any director or officer of the corporation in furtherance of the provisions of this Article 9 and may create trust funds, grant security interests in corporate assets, provide letters of credit, and use such other means as the corporation deems necessary or appropriate to ensure that indemnification is provided under this Article 9.

**6. INDEMNIFICATION OF EMPLOYEES AND AGENTS OF THE CORPORATION.** The corporation may, by action of the Board from time to time, provide indemnification and pay expenses in advance of the final disposition of a proceeding to or on behalf of employees and agents of the corporation with the same scope and effect as the provisions of this Article 9 with respect to the indemnification and advancement of expenses of directors and officers of the corporation or pursuant to rights granted pursuant to, or provided by, the Idaho Business Corporation Act or otherwise.

IN WITNESS WHEREOF, the incorporators hereinabove named have hereunto set their hands in triplicate this 1st day of January, 1997.

Lorry J. Smith  
Lorry J. Smith

Cody C. Smith  
Cody C. Smith

**CONSENT TO APPOINTMENT AS REGISTERED AGENT**

I, Cody C. Smith, hereby consent to serve as Registered Agent, in the State of Idaho, for the corporation herein named. I understand that as agent for the corporation, it will be my responsibility to accept Service of Process in the name of the corporation; and to immediately notify the Office of the Secretary of State in the event of my resignation or of any change in the Registered Office of the corporation for which I am agent.

Cody C. Smith  
Registered Agent

1/13/97  
Date