

# State of Idaho

## Department of State

### CERTIFICATE OF INCORPORATION OF

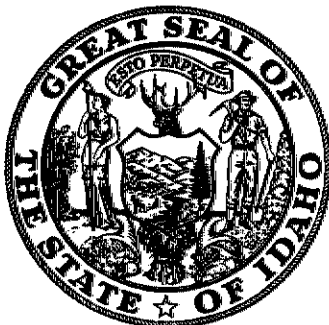
KELLY'S SUBWAY, INC.

File number C 107477

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: August 29, 1994



*Pete T. Cenarrusa*  
SECRETARY OF STATE

By *Cara Sipe*

ARTICLES OF INCORPORATION

of

KELLY'S SUBWAY, INC.

RECEIVED  
SEC. OF STATE

94 JUL 29 AM 8:11 BY THESE PRESENTS:

That we, the undersigned, desirous of associating ourselves together for the purpose of forming a corporation under the laws of the State of Idaho, and pursuant to the laws thereof, have agreed, and do certify, as follows:

I

NAME

That the name of the corporation shall be KELLY'S SUBWAY, INC.

II

The incorporators, all being natural persons of the ages of twenty-one years or more, and their names and places of residence are:

NAME

ADDRESS

Richard A. Jaynes

1215 E 580 So  
Provo, Utah 84606

Kelly H. Spackman

4 North Main  
Lewiston, Utah 84320

IDAHO SECRETARY OF STATE  
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### III

#### DURATION

The corporation shall have perpetual existence, unless it is dissolved by act of the shareholders, or by operation of law.

### IV

#### OBJECTS AND PURPOSES

The nature of the business, and the objects and purposes are to establish and operate Subway franchise stores and carry out these general purposes and related objectives. To buy, sell, hold, trade, lease, rent, develop, subdivide, improve, manage and generally deal in real estate and personal property. To engage in and do all lawful acts concerning any and all lawful business whatsoever, either as principal or as agent or both, or as a syndicate which the corporation may deem convenient or proper.

The foregoing clauses shall be construed both as to objects, and the corporation shall have all powers, and may engage in any and all business that may be incidental to or necessary to the exercise of the foregoing powers, and for the attaining of any of the foregoing objects, and the business of the corporation may be carried on, and its powers may be exercised, in any of the states, territories or dependencies of

the United States, or any foreign country. Offices of the corporation may be established and maintained in such place or places, outside of the State of Idaho as the Board of Directors may decide, and meetings of the Board of Directors may be held within the State of Idaho, or outside of the State of Idaho.

V

PRINCIPAL PLACE OF BUSINESS

The principal place of business of this corporation within the state of Idaho shall be in Franklin County, Idaho. The exact mailing address of the corporation will be as follows:

104 South State Street  
Preston, Idaho 83263

The business of this corporation may be carried on in all of the counties of the State of Idaho, and in all states of the United States, and in United States possessions, as well as in foreign countries.

VI

CAPITAL STOCK

The authorized number of shares of stock which this corporation shall have authority to issue is Ten Million (10,000,000), with a par value of one cent (.01) per share. Each share shall entitle the holder thereof to one vote on each matter submitted to vote at a meeting of the shareholders. There shall be no cumulative voting.

VII

OFFICERS AND DIRECTORS

The officers of this corporation shall consist of a president, vice president, secretary and treasurer. However, each may serve in a dual capacity with another office except for the office combination of president and secretary. The Board of Directors shall consist of the number specified by the by-laws of the corporation, and shall consist of not less than three (3) members, or more than twelve (12) members. Members of the Board of Directors need not be stockholders. The members of the initial Board of Directors shall serve as directors until the first annual meeting of the stockholders, or until their successors are elected and shall qualify. The number of such directors constituting the initial Board of Directors of the corporation is three (3), and their names and addresses are:

<u>NAME</u>	<u>SOCIAL SECURITY NUMBER</u>	<u>ADDRESS</u>
Richard Jaynes	298-56-5993	1215 E 580 S Provo, Utah 84606
Kelly H. Spackman	529-66-2889	4 North Main Lewiston, Utah 84320
Merilee Spackman	529-78-0175	4 North Main Lewiston, Utah 84320

Each subsequent election of the Board of Directors who serve the corporation shall be held at the annual stockholders' meeting, unless it shall become necessary to call a special meeting of the stockholders for such purpose. Said special meetings will be called by the secretary of the corporation by giving ten (10) days written notice in advance of said meetings, and the same shall be delivered in person, or by registered mail. A vacancy occurring in the board of directors may be filled by an affirmative vote of a majority of the remaining directors, although less than a quorum of the Board of Directors.

Any director of this corporation may be removed at any stockholders meeting properly called for that purpose, provided that a majority of the shares of capital stock entitled to vote at an election of the directors shall vote for such removal. Any officer or director may resign by filing a written resignation with the secretary of the corporation. Such resignation shall take effect five (5) days after the receipt thereof by the secretary, if it is not first accepted by the Board of Directors. The names of the officers who shall serve until lawfully replaced by the Board of Directors, or until lawfully removed, as hereinabove provided, are:

<u>NAME</u>	<u>POSITION</u>
Kelly Spackman	President/Treasurer
Merilee Spackman	Secretary
Shelly Spackman	Vice President

The Board of Directors shall have the power to create such other offices and positions as the Board of Directors may determine to be necessary and advisable for the conducting of the business of the corporation.

#### VIII

#### QUORUM

A majority of the entire Board of Directors shall be necessary to form a quorum to transact the business and exercise the corporate powers of the corporation and, specifically, to remove any officer.

#### IX

#### LIABILITY OF STOCKHOLDERS

The capital stock of the corporation is, and shall be, non-assessable, and the private property of the stockholders of the corporation shall not be liable for the debts or obligations of the corporation to any extent whatsoever.

X

AMENDMENT OF ARTICLES

The Articles of Incorporation of this corporation may be amended, altered or repealed, by the affirmative vote of stockholders holding sixty percent (60%) of the outstanding capital stock, at the meeting of the stockholders called for such purpose, providing proper notice to all stockholders has been given and, providing further, that such amendments are not contrary to law.

XI

BY-LAWS

The initial by-laws providing for the management and operation of the corporation shall be adopted by the Board of Directors of the corporation. Thereafter, by-laws may be amended, altered, or repealed by the Board of Directors or by the stockholders, except where the laws of the State of Idaho provide otherwise.

XII

PRE-EMPTIVE RIGHTS

If the Board of Directors from time to time authorizes the issuance of additional stock, or increases the capitalization, or authorizes the sale of stock possessed or owned by the corporation, it may limit the time within which said



stock may be purchased or subscribed to by anyone, and otherwise to control the distribution of stock sold or issued by the corporation. It is understood and agreed that any transfer or offer of sale of the above entitled stock shall be made to the existing stockholders first, and that it will in no way affect or change the existing percentage held by the said stockholders. However, should any one of the said stockholders desire not to accept the offer or exercise his option, the others may purchase the stock on an equal basis, thereby changing the percentage of stock held by the stockholders of the corporation.

### XIII

#### RIGHT OF TRANSFER

It is further agreed that, in addition to the rights and duties established in the above Paragraph XII, entitled "Preemptive Rights", as a condition to the sale or transfer of all corporate stock held by any stockholder to anyone not then a stockholder of the corporation, the procedure established by the following provisions must be complied with and followed, or such transfer or sale shall be null and void.

A stockholder desiring to sell his stock to anyone who is not, at such time, an existing stockholder, shall file a notice in writing with the secretary of the corporation, stating the terms of the sale and the name and address of the purchaser,

and the secretary shall, without delay, and by registered mail, send a copy of such written notice to all stockholders of record. Any and all stockholders of record shall have fifteen (15) days from the date when copy of the written notice of the intended sale is received by them, and within fifteen (15) days any stockholder of record shall have the privilege of purchasing the stock in question on the same terms that the stockholder, who seeks to sell, forwarded to the secretary of the corporation. However nothing in this paragraph shall be construed as limiting or denying a stockholder, who has filed a written notice of the terms of a prospective sale, from revoking the offer to sell, providing such revocation is made before it is accepted by one or more stockholders, and in accordance with the applicable rules of law governing offer and acceptance in contract. If more than one stockholder is desirous of purchasing the offered stock, the stock shall be divided and sold to those stockholders desiring to purchase and acquire the same on the basis of the ratio of their individual shares owned, as to the total shares owned by all shareholders seeking to purchase the offered stock. In the event a sale is held, reference in determination of the value of the shares shall be made by ascertaining their book value, less goodwill.

This provision, Article XIII, shall also apply to the transfer or transfers, of stock by virtue of the law of dissent of any state, or by virtue of any testamentary disposition by will, or otherwise, to heirs or devisees of any stockholder who shall have died. This provision shall also apply to judicial sales by executors and administrators of any stockholder.

#### XIV

#### ANNUAL STOCKHOLDERS' MEETING

The first annual meeting of the stockholders of the corporation shall be held on the third Monday of May, 1994, at the corporations place of business, at the hour of 6:00 p.m. on that day.

Subsequent meetings shall be held on the last Friday of January of each year, unless otherwise provided by a majority vote of the stockholders of the corporation, and such meetings shall be held at the office of the corporation's principal place of business, and shall begin at 5:00 p.m., unless otherwise provided by the by-laws, or unless such date, time or place is changed by a vote of the majority of the stockholders entitled to vote and in attendance at any annual stockholders' meeting, or at a special meeting called for the purpose of changing the above date, time, or place.

XV

COMMENCING BUSINESS

The corporation, and the incorporators thereof, certify that the corporation shall not commence business until at least One Thousand Dollars (\$1,000), or its equivalent in value, has been recieved by the corporation as consideration for the issuance of shares.

XVI

REGISTERED OFFICE AND AGENT

The initial registered office of the corporation shall be at 104 South State, Preston, Idaho 84263.

The initial registered agent shall be Kelly H. Spackman.

IN WITNESS WHEREOF, we have hereunto set our hands this

14<sup>th</sup> day of May, 1994.

*[Handwritten signatures]*  
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STATE OF UTAH            )  
                                  )        SS:  
County of Utah         )

I, the undersigned, a notary public, hereby certify that Richard Jaynes and Kelly Spackman personally appeared before me, and being first duly sworn by me, declared that they are the persons who signed the foregoing document as incorporators of the corporation, and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 14<sup>th</sup> day of May, 1994

Commission Expires:  
5-11-97

*[Handwritten signature: Gina K. Smith]*  
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NOTARY PUBLIC  
Residing in Utah County, Utah

