

28522 / 7706

# State of Idaho

## Department of State

### CERTIFICATE OF AMENDMENT OF

SUN VALLEY SHOPPING CENTER, INC.

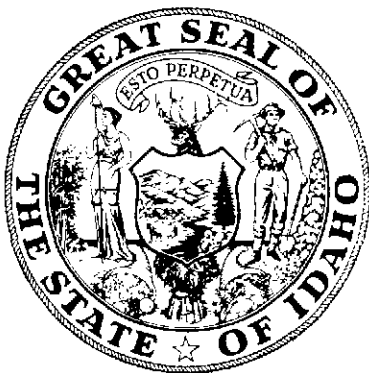
I PETE T. CENARRUSA, Secretary of State of the State of Idaho hereby, certify that  
duplicate originals of Articles of Amendment to the Articles of Incorporation of \_\_\_\_\_

ATKINSONS' MARKET, INC.

duly signed and verified 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  
Amendment to the Articles of Incorporation and attach hereto a duplicate original of the Articles  
of Amendment.

Dated \_\_\_\_\_ August 12 , 19 91 .



*Pete T. Cenarrusa*

SECRETARY OF STATE

*Ray J. Cook*  
Corporation Clerk

RECEIVED  
SEC. OF STATE

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION OF  
SUN VALLEY SHOPPING CENTER, INC.  
(To be Known as Atkinsons' Market, Inc.)**

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Pursuant to the provisions of §30-1-61 of the Idaho Business Corporation Act, the undersigned Corporation adopts the following Amended and Restated Articles of Incorporation:

**FIRST:** The name of the Corporation is Sun Valley Shopping Center, Inc. It's name shall, by these Amended and Restated Articles of Incorporation, be changed to **Atkinsons' Market, Inc.**

**SECOND:** The following Amended and Restated Articles of Incorporation were adopted by the shareholders of the Corporation on July 30, 1991 in the manner prescribed by the Idaho Business Corporation Act. All Articles are amended.

**1. NAME**

The name of the corporation is **Atkinsons' Market, Inc.**

**2. PURPOSE AND POWER**

The purposes for which this corporation is formed are to engage in any lawful act or activity for which corporations may be organized under the Idaho Business Corporation Act and to possess and exercise all the powers and privileges granted by the Idaho Business Corporation Act or by any lawful powers and privileges incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes of the corporation.

**3. DURATION**

Subject to dissolution in the manner provided by law, the corporation shall be perpetual.

**4. REGISTERED OFFICE**

The registered office of said corporation in the State of Idaho shall be located at Giacobbi Square, Ketchum, Idaho 83340. The post office address of the registered office of said corporation in the State of Idaho, shall be P.O. Box 2088, Ketchum, Idaho 83340. Don R. Atkinson shall be the registered agent at the address set forth above.

**5. CORPORATE STOCK.** The aggregate number of shares which the corporation shall have authority to issue is 2,500,000 shares, which shall be divided into the following classes:

500,000 shares of Class A Convertible Preferred Stock, par value \$10,  
500,000 shares of Class B Preferred Stock, par value \$10,  
500,000 shares of Class A Voting Common Stock, no par value,  
500,000 shares of Class B Voting Common Stock, no par value, and  
500,000 shares of Class F Nonvoting Common Stock, no par value.

There are two shareholders of record as of the date these Amended and Restated Articles of Incorporation are filed, and each shareholder holds 10,000 shares of voting common stock ("old

common stock"). Within 10 business days of filing of these Amended and Restated Articles of Incorporation by the Idaho Secretary of State, all outstanding common stock shall be surrendered. Each shareholder of record shall receive 100,000 shares of Class B no par voting common stock and 100,000 shares of Class F no par nonvoting common stock for each block of 10,000 shares of surrendered old common stock.

The designations and the powers, preferences and rights and the qualifications, limitations or restrictions thereof of the shares of each class are described in the following paragraphs of this Article 5.

#### **5.1. CLASS A CONVERTIBLE PREFERRED STOCK.**

**5.1.1 Relative Seniority.** With respect to dividends and upon liquidation, the Class A convertible preferred stock shall rank senior to all other classes of stock.

##### **5.1.2 Dividends.**

- (a) The holders of the Class A convertible preferred stock shall be entitled to receive, when and as declared by the Board of Directors out of any funds legally available for the payment of dividends, annual cash dividends at the rate of \$1.00 per share per year, payable on the last business day of each fiscal year of the corporation (the "dividend date"), to stockholders of record at the close of business on such date as shall be fixed by the board of directors at the time of the declaration of the dividend, which record date shall be not less than 10 nor more than 30 days preceding the dividend date. The first dividends on the Class A convertible preferred stock shall be payable on the first anniversary of the issue date of said shares, if so declared by the board of directors.
- (b) Dividends on shares of Class A convertible preferred stock shall accrue and be cumulative from the respective dates on which such shares are issued, whether or not (1) dividends on such shares are earned or declared or (2) on any dividend date there shall be funds legally available for the payment of dividends. The amount of dividends accumulated on any shares of Class A convertible preferred stock from the respective dates on which such shares are issued shall be an amount calculated on the basis of the annual dividend rate of 10% based on a 360 day year. Accrued but unpaid dividends shall not bear interest.
- (c) No dividend shall be paid or declared and set apart for payment on any shares of any other class of stock for any dividend period unless a dividend for the same dividend period and all past dividend periods, if any, ratable in proportion to the annual dividend rate fixed therefor and in proportion to the amount, if any, accrued with respect to defaulted dividends, shall be or have been paid or declared and set apart for payment on all shares of Class A convertible preferred stock then outstanding.

**5.1.3 Voting Rights.** The voting rights of holders of Class A convertible preferred stock are set forth in section 5.2.

#### **5.1.4 Liquidation Rights.**

- (a) Upon the dissolution, liquidation or winding up of the corporation, whether voluntary or involuntary, the holders of the shares of Class A convertible preferred stock shall be entitled to receive out of the assets of the corporation before any payment or distribution shall be made with respect to junior stock, cash in the amount of \$10 per share, plus an amount equal to all dividends accrued and unpaid thereon to the date of final distribution.
- (b) If upon any voluntary or involuntary liquidation, dissolution or winding up of the corporation the assets of the corporation available for distribution to the holders of shares of Class A convertible preferred stock shall be insufficient to pay such holders the full amount to which they are entitled (e.g., \$1 per share, plus an amount equal to all dividends accrued and unpaid), the holders of shares of the Class A convertible preferred stock shall share ratably in any distribution of assets in proportion to the respective amounts which would be payable in respect to the shares of Class A convertible preferred stock if all amounts payable on or with respect to shares of Class A convertible preferred stock were paid in full.
- (c) If upon any voluntary or involuntary liquidation, dissolution or winding up of the corporation, payment shall have been made to the holders of Class A convertible preferred stock of the full amount of which they shall be entitled (e.g., \$10 per share, plus an amount equal to all dividends accrued and unpaid), such holders shall not be entitled to any further participation in the distribution of the remaining assets of the corporation available for distribution to its stockholders; provided, however, that each holder of Class A convertible preferred stock shall be given a written notice from the corporation informing each holder of the liquidation, dissolution or winding up of the corporation at least 10 days prior to the anticipated date of such event, and each holder shall have the right to convert his shares of Class A convertible preferred stock into Class A voting common stock as provided in subsection 5.1.6.
- (d) A liquidation following a sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration ) of all or substantially the property and assets of the corporation shall be deemed a dissolution, liquidation or winding up of the corporation for the purposes of this subsection 5.1.4, but the merger or consolidation of the corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the corporation, shall not be deemed a dissolution, liquidation or winding up for the purposes of this subsection.

#### **5.1.5 Optional Redemption.**

- (a) It is anticipated that the Class A convertible preferred stock will be issued to and held by a qualified Employee Stock Ownership Trust ("ESOT or ESOP"). It is also anticipated that the ESOP will acquire shares of Class A convertible preferred stock with the proceeds of a stock acquisition loan

(the "stock acquisition loan"). From and after the date of full payment of the stock acquisition loan, the corporation may, at the option of the board of directors and in accordance with the provisions of section 5.3, redeem outstanding shares of Class A convertible preferred stock, at any time or from time to time, either in whole or in part (pro rata based on the number of shares then owned by each holder of record), at \$10 per share, plus an amount equal to all dividends accrued and unpaid.

- (b) Notwithstanding the foregoing provisions of this subsection 5.1.5, no shares of Class A convertible preferred stock shall be redeemed at any time while any dividends on any other shares of Class A convertible preferred stock are in arrears unless all outstanding shares of Class A convertible preferred stock are simultaneously redeemed, and the corporation shall not, directly or indirectly, purchase or otherwise acquire (other than upon conversion thereof) any shares of Class A convertible preferred stock at any time while any dividends on any other Class A convertible preferred stock are in arrears; provided, however, that the foregoing shall not prevent the purchase or acquisition of shares of Class A convertible preferred stock pursuant to a purchase or exchange offer made on a pro rata basis and on the same terms to the holders of all outstanding Class A convertible preferred stock.

**5.1.6 Conversion Rate.** Class A convertible preferred stock shall be convertible into shares of Class A voting common stock at any time on and subject to the following terms and conditions:

- (a) Class A convertible preferred stock shall be convertible at the principal office of the company and at such other office or offices, if any, as the board of directors may designate (the "transfer office"), into fully paid and nonassessable shares (calculated as to each conversion to the nearest 1/100th of a share) of Class A voting common stock at the rate of 1 share of Class A voting common stock for 1 share of Class A convertible preferred stock; or, at the rate which results from the making of any adjustment specified in (d) of this subsection 5.1.6 (the number of shares of Class A voting common stock issuable at any time, giving effect to the latest prior adjustment pursuant to paragraph (d) of this subsection 5.1.6 if any, in exchange for one share of Class A convertible preferred stock ("conversion rate").
- (b) In order to convert shares of Class A convertible preferred stock into Class A voting common stock, the holder of Class A convertible preferred stock shall surrender to the transfer office the certificates therefore, duly endorsed to the corporation or in blank, and give written notice to the corporation at the transfer office that such holder elects to convert such shares. In case less than all the shares represented by any such certificate are converted, a new certificate shall be promptly issued by the corporation representing the unconverted shares without cost to the holder thereof. Shares of Class A convertible preferred stock shall be deemed to have been converted immediately prior to the close of business on the date of the surrender of such shares for conversion in accordance with the

foregoing provisions, and the person or persons entitled to receive the Class A voting common stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Class A voting common stock at such time. As promptly as practicable on or after the conversion date, the corporation shall issue and shall deliver at the transfer office a certificate or certificates for the number of full shares of Class A voting common stock issuable upon such conversion, together with a cash payment in lieu of any fraction of any share, as provided in paragraph (d) of this subsection 5.1.6 to the person or persons entitled to receive the same. If shares of Class A convertible preferred stock are called for redemption, the right to convert such shares shall cease and terminate at the close of business on the relevant redemption date, unless default be made of the redemption price, plus an amount equal to all accrued but unpaid dividends on such shares to the relevant redemption date.

- (c) No fractional shares of Class A voting common stock shall be issued upon conversion of shares of Class A convertible preferred stock, but in lieu of any fraction of a share of Class A voting common stock that would otherwise be issuable in respect of the aggregate number of shares of Class A convertible preferred stock surrendered for conversion at one time by the same holder, the corporation shall pay in cash as an adjustment of such fraction an amount equal to the same fraction of the purchase price of such Class A voting common stock.
- (d) The Conversion Rate shall be subject to the following adjustments:
  - (1) If the corporation shall declare and pay to the holders of Class A voting common stock a dividend or other distribution payable in shares of Class A voting common stock, the holders of Class A convertible preferred stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Class A voting common stock which such holder would have owned or been entitled to receive after declaration and payment of such dividend or other distribution if such shares of Class A convertible preferred stock had been converted immediately prior to the record date for the determination of stockholders entitled to receive such dividend or other distribution.
  - (2) If the corporation shall subdivide the outstanding shares of Class A voting common stock into a greater number of shares of Class A voting common stock, or combine the outstanding shares of Class A voting common stock into a lesser number of shares, or issue by reclassification of its shares of Class A voting common stock any shares of the corporation, the conversion rate in effect immediately prior thereto shall be adjusted so that the holders of Class A convertible preferred stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Class A voting common stock or other shares which such holder would have owned or been entitled to receive after the happening

of any of the events described above if such shares of Class A convertible preferred stock had been converted immediately prior to the day upon which such subdivision, combination or reclassification, as the case may be, becomes effective.

- (3) If the corporation shall issue or sell any additional shares of Class A voting common stock (as defined in Section 5.7 of this Article) for a consideration per share less than the conversion amount (as defined in section 5.7 of this Article) then the conversion rate shall be adjusted to the number determined by multiplying the conversion rate in effect immediately prior to such issuance or sale by a fraction, the numerator of which shall be the number of shares of Class A voting common stock outstanding immediately prior to the issuance or sale of such additional shares of Class A voting common stock plus the number of such additional shares of Class A voting common stock so issued and sold, and the denominator of which shall be the number of shares of Class A voting common stock outstanding immediately prior to the issuance or sale of such additional shares of Class A voting common stock which the aggregate consideration for such additional shares of Class A voting common stock so issued or sold would purchase at consideration per share equal to the conversion amount. For the purpose of this subparagraph (3), the date as of which the conversion amount shall be computed shall be the earlier of (A) the date on which the corporation shall enter into a firm contract for the issuance or sale of such additional shares of Class A voting common stock or (B) the date of the actual issuance or sale of such shares.
- (4) If the corporation shall issue or sell any warrants or options or other rights entitling the holders thereof to subscribe for or purchase either any additional shares of Class A voting common stock or evidences of indebtedness, shares of stock or other securities which are convertible into or exchangeable, with or without payment of additional consideration in cash or property, for additional shares of Class A voting common stock (such convertible or exchangeable evidences of indebtedness, shares of stock or other securities hereinafter being called ("convertible securities"), and the consideration per share for which additional shares of Class A voting common stock may at any time thereafter be issuable pursuant to the terms of such convertible securities (when added to the consideration per share of Class A voting common stock, if any, received for such warrants or other rights or such convertible securities), shall be less than the conversion amount, then the conversion rate shall be adjusted as provided in subparagraph (3) on the basis of (A) the maximum number of Additional Shares of Class A voting common stock issuable pursuant to all such warrants or other rights necessary to effect the conversion or exchange of all such convertible securities shall be deemed to have been issued and (B) the aggregate

consideration for such maximum number of additional shares of Class A voting common stock shall be deemed to be the minimum consideration received and receivable by the corporation for the issuance of such additional shares of Class A voting common stock (plus the consideration, if any, received for such warrants or other rights or such convertible securities) pursuant to such warrants or other rights or pursuant to the terms of such convertible securities.

- (5) If the corporation shall issue or sell convertible securities and the consideration per share for which additional shares of Class A voting common stock may at any time thereafter be issuable pursuant to the terms of such convertible securities (when added to the consideration per share of Class A voting common stock, if any received for such convertible securities), shall be less than the conversion amount, then the conversion rate shall be adjusted as provided in subparagraph (3) on the basis that (A) the maximum number of additional shares of Class A voting common stock necessary to effect the conversion or exchange of all such convertible securities shall be deemed to have been issued and (B) the aggregate consideration for such maximum number of additional shares of Class A voting common stock shall be deemed to be the minimum consideration received and receivable by the corporation for the issuance of such additional shares of Class A voting common stock pursuant to the terms of such convertible securities (plus the consideration, if any, received for such warrants or other rights or such convertible securities). No adjustment of the conversion rate shall be made under this subparagraph (5) upon the issuance of any convertible securities which are issued pursuant to the exercise of any warrants or other subscription or purchase rights therefor, if such adjustment shall previously have been made upon the issuance of such warrants or other rights pursuant to subparagraph (4).
- (6) If the corporation shall distribute to the holders of shares of Class A voting common stock any assets or evidences of its indebtedness (other than regular cash dividends on Class A voting common stock), the conversion rate in effect immediately prior to such distribution shall be adjusted so that the number of shares of Class A voting common stock into which each outstanding share of Class A convertible preferred stock shall thereafter be convertible shall be the number of such shares into which such share of Convertible Class A convertible preferred stock was theretofore convertible multiplied by a fraction of which the numerator shall be the fair value of a share of the Class A voting common stock on the date of such distribution, and of which the denominator shall be the fair value of a share of the Class A voting common stock on such date less the fair value (all as determined in good faith by the board of directors of the



corporation) of the portion of the assets so distributed applicable to 1 share of Class A common outstanding on such date.

- (7) The adjustment provided for in subparagraphs (1), (2), and (4) shall be made whenever any of the events enumerated in such subparagraphs shall happen, but shall also be effective retroactively as to any share of Class A convertible preferred stock converted between the record date and the date of the distribution or other event. For the purposes of subparagraphs (4) and (5), the date as of which the conversion amount shall be computed shall be the earliest of (A) the date on which the corporation shall take a record of the holders of its Class A voting common stock for the purpose of entitling them to receive any warrants or other rights referred to in subparagraph (4) or to receive any convertible securities, (B) the date on which the corporation shall enter into a firm contract for the issuance of such warrants or other rights or convertible securities or (C) the date of the actual issuance of such warrants or other rights or convertible securities.
- (8) No adjustment of the conversion rate shall be made under subparagraph (3) upon the issuance of any additional shares of Class A voting common stock which are issued pursuant to the exercise of any warrants or other subscription or purchase rights or pursuant to the exercise of any conversion or exchange rights in any convertible securities, if such adjustment shall previously have been made upon the issuance of any warrants or other rights therefor), pursuant to subparagraph (4) or (5).
- (9) If any warrants or other rights (or any portions thereof) which shall have given rise to an adjustment pursuant to subparagraph (4) or conversion rights pursuant to convertible securities which shall have given rise to an adjustment pursuant to subparagraph (5) shall have expired or terminated without the exercise thereof and/or if by reason of the terms of such warrants or other rights or convertible securities there shall have been an increase or increases, with the passage of time or otherwise, in the price payable upon the exercise or conversion thereof, then the conversion rate hereunder shall be readjusted (but to no greater extent than originally adjusted) on the basis of (A) eliminating from the computation any additional shares of Class A voting common stock corresponding to such warrants or other rights or conversion rights as shall have expired or terminated, (B) treating the additional shares of Class A voting common stock, if any, actually issued or issuable pursuant to the previous exercise of such warrants or other rights or of conversion rights pursuant to any convertible securities as having been issued for the consideration actually received and receivable therefor, and (C) treating any of such warrants or other rights or of conversion rights pursuant to any convertible securities which remain

outstanding as being subject to exercise or conversion on the basis of such exercise or conversion price shall be in effect at the time; provided, however, that any consideration which was actually received by the corporation in connection with the issuance or sale of such warrants or other rights shall form part of the readjustment computation even though such warrants or other rights shall have expired without the exercise thereof. The conversion rate shall be adjusted as provided in subparagraph (3) as a result of any increase in the number of additional shares of Class A voting common stock issuable, or any decrease in the consideration payable upon any issuance of additional shares of Class A voting common stock, pursuant to any anti-dilution provisions contained in any warrants or other rights or in any convertible securities.

- (10) To the extent that any additional shares of Class A voting common stock, any warrants or other rights to subscribe for or purchase any additional shares of Class A voting common stock, or any convertible securities shall be issued for a cash consideration, the consideration received by the corporation therefore shall be deemed to be the amount of cash received by the corporation therefor, or, if such additional shares of Class A voting common stock, warrants or other rights or convertible securities are offered by the corporation for subscription, the subscription price, or, if such additional shares of Class A voting common stock, warrants or other rights or convertible securities are sold to underwriters or dealers for public offering without a subscription offering, the initial public offering price, in any such case excluding any amounts paid or receivable for accrued interest or accrued compensation, discounts or expense paid or incurred by the corporation for and in the underwriting of, or otherwise in connection with, the issuance thereof. If and to the extent that such issuance shall be for a consideration other than cash, then, except as herein otherwise expressly provided, the amount of such consideration at the time of such issuance as determined by the board of directors of the corporation. If additional shares of Class A voting common stock shall be issued as part of a unit with warrants or other rights, then the amount of consideration for the warrant or other rights shall be deemed to be the amount determined at the time of issuance by the board of directors of the corporation. If the board of directors of the corporation shall not make any such determination, the consideration for the warrant or other right shall be deemed to be zero.
- (11) In case the corporation shall effect a reorganization, shall merge with or consolidate into another corporation, or shall sell, transfer or otherwise dispose of all or substantially all of its property, assets or business and, pursuant to the terms of such redemption, merger, consolidation, successor or transferee or an affiliate thereof, or cash are to be received by or distributed to the holders

of Class A voting common stock, then each holder of Class A convertible preferred stock shall be given a written notice from the corporation informing each holder of the terms of such reorganization, merger, consolidation, or disposition of assets and of the record date thereof for any distribution pursuant thereto, at least 10 days in advance of such record date, and each holder of Class A convertible preferred stock shall have in addition to any other rights provided for herein, the right thereafter to receive, at the holder's election, either (A) upon conversion of such Class A convertible preferred stock, the number of shares of stock or other securities, property or assets of the corporation, successor or transferee or affiliate thereof, or cash receivable upon or as a result of such reorganization, merger, consolidation or disposition of assets by a holder of the number of shares of Class A voting common stock equal to the conversion rate immediately prior to such event, multiplied by the number of shares of Class A convertible preferred stock as may be converted or (B) the securities are converted into, upon or as a result of such reorganization, merger, consolidation, or disposition of assets. The provisions of this subparagraph (11) shall similarly apply to successive reorganizations, mergers, consolidations or dispositions of assets.

- (12) If a purchase, tender or exchange offer is made to and accepted by the holders of more than 50% of the outstanding shares of Class A voting common stock, the corporation shall not effect any consolidation, merger or sale with the person having made such offer or with any affiliate of such person, unless prior to the consummation thereof each holder of shares of Class A convertible preferred stock shall have been given not less than 15 days to elect to receive, upon conversion of the shares of Class A convertible preferred stock then held by such holder, either the stock, securities, cash or assets then issuable with respect to the Class A voting common stock in accordance with such offer, or the equivalent thereof.
- (13) The number of shares of Class A voting common stock outstanding at any given time shall not include shares owned or held by or for the account of the corporation, for the purpose of this paragraph (d).
- (14) If a state of facts shall occur which, without being specifically controlled by the provisions of this paragraph (d), would not fairly protect the conversion rights of the Class A convertible preferred stock in accordance with the essential intent and principles of such provisions, then the board of directors of the corporation shall make an adjustment in the application of such provisions, in accordance with such essential intent and principles so as to protect such conversion rights.

- (15) Anything herein to the contrary notwithstanding, no adjustment in the conversion rate shall be required unless such adjustment, either by itself or with other adjustments not previously made, would require a change of at least 1% in such rate; provided, however, that any adjustment which by reason of this subparagraph (15) is not required to be made shall be carried forward and taken into account in any subsequent adjustment; provided, further that any such adjustment; shall be made no later than 3 years from the date on which such adjustment would have been made but for this subparagraph (15). If, by reason of this subparagraph (15), an adjustment is not required to be made, the corporation shall make such federal income tax elections as shall be necessary to prevent the failure to make such adjustment from resulting in a constructive dividend to the holders of shares of Class A voting common stock.
- (16) All calculations under this paragraph (d) shall be made to the nearest one-thousandth of a share.
- (17) Whenever the conversion rate shall be adjusted pursuant to this paragraph (d), the corporation shall forthwith obtain, and cause to be delivered to each holder of Class A convertible preferred stock, a certificate signed by the principal financial or accounting officer of the corporation, setting forth in reasonable detail the event requiring the adjustment and the method by which such adjustment was calculated (including a description of the basis on which the board of directors of the corporation determined the fair value of any consideration other than cash pursuant to subparagraph (10)) and specifying the new conversion rate. In the case referred to in subparagraph (11), such a certificate shall be issued describing the amount and kind of stock, securities, property or assets or cash which shall be receivable upon conversion of the Class A convertible preferred stock after giving effect to the provisions of such subparagraph (11).
- (18) Anything contained in this paragraph (d) to the contrary notwithstanding, no adjustment shall be made in the conversion rate as a result of (A) the conversion of the Class A convertible preferred stock, (B) the granting of, or the issuance of shares upon exercise of any option granted to any employee or prospective employee in respect to such employee's present or future employment by the corporation or any subsidiary or (C) the granting of, or the issuance of, shares upon exercise of stock appreciation right, or the institution of, or the issuance of any shares issued under, any stock purchase plan, stock bonus plan or other employee incentive plan, or under any stock purchase arrangement entered into with any employee, prospective employee or consultant in connection with such employee's or consultant's present or future employment by the corporation or any subsidiary, whether such plan, right, or arrangement is now

in effect or hereafter adopted, granted or entered into by the corporation (or any subsidiary).

- (e) The corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A voting common stock, solely for the purpose of effecting the conversion of Class A convertible preferred stock, the full number of shares of Class A voting common stock then deliverable upon the conversion or exchange of all shares of Class A convertible preferred stock at the time outstanding. The corporation shall take at all times such corporate action as shall be necessary in order that the corporation may validly and legally issue fully paid and nonassessable shares of Class A voting common stock upon the conversion of Class A convertible preferred stock in accordance with the provisions hereof.

**5.2. Amendment of Articles Affecting Class A Convertible Preferred Stock and Voting Rights.** The consent of the holders of at least 66% of all of the shares of Class A convertible preferred stock present in person or by proxy at a stockholders' meeting called for the purpose, voting as a single class, shall be necessary for the amendment, alteration or repeal of any of the provisions of these Articles which may adversely affect the powers, preferences, or special rights of the Class A convertible preferred stock. The holders of Class A convertible preferred stock shall have no other voting rights.

**5.3. Redemption Procedures.**

**5.3.1 Notice.** In the case of any redemption of Class A convertible preferred stock pursuant to subsection 5.1.5, a notice of the time and place of redemption shall be given by mail at least 30 but not more than 60 days prior to the redemption date, to the holders of record of the shares of Class A convertible preferred stock in such manner as may be prescribed by the board of directors; provided, that in the case of a redemption of less than all of the outstanding shares of Class A convertible preferred stock, the shares of Class A convertible preferred stock to be redeemed shall be pro rata based on the number of shares then owned by each holder of record, or shall be chosen by such other method as may be approved by the board of directors to conform to any applicable law, rule or regulation.

**5.3.2 Depository.** At its option, the corporation may, on or prior to the redemption date, deposit the aggregate amount payable upon redemption of the shares of Class A convertible preferred stock to be redeemed with a bank or trust company (the "depository") designated by the board of directors and named in the notice referred to in subsection 5.3.1 to be held in trust by the depository for payment on the redemption date to the holders of the shares then to be redeemed. If such deposit is made and the funds so deposited are made immediately available on the redemption date to the holders of the shares to be redeemed, the corporation shall upon such deposit be released and discharged (subject to the provisions of subsection 5.3.3) from any obligation to make payment of the amount payable upon redemption of the shares to be redeemed, and the holders of such shares shall look only to the depository for such payment and shall be entitled to such payment upon the surrender to the depository of the certificates representing such shares. Any interest accrued on any funds deposited with the depository shall belong to the corporation and shall be paid to it from time to time on demand.

**5.3.3 Unclaimed Funds.** Any funds deposited with the depository as set forth in subsection 5.3.2 with respect to shares of Class A convertible preferred stock, which are converted prior to the close of business on the redemption date, shall be returned to the corporation forthwith, and, subject to applicable laws relating to unclaimed funds, any funds remaining unclaimed at the end of two years from and after the redemption date in respect of which such funds were deposited shall then be returned to the corporation. After any such unclaimed funds are returned to the corporation, the holders of shares of Class A convertible preferred stock redeemed on such redemption date shall look only to the corporation for the payment of the redemption price thereof, plus an amount equal to all accrued but unpaid dividends thereon to the relevant redemption date.

**5.3.4 Rights After Redemption.**

- (a) Unless default be made in payment of the redemption price, plus an amount equal to all accrued but unpaid dividends thereon to the relevant redemption date, dividends on shares of Class A convertible preferred stock called for redemption shall cease on such redemption date, except the right to receive the amount payable upon redemption of such shares, on presentation and surrender of the respective certificates representing such shares and the right of conversion on or before the close of business on the redemption date, and after the redemption date such shares shall not be deemed to be outstanding for any purpose whatsoever (notwithstanding that any certificates for shares called for less than all the shares represented by any such certificate are redeemed, a new certificate shall be promptly issued by the corporation representing the unredeemed shares without cost to the holder thereof).
- (b) Any shares of Class A convertible Class A convertible preferred stock which at any time shall have been redeemed, shall, after such redemption, have no voting, dividends or liquidation rights and shall be retired and shall have the status of authorized but unissued shares of such stock.

**5.3.5 Close of Transfer Book.** In order to facilitate the redemption of any shares that may be chosen for redemption, the board of directors may cause the transfer books of the corporation to be closed as to such share at any time from and after the relevant redemption date and may make and enforce any and all such reasonable regulations not inconsistent herewith governing the manner of redemption as the board of directors in its discretion may deem advisable.

**5.4 Class B Preferred Stock.**

**5.4.1 Relative Seniority.** The Class B preferred stock shall rank junior to the Class A convertible preferred stock in respect of the rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the corporation and shall rank senior to the Class A voting common stock, Class B voting common stock and Class F nonvoting common stock in respect of the rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the corporation.

#### **5.4.2 Dividends.**

- (a) Subject to the rights of the holders of Class A convertible preferred stock, the holders of the Class B preferred stock shall be entitled to receive, when and as declared by the board of directors out of any funds legally available for the payment of dividends, annual cash dividends at the rate of \$1.00 per share per year, payable on the last business day of each fiscal year of the corporation (the "dividend date"), to stockholders of record at the close of business on such date as shall be fixed by the board of directors at the time of the declaration of the dividend, which record date shall be not less than 10 nor more than 30 days preceding the dividend date. The first dividends on the Class B preferred stock shall be payable on the first anniversary of the issue date of said shares.
- (b) Dividends on shares of Class B preferred stock shall accrue and be cumulative from the respective dates on which such shares are issued, whether or not (1) dividends on such shares are earned or declared or (2) on any dividend date there shall be funds legally available for the payment of dividends. The amount of dividends accumulated on any shares of Class B preferred stock from the respective dates on which such shares are issued shall be an amount calculated on the basis of the annual dividend rate of 10% based on a 360 day year. Accrued but unpaid dividends shall not bear interest.
- (c) No dividend shall be paid or declared and set apart for payment on any shares of any other class of stock, except for Class A convertible preferred stock, for any dividend period unless a dividend for the same dividend period and all past dividend periods, if any, ratable in proportion to the annual dividend rate fixed therefor and in proportion to the amount, if any, accrued with respect to defaulted dividends, shall be or have been paid or declared and set apart for payment on all shares of Class A convertible preferred stock then outstanding.

**5.4.3 Voting Rights.** The voting rights of holders of Class B preferred stock are set forth in section 5.7.

#### **5.4.4 Liquidation Rights.**

- (a) Upon the dissolution or winding up of the corporation, whether voluntary or involuntary, after payment shall have been made to the holders of Class A convertible preferred stock of the full amount to which they are entitled pursuant to the provisions of sections 5.1.4, the holders of the shares of any outstanding Class B preferred stock shall be entitled to receive out of the assets of the corporation before any payment or distribution shall be made on the Class A voting common stock, Class B voting common stock or Class F nonvoting common stock, cash in the amount of the greater of (i) \$10 or (ii) the implied price of a share based on the equity attributable to the Class B preferred stock, as computed in accordance with the formulas set forth in section 5.7.

- (b) A liquidation following a sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all the property and assets of the corporation shall be deemed a dissolution, liquidation or winding up of the corporation for the purposes of this section, but the merger or consolidation of the corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the corporation, shall not be deemed a dissolution, liquidation or winding up for purposes of this section.
- (c) If upon any voluntary or involuntary liquidation, dissolution or winding up of the corporation, the assets of the corporation available for distribution to the holders of Class B preferred stock shall be insufficient to pay such holders the full amount to which they are entitled the holders of the shares of Class B preferred stock shall share ratably in any distribution of assets in proportion to the respective amounts which would be payable in respect of the shares of Class B preferred stock if all amounts payable on or with respect to said shares were paid in full.

## **5.5 Class A Voting Common.**

**5.5.1 Relative Seniority.** The Class A voting common stock shall rank junior to the Class A convertible preferred stock and Class B preferred stock in respect of the rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the corporation and shall rank senior to the Class B voting common stock and Class F nonvoting common stock in respect of the rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the corporation.

**5.5.2 Dividends.** Subject to the rights of the holders of Class A convertible preferred stock and Class B preferred stock, the holders of Class A voting common stock shall be entitled to receive dividends when and as declared by the Board of Directors out of any funds available for the payment thereof.

**5.5.3 Voting Rights.** The voting rights of holders of Class A voting common stock are set forth in section 5.7.

### **5.5.4 Liquidation Rights.**

- (a) Upon the dissolution or winding up of the corporation, whether voluntary or involuntary, after payment shall have been made to the holders of Class A convertible preferred stock and the Class B preferred stock of the full amount to which they are entitled pursuant to the provisions of sections 5.1.4 and 5.4.4, the holders of the shares of any outstanding Class A voting common stock shall be entitled to receive out of the assets of the corporation before any payment or distribution shall be made on the Class B voting common stock or Class F nonvoting common stock, cash in the amount of the greater of (i) \$10 or (ii) the implied price of a share based on the equity attributable to the Class A voting common stock, as computed in accordance with the formulas set forth in section 5.7.



- (b) A liquidation following a sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all the property and assets of the corporation shall be deemed a dissolution, liquidation or winding up of the corporation for the purposes of this section, but the merger or consolidation of the corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the corporation, shall not be deemed a dissolution, liquidation or winding up for purposes of this section.
- (c) If upon any voluntary or involuntary liquidation, dissolution or winding up of the corporation, the assets of the corporation available for distribution to the holders of Class A voting common stock shall be insufficient to pay such holders the full amount to which they are entitled the holders of the shares of Class A voting common stock shall share ratably in any distribution of assets in proportion to the respective amounts which would be payable in respect of the shares of Class A voting common stock if all amounts payable on or with respect to said shares were paid in full.

## **5.6 Class B Voting Common Stock and Class F Nonvoting Common Stock**

- 5.6.1 Commonality.** All shares of Class B voting common stock and Class F nonvoting common stock shall have equal powers, preferences, and rights, except for voting rights; and shall be subject to the same qualifications, limitations and restrictions.
- 5.6.2 Relative Seniority.** Class B voting common stock and Class F nonvoting common stock shall rank junior to the Class A convertible preferred stock, Class B preferred stock and Class A voting common stock in respect of the rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the corporation.
- 5.6.3 Dividends.** Subject to the rights of the holders of Class A convertible preferred stock, Class B preferred stock and Class A voting common stock, the holders of Class B voting common stock and Class F nonvoting common stock shall be entitled to receive dividends when and as declared by the Board of Directors out of any funds available for the payment thereof.
- 5.6.4 Voting Rights.** The voting rights of holders of Class B voting common stock are set forth in section 5.7. The holders of Class F nonvoting common stock shall not have any voting rights with respect to said stock.
- 5.6.5 Liquidation Rights.**
  - (a) Upon the dissolution or winding up of the corporation, whether voluntary or involuntary, after payment shall have been made to the holders of Class A convertible preferred stock, the Class B preferred stock and the Class A voting common stock of the full amount to which they are entitled pursuant to the provisions of sections 5.1.4, 5.4.4 and 5.5.5, the holders of the shares of any outstanding Class B voting common stock and Class F nonvoting common stock shall be entitled to receive out of the assets of

the corporation the implied price of a share based on the equity attributable to the Class B voting common stock and Class F nonvoting common stock, as computed in accordance with the formulas set forth in section 5.7.

- (b) A liquidation following a sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all the property and assets of the corporation shall be deemed a dissolution, liquidation or winding up of the corporation for the purposes of this section, but the merger or consolidation of the corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the corporation, shall not be deemed a dissolution, liquidation or winding up for purposes of this section.
- (c) If upon any voluntary or involuntary liquidation, dissolution or winding up of the corporation, the assets of the corporation available for distribution to the holders of Class B voting common stock and Class F nonvoting common stock shall be insufficient to pay such holders the full amount to which they are entitled the holders of the shares of Class B voting common and Class F nonvoting common stock shall share ratably in any distribution of assets in proportion to the respective amounts which would be payable in respect of the shares of Class B voting common stock and Class F nonvoting common stock if all amounts payable on or with respect to said shares were paid in full.

## **5.7 Voting Rights.**

**5.7.1 General.** Class A voting common stock, Class B voting common stock and Class B Preferred stock shall be voting stock. The votes will be apportioned on a per share basis as set forth below.

**5.7.2 No Outstanding Shares of Class A Voting Common Stock and/or Class B Preferred.** As long as no shares of Class A common stock or Class B preferred stock are outstanding, the entire voting power of the corporation (subject to the rights of the holders of Class A convertible preferred stock to vote in certain limited circumstances as provided in section 5.2) shall be vested in the holders of the Class B voting common stock. In such case, each share of Class B voting common stock will be entitled to one vote per share on all matters to be voted upon by the holders of said stock. The provisions of this section shall not, however, limit any shareholder's right to cumulate his vote as provided by *Idaho Code* §30-1-33(d).

**5.7.3 Full Conversion of Class A Convertible Preferred Stock.** It is anticipated that Class A convertible preferred stock will only be issued to a qualified Employee Stock Ownership Trust ("ESOT" or "ESOP") sponsored by the corporation, or an affiliate of the corporation. If all shares of Class A convertible preferred stock are converted into shares of Class A voting common stock, then the respective voting rights of the Class A voting common stock, the Class B voting common stock and the Class B preferred stock shall be as follows: on an annual basis, commencing on the first anniversary date of the issuance of any shares of Class A convertible

preferred stock, the board of directors of the corporation shall determine the net equity of the shareholders of the corporation. This amount will be based on a calculation of market value of invested capital ("MVIC") obtained through an annual appraisal of the fair market value of the invested capital of the corporation. The MVIC shall then be reduced by (a) senior long-term debt, (b) subordinate debt and (c) any other interest bearing debt to arrive at the corporation's net equity. The net equity shall then be allocated among Class A voting common stock, Class B voting common stock and Class B preferred stock such that the Class A common stock receives the percentage of net equity which results from assigning an allocation of an amount equal the price paid by the ESOP to the corporation, or its affiliate, for the Class A convertible preferred stock divided by the total net equity of the corporation ("Class A percentage"). The Class A voting common stock will then be entitled to vote that number of shares represented by the Class A percentage times the total number of shares of all classes of voting stock which are issued and outstanding. The total number of votes available to be voted by the Class A voting common stock based upon the above formula shall be divided by the number of shares of Class A voting common outstanding to determine the available vote per share of Class A voting stock. The remaining shares shall be divided between the Class B voting common stock and the Class B preferred stock. The total number of shares available to be voted by the Class B voting common stock and the Class B preferred stock shall be divided by the total number of shares of those classes which are issued and outstanding to determine the available vote per share of Class B voting common stock and the Class B preferred stock.

**5.7.4 Partial Conversion of Class A Convertible Preferred Stock.** Should less than all the shares of Class A voting common stock that are issuable upon conversion of the Class A convertible preferred stock be issued and outstanding, the percentage voting interest of the Class A voting common shall be computed on the basis set forth in section 5.7.3, assuming conversion of all shares of Class A convertible preferred stock, except that it shall be reduced by multiplying the Class A Percentage by a fraction the numerator of which is the number of shares of Class A voting common stock outstanding and the denominator of which is the number of shares of Class A voting common stock outstanding plus the number of shares of Class A voting common stock that would be outstanding assuming conversion of any remaining outstanding shares of Class A convertible preferred stock. Once this calculation is made, the remaining percentage of voting interest shall be voted by the Class B voting common stock and the Class B preferred stock after allocation on a per share basis as described in section 5.7.3.

**5.7.5 Exception.** The calculations set forth above shall be made on an annual basis and in a timely manner commencing on the first anniversary date of the issuance of any shares of Class A convertible preferred stock, whether or not any shares of Class A voting common are actually outstanding. Once made, the calculations will set the voting percentages that will apply for any actions taken by shareholders whether at regular or special meetings or otherwise until the next valuation, except that if any subsequent valuation would reduce the percentage vote available to the Class B voting common stock and Class B preferred stock, said valuation shall be replaced for purposes of determining the allocation of voting power between the Class A voting common stock and the Class B common stock and Class B preferred stock, considered together, for the ensuing year with any of the prior

valuations providing the greatest voting power to the holders of Class B voting common stock and Class B preferred stock, considered together.

**5.7.6 Limitation.** At such time as the percentage of voting interest of the Class A voting common stock, assuming full conversion of the Class A convertible preferred stock, is reduced to its lowest percentage level permitted, then each share of Class A voting common stock, Class B voting common stock and Class B preferred stock shall be entitled to one vote per share on all matters to be voted upon by the holders of said shares and no further valuation or adjustment shall be made regarding allocation of the voting power of the stock of the corporation.

**5.7.7 Definitions.** For purposes of this Article 5, the following terms shall have the meanings set forth below.

- (a) "Additional shares of Class A voting common stock" shall mean all shares of Class A voting common stock of the corporation that are issued by the corporation after the original issue date, except for any Class A voting common stock referred to in subparagraph 18 of paragraph (d) of subsection 5.1.6.
- (b) "Person" shall mean a corporation, an association, a partnership, a trust, an individual, a government or political subdivision thereof or a government agency.

## **6. MANAGEMENT**

The business of the corporation shall be managed by a board of at least three (3) directors, except that if all of the shares of the corporation are owned beneficially and of record by either one (1) or two (2) stockholders, the number of directors may be less than three (3) but not less than the number of stockholders. A director shall hold office for the term for which he was named or elected and until his successor is elected and qualified. The names and addresses of the members of the board of directors as of the date these Articles are signed are:

|                     |                                  |
|---------------------|----------------------------------|
| Don R. Atkinson     | P.O. Box 2088, Ketchum, ID 83340 |
| Stanton E. Atkinson | P.O. Box 5979, Ketchum, ID 83340 |
| Judy H. Atkinson    | P.O. Box 2088, Ketchum, ID 83340 |

## **7. BY-LAWS**

The Amended and Restated By-Laws of the corporation shall be adopted by the board of directors. The power to alter, amend or repeal the By-Laws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors.

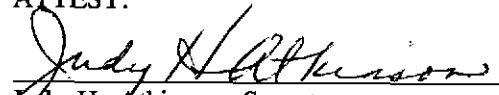
**THIRD:** The number of shares of the corporation outstanding at the time of the Amended and Restated Articles of Incorporation were adopted was 20,000; and the number of shares entitled to vote on the adoption was 20,000.

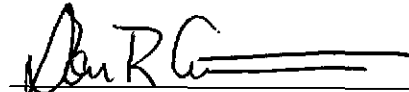
**FOURTH:** The number of shares voted for adoption was 20,000; and the number of shares voted against adoption was 0.

**FIFTH:** This amendment and restatement results in a change in the amount of stated capital. Prior to this amendment the corporation was authorized to issue 100,000 shares of \$1 par value common stock; 20,000 shares were issued and outstanding. Thus, the stated capital was \$20,000. As a result of this amendment and restatement, the corporation is authorized to issue 1,000,000 shares of preferred stock having a par value of \$10 per share and 1,500,000 shares of common stock, having no par value per share. In accordance with the requirements of *Idaho Code* §30-1-21, in case of the issuance by the corporation of shares without par value, the entire consideration received therefor shall constitute stated capital unless the board of directors shall determine that only a part thereof shall be stated capital. Within 60 days after the issuance of any shares without par value, the board of directors may allocate to capital surplus any portion of the consideration received for the issuance of such shares.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of July, 1991.

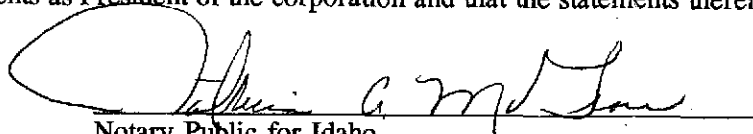
ATTEST:

  
Judy H. Atkinson, Secretary

  
Don R. Atkinson, President

STATE OF IDAHO                    )  
  ) ss.  
County of Blaine                 )

The undersigned, a notary public, does hereby certify that on July 30, 1991, personally appeared Don R. Atkinson, who, being first duly sworn, declared that he is the President of *Atkinsons' Market, Inc.*, that he signed the foregoing documents as President of the corporation and that the statements therein contained are true.

  
Notary Public for Idaho  
Residing at Hailey  
Commission Expires: 1-22-94