

02-21-2001



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Tab settings

...nal documents or copy thereof.

Honorable Commissioner of Patents and T.

1. Name of conveying party(ies): 2-17-01  
ONLINE SPECIALTY RETAILING, INC.

- Individual(s)
- General Partnership
- Corporation-State
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached?  Yes  No

Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: May 14, 1999

2. Name and address of receiving party(ies)

Name: GREATFOOD.COM, INC.

Internal Address: \_\_\_\_\_

Street Address: 1600 Stewart Avenue

City: Westbury State: NY ZIP: 11590

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Washington
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,367,258

2,401,093

Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: THOMAS M. GALGANO, ESQ.

Internal Address: GALGANO & BURKE

SUITE 135

Street Address: 300 RABRO DRIVE

City: HAUPPAUGE State: NY ZIP: 11757

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41).....\$ 65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_  
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Thomas M. Galgano, Esq.  
Name of Person Signing

Signature

2/7/00  
Date

Total number of pages including cover sheet, attachments, and document: 17

**STATE of WASHINGTON****SECRETARY of STATE**

*I, SAM REED, Secretary of State of the State of Washington and custodian of its seal,*

hereby certify by this certificate that the attached is a true and correct copy of

ARTICLES OF AMENDMENT

of

**ONLINE SPECIALTY RETAILING, INC.**

Changing name to  
GREATFOOD.COM, INC.

as filed in this office on May 14, 1999.



Date: February 2, 2001

*Given under my hand and the Seal of the State  
of Washington at Olympia, the State Capital*

SM

*Sam Reed*  
Sam Reed, Secretary of State

700-001

TRADEMARK  
REEL: 2238 FRAME: 0610

# STATE of WASHINGTON



## SECRETARY of STATE

I, **RALPH MUNRO**, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

### CERTIFICATE OF AMENDMENT

to

**ONLINE SPECIALITY RETAILING, INC.**

a Washington Profit Corporation. Articles of Amendment were filed for record in this office on the date indicated below.

Changing name to **GREATFOOD.COM, INC.**

UBI Number: 601 654 548

Date: May 14, 1999



*Given under my hand and the Seal of the State of Washington at Olympia, the State Capital*

Ralph Munro, Secretary of State  
2-517327-9

ARTICLES OF AMENDMENT  
OF  
ARTICLES OF INCORPORATION OF  
ONLINE SPECIALTY RETAILING, INC.

FILED  
STATE OF WASHINGTON  
MAY 14 1999  
RALPH MUNRO  
SECRETARY OF STATE

Pursuant to RCW 23B.06.020, the undersigned officer of Online Specialty Retailing, Inc., a Washington corporation (the "Corporation"), does hereby submit for filing these articles of amendment:

FIRST: The name of the corporation is Online Specialty Retailing, Inc.

SECOND: Article I of the Articles of Incorporation of the Corporation is hereby amended to read as follows: "The name of the Corporation is GreatFood.com, Inc."

THIRD: 1,384,615 shares of the authorized shares of Preferred Stock are hereby designated "Series C Preferred Stock" (the "Series C Preferred"). Certain other capitalized terms used herein are defined in Section 9 hereof.

The rights, preferences, privileges, restrictions and other matters relating to the Series C Preferred are as follows:

SECTION 1. Liquidation.

1A. General. Upon any liquidation, dissolution or winding up of the Corporation, the Corporation's assets shall be distributed as follows:

(i) if the Net Proceeds are equal to or less than the aggregate Liquidation Value of the Series C Preferred, plus all accrued and unpaid dividends on the Series C Preferred, then such Net Proceeds shall be distributed ratably among all holders of Series C Preferred;

(ii) if the Net Proceeds are greater than the aggregate Liquidation Value of the Series C Preferred, plus all accrued and unpaid dividends, then such Net Proceeds shall be distributed as follows: (a) an amount equal to the aggregate Liquidation Value of the Series C Preferred, plus all accrued and unpaid dividends, shall be distributed ratably among all holders of Series C Preferred; and (b) after the distribution set forth in clause (a), the remainder of such Net Proceeds shall be distributed (x) first, ratably among all holders of Junior Securities in an amount sufficient to return to such holders an amount equal to the original price paid by such

val: 05/17/1999 - 245280  
\$50.00 on 05/14/1999  
Check - 05/14/1999 - 1220055

holders for their shares (y) second, ratably among all holders of Common Stock in an amount sufficient to return to such holders their cost basis in the shares, and (z) third, to all holders of Common Stock and the Series C Preferred, ratably on an as-converted basis.

1B. Notice. The Corporation shall mail written notice of such liquidation, dissolution or winding up, not less than 10 days prior to the payment date stated therein, to each record holder of Series C Preferred.

SECTION 2. Cumulative Dividends.

Dividends on the Series C Preferred shall be cumulative and shall cumulate and accrue on a semi-annual basis, without interest, at the rate of 8.0% of the purchase price per share per annum from the date of issue of the Series C Preferred, regardless of whether the Corporation shall have funds legally available for such purpose. The holders of the Series C Preferred shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available for such purpose, cumulative dividends at the rates specified above.

SECTION 3. Redemptions.

3A. Mandatory Redemption. If requested in writing by holders of a majority of the Series C Preferred at any time after May 14, 2004, the Corporation shall redeem, with funds legally available therefor, all shares of Series C Preferred at a price per share equal to the Liquidation Value thereof, plus all accrued and unpaid dividends thereon (the "Redemption Price") as follows:

- (i) one-third of the shares of Series C Preferred on the date stated in such written request, which date shall not be earlier than May 14, 2004;
  - (ii) an additional one-third of such shares on the first anniversary of such date;
- and
- (iii) the final one-third of such shares on the second anniversary of such date (each of the dates in (i)-(iii) being referred to as a "Redemption Date").

3B. Surrender of Certificates. Ten days prior to each Redemption Date, the Corporation shall mail written notice (the "Redemption Notice"), postage prepaid, to each holder of record of Series C Preferred, at such holder's address as shown on the records of the Corporation; provided, however, that the Corporation's failure to give such Redemption Notice shall in no way affect its obligation to redeem the Preferred Stock as provided in Section 3A hereof. The Redemption Notice shall contain the following information:

(i) The number of shares of Series C Preferred held by the holder which shall be redeemed by the Corporation on such Redemption Date pursuant to the provisions of Section 3A;

(ii) the Redemption Date; and

(iii) the address at which the holder may surrender to the Corporation its certificate or certificates representing shares of Series C Preferred to be redeemed.

Each holder of shares of Series C Preferred to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation at the place specified in the Redemption Notice on or before the Redemption Date designated in the Redemption Notice (provided that failure to surrender a stock certificate shall not prevent the redemption of the underlying stock), and thereupon the applicable Redemption Price for such shares as set forth in this Section 3 shall be paid to the order of the person whose name appears on such certificate or certificates. Each surrendered certificate shall be canceled and retired and a new certificate, representing the remaining, unredeemed shares of Series C Preferred, if any, shall be issued to the holder of such shares.

3C. Dividends After Redemption Date. No share of Series C Preferred is entitled to any dividends accruing after the date on which the Liquidation Value of such share, plus all accrued and unpaid dividends thereon, is paid to the holder thereof. On such date all rights of the holder of such share shall cease, and such share shall not be deemed to be outstanding.

3D. Redeemed or Otherwise Acquired Shares. Any shares of Series C Preferred which are redeemed or otherwise acquired by the Corporation shall be cancelled and shall not be reissued, sold or transferred.

3E. Accrued Dividends Must be Paid Prior to Any Redemption. The Corporation may not redeem any Series C Preferred, unless all dividends accrued on the outstanding Series C Preferred through the immediately preceding Redemption Date have been paid in full.

3F. Funds Legally Available. If the funds of the Corporation legally available for a redemption pursuant to RCW 23B.06.400 on a Redemption Date are insufficient to redeem the total number of shares of Series C Preferred submitted for redemption, those funds which are legally available will be used to redeem the maximum possible number of whole shares ratably among the holders of such shares.

#### SECTION 4. Voting Rights.

The holders of the Series C Preferred shall be entitled to notice of all shareholders meetings in accordance with the Corporation's bylaws and shall be entitled to vote on all matters submitted to the shareholders for a vote together with the holders of the Common Stock voting together as a single class with each share of Common Stock entitled to one vote per share and each share of Series C Preferred entitled to one vote for each share of Common Stock issuable upon conversion of the Series C Preferred at the time the vote is taken, except as otherwise provided herein or by law.

At any time prior to the closing of the Corporation's Qualified Public Offering, the holders of Series C Preferred, voting as a separate class, shall be entitled to elect one director (the "Series C Director"). At any annual or special meeting of the Corporation (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy of the holders of at least a majority of the then outstanding shares of Series C Preferred (voting together as a separate class) shall constitute a quorum for the election of the Series C Director. The holders of at least a majority of the shares of Series C Preferred present in person or by proxy at any meeting relating to the election of directors (calculated after the determination of a quorum) shall then be entitled to elect the Series C Director.

A Series C Preferred Director may be removed during his or her term of office without cause, by and only by, the affirmative vote or written consent of at least a majority of the then outstanding shares of the Series C Preferred (voting as a separate class). A vacancy in a seat held by a Series C Director shall be filled by the vote of the holders of at least a majority of the shares of Series C Preferred (voting as a separate class) present in person or represented by proxy at any meeting at which a quorum of the Series C Preferred is present (calculated after the determination of a quorum) or by written consent of the holders of at least a majority of the then outstanding shares of Series C Preferred (voting as a separate class).

#### SECTION 5. Conversion.

##### 5A. Conversion Procedure.

(i) At any time and from time to time, any holder of Series C Preferred may convert all or any portion of the Series C Preferred (including any fraction of a share) held by such holder into a number of shares of Conversion Stock computed by multiplying the number of shares to be converted by the Liquidation Value and dividing the result by the Conversion Price then in effect.

(ii) Each conversion of Series C Preferred shall be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Series C Preferred to be converted have been surrendered at the principal office of the

Corporation. At such time as such conversion has been effected, the rights of the holder of such Series C Preferred as such holder shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Conversion Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Conversion Stock represented thereby.

(iii) The conversion rights of any Series C Preferred share shall terminate on the Redemption Date for such share unless the Corporation has failed to pay to the holder thereof the Liquidation Value thereof plus all accrued and unpaid dividends thereon.

(iv) As soon as possible after a conversion has been effected (but in any event within ten days in the case of subparagraph (a) below), the Corporation shall deliver to the converting holder:

(a) a certificate or certificates representing the number of shares of Conversion Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified;

(b) payment in an amount equal to all accrued dividends with respect to each share of Series C Preferred converted, which have not been paid prior thereto, plus the amount payable under subparagraph (viii) below with respect to such conversion; and

(c) a certificate representing any shares of Series C Preferred which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(v) If the Corporation is not permitted under applicable law to pay any portion of the accrued dividends on the Series C Preferred being converted, the Corporation shall pay such dividends to the converting holder as soon thereafter as funds of the Corporation are legally available for such payment. At the request of any such converting holder, the Corporation shall provide such holder with written evidence of its obligation to such holder.

(vi) The issuance of certificates for shares of Conversion Stock upon conversion of Series C Preferred shall be made without charge to the holders of such Series C Preferred for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Conversion Stock. Upon conversion of each share of Series C Preferred, the Corporation shall take all such actions as are necessary in order to insure that the Conversion Stock issuable with respect to such conversion shall be validly issued, fully paid and nonassessable.

(vii) The Corporation shall assist and cooperate with any holder of shares of Series C Preferred required to make any governmental filings or obtain any governmental approval



prior to or in connection with any conversion of shares of Series C Preferred hereunder (including, without limitation, making any filings required to be made by the Corporation).

(viii) If any fractional interest in a share of Conversion Stock would, except for the provisions of this subparagraph, be deliverable upon any conversion of the Series C Preferred, the Corporation, in lieu of delivering the fractional share therefor, shall pay an amount to the holder thereof equal to the Market Price of such fractional interest as of the date of conversion.

(ix) If the shares of Conversion Stock issuable by reason of such conversion of Series C Preferred are convertible into or exchangeable for any other stock or securities of the Corporation, the Corporation shall, at the converting holder's option, upon surrender of the shares of Series C Preferred to be converted by such holder as provided above together with any notice, statement or payment required to effect such conversion or exchange of Conversion Stock, deliver to such holder or as otherwise specified by such holder a certificate or certificates representing the stock or securities into which the shares of Conversion Stock issuable by reason of such conversion are so convertible or exchangeable, registered in such name or names and in such denomination or denominations as such holder has specified.

5B. Conversion Price.

(i) The initial "Conversion Price" shall be an amount equal to the average per share price paid for the Series C Preferred by the holders thereof (the "Conversion Price"). In order to prevent dilution of the conversion rights granted under this subdivision, the Conversion Price shall be subject to adjustment from time to time pursuant to this Section 5.

(ii) If and whenever on or after the original date of issuance of the Series C Preferred the Corporation issues or sells, or in accordance with Section 5C is deemed to have issued or sold, any shares of its Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issuance or sale, then forthwith upon such issue or sale the Conversion Price shall be reduced to the Conversion Price determined by dividing (a) the sum of (1) the product derived by multiplying the Conversion Price in effect immediately prior to such issue or sale by the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (2) the consideration, if any, received by the Corporation upon such issue or sale, by (b) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale; provided that there shall be no adjustment in the Conversion Price as a result of any issuance or sale (or deemed issuance or sale) of (i) up to an aggregate of 1,600,000 shares of Common Stock to directors, officers, employees or consultants of the Corporation pursuant to stock option plans and stock ownership plans and issuances approved by the Corporation's board of directors under which the Corporation may grant options to purchase or otherwise acquire Common Stock ("Options"), (ii) up to an aggregate of 354,811 shares of Common Stock pursuant to warrant agreements outstanding on May 14, 1999 (as such number of shares is proportionately adjusted for subsequent stock splits, combinations

and dividends affecting the Common Stock and as such number includes all such employee stock options and purchase rights outstanding at the time of the issuance of the Series C Preferred), (iii) shares of Common Stock issued or issuable upon conversion or in exchange for the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock (collectively the "Preferred"), (iv) shares of Common Stock issued or issuable as a dividend or distribution on the Preferred, or any other share of Common Stock or other security convertible into or exchangeable or exercisable for shares of Common Stock that are designated as excluded from adjustment of the Conversion Price by the vote or written consent of at least a majority of the then outstanding shares of Series C Preferred.

5C. Effect on Conversion Price of Certain Events. For purposes of determining the adjusted Conversion Price under Section 5B, the following shall be applicable after the date of the original issuance of the Series C Preferred:

(i) Issuance of Rights or Options. If the Corporation in any manner grants any securities convertible into or otherwise exchangeable for Common Stock ("Convertible Securities") or Options and the price per share for which Common Stock is issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities is less than the Conversion Price in effect immediately prior to the time of the issuance or sale of such Convertible Securities or granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities or granting of such Options for such price per share. For purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the issuance or sale of such Convertible Securities or granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon exercise of all such Options or issuance or sale of such Convertible Securities, plus in the case of such Options which relate to Convertible Securities and in the case of Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the issuance or sale of such Convertible Securities and the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities, including Convertible Securities issuable upon the exchange of such Options. No further adjustment of the Conversion Price shall be made when Convertible Securities are actually issued upon the exercise of such Options or Common Stock is actually issued upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities.

5D. Effect on Conversion Price of Certain Other Events. For purposes of determining the adjusted Conversion Price under Section 5B, the following shall be applicable at all times after the original issuance of the Series C Preferred:

(i) Change in Option Price or Conversion Rate. If the purchase price provided for in any Option, the additional consideration (if any) payable upon the issue, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock change at any time, the Conversion Price in effect at the time of such change shall be readjusted to the Conversion Price which would have been in effect at such time had such Option or Convertible Securities originally provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold.

(ii) Treatment of Expired Options and Unexercised Convertible Securities. Upon the expiration of any Option or the termination of any right to convert or exchange any Convertible Securities without the exercise of any such Option or right, the Conversion Price then in effect hereunder shall be adjusted to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued.

(iii) Calculation of Consideration Received. If any Common Stock, Option or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor shall be deemed to be the gross amount received by the Corporation therefor. In case any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Corporation shall be the Market Price thereof as of the date of receipt. If any Common Stock, Option or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash and securities shall be determined in good faith by the Board of Directors of the Corporation.

(iv) Treasury Shares. The number of shares of Common Stock outstanding at any given time does not include shares owned or held by or for the account of the Corporation, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock.

(v) Record Date. If the Corporation takes a record of the holders of Common Stock for the purpose of entitling them (a) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities or (b) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the

declaration of such dividend or upon the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

5E. Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and if the Corporation at any time combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased.

5F. Reorganization, Reclassification, Consolidation, Merger or Sale. Any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Corporation's assets to another Person or other transaction which is effected in such a manner that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as an "Organic Change". Prior to the consummation of any Organic Change, the Corporation shall make appropriate provisions (in form and substance reasonably satisfactory to the holders of a majority of the Series C Preferred then outstanding) to insure that each of the holders of Series C Preferred shall thereafter have the right to acquire and receive, in lieu of or in addition to (as the case may be) the shares of Conversion Stock immediately theretofore acquirable and receivable upon the conversion of such holder's Series C Preferred, such shares of stock, securities or assets as such holder would have received in connection with such Organic Change if such holder had converted its Series C Preferred immediately prior to such Organic Change. In each such case, the Corporation shall also make appropriate provisions (in form and substance satisfactory to the holders of a majority of the Series C Preferred then outstanding) to insure that the provisions of this Section 5 and Sections 6 and 7 hereof shall thereafter be applicable to the Series C Preferred (including, in the case of any such consolidation, merger or sale in which the successor entity or purchasing entity is other than the Corporation, an immediate adjustment of the Conversion Price to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and a corresponding immediate adjustment in the number of shares of Conversion Stock acquirable and receivable upon conversion of Series C Preferred, if the value so reflected is less than the Conversion Price in effect immediately prior to such consolidation, merger or sale). The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor corporation (if other than the Corporation) resulting from consolidation or merger or the corporation purchasing such assets assumes by written instrument (in form satisfactory to the holders of a majority of the Series C Preferred then outstanding), the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

5G. Certain Events. If any event occurs of the type contemplated by the provisions of this Section 5 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's board of directors shall make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of Series C Preferred; provided that no such adjustment shall increase the Conversion Price as otherwise determined pursuant to this Section 5 or decrease the number of shares of Conversion Stock issuable upon conversion of each share of Series C Preferred.

5H. Notices.

(i) Upon any adjustment of the Conversion Price, the Corporation shall give written notice thereof to all holders of Series C Preferred, setting forth in reasonable detail and certifying the calculation of such adjustment.

(ii) The Corporation shall give written notice to all holders of Series C Preferred at least 10 days prior to the date on which the Corporation closes its books or takes a record (a) with respect to any dividend or distribution upon Common Stock, or (b) with respect to any pro rata subscription offer to holders of Common Stock or at least 20 days prior for determining rights to vote with respect to any Organic Change, dissolution or liquidation.

(iii) The Corporation shall also give written notice to the holders of Series C Preferred at least 20 days prior to the date on which any Organic Change shall take place.

5I. Mandatory Conversion. The Corporation may at any time require the conversion of all of the outstanding Series C Preferred if the Corporation is at such time consummating a Qualified Public Offering, with such mandatory conversion only to be effected at the time of and subject to the closing of the sale of such shares pursuant to such Qualified Public Offering; or if the holders of a majority of the outstanding shares of Series C Preferred elect by affirmative vote or written consent to convert.

SECTION 6. Purchase Rights.

If at any time the Corporation grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "Purchase Rights"), then each holder of Series C Preferred shall be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Conversion Stock acquirable upon conversion of such holder's Series C Preferred immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

### SECTION 7. Registration of Transfer.

The Corporation shall keep at its principal office a register for the registration of Series C Preferred. Upon the surrender of any certificate representing Series C Preferred at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Series C Preferred represented by such new certificate from the date to which dividends have been fully paid on such Series C Preferred represented by the surrendered certificate.

### SECTION 8. Replacement.

Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of any Series C Preferred, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation, or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at such shareholder's expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Series C Preferred represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

### SECTION 9. Definitions.

"Common Stock" means, collectively, the Corporation's Common Stock.

"Common Stock Deemed Outstanding" means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to Section 5C hereof whether or not the Options or Convertible Securities are actually exercisable at such time.

"Conversion Stock" means shares of the Corporation's Common Stock; provided that if there is a change such that the securities issuable upon conversion of the Series C Preferred are issued by an entity other than the Corporation or there is a change in the class of securities so issuable, then the term "Conversion Stock" shall mean one share of the security issuable upon

conversion of the Series C Preferred if such security is issuable in shares, or shall mean the smallest unit in which such security is issuable if such security is not issuable in shares.

"Convertible Securities" has the meaning provided in Section 5C.

"Junior Securities" means the Corporation's Series A Preferred Stock and Series B Preferred Stock.

"Liquidation Value" of any share of Series C Preferred as of any particular date shall be an amount equal to the average per share price paid for the Series C Preferred by the holders thereof.

"Market Price" of any security means the average of the closing prices of such security's sales on all securities exchanges on which such security may at the time be listed, or, if there has been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average of the representative bid and asked prices quoted in The Nasdaq Stock Market as of 4:00 P.M., New York time, or, if on any day such security is not quoted in The Nasdaq Stock Market, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of 21 days consisting of the day as of which "Market Price" is being determined and the 20 consecutive business days prior to such day. If at any time such security is not listed on any securities exchange or quoted in The Nasdaq Stock Market or the over-the-counter market, the "Market Price" shall be the fair value thereof determined in good faith by the Board of Directors of the Corporation.

"Net Proceeds" means gross consideration paid to the Corporation upon a liquidation event less any commissions or other expenses payable by the Corporation in connection therewith.

"Options" has the meaning provided in Section 5B.

"Organic Change" has the meaning provided in Section 5F.

"Person" means an individual, a partnership, a corporation, limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Purchase Rights" has the meaning provided in Section 6.

"Qualified Public Offering" means the sale in an underwritten public offering registered under the Securities Act of 1933, as amended, of shares of the Common Stock in which

(i) the aggregate price paid by the public for the shares shall be at least \$10,000,000, and (ii) the price per share paid by the public for such shares shall be at least two times an amount equal to the average per share price paid for the Series C Preferred by the holders thereof.

"Registration Rights Agreement" means the Registration Rights Agreement dated as of May 17, 1999 by and among the Corporation and the holders of the Series C Preferred.

#### SECTION 10. Amendment and Waiver.

No amendment, modification or waiver shall be binding or effective with respect to any provision hereof without the prior written consent of the holders of at least a majority of the Series C Preferred outstanding at the time such action is taken; provided that no such action shall change (a) the amount payable on redemption of the Series C Preferred or the times at which redemption of Series C Preferred is to occur, without the prior written consent of the holders of at least 90% of the Series C Preferred then outstanding, (b) the Conversion Price of the Series C Preferred or the number of shares or class of stock into which the Series C Preferred is convertible, without the prior written consent of the holder of at least 90% of the Series C Preferred then outstanding or (c) the percentage required to approve any change described in clauses (a) and (b) above, without the prior written consent of the holders of at least 90% of the Series C Preferred then outstanding; and provided further that no change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of at least 90% of the Series C Preferred.

#### SECTION 11. Notices.

Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and shall be delivered by registered or certified mail, return receipt requested and postage prepaid, by reputable overnight courier service, charges prepaid, or by electronic mail or facsimile transmission and shall be deemed to have been given when so mailed or sent (i) to the Corporation, at its principal executive offices, attention President; and (ii) to any shareholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

THIRD: These Articles of Amendment were duly adopted on May 14, 1999.

FOURTH: These Articles of Amendment were duly adopted by the Board of Directors, pursuant to the provisions of RCW 23B.06.020 and RCW 23B.08.210, by written consent of all of the directors. Shareholder action was not required.



Executed this 14<sup>th</sup> day of May, 1999.

Binger C. Norrme  
Chief Executive Officer *LOB - Sec.*