



P990000016324

ACCOUNT NO. : 072100000032

REFERENCE : 585263 8796A

AUTHORIZATION :

COST LIMIT : \$ 35.00

Patricia Pizit

ORDER DATE : February 11, 2000

ORDER TIME : 11:13 AM

ORDER NO. : 585263-005

CUSTOMER NO: 8796A

CUSTOMER: Mr. William Schifino
Schifino & Fleischer
One Tampa City Center, #2700
201 North Franklin Street
Tampa, FL 33602

FILED
00 FEB 11 PM 4:33
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

DOMESTIC AMENDMENT FILING

NAME: CIGARETTESBYMAIL.COM
CORPORATION

EFFECTIVE DATE:

XX ARTICLES OF AMENDMENT
 RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

 CERTIFIED COPY
XX PLAIN STAMPED COPY
 CERTIFICATE OF GOOD STANDING

100003132801--5

G. COULLETTE FEB 15 2000

CONTACT PERSON: Janna Wilson

EXAMINER'S INITIALS: _____

RECEIVED
00 FEB 11 PM 12:09
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA



FLORIDA DEPARTMENT OF STATE

Katherine Harris
Secretary of State

February 11, 2000

CSC

TALLAHASSEE, FL

SUBJECT: CIGARETTESBYMAIL.COM, INC.
Ref. Number: P99000016324

*Please
issue
this
file date*

RECEIVED
00 FEB 15 PM 2:27
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

We have received your document for CIGARETTESBYMAIL.COM, INC. and the authorization to debit your account in the amount of \$35.00. However, the document has not been filed and is being returned for the following:

The name of the person signing the document must be typed or printed beneath or opposite the signature.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6903.

Cheryl Coulliette
Document Specialist

Letter Number: 800A00007312

RESUBMIT
Please give original
submission date as file date.

**ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
CIGARETTESBYMAIL.COM CORPORATION**

FILED
00 FEB 11 PM 4:33
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of the Florida Revised Statutes, the undersigned corporation does hereby adopt these Articles of Amendment to the Articles of Incorporation, and the undersigned officer does hereby certify individually and on behalf of the undersigned corporation as follows:

1. The name of the corporation is Cigarettesbymail.com Corporation (the "Company"). The Articles of Incorporation of this Corporation were filed by the Department of the State of Florida and became effective on February 18, 1999.
2. A new Article III to the Articles of Incorporation of this Corporation shall be as follows:

ARTICLE III - SHARES

Shares Authorized. The aggregate number of shares of stock which this corporation shall have authority to issue shall be thirty five million (35,000,000) shares of which twenty five million (25,000,000) shares shall be of Common Stock (each with a par value of \$.0001) and ten million (10,000,000) shares shall be Preferred Stock (each with a par value of \$.0001).

A. Common Stock

1. *Voting Rights of Common Stock.* Every holder of Common Stock shall be entitled to one vote in person or by proxy for each share of Common Stock standing in his, her or its name on the transfer books of the Corporation, in connection with all matters submitted to a vote of shareholders. The holders of Common Stock shall vote together as a single voting group on all matters submitted to a vote of the holders of Common Stock.

2. *Other Rights of Common Stock.* The holders of Common Stock shall be entitled to such dividends as may be declared by the Board of Directors from time to time, provided that required dividends, if any, on the Preferred Stock have been paid or provided for. In the event of the liquidation, dissolution, or winding up, whether voluntary or involuntary, of this Corporation, the assets and funds of this Corporation available for distribution to shareholders, and remaining after the payment to holders of Preferred Stock of the amounts to which they are entitled, shall be divided and paid to the holders of the Common Stock according to their respective shares.

B. Preferred Stock

Shares of Preferred Stock may be issued from time to time, in one or more series, with such designations, assigned values, preferences and relative, participating, optional or other rights, qualifications, limitation or restrictions thereof as shall be stated and expressed in the resolution or

resolutions providing for the issue of such series adopted by the Board of Directors from time to time, pursuant to the authority herein given, a copy of which resolution or resolutions shall have been set forth in a certificate made, executed, acknowledge, filed and recorded in the manner required by the laws of the State of Florida in order to make the same effective. Each series shall consist of such number of shares as shall be stated and expressed in such resolution or resolutions providing for the issuance of the stock of such series.

Except as limited elsewhere in this Article III, the rights, preferences and privileges of the shares in any series shall be determined by the Board of Directors who shall have the power to decide on the following terms:

- (a) whether the shares of preferred stock shall be participating;
- (b) the dividend rate or rates, if any, on the shares of preferred stock and the relation which dividends of preferred stock shall bear to the dividends payable on any other class or classes or of any other series of any class or classes of capital stock of the corporation;
- (c) the terms and conditions upon which and the periods in respect to which any such dividends shall be payable;
- (d) whether and upon what conditions any dividends of preferred stock shall be cumulative, and if cumulative, the date or dates from which dividends shall accumulate;
- (e) whether the shares shall be limited in dividends, if any or whether they shall participate in dividends over and above the dividend rate, if any, provided for the shares;
- (f) whether any such dividends shall be payable in cash, in shares of such series, in shares of any other class or classes or of any other series of any class or classes of capital stock of the corporation, or in other property, or in more than one of the foregoing;
- (g) whether the shares of preferred stock shall be redeemable or callable, the limitations and restrictions with respect to such redemption or call, the time or times of redemption, and the price or prices (which may be greater than par value) at which and the manner in which shares shall be redeemable or callable, including the manner of selecting shares for redemption if less than all shares are to be redeemed or called;
- (h) whether the shares of preferred stock shall be subject to the operation of a purchase, retirement or sinking fund, and, if so, whether and upon what conditions the purchase, retirement or sinking fund shall be cumulative on non-cumulative, and the extent to which and the manner in which the fund shall be applied to the purchase or redemption of the shares for retirement or to other corporate purposes and the terms and provisions relative to the operation thereof;

(i) the terms on which preferred stock shall be convertible into or exchangeable for shares of any other class or classes of capital stock of the corporation, and the price or prices or the rate or rates of conversion or exchange and the method, if any, of adjusting the same, and any other terms and conditions of such conversion or exchange;

(j) the extent to which holders of preferred stock shall be entitled to vote generally with respect to matters relating to the corporation and the matters on which the holders of preferred stock shall be entitled to vote as a class;

(k) the preferences in respect to the assets of the corporation upon liquidation or winding up of the corporation including the amount (which may be greater than par value) payable to holders of preferred stock before any amount is payable to holders of common stock;

(l) any other preferences, privileges and powers, and relative, participating, optional or other special rights and qualifications of or limitations or restrictions which the Board of Directors may deem advisable, provided they are not inconsistent with the provisions of these Articles of Incorporation.

All shares of preferred stock shall be of equal rank, and shall be identical in all respects except in respect of the particulars that may be fixed by the Board of Directors as herein above provided. All shares of each series shall be identical in all respects.

1. Series A Convertible Preferred Stock

Two Million (2,000,000) shares of Preferred Stock have been designated Series A Convertible Preferred Stock. The Series A Convertible Preferred Stock shall have the following relative powers, preferences and rights, and qualifications, limitations and restrictions thereof:

(a) Dividends Rights

(i) Subject to the prior preferences and other rights of Senior Stock, if any, the holders of outstanding shares of Series A Convertible Preferred Stock shall be entitled to receive, before any dividends shall be declared and paid upon or set aside for the Junior Stock (as defined in Section 9) under certain limited circumstances described herein, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, dividends paid in cash or, at the sole option of the Corporation, in the Corporation's Common Stock at the rate of \$0.06091 per share of Series A Convertible Preferred Stock per annum, as adjusted for any consolidations, combinations, stock distributions, stock dividends, stock splits or similar events (each, a "Recapitalization Event").

(ii) Dividends on the Series A Convertible Preferred Stock will be paid only in the event of: (i) the consummation of an IPO (as defined in Section B1(i));

(ii) a sale of all or substantially all of the capital stock or assets of the Corporation; (iii) a voluntary conversion by all or a majority (in number of shares) of the holders thereof occurring after December 31, 2003; (iv) a redemption of at least a majority of the Series A Preferred Stock (in number of shares) by the Corporation pursuant to the election of either the Corporation or the holders thereof; or (v) a dissolution, liquidation or other winding up of the affairs of the Corporation (each a "Dividend Accrual Event"). In the event of a Dividend Accrual Event, such dividends shall be cumulative (whether or not there shall be net profits or net assets of the Corporation legally available for payment of such dividends) from the date of original issuance in an amount equal to \$0.06091 per share per annum (representing an annual dividend yield of 8%) (the "Accrued Dividends") when, as and if declared by the Board of Directors from time to time until any such Dividend Accrual Event and thereafter no further dividends will accumulate thereon or be due upon the Series A Convertible Preferred Stock. If such dividends are paid in Common Stock, such stock shall be valued at the higher of (i) any gross IPO sales price per share of the Common Stock (if available), or (ii) \$0.7614 per share.

(iii) All dividends declared upon the Series A Convertible Preferred Stock shall be declared pro rata per share based on the Series A Liquidation Price (as defined below) of the Series A Convertible Preferred Stock, but shall be paid pro rata based on the Accrued Dividends declared with respect thereto. The aggregate of all payments due under this Section B1(a) to any holder of shares of Series A Convertible Preferred Stock shall be made to such holder to the nearest dollar. In the case of a dividend or distribution to the holders of the Common Stock or other Junior Stock, the holder of each share of the Series A Convertible Preferred Stock shall receive the same dividend or distribution on a one-for-one basis with the holder of each share of Common Stock or other Junior Stock. Each such dividend shall be paid to the holders of record of the Series A Convertible Preferred Stock as their names appear on the share register of the Corporation.

(b) Preference on Liquidation, Dissolution or Winding Up

(i) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation for the price per share that is less than \$0.7614, the assets and funds of the Corporation legally available for distribution to shareholders shall be distributed as follows:

(A) First, subject to the prior preferences and other rights of Senior Stock, if any, the holders of shares of Series A Convertible Preferred Stock then outstanding shall be entitled to receive, out of the assets of the Corporation legally available for distribution to its shareholders and before any payment shall be made in respect of the Corporation's Common Stock or other Junior Stock, an amount equal to \$0.7614 per share of Series A

Convertible Preferred Stock, plus any Accrued Dividends thereon to such date, and no more (the "Series A Liquidation Price") (as adjusted for any Recapitalization Event and, in the event the Series A Liquidation Price becomes payable to such holders, the holders of the Series A Convertible Preferred Stock shall share ratably in the payment of such Series A Liquidation Price); provided, however, that prior to such a distribution the Corporation shall first pay to the holders of the Senior Stock, if any, and then the holders of the Series A Convertible Preferred Stock, and the holders of the Parity Stock, if any, ratably, any Accrued Dividends required to be paid pursuant to Section B1(a), whether declared or accrued and unpaid thereon to the date fixed for such distribution. If upon liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its shareholders shall be insufficient to pay the holders of the Series A Convertible Preferred Stock and of Parity Stock, if any, the full amounts to which they shall be entitled, following the payment to the holders of any Senior Stock of the full amounts to which they are entitled, and then Series A Convertible Preferred Stock and of any Parity Stock of all declared or accrued and unpaid dividends thereon to the date fixed for such liquidating distribution, the holders of the Series A Convertible Preferred Stock and of Parity Stock, if any, shall share ratably in any distribution of assets to them according to the respective amounts which would be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(B) After setting apart or paying in full the preferential amounts due the holders of Series A Convertible Preferred Stock, and if all amounts due the holders of the Senior Stock and Parity Stock, if any, have been set apart or paid, the remaining assets of the Corporation legally available for distribution to its shareholders, if any, shall be distributed ratably, on an as converted basis, to the holders of Common Stock and any other Junior Stock.

(ii) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the Corporation shall, within ten (10) days after the date the Board of Directors approves such action, twenty (20) days prior to any shareholders' meeting called to approve such action, or twenty (20) days after the commencement of any involuntary proceeding, whichever is earlier, give each holder of shares of Series A Convertible Preferred Stock initial written notice of the proposed action. Such initial written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of shares of Series A Convertible Preferred Stock upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the

Corporation shall promptly give written notice to each holder of shares of Series A Convertible Preferred Stock of such material change.

(iii) The Corporation shall not consummate any voluntary or involuntary liquidation, dissolution or winding up of the Corporation before the expiration of thirty (30) days after the mailing of the initial written notice or ten (10) days after the mailing of any subsequent written notice, whichever is later; provided, that any such thirty (30) day or ten (10) day period may be shortened upon the written consent of the holders of a majority of the outstanding shares of Series A Convertible Preferred Stock.

(iv) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation which will involve the distribution of assets other than cash, the Corporation shall promptly engage competent independent appraisers to determine the value of the assets to be distributed to the holders of shares of the Senior Stock, the Series A Convertible Preferred Stock, the Parity Stock and the Common Stock and other Junior Stock, if any. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice to each holder of shares of Series A Convertible Preferred Stock of the appraiser's valuation.

(c) Voting

Except as otherwise required by law or as set forth herein, the shares of Series A Convertible Preferred Stock shall be non-voting; provided, however, so long as at least one-third of the Series A Convertible Preferred Stock is outstanding, the Corporation will not, without the affirmative vote or written consent of the holders of at least a majority of such Series A Convertible Preferred Stock then outstanding: (a) alter or change the rights, preference or privileges of the shares of Series A Convertible Preferred Stock or otherwise amend the Corporation's Articles of Incorporation or Bylaws so as to affect adversely the shares of Series A Convertible Preferred Stock; (b) increase the authorized number of shares of Series A Convertible Preferred Stock, Senior Stock or Parity Stock; (c) create or designate, or authorize the issuance of, any new class or series of Senior Stock or Parity Stock, or other stock convertible into any such class or series of stock; or (d) sell all or substantially all of the assets or capital stock of the Corporation for a price per share which is less than \$1.5228 (on a per share basis), whether in one transaction or a series of transactions, or whether by outright sale or by merger.

(d) Conversion Rights

(i) Each share of Series A Convertible Preferred Stock may be converted, at the option of the holder thereof, at any time after December 31, 2003, at the office of the Corporation, into fully paid and non-assessable shares of Common Stock at the Series A Conversion Price (as defined in Section B1(f)) in effect on the Series A

Conversion Date, subject to any adjustment of the Series A Conversion Price upon certain events, as hereinafter provided. The Series A Conversion Price shall initially be \$0.7614 and shall be subject to adjustment as hereinafter provided.

(ii) Each share of Series A Convertible Preferred Stock shall automatically be converted without any further act of the Corporation, the holders of the Series A Convertible Preferred Stock or the Corporation's other shareholders, into fully paid and nonassessable shares of Common Stock, at the Series A Conversion Price in effect on the Series A Conversion Date, (i) upon the closing of an IPO (as defined in Section B1(i)) or (ii) upon a sale of all or substantially all of the Common Stock or assets of the Corporation (each sometimes referred to as an "Automatic Conversion Event"). In the event of an Automatic Conversion Event, the person(s) entitled to receive the Common Stock issuable upon such conversion of Series A Convertible Preferred Stock shall not be deemed to have converted such Series A Convertible Preferred Stock until immediately prior to the closing of such Automatic Conversion Event, at which time the Series A Convertible Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of Series A Convertible Preferred Stock being converted are either delivered to the Corporation or its transfer agent, as hereinafter provided, or the holder notifies the Corporation or any transfer agent, as hereinafter provided, that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith.

(iii) The holder of any shares of Series A Convertible Preferred Stock may exercise the conversion rights by delivering to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Series A Convertible Preferred Stock, or at the principal office of the Corporation or at such other place as may be designated by the Corporation, the certificate or certificates for the shares to be converted, duly endorsed for transfer to the Corporation (if required by it), accompanied or preceded by written notice stating that the holder elects to convert such shares into shares of Common Stock. Conversion shall be deemed to have been effected on the date when such delivery is made (the "Series A Conversion Date"). As promptly as practicable thereafter, the Corporation shall issue and deliver to or, upon the written order of such holder, at the office of the Corporation, a certificate or certificates for the number of full shares of Common Stock to which such holder is entitled. The holder shall be deemed to have become a shareholder of record of Common Stock on the applicable Series A Conversion Date unless the transfer books of the Corporation are closed on the date, in which event it shall be deemed to have become a shareholder of record on the next succeeding date on

which the transfer books are open, but the Series A Conversion Price shall be that in effect on the Series A Conversion Date. Upon conversion of only a portion of the number of shares of Series A Convertible Preferred Stock represented by a certificate surrendered for conversion, the Corporation shall issue and deliver to or upon the written order of the holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Series A Convertible Preferred Stock representing the unconverted portion of the certificate so surrendered.

(iv) The Corporation shall pay any and all issue taxes and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Series A Convertible Preferred Stock pursuant hereto. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the Series A Convertible Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Corporation the amount of any such tax, or has established, to the satisfaction of the Corporation, that such tax has been paid.

(v) The Corporation shall at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of the Series A Convertible Preferred Stock, the full number of shares of Common Stock deliverable upon the conversion of all Series A Convertible Preferred Stock from time to time outstanding. The Corporation shall from time to time (subject to obtaining necessary board and shareholder approval), in accordance with the laws of the State of Florida, increase the authorized amount of its Common Stock if at any time the authorized number of shares of its Common Stock remaining unissued shall not be sufficient to permit the conversion of all of the shares of Series A Convertible Preferred Stock at the time outstanding.

(vi) If any shares of Common Stock to be reserved for the purpose of conversion of shares of Series A Convertible Preferred Stock require registration or listing with, or approval of, any governmental authority, stock exchange or other regulatory body under any federal or state law or regulation or otherwise, before such shares may be validly issued or delivered upon conversion, the Corporation will in good faith and as expeditiously as possible endeavor to secure such registration, listing or approval, as the case may be.

(vii) All shares of Common Stock which may be issued upon conversion of the shares of Series A Convertible Preferred Stock will upon issuance by the Corporation be validly issued, fully paid and non-assessable and free from all taxes, liens and charges with respect to the issuance thereof.

(viii) The holder of any shares of Series A Convertible Preferred Stock that is converted into shares of Common Stock pursuant to subsections (i) or (ii) of this Section B1(d) shall be entitled to payment of Accrued Dividends, if any, payable with respect to such shares of Series A Convertible Preferred Stock up to and including the Series A Conversion Date (as hereinafter defined), which payment of Accrued Dividends may be made, as further described in Section 1 above, at the option of the Corporation in cash or in Common Stock.

(ix) The Corporation will at no time close its transfer books against the transfer of the Series A Convertible Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of the Series A Convertible Preferred Stock in any manner which interferes with the timely conversion of the Series A Convertible Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

(x) No fractional shares of Common Stock or scrip shall be issued upon conversion of shares of Series A Convertible Preferred Stock. If more than one share of Series A Convertible Preferred Stock shall be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series A Convertible Preferred Stock so surrendered. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of shares of Series A Convertible Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount equal to the then Current Market Price (as defined Section B1(i) hereof) of a share of Common Stock multiplied by such fractional interest. Fractional interests shall not be entitled to dividends, and the holders of fractional interests shall not be entitled to any rights as shareholders of the Corporation in respect of such fractional interest.

(xi) Subject to the provisions of Sections B1(c) and (d) hereof, the existence of the Series A Convertible Preferred Stock shall not affect in any way the right or power of the Corporation to make or authorize any or all adjustments, recapitalizations, reorganizations or other changes in the Corporation's capital structure or its business, or any merger or consolidation of the Corporation or to issue any securities, bonds, debentures, or preferred stock, or to effect the dissolution or liquidation of the Corporation, or any sale or transfer of all or part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

(xii) The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary

action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section B1(d) and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Convertible Preferred Stock against impairment.

(e) Redemption Rights

In the event that (i) a registration statement relating to an IPO has not been filed and declared effective by the Securities and Exchange Commission or (ii) a sale of all or substantially all of the Common Stock or assets of the Corporation has not been consummated, in either case on or before December 31, 2003, then at any time during the 12 month period subsequent to December 31, 2003, the Corporation may (unless otherwise prevented by law) redeem from each holder of the Series A Convertible Preferred Stock, and the holder thereof may exercise his or her right to put to the Corporation, all of the holder's shares of Series A Convertible Preferred Stock at the Series A Conversion Price, together with any Accrued Dividends thereon to and including the date of redemption, in whole or from time to time in part. The Series A Conversion Price shall be subject to adjustment as provided in Section B1(f) hereof.

(f) Adjustment of Series A Conversion Price

The Series A Preferred Stock Conversion Price (the "Series A Conversion Price") shall be subject to adjustment from time to time, and the number of shares of Common Stock issuable on conversion of any shares of Series A Convertible Preferred Stock shall be subject to, a resultant increase or decrease (calculated to the nearest 1/100th of a share) by reason of such adjustment, as hereinafter stated, except that no adjustment shall be made unless by reason of the occurrence of one of more of the events (other than in connection with the first issuance by the Corporation of the shares of Series A Convertible Preferred Stock (collectively, the "Grandfathered Stock")):

(i) In case the Corporation shall at any time or from time to time issue or sell any shares of its Common Stock without consideration or for a consideration per share less than the Series A Conversion Price in effect immediately prior to such issuance (other than Excluded Stock as herein defined), then, forthwith upon such issue or sale, the following adjustments shall be made in the Series A Conversion Price:

(A) The Series A Conversion Price shall be reduced to a price (calculated to the nearest cent) determined by dividing (x) an amount equal to the sum of (i) the number of shares of Common Stock or other equity securities convertible into Common Stock of the Corporation outstanding or

deemed outstanding immediately prior to such issue or sale multiplied by the Series A Conversion Price in effect immediately prior to such issuance and (ii) the consideration, if any, received by the Corporation upon such issue or sale, by (y) the total number of shares of Common Stock of the Corporation outstanding or deemed outstanding immediately after such issue or sale. The number of shares of Common Stock outstanding or deemed outstanding at any given time for the purposes of the foregoing computation means the shares thereof actually outstanding, the shares thereof previously outstanding that have been reacquired by the Corporation and constitute treasury shares, and the shares thereof issuable in respect of outstanding scrip certificates issued in lieu of fractions of shares of Common Stock.

(B) The number of shares of Common Stock deliverable upon the exercise of the conversion privilege shall be increased in the ratio which the Series A Conversion Price existing just prior to the adjustment made pursuant to the preceding subdivision (i) bears to the Series A Conversion Price existing immediately after such adjustment.

(ii) Adjustments similar to those provided for in subdivisions (i) and (ii) of subsection (a) above shall be made:

(A) In case the Corporation shall in any manner grant (whether evidenced by warrants or otherwise) any rights to subscribe for or purchase shares of Common Stock or any options for the purchase of shares of Common Stock (other than Excluded Stock), whether or not such rights or options are immediately exercisable, and the price per share for which such shares are issuable or deliverable upon the exercise of such rights or options (determined by dividing (x) the total minimum amounts, if any, received or receivable by the Corporation as consideration for the granting of such rights or options, plus the total minimum amount of additional consideration payable to the Corporation upon the exercise of such rights or options by (y) the total maximum number of shares issuable or deliverable upon the exercise of such rights or options) shall be less than the Series A Conversion Price in effect immediately prior to the time of the granting of such rights or options, then the granting of such rights or options shall be deemed to be an issue or a sale (as of the date of the granting of such rights or options) of the total maximum number of shares issuable or deliverable upon the exercise of such rights or options then granted, and the amount received or receivable by the Corporation as consideration for the granting of such rights or options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of such rights or options, shall be deemed to be the consideration actually received by the Corporation (as of the date of

the granting of such rights or options) for the issue or sale of such shares of Common Stock.

(B) In case the Corporation shall in any manner issue or sell any shares of stock or other securities (other than Excluded Stock) convertible into or exchangeable for shares of Common Stock, whether or not the rights to convert or exchange are immediately exercisable, and the price per share for which such shares are issuable or deliverable upon such conversion or exchange (determined by dividing (x) the minimum total amount received or receivable by the Corporation as consideration for the issue or sale of such convertible shares or other securities, plus the minimum total amount of additional consideration, if any, payable to the Corporation upon conversion or exchange by (y) the total maximum number of shares of Common Stock issuable or deliverable upon the conversion of all such convertible stock or other securities) shall be less than the Series A Conversion Price in effect immediately prior to the time of such issue or sale, then such issue or sale shall be deemed to be an issue or sale (as of the date of issue or sale of such convertible stock or other securities) of the total maximum number of shares of Common Stock issuable or deliverable upon the conversion of all such convertible stock or other securities, and the minimum amount received or receivable by the Corporation as consideration for the issue or sale of such convertible stock or other securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon conversion or exchange, shall be deemed to be the consideration actually received by the Corporation (as of the date of the issue of such convertible stock or other securities) for the issue or sale of such Common Stock.

(C)

(1) In case the Corporation shall declare a dividend or make any other distribution upon any class of its capital stock payable in Common Stock or in shares of stock or other securities convertible into or exchangeable for shares of its Common Stock, such declaration shall be deemed to be an issue or sale (as of the record date) for a consideration per share less than the Series A Conversion Price then in effect of the aggregate number of shares of Common Stock issuable in payment of such dividend or upon such distribution, or of the total maximum number of shares issuable or deliverable upon conversion or exchange of all such shares of stock or other securities convertible into or exchangeable for shares of its Common Stock, as the case may be, and such Common Stock shall be deemed to have been issued or sold without consideration.

(2) In case the Corporation shall declare a dividend or make any other distribution upon any class of its capital stock, payable at the option of the shareholder in cash or in Common Stock, or in cash or in shares of stock or other securities convertible into or exchangeable for shares of its Common Stock, then such dividend shall be deemed to be a stock dividend payable in the maximum aggregate number of shares of Common Stock which would be issuable if all the shareholders elected to receive such stock in lieu of cash, or shall be deemed to be a stock dividend payable in the maximum aggregate number of shares of Common Stock issuable or deliverable upon the conversion or exchange of all such convertible or exchangeable stock or other securities which would be issuable if all such shareholders elected to receive the dividends in such convertible or exchangeable stock or other securities in lieu of cash, and the provisions of the foregoing subdivision (iii)(A) shall be applicable; provided, that if the period during which the shareholder must exercise the option to receive cash or Common Stock or shares of stock or other securities convertible into or exchangeable for shares of Common Stock shall be thirty (30) days or less, no adjustment of the Series A Conversion Price by reason of such dividend shall be made until the expiration of the option period but at such time the same adjustment shall be made, as of the record date for such dividend, as if the Corporation had declared a dividend of the aggregate number of shares of Common Stock which the shareholders shall elected to receive in lieu of cash or of the maximum aggregate number of shares of Common Stock issuable or deliverable upon the conversion or exchange of the aggregate number of shares of all such convertible or exchangeable stock or other securities which the shareholders shall have elected to receive in lieu of cash, and an appropriate adjustment shall be made with holders of shares of the Series A Convertible Preferred Stock converted after such record date and prior to the expiration of the said option period.

(D) "Excluded Stock" shall mean shares of Common Stock issued or reserved for issuance by the Corporation as a stock dividend payable in shares of Common Stock, or upon any subdivision or split-up of the outstanding shares of Common Stock or Series A Convertible Preferred Stock, or upon conversion of shares of Series A Convertible Preferred Stock, and shares of Common Stock to be issued to employees, directors and consultants pursuant to the 1999 Stock Option Plan of the Corporation, together with any such shares that are repurchased by the Corporation and reissued to any such employee, director or consultant, or for stock issued in conjunction with bank or equipment financing (subject to the approval of the Board of Directors for any issuance of stock for such a financing). All shares

of Excluded Stock which the Corporation has reserved for issuance shall be deemed to be outstanding for all purposes of computations under subsections B1(f)(i) and (ii).

(iii) For the purposes of subsections (i) and (ii) above, the following shall apply:

(A) In case any shares of Common Stock or any rights or options (whether evidenced by warrants or otherwise) to purchase any shares of Common Stock or any stock or other securities convertible into or exchangeable for shares of Common Stock shall be issued by the Corporation for cash, the consideration received therefor shall be deemed to be the net proceeds to the Corporation before deducting from the total amount of cash received any expenses incurred, discounts, taxes or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock or any rights or options to purchase any shares of Common Stock or any stock or other securities convertible into or exchangeable for shares of Common Stock shall be issued by the Corporation for consideration in whole or in part other than cash, including, without limitation, securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors, irrespective of any accounting treatment ("Fair Value"); provided that such fair value as determined by the Board of Directors shall not exceed the aggregate Current Market Price of the shares of Common Stock being issued as of the date the Board of Directors authorizes the issuance of such shares.

(B) In case the Corporation shall take a record of the holders of any class of its capital stock for the purpose of entitling them (i) to receive a dividend payable in shares of Common Stock or payable in stock or other securities convertible into or exchangeable for shares of Common Stock or payable at the option of the shareholder in cash or in shares of Common Stock, or payable at the option of the shareholder in cash or in stock or other securities convertible into or exchangeable for share of Common Stock or (ii) to subscribe for or purchase shares of Common Stock or stock or other securities convertible into or exchangeable for shares of Common Stock, then such record date shall be deemed to be the date of the issue or sale of the shares deemed to have been issued or sold upon the declaration of such dividend or upon the granting of such right of subscription or purchase, as the case may be.

(C) If the purchase price provided for in any right or option referred to in subdivision (A) of subsection (ii) of this Section B1(f), or the

rate of conversion or exchange into Common Stock of any stock or other securities referred to in subdivision (B) of said subsection (ii), shall decrease at any time under or by reason of provisions with respect thereto designed to protect against dilution, then in case of delivery of Common Stock upon the exercise of any such right or option or upon conversion or exchange of any such stock or other securities, the Series A Conversion Price shall forthwith be decreased to such Series A Conversion Price as would have obtained had the adjustments made upon the issuance of such right, option or stock or other securities been made upon the basis of the issuance of (and the total consideration received for) the shares of Common Stock so delivered.

(iv) In case the Corporation shall make to the holders of its Common Stock any distribution of securities or assets (excluding cash dividends paid out of earned surplus and excluding distributions to such holders in respect of which other specified provisions are made herein) then, in each such case, the Series A Conversion Price shall be decreased by an amount determined by multiplying the Series A Conversion Price then in effect by a fraction, the numerator of which shall be the "Fair Value" (as defined in subdivision of this Section B1 of the portion of such distribution applicable to one share of such Common Stock and the denominator of which shall be the then-applicable Series A Conversion Price, and the number of shares issuable upon exercise of the conversion privilege shall be proportionately increased.

(v) In case the Corporation shall at any time subdivide its outstanding shares of Common Stock into a greater number of shares, the Series A Conversion Price then in effect shall be proportionately reduced, and the number of shares of Common Stock then deliverable upon exercise of the conversion privilege shall be proportionately increased, and, conversely, in case the outstanding shares of the Common Stock of the Corporation shall be combined into a smaller number of shares, the Series A Conversion Price shall be proportionately increased, and the number of shares issuable upon exercise of the conversion privilege shall be proportionately decreased.

(vi) Whenever the Series A Conversion Price is adjusted as herein provided, the Corporation shall forthwith employ a firm of independent public accountants of recognized standing (who may be the regular accountants of the Corporation) who shall compute the adjusted Series A Conversion Price in accordance with the foregoing provisions and shall prepare a certificate in duplicate setting forth such adjusted Series A Conversion Price as determined as aforesaid and showing in detail the facts upon which such adjustment is based, including a statement of the consideration received or to be received by the Corporation for any additional stock issued or sold or deemed to have been issued or sold and for the number of shares of Common Stock outstanding or deemed to be outstanding, and one counterpart of such certificate shall forthwith be filed with the transfer agent (if

any) for the Common Stock and the other counterpart shall be retained at the principal business office of the Corporation, available for inspection, and thereafter (until further adjusted) the adjusted Series A Conversion Price shall be set forth in said certificate.

(vii) In case of any classification, reclassification, or other reorganization of the capital stock of the Corporation, or in case of the consolidation or merger of the Corporation with or into another Corporation, or the sale, lease or conveyance to another Corporation of all or any major portion of the assets of the Corporation, then, as part of such classification, reclassification, reorganization, consolidation, merger, or sale, lease or conveyance, adequate provision shall be made whereby each holder of shares of Series A Convertible Preferred Stock upon the exercise of the conversion privilege shall be entitled to receive on the same basis and conditions as provided herein with respect to Common Stock of the Corporation, the stock, securities or other property (including, without limitation, cash) which such holders would have been entitled to receive upon such classification, reclassification or other reorganization, consolidation, merger or sale, lease or conveyance, if such holder had exercised the conversion privilege immediately prior to such classification, reclassification or other reorganization, consolidation, merger or sale, lease or conveyances, and in any such case appropriate provision shall be made with respect to the rights and interest of such holder to the end that the provisions hereof (including, without limitation, provision for adjustment of the Series A Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or other property thereafter deliverable upon the exercise of such conversion privilege; and, as a condition of any such consolidation, merger, or sale, lease or conveyance, any Corporation which shall become successor to the Corporation by reason of such consolidation, merger or sale, lease or conveyance shall expressly assume the obligation to deliver, upon the exercise of the conversion privilege, such shares of stock, securities or other consideration as the holders of shares of the Series A Convertible Preferred Stock shall be entitled to receive pursuant to the provisions hereof. The foregoing provisions shall similarly apply to successive classifications, reclassifications, or other reorganizations and to successive consolidations, mergers, and sale, lease or conveyances of or by any such successor.

(viii) If:

(A) The Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or any other distribution payable otherwise than in cash;

(B) The Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them to subscribe for or purchase any share of stock of any class or to receive any other rights;

(C) There is any classification, reclassification, or other reorganization of the capital stock of the Corporation, consolidation, or merger of the Corporation with or into another Corporation, or sale, lease or conveyance of all or any major portion of the assets of the Corporation to another Corporation; or

(D) There is a voluntary or involuntary dissolution, liquidation, or winding up of the Corporation, then and in any such case, the Corporation shall cause to be mailed to the transfer agent, if any, for the Series A Convertible Preferred Stock and the holders of the Series A Convertible Preferred Stock, a notice stating the date on which (A) a record is to be taken for the purpose of such dividend, distribution, or rights, or (B) such classification, reclassification, reorganization, consolidation, merger, sale, lease or conveyance, dissolution, liquidation, or winding up is to take place, as the case may be. Such notice shall also specify the date as to which holders of Common Stock of record shall be entitled to participate in said dividend, distribution, or rights, or shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such classification, reclassification, reorganization, consolidation, merger, sale, lease or conveyance, dissolution, liquidation, or winding up, as the case may be. Such notice shall be given at least fifteen (15) days prior to the record date or the date on which the Corporation's transfer books are closed in respect thereto.

(ix) The Series A Liquidation Price shall be subject to adjustment in the same manner as the Series A Conversion Price as herein provided.

(g) Status of Converted Stock

In the event any shares of Series A Convertible Preferred Stock shall be converted pursuant to Section B1(d) above or otherwise acquired by the Corporation, the shares so converted shall be canceled and shall not be issuable by the Corporation, and the articles of incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(h) Pre-emptive Rights

Holders of shares of Series A Convertible Preferred Stock shall be entitled to purchase pro rata, on an as converted basis, any future issuance of capital stock of the Corporation, except for issuance of the Grandfathered Stock, the Pre-Emptive Excluded Stock (defined below), or shares issued upon conversion of all or a portion of the Grandfathered Stock or the Pre-Emptive Excluded Stock. The foregoing right shall terminate upon the happening of an Automatic Conversion Event, and may be waived by the holders of a majority of Series A Convertible Preferred Stock with respect to any particular

transaction as to all holders of Series A Convertible Preferred Stock. For purposes of this Section (h), "Pre-Emptive Excluded Stock" includes the following: (b) Common Stock issued as a stock dividend to holders of Common Stock or upon any subdivision or combination of shares of Common Stock; (c) Series A Convertible Preferred Stock issued as a dividend to holders of Series A Convertible Preferred Stock upon any subdivision or combination of shares of Preferred Stock; (d) any shares issued or issuable upon conversion of the outstanding shares of Series A Convertible Preferred Stock; (e) the issuance of Common Stock or options to purchase Common Stock granted to directors, officers, employees or consultants in connection with their service or relationship to the Corporation, or of Common Stock issued upon exercise of such options, all pursuant to plans or arrangements approved by the Corporation's Board of Directors; (c) Common Stock issued pursuant to a public offering; (d) Common Stock (or securities exercisable for or exchangeable for Common Stock) issued pursuant to the acquisition of or business combination with another corporation by the Corporation by merger (whereby the Corporation owns no less than 51% of the voting power of such corporation) or purchase of substantially all of its stock or assets; and (e) any shares of capital stock issued or issuable upon exercise of warrants outstanding as of the effective date of filing of the Articles of Amendment to the Articles of Incorporation of the Corporation.

(i) Definitions

In addition to any other terms defined herein, for purposes of these Articles of Incorporation, the following terms shall have the meanings indicated:

"Accrued Dividends" with respect to any share of Series A Convertible Preferred Stock shall mean (whether or not there shall have been net profits or net assets of the Corporation legally available for the payment of such dividends) that amount which shall be equal to dividends at the full rate fixed for the Series A Convertible Preferred Stock as provided herein for the period of time elapsed from the date of issuance of such share to the date as of which Accrued Dividends are to be computed, less any payments made in respect of such dividends.

"Common Stock" shall mean all shares now or hereafter authorized of any class of common stock of the Corporation and any other stock of the Corporation, howsoever designated, authorized after the date of issuance of the Series A Convertible Preferred Stock, which has the right (subject always to prior rights of any class or series of preferred stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

"Cumulative" shall mean that if at any time Accrued Dividends upon the Series A Convertible Preferred Stock shall not have been paid or declared and a sum sufficient for payment thereof set apart (in cash or in stock), no dividend shall be declared or paid or any other distribution ordered or made upon any Junior Stock (other than a dividend payable in

such Junior Stock) or any sum or sums set aside for or applied to the purchase or redemption of any shares of any Junior Stock.

“Current Market Price” shall mean the current market price at any date of one share of Common Stock, which shall be deemed to be the average of the daily closing prices for the thirty (30) consecutive business days selected by the Board of Directors of the Corporation ending no more than fifteen (15) days before the day in question (as adjusted for any stock dividend, split-up, combination or reclassification that took effect during such period). The closing price for each day shall be the last reported sales price regular way or, in case no such reported sales took place on such day, the average of the last reported bid and asked prices regular way, in either case on the principal national securities exchange on which the Common Stock is listed or admitted to trading or as reported in the National Market List of the National Association of Securities Dealers Automated Quotations System (“NASDAQ”) (or if the Common Stock is not at the time listed or admitted for trading on any such exchange or reported in such National Market List, then such price shall be equal to the average of the last reported bid and asked prices, as reported by NASDAQ on such day, or if, on any day in question, the security shall not be or have been quoted on NASDAQ, then such price shall be equal to the average of the last reported bid and asked prices on such day as reported by the National Quotation Bureau, Inc., or any similar reputable quotation and reporting service, if such quotation is not reported by the National Quotation Bureau, Inc.); provided, however, that if the Common Stock is not traded in such a manner that the quotations referred to herein are available for the period required hereunder, the Current Market Price as of the day in question shall be determined in good faith by the Board of Directors of the Corporation, or if such determination cannot be made, by a nationally recognized independent investment banking firm selected jointly by the holders of at least a majority of the voting power of the Series A Convertible Preferred Stock then outstanding and the Corporation (or, if such selection cannot be made, by a nationally recognized independent investment banking firm selected by the American Arbitration Association in accordance with its rules).

“Grandfathered Stock” shall have the meaning ascribed thereto in Section B1(f).

“IPO” shall mean an underwritten initial public offering of the Corporation’s Common Stock, yielding gross proceeds to the Corporation of at least \$15,000,000 at a per share price of not less than \$1.5228.

“Issue Date” shall mean the date that shares of Series A Convertible Preferred Stock are first issued by the Corporation.

“Junior Stock” shall mean, for purposes of Section B1(a) hereof, the Common Stock and any other class or series of stock of the Corporation issued after the date of the issuance of the Series A Convertible Preferred Stock not entitled to receive any dividends unless all dividends required to have been paid or declared and set apart for payment on the Series A Convertible Preferred Stock shall have been so paid or declared and set apart for payment

and, for purposes of Section B1(b) hereof, any class or series of stock of the Corporation issued after the date of the issuance of the Series A Convertible Preferred Stock not entitled to receive any assets upon the liquidation, dissolution or winding up of the affairs of the Corporation until the Series A Convertible Preferred Stock shall have received the entire amount to which such stock is entitled upon such liquidation, dissolution or winding up.

“Parity Stock” shall mean, for purposes of Sections B1(a) and (c) hereof, any other class or series of stock of the Corporation issued after the Issue Date entitled to receive payment of dividends on a parity with the Preferred Stock and, for purposes of Sections B1(b) and (c) above, any other class or series of stock of the Corporation issued after the Issue Date entitled to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation on a parity with the Series A Convertible Preferred Stock.

“Person” shall mean any individual, firm, corporation, partnership or other entity, and shall include any successor (by merger or otherwise) of such entity.

“Senior Stock” shall mean, for purposes of Sections B1(a) and (c) hereof, any class or series of stock of the Corporation issued after the Issue Date ranking senior to the Series A Convertible Preferred Stock in respect of the right to receive dividends, and, for purposes of Sections B1(b) and (c) hereof, any class or series of stock of the Corporation issued after the Issue Date ranking senior to the Series A Convertible Preferred Stock in respect of the right to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation.

(j) Severability of Provisions

If any right, preference or limitation of the Series A Convertible Preferred Stock set forth in these such articles of amendment (as such articles of amendment may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

(k) Status of Reacquired Shares

Shares of Series A Convertible Preferred Stock which have been issued and reacquired in any manner shall, upon compliance with any applicable provisions of the laws of the State of Florida have the status of authorized and unissued shares of Series A Convertible Preferred Stock issuable in series undesignated as to series and may be redesignated and reissued.

C. Pre-emptive Rights

1. *Preferred Stock.* Other than as set forth in Section B1(h) of this Article III with respect to the Series A Convertible Preferred Stock, the holders of any series of Preferred Stock of this Corporation shall have no preemptive right to subscribe for and purchase their proportionate share of any additional Preferred Stock (of the same class or otherwise) or Common Stock issued by this Corporation, from and after the issuance of the shares originally subscribed for by the shareholders of this Corporation, whether such additional shares be issued for cash, property, services or any other consideration and whether or not such shares be presently authorized or be authorized by subsequent amendment to these Articles of Incorporation.

2. *Common Stock.* The holders of Common Stock of this Corporation shall have no preemptive right to subscribe for and purchase their proportionate share of any Preferred Stock or additional Common Stock issued by this Corporation, from and after the issuance of the shares originally subscribed for by the shareholders of this Corporation, whether such additional shares be issued for cash, property, services or any other consideration and whether or not such shares be presently authorized or be authorized by subsequent amendment to these Articles of Incorporation.

D. Payment for Stock

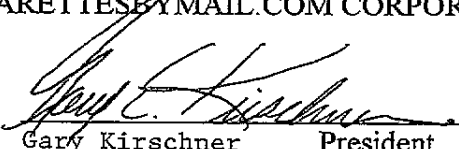
The consideration for the issuance of shares of capital stock may be paid, in whole or in part, in cash, in promissory notes, in other property (tangible or intangible), in labor or services actually performed for this Corporation, in promises to perform services in the future evidenced by a written contract, or in other benefits to this Corporation at a fair valuation to be fixed by the Board of Directors. When issued, all shares of stock shall be fully paid and non-assessable.

3. This Amendment was recommended by the Board of Directors to the Corporation's shareholders on June 1, 1999.
4. On June 1, 1999, the holders of a majority of the outstanding shares of Common Stock of the Corporation, the only class of securities outstanding, adopted this amendment to the Corporation's Articles of Incorporation at a special, duly called and convened meeting of such shareholders. The number of votes cast for the amendment by the shareholders was sufficient for approval.

IN WITNESS WHEREOF, the Company has caused these Articles of Amendment to the Articles of Incorporation to be executed this 8th day of February, 2000.

CIGARETTESBYMAIL.COM CORPORATION

By:


Gary Kirschner, President