



**CERTIFICATE OF INCORPORATION  
OF**

**ULTIMATE INC.**

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

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

Dated: May 24, 1990



*Pete T. Cenarrusa*

SECRETARY OF STATE

by: *Elizabeth M. Zabala*

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ARTICLES OF INCORPORATION

OF

ULTIMATE INC.

The undersigned, acting as incorporators of a corporation under the Idaho Business Corporation Act, adopt the following Articles of Incorporation of such corporation.

FIRST

The name of the corporation is: Ultimate Inc.

SECOND

The period of its duration is perpetual.

THIRD

The purpose or purposes for which the corporation is organized is to operate a Dairy Queen fast food service franchise in Gooding, Idaho and to exercise all powers, rights and responsibilities available to corporations under the laws of the State of Idaho.

FOURTH

The aggregate number of shares which the corporation shall have authority to issue is 600,000 shares at \$1.00 par value per share. Said stock shall be subject to transfer restrictions of first right of refusal as set forth in the Articles and the Bylaws of the Corporation.

FIFTH

Provisions denying preemptive rights are: none.

SIXTH

The address of the initial registered office of the corporation is Route 1 Box 1842 Burley, Idaho 83318, and the name of its initial registered agent at such address is Gary Lynn Haycock.

SEVENTH

The number of directors constituting the initial board of directors of the Corporation is four (4), and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and shall qualify are:

Arthur Dale Haycock: Route 1 Burley, Idaho 83318

Alice Lila Haycock: Route 1 Burley, Idaho 83318

Gary Lynn Haycock: P.O. Box 447 Gooding, Idaho 83330

Barbara Ann Haycock: P.O. Box 447 Gooding, Idaho 83330

EIGHTH

The name and address of each incorporator is:

Arthur Dale Haycock: Route 1 Burley, Idaho 83318

Alice Lila Haycock: Route 1 Burley, Idaho 83318

NINTH

(a) Bylaws: The majority of the Directors may adopt bylaws for the Corporation which are consistent with these Articles and the laws of the State of Idaho and may amend and repeal from time to time any bylaw as provided hereafter.

(b) Contracts with Interested Directors or Officers.

No contract, lease, or other transaction between the Corporation and any other corporation and no other act of the Corporation with relation to any other corporation shall, in the absence of fraud, in any way be invalidated or otherwise affected, by the fact that any one or more of the Directors of the Corporation is pecuniarily or otherwise interested in, or are Directors or Officers of such other corporation. Any Director of the Corporation may vote upon any contract or other transaction between the Corporation and any subsidiary or affiliated Corporation without regard to the fact that he is also a Director of such subsidiary or affiliated Corporation. Any Director of the Corporation, individually, or any firm or association of which any Director may be a member, may be a party to, or may be pecuniarily or otherwise interested in, any contract, lease or other transaction with the Corporation, provided that the fact that he individually or as a member of such firm or association is such a party to, or is so interested in, any contract, lease, or other transaction with the Corporation, shall be disclosed, or shall have been known, to the Board of Directors or by a majority of such members thereof as shall be present at any meeting of the Board of Directors at which action upon any such contract or transaction shall be taken; and in any case described in this paragraph, any such Director may be counted in determining the existence of a quorum at any meeting of the Board of Directors which shall authorize any such contract, lease, or other transaction and may vote thereat to authorize any such contract or transaction.

(c) Shareholders' Meetings. Meetings of Shareholders may be called by the President or by any one Director or by any

number of Shareholders owning not less than ten percent of the outstanding shares entitled to vote at such meeting. Notice of Shareholders' meetings shall be given in writing by mailing such notice to the address of every Shareholder, at the last known address of such Shareholder, at least ten days prior to the date and hour of said meeting. Publication of notice of a Shareholders' meeting is not required for any purpose. Any notice required to be given any Shareholders of this Corporation may be waived by written instrument signed by such Shareholders.

#### TENTH

Restrictions on Transfer of Stock. If (a) any two or more Shareholders or subscribers to stock of the Corporation shall enter into any agreement abridging, limiting or restricting the rights of any one or more of them to sell, assign, transfer, mortgage, pledge, hypothecate or transfer on the books of the Corporation, any or all of the stock of the Corporation held by them and if a copy of said agreement shall be filed with the Corporation, or if (b) the Incorporators or the Shareholders entitled to vote shall adopt any bylaw provision abridging, limiting or restricting the aforesaid rights of any Shareholders, then and in either of such events, all certificates of shares of stock subject to such abridgments, limitations or restrictions shall have a reference thereto endorsed thereon by an officer of the Corporation and such stock shall not thereafter be transferred on the books of the Corporation except in accordance herewith or with the terms and provisions of such agreement or bylaws, as the case may be.

#### ELEVENTH

The authorized and treasury stock of this Corporation may be issued at such time, upon such terms and conditions, and for such consideration as the Board of Directors shall determine.

Shareholders shall have pre-emptive rights to acquire unissued shares of this Corporation. Before the Board of Directors shall issue any unissued shares of this Corporation, authorized in these Articles or by later amendment, it shall notify each Shareholder of the proposed issuance of the terms and conditions under which the shares are proposed to be issued. For a period of thirty (30) days after the giving of such notice, any Shareholder shall have the rights, on the same terms and conditions as is stated in the notice, to acquire such portion of the shares proposed to be issued as the shares held by such Shareholder bears to the total shares issued and outstanding at the time such notice is given, such right to be exercised by giving notice of such election to the Corporation at its registered office. If any Shareholder does not give notice of his election to acquire such shares within such thirty-day period, the shares may be issued to others, but only on terms and conditions no more favorable than the terms and conditions stated in the notice to the Shareholders, Except as provided for above, no other pre-emptive rights shall vest in any Shareholder.

#### TWELFTH

Share of the Corporation shall not be subject to assessment for payment of debts of the Corporation.

THIRTEENTH

These Articles may be amended as provided herein. The Corporation reserves the right to amend, alter, change or repeal any provision of these Articles, in the manner now or hereafter prescribed by law, and by these Articles; and all rights and powers conferred herein on Shareholders and Directors are subject to this reserved power.

DATED this 18 day of May, 1990.

Arthur Dale Haycock  
Arthur Dale Haycock

Alice Lila Haycock  
Alice Lila Haycock

STATE OF IDAHO )

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County of Cassia )

On this 18th day of May, 1990, before me, the undersigned, a notary public in and for said state, personally appeared ARTHUR DALE HAYCOCK and ALICE LILA HAYCOCK, known to me to be the persons whose names are subscribed to the foregoing document and who acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year in this certificate first written.

Kathleen M. Barker  
Notary Public for Idaho  
Residing at Burley, Idaho  
9/11/93