

05-29-1998

FORM PTO-1594

(Rev. 6-93)

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U.S. DEPARTMENT OF COMMERCE

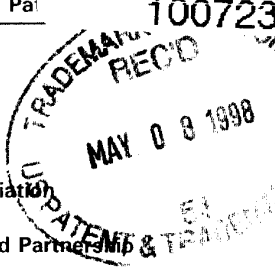
Patent and Trademark Office



To the Honorable Commissioner of Pat

Attached original documents or copy thereof.

100723293



1. Name of conveying party(ies):

Ultra Lucca, Inc.

- Individual(s) Association
 - General Partnership Limited Partnership
 - Corporation-State of California
 - Other _____
- Additional name(s) of conveying party(ies) attached? Yes
 No

3. Nature of conveyance:

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

Execution Date: 4/3/98

2. Name and address of receiving party(ies):

Name: A.G. Ferrari Foods

Internal Address: _____

Street Address: 14310 Catalina Street

City: San Leandro State: CA ZIP 94577

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

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designation must be a separate document from Assignment).
Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)

75/426,698 75/426,538 75/426,537 75/412,671
75/410,668 75/410,663 75/211,560 75/208,987
75/202,996 75/202,991 75/202,688

Additional numbers attached? Yes No

B. Trademark Registration No.(s)

2,136,934 2,138,545 2,138,508 1,529,017

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

Name: Cooley Godward LLP

Internal Address: Attn: Tsan Merritt-Porée, Esq.

Street Address: One Maritime Plaza, 20th Floor

City: San Francisco State: CA ZIP 94111

6. Total number of applications and registration involved: Fifteen

7. Total fee (37 CFR 3.41): \$ 390.00

- 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 copies are true copies of the original document.

Tsan Merritt-Porée

Date

20 April 98

Total number of pages including cover sheet, attachments, and document: 16

Mail documents to be recorded with required cover sheet information to: Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

00000039 7548669
 05/28/1998 DEC04TES
 01 FC:481
 02 FC:482

State of California

SECRETARY OF STATE



[Faint circular stamp and handwritten signature]

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

APR 14 1998



Bill Jones

Secretary of State

TRADEMARK

REEL: 1731 FRAME: 0713

APR 10 1999

LILL JONES, SECRETARY OF STATE

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
ULTRA LUCCA, INC.**

WILLIAM B. HUGHSON and **PAUL E. FERRARI** hereby certify that:

ONE: They are the duly elected and acting President and Secretary, respectively, of **ULTRA LUCCA, INC.**, a California corporation (the "Corporation" or the "Company").

TWO: The Articles of Incorporation of this corporation are hereby amended and restated to read as follows:

I.

The name of the Corporation is **A.G. Ferrari Foods** (the "Corporation" or the "Company").

II.

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

A. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is Fifteen Million (15,000,000) shares, Ten Million (10,000,000) shares of which shall be Common Stock (the "Common Stock") and Five Million (5,000,000) shares of which shall be Preferred Stock (the "Preferred Stock").

B. One Million Three Hundred Fifty Thousand (1,350,000) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "Series A Preferred") and One Million Four Hundred Thousand (1,400,000) shares of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "Series B Preferred" and collectively with the Series A Preferred, the "Preferred").

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

1. Dividend Rights.

(a) Holders of the Preferred, in preference to the holders of any other stock of the Company ("Junior Stock"), shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of seven percent (7%) of the "Original Issue Price" per annum on each outstanding share of Preferred (as adjusted for any stock dividends, combinations, splits recapitalizations and the like with respect to such shares). The Original Issue Price of the Series A Preferred shall be two

dollars (\$2.00) per share ("Series A Original Issue Price") and the Original Issue Price for the Series B Preferred shall be two dollars and fifty cents (\$2.50) per share ("Series B Original Issue Price". Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(b) So long as any shares of Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the Company be purchased, redeemed, or otherwise acquired for value by the Company (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 1(a) above) on the Preferred shall have been paid or declared and set apart. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Preferred in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. The provisions of this Section 1(b) shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock, or (iii) any repurchase of any outstanding securities of the Company that is unanimously approved by the Company's Board of Directors. The holders of the Preferred hereby consent for purposes of Sections 502, 503 and 506 of the General Corporation Law of the State of California, to distributions made by the Company in connection with the repurchase of shares of Common Stock issued to or held by employees, directors or consultants upon termination of their employment or services pursuant to agreements providing for such repurchase and expressly waive their rights, if any, as they relate to such repurchases.

2. Voting Rights.

(a) **General Rights.** Except as otherwise provided herein or as required by law, the Preferred shall be voted equally with the shares of the Common Stock of the Company and not as a separate class, at any annual or special meeting of shareholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Preferred are convertible (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

(b) **Separate Vote of Preferred.** In addition to any other vote or consent required herein or by law, the vote or written consent of the holders of more than fifty percent (50%) of the outstanding Preferred shall be necessary for effecting any agreement by the Company or its shareholders regarding an Asset Transfer or Acquisition (each as defined in Section 3(d)).

(c) **Separate Vote of Series A Preferred.** For so long as at least 500,000 shares of Series A Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series A Preferred) remain outstanding, in addition to any other vote

or consent required herein or by law, the vote or written consent of the holders of at least fifty percent (50%) of the outstanding Series A Preferred shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration, or repeal of any provision of the Amended and Restated Articles of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Determination) that affects adversely the voting powers, preferences, or other special rights or privileges, qualifications, limitations, or restrictions of the Series A Preferred;

(ii) Any increase or decrease (other than by redemption or conversion) in the authorized number of shares of Series A Preferred Stock; or

(iii) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company senior to the Series A Preferred in rights of redemption, liquidation preference, voting or dividends or any increase in the authorized or designated number of any such new class or series.

(d) Separate Vote of Series B Preferred. For so long as at least 300,000 shares of Series B Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series B Preferred) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least fifty percent (50%) of the outstanding Series B Preferred shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration, or repeal of any provision of the Amended and Restated Articles of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Determination) that affects adversely the voting powers, preferences, or other special rights or privileges, qualifications, limitations, or restrictions of the Series B Preferred;

(ii) Any increase or decrease (other than by redemption or conversion) in the authorized number of shares of Series B Preferred Stock; or

(iii) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company senior to the Series B Preferred in rights of redemption, liquidation preference, voting or dividends or any increase in the authorized or designated number of any such new class or series.

(e) Voting for the Election of Directors. For so long as at least 400,000 shares of Series B Preferred remain outstanding, the holders of a majority of the Series B Preferred shall elect one member of the Company's Board of Directors. All other members of the Board of Directors shall be elected by holders of Series A Preferred and Common Stock, voting together and not as separate classes. The authorized size of the Company's Board of Directors shall be set in the Company's Bylaws, as they may be amended from time to time. The

same shareholders empowered to elect a director shall be empowered to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.

3. Liquidation Rights.

Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, distributions to stockholders of the Company shall be made in the following manner:

(a) Holders of the Series B Preferred shall be entitled to receive, prior and in preference to any distribution or payment made to the holders of the Series A Preferred or Junior Stock, an amount per share equal to the Series B Original Issue Price plus all declared and unpaid dividends on such shares of Series B Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series B Preferred held by them. If the assets and funds thus distributed among the holders of the Series B Preferred shall be insufficient to permit the payment to such holders of Series B Preferred of the full aforesaid preferential amount, then the entire assets and funds of the Company legally available for distribution shall be distributed among the holders of the Series B Preferred in proportion to the full preferential amount each such holder is otherwise entitled to receive.

(b) Subject to the payment in full of the liquidation preferences with respect to the Series B Preferred as set forth in Section 3(a) above, the holders of the Series A Preferred shall be entitled to receive, prior and in preference to any distribution or payment made to the holders of any Junior Stock, an amount per share equal to the Series A Original Issue Price plus all declared and unpaid dividends on such shares of Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series A Preferred held by them. If the assets and funds thus distributed among the holders of the Series A Preferred shall be insufficient to permit the payment to such holders of Series A Preferred of the full aforesaid preferential amount, then the entire assets and funds of the Company legally available for distribution shall be distributed among the holders of the Series A Preferred in proportion to the full preferential amount each such holder is otherwise entitled to receive.

(c) After the payment of the full liquidation preference of the Series B Preferred as set forth in Section 3(a) and the Series A Preferred as set forth in Section 3(b) above, the remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock.

(d) The following events shall be considered a liquidation under this Section:

(i) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the shareholders of the Company immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the Company's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions in

which in excess of fifty percent (50%) of the Company's voting power is transferred (an "Acquisition"); or

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Company (an "Asset Transfer").

4. Redemption.

The Preferred shall not be redeemable by the Company.

5. Conversion Rights.

The holders of the Preferred shall have the following rights with respect to the conversion of the Preferred into shares of Common Stock (the "Conversion Rights"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5, any shares of Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder Preferred shall be entitled upon conversion shall be the product obtained by multiplying the applicable "Series A Conversion Rate" or "Series B Conversion Rate" then in effect (determined as provided in Section 5(b)) by the number of shares of Series A Preferred or Series B Preferred being converted.

(b) **Conversion Rates.** The conversion rate in effect at any time for conversion of the Series A Preferred (the "Series A Conversion Rate") shall be the quotient obtained by dividing the Series A Original Issue Price of the Series A Preferred by the "Series A Conversion Price," calculated as provided in Section 5(c). The conversion rate in effect at any time for conversion of the Series B Preferred (the "Series B Conversion Rate") shall be the quotient obtained by dividing the Series B Original Issue Price of the Series B Preferred by the "Series B Conversion Price," calculated as provided in Section 5(c).

(c) **Conversion Prices.** The conversion price for the Series A Preferred shall initially be the Series A Original Issue Price (the "Series A Conversion Price") and the conversion price for the Series B Preferred shall initially be the Series B Original Issue Price (the "Series B Conversion Price"). Such initial Series A Conversion Price and Series B Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series A Conversion Price and Series B Conversion Price herein shall mean the Series A Conversion Price and Series B Conversion Price as so adjusted.

(d) **Mechanics of Conversion.** Each holder of Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value

determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(e) **Adjustment for Stock Splits and Combinations.** If the Company shall at any time or from time to time after the date that the first share of Series B Preferred is issued (the "Original Issue Date") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred, the Series A Conversion Price and Series B Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred, the Series A Conversion Price and the Series B Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) **Adjustment for Common Stock Dividends and Distributions.** If the Company at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Series A Conversion Price and Series B Conversion Price that are then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price and Series B Conversion Price then in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price and Series B Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Preferred Conversion Price and Series B Conversion Price shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

(g) **Adjustments for Other Dividends and Distributions.** If the Company at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company other than shares of Common Stock, in each such event provision shall be made so that the holders of Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of other securities of the Company which they would have received had their Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities

receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of Preferred or with respect to such other securities by their terms.

(h) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 3(d) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), in any such event each holder of Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(i) Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock (other than an Acquisition or Asset Transfer as defined in Section 3(d) or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 5), as a part of such capital reorganization, provision shall be made so that the holders of the Preferred shall thereafter be entitled to receive upon conversion of the Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Preferred after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Series A Conversion Price and Series B Conversion Price then in effect and the number of shares issuable upon conversion of the Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(j) Sale of Shares Below Series A and Series B Conversion Prices.

(i) If at any time or from time to time after the Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this subsection (j) to have issued or sold, Additional Shares of Common Stock (as defined in subsection (j)(iv) below), other than as a dividend or other distribution on any class of stock as provided in Section 5(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 5(e) above, for an Effective Price (as defined in subsection (j)(iv) below) less than the then effective Series A Conversion Price or Series B Conversion Price, then and in each such case the then existing Series A Conversion Price or Series B Conversion Price as applicable, shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying such Series A Conversion Price or Series B Conversion Price by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed

outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection (j)(ii)) by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Series A Conversion Price or Series B Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Preferred could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under this Section 5(j), the consideration received by the Company for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in subsection (j)(iii) below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 5(j), if the Company issues or sells any rights or options for the purchase of, or stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") and if the Effective Price of such Additional Shares of Common Stock is less than the Series A Conversion Price or Series B Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided further that if the

minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series A Conversion Price or Series B Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series A Conversion Price or Series B Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series A Conversion Price or Series B Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Preferred.

(iv) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(j), whether or not subsequently reacquired or retired by the Company other than (1) shares of Common Stock issued upon conversion of the Preferred; (2) shares of Common Stock and/or options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) after the Original Issue Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board; (3) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Original Issue Date; and (4) shares of Common Stock issued in connection with strategic partnerships or similar arrangements. The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 5(j), into the aggregate consideration received, or deemed to have been received by the Company for such issue under this Section 5(j), for such Additional Shares of Common Stock.

(k) Certificate of Adjustment. In each case of an adjustment or readjustment of the Series A Conversion Price or Series B Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series A Preferred and Series B Preferred, if the Series A Preferred and Series B Preferred are then convertible pursuant to this Section 5, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (1) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (2) the Series A Conversion Price or Series B Conversion Price at the time in effect, (3) the number of Additional Shares of Common Stock and (4) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred or Series B Preferred.

(l) Notices of Record Date. Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 3(d)) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 3(d)), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Preferred at least twenty (20) days prior to the record date specified therein a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (3) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(m) Automatic Conversion.

(i) Each share of Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series A Conversion Price and Series B Conversion Price, as applicable, (A) at any time upon the affirmative election of the holders of at least fifty percent (50%) of the outstanding shares of the Preferred, or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least Seven Dollars (\$7.00) per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like), and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least Ten Million Dollars (\$10,000,000). Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

(ii) Upon the occurrence of the event specified in paragraph (1) above, the outstanding shares of Preferred 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 Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred, the holders of Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

(n) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

(o) **Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(p) **Notices.** Any notice required by the provisions of this Section 5 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(q) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Preferred so converted were registered.

(r) **No Dilution or Impairment.** Without the consent of the holders of the then outstanding Preferred, as required under Section 2(b), the Company shall not amend its Amended and Restated Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Preferred against dilution or other impairment.

6. **No Reissuance of Preferred.** No share or shares of Preferred acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued.

7. **No Preemptive Rights.** Shareholders shall have no preemptive rights except as granted by the Company pursuant to written agreements.

III.

A. The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

B. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the General Corporation Law of California) for breach of duty to the Corporation and its shareholders through bylaw provisions or through agreements with agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the General Corporation Law of California, subject to the limits on such excess indemnification set forth in Section 204 of the General Corporation Law of California. If, after the effective date of this Article, California law is amended in a manner which permits a corporation to limit the monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to "California law" shall to that extent be deemed to refer to California law as so amended.

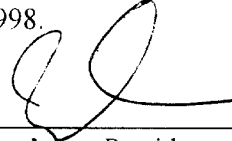
C. Any repeal or modification of this Article shall only be prospective and shall not effect the rights under this Article in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability."

THREE: The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the Board of Directors of this Corporation.

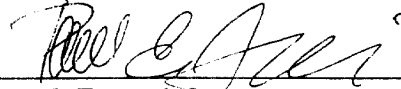
FOUR: The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the California Corporations Code. The total number of outstanding shares is 2,400,000 shares of Common Stock and 1,307,500 shares of Series A Preferred Stock. The total number of shares of each class voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required of each class was more than 50% of the Common Stock and Series A Preferred Stock.

The undersigned, William B. Hughson and Paul E. Ferrari, the President and Secretary, respectively, of Ultra Lucca, Inc., declare under penalty of perjury under the laws of the State of California that the matters set out in the foregoing Certificate are true of their own knowledge.

Executed at San Leandro, California on April 3, 1998.



William B. Hughson, President



Paul E. Ferrari, Secretary

