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TO: The Commissioner of Patents and Trade.

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ment(s) or copy(ies).

Submission Type

New
 Resubmission (Non-Recordation)

Document ID #
 Correction of PTO Error

Reel # Frame #

Corrective Document

Reel # Frame #

3-12-02

Conveyance Type

Assignment License
 Security Agreement Nunc Pro Tunc Assignment

Effective Date
Month Day Year

Merger
 Change of Name
 Other

Conveying Party

Mark if additional names of conveying parties attached

Name **Una Mas, Inc.**

Formerly

Execution Date
Month Day Year

10/17/1997

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization **California**

Receiving Party

Mark if additional names of receiving parties attached

Name **Una Mas Restaurants, Inc.**

DBA/AK/A

Composed of

Address (line 1) **528 Weddell Drive**

Address (line 2) **Suite 7**

Address (line 3) **Sunnyvale**

CA

94089

City

State/Country

Zip Code

Individual General Partnership Limited Partnership

Corporation Association

Other

Citizenship/State of Incorporation/Organization **Delaware**

If document to be recorded is an assignment and receiving party is not domiciled in the United States, appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

FOR OFFICE USE ONLY

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

03/25/2002 LMUELLER 0000016575154598 40.00 DP 125.00 DP
01 FC:481
02 FC:482

TRADEMARK

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name _____
 Address (line 1) _____
 Address (line 2) _____
 Address (line 3) _____
 Address (line 4) _____

Correspondent Name and AddressArea Code and Telephone Number **415 781 1989**

Name **David J. Brezner**
 Address (line 1) **FLEHR HOHBACH TEST ALBRITTON & HERBERT LLP**
 Address (line 2) **4 Embarcadero Center**
 Address (line 3) **Suite 3400**
 Address (line 4) **San Francisco, CA 94111**

Pages Enter the total number of pages of the attached conveyance document including any attachments. # **15**

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)**Registration Number(s)**

75/154,590	76/308,904	2,001,574			
75/214,266		2,064,594			
75/214,508					

Number of PropertiesEnter the total number of properties involved. # **6**

Fee Amount **Fee Amount for Properties Listed (37 CFR 3.41): \$ 165**

Method of Payment: Enclosed Deposit Account

Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.)

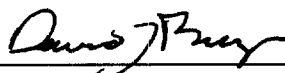
Deposit Account Number: # **06-1300 (G-53425/DJB/DJM)**

Authorization to charge additional fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

David J. Brezner
 Name of Person Signing


 Signature

3/1/02
 Date Signed

State of California



SECRETARY OF STATE

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

That the attached transcript of 14 page(s) was prepared by and in this office from the record on file, 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 day of

FEB 13 2002



Bill Jones

Secretary of State

FILED
In the office of the Secretary of State
of the State of California

OCT 21 1997

Bill Jones
L. JONES Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"POLLO REY, INC.", A CALIFORNIA CORPORATION,

"UNA MAS, INC.", A CALIFORNIA CORPORATION,

WITH AND INTO "UNA MAS RESTAURANTS, INC." UNDER THE NAME OF "UNA MAS RESTAURANTS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE SEVENTEENTH DAY OF OCTOBER, A.D. 1997, AT 5 O'CLOCK P.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS FOR RECORDING.



Edward J. Freel

Edward J. Freel, Secretary of State

2777772 8100M

971351953

AUTHENTICATION 8709196

DATE 10-17-97

CERTIFICATE OF MERGER

OF

UNA MAS, INC
(A CALIFORNIA CORPORATION)

AND

POLLO REY, INC.
(A CALIFORNIA CORPORATION)

INTO

UNA MAS RESTAURANTS, INC
(A DELAWARE CORPORATION)

The undersigned corporation, a Delaware corporation, does hereby certify:

First That the name and state of incorporation of each of the constituent corporations of the merger is as follows:

<u>Name</u>	<u>State of Incorporation</u>
Una Mas, Inc	California
Pollo Rey, Inc	California
Una Mas Restaurants, Inc	Delaware

Second That the Agreement and Plan of Consolidation dated as of August 29, 1997 by and among Una Mas, Inc, Pollo Rey, Inc and Una Mas Restaurants, Inc. has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 252(c) of the General Corporation Law of the State of Delaware

Third That the name of the surviving corporation of the merger is Una Mas Restaurants, Inc, a Delaware corporation (the "Surviving Corporation")

Fourth That the Certificate of Incorporation of the Surviving Corporation is hereby amended and restated to read in its entirety as set forth in Exhibit A attached hereto and made a part hereof

Fifth That the executed Agreement and Plan of Consolidation is on file at the principal place of business of the Surviving Corporation. The address of said principal place of business is 2301 Leghorn Street, Mountain View, California 94043

Sixth That a copy of the Agreement and Plan of Consolidation will be furnished by the Surviving Corporation upon request and without charge to any stockholder of any constituent corporation

Seventh That this Certificate of Merger shall be effective at 11:59 p.m., Eastern Standard Time, on Sunday, October 19 1997

Eighth The authorized capital stock of each constituent corporation is as follows:

<u>Constituent Corporation Name</u>	<u>Type of Capital Stock</u>	<u>Number of Shares Authorized</u>
Pollo Rey, Inc	Common Stock, par value 001 per share	10,000,000
	Preferred Stock	4,000,000
	Series A Preferred Stock, par value 001 per share	718,390
	Series B Preferred Stock, par value 001 per share	1,300,000
	Series C Preferred Stock, par value 001 per share	1,300,000
Una Mas, Inc	Common Stock, par value 01 per share	15,000,000
	Preferred Stock	5,000,000
	Series A Preferred Stock, par value 01 per share	2,000,000

IN WITNESS WHEREOF, the undersigned has caused this Certificate to be executed by its President and attested by its Secretary this 17th day of October, 1997.

UNA MAS RESTAURANTS, INC
(a Delaware corporation)

By Richard Hamner
Richard Hamner, President

Attest
By Randal Niemeyer
Randal Niemeyer, Secretary

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
UNA MAS RESTAURANTS, INC

Una Mas Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

FIRST The name of the Corporation is Una Mas Restaurants, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on July 25, 1997.

SECOND Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation of the Corporation.

THIRD The text of the original Certificate of Incorporation and any amendment and restatement thereto is hereby amended and restated to read in its entirety as follows:

ARTICLE I

The name of the Corporation is Una Mas Restaurants, Inc.

ARTICLE II

The address of the registered office of the corporation in the State of Delaware is Incorporating Services, Ltd., 5 East North Street, in the City of Dover, County of Kent, and the name of its registered agent at that address is Incorporating Services, Ltd.

ARTICLE III

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 the State of Delaware.

ARTICLE IV

The Corporation is authorized to issue two classes of shares to be designated respectively "Common Stock" and "Preferred Stock." The total number of shares of Preferred Stock authorized is 10,000,000, \$0.0001 par value per share. The total number of shares of Common Stock authorized is 20,000,000, \$0.0001 par value per share.

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A Preferred Stock The Preferred Stock shall be comprised of 2,039,243 shares designated as "Series A Preferred Stock," of which 1,351,605 shares shall be designated "Series A-1 Preferred Stock" and 687,638 shares shall be designated "Series A-2 Preferred Stock" and 2,872,470 shares designated as "Series B Preferred Stock," of which 1,492,686 shares shall be designated "Series B-1 Preferred Stock," 206,325 shares shall be designated "Series B-2 Preferred Stock" and 1,173,459 shares shall be designated "Series B-3 Preferred Stock." The remaining shares of Preferred Stock remain undesignated. The relative rights, preferences, restrictions and other matters relating to the Preferred Stock are as follows:

1 Dividends Rights of Preferred

(a) The holders of the Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series B-1 Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available therefor, dividends at the rate of \$0.37, \$0.348, \$0.159, \$0.293, and \$0.28 per share per annum on each outstanding share of Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series B-1 Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock, respectively, payable in preference and priority to any payment of any dividend on the Common. The right to such cash dividends on the Preferred Stock shall not be cumulative, and no right shall accrue to holders of the Preferred Stock by reason of the fact that dividends on such shares are not declared in any prior year. No dividends shall be paid on any Common Stock unless an equal dividend is paid with respect to all outstanding shares of Preferred Stock in an amount for each such share of Preferred Stock equal to the aggregate amount of such dividends for all Common Stock into which each such share of Preferred Stock could then be converted.

2 Preference on Liquidation

(a) In the event of any liquidation, dissolution or winding up of the Corporation, distributions to the stockholders of the Corporation shall be made in the following manner:

(i) The holders of the Series A-1 and Series A-2 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, (A) the amount of \$3.70 per share for each share of Series A-1 Preferred Stock and the amount of \$3.48 per share for each share of Series A-2 Preferred Stock, then held by them, adjusted for any stock split, combination, consolidation, or stock distributions or stock dividends with respect to such shares, and (B) an amount equal to all declared but unpaid dividends on the Series A-1 and Series A-2 Preferred Stock as provided in Section 1 above. If the assets and funds thus distributed among the holders of the Series A-1 and Series A-2 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be

distributed ratably among the holders of the Series A-1 and Series A-2 Preferred Stock in proportion to their aggregate preferential amount.

(ii) After payment has been made to the holders of the Series A-1 and Series A-2 Preferred Stock of the full preferential amounts to which they shall be entitled, if any, as aforesaid, the holders of the Series B-1, Series B-2 and Series B-3 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, (A) the amount of \$1.59 per share for each share of Series B-1 Preferred Stock, the amount of \$2.93 for each share of Series B-2 Preferred Stock and the amount of \$2.80 for each share of Series B-3 Preferred Stock, then held by them, adjusted for any stock split, combination, consolidation, or stock distributions or stock dividends with respect to such shares, and (B) an amount equal to all declared but unpaid dividends on the Series B-1, Series B-2 and Series B-3 Preferred Stock as provided in Section 1 above. If the assets and funds thus distributed among the holders of the Series B-1, Series B-2 and Series B-3 Preferred Stock shall be insufficient to permit payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B-1, Series B-2 and Series B-3 Preferred Stock in proportion to their aggregate preferential amount.

(iii) After payment has been made to the holders of the Preferred Stock of the full preferential amounts to which they shall be entitled, if any, as aforesaid, the holders of the Common Stock shall be entitled to share ratably in all remaining assets to be distributed, based upon the number of shares of Common Stock then held by such holders.

(b) A consolidation or merger of the Corporation with or into any other corporation or corporations (other than a wholly-owned subsidiary), or the sale, transfer or other disposition of all or substantially all of the assets of the Corporation or the consummation of any transaction or series of related transactions which results in the corporation's stockholders immediately prior to such transaction not holding at least 50% of the voting power of the surviving or continuing entity shall be deemed a liquidation, dissolution or winding up within the meaning of this Section 2.

(c) In the event the Corporation shall propose to take any action of the type described in subsection (a) or (b) of this Section 2, the Corporation shall, within ten (10) days after the date the Board of Directors approves such action or twenty (20) days prior to any stockholders' meeting called to approve such action, whichever is earlier, give each holder of shares of the Preferred Stock written notice of the proposed action. Such 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 the Preferred Stock upon consummation of the proposed action and the proposed date of delivery thereof. If any material change in the facts set forth in the notice shall occur, the Corporation shall promptly give written notice to each holder of shares of the Preferred Stock of such material change.

(d) The Corporation shall not consummate any proposed action of the type described in subsection (a) or (b) of this Section 2 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, however, that any such 30-day or 10-day period may be shortened upon the written consent of the holders of a majority of the outstanding shares of the Preferred Stock

(e) If the Corporation shall propose to take any action of the type described in subsection (a) or (b) of this Section 2 which will involve the distribution of assets other than cash, the Corporation shall promptly engage independent competent appraisers to determine the value of the assets to be distributed to the holders of shares of the Preferred Stock and the Common Stock. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice of the appraiser's valuation to each holder of shares of the Preferred Stock.

3. Voting Rights. Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted on the record date for the vote or consent of stockholders and shall have voting rights and powers equal to the voting rights and powers of the Common Stock. The holder of each share of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation and shall vote with holders of the Common Stock upon any matter submitted to a vote of stockholders, except those matters required by law to be submitted to a class vote. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number

4. Conversion Rights. The holders of Preferred Stock shall have conversion rights as follows

(a) Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time at the principal office of the Corporation or any transfer agent for such shares, into fully paid and nonassessable shares of Common Stock of the Corporation. The number of shares of Common Stock into which each share of Series A-1 Preferred Stock may be converted shall be determined by dividing \$3.70 by the Series A-1 Conversion Price determined as hereinafter provided in effect at the time of the conversion. The Series A-1 Conversion Price per share shall initially be \$3.70 for the Series A-1 Preferred Stock, subject to adjustment as provided herein. The number of shares of Common Stock into which each share of Series A-2 Preferred Stock may be converted shall be determined by dividing \$3.48 by the Series A-2 Conversion Price determined as hereinafter provided in effect at the time of the conversion. The Series A-2 Conversion Price per share shall initially be \$3.48 for the Series A-2 Preferred Stock, subject to adjustment as provided herein. The number of shares of Common Stock into which each share of Series B-1 Preferred Stock may be converted shall be determined by dividing \$1.59 by the Series B-1 Conversion Price determined as hereinafter provided in

effect at the time of the conversion. The Series B-1 Conversion Price per share shall initially be \$1.59 for the Series B-1 Preferred Stock, subject to adjustment as provided herein. The number of shares of Common Stock into which each share of Series B-2 Preferred Stock may be converted shall be determined by dividing \$2.93 by the Series B-2 Conversion Price determined as hereinafter provided in effect at the time of the conversion. The Series B-2 Conversion Price per share shall initially be \$2.93 for the Series B-2 Preferred Stock, subject to adjustment as provided herein. The number of shares of Common Stock into which each share of Series B-3 Preferred Stock may be converted shall be determined by dividing \$2.80 by the Series B-3 Conversion Price determined as hereinafter provided in effect at the time of the conversion. The Series B-3 Conversion Price per share shall initially be \$2.80 for the Series B-3 Preferred Stock, subject to adjustment as provided herein.

(b) Each share of Preferred Stock shall be converted into Common Stock automatically in the manner provided herein upon the earlier to occur of (i) the time the consent of at least 66-2/3% of the outstanding Preferred Stock to such conversion is obtained, or (ii) the closing of the sale of the Corporation's securities pursuant to a firm commitment underwritten public offering from which the Corporation receives gross proceeds of not less than \$11,000,000 at a purchase price of not less than \$6.00 per share (as adjusted for stock splits, stock dividends, reorganizations and the like).

(c) Before any holder of Preferred Stock shall be entitled to convert the same into Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed in blank or accompanied by proper instruments of transfer, at the principal office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state in writing therein the name or names in which such holder wishes the certificate or certificates for Common Stock to be issued. As soon as practicable thereafter, the Corporation shall issue and deliver at such office to such holder's nominee or nominees, certificates for the number of whole shares of Common Stock to which such holder shall be entitled. No fractional shares of Common Stock shall be issued by the Corporation and all such fractional shares shall be disregarded. In lieu thereof, the Corporation shall pay in cash the fair market value of such fractional share as determined by the Board of Directors of the Corporation. Such conversion shall be deemed to have been made as of the date of such surrender of the Preferred Stock to be converted, and the person or persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock on said date.

(d) The Conversion Price for each series of Preferred Stock shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Preferred Stock, the Conversion Price in effect immediately prior to such subdivision or

the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, without an equivalent combination of the Preferred Stock, the Conversion Price in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, dividend or combination, as the case may be

(ii) If after the date of filing of this Amended and Restated Certificate of Incorporation with the Delaware Secretary of State the Corporation shall issue or sell Equity Securities as defined in Section 4(e)(1) below at a consideration per share (the "Lower Price") less than the Conversion Price for any series of Preferred Stock in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Conversion Price of each share of such series of Preferred Stock shall be adjusted to a price (calculated to the nearest cent) determined by dividing

(A) an amount equal to the sum of (x) the number of shares of Common Stock outstanding immediately prior to such issue or sale multiplied by the then existing Conversion Price, (y) the number of shares of Common Stock issuable upon conversion or exchange of any shares of stock or convertible securities of the Corporation outstanding immediately prior to such issue or sale multiplied by the then existing Conversion Price, and (z) an amount equal to the aggregate "consideration actually received" by the Corporation upon such issue or sale, by

(B) the sum of the number of shares of Common Stock outstanding immediately after such issue or sale and the number of shares of Common Stock issuable upon conversion or exchange of any shares of stock of the Corporation outstanding immediately after such issue or sale

(e) For purposes hereof the following provisions shall be applicable

(i) The term "Equity Securities" shall mean any shares of Common Stock, or any obligation, any share of stock or other security of the Corporation convertible into, exercisable or exchangeable for Common Stock except for (i) shares of Common Stock issued or issuable to officers, directors, employees or consultants of the Corporation pursuant to stock grants, stock purchase and stock option plans or other stock incentive programs, agreements or arrangements approved by the Board of Directors, (ii) shares issued pursuant to transactions described in subsection (e)(1) of this Section 4 (iii) shares of capital stock issued in connection with the Agreement and Plan of Consolidation dated as of September 29, 1997 to which the Company is a party and (iv) shares of Common Stock issued upon conversion of the Preferred Stock

(ii) In the case of an issue or sale for cash of shares of Common Stock or shares convertible into or exchangeable for Common Stock, the

"consideration actually received" by the Corporation therefor shall be deemed to be the amount of cash received, before deducting therefrom any commissions or expenses paid by the Corporation

(iii) In case of the issuance (otherwise than upon conversion or exchange of obligations or shares of stock of the Corporation) of additional shares of Common Stock for a consideration other than cash or a consideration partly other than cash, the amount of the consideration other than cash received by the Corporation for such shares shall be deemed to be the value of such consideration as determined reasonably and in good faith by the Board of Directors.

(iv) In case of the issuance by the Corporation in any manner of any rights to subscribe for or to purchase shares of Common Stock, or any options for the purchase of shares of Common Stock or stock convertible into Common Stock, all shares of Common Stock or stock convertible into Common Stock to which the holders of such rights or options shall be entitled to subscribe for or purchase pursuant to such rights or options shall be deemed "outstanding" as of the date of the offering of such rights or the granting of such options, as the case may be, and the minimum aggregate consideration named in such rights or options for the shares of Common Stock or stock convertible into Common Stock covered thereby, plus the consideration, if any, received by the Corporation for such rights or options, shall be deemed to be the "consideration actually received" by the Corporation (as of the date of the offering of such rights or the granting of such options, as the case may be) for the issuance of such shares.

(v) In case of the issuance or issuances by the Corporation in any manner of any obligations or of any shares of stock of the Corporation that shall be convertible into or exchangeable for Common Stock, all shares of Common Stock issuable upon the conversion or exchange of such obligations or shares shall be deemed issued as of the date such obligations or shares are issued, and the amount of the "consideration actually received" by the Corporation for such additional shares of Common Stock shall be deemed to be the total of (x) the amount of consideration received by the Corporation upon the issuance of such obligations or shares, as the case may be, plus (y) the minimum aggregate consideration, if any, other than such obligations or shares, receivable by the Corporation upon such conversion or exchange, except in adjustment of dividends.

(vi) The amount of the "consideration actually received" by the Corporation upon the issuance of any rights or options referred to in subsection (iv) above or upon the issuance of any obligations or shares which are convertible or exchangeable as described in subsection (v) above, and the amount of the consideration, if any, other than such obligations or shares so convertible or exchangeable, receivable by the Corporation upon the exercise, conversion or exchange thereof shall be determined in the same manner provided in subsections (ii) and (iii) above with respect to the consideration received by the Corporation in case of the issuance of additional shares of Common Stock, provided, however, that if such obligations or shares of stock so convertible or exchangeable are issued in payment or satisfaction of any dividend upon any

stock of the Corporation other than Common Stock, the amount of the "consideration actually received" by the Corporation upon the original issuance of such obligations or shares or stock so convertible or exchangeable shall be deemed to be the value of such obligations or shares of stock, as of the date of the adoption of the resolution declaring such dividend, as determined by the Board of Directors at or as of that date. On the expiration of any rights or options referred to in subsection (iv), or the termination of any right of conversion or exchange referred to in subsection (v), or any change in the number of shares of Common Stock deliverable upon exercise of such options or rights or upon conversion of or exchange of such convertible or exchangeable securities, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustments made upon the issuance of such option, right or convertible or exchangeable securities been made upon the basis of the delivery of only the number of shares of Common Stock actually delivered or to be delivered upon the exercise of such rights or options or upon the conversion or exchange of such securities

(vii) In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons or options or rights not referred to in this Section 4(e), then, in each such case, the holders of the Preferred Stock shall be entitled to the distributions provided for in Section I above, and no adjustment to the Conversion Price provided for in this Section 4 shall be applicable.

(f) The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, 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 4 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 Preferred Stock against impairment.

(g) Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof, and shall prepare and furnish to each holder of Preferred Stock affected thereby a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustment or readjustment, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Preferred Stock.

(h) 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 Preferred Stock, the full number of shares of Common

Stock deliverable upon the conversion of all Preferred Stock from time to time outstanding. The Corporation shall from time to time (subject to obtaining necessary director and shareholder action, which the Corporation shall use its best efforts to obtain), in accordance with the laws of the State of California, 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 Preferred Stock at the time outstanding.

5. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation, and the Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

6. Changes. So long as any shares of Preferred Stock are outstanding, the Corporation shall not, without first obtaining the approval by vote or written consent, in the manner provided by law, of the holders of at least a majority of the total number of shares of the affected series of Preferred Stock outstanding, voting as separate classes: (1) alter or change any of the powers, preferences, privileges or rights of the Series A-1, Series A-2, Series B-1, Series B-2 and Series B-3 Preferred Stock; (2) create any new class or series of shares having preferences prior to or being on a parity with the Series A-1, Series A-2, Series B-1, Series B-2 or Series B-3 Preferred Stock as to dividends or liquidation; or (3) amend the provisions of this Section 6.

ARTICLE V

To the fullest extent permitted by the General Corporation Law of the State of Delaware, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any repeal or modification of this paragraph by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation with respect to any act or omission occurring prior to the time of such repeal or modification.

* * *

FOURTH This Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors.

FIFTH This Amended and Restated Certificate of Incorporation has been duly adopted by the stockholders of the Corporation in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate to be signed by its President on October 17, 1997

Richard T. Hamner

Richard T. Hamner, President



STATE OF CALIFORNIA
 FRANCHISE TAX BOARD
 PO BOX 1468
 SACRAMENTO CA 95812-1468

**TAX CLEARANCE
 CERTIFICATE**

September 9, 1997

EXPIRATION DATE: December 15, 1997

GRAY ET AL
 STEVE GIBSON
 400 HAMILTON AV
 PALO ALTO CA 94301-1825

ISSUED TO: POLLO REY, INC.
 Entity ID 1990462

This is to certify that all taxes imposed under the Bank and Corporation Tax Law on this corporation have been paid, assumed, or are secured by other means.

If a final return has not been filed, one should be filed within two months and 15 days after the close of the month in which the dissolution or withdrawal takes place. If the corporation was inactive, a statement to that effect should be attached to the tax forms. All returns remain subject to audit until the expiration of the normal statutory period. Failure to file required returns may result in additional assessments.

A copy of this Tax Clearance Certificate has been sent to the Office of the the Secretary of State. This original Tax Clearance Certificate may be retained in the files of the corporation.

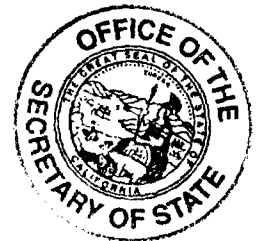
By the Expiration Date noted above, this corporation must have filed the documents required by the Secretary of State to dissolve, withdraw or merge. Requests for the appropriate documents must be directed to: Office of the Secretary of State at 1500 11th Street, 3rd Floor, Sacramento CA. 95814, or by telephone, (916) 657-5448.

NOTE: If the required documents are not filed with the Secretary of State prior to the Expiration Date noted above, the corporation will remain subject to the filing requirements of the Bank and Corporation Tax Law.

By H. Hermansen
 Special Audit Unit
 Corporation Audit Section
 Telephone (916) 845-4124

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RECORDED: 03/12/2002

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