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COMMONWEALTH OF KENTUCKY
OFFICE OF SECRETARY OF STATE
FRANKFORT, 40601-3493

BREMER EHRLER
SECRETARY OF STATE
CLINTON H. NEWMAN II
ASSISTANT SECRETARY OF STATE

SECRETARY OF STATE (502) 564-3490
CORPORATE FILINGS (502) 564-2848
CORPORATION RECORDS (502) 564-7330

MARCH 25, 1988

SUSAN METZE
C T CORPORATION SYSTEM
813 CAREW TOWER
CINCINNATI, OHIO 45202

RE: CHI-CHI'S , INC.

Dear Sir:

Receipt and filing of the following is hereby acknowledged.

- 1. () Articles of Amendment
- 2. () Restated Articles of Incorporation
- 3. (XX) Articles of Merger CHI-CHI'S , INC. (QUAL.) INTO
CHI-CHI'S , INC. (DELAWARE NOT QUAL.) WERE FILED IN KENTUCKY ON
MARCH 25, 1988.
- 4. () Other

513118

If we may be of further assistance to you, please do not hesitate to call us.

Sincerely yours,
Bremer Ehrler
Bremer Ehrler
Secretary of State

State of Minnesota

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SECRETARY OF STATE

ORIGINAL COPY FILED
SECRETARY OF STATE OF KENTUCKY
FRANKFORT, KENTUCKY

MAR 25 1988

Certificate of Merger

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Brewer Edna
SECRETARY OF STATE

I, Joan Anderson Growe, Secretary of State of Minnesota, do certify that: An Agreement and Plan of Merger between the following corporations has been approved pursuant to the procedures required by the chapter indicated. The Agreement and Plan of Merger was filed in this office on this date. Each of the merging corporations have been merged into the surviving corporation listed below on the effective date listed below.

Merger Filed Pursuant to Minnesota Statutes, Chapter: 302A

State of Incorporation and Names of Merging Corporations:

MN: Chi-Chi's, Inc. #144189- gold

DE: Chi-Chi's, Inc. HQ

State of Incorporation and Name of Surviving Corporation:

DE: Chi-Chi's, Inc.

Effective Date of Merger: 9/29/86

Name of Surviving Corporation After Effective Date of Merger:

Chi-Chi's, Inc.

The surviving corporation, if a non-Minnesota corporation, is not qualified to do business in Minnesota.

This certificate has been issued on: 9/29/86

Joan Anderson Growe
Secretary of State.

MINNESOTA

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ARTICLES OF MERGER
OF
CHI-CHI'S, INC.
A Minnesota corporation
INTO
CHI-CHI'S, INC.
A Delaware corporation

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1. These Articles of Merger concern the merger of Chi-Chi's, Inc., a Minnesota corporation, into its wholly-owned subsidiary, Chi-Chi's, Inc., a Delaware corporation (the "Merger"). The Plan of Merger as duly adopted by the Boards of Directors of Chi-Chi's, Inc. (Minnesota) and Chi-Chi's, Inc. (Delaware) is attached as Exhibit A to these Articles and is incorporated herein by reference.

2. Chi-Chi's, Inc. (Minnesota) (the "Merged Corporation") has as of the Effective Date of the Merger 70,000,000 shares of common stock, \$.01 par value, authorized of which 27,115,829 shares are issued and outstanding and 250,000 shares of preferred stock, \$.25 par value, authorized of which none are issued and outstanding. Chi-Chi's, Inc. (Delaware) (the "Surviving Corporation") has authorized capital as of the Effective Date of the Merger of 70,000,000 shares of common stock \$.01 par value, and 250,000 shares of preferred stock, par value \$.25, per share of which one (1) share of common stock is issued and outstanding. The outstanding stock of the Surviving Corporation held by the Merged Corporation shall be cancelled upon completion of the Merger.

3. At a meeting duly held following appropriate notice, the shareholders of the Merged Corporation approved the Plan of Merger and the Merger contemplated therein.

4. There are no shareholders of the Surviving Corporation other than the Merged Corporation and the Merged Corporation has authorized the adoption by the Surviving Corporation of the Plan of Merger.

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (hereinafter called the "Merger Agreement") is made as of July 25, 1986, by and between Chi-Chi's, Inc., a Minnesota corporation ("Chi-Chi's Minnesota"), and Chi-Chi's, Inc., a Delaware corporation ("Chi-Chi's Delaware"). Chi-Chi's Minnesota and Chi-Chi's Delaware are sometimes referred to as the "Constituent Corporations".

The authorized capital stock of Chi-Chi's Minnesota consists of 250,000 shares of preferred stock, par value Twenty-Five cents (\$.25), and 70,000,000 shares of common stock, par value One Cent (\$.01), and the authorized capital stock of Chi-Chi's Delaware consists of 250,000 shares of preferred stock, par value Twenty-Five Cents (\$.25), and 70,000,000 shares of common stock, par value One Cent (\$.01). No shares of preferred stock of Chi-Chi's Minnesota or of Chi-Chi's Delaware are presently outstanding and none will be outstanding at the time of the merger provided for herein. The directors of the Constituent Corporations deem it advisable and to the advantage of said corporations that Chi-Chi's Minnesota merge into Chi-Chi's Delaware upon the terms and conditions herein provided.

NOW, THEREFORE, the parties do hereby adopt the plan of reorganization encompassed by this Merger Agreement and do hereby agree that Chi-Chi's Minnesota shall merge into Chi-Chi's Delaware on the following terms, conditions and other provisions:

I. TERMS AND CONDITIONS

1.1 Merger. Chi-Chi's Minnesota shall be merged (the "Merger") with and into Chi-Chi's Delaware, in accordance with the Minnesota Business Corporation Act and the General Corporation Law of the State of Delaware, the separate existence of Chi-Chi's Minnesota shall cease and Chi-Chi's Delaware shall be the surviving corporation (the "Surviving Corporation") and continue its corporate existence under the laws of the State of Delaware, effective upon the later date and time of the filing of this Merger Agreement or a certificate of merger with the Secretary of State of Delaware and the filing of Articles of Merger with the Secretary of State of Minnesota (the "Effective Date"). The name of the Surviving Corporation shall be Chi-Chi's, Inc.

1.2 Succession. On the Effective Date, Chi-Chi's Delaware shall succeed to all of the rights, privileges, powers and property, including without limitation all rights, privileges, franchises, patents, trademarks, licenses, registrations and other assets of every kind and description, of Chi-Chi's Minnesota in the manner of and as more fully set forth in Section 259 of the General Corporation Law of the State of Delaware.

1.3 Common Stock of Chi-Chi's Minnesota and Chi-Chi's Delaware. Upon the Effective Date, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their stockholders, (i) each share of common stock of Chi-Chi's Minnesota, par value \$.01 per share, issued and outstanding immediately prior thereto shall be changed and converted into one fully paid and nonassessable share of the common stock of Chi-Chi's Delaware, par value of \$.01 per share; and (ii) each share of common stock of Chi-Chi's Delaware par value of \$.01 per share and issued and outstanding immediately prior thereto shall be cancelled and returned to the status of authorized but unissued shares.

1.4 Stock Certificates. On and after the Effective Date, all of the outstanding certificates which prior to that time represented shares of the common stock of Chi-Chi's Minnesota shall be deemed for all purposes to evidence ownership of and to represent the shares of Chi-Chi's Delaware into which the shares of Chi-Chi's Minnesota represented by such certificates have been converted as herein provided and shall be so registered on the books and records of Chi-Chi's Delaware or its transfer agents. The registered owner of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to Chi-Chi's Delaware or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the shares of Chi-Chi's Delaware evidenced by such outstanding certificate as above provided.

1.5 Options. Upon the Effective Date, Chi-Chi's Delaware will assume and continue all of Chi-Chi's Minnesota's stock option plans, including, but not limited to its 1981 Stock Option and Stock Appreciation Rights Plan and 1985 Stock Option Plan for Non-Employee Directors, and the outstanding and unexercised portion of all options to buy common stock of Chi-Chi's Minnesota shall become options for the same number of shares of common stock of Chi-Chi's Delaware with no other changes in the terms and conditions of such options, including exercise prices, and effective upon the Effective Date, Chi-Chi's Delaware hereby assumes the outstanding and unexercised portions of such options and the obligations of Chi-Chi's Minnesota with respect thereto.

1.6 Convertible Subordinated Debentures. Upon the Effective Date, the rights and obligations of Chi-Chi's Minnesota under the Indenture, dated as of October 11, 1984, between Citizens Fidelity Bank and Trust Company and Chi-Chi's Minnesota (the "Indenture") shall be assumed by the Surviving Corporation and the conversion privilege under the 9% Convertible Subordinated Debentures due in 2009, issued by Chi-Chi's Minnesota pursuant to the Indenture shall relate to one share of common stock of Chi-Chi's Delaware for each share of Chi-Chi's Minnesota's common stock to which such conversion privilege related immediately before the Effective Date, such conversion privilege to be thereupon exercisable upon and otherwise subject to the same terms and conditions including, without limitation, conversion price, which applied with respect to the conversion privilege as of the Effective Date.

II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

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2.1 Certificate of Incorporation and By-Laws At and after the Effective Date, the certificate of incorporation of Chi-Chi's Delaware as set forth in full in Appendix 1 attached hereto and hereby made a part hereof and the By-Laws of Chi-Chi's Delaware as set forth in full in Appendix 2 attached hereto and hereby made a part hereof, in each case in effect on the Effective Date, shall be the Certificate of Incorporation and By-Laws of the Surviving Corporation without change or amendment until further amended in accordance with the provisions thereof and applicable law.

2.2 Directors. The directors of Chi-Chi's Minnesota immediately preceding the Effective Date shall become the directors of Chi-Chi's Delaware on and after the Effective Date to serve until the expiration of their current terms and until their successors are elected and qualified.

2.3 Officers. The officers of Chi-Chi's Minnesota immediately preceding the Effective Date shall become the officers of Chi-Chi's Delaware on the Effective Date to serve at the pleasure of its Board of Directors.

III. MISCELLANEOUS

3.1 Condition Precedent. Consummation of the Merger is subject to the approval by the affirmative vote of the holders of a majority of outstanding shares of common stock of Chi-Chi's Minnesota

3.2 Further Assurances. From time to time, us and when required by Chi-Chi's Delaware or by its successors and assigns, there shall be executed and delivered on behalf of Chi-Chi's Minnesota such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other action, as shall be appropriate or necessary in order to vest or perfect in or to conform to record or otherwise, in Chi-Chi's Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises, and authority of Chi-Chi's Minnesota and otherwise to carry out the purposes of this Merger Agreement, and the officers and directors of Chi-Chi's Delaware are fully authorized in the name and on behalf of Chi-Chi's Minnesota or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

3.3 Amendment. At any time before or after approval by the shareholders of Chi-Chi's Minnesota, this Merger Agreement may be amended in any manner (except that any of the principal terms may not be amended without the approval of the shareholders of Chi-Chi's Minnesota) as may be determined in the judgment of the respective Board of Directors of Chi-Chi's Delaware and Chi-Chi's Minnesota to be necessary, desirable or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purpose and intent of this Merger Agreement.

3.4 Abandonment. At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either Chi-Chi's Minnesota or Chi-Chi's Delaware or both, notwithstanding the approval of this Merger Agreement by the shareholders of Chi-Chi's Minnesota.

3.5 Counterparts. In order to facilitate the filing and recording of this Merger Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original

IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by the Board of Directors of Chi-Chi's Minnesota and Chi-Chi's Delaware, is hereby executed on behalf of each said corporation and attested by their respective officers thereunto duly authorized

CHI-CHI'S, INC.
A Minnesota Corporation

By [Signature]
Chairman of the Board and
Chief Executive Officer

ATTEST:

[Signature]
Secretary

CHI-CHI'S, INC.
A Delaware Corporation

By [Signature]
Chairman of the Board and
Chief Executive Officer

ATTEST:

[Signature]
Secretary

APPENDIX 1

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CERTIFICATE OF INCORPORATION
OF
CHI-CHI'S, INC.

ARTICLE 1 — NAME

1.1 The name of the corporation shall be Chi-Chi's, inc.

ARTICLE 2 — REGISTERED OFFICE

2.1 The address of the corporation's registered office in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company

ARTICLE 3 — DURATION

3.1 The duration of the corporation shall be perpetual.

ARTICLE 4 — PURPOSES

4.1 The corporation shall have general business purposes and may engage in any lawful activities for which corporations may be organized under the General Corporation Law of Delaware

ARTICLE 5 — CAPITAL STOCK

5.1 **Authorized Shares.** The total authorized number of shares of the corporation shall be Seventy Million Two Hundred Fifty Thousand (70,250,000) shares, consisting of Two Hundred Fifty Thousand (250,000) shares of Preferred Stock of a par value of Twenty-Five Cents (\$.25) and Seventy Million (70,000,000) shares of Common Stock of a par value of One Cent (\$.01).

5.2 **Issuance of Stock.** The Board of Directors of the corporation is authorized from time to time to accept subscriptions for, allot, issue, sell and deliver shares of stock of any class of the corporation, including stock issued as a stock dividend, to such persons, at such times and upon such terms and conditions as the Board shall determine.

5.3 **Issuance of Stock Rights.** The Board of Directors is further authorized from time to time to grant and issue rights to convert securities of the corporation into shares of stock of the corporation of any class or classes, options to purchase or subscribe for such shares of stock, and warrants to purchase or subscribe for such shares of stock, and to fix the terms, provisions and conditions of such rights, options or warrants, including the conversion basis or bases and the option price or prices at which such shares may be purchased or subscribed for.

5.4 **Preferred Stock Rights.** The Preferred Stock shall have the following rights, privileges and limitations:

(a) Holders of Preferred Stock shall not be entitled to vote at any time or under any circumstances except as otherwise required by law.

(b) Unless all dividends accumulated or accrued upon outstanding shares of Preferred Stock shall have been paid or set apart from the surplus or net earnings of the corporation, no dividends (other than dividends payable solely in shares of Common Stock) shall be declared or paid upon Common Stock

(c) In the event of any liquidation, dissolution or winding up of the corporation, holders of Preferred Stock shall be entitled to receive the liquidation price thereof in full, plus any unpaid dividends accrued thereon to the date of distribution, before any distributions shall be made on account of the Common Stock. After such payment to the holders of Preferred Stock, any remaining assets of the corporation available for distribution shall be distributed solely for the ratable benefit of the holders of Common Stock

(d) Preferred Stock may be issued in such series and with such relative rights, preferences and restrictions as may be determined by the Board of Directors pursuant to Section 5.5 of this Article 5

5.5 **Issuance of Series of Stock.** The Board of Directors is further authorized from time to time to divide any class of stock into one or more series thereof and, upon filing a certified copy of the authorizing resolution adopted by the Board of Directors in the manner provided by law, to accept subscriptions for, allot, issue, sell and deliver shares of any such series, with such dividend rate, redemption price, liquidation price, conversion rights, and sinking or purchase fund rights and of such number of shares constituting the series as the Board shall establish in such resolution.

ARTICLE 6 — RIGHTS OF SHAREHOLDERS

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6.1 **Preemptive Rights.** No holder of any stock of the corporation shall have any preemptive right to subscribe for or purchase his proportionate share of any stock of the corporation now or hereafter authorized or issued.

6.2 **Voting Rights.** At each meeting of the shareholders and with respect to any matter upon which the shareholders shall have a right to vote, each holder of record of shares of Common Stock shall be entitled to one (1) vote for each share of Common Stock so held. No shareholder shall have the right to cumulate his votes for the election of directors and there shall be no cumulative voting for any purpose whatsoever.

ARTICLE 7 — INCORPORATOR

7.1 The name and address of the incorporator is as follows.

Hal W. Smith	10200 Linn Station Road Louisville, Kentucky 40223
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ARTICLE 8 — DIRECTORS

8.1 **Names.** The names and post office addresses of the directors of the corporation on the date of adoption of this Certificate of Incorporation are:

Hal W. Smith	10200 Linn Station Road Louisville, Kentucky 40223
Joseph P. Smaha	10200 Linn Station Road Louisville, Kentucky 40223
John R. Bilone	10200 Linn Station Road Louisville, Kentucky 40223
James A. Patterson	10000 Shelbyville Road Louisville, Kentucky 40223
William C. Ballard, Jr.	500 West Main Street Louisville, Kentucky 40202
Michael M. Fleishman	3300 First National Tower Louisville, Kentucky 40202
Robert G. Cowan	P.O. Box 2324 Pasco, Washington 99302
Paul J. Percotti	10101 Linn Station Road Louisville, Kentucky 40223

8.2 **Number and Term.** The management of the corporation shall be vested in a Board of Directors. The number of directors shall be fixed by the By-Laws and may be altered by amending the By-Laws but shall never be less than required by law. The term of office of each of the directors shall be fixed by the By-Laws.

ARTICLE 9 — BY-LAWS

9.1 The Board of Directors is expressly authorized to make and alter By-Laws of this corporation, subject to the power of the shareholders to change or repeal such By-Laws and subject to any other limitations on such authority provided by the General Corporation Law of Delaware.

ARTICLE 10 — MISCELLANEOUS

10.1 **Interested Directors.** In the absence of fraud, no contract or other transaction between the corporation and any other corporation, and no act of the corporation, shall in any way be affected or invalidated by the fact that any of the directors of the corporation are pecuniarily or otherwise interested in, or are directors or officers of, such other corporation; and, in the absence of fraud, any director, individually, or any firm of which any director may be a member, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the corporation; provided, in any case, that the fact that he or such firm is so interested shall be disclosed or shall have

been known to the Board of Directors or a majority thereof, and any director of the corporation who is also a director or officer of any such other corporation or who is so interested may be counted in determining the existence of a quorum at any meeting of the Board of Directors of the corporation which shall authorize any such contract, act or transaction and may vote thereat to authorize any such contract, act or transaction with like force and effect as if he were not such director or officer of such other corporation or not so interested.

10.2 Elimination of Certain Liability of Directors. 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, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

10.3 Indemnification and Insurance.

(a) Right to indemnification. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer, of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment), against all expense, liability and loss (including attorney's fees, judgments, fines, ERISA, excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and shall inure to the benefit of his or her heirs, a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators, provided however that, except as provided in paragraph (b) hereof, the corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the board of directors of the corporation. The right to indemnification conferred in this section shall be a contract right and shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided however, that, if the Delaware General Corporation Law requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this section or otherwise. The corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(b) Right of Claimant to Bring Suit. If a claim under paragraph (a) of this section is not paid in full by the corporation within thirty (30) days after a written claim has been received by the corporation the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the corporation) that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(c) Non-Exclusivity of Rights. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.

(d) Insurance. The corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

ARTICLE 11 — MERGER, CONSOLIDATION AND SALE OF ASSETS

11.1 When and if authorized by the affirmative vote of the holders of record of shares of Common Stock entitling them to exercise at least a majority of the total voting power of all shareholders authorized under these Articles to vote, the corporation may merge or consolidate into or with another corporation or sell, lease, exchange or otherwise dispose of all or substantially all of its property and assets, including its good will, upon such terms and conditions and for such consideration (which may be money, stock, bonds or other instruments for the payment of money or other property) as the Board of Directors shall deem advisable.

ARTICLE 12 — AMENDMENT OF CERTIFICATE OF INCORPORATION

12.1 **Reservation of Rights.** The corporation reserves the right to amend, alter, change or repeal any provisions contained in this Certificate of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon shareholders herein are granted subject to this reservation.

12.2 **Amendment procedure.** Any amendment may be adopted by the affirmative vote of the holders of record of shares of Common Stock entitling them to exercise at least a majority of the total voting power of all shareholders authorized under these Articles to vote, except as may be otherwise prescribed by the Statutes of the State of Delaware.

I, THE UNDERSIGNED, being the incorporator hereinabove named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this Certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunder set my hand this _____ day of July, 1986.

Hal W. Smith

APPENDIX 2

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BY-LAWS OF CHI-CHI'S, INC.

ARTICLE 1.

OFFICES

1.1) **Offices.** The registered office of the corporation shall be c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware, and the corporation may have offices at such other places within or without the State of Delaware as the Board of Directors shall from time to time determine or the business of the corporation requires.

ARTICLE 2.

MEETINGS OF SHAREHOLDERS

2.1) **Annual Meeting.** The Annual Meeting of the shareholders of this corporation shall be held at a time and on such date, in each calendar year, as determined by the Board of Directors or President prior to the date of the Annual Meeting. Such Annual Meeting, or Adjourned Meeting, may be held at the corporation's registered office or at any other place within or without the State of Delaware as may be selected by the Board of Directors or President or as may be designated in the notice of call of such meeting. At the Annual Meeting, the shareholders, voting as provided in the Articles of Incorporation, shall elect directors and shall transact such other business as shall properly come before the meeting.

2.2) **Special Meetings.** Special meetings of the shareholders entitled to vote shall be called by the Secretary at any time upon request of the Chairman of the Board, the President or the Board of Directors (acting upon majority vote), or upon request by shareholders holding ten percent (10%) or more of the voting power of the shareholders.

2.3) **Notice of Meetings.** There shall be mailed to each shareholder entitled to vote, at his address as shown by the books of the corporation, a notice setting out the place, date and hour of the annual meeting or any special meeting, which notice shall be mailed at least ten (10) days prior to the date of the meeting. Notice of any special meeting shall state the purpose or purposes of the proposed meeting, and the business transacted at all special meetings shall be confined to purposes stated in the notice. Attendance at a meeting by any shareholder, without objection in writing by him, shall constitute his waiver of notice of the meeting.

2.4) **Quorum and Adjourned Meetings.** The holders of a majority of all shares outstanding and entitled to vote, represented either in person or by proxy, shall constitute a quorum for the transaction of business at any annual or special meeting of the shareholders. In case a quorum is not present at any meeting, those present shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite number of voting shares shall be represented. At such adjourned meetings at which the required amount of voting shares shall be represented, any business may be transacted which might have been transacted at the original meeting.

2.5) **Voting.** At each meeting of the shareholders, every shareholder having the right to vote shall be entitled to vote in person or by proxy duly appointed by an instrument in writing subscribed by such shareholder. Each shareholder shall have one (1) vote for each share having voting power standing in his name on the books of the corporation. The vote for directors or, upon the demand of any shareholder, the vote upon any other question before the meeting, shall be by ballot. All elections shall be determined and all questions decided by a majority vote of the number of shares entitled to vote and represented at any meeting at which there is a quorum except in such cases as shall otherwise be required by statute, the Certificate of Incorporation or these By-laws. Directors shall be elected by a plurality of the votes cast by holders of shares entitled to vote thereon.

2.6) **Record Date.** The Board of Directors may fix a time, not exceeding sixty (60) days preceding the date of any meeting of shareholders, as a record date for the determination of the shareholders entitled to notice of and to vote at such meeting, notwithstanding any transfer of any shares on the books of the corporation after any record date so fixed. The Board of Directors may close the books of the corporation against transfer of shares during the whole or any part of such period.

2.7) **Order of Business.** The suggested order of business at the annual meeting and, to the extent appropriate, at all other meetings of the shareholders shall, unless modified by the presiding chairman, be

- (a) Call of roll
- (b) Proof of due notice of meeting or waiver of notice
- (c) Determination of existence of quorum
- (d) Reading and disposal of any unapproved minutes
- (e) Annual reports of officers and committees
- (f) Election of directors

- (g) Unfinished business
- (h) New business
- (i) Adjournment

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ARTICLE 3. DIRECTORS

3.1 **General Powers.** The property, affairs and business of the corporation shall be managed by or under the direction of the Board of Directors.

3.2 **Number, Term and Qualifications.** The number of Directors shall not be less than five (5) nor more than nine (9). Directors need not be shareholders. The shareholders shall determine at each annual meeting, within the limits herein prescribed the number of Directors to be elected; provided that hereafter the authorized number of Directors may be increased by the shareholders or the Board of Directors or decreased by the shareholders, or by amendment to these By-Laws. Each Director at each annual meeting of shareholders shall be elected for a term of one (1) year and shall hold office until his successor is elected and qualified or until his resignation or removal as provided by statute.

3.3 **Vacancies.** Vacancies on the Board of Directors shall be filled by the remaining members of the Board, though less than a quorum; provided that newly created directorships resulting from an increase in the authorized number of directors shall be filled by two-thirds (2/3) of the directors serving at the time of such increase. Persons so elected shall be directors until their successors are elected and qualify.

3.4 **Quorum.** A majority of the directors at the time in office shall constitute a quorum for the transaction of business.

3.5 **First Meeting.** As soon as practicable after each annual election of directors, the Board of Directors shall meet for the purpose of organization, selecting or appointing officers of the corporation, and transaction of other business, at the place where the shareholders' meeting is held or at the place where regular meetings of the Board of Directors are held. No notice of such meeting need be given. Such first meeting may be held at any other time and place specified in a notice given as hereinafter provided for special meetings or in a waiver of notice signed by all the directors.

3.6 **Regular Meetings.** Regular meetings of the Board of Directors shall be held from time to time at such time and place as may from time to time be fixed by resolution adopted by a majority of the entire Board of Directors. No notice need be given of any regular meeting.

3.7 **Special Meetings.** Special meetings of the Board of Directors may be held at such time and place as may be designated in the notice or the waiver of notice of the meeting. Special meetings of the Board of Directors may be called by the Chairman of the Board, the President or by any two (2) directors. Unless notice shall be waived by all directors, notice of such special meeting (including a statement of the purposes thereof) shall be given to each director at least forty-eight (48) hours in advance of the meeting if oral or three (3) days in advance of the meeting if by mail, telegraph or other written communication; provided, however, that meetings may be held without waiver of notice from or giving notice to any director while he is in the armed forces of the United States or outside the continental limits of the United States. Attendance at a meeting by any director, without objection in writing by him, shall constitute a waiver of notice of such meeting.

3.8 **Compensation.** Directors and members of any committee of the Board shall receive only such compensation therefore as may be determined from time to time by resolution of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving proper compensation therefore.

3.9 **Executive Committee.** The Board of Directors may, by unanimous affirmative action of the entire Board, designate two (2) or more of its number to constitute an Executive Committee, which, to the extent determined by unanimous affirmative action of the entire Board, shall have and exercise the authority of the Board in the management of the business of the corporation. Any such Executive Committee shall act only in the interval between meetings of the Board.

3.10 **Order of Business.** The suggested order of business at any meeting of the Board of Directors shall, to the extent appropriate and unless modified by the presiding chairman, be

- (a) Roll call
- (b) Proof of due notice of meeting or waiver of notice, or unanimous presence and declaration by President
- (c) Determination of existence of quorum
- (d) Reading and disposal of any unapproved minutes
- (e) Reports of officers and committees
- (f) Election of officers
- (g) Unfinished business
- (h) New business
- (i) Adjournment

ARTICLE 4.
OFFICERS

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4.1) **Number and Designation.** The Board of Directors shall elect a President, a Secretary and a Treasurer, and may elect or appoint a Chairman of the Board, one or more Vice Presidents, and such other officers and agents as it may from time to time determine. No one person shall hold simultaneously the offices of President, Secretary and Treasurer.

4.2) **Election, Term of Office and Qualifications.** At each annual meeting of the Board of Directors, the Board shall elect the officers provided for in Section 4.1 and such officers shall hold office until the next annual meeting of the Board or until their successors are elected or appointed and qualify, provided, however, that any officer may be removed with or without cause by the affirmative vote of a majority of the entire Board of Directors (without prejudice, however, to any contract rights of such officer)

4.3) **Resignations.** Any officer may resign at any time by giving written notice to the Board of Directors or to the Chairman of the Board, President or Secretary. The resignation shall take effect at the time specified in the notice and, unless otherwise specified therein, acceptance of the resignation shall not be necessary to make it effective.

4.4) **Vacancies in Offices.** If there be a vacancy in any office of the corporation, by reason of death, resignation, removal or otherwise, such vacancy shall be filled for the unexpired term by the Board of Directors at any regular or special meeting.

4.5) **Chairman of the Board.** The Chairman of the Board, if any, shall preside at all meetings of the shareholders and of the Board and shall exercise general supervision and direction over the implementation of Board policy affecting the affairs of the corporation. The Chairman of the Board may call a meeting of the Board whenever he deems it advisable.

4.6) **President.** Unless otherwise designated by the Board of Directors the President shall be the Chief Executive and Chief Operating Officer of the corporation. The President shall have general active management of the business of the corporation. In the absence of the Chairman of the Board, he shall preside at all meetings of the shareholders and Board of Directors. In the absence of a designated Chief Executive Officer other than the President he shall see that all policies and directives of the Board of Directors are carried into effect. He shall perform all duties usually incident to the office of President and such other duties as may from time to time be assigned to him by the Board.

4.7) **Vice President.** Each Vice President shall have such powers and shall perform such duties as may be specified in these By-Laws or prescribed by the Board of Directors. In the event of absence or disability of the President, the Vice Presidents shall succeed to his powers and duties in the order in which they are elected.

4.8) **Secretary.** The Secretary shall be secretary of and shall attend all meetings of the shareholders and Board of Directors. He shall act as clerk thereof and shall record all the proceedings of such meetings in the minute book of the corporation. He shall give proper notice of meetings of shareholders and directors. He may, with the Chairman of the Board, President or Vice President, sign all certificates representing shares of the corporation and shall perform the duties usually incident to his office and such other duties as may be prescribed by the Board of Directors from time to time.

4.9) **Treasurer.** The Treasurer shall keep accurate accounts of all monies of the corporation received or disbursed, and shall deposit all monies, drafts and checks in the name of and to the credit of the corporation in such banks and depositories as the Board of Directors shall designate from time to time. He shall have power to endorse for deposit the funds of the corporation as authorized by the Board of Directors. He shall render to the Chairman of the Board, President and the Board of Directors, whenever required, an account of all of his transactions as Treasurer and statements of the financial condition of the corporation, and shall perform the duties usually incident to his office and such other duties as may be prescribed to his office and such other duties as may be prescribed by the Board of Directors from time to time.

4.10) **Chief Executive Officer; Chief Operating Officer.** The Board of Directors, from time to time may designate any person appointed or elected Chairman of the Board and any person elected President to be the Chief Executive Officer or Chief Operating Officer of the corporation.

A person designated Chief Executive Officer of the corporation shall have primary responsibility for the management and supervision of the business of the corporation. In the event that the Chief Executive Officer is not the President of the corporation, the Chief Executive Officer shall supervise the performance of the President and shall be responsible for the execution of the policies and directives of the Board of Directors. The Chief Executive Officer shall report directly to the Board of Directors. The Chief Executive Officer shall perform such other duties as may be assigned by the Board of Directors.

A person designated Chief Operating Officer of the corporation shall be responsible for the day-to-day management of the corporation's business. The Chief Operating Officer shall report directly to the Chief Executive Officer of the corporation, and shall consult with the Chief Executive Officer on all matters of corporate policy. The Chief Operating Officer shall perform such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

Persons designated Chief Executive Officer or Chief Operating Officer shall serve in such capacities at the pleasure of the Board of Directors.

4.11) **Other Officers.** The Board of Directors may appoint an Assistant Secretary, an Assistant Treasurer and such other officers, agents and employees as the Board may deem advisable. Each such officer, agent or employee so appointed shall hold office at the pleasure of the Board and shall perform such duties as may be assigned to him by the Board, Chairman of the Board or President.

ARTICLE 5.

SHARES AND THEIR TRANSFER

5.1) **Certificates of Stock.** Every owner of stock of the corporation shall be entitled to a certificate, in such form as the Board of Directors may prescribe, certifying the number of shares of stock of the corporation owned by him. The certificates for such stock shall be numbered (separately for each class) in the order in which they shall be issued and shall be signed in the name of the corporation by the Chairman of the Board, President or a Vice President, and by the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or any other proper officer of the corporation thereunto authorized by the Board of Directors. Signatures of the officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation. Certificates on which a facsimile signature of a former officer appears may be issued with the same effect as if he were such officer on the date of issue.

5.2) **Stock Record.** As used in these By-Laws, the term "shareholder" shall mean the person, firm or corporation in whose name outstanding shares of capital stock of the corporation are currently registered on the stock record books of the corporation. A record shall be kept of the name of the person, firm or corporation owning the stock represented by such certificates respectively, the respective dates thereof and, in the case of cancellation, the respective dates of cancellation. Every certificate surrendered to the corporation for exchange or transfer shall be cancelled and no new certificate or certificates shall be issued in exchange for any existing certificate until such existing certificate shall have been so cancelled (except as provided for in Section 5.4 of this Article 5).

5.3) **Transfer of Shares.** Transfer of shares on the books of the corporation may be authorized only by the shareholder named in the certificate (or his legal representative or duly authorized attorney-in-fact) and upon surrender for cancellation of the certificate or certificates for such shares. The shareholder in whose name shares of stock stand on the books of the corporation shall be deemed the owner thereof for all purposes as regards the corporation; provided, that when any transfer of shares shall be made as collateral security and not absolutely, such fact, if known to the Secretary of the corporation or to the transfer agent, shall be so expressed in the entry of transfer.

5.4) **Lost Certificates.** Any shareholder claiming a certificate of stock to be lost or destroyed shall make an affidavit or affirmation of that fact in such form as the Board of Directors may require, and shall, if the directors so require, give the corporation a bond of indemnity in form and with one (1) or more sureties satisfactory to the Board of at least double the value, as determined by the Board, of the stock represented by such certificate in order to indemnify the corporation against any claim that may be made against it on account of the alleged loss or destruction of such certificate, whereupon a new certificate may be issued in the same tenor and for the same number of shares as the one alleged to have been destroyed or lost.

ARTICLE 6.

GENERAL PROVISIONS

6.1) **Dividends.** Subject to the provisions of the Certificate of Incorporation and of these By-Laws, the Board of Directors may declare dividends from the net earnings or net assets of the corporation available for dividends whenever and in such amounts as, in its opinion, the condition of the affairs of the corporation shall render it advisable.

6.2) **Surplus and Reserves.** Subject to the provisions of the Certificate of Incorporation and of these By-Laws, the Board of Directors in its discretion may use and apply any of the surplus of the corporation available for such purpose to purchase or acquire any of the shares of the capital stock of the corporation in accordance with the law, or from time to time may set aside from its net assets or net earnings such sums as it, in its absolute discretion, may think proper as a reserve fund to meet contingencies, for the purpose of maintaining or increasing the property or business of the corporation, or for any other purpose it may think conducive to the best interests of the corporation.

6.3) **Fiscal Year.** The fiscal year of the corporation shall be established by the Board of Directors.

6.4) **Audit of Books and Accounts.** The books and accounts of the corporation shall be audited at least once in each fiscal year or at such times as may be ordered by the Board of Directors.

6.5) **Seal.** The corporation shall have such corporate seal or no corporate seal as the Board of Directors shall from time to time determine.

ARTICLE 7.

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WAIVER OF NOTICE AND UNANIMOUS CONSENT

7.1) **Waiver of Notice.** Whenever any notice whatsoever is required to be given by these By-Laws, the Articles of Incorporation or any of the laws of the State of Delaware, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before, at or after the time stated therein, shall be deemed equivalent to the actual required notice.

7.2) **Authorization Without Meeting.** Any action of the shareholders, the Board of Directors, or any lawfully constituted committee of the corporation which may be taken at a meeting thereof, may be taken without a meeting if authorized by a writing signed by all of the holders of shares who would be entitled to notice of a meeting for such purpose, by all of the directors, or by all of the members of such committee, as the case may be.

ARTICLE 8.

AMENDMENTS OF BY-LAWS

8.1) **Amendments.** These By-Laws may be altered, amended, added to or repealed by the affirmative vote of a majority of the members of the Board of Directors at any regular meeting of the Board or at any special meeting of the Board called for that purpose, subject to the power of the shareholders to change or repeal such By-Laws and subject to any other limitations on such authority of the Board provided by the Delaware General Corporation Law.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

SEP 29 1988

John Andrew Howe
Secretary of State

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I, Richard A. Sanks, Secretary of Chi-Chi's, Inc., a corporation organized and existing under the laws of the State of Minnesota ("Chi-Chi's Minnesota"), hereby certify as such Secretary that the Agreement and Plan of Merger dated as of July 28, 1986, between Chi-Chi's Minnesota and Chi-Chi's, Inc., a Delaware corporation, to which this certificate is attached was duly submitted to the stockholders of Chi-Chi's Minnesota at the annual meeting of said stockholders called and held on the 29th day of September, 1986, pursuant to the Business Corporation Act of the State of Minnesota for the purpose, among other things, of considering and taking action upon the proposed Agreement and Plan of Merger; that _____ shares of Common Stock, par value \$.01 per share, of Chi-Chi's Minnesota ("Common Stock") were on said date issued and outstanding; that the proposed Agreement and Plan of Merger was approved by the affirmative vote of the holders of a majority of the total number of shares of the outstanding Common Stock entitled to vote thereon, and that thereby such Agreement and Plan of Merger was at such meeting duly adopted as the act of the stockholders of Chi-Chi's Minnesota and the duly adopted agreement of such corporation.

Richard A. Sanks
Secretary

I, Richard A. Sanks, Secretary of Chi-Chi's, Inc., a corporation organized and existing under the laws of the State of Delaware ("Chi-Chi's Delaware"), hereby certify as such Secretary that the Agreement and Plan of Merger dated as of July 28, 1986, between Chi-Chi's, Inc., a Minnesota corporation ("Chi-Chi's Minnesota"), and Chi-Chi's Delaware, to which this certificate is attached, was duly consented to in writing by Chi-Chi's Minnesota, the holder of all the outstanding stock of Chi-Chi's Delaware, in accordance with Section 228 of Title 8 of the General Corporation Law of the State of Delaware, and that thereby such Agreement and Plan of Merger was duly adopted as the act of the sole stockholder of Chi-Chi's Delaware and the duly adopted agreement of such corporation.

Richard A. Sanks
Secretary

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

SEP 29 1986

Richard A. Sanks
Secretary of State