

P970000 86091
Food\$aver\$

(A Florida Corporation in formation)
148 North Ridgewood Avenue
Daytona Beach, FL 32114

Thursday, September 25, 1997

Department of State
Division of Corporations
409 East Gaines Street
Tallahassee, Florida 32399

Scratch N Dent Groceries, Inc.

RE: Articles of Incorporation
FoodSavers, Inc.

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-10/03/97--01078--003
****122.50 ****122.50

Gentlemen:

Enclosed is an original and 1 copy of the Articles of Incorporation and Certificate of Designation for Registered Agent / Registered Office for FoodSavers, Inc. and a check in the amount of \$ 122.50 for all filing fees, including:

\$ 35.00 Articles of Incorporation Filing Fee
\$ 35.00 Registered Agent / Registered Office Designation Fee
\$ 52.50 Fee for Certified Copy of the Articles of Incorporation
\$ 122.50 Total Fees Enclosed.

Please have the certified copy of the Articles of Incorporation sent to my personal attention at the address below:

Gary S. Griffin
~~FoodSavers, Inc.~~
148 North Ridgewood Avenue
Daytona Beach, Florida 32114
Telephone (904) 252-7661

Thank you,

410-472-4656
Conflict 96-678
789-2544, 25
GAVE
Ben Griffin

Gary S. Griffin

AUTHORIZATION BY PHONE TO

CORREL name

DATE 10-6-97

DOC. EXAM BA

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

97 OCT -3 PM 1:32

FILED

**ARTICLES OF INCORPORATION
OF**

FOODSAVERS SCRATCH N DENT GROCERIES, INC.

FILED
97 OCT -3 PM 1:33
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**ARTICLE 1
NAME**

The name of the Corporation is: FOODSAVERS SCRATCH N DENT
GROCERIES, INC.

**ARTICLE 2
PRINCIPAL OFFICE**

The principal place of business and mailing address of this corporation is:

148 North Ridgewood Avenue
Daytona Beach, Florida 32114

**ARTICLE 3
SHARES OF STOCK**

Section 1. Authorized Shares. The total number of shares of capital stock which the Corporation is authorized to issue is one hundred thousand (100,000) of Common Stock having par value of one dollar (\$1.00) per share.

Section 2. Common Stock. All shares of Common Stock shall be identical with each other in every respect. The shares of Common Stock shall entitle the holders thereof to one vote for each share upon all matters submitted to a vote of the shareholders of the Corporation. Subject to the provisions of law and the preferences of any stock ranking prior to the Common Stock as to dividends, the holders of Common Stock shall be entitled to receive dividends at such time and in such amounts as may be determined by the Board of Directors. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Corporation and the preferential amounts to which the holders of any stock ranking prior to the Common Stock in the distribution of assets shall be entitled upon liquidation, the holders of

Common Stock and the holders of any other stock ranking on a parity with the Common Stock in the distribution of assets upon liquidation shall be entitled to share in the remaining assets of the Corporation according to their respective interests.

Section 3. Changes in Authorized Capital Stock The authorized amount of capital stock may be increased or decreased and the types and classes of capital stock changed from time to time by the affirmative vote of the holders of at least eighty percent (80%) of the combined voting power of the then outstanding shares of Voting Stock, as defined in Article 12 of these Articles of Incorporation, voting together as a single class.

ARTICLE 4

INITIAL REGISTERED AGENT AND ADDRESS

The name and address of the initial registered agent for this Corporation is:

Gary S. Griffin
148 North Ridgewood Avenue
Daytona Beach, Florida 32114

ARTICLE 5

CORPORATE PURPOSES AND POWERS

The purpose of the Corporation is to engage in any part of the world in any capacity in any lawful act or activity for which corporations may be organized under the Florida Business Corporation Act, and the Corporation shall be authorized to exercise and enjoy all powers, rights and privileges which corporations organized under the Florida Business Corporation Act may have under the laws of the State of Florida as in force from time to time, including without limitation all powers, rights and privileges necessary or convenient to carry out all those acts and activities in which it may lawfully engage.

ARTICLE 6

BOARD OF DIRECTORS

Section 1. Number of Classes of Directors; Filling of Vacancies in Board of Directors. In furtherance and not in limitation of the powers conferred by the laws of the State of Florida, the following provisions are inserted in these Articles of Incorporation for the regulation and conduct of the business and affairs of the Corporation.

(1) The business and affairs of the Corporation shall be managed by, or under the direction of, a Board of Directors consisting of one (1) or more members. The exact number of directors shall be fixed from time to time by resolution of a majority of the whole Board of Directors. The directors may be classified with respect to the time during which they shall severally hold office by dividing them into three classes, as nearly equal in number as possible. Each class of directors shall consist of not less than one (1) director except during the period preceding the initial election of directors to each class and, during the period of a vacancy of the sole director of a particular class until such vacancy is filled. All directors of the Corporation shall hold office until their respective successors shall be elected and qualified or until their earlier resignation or removal. At the meeting of the stockholders of the Corporation held for the election of the first such classified Board, the directors of the first class (designated Class I) shall be elected for a term expiring at the annual meeting of stockholders one year thereafter, the directors of the second class (designated Class II) for a term expiring at the annual meeting of stockholders two years thereafter and the directors of the third class (designated Class III) for a term expiring at the annual meeting of stockholders three years thereafter and, in each instance, until their respective successors shall be elected and qualified. At each annual meeting of stockholders held after such classification and election, the successors to the class of directors whose terms shall expire that year shall be elected to hold office for a term of three years (and until their respective successors shall be elected and

qualified or until their earlier resignation or removal), so that the term of office of one class of directors shall expire each year. In instances where the total number of directors constituting the whole Board, as fixed by resolution of the Board of Directors, is a number other than an integral multiple of three, the number of directors in each class shall be determined by the Board of Directors. The directors shall have the power, from time to time, to increase or decrease their own number, within the minimum and maximum limitations specified herein, by resolution of the Board of Directors as hereinabove provided. Any newly-created directorships, or any decrease in directorships, authorized as aforesaid by resolution of the Board of Directors, shall be so apportioned among the classes as to make all classes as nearly equal in number as possible.

(2) Newly-created directorships resulting from an increase in the number of directors and all vacancies occurring in the Board, including vacancies occurring in the Board by reason of the removal of directors, may be filled by the affirmative vote of a majority of the directors then in office, though less than a quorum of the Board of Directors, and directors so chosen shall hold office until the next election of the class for which such directors shall have been chosen and until their respective successors shall be elected and qualified.

(3) Pursuant to the provisions of the Business Corporation Act of the State of Florida, Section 607.0808, Directors of the Corporation may not be removed from office except for cause and then only by the holders of eighty percent (80%) of the outstanding shares of Voting Stock of the Corporation, as defined in Article 11 of these Articles of Incorporation, voting together as a single class.

(4) The directors of the Corporation, by the affirmative vote of a majority of the whole Board, at any regular or special meeting, shall have the power to adopt, amend or repeal Bylaws of the Corporation, provided, however, that such power of the Board shall not divest the stockholders of the Corporation of their power to adopt, amend or repeal Bylaws of the Corporation.

(5) Election of directors need not be by ballot.

(6) In addition to the powers and authorities conferred upon the Board of

Directors of the Corporation by these Articles of Incorporation, the Board of Directors of the Corporation may exercise all such powers and take all such action as may be exercised or taken by the Corporation, subject, however, to the provisions of the laws of the State of Florida, these Articles of Incorporation and the Bylaws of the Corporation.

Section 2. Powers of the Board of Directors. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized:

- (1) To make, alter, amend or repeal from time to time any of the Bylaws of the Corporation, except such of them as shall have been made from time to time by the holders of shares of stock entitled to vote thereon; provided, however, that any By-laws made by the Board of Directors may be altered, amended, or repealed by the holders of stock of the Corporation entitled to vote thereon at any annual meeting or at any special meeting called for that purpose.
- (2) To authorize and cause to be executed mortgages and liens upon the real and personal property of the Corporation.
- (3) To determine the use and disposition of any surplus and net profits of the Corporation, including the determination of the amount of working capital required, to set apart out of any of the funds of the Corporation, whether or not available for dividends, a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.
- (4) To designate, by resolution passed by a majority of the Board, one or more committees, each committee to consist of one or more directors of the Corporation, which, to the extent provided in the resolution passed by a majority of the Board or in the Bylaws of the Corporation, shall have and may exercise, subject to the provisions of the Business Corporation Act of the State of Florida, the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be provided in the Bylaws of the Corporation or

as may be determined from time to time by resolution adopted by the Board of Directors; provided, however, no such committee shall have the power or authority to amend the Articles of Incorporation, adopt an agreement of merger or consolidation, recommend to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amend the Bylaws of the Corporation; and, unless the resolution or Bylaws expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

(5) To grant rights or options entitling the holders thereof to purchase from the Corporation shares of its stock. The terms upon which, the time or times at or within which, and the price or prices at which any such rights or options may be issued and any such shares may be purchased from the Corporation upon the exercises of any such rights or options, shall be determined by the Board of Directors. In the absence of actual fraud in the transaction, the judgment of the Board of Directors as to the consideration for the issuance of such rights or options and for the issuance of shares of stock upon exercise thereof and the sufficiency of such consideration shall be conclusive. No such rights or options shall be invalidated or in any way affected by the fact that any director shall be a grantee thereof or shall vote for the issuance of such rights or options or for any plan pursuant to which any director may receive any such rights or options.

(6) To adopt or assume such plans as may from time to time be approved by it for the purchase by officers or employees of the Corporation of shares of stock of the Corporation. The terms upon which, the time or times at or within which, and the price or prices at which shares may be purchased from the Corporation pursuant to such a plan shall be determined by the Board of Directors in the plan. In the absence of actual fraud in the transaction, the judgment of the Board of Directors as to the consideration for the issuance of such shares and the sufficiency thereof shall be conclusive. No such plan, which is not at the time of adoption or assumption unreasonable or unfair, shall be invalidated or in any way affected because any director shall be entitled to purchase shares of stock of the Corporation thereunder and shall vote for any such plan.

(7) To adopt or assume and carry out such plans, as may from time to time be approved by it, for the distribution among the officers or employees of the Corporation, or any of them, in addition to their regular salaries or wages, of part of the earnings of the Corporation in consideration for or in recognition of the services rendered by such officers or employees or as in inducement to future efforts. No such plan which is not at the time of adoption or assumption unreasonable or unfair shall be invalidated or in any way affected because any director shall be a beneficiary thereunder or shall vote for any plan under which any director may benefit or for any distribution thereunder in which any director may participate.

(8) To adopt or assume and carry out such pension, deferred compensation, profit-sharing or retirement plans as may from time to time be approved by it, providing for pensions, deferred compensation, profit-sharing plan benefits or retirement income for officers or employees of the Corporation, in consideration for or in recognition of the services rendered by such officers or employees or as an inducement to future efforts. No such plan which is not at the time of adoption or assumption unreasonable or unfair shall be invalidated or in any way affected because any director shall be a beneficiary thereunder or shall vote for any plan under which any director may benefit or for any distribution thereunder in which any director may participate.

(9) To exercise, in addition to the powers and authorities hereinbefore or by law conferred upon it, any such powers and authorities and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the laws of the State of Florida and of these Articles of Incorporation and to the Bylaws of the Corporation.

Section 3. Reliance on Books. A director shall be fully protected in relying in good faith upon the books of account of the Corporation or statements prepared by any of its officers or by independent public accountants as to the value and amount of the assets, liabilities and/or net profits of the Corporation or any other facts pertinent to the existence and amount of surplus or other funds with which the Corporation's stock

might properly be purchased or redeemed.

Section 4. Limitation of Liabilities. No director shall have any personal liability for money damages to the Corporation or its shareholders for breach of fiduciary duty as a director, provided, however, that nothing herein shall eliminate or limit the liability of a director (i) for any breach of 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, or (iii) for any transaction from which the director derived an improper personal benefit.

ARTICLE 7

MEETINGS OF SHAREHOLDERS AND DIRECTORS;

CORPORATE BOOKS

Meetings of shareholders of the Corporation and the Board of Directors and of any committee thereof may be held within or without the State of Florida, as the Bylaws may provide. Except as otherwise provided by law, the books of the Corporation may be kept outside the State of Florida at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE 8

RESTRICTIONS ON DIVIDENDS

Pursuant to the provisions of the Business Corporation Act of the State of Florida, Section 607.06401, no dividend shall be declared or paid which shall impair the capital of the Corporation nor shall any distribution of assets be made to any shareholder unless the value of the assets of the Corporation remaining after such payment or distribution is at least equal to the aggregate of its debts, liabilities and capital.

ARTICLE 9

INDEMNIFICATION

(1) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding,

whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner that such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

(2) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled

to indemnify for such expenses which the court shall deem proper.

(3) To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred in connection therewith.

(4) Any indemnification under the first two paragraphs of this Article 9 (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth therein. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders.

(5) Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article 9. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

(6) The indemnification and advancement of expenses provided by or granted pursuant to the other paragraphs of this Article 9 shall not be deemed exclusive of any other rights to which any person seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

(7) The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or

agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article 9 or of the Business Corporation Act of the State of Florida.

(8) For purposes of this Article 9 references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article 9 with respect to the resulting or surviving corporation as if such constituent corporation's separate existence had continued.

(9) For the purpose of this Article 9, references to "other enterprises", shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article 9.

(10) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article 9, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall ensure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE 10

PREEMPTIVE RIGHTS AND CUMULATIVE VOTING DENIED

No holder of shares of the Corporation of any class or series shall have any preemptive right to subscribe for, purchase or receive any shares of the Corporation of any class or series now or hereafter authorized, or any options or warrants for such shares, or any securities convertible into or exchangeable for such shares, which may at any time be issued, sold or offered for sale by the Corporation. Cumulative voting by the stockholders of the Corporation at any election of directors of the Corporation is hereby prohibited.

ARTICLE 11

COMPROMISE OR ARRANGEMENT

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Florida may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of applicable Laws of the State of Florida, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders, of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three- fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders, of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

ARTICLE 12

RESERVATION OF RIGHT TO AMEND ARTICLES OF INCORPORATION

The Corporation reserves the right to amend, alter, change or repeal any provisions contained in these Articles of Incorporation in the manner now or hereafter prescribed by law, and all the provisions of these Articles of Incorporation and all rights and powers conferred in these Articles of Incorporation on shareholders, directors and officers are subject to this reserved power; provided, however, that the provisions set forth in Articles 3, 6, 8, 9 and this Article 12 may not be altered, amended or repealed unless such alteration, amendment or repeal is approved by the affirmative vote of eighty percent (80%) of the Voting Stock, as defined below, voting together as a single class. For purposes of these Articles of Incorporation, "Voting Stock" shall mean the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of Directors.

ARTICLE 13

INCORPORATORS

The name and mailing address of the incorporators is as follows:

NAME

MAILING ADDRESS

Gary S. Griffin

148 N. Ridgewood Avenue
Daytona Beach, FL 32114

Ben L. Griffin, Jr.

148 N. Ridgewood Avenue
Daytona Beach, FL 32114

THE UNDERSIGNED, being the incorporators hereinabove named, for the purpose of forming a corporation pursuant to the Business Corporation Act of the State of Florida, do make this certificate, hereby declaring and certifying that this is our act and deed and the facts herein stated are true, and accordingly have hereunto set our hands this 1 day of October, 1997.



Gary S. Griffin
Incorporator



Ben L. Griffin, Jr.
Incorporator

CERTIFICATE OF DESIGNATION
REGISTERED AGENT / REGISTERED OFFICE

FILED
97 OCT -3 PM 1:32
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of Section 607.0501, Florida Statutes, the undersigned Corporation, organized under the Laws of the State of Florida, submits the following statement in designating the registered office / registered agent, in the State of Florida:

1. The name of the Corporation is:
FOODSAVERS SCRATCH N DENT GROCERIES, INC.
2. The name and address of the registered agent and office is:
Gary S. Griffin
148 North Ridgewood Avenue
Daytona Beach, Florida 32114

Signature: _____



Gary S. Griffin
Incorporator

Date: _____

10/1/97

HAVING BEEN NAMED AS REGISTERED AGENT AND TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATING TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.

Signature: _____



Gary S. Griffin

Date: _____

10/1/97