

P10000024240

Florida Department of State  
Division of Corporations  
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**MERGER OR SHARE EXCHANGE**  
**Total Energy Resource, Inc.**

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October 27, 2010

FLORIDA DEPARTMENT OF STATE  
Division of Corporations

TOTAL ENERGY RESOURCE, INC.  
5030 CHAMPION BLVD. #G6 #443  
BOCA RATON, FL 33496

SUBJECT: TOTAL ENERGY RESOURCE, INC.  
REF: P10000024240

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**ARTICLES OF MERGER**  
(Profit Corporations)

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, Florida Statutes.

First: The name and jurisdiction of the surviving corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u> (If known/ applicable)
Total Energy Resources, Inc.	Delaware	4834318

Second: The name and jurisdiction of each merging corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u> (If known/ applicable)
Total Energy Resources, Inc.	Florida	P10000024240

Third: The Plan of Merger is attached.

Fourth: The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State.

OR \_\_\_\_\_ (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days after merger file date.)

Fifth: Adoption of Merger by surviving corporation - (COMPLETE ONLY ONE STATEMENT)  
The Plan of Merger was adopted by the shareholders of the surviving corporation on October 22, 2010

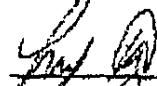
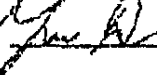
The Plan of Merger was adopted by the board of directors of the surviving corporation on \_\_\_\_\_ and shareholder approval was not required.

Sixth: Adoption of Merger by merging corporation(s) (COMPLETE ONLY ONE STATEMENT)  
The Plan of Merger was adopted by the shareholders of the merging corporation(s) on \_\_\_\_\_

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on October 22, 2010 and shareholder approval was not required.

(Attach additional sheets if necessary)

**Seventh: SIGNATURES FOR EACH CORPORATION**

<u>Name of Corporation</u>	<u>Signature of an Officer or Director</u>	<u>Typed or Printed Name of Individual &amp; Title</u>
Total Energy Resource, Inc. (Florida)		Michael DeCosimo, President
Total Energy Resource, Inc. (Delaware)		Michael DeCosimo, President

**AGREEMENT AND PLAN OF MERGER**

**OF**

**TOTAL ENERGY RESOURCE, INC., A FLORIDA CORPORATION**

**AND**

**TOTAL ENERGY RESOURCE, INC. A DELAWARE CORPORATION**

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement") dated as of October 22, 2010, made and entered into by and between Total Energy Resource, Inc., a Florida corporation ("TER-Florida"), and Total Energy Resource, Inc. a Delaware corporation ("TER-Delaware"), which corporations are sometimes referred to herein as the "Constituent Corporations."

**WITNESSETH:**

WHEREAS, TER-Florida is a corporation organized and existing under the laws of the State of Florida, having been incorporated on March 18, 2010 under the laws of the State of Florida under the Florida Business Corporation Act (the "FBCA"); and

WHEREAS, TER-Delaware is a corporation organized under the laws of the State of Delaware having been incorporated on June 9, 2010 under the laws of the State of Delaware under the Delaware General Corporation Law (the "DGCL"); and

WHEREAS, the respective Boards of Directors of TER-Florida and TER-Delaware have determined that it is desirable to merge TER-Florida with and into TER-Delaware and that TER-Delaware shall be the surviving corporation (the "Merger"); and

WHEREAS, the parties intend by this Agreement to effect a reorganization under Section 368 of the Internal Revenue Code of 1986, as amended;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, TER- Florida and TER-Delaware hereto agree as follows:

**ARTICLE I  
MERGER**

1.1 On the effective date of the Merger (the "Effective Date"), as provided herein, TER-Florida shall be merged with and into TER-Delaware, the separate existence of TER-Florida shall cease and TER-Delaware (hereinafter sometimes referred to as the "Surviving Corporation") shall continue to exist under the name of Total Energy Resource, Inc. by virtue of, and shall be governed by, the laws of the State of Delaware. The address of the registered office of the Surviving Corporation in the State of Delaware will be The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801.

**ARTICLE II**  
**CERTIFICATE OF INCORPORATION OF SURVIVING CORPORATION**

2.1 The name of the Surviving Corporation shall be "TOTAL ENERGY RESOURCE, INC." The Certificate of Incorporation of the Surviving Corporation, attached hereto as Exhibit A, as in effect on the date hereof, shall be the Certificate of Incorporation of TER-Delaware (the "TER Charter") without change, unless and until amended in accordance with Article VIII of this Agreement or otherwise amended in accordance with applicable law, provided however, Article Fourth of the TER Charter is hereby amended by changing Article Fourth so that as amended said Article Fourth shall be and read as follows:

"FOURTH: The total number of shares of stock, which this corporation is authorized to issue is Fifteen Million (15,000,000) shares of common stock with par value of \$0.001.

Each two shares of the Corporation's common stock, par value \$0.001 per share, issued and outstanding as of 5:00 p.m. eastern time on the date this Agreement and Plan of Merger is filed with the Secretary of State of the State of Delaware shall be converted and reclassified into 1 share of the Corporation's common stock, par value \$0.001 per share.

Any fractional shares resulting from such conversion will be rounded up to the nearest whole number.

While this corporation's 10% Senior Convertible Promissory Notes (the "Notes") are outstanding, this corporation shall not grant equity compensation of any kind including stock options, restricted stock, stock rights, except in connection with the hiring of certain key executive and then only with the written permission of the holders of at least 67% or more of the face amount of the Notes and Charles Vista, LLC. Once the Notes have been converted or paid, this corporation may grant stock options according to the following limitations:

Once the Notes are converted or paid-off, this corporation may grant stock options according to the following limitations: (i) In any fiscal year this corporation is limited to granting a number of stock options equal to one percent (1%) or less of the number of issued and outstanding shares at the end of the previous fiscal year, as represented in the previous year's Statement of Shareholder's Equity (the "Option Allocation"); (ii) No stock option shall ever be granted with an exercise price of less than one dollar (\$1.00) per share, adjusted for stock splits, and with an exercise price of less than 120% of the last price (closing price) of the stock on the grant day as reported by the exchange on which the Common Stock trades or is quoted on; and (iii) no stock option shall have a life of more than five (5) calendar years. Any Option Allocation not granted in one year may be carried over to subsequent years."

**ARTICLE III**  
**BYLAWS OF THE SURVIVING CORPORATION**

3.1 The Bylaws of the Surviving Corporation, as in effect on the date hereof shall be the Bylaws of TER Delaware (the "TER-Delaware Bylaws") without change, unless and until amended in accordance with Article VIII of this Agreement or otherwise amended in accordance with applicable law.

**ARTICLE IV  
EFFECT OF MERGER ON STOCK OF CONSTITUENT CORPORATIONS**

4.1 Upon the Effective Date, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their stockholders, each share of Common Stock of TER-Delaware issued and outstanding immediately prior to the Effective Date shall be changed and converted into and become one (1) fully paid and nonassessable shares of Common Stock of the Surviving Corporation. On the Effective Date, no shares of the Common Stock of TER-Florida will be issued and outstanding.

**ARTICLE V  
CORPORATE EXISTENCE, POWERS AND LIABILITIES OF THE SURVIVING CORPORATION**

5.1 On the Effective Date, the separate existence of TER-Florida shall cease. TER-Florida shall be merged with and into TER-Delaware, the Surviving Corporation, in accordance with the provisions of this Agreement. Thereafter, TER-Delaware shall possess all the rights, privileges, powers and franchises of a public as well as of a private nature, and shall be subject to all the restrictions, disabilities and duties of each of the parties to this Agreement; all singular rights, privileges, powers and franchises of TER-Florida and TER-Delaware, and all property, real, personal and mixed and all debts due to each of them on whatever account, shall be vested in TER-Delaware; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter the property of TER-Delaware, the Surviving Corporation, as they were of the respective constituent entities, and the title to any real estate, whether by deed or otherwise, vested in TER-Florida and TER-Delaware or either of them, shall not revert or be in any way impaired by reason of the Merger, but all rights of creditors and all liens upon the property of the parties hereto, shall be preserved unimpaired, and all debts, liabilities and duties of TER-Florida shall thenceforth attach to TER-Delaware, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

5.2 TER-Florida agrees that it will execute and deliver, or cause to be executed and delivered, all such deeds and other instruments and will take or cause to be taken such further or other action as the Surviving Corporation may deem necessary in order to vest in and confirm to the Surviving Corporation title to and possession of all the property, rights, privileges, immunities, powers, purposes and franchises, and all and every other interest of TER-Florida and otherwise to carry out the intent and purposes of this Agreement.

**ARTICLE VI  
OFFICERS AND DIRECTORS OF SURVIVING CORPORATION**

6.1 Upon the Effective Date, the officers and directors of TER-Florida shall become the officers and directors of TER-Delaware, and such persons shall hold office in accordance with the TER-Delaware Bylaws until their respective successors shall have been appointed or elected.

6.2 If upon the Effective Date, a vacancy shall exist in the Board of Directors of the Surviving Corporation, such vacancy shall be filled in the manner provided by the TER-Delaware Bylaws.

#### **ARTICLE VII DISSENTING SHARES**

7.1 (a) Notwithstanding any provision of this Agreement to the contrary, each share of Common Stock of TER-Delaware issued and outstanding immediately prior to the Effective Date and that is held by a shareholder of TER-Delaware who has not voted in favor of this Agreement or consented thereto in writing and who shall have otherwise perfected such holder's dissenters' rights in accordance with and as contemplated by Section 262 of the DGCL (each such shareholder, a "Dissenting Stockholder", and each share of Common Stock of TER-Delaware held by such shareholder, a "Dissenting Share") shall not be canceled, extinguished and converted, but shall be entitled to receive from the Surviving Corporation the value of such shares held by such Dissenting Stockholder as determined pursuant to Section 262 of the DGCL; provided, however, that if such Dissenting Stockholder fails to perfect, or effectively withdraws or loses such holder's right to appraisal of and payment for such holder's shares under Section 262 of the DGCL, each share of Common Stock of TER-Delaware of such Dissenting Stockholder shall thereupon be deemed to have been converted into and to have become exchangeable for, as of the Effective Date, shares of Common Stock of the Surviving Corporation, and such share of Common Stock of TER-Delaware shall no longer be a Dissenting Share. In such event, TER-Delaware shall deliver the number of shares of Surviving Corporation Common Stock to which such shareholder is entitled (without interest) upon surrender by such shareholder of the certificate or certificates representing the TER-Delaware shares held by such shareholder.

(b) TER-Delaware shall provide notice in accordance with the DGCL to each shareholder that is entitled to appraisal rights; provided that if the TER-Delaware shareholders have approved the Merger by written consent pursuant to Section 228 of the DGCL, TER-Delaware shall provide notice promptly after such stockholder approval is obtained. The Surviving Corporation shall promptly pay to any Dissenting Stockholder any and all amounts due and owing to such holder as a result of any settlement of, or determination by the Court of Chancery of the State of Delaware with respect to, such demands.

(c) No shares of TER-Florida are issued or outstanding as a result there are no dissenter's rights with respect to TER-Florida.

#### **ARTICLE VIII EFFECTIVE DATE, CONDUCT OF BUSINESS PRIOR TO EFFECTIVE DATE**

8.1 The Boards of Directors of TER-Florida and TER-Delaware will cause their duly authorized officers to make and execute Articles of Merger and a Certificate of Merger or other applicable certificates or documentation effecting this Agreement and shall cause the same to be filed, with the Secretaries of State of Florida and Delaware, respectively, (or, with respect to the State of Delaware, shall cause this Agreement to be filed) in accordance with the FBCA and the DGCL. The Effective Date shall be the date on which the Articles of Merger and the Certificate of Merger (or this Agreement) are filed with the Secretary of State of Delaware and the Secretary of State of Florida, respectively, in accordance with the DGCL and FBCA.

8.2 The Boards of Directors of TER-Florida and TER-Delaware may amend this Agreement and the TER-Delaware charter or TER-Delaware Bylaws at any time prior to the Effective Date.



**ARTICLE IX  
TERMINATION OF MERGER**

9.1 This Agreement may be terminated and the Merger abandoned at any time prior to the Effective Date, whether before or after shareholder approval of this Agreement, by the consent of the Board of Directors of TER-Florida and TER-Delaware.

**ARTICLE X  
MISCELLANEOUS**

10.1 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without reference to its principles of conflicts of law.

10.2 EXPENSES. If the Merger becomes effective, TER-Delaware shall assume and pay all expenses in connection therewith not theretofore paid by the respective parties. If for any reason the Merger shall not become effective, TER-Delaware shall pay all expenses incurred in connection with all the proceedings taken in respect of this Merger Agreement or relating thereto.

10.3 AGREEMENT. An executed copy of this Merger Agreement will be on file at the principal place of business of TER-Delaware, at 150, East Boca Raton Road, Boca Rotan Florida 33432 and, upon request and without cost, a copy thereof will be furnished to any shareholder.

10.4 COUNTERPARTS. This Merger Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Signature Page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**TOTAL ENERGY RESOURCE, INC.**

a Delaware corporation

By: /s/ Michael DeCosimo, President

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Michael DeCosimo (Name)  
President (Title)

**TOTAL ENERGY RESOURCE, INC.**

a Florida corporation

By: /s/ Michael DeCosimo, President

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Michael DeCosimo (Name)  
President (Title)