

# P97000001393

Florida Department of State  
Division of Corporations  
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## MERGER OR SHARE EXCHANGE

OTG, LLC

|                       |         |
|-----------------------|---------|
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W05-56844

J. BRADY DEC 30 2005



FLORIDA DEPARTMENT OF STATE  
Division of Corporations

December 29, 2005

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SUBJECT: OTG, LLC  
REF: W05000056844

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We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

Pursuant to section 608.438(3)(e), F.S., the plan of merger must provide the name(s) and address(es) of the manager(s) or managing member(s).

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6043

Joey Bryan  
Document Specialist

FAX Aud. #: H05000292927  
Letter Number: 205A00073931

P.O BOX 6327 - Tallahassee, Florida 32314

ARTICLES OF MERGER

The following articles of merger are being submitted in accordance with section(s) 607.1109, 608.4382, and/or 620.203, Florida Statutes.

FIRST: The exact name, street address of its principal office, jurisdiction, and entity type for each merging party are as follows:

| <u>Name and Street Address</u>   | <u>Jurisdiction</u> | <u>Entity Type</u> |
|----------------------------------|---------------------|--------------------|
| <u>1. ESI Calistoga LP, Inc.</u> | <u>Florida</u>      | <u>Corporation</u> |
| <u>700 Universe Boulevard</u>    |                     |                    |
| <u>Juno Beach, FL 33408</u>      |                     |                    |

Florida Document/Registration Number: P97000001393 FEI Number: 65-0728168

|   |                |                    |
|---|----------------|--------------------|
| <u>2. FPL Energy CO2 Operations, Inc.</u> | <u>Florida</u> | <u>Corporation</u> |
| <u>700 Universe Boulevard</u>             |                |                    |
| <u>Juno Beach, FL 33408</u>               |                |                    |

Florida Document/Registration Number: P980000097722 FEI Number: 65-0835229

|  |                |                    |
|--|----------------|--------------------|
| <u>3. Harper Lake Acquisitions, Inc.</u> | <u>Florida</u> | <u>Corporation</u> |
| <u>700 Universe Boulevard</u>            |                |                    |
| <u>Juno Beach, FL 33408</u>              |                |                    |

Florida Document/Registration Number: P970000039586 FEI Number: 65-0758966

|                                      |                |                    |
|--------------------------------------|----------------|--------------------|
| <u>4. Harper Lake Holdings, Inc.</u> | <u>Florida</u> | <u>Corporation</u> |
| <u>700 Universe Boulevard</u>        |                |                    |
| <u>Juno Beach, FL 33408</u>          |                |                    |

Florida Document/Registration Number: P970000039152 FEI Number: 65-0758965

(Attach additional sheet(s) if necessary)

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TALLAHASSEE, FLORIDA

| <u>Name and Street Address</u>      | <u>Jurisdiction</u> | <u>Entity Type</u> |
|-------------------------------------|---------------------|--------------------|
| <u>Harper Lake Management, Inc.</u> | <u>Florida</u>      | <u>Corporation</u> |
| <u>700 Universe Boulevard</u>       |                     |                    |
| <u>Juno Beach, FL, 33408</u>        |                     |                    |

Florida Document/Registration Number: F95000048863 FEI Number: 65-0597685

Florida Document/Registration Number: \_\_\_\_\_ FEI Number: \_\_\_\_\_

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*(Attach additional sheet(s) if necessary)*

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**SECOND:** The exact name, street address of its principal office, jurisdiction, and entity type of the surviving party are as follows:

| <u>Name and Street Address</u> | <u>Jurisdiction</u> | <u>Entity Type</u>        |
|--------------------------------|---------------------|---------------------------|
| OTG, LLC                       | Delaware            | Limited Liability Company |
| 700 Universe Boulevard         |                     |                           |
| Juno Beach                     |                     |                           |

Florida Document/Registration Number: \_\_\_\_\_ FEI Number: \_\_\_\_\_

**THIRD:** The attached Plan of Merger meets the requirements of section(s) 607.1108, 608.438, 617.1103, and/or 620.201, Florida Statutes, and was approved by each domestic corporation, limited liability company, partnership and/or limited partnership that is a party to the merger in accordance with Chapter(s) 607, 617, 608, and/or 620, Florida Statutes.

**FOURTH:** If applicable, the attached Plan of Merger was approved by the other business entity(ies) that is/are party(ies) to the merger in accordance with the respective laws of all applicable jurisdictions.

**FIFTH:** If not incorporated, organized, or otherwise formed under the laws of the state of Florida, the surviving entity hereby appoints the Florida Secretary of State as its agent for substitute service of process pursuant to Chapter 48, Florida Statutes, in any proceeding to enforce any obligation or rights of any dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger.

**SIXTH:** If not incorporated, organized, or otherwise formed under the laws of the state of Florida, the surviving entity agrees to pay the dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger the amount, if any, to which they are entitled under section(s) 607.1302, 620.205, and/or 608.4384, Florida Statutes.

**SEVENTH:** If applicable, the surviving entity has obtained the written consent of each shareholder, member or person that as a result of the merger is now a general partner of the surviving entity pursuant to section(s) 607.1108(s), 608.4381(2), and/or 620.202(2), Florida Statutes.

**EIGHTH:** The merger is permitted under the respective laws of all applicable jurisdictions and is not prohibited by the agreement of any partnership or limited partnership or the regulations or articles of organization of any limited liability company that is a party to the merger.

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**NINTH:** The merger shall become effective as of:

The date the Articles of Merger are filed with Florida Department of State



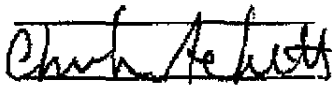
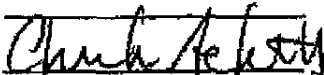
**OR**

\_\_\_\_\_  
(Enter specific date. NOTE: Date cannot be prior to the date of filing.)

**TENTH:** The Articles of Merger comply and were executed in accordance with the laws of each party's applicable jurisdiction.

**ELEVENTH: SIGNATURE(S) FOR EACH PARTY:**

*(Note: Please see instructions for required signatures.)*

| <u>Name of Entity</u>           | <u>Signature(s)</u>   | <u>Typed or Printed Name of Individual</u> |
|---------------------------------|---|--|
| BSI Calistoga LP, Inc.          |    | Charles S. Schultz, Secretary              |
| FPL Energy CO2 Operations, Inc. |  | Charles S. Schultz, Secretary              |
| Harper Lake Acquisitions, Inc.  |  | Charles S. Schultz, Secretary              |
| Harper Lake Holdings, Inc.      |  | Charles S. Schultz, Secretary              |

*(Attach additional sheet(s) if necessary)*



**AGREEMENT AND PLAN OF MERGER**

**of**

**ESI CALISTOGA LP, INC.**

**FPL ENERGY CO2 OPERATIONS, INC.**

**HARPER LAKE ACQUISITIONS, INC.**

**HARPER LAKE HOLDINGS, INC.**

**HARPER LAKE MANAGEMENT, INC.**

**all Florida corporations**

**with and into**

**OTG, LLC,**

**a Delaware limited liability company**

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**DIVISION OF CORPORATIONS**  
**TALLAHASSEE, FLORIDA**



This Agreement and Plan of Merger (this "Agreement") is entered into this 27 day of December, 2005 between the Corporations listed above, all Florida corporations (the "Corporations"), and OTG, LLC, a Delaware limited liability company (the "Company").

### Recitals

A. The Florida Business Corporation Act (the "Florida Act"), the Delaware Limited Liability Company Act (the "Delaware Act"), the Articles of Incorporation and Bylaws of the Corporations and the Limited Liability Company Agreement of the Company each permit the merger of the Corporations with and into the Company.

B. The shareholder of the Corporations and the sole member of the Company deem it advisable and beneficial to the welfare of each such corporation and its shareholders or members, as applicable, to merge Corporations with and into the Company.

C. This Agreement was approved by unanimous written consent of each of (i) the sole shareholder and Board of Directors of the Corporations on December 27, 2005 and (ii) the sole member of the Company on December 27, 2005.

NOW, THEREFORE, in consideration of the mutual promises and covenants in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, the parties, intending to be legally bound, agree as follows:

### PLAN

1. Merger and Surviving Company. Subject to the terms and conditions of this Agreement and in accordance with the Florida Act and the Delaware Act, at the Effective Time (as defined below), the Corporations shall be merged with and into the Company (the "Merger"). The Company shall be the surviving company (the "Surviving Company") and shall continue to be governed by the laws of the State of Delaware (including, without limitation, the Delaware Act). From and after the Effective Time, the separate existence of the Corporations shall cease. ESI Energy, LLC is located at 700 Universe Boulevard, Juno Beach, FL 33408, and is the managing member of OTG, LLC.

2. Service of Process. The Surviving Company hereby appoints the Florida Secretary of State as its agent for substitute service of process pursuant to Chapter 48, Florida Statutes, in any proceeding to enforce any obligation or rights of any dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger.

3. Payment. The Surviving Company agrees to pay the dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger the amount, if any, to which they are entitled under section(s) 607.1302, 620.205, and/or 608.4384 of the Florida Statutes.

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TALLAHASSEE, FLORIDA

4. Effective Time. The Merger shall become effective at the time that (i) the Articles of Merger have been filed with the Secretary of State of the State of Florida and (ii) a Certificate of Merger has been filed with the Secretary of State of the State of Delaware (the "Effective Time").

5. Limited Liability Company Agreement. The Limited Liability Company Agreement of the Company as in effect immediately prior to the Effective Time of the Merger shall continue in full force and effect with no change as the Limited Liability Company Agreement of the Surviving Company, and such Limited Liability Company Agreement may thereafter be amended and/or restated as provided therein and by the Delaware Act.

6. Management after the Merger. At the Effective Time, the member and officers of the Company immediately prior to the Effective Time will become the member and officers of the Surviving Company, each to hold office in accordance with the Limited Liability Company Agreement of the Surviving Company and the Delaware Act and until the earlier of such member's or officer's removal or the election or appointment of such member's or officer's successor, as the case may be. The Surviving Company shall be managed by its members and officers. ESI Energy, LLC is located at 700 Universe Boulevard, Juno Beach, FL 33408 and is the managing member of OTG, LLC.

7. Rights and Liabilities of Surviving Company. At the Effective Time, all of the properties, rights, privileges, powers and franchises of the Corporations and the Company will vest in the Surviving Company, and all debts, liabilities and duties of the Corporations and the Company will become the debts, liabilities and duties of the Surviving Company.

8. Conversion of Capital Stock. Each of the capital stock of the Corporations issued and outstanding immediately prior to the Effective Time shall be converted convert into a membership interest in the Surviving Company.

9. Representations and Warranties of the Corporations. The Corporations represent and warrant that they are corporations duly formed, validly existing and in good standing under the laws of the State of Florida, and that it has the requisite power and authority to enter into this Agreement and the transactions contemplated by this Agreement.

10. Representations and Warranties of the Company. The Company represents and warrants that it is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and that it has the requisite power and authority to enter into this Agreement and the transactions contemplated by this Agreement.

11. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware, without regard to conflicts of law principles.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

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

ESI CALISTOGA LP, INC.  
FPL ENERGY CO2 OPERATIONS, INC.  
HARPER LAKE ACQUISITIONS, INC.  
HARPER LAKE HOLDINGS, INC.  
HARPER LAKE MANAGEMENT, INC.,  
all Florida corporations

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By: Charles Schultz  
Name: Charles S. Schultz  
Title: Secretary

OTG, LLC,  
a Delaware limited liability company

By: Charles Schultz  
Name: Charles S. Schultz  
Title: Secretary