

# FO 2000002673

## TRANSMITTAL LETTER

TO: Registration Section  
Division of Corporations

SUBJECT: Eastern Foods, Inc.

(Name of corporation - must include suffix)

Dear Sir or Madam:

The enclosed "Application by Foreign Corporation for Authorization to Transact Business in Florida", "Certificate of Existence", and check are submitted to register the above referenced foreign corporation to transact business in Florida.

Please return all correspondence concerning this matter to the following:

Robert C. Dotson

(Name of Person)

Eastern Foods, Inc.

(Firm/Company)

1000 Naturally Fresh Blvd.

(Address)

Atlanta, Georgia 30349

(City/State and Zip code)

ADP-6, 216.25

For further information concerning this matter, please call:

Robert C. Dotson

(Name of Person)

at ( 404 ) 765-9000

(Area Code & Daytime Telephone Number)

### STREET ADDRESS:

Registration Section  
Division of Corporations  
409 E. Gaines St.  
Tallahassee, FL 32399

### MAILING ADDRESS:

Registration Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

Enclosed is a check for the following amount:

- ☐ \$70.00 Filing Fee    ☐ \$78.75 Filing Fee & Certificate of Status    ☐ \$78.75 Filing Fee & Certified Copy    ☒ \$87.50 Filing Fee, Certificate of Status & Certified Copy

FILED  
MAY 30 PM 11:50  
TALLAHASSEE, FLORIDA  
SECRETARY OF STATE

FILED  
MAY 30 PM 2:00  
TALLAHASSEE, FLORIDA  
SECRETARY OF STATE

400005195764--1  
-04/05/02--01033--007  
\*\*\*\*\*87.50 \*\*\*\*\*87.50

400005195764--1  
-05/30/02--01014--004  
\*\*\*6216.25 \*\*\*6216.25

BK



FLORIDA DEPARTMENT OF STATE

Katherine Harris  
Secretary of State

April 5, 2002

ROBERT C. DOTSON  
EASTERN FOODS, INC.  
1000 NATURALLY FRESH BLVD.  
ATLANTA, GA 30349

SUBJECT: EASTERN FOODS, INC.  
Ref. Number: W02000009643

*FAXED 4/11/02  
K. Harris*

We have received your document for EASTERN FOODS, INC. and your check(s) totaling \$87.50. However, the document has not been filed and is being retained in this office for the following:

Please note that we have RETAINED your \$87.50 payment.

The form indicates that this corporation began transacting business in Florida in 1970. If that is so, then penalty fees are owed.

Pursuant to section 607.1502(4), 617.1502(4) or 608.502(4), Florida Statutes, this office collects a civil penalty of \$1000 for each year this entity transacted business or conducted its affairs in Florida prior to qualification and the appropriate annual report/uniform business report fees that would have been due this office had the entity qualified the year it began operations in this state. The amount due this office to cover both annual report/uniform business report and penalty fees is \$29,216.25.

If you have any questions concerning the filing of your document, please call (850) 245-6914.

Buck Kohr  
Corporate Specialist

Letter Number: 302A00020172





VIA FACSIMILE: 904-741-8444 and email to: gharvey@mail.dos.state.fl.us

April 10, 2002

Ms. Gretchen Harvey  
Corporate Specialist  
Florida Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, Florida 32314

**ORIGINAL OF FACSIMILE**

Re: Eastern Foods Inc.  
Ref. Number: W02000009643

Dear Ms. Harvey:

I am General Counsel for Eastern Foods Inc. ("Eastern"). I received a letter dated April 5, 2002 from Mr. Buck Kohr in which he rejected Eastern's Application for Authorization to Transact Business in Florida (please see attached copy). Mr. Kohr in his facsimile to me stated that in his absence you could be of assistance.

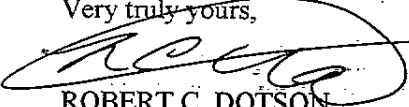
In that letter, it was stated that the amount due the State of Florida (pursuant to Florida Statutes 607.1502(4), 617.1502(4), 608.502(4)) to "cover annual report/uniform business report and penalty fees is \$29,216.25".

As I explained on the telephone to Mr. Kohr, I am trying to determine exactly what the situation is concerning this matter and why it has not been addressed here at Eastern. Quite frankly, we were somewhat surprised that Eastern is not registered. Eastern has a registration for state sales taxes and has been filing and paying franchise, excise taxes and personal property taxes for many years.

As you can see, Eastern has not been engaged in an attempt to hide from the State of Florida. Be that as it may, I need your assistance so that we can get this matter settled as soon as possible. First of all, I have been unable to reconcile the \$29,216.25 amount to any of the Florida Statutory fees or amounts. Can you please provide me with a breakdown of how that number was determined on a year by year basis?

If you can help us by providing this information for me, it will greatly facilitate an expeditious conclusion to this matter. If you have any questions about this situation or my request, please give me a call. Eastern Foods prides itself in being a good citizen in all of the jurisdictions in which we operate, and I want to continue that reputation in Florida.

Very truly yours,

  
ROBERT C. DOTSON  
General Counsel  
Eastern Foods Inc.

Cc: Mr. Buck Kohr

*Manufacturing and General Office*  
1000 Naturally Fresh Blvd.  
Atlanta, Ga. 30349 (404) 765-9000  
Fax (404) 765-9016



VIA FACSIMILE: 904-741-8444

April 10, 2002

**ORIGINAL OF FACSIMILE**

Mr. Buck Kohr  
Corporate Specialist  
Florida Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, Florida 32314

Re: Eastern Foods Inc.  
Ref. Number: W02000009643

Dear Mr. Kohr:

Thank you for your letter of April 15, 2002. The information that you provided concerning how the penalties and fees would be assessed was of great value in trying to arrive at a mutually agreeable resolution. Eastern Foods, Inc. ("Eastern") is eager to settle this matter and put it behind us. All of the parties that I have spoken to here admit that it was an error in not being registered, but not an intentional one. Eastern has not been hiding its existence in Florida, and has in fact been paying taxes, license fees and other fees for some time. I have attached copies of representative samples for your consideration (See Tab 2 attached).

As I am sure that you realize, the penalties and fees that you cite of \$29,216.25 are quite a substantial amount. Based on my analysis of the Florida statutes, I do not believe that Eastern owes quite that much. Therefore, I would like to make an offer to settle this matter today. I have hopefully included my understanding of the Florida law and an explanation that will be clear as to how we arrived at the amount being offered. If our offer is acceptable, then I can have the check in your hands within a week.

I agree that the statute you cite in your letter (Chapter 607.1502(4))<sup>1</sup> is the appropriate one to consider for the penalties that you have indicated. However, the statute calls for a range from \$500 to \$1,000. I would respectfully request that the lower number of \$500 be used in your calculations, since Eastern has not been intentionally hiding their existence (see attached copies).

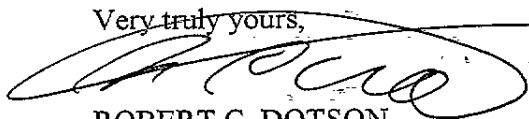
I also note that you assessed fees and penalties back to 1975. After doing some research on my own, it is my understanding that there is a four year statute of limitations on the collection of statutory fees and penalties (See Florida Statute Chapter 95.011, 95.11(3)(f) and (n))<sup>2</sup>. Therefore as I understand it, you can only go back to 1998. I have endeavored to set out the appropriate numbers on the attached spreadsheet for reference.

*Manufacturing and General Office*  
1000 Naturally Fresh Blvd.  
Atlanta, Ga. 30349 (404) 765-9000

Based on the calculations that I have done going back to 1998 and using the lower penalty of \$500, I have arrived at a sum of \$2,750.00 due and payable (see attached spreadsheet). If this amount is acceptable, I can have a check to you right away. If I have erred in my calculations or research please let me know.

I hope that this will allow us to bring a conclusion to this matter.

Very truly yours,



ROBERT C. DOTSON  
General Counsel  
Eastern Foods Inc.

**1. § 607.1502 Consequences of transacting business without authority.**

(4) A foreign corporation which transacts business in this state without authority to do so shall be liable to this state for the years or parts thereof during which it transacted business in this state without authority in an amount equal to all fees and taxes which would have been imposed by this act upon such corporation had it duly applied for and received authority to transact business in this state as required by this act. In addition to the payments thus prescribed, such corporation shall be liable for a civil penalty of not less than \$500 or more than \$1,000 for each year or part thereof during which it transacts business in this state without a certificate of authority. The Department of State may collect all penalties due under this subsection and may bring an action in circuit court to recover all penalties and fees due and owing the state.

**2. TITLE VIII LIMITATIONS**

**CHAPTER 95 LIMITATIONS OF ACTIONS; ADVERSE POSSESSION**

**§ 95.011 Applicability.**

A civil action or proceeding, called "action" in this chapter, including one brought by the state, a public officer, a political subdivision of the state, a municipality, a public corporation or body corporate, or any agency or officer of any of them, or any other governmental authority, shall be barred unless begun within the time prescribed in this chapter or, if a different time is prescribed elsewhere in these statutes, within the time prescribed elsewhere. [emphasis added]

**§ 95.11 Limitations other than for the recovery of real property.**

Actions other than for recovery of real property shall be commenced as follows:

**(3) WITHIN FOUR YEARS.—**

(f) An action founded on a statutory liability.

(n) An action for a statutory penalty or forfeiture.

TO: Gerry York, General Counsel's Office  
FROM: *llt* Brenda L. Tadlock, Registration Section  
DATE: April 19, 2002  
SUBJECT: EASTERN FOODS, INC.  
REFERENCE: W02000009643

The attached documents and correspondence are being forwarded to you for appropriate handling.

Please note the attached documents appear to meet the filing requirements stipulated in Chapter 607, Florida Statutes, with the exception of any penalty or annual report fees that may be due this office.

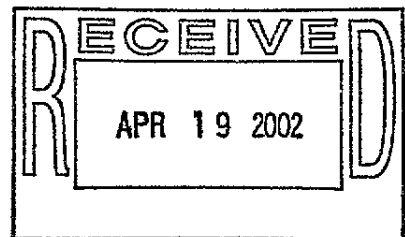
Should you have any further questions concerning this matter, please do not hesitate to get in touch.

/blt

Attachments

2216.25  
13,500.00  
100.00  
\* 15,816.25

404-765-6065





**FLORIDA DEPARTMENT OF STATE**  
**Katherine Harris**  
**Secretary of State**  
**OFFICE OF THE GENERAL COUNSEL**

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**F A C S I M I L E   T R A N S M I T T A L**

**TO FAX NUMBER:** 404-765-6065

**Please deliver the following pages to:**

**NAME:** Mr. Robert C. Dotson

**COMPANY:** Eastern Foods, Inc.

**CITY/STATE:** Atlanta, Georgia

**SENDER:** Gerard T. York, Esq.,  
Assistant General Counsel

**DATE/TIME:** 04/26/02 9:15 AM

**NUMBER OF PAGES (including transmittal sheet):**2

**FROM FAX:** 850/922-5763 (Suncom 292-5763)

**COMMENTS:** This communication is further to our recent conversation regarding annual report fees and statutory penalties which would be assessed against Eastern Foods, Inc., under section 607.1502(4), Florida Statutes.

An application filed with the Division of Corporations indicates Eastern Foods, Inc. has transacted business in Florida since 1970. Accordingly, an amount of \$29,316.25 is due, reflecting statutory penalties of \$27,000.00, annual report fees of \$2,216.25, plus estimated charter taxes of \$100.00 for the period 1975-1987 (Mr. Kohr omitted this tax, repealed in 1987 from the calculations discussed in his April 15, 2002). As we discussed, the Department prefers to avoid litigation where possible and we

would, however, offer to settle the issue of foreign non-qualified penalties and annual report fees from Eastern Foods, Inc., for the sum of \$15,876.25, reflecting penalties from 1975 of \$13,500.00 assessed at the statutory minimum of \$500.00 per year. This offer remains in effect only until June 14, 2002.

A word about your client's alleged statute of limitations defense. It is not available in the case of an ongoing regulatory violation. *See, e.g., Department of Environmental Protection v. Fleet Credit Corporation*, 691 So.2d 512 (Fla. 4<sup>th</sup> DCA 1997). Further, because section 607.1502(4), Florida Statutes, mandates the collection of all fees, penalties and taxes due, without limitation, I seriously doubt a court would find the statute of limitations to be applicable. I should add I have handled litigation for the Division of Corporations since 1996.

Upon receipt of a check in the amount of \$15,876.25 payable to the Department of State, Division of Corporations, I will instruct the Division of Corporations to issue, Inc., a Certificate of Authority to transact business in Florida. Please mail the check to this attorney at: Office of General Counsel, LL-10, The Capitol, Tallahassee, Florida 32399-0250.

Please do not hesitate to contact me should you have any questions.

**LL-10 • THE CAPITOL • TALLAHASSEE, FLORIDA 32399-0250**





May 8, 2002

Mr. Gerard T. York  
Assistant General Counsel  
Office of General Counsel  
LL-10, The Capitol  
Tallahassee, Florida 32399-0250

Re: Eastern Foods, Inc.  
Ref. Number W02000009643

Dear Mr. York:

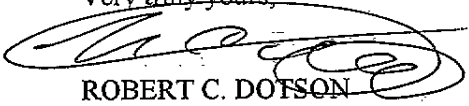
I have reviewed your letter of April 26, 2002 and have discussed this matter with the management for my client, Eastern Foods, Inc. ("Eastern"). I have also read the case that you cited in support of your argument that the statute of limitations does not apply (Department of Environmental Protection v. Fleet Credit Corporation, 691 So.2d 512, Fla. 4<sup>th</sup> DCA 1997). I feel that your citation of the Fleet Credit case is not on point with the issues in this matter, as that case turns on the narrow exception to the limitations period found in environmental cases, where the statutes violated are "remedial in nature and intended to clean up abandoned, inactive waste disposal sites in order to protect the public health, safety and welfare." 691 So.2d at 513. In the case of a repeated tort, it is fairly established law that there is liability only for actions accruing during the limitations period, unless there is some sort of attempt to conceal the tort. See, e.g., 35 Fla. Jur. 2d "Limitations and Laches," s. 62. In our situation, of course, there was no tort at all, nor is there anything to remediate. Instead, what we have was an inadvertent failure to register. It seems clear that the four-year statute of limitations should apply.

We continue to believe that \$2,750.00 would be a very reasonable settlement in this matter, particularly as Eastern brought this matter to your attention and the Department was not put to any investigatory expense. Nevertheless, in the interest of resolving this matter, I am authorized to offer \$4,216.25, which sum is the total of all of the annual report fees (\$2,216.25), plus \$2,000.00 in fines (\$500 per year for four years).

This resolution would allow the Department to recoup an amount considerably in excess of the amount which Eastern would have paid during the period it failed to register, and resolve the matter for the future.

On behalf of Eastern Foods, I hope that you can accept this offer in compromise and allow us to close this matter without referring it to outside counsel.

Very truly yours,

  
ROBERT C. DOTSON  
General Counsel  
Eastern Foods Inc.

Cc: Jerry Greene  
Allan F. Brooke II  
Bedell, Dittmar, DeVault, Pillans & Cox, P.A.  
*Manufacturing and General Office*  
1000 Naturally Fresh Blvd.  
Atlanta, Ga. 30349 (404) 765-9000



**FLORIDA DEPARTMENT OF STATE**  
**Katherine Harris**  
**Secretary of State**  
**OFFICE OF THE GENERAL COUNSEL**

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**F A C S I M I L E   T R A N S M I T T A L**

**TO FAX NUMBER:** 404-765-6065

**Please deliver the following pages to:**

**NAME:** Mr. Robert C. Dotson

**COMPANY:** Eastern Foods, Inc.

**CITY/STATE:** Atlanta, Georgia

**SENDER:** Gerard T. York, Esq.,  
Assistant General Counsel

**DATE/TIME:** 05/13/02 5:19 PM

**NUMBER OF PAGES (including transmittal sheet):**2

**FROM FAX:** 850/922-5763 (Suncom 292-5763)

**COMMENTS: RE: FNQ Penalties; Corporate Qualification**

**We would offer to settle the issue of foreign non-qualified penalties and annual report fees from Eastern Foods, Inc., for the sum of \$6,216.25, reflecting penalties in a lump sum of \$4,000.00. This offer remains in effect only until June 14, 2002.**

**Upon receipt of a check in the amount of \$6,216.25 payable to the Department of State, Division of Corporations, I will instruct the Division of Corporations to issue, Inc., a Certificate of Authority to transact business in Florida. Please mail the check**

to this attorney at: Office of General Counsel, LL-10, The Capitol, Tallahassee,  
Florida 32399-0250.

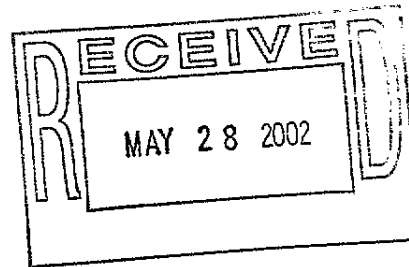
Please do not hesitate to contact me at 850-245-6514 should you have any questions.

**LL-10 • THE CAPITOL • TALLAHASSEE, FLORIDA 32399-0250**



FILED  
02 MAY 30 PM 1:59  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

May 24, 2002



Mr. Gerard T. York  
Assistant General Counsel  
Office of General Counsel  
LL-10, The Capitol  
Tallahassee, Florida 32399-0250

Re: Settlement  
Eastern Foods, Inc.  
Ref. Number W02000009643

Dear Mr. York:

Enclosed please find a check in the amount of \$6,216.25 in full settlement of the above-referenced matter.

It is my understanding that upon receipt, the Division of Corporations will issue a Certificate of Authority to transact business in Florida to Eastern Foods, Inc., and that this registration is good until next year when the annual fees will be due. Please confirm to me the amount of those annual fees and their due dates, so that I can inform our accounting department and avoid any further misunderstandings.

On behalf of Eastern Foods, I thank you for your assistance in this matter. If you have any questions, please do not hesitate to call.

Very truly yours,

ROBERT C. DOTSON  
General Counsel  
Eastern Foods Inc.

Cc: Jerry Greene  
Allan F. Brooke II  
Bedell, Dittmar, DeVault, Pillans & Cox, P.A.

*Manufacturing and General Office*  
1000 Naturally Fresh Blvd.  
Atlanta, Ga. 30349 (404) 765-9000



# *Department of State*

## *Memorandum Office of the General Counsel*

02 MAY 30 PM 2:00  
FILED  
SECRETARY OF STATE  
TALLAHASSEE FLORIDA

TO: File

FROM: Gerard York, Assistant General Counsel

DATE: May 28, 2002

RE: Eastern Foods, Inc.

Based on my review of the file and the payments received from the corporation, it is my recommendation that this file be closed. Corporation has paid outstanding report fees from 1970 of \$2216.25, charter taxes of \$100.00, and foreign non-qualified penalties of \$3900.00 assessed in a lump sum to avoid litigation. Corporation wishes to be qualified to do business in the State of Florida. Accordingly, it is recommended corporation be issued a certificate of authority.

/gty

**APPLICATION BY FOREIGN CORPORATION FOR AUTHORIZATION TO TRANSACT  
BUSINESS IN FLORIDA**

IN COMPLIANCE WITH SECTION 607.1503, FLORIDA STATUTES, THE FOLLOWING IS SUBMITTED TO  
REGISTER A FOREIGN CORPORATION TO TRANSACT BUSINESS IN THE STATE OF FLORIDA

1. Eastern Foods, Inc.  
(Name of corporation; must include the word "INCORPORATED", "COMPANY", "CORPORATION" or words or abbreviations of like import in language as will clearly indicate that it is a corporation instead of a natural person or partnership if not so contained in the name at present.)
2. State of Georgia 3. 58-1020428  
(State or country under the law of which it is incorporated) (FEI number, if applicable)
4. September 9, 1966 5. Perpetual  
(Date of incorporation) (Duration: Year corp. will cease to exist or "perpetual")
6. 1970  
(Date first transacted business in Florida. If corporation has not transacted business in Florida, insert "upon qualification.")  
(SEE SECTIONS 607.1501, 607.1502 and 817.155, F.S.)
7. 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349  
(Principal office address)
- 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349  
(Current mailing address)
8. Entity is a corporation for profit engaged in the manufacture, sale and distribution of food and related items.  
(Purpose(s) of corporation authorized in home state or country to be carried out in state of Florida)
9. Name and street address of Florida registered agent: (P.O. Box or Mail Drop Box **NOT** acceptable)
- Name: Mr. Michael Vickery
- Office Address: 1420 Vantage Way, Suite 104
- Jacksonville, Florida 32218  
(City) (Zip code)

**10. Registered agent's acceptance:**

*Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this application, 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 relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.*



(Registered agent's signature)

11. Attached is a certificate of existence duly authenticated, not more than 90 days prior to delivery of this application to the Department of State, by the Secretary of State or other official having custody of corporate records in the jurisdiction under the law of which it is incorporated.

FILED  
MAY 30 PM 2:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

12. Names and business addresses of officers and/or directors:

**A. DIRECTORS**

Chairman: Mr. Robert H. Brooks

Address: 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349

Vice Chairman: None

Address: \_\_\_\_\_

Director: Mr. Jerry Greene

Address: 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349

Director: Mr. Kenneth L. Abbott

Address: 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349

**B. OFFICERS**

President: Mr. Jerry Greene

Address: 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349

Vice President: Mr. Joe Hummel

Address: 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349

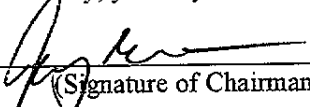
Secretary: Mr. Kenneth L. Abbott

Address: 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349

Treasurer: Mr. Kenneth L. Abbott

Address: 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349

NOTE: If necessary, you may attach an addendum to the application listing additional officers and/or directors.

13.   
(Signature of Chairman, Vice Chairman, or any officer listed in number 12 of the application)

14. Jerry Greene, President  
(Typed or printed name and capacity of person signing application)

FILED  
02 MAY 30 PM 2:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

## ADDENDUM

### 12. Names and business addresses of officers and/or directors:

#### A. ADDITIONAL DIRECTORS

Director: Mr. Pete Rostad

Address: 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349

Director: Mr. Jay Block

Address: 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349

02 MAY 30 PM 2:00  
FILED  
SECRETARY OF STATE  
TALLAHASSEE FLORIDA

#### B. ADDITIONAL OFFICERS

Vice President: Mr. Pete Rostad

Address: 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349

Assistant Secretary: Ms. Patti Frederick

Address: 1000 Naturally Fresh Blvd., Atlanta, Georgia 30349



# Secretary of State

Corporations Division

315 West Tower

#2 Martin Luther King, Jr. Dr.

Atlanta, Georgia 30334-1530

CONTROL NUMBER : H609591  
DATE INC/AUTH/FILED : 09/09/1966  
JURISDICTION : GEORGIA  
PRINT DATE : 04/03/2002  
FORM NUMBER : 211

FILED  
02 MAY 30 PM 2:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

EASTERN FOODS, INC.  
K. L. ABBOTT  
1000 NATURALLY FRESH BLVD.  
ATLANTA, GA 30349

## CERTIFICATE OF EXISTENCE

I, Cathy Cox, the Secretary of State of the State of Georgia, do hereby certify under the seal of my office that as of the above print date

EASTERN FOODS, INC.  
A GEORGIA PROFIT CORPORATION

is in compliance with the applicable filing and annual registration provisions of Title 14 of the Official Code of Georgia Annotated.

Said entity was formed in the jurisdiction stated above or was authorized to transact business in Georgia on the above date and has not filed articles of dissolution, certificate of cancellation or any other similar document with the Office of the Secretary of State.

This certificate relates only to the legal existence of the above-named entity as of the print date above. It does not certify whether or not a notice of intent to dissolve, an application for withdrawal, a statement of commencement of winding up or any other similar document has been filed or is pending with the Secretary of State.

This information is electronically transmitted, issued and certified in accordance with the Georgia Electronic Records and Signatures Act and Title 14 of the Official Code of Georgia Annotated and is prima-facie evidence that said entity is in existence or is authorized to transact business in this state.

20020403201925600



*Cathy Cox*

Cathy Cox  
Secretary of State