

# FA8000000035

Division of Corporations

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### MERGER OR SHARE EXCHANGE Benihana Brickell Station Corp.

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ARTICLES OF MERGER  
OF  
BENIHANA LINCOLN ROAD CORP.,  
WITH AND INTO  
BENIHANA BRICKELL STATION CORP.

These Articles of Merger (the "Articles of Merger") provide for the merger of:

*NR* Benihana of San Antonio, Corp., a Texas corporation, file number 801453936 (the "Non-surviving Entity 1");

Benihana Lincoln Road Corp., a Florida corporation, document number H74492 (the "Non-surviving Entity 2");

*NR* Benihana Tucson Corp., a Delaware corporation, file number 3976762 (the "Non-surviving Entity 3");

*FOR 3788* Benihana Winter Park Corp., a Delaware corporation, file number 4592862 (the "Non-surviving Entity 4");

*NR* Benihana Chicago Corp., a Delaware corporation, file number 4309672 (the "Non-surviving Entity 5");

*NR* RA Sushi Pittsburg Corp., a Delaware corporation, file number 4323876 (the "Non-surviving Entity 6");

*NR* RA Sushi Westwood Corp., a Delaware corporation, file number 4262796 (the "Non-surviving Entity 7");

*NR* RA Fashion Valley Corp., a Delaware corporation, file number 4175252 (the "Non-surviving Entity 8");

*NR* RA Sushi Denver Corp., a Delaware corporation, file number 4291904 (the "Non-surviving Entity 9"); and

*NR* RA Sushi Leawood Corp., a Delaware corporation, file number 4447327 (the "Non-surviving Entity 10"); and together with Non-surviving Entity 1, Non-surviving Entity 2, Non-surviving Entity 3, Non-surviving Entity 4, Non-surviving Entity 5, Non-surviving Entity 6, Non-surviving Entity 7, Non-surviving Entity 8 and Non-surviving Entity 9, collectively, the "Non-surviving Entities" and each, a "Non-surviving Entity")

with and into:

*FOR 35* Benihana Brickell Station Corp., a Delaware corporation, file number 2683885 (the "Surviving Entity").

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Pursuant to the requirements of Section 607.1109 of the Florida Business Corporation Act (the "Florida Business Act"), the Non-surviving Entities and the Surviving Entity hereby state and certify as follows:

#### ARTICLE I: PLAN OF MERGER

Attached as Exhibit A hereto is the Agreement and Plan of Merger (the "Plan of Merger") between the Non-surviving Entities and the Surviving Entity, pursuant to which the Non-surviving Entities shall merge with and into the Surviving Entity, with the Surviving Entity emerging as the surviving corporation (the "Merger").

#### ARTICLE II: SURVIVING ENTITY

The principal place of business of the Surviving Entity, organized under the laws of the State of Delaware, is c/o Bonihana Inc., 8685 NW 53rd Terrace, Miami FL 33166.

Pursuant to Section 607.1109 of the Florida Business Act, (i) the Surviving Entity is deemed to have appointed the Secretary of State of the State of Florida as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each Non-surviving Entity incorporated in the State of Florida; and (ii) the Surviving Entity agrees to promptly pay to the dissenting shareholders of any Non-surviving Entity incorporated in the State of Florida, if any, to which they are entitled under Section 607.302 of the Florida Business Act.

#### ARTICLE III: EFFECTIVE DATE

The Merger of the Non-surviving Entities with and into the Surviving Entity shall become effective on the date on which the Articles of Merger and Certificate of Merger, as applicable, are filed with all of the Department of State of the State of Florida, the Secretary of State of the State of Delaware and the Secretary of State of the State of Texas (the "Effective Date").

#### ARTICLE IV: ADOPTION OF PLAN OF MERGER

(A)(i) The Board of Directors of the Surviving Entity duly and unanimously approved, adopted, and declared the Plan of Merger advisable to the sole shareholder of the Surviving Entity, and (ii) the sole shareholder of the Surviving Entity duly approved, adopted, executed and acknowledged the Plan of Merger, by written consent thereto, dated as of October 11, 2011 in accordance with Section 252 of the Delaware Corporate Law.

(B)(i) The Board of Directors of the Non-surviving Entities incorporated in the State of Delaware duly and unanimously approved, adopted and declared the Plan of Merger advisable to the sole shareholder of the Non-surviving Entities incorporated in the State of Delaware, and (ii) the sole shareholder of the Non-surviving Entities incorporated in the State of Delaware duly approved, adopted and executed the Plan of Merger, by written consent thereto, dated as of October 11, 2011 in accordance with Section 252 of the Delaware Corporate Law.

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(C)(i) The Board of Directors of the Non-surviving Entity 1 duly and unanimously approved and adopted the Plan of Merger and recommended that the Plan of Merger be approved by the sole shareholder of the Non-surviving Entity 1, and (ii) the sole shareholder of Non-surviving Entity 1 duly approved, adopted, executed and acknowledged the Plan of Merger, by written consent thereto, dated as of October 11, 2011 in accordance with Section 21.452 of the Texas Corporate Law.

(D)(i) The Board of Directors of the Non-surviving Entity 2 duly and unanimously approved the Plan of Merger and recommended that the Plan of Merger be approved by the sole shareholder of the Non-surviving Entity 2, and (ii) the sole shareholder of Non-surviving Entity 2 duly approved, adopted and executed the Plan of Merger, by written consent thereto, dated as of October 11, 2011 in accordance with Section 607.1103 of the Florida Business Act.

**ARTICLE V: CERTIFICATE OF INCORPORATION OF SURVIVING ENTITY**

As of the Effective Date, the Certificate of Incorporation, as amended, of the Surviving Entity will not differ from its Certificate of Incorporation, as amended, immediately prior to the Merger and the Certificate of Incorporation, as amended, of the Surviving Entity shall be the certificate of incorporation, of the surviving business entity.

These Articles of Merger may be executed in separate counterparts or counterpart signature pages, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same instrument.

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties have executed and delivered these Articles of  
Merge as of October 11, 2011.

NON-SURVIVING ENTITIES:

BENIHANA OF SAN ANTONIO, CORP., a Texas  
corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

BENIHANA LINCOLN ROAD CORP., a Florida  
corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

BENIHANA TUCSON CORP., a Delaware  
corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

BENIHANA WINTER PARK CORP., a Delaware  
corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

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BENIHANA CHICAGO CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

RA SUSHI PITTSBURG CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

RA SUSHI WESTWOOD CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

RA FASHION VALLEY CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

RA SUSHI DENVER CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

RA SUSHI LEAWOOD CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

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SURVIVING ENTITY:

BENIGNA BRICKELL STATION CORP., a  
Florida corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

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**EXHIBIT "A"**  
**PLAN OF MERGER**

(Attached hereto and made a part hereof)

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SECRETARY OF STATE  
DIVISION OF CORPORATIONS

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**AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") relates to the merger of each of Benihana of San Antonio, Corp., a Texas corporation (the "Non-surviving Entity 1"), Benihana Tucson Corp., a Delaware corporation (the "Non-surviving Entity 2"), Benihana Winter Park Corp., a Delaware corporation (the "Non-surviving Entity 3"), Benihana Chicago Corp., a Delaware corporation (the "Non-surviving Entity 4"), Benihana Lincoln Road Corp., a Florida corporation (the "Non-surviving Entity 5"), RA Sushi Pittsburg Corp., a Delaware corporation (the "Non-surviving Entity 6"), RA Sushi Westwood Corp., a Delaware corporation (the "Non-surviving Entity 7"), RA Fashion Valley Corp., a Delaware corporation (the "Non-surviving Entity 8"), RA Sushi Denver Corp., a Delaware corporation (the "Non-surviving Entity 9"), and RA Sushi Leewood Corp., a Delaware corporation (the "Non-surviving Entity 10," and together with Non-surviving Entity 1, Non-surviving Entity 2, Non-surviving Entity 3, Non-surviving Entity 4, Non-surviving Entity 5, Non-surviving Entity 6, Non-surviving Entity 7, Non-surviving Entity 8 and Non-surviving Entity 9, collectively, the "Non-surviving Entities" and each, a "Non-surviving Entity") with and into Benihana Brickell Station Corp., a Delaware corporation (the "Surviving Entity").

WHEREAS, each Non-surviving Entity and the Surviving Entity wish to enter into a merger agreement pursuant to which each Non-surviving Entity will merge with and into the Surviving Entity and the Surviving Entity will be the surviving business entity,

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth below, the parties agree as follows:

1. Non-surviving Entity. The name and jurisdiction of formation of each Non-surviving Entity are as follows:

<u>Name of Entity</u>	<u>State of Formation</u>
Benihana of San Antonio, Corp.	Texas
Benihana Lincoln Road Corp.	Florida
Benihana Tucson Corp.	Delaware
Benihana Winter Park Corp.	Delaware
Benihana Chicago Corp.	Delaware
RA Sushi Pittsburg Corp.	Delaware
RA Sushi Westwood Corp.	Delaware
RA Fashion Valley Corp.	Delaware
RA Sushi Denver Corp.	Delaware
RA Sushi Leewood Corp.	Delaware

2. Surviving Entity: The name and jurisdiction of formation of the Surviving Entity are as follows:

<u>Name of Entity</u>	<u>State of Formation</u>
Beribana Brickell Station Corp.	Delaware

3. The Merger. Subject to the terms and conditions of this Agreement and in accordance with Section 607.1107 of the Florida Business Corporation Act (the "Florida Business Act"), Section 252 of the Delaware General Corporation Law (the "Delaware Corporate Law") and Section 10.001 of the Texas Corporation Law (the "Texas Corporate Law"), on the Effective Date, as hereinafter defined, each Non-surviving Entity shall merge with and into the Surviving Entity (the "Merger"). Upon consummation of the Merger, the separate existence of each Non-surviving Entity shall cease and the Surviving Entity shall be the surviving corporation in the Merger.

4. Effective Date and Time of the Merger. The Merger shall become effective as of the date on which all of the Articles of Merger and Certificates of Merger substantially in the forms attached hereto as Exhibit A, by and between the Non-surviving Entities and the Surviving Entity, or this Plan of Merger, as applicable, are filed with all of the Department of State of the State of Florida, the Secretary of State of the State of Delaware, and the Secretary of State of the State of Texas (the "Effective Date").

5. Cancellation of Outstanding Shares and Assumption of Obligations. As of the Effective Date, by virtue of the Merger and without any action on the part of the Surviving Entity or the Non-surviving Entities, all outstanding shares of the Non-surviving Entities shall be cancelled and all outstanding shares of the Surviving Entity shall remain. Each shareholder of the Surviving Entity shall hold the same number of outstanding shares immediately prior to the Effective Date and immediately after the Merger. All outstanding debt instruments and other obligations of each Non-surviving Entity, if any, shall convert to debt instruments and obligations, respectively, of the Surviving Entity. All assets and property of each Non-surviving Entity, if any, shall become assets and property, respectively, of the Surviving Entity.

6. Effects of the Merger. At and after the Effective Date, the Merger shall have the effects set forth in 607.11101 of the Florida Business Act, Section 259 of the Delaware Corporate Law, and Section 10.008 of the Texas Corporate Law.

7. Articles of Incorporation the Surviving Entity and Bylaws. As of the Effective Date, the Certificate of Incorporation, as amended, of the Surviving Entity will not differ from its Certificate of Incorporation, as amended, immediately prior to the Merger. The Bylaws of the Surviving Entity as in effect on the Effective Date shall be the bylaws, respectively, of the surviving business entity.

8. Compliance Agreement. Each Non-surviving Entity shall from time to time, as and when requested by the Surviving Entity, execute and deliver all such documents and instruments and take all such action necessary or desirable to evidence or carry out the Merger.

9. Termination. This Agreement may be terminated at any time prior to the Effective Date, whether prior to or after approval by either party's respective board of directors or shareholders, as applicable, effective upon and pursuant to the written consent of the board of directors or shareholders of the Surviving Entity and the Non-surviving Entities.

10. Effect of Termination. If this Agreement is terminated as provided in Section 9 above, this Agreement shall forthwith become void and have no effect, without liability of any kind being attributed to the Surviving Entity or the Non-surviving Entities, or any of their respective officers, directors or shareholders, as applicable.

11. Amendment. This Agreement may not be amended except by an instrument signed by each party hereto.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

*[Signature page to follow]*

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the 11 day of October, 2011.

NON-SURVIVING ENTITIES:

BENIHANA OF SAN ANTONIO, CORP., a Texas corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

BENIHANA LINCOLN ROAD CORP., a Florida corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

BENIHANA TUCSON CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

BENIHANA WINTER PARK CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

BENIHANA CHICAGO CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

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RA SUSHI PITTSBURG CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

RA SUSHI WESTWOOD CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

RA FASHION VALLEY CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

RA SUSHI DENVER CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

RA SUSHI LEAWOOD CORP., a Delaware corporation

By: Cristina L. Mendoza  
Cristina L. Mendoza, Secretary

**SURVIVING ENTITY:**

**BENIHANA BRICKELL STATION CORP., a  
Florida corporation**

By: *Cristina L. Mendoza*  
Cristina L. Mendoza, Secretary

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