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DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

B. KOHR

JUN - 3 2008

EXAMINER



CORPORATION SERVICE COMPANY

ACCOUNT NO. : 072100000032

REFERENCE : 594041 9156A

AUTHORIZATION :

COST LIMIT : \$ 50

FILED
08 JUN -3 PM 1:15
TALLAHASSEE, FLORIDA

[Handwritten signature]

ORDER DATE : June 2, 2008

ORDER TIME : 4:37 PM

ORDER NO. : 594041-005

CUSTOMER NO: 9156A

ARTICLES OF MERGER

EFM CHEESEHEADS, LLC

INTO

EFM PIZZA VENTURE, LLC

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

☐ CERTIFIED COPY
☒ PLAIN STAMPED COPY

CONTACT PERSON: Harry B. Davis

EXAMINER'S INITIALS: _____

Exhibit "B"

CERTIFICATE OF MERGER

Pursuant to the provisions of the Chapter 608 of the Florida Statutes of the state of Florida, EFM Cheeseheads, LLC, a limited liability company created under the laws of the state of Florida (the "merging company"), and EFM Pizza Venture, LLC, a limited liability company created under the laws of the state of Florida (the "surviving company") adopt the following certificate of merger.

1. Names of Merging Limited Liability Companies

The names of the limited liability companies that are merging are EFM Cheeseheads, LLC and EFM Pizza Venture, LLC.

2. Name of Surviving Limited Liability Company

EFM Pizza Venture, LLC will be the surviving limited liability company in this merger.

3. Plan of Merger

A copy of the plan of merger between the merging company and the surviving company is attached to these articles of merger as Exhibit A.

4. Member Approval

4.1 Approval by Members of Merging Company. In accordance with the terms of the operating agreement of the merging company, the plan of merger was approved by a written consent of all Members of the company. The effective date of the written consent was January 4, 2008.

4.2 Approval by Members of Surviving Company. In accordance with the terms of the operating agreement of the surviving company, the plan of merger was approved by a written consent signed by all members of the company. The effective date of the written consent was January 4, 2008.

5. Effective Date

This merger of the merging company into the surviving company will be effective when these articles of merger are filed in accordance with the Chapter 608 of the Florida Statutes of the state of Florida.

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TALLAHASSEE, FLORIDA

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MERGING COMPANY:

EFM Cheeseheads, LLC,
a Florida limited liability company

By: 

Name: Joseph P. O'Connor, Jr.

Its: Managing Member

SURVIVING COMPANY:

EFM Pizza Venture, LLC,
a Florida limited liability company

By: 

Name: Joseph P. O'Connor, Jr.

Its: Managing Member

Exhibit "A"

PLAN OF MERGER

DATE: January 4, 2008

PARTIES: EFM Cheeseheads, LLC, a limited liability company created under the laws of the state of Florida (the "merging company")

EFM Pizza Venture, LLC, a limited liability company created under the laws of the state of Florida (the "surviving company")

AGREEMENTS:

1. Merger

On the effective date, as defined below, the merging company will be merged with and become a part of the surviving company.

2. Effect of Merger

2.1 Single Limited Liability Company. At the time of this merger, the separate existence of the merging company will cease, both the merging company and the surviving company will be a single limited liability company, and that single limited liability company will be the surviving company.

2.2 Title to Assets. At the time of this merger, the title to all real estate and other property owned by the merging company and the surviving company will be vested in the surviving company without reversion or impairment, and without further act or deed.

2.3 Liabilities and Obligations. At the time of this merger, the surviving company will assume all liabilities and obligations of the merging company.

2.4 Pending Proceedings. Any proceeding pending against the merging company or the surviving company at the time of this merger may be continued as if the merger did not occur. If the proceeding involves the merging company, the surviving company may be substituted as a party to the proceeding.

2.5 Articles of Organization. The articles of organization of the surviving company will not be amended or otherwise affected by the merger.

2.6 Operating Agreement. The operating agreement of the surviving company must be amended as provided in the Merger Agreement between the merging company and the surviving company that is dated on the same date as this plan of merger (the "merger agreement"). Otherwise, the operating agreement of the surviving company will not be

affected by this merger and will remain in full force and effect in accordance with its terms.

2.7 Managing Members. Each of the Managing Members of the surviving company who are serving at the time of this merger will continue to serve as a Managing Members until the next meeting of members called for the purpose of electing Managing Members, or until the Managing Member's earlier death, resignation, or removal.

2.8 Members. At the time of this merger, each of the members of the merging company will become a member of the surviving company, and each of the members of the surviving company will remain a member of the surviving company. The ownership interests and capital accounts of the members of the surviving company following the merger will be determined under the terms of the merger agreement.

3. Effective Date

The effective date of this merger will be the date on which articles of merger are filed in accordance with the Chapter 608 of the Florida Statutes of the state of Florida. Articles of merger must be filed promptly following the approval of this plan by the members of the merging company and of the surviving company.

4. Intent

The merging company and the surviving company intend that the transaction contemplated by this plan will be a merger of limited liability companies under the Chapter 608 of the Florida Statutes of the state of Florida and that, for federal income tax purposes, the transaction will result in a continuation of the surviving company under the provisions of Treasury Regulations §1.708-1(c)(1).

5. Governing Law

The validity and interpretation of this plan will be governed by the law of the state of Florida.


MERGING COMPANY:

EFM Cheeseheads, LLC,
a Florida limited liability company

By: 
Name: Joseph P. O'Connor, Jr.
Its: Managing Member

SURVIVING COMPANY:

EFM Pizza Venture, LLC,
a Florida limited liability company

By: 
Name: Joseph P. Connor, Jr.
Its: Managing Member

MERGER AGREEMENT

DATE: January 4, 2008

PARTIES: EFM Cheeseheads, LLC, a limited liability company created under the laws of the state of Florida (the "merging company")

EFM Pizza Venture, LLC, a limited liability company created under the laws of the state of Florida (the "surviving company")

AGREEMENTS:

1. Merger

Subject to the conditions set forth in this agreement, the merging company will be merged into and become a part of the surviving company. The merger will take place in accordance with the Chapter 608 of the Florida Statutes of the state of Florida (the "act") and the terms set forth in the Plan of Merger attached to this agreement as Exhibit A (the "plan of merger").

2. Member Approval

Promptly after this agreement is signed, the merging company and the surviving company must each submit the plan of merger to its members for approval.

3. Effective Date and Closing

3.1 Effective Date. The merger of the merging company and the surviving company will be effective when articles of merger are filed in accordance with the act.

3.2 Closing. Subject to the satisfaction of the conditions set forth in this agreement, the closing of this merger will take place at the principal office of the surviving company, which is located at 16488 Edgemont Drive, Fort Myers, Florida 33908, on the 4th day of January, 2008, at 10:00 a.m. At the time of the closing:

3.2.1 The merging company and the surviving company must each deliver to the other certified copies of resolutions of the members of the delivering company approving the plan of merger and this agreement;

3.2.2 The merging company and the surviving company must each deliver to the other a copy of the operating agreement of the surviving company that has been amended as required in this agreement and has been signed by the members of the delivering company;

3.2.3 The merging company must deliver to the surviving company a document signed by each of the members of the merging company stating that: (a) the interest in the surviving company acquired in this merger is being acquired for investment and not with a view to distribution; (b) the member understands that the interest has not been registered under the Securities Act of 1933 or applicable state securities laws in reliance on exemptions from registration; (c) the member also understands that the interest must be held indefinitely, unless it is later registered under the Securities Act of 1933 and applicable state securities laws or unless exemptions from registration are otherwise available, and that the surviving company has no obligation to register the interest; and (d) the member agrees that the interest will not be offered, sold, transferred, pledged, or otherwise disposed of without registration under the Securities Act of 1933 and applicable state securities laws or an opinion of counsel acceptable to the surviving company that registration is not required; and

3.2.4 The merging company and the surviving company must sign articles of merger in the form attached to this agreement as Exhibit B, and the signed articles of merger must be delivered to the Department of State for the state of Florida for filing.

3.3 **Conditions of Closing.** The conditions to the closing of this merger are set forth in the subsections that follow. Unless all of the conditions have been fulfilled or waived before or at the time for the closing specified in this agreement, this agreement will be of no further force or effect.

3.3.1 It is a condition of the closing of this merger that the plan of merger has been approved by the members of both the merging company and the surviving company as required by the act. This condition cannot be waived.

3.3.2 It is a condition of the surviving company's obligation to close this merger that no member of the merging company has the right to compel the merging company to purchase the member's interest as a result of the merger, whether the right arises under the merging company's operating agreement, the state LLC statute that defines the rights of members of the merging company, or otherwise. The surviving company may waive this condition in whole or in part.

3.4 **Further Assurances.** After the closing, the merging company and the surviving company must each sign and deliver to the other such additional documents, and must take such additional actions, as may reasonably be required to complete this merger or to perfect the rights arising out of this merger of the merging company, the surviving company, and their respective members.

4. Amendment of Operating Agreement

4.1 **Membership.** Each of the Members of the Surviving Company is also a Member of the Merging Company and each Member of the Surviving Company owns the same

percentage of interest in the Merging Company as the Members owns in the Surviving Company. After the Merger each member of the Surviving Company will own the same number/percentage of interest in the Surviving Company as the Member owned prior to the Merger. There shall be no increase in the membership shares of a Member of the Surviving Company as a result of the Merger. At the time of this merger, each of the members of the merging company will become members of the surviving company, and each of the members of the surviving company will remain members. The surviving company operates under an Operating Agreement dated March 29, 2006, amended April 3, 2007 and as amended November 6, 2007, and the operating agreement must be amended. Specifically, the surviving company's operating agreement must be amended to make the following changes:

+

4.1.1 The members of the merging company as well as the members of the surviving company are the same and each Member of the Surviving Company shall remain a Member of the Surviving Company and there shall be no increases in the number of Membership Units of a Member of the Surviving Company.

4.1.2 The merger of the merging company into the surviving company and the effective date of the merger must be noted in the recitals to amendment of the operating agreement.

4.1.3 For purposes of establishing the ownership interests and capital accounts of the members of the surviving company following this merger, the operating agreement must provide that each of the members of the merging company is deemed to have made a contribution to the capital of the surviving company at the time of the merger of an amount equal to the capital account of the Member in the merging company as of the effective date of the Merger.

4.1.4 For purposes of establishing the ownership interests and capital accounts of the members of the surviving company following this merger, the operating agreement must provide that each of the members of the surviving company has a capital account at the time of the merger equal to the capital account of the Member in the Surviving Company plus the capital account of the Merging Company of the effective date of the Merger.

4.2 No Other Amendments. Except for the amendments specifically required under the terms of this agreement, the operating agreement of the surviving company will remain in full force and effect in accordance with its terms.

5. Representations and Warranties of Merging Company

The merging company makes the representations and warranties set forth in the following subsections to the surviving company.

5.1 Status. The merging company is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Florida and has all powers

3 - Merger Agreement

required to own its assets and property and to carry on its business as now owned and conducted. The merging company is not licensed or qualified as a foreign limited liability company in any other state, and such license or qualification is unnecessary given the character of its properties and the nature of its business.

5.2 Operating Agreement. The merging company operates under an Operating Agreement dated March 29, 2006, amended April 3, 2007 and as amended November 6, 2007. The operating agreement is in full force and effect in accordance with its terms and has not been amended or modified in any manner.

5.3 Compliance with Law. The merging company is not in violation of any applicable law, ordinance, regulation, order, or requirement relating to its operations.

6. Representations and Warranties of Surviving Company

The merging company makes the representations and warranties set forth in the following subsections to the surviving company.

6.1 Status. The surviving company is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Florida and has all powers required to own its assets and property and to carry on its business as now owned and conducted. The surviving company is not licensed or qualified as a foreign limited liability company in any other state, and such license or qualification is unnecessary given the character of its properties and the nature of its business.

6.2 Operating Agreement. The surviving company operates under an Operating Agreement dated March 29, 2006, amended April 3, 2007 and as amended November 6, 2007. The operating agreement is in full force and effect in accordance with its terms and has not been amended or modified in any manner.

6.3 Compliance with Law. The surviving company is not in violation of any applicable law, ordinance, regulation, order, or requirement relating to its operations.

7. Survival of Representations and Warranties

All representations and warranties of the merging company and the surviving company will survive the closing of the merger.

8. Conduct of Business Pending Closing

Pending the closing of the merger, the Surviving Company and the Merging Company shall continue to operate if business in the normal manner.

9. No Transfer

Neither the merging company nor the surviving company may transfer or assign any of its interests under this agreement.

10. Miscellaneous Provisions

10.1 Waiver. No waiver of any provision of this agreement may be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless it is in writing and signed by the party making the waiver.

10.2 Governing Law. The validity and interpretation of this agreement will be governed by the law of the state of Florida.

10.3 Entire Agreement. This agreement constitutes the entire agreement between the parties pertaining to its subject matter and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this agreement will be binding unless it is in writing and signed by all parties.

10.4 Authority. Each individual executing this agreement on behalf of a limited liability company warrants that he or she is authorized to do so and that this agreement will constitute the legally binding obligation of the limited liability company that the individual represents.

MERGING COMPANY:

EFM Cheeseheads, LLC
a Florida limited liability company

By: 
Name: Joseph P. O'Connor, Jr.
Its: Managing Member

SURVIVING COMPANY:

EFM Pizza Venture, LLC,
a Florida limited liability company

By: 
Name: Joseph P. O'Connor, Jr.
Its: Managing Member