

Florida Department of State  
Division of Corporations  
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To:

Division of Corporations  
Fax Number : (850) 617-6380

From:

Account Name : MCDONALD HOPKINS CO., PA  
Account Number : I20050000183  
Phone : (561) 472-7510  
Fax Number : (561) 472-2970

**\*\*Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.\*\***

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**MERGER OR SHARE EXCHANGE**

**Phantom Fireworks Showrooms, LLC, a Delaware LLC**

Certificate of Status	0
Certified Copy	0
Page Count	12
Estimated Charge	\$60.00

RECEIVED

17 MAR 28 AM 11:12

DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

17 MAR 28 AM 7:55

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**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**SUBJECT:** Phantom Fireworks Showrooms, LLC

Name of Surviving Party

Please return all correspondence concerning this matter to:

Jaimie Paul

Contact Person

McDonald Hopkins LLC

Firm/Company

505 S. Flagler Drive, Suite 300

Address

West Palm Beach, FL 33401

City, State and Zip Code

jpaul@mcdonaldhopkins.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Jaimie Paul

at (561) 472-2121

Name of Contact Person

Area Code and Daytime Telephone Number

☐ Certified Copy (optional) \$8.75

**STREET ADDRESS:**

Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**MAILING ADDRESS:**

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

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**ARTICLES OF MERGER  
OF**

**PHANTOM OF MISSOURI, INC., A FLORIDA CORPORATION,  
INTO  
PHANTOM FIREWORKS SHOWROOMS, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY**

The following Articles of Merger are submitted to merge the following Florida corporation in accordance with Section 607.1109, Florida Statutes.

**FIRST:** The name, type of entity and jurisdiction of each merging party are as follows:

Entity Name	State of Formation	Entity Type
Phantom of Missouri, Inc.	Florida	Corporation

P99000048839

**SECOND:** The name, type of entity and jurisdiction of the surviving party are as follows:

Entity Name	State of Formation	Entity Type
Phantom Fireworks Showrooms, LLC	Delaware	Limited Liability Company

**THIRD:** The Plan of Merger attached hereto as Exhibit A has been approved by each domestic corporation that is party to the merger in accordance with the applicable provisions of Chapter 607, Florida Statutes.

**FOURTH:** The Plan of Merger attached hereto as Exhibit A was approved by each other business entity that is a party to the merger in accordance with the applicable laws of the state, country or jurisdiction under which such other business entity is formed, organized or incorporated.

**FIFTH:** The merger is to become effective on March 31, 2017 at 12:01 A.M.

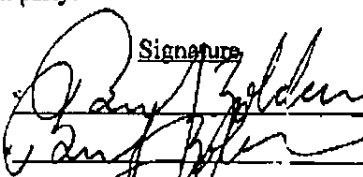
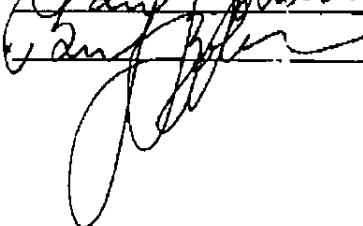
**SIXTH:** The principal office of the surviving party is 555 Martin Luther King Jr. Boulevard, Youngstown, Ohio 44502-1102.

**SEVENTH:** The surviving entity: (a) appoints the Florida Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation that is party to the merger; and (b) agrees to promptly pay the dissenting shareholders of each domestic corporation that is a party to the merger the amount, if any, to which they are entitled under Section 607.1302, Florida Statutes.

[Signature page follows]

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**EIGHTH: Signatures for each party:**

<u>Name of Entity</u>	<u>Signature</u>	<u>Name</u>
<u>Phantom Fireworks Showrooms, LLC</u>		<u>Bruce J. Zoldan</u>
<u>Phantom of Missouri, Inc.</u>		<u>Bruce J. Zoldan</u>

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**Exhibit A**

**Plan of Merger**

See attached.

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## AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of February 28, 2017, is made and entered into by and between Phantom Fireworks Showrooms, LLC, a Delaware limited liability company (the "Surviving Entity"), and Phantom of Missouri, Inc., a Florida corporation (the "Merged Corporation").

### RECITALS

WHEREAS, the parties desire to consummate a merger whereby the Merged Corporation will be merged into Surviving Entity in the manner provided for in this Agreement;

WHEREAS, Phantom Fireworks, Inc., a Delaware corporation ("Parent"), is the sole member of Phantom Fireworks Company, LLC, a Delaware limited liability company ("Phantom LLC"), and Phantom LLC is the sole member of Surviving Entity, and as such Parent is responsible for the management of Phantom LLC and the Surviving Entity;

WHEREAS, Phantom LLC is also the sole shareholder of Merged Corporation;

WHEREAS, the board of directors of Parent and the board of directors of the Merged Corporation have each unanimously adopted this Agreement providing for the merger of Merged Corporation into Surviving Entity;

WHEREAS, the sole stockholder of the Merged Corporation and the sole member of the Surviving Entity, and have each unanimously approved the merger of the Merged Corporation into the Surviving Entity.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE I THE MERGER

Section 1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Limited Liability Company Act of the State of Delaware (the "DE LLC Act") and the Florida Business Corporation Act (the "FL BCA"), at the Effective Time, Merged Corporation shall be merged with and into Surviving Entity (the "Merger"), the separate legal existence of Merged Corporation shall thereupon cease and Surviving Entity shall be the surviving entity in the Merger.

Section 1.2 Closing. The closing of the transactions contemplated hereby (the "Closing") shall take place remotely via the electronic exchange of documents and signatures as soon as reasonably practicable. The Closing will be deemed to have occurred as of the Effective Time.

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Section 1.3 Effective Time. Upon the terms and subject to the conditions set forth in this Agreement, Surviving Entity and the Merged Corporation shall cause the Merger to be consummated by filing certificates of merger with the Secretary of State of the States of Delaware and Florida, each executed in accordance with the relevant provisions of the DE LLC Act and the FL BCA, as applicable (collectively, the "Certificates of Merger"), and shall make all other filings required by the foregoing laws. The Merger shall become effective as of 12:01 A.M. (Eastern Standard Time) on February \_\_, 2017 or at such later time as is agreed to by Surviving Entity and the Merged Corporation and specified in the Certificates of Merger (the time at which the Merger becomes effective being the "Effective Time").

Section 1.4 Effects of the Merger. The Merger shall have the effects set forth in the DE LLC Act and the FL BCA. Without limiting the foregoing, at the Effective Time, all the properties, rights, privileges, powers and franchises of any nature whatsoever of Merged Corporation shall vest in the Surviving Entity, and all debts, liabilities and duties of Merged Corporation of any nature whatsoever shall become the debts, liabilities and duties of the Surviving Entity.

Section 1.5 Certificate of Formation and Operating Agreement of the Surviving Entity.

(a) From and after the Effective Time, the Certificate of Formation of the Surviving Entity, as in effect immediately prior to the Effective Time, shall be and remain the Certificate of Formation of the Surviving Entity following the Merger (the "Surviving Entity's Charter") until thereafter amended as provided therein or by the DE LLC Act.

(b) From and after the Effective Time, the Operating Agreement of the Surviving Entity, as in effect immediately prior to the Effective Time, shall be and remain the Operating Agreement of the Surviving Entity following the Merger (the "Surviving Entity's Operating Agreement") until thereafter amended as provided therein or by the DE LLC Act.

Section 1.6 Officers of the Surviving Entity. The officers of the Surviving Entity holding office immediately prior to the Effective Time shall be the officers of the Surviving Entity following the Merger, each to serve until a successor is duly elected and qualified or their earlier death, resignation, or removal in accordance with the Surviving Entity's Operating Agreement. Following the Merger, the Surviving Entity shall continue to be managed by its member in accordance with the Surviving Entity's Operating Agreement.

## ARTICLE II EFFECT OF THE MERGER

At the Effective Time, by virtue of the Merger and without any action on the part of any stockholder of the Merged Corporation, the shares of capital stock of the Merged Corporation issued and outstanding immediately prior to the Effective Time shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and no membership interests of Surviving Entity nor shares of Parent shall be issued in exchange therefor.

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### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES OF THE SURVIVING ENTITY**

The Surviving Entity hereby makes the representations and warranties set forth in this Article III:

Section 3.1 Organization. The Surviving Entity is a limited liability company duly organized, validly existing, and in good standing under the Laws of Delaware.

Section 3.2 Authorization. The Surviving Entity has full limited liability company power and authority to execute, deliver and perform this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the Merger and the other transactions contemplated hereby have been duly approved by the board of directors of the Parent, which is the sole member of Phantom LLC, which is the sole member of Surviving Entity, and no other limited liability action on the part of the Surviving Entity is necessary to approve and authorize the execution and delivery of this Agreement or the consummation of the Merger and the other transactions contemplated hereby. This Agreement has been duly executed and delivered by the Surviving Entity and constitutes the valid and binding agreement of the Surviving Entity, enforceable in accordance with its terms, except that the enforceability of this Agreement is subject to bankruptcy, insolvency, reorganization and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles.

Section 3.3 No Other Representations or Warranties. Except for the representations, warranties, covenants and agreements contained in this Article III, (a) neither the Surviving Entity nor any of its representatives, agents or Affiliates makes any express or implied representation or warranty or condition in connection with the transactions contemplated hereby and (b) the Surviving Entity disclaims any and all other representations, warranties, covenants and agreements, in any form whatsoever, whether express or implied.

### **ARTICLE IV**

#### **REPRESENTATIONS AND WARRANTIES OF MERGED CORPORATION**

The Merged Corporation hereby makes the representations and warranties set forth in this Article IV:

Section 4.1 Corporate Organization. Merged Corporation is a corporation duly incorporated, validly existing, and in good standing under the Laws of the State of Florida.

Section 4.2 Authorization. Merged Corporation has full corporate power and authority to execute, deliver and perform this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the Merger and the other transactions contemplated hereby have been duly approved by the board of directors of Merged Corporation, the Merger has been approved by all of the stockholders of the Merged Corporation, and no other corporate action on the part of Merged Corporation is necessary to approve and authorize the execution and delivery of this Agreement or the consummation of the Merger and the other transactions contemplated hereby. This Agreement has been duly executed and delivered by Merged Corporation and constitutes the valid and binding agreement of Merged Corporation,

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enforceable in accordance with its terms, except that the enforceability of this Agreement is subject to bankruptcy, insolvency, reorganization and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles.

**Section 4.3 No Other Representations or Warranties.** Except for the representations, warranties, covenants and agreements contained in this Article IV, (a) neither Merged Corporation nor any of its representatives, agents or Affiliates makes any express or implied representation or warranty or condition in connection with the transactions contemplated hereby and (b) Merged Corporation disclaims any and all other representations, warranties, covenants and agreements, in any form whatsoever, whether express or implied.

#### **ARTICLE V**

#### **CONDITIONS OF MERGER**

The obligations of the parties to this Agreement to consummate the Merger and the transactions contemplated by this Agreement shall be subject to fulfillment or waiver by the parties hereto of each of the following conditions:

(a) **No Conflicts.** Prior to the Effective Time, no order, statute, rule, regulation, executive order, injunction, stay, decree, judgment or restraining order shall have been enacted, entered, promulgated or enforced by any court or governmental or regulatory authority or instrumentality which prohibits or makes illegal the consummation of the Merger or the transactions contemplated hereby.

(b) **Lender Approval.** Prior to the Effective Time, the Merged Corporation and Surviving Entity shall obtain any necessary consent by any lender to any party hereto to approve the Merger.

#### **ARTICLE VI**

#### **ADDITIONAL ACTIONS**

If, at any time after the Effective Time, the Surviving Entity shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Entity its right, title or interest in, to or under any of the rights, properties or assets of any Merged Corporation acquired or to be acquired by the Surviving Entity as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and directors of the Surviving Entity shall be authorized to execute and deliver, in the name and on behalf of each of Merged Corporation, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of each of Merged Corporation or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Entity or otherwise to carry out this Agreement.

#### **ARTICLE VII**

#### **TERMINATION**

**Section 7.1 Termination.** This Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time prior to the Effective Time by action of the

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board of directors of the Merged Corporation or Surviving Entity, or any duly authorized committee of any of such entities, if it is determined that for any reason the completion of the transactions provided for herein would be inadvisable or not in the best interest of such entity or its stockholders or members.

**Section 7.2 Effect of Termination.** In the event of the termination and abandonment of this Agreement as provided above, the provisions of this Agreement shall immediately become void and of no further force or effect and the Merged Corporation, Surviving Entity nor their respective stockholders, members, directors or officers shall have any liability with respect to such termination and abandonment.

## **ARTICLE VIII** **MISCELLANEOUS**

**Section 8.1 Non-Survival of Representations and Warranties, Etc.** No representations or warranties shall survive the consummation of the Merger. Except for any covenant or agreement that by its terms contemplates performance after the consummation of the Merger, none of the covenants and agreements of the parties contained in this Agreement shall survive the consummation of the Merger.

**Section 8.2 Amendment.** This Agreement may be supplemented, amended or modified by the mutual consent of the parties to this Agreement by action by their respective boards of directors; provided, however, that, any amendment effected subsequent to stockholder approval shall be subject to the restrictions contained in the DE LLCA and the FL BCA. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the parties hereto.

**Section 8.3 Counterparts.** This Agreement may be executed in counterparts (each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement) and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission (including documents in Adobe PDF format) will be effective as delivery of a manually executed counterpart to this Agreement.

**Section 8.4 Entire Agreement; No Third-Party Beneficiaries.** This Agreement (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and thereof, and (b) is not intended to and shall not confer upon any Person other than the parties hereto any rights or remedies hereunder.

**Section 8.5 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without reference to its conflicts of laws principles.

**Section 8.6 Severability.** If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any

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term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 8.7 Fees and Expenses. Except as expressly provided herein, all fees and expenses incurred in connection with this Agreement, the Merger or the other transactions contemplated hereby shall be paid by the party incurring such fees or expenses.

Section 8.8 Miscellaneous. When a reference is made in this Agreement to an Article, a Section, Exhibit or Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 8.9 Definitions. As used in this Agreement, the following terms have the meanings ascribed thereto below:

(a) "Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

(b) "Agreement" has the meaning given in the Preamble.

(c) "Business Day" shall mean a day except a Saturday, a Sunday, or other day on which banks in Youngstown, Ohio are authorized or required by Law to be closed.

(d) "Governmental Authority" means any domestic or foreign governmental or regulatory body, commission, agency, instrumentality, authority or other legislative, executive or judicial entity or court.

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(e) "Laws" shall mean, collectively, all laws (including common law), statutes, ordinances, codes, rules, regulations, decrees, orders, writs, injunctions, judgments, rulings or other requirements of any Governmental Authority, including, but not limited to, all laws (including common law), statutes, ordinances, codes, rules, regulations, decrees, orders, writs, injunctions, judgments, rulings or other requirements of any Governmental Authority governing the environment, health and human safety.

(f) "Person" shall mean an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity, including a Governmental Authority, or any division of such Person.

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

**SURVIVING ENTITY:**

PHANTOM FIREWORKS SHOWROOMS, LLC

By: 

Name: Bruce J. Zoldan

Title: President

**MERGED CORPORATION:**

PHANTOM OF MISSOURI, INC.

By: 

Name: Bruce J. Zoldan

Title: President

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