

Filing Fee: See Instructions

ID Number: 158218



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Office of the Secretary of State  
Corporations Division  
148 W. River Street  
Providence, Rhode Island 02904-2615

ARTICLES OF MERGER OR CONSOLIDATION INTO

KRES - RI, LLC

(Insert full name of surviving or new entity on this line.)

SECTION I: TO BE COMPLETED BY ALL MERGING OR CONSOLIDATING ENTITIES

Pursuant to the applicable provisions of the General Laws of Rhode Island, 1956, as amended, the undersigned entities submit the following Articles of ☒ Merger or ☐ Consolidation (check one box only) for the purpose of merging or consolidating them into one entity.

- a. The name and type (for example, business corporation, non-profit corporation, limited liability company, limited partnership, etc.) of each of the merging or consolidating entities and the state under which each is organized are:

Name of entity	Type of entity	State under which entity is organized
Blimpie Newport Ventures, Inc.	Corporation	Rhode Island
KRES - RI, LLC	Limited Liability Company	Rhode Island

- b. The laws of the state under which each entity is organized permit such merger or consolidation.

- c. The full name of the surviving or new entity is KRES - RI, LLC  
which is to be governed by the laws of the state of Rhode Island

- d. The attached Plan of Merger or Consolidation was duly authorized, approved, and executed by each entity in the manner prescribed by the laws of the state under which each entity is organized. (Attach Plan of Merger or Consolidation)

- e. If the surviving entity's name has been amended via the merger, please state the new name:

- f. If the surviving or new entity is to be governed by the laws of a state other than the State of Rhode Island, and such surviving or new entity is not qualified to conduct business in the state of Rhode Island, the entity agrees that it: (i) may be served with process in Rhode Island in any proceeding for the enforcement of any obligation of any domestic entity which is a party to the merger or consolidation; (ii) irrevocably appoints the Secretary of State as its agent to accept service of process in any action, suit, or proceeding; and (iii) the address to which a copy of such process of service shall be mailed to it by the Secretary of State is:

- g. These Articles of Merger or Consolidation shall be effective upon filing unless a specified date is provided which shall be no later than the 90<sup>th</sup> day after the date of this filing

SECTION II: TO BE COMPLETED ONLY IF ONE OR MORE OF THE MERGING OR CONSOLIDATING ENTITIES IS A BUSINESS CORPORATION PURSUANT TO TITLE 7, CHAPTER 1.2 OF THE RHODE ISLAND GENERAL LAWS, AS AMENDED.

- a. If the surviving or new entity is to be governed by the laws of a state other than the State of Rhode Island, such surviving or new entity hereby agrees that it will promptly pay to the dissenting shareholders of any domestic corporation the amount, if any, to which they shall be entitled under the provisions of Title 7, Chapter 1.2 of the General Laws of Rhode Island, 1958, as amended, with respect to dissenting shareholders.

FILED

FEB 05 2007

By [Signature] 15491

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SECRETARY OF STATE  
CORPORATIONS DIV.

b. Complete the following subparagraphs i and ii only if the merging business corporation is a subsidiary corporation of the surviving corporation.

i) The name of the subsidiary corporation is \_\_\_\_\_

ii) A copy of the plan of merger was mailed to shareholders of the subsidiary corporation (such date shall not be less than 30 days from the date of filing) \_\_\_\_\_

c. As required by Section 7-1.2-1003 of the General Laws, the corporation has paid all fees and franchise taxes.

.....  
**SECTION III: TO BE COMPLETED ONLY IF ONE OR MORE OF THE MERGING OR CONSOLIDATING ENTITIES IS A NON-PROFIT CORPORATION PURSUANT TO TITLE 7, CHAPTER 6 OF THE RHODE ISLAND GENERAL LAWS, AS AMENDED.**

a. If the members of any merging or consolidating non-profit corporation are entitled to vote thereon, attach a statement for each such non-profit corporation which sets forth the date of the meeting of members at which the Plan of Merger or Consolidation was adopted, that a quorum was present at the meeting, and that the plan received at least a majority of the votes which members present at the meeting or represented by proxy were entitled to cast; OR attach a statement for each such non-profit corporation which states that the plan was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

b. If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such non-profit corporation attach a statement which states the date of the meeting of the board of directors at which the plan was adopted, and a statement of the fact that the plan received the vote of a majority of the directors in office.

.....  
**SECTION IV: TO BE COMPLETED ONLY IF ONE OR MORE OF THE MERGING OR CONSOLIDATING ENTITIES IS A LIMITED PARTNERSHIP PURSUANT TO TITLE 7, CHAPTER 13 OF THE RHODE ISLAND GENERAL LAWS, AS AMENDED**

a. The agreement of merger or consolidation is on file at the place of business of the surviving or resulting domestic limited partnership or other business entity and the address thereof is:

b. A copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited partnership or other business entity, on request and without cost, to any partner of any domestic limited partnership or any person holding an interest in any other business entity which is to merge or consolidate.

.....  
**SECTION V: TO BE COMPLETED BY ALL MERGING OR CONSOLIDATING ENTITIES**

Under penalty of perjury, we declare and affirm that we have examined these Articles of Merger or Consolidation, including any accompanying attachments, and that all statements contained herein are true and correct.

Blimpie Newport Ventures, Inc.

Print Entity Name

By: David Guarino David Guarino, President  
Name of person signing Title of person signing

By: \_\_\_\_\_  
Name of person signing Title of person signing

KRES - RI, LLC

Print Entity Name

By: Michael Reagan Michael Reagan, EVP/General Counsel of Member  
Name of person signing Title of person signing

By: \_\_\_\_\_  
Name of person signing Title of person signing

## **PLAN OF MERGER**

This Plan of Merger (the "Plan of Merger") is entered into as of this 8<sup>th</sup> day of January, 2007, by and among Blimpie Newport Ventures, Inc., a Rhode Island corporation (the "Disappearing Entity"), and KRES-RI, LLC, a Rhode Island limited liability company ("KRES"). The Disappearing Entity and KRES are sometimes collectively referred to in this agreement as the "Constituent Entities."

### **Recitals**

All of the Constituent Entities are organized and existing under the laws of the State of Rhode Island.

The Constituent Entities have deemed it advisable and in the best interest of each Constituent Entity and their respective members that the Disappearing Entity be merged with and into KRES (the "Merger") as authorized by the laws of the State of Rhode Island.

The address of the principal place of business of KRES-RI, LLC is 7730 E. Greenway Road, Suite 104, Scottsdale, Arizona 85260.

### **AGREEMENT**

In consideration of the foregoing recitals, covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties state and agree as follows.

#### **1. Terms and Conditions.**

- a. **Effectiveness.** The Disappearing Entity shall be merged with and into KRES (the "Surviving Entity") pursuant to the laws of the State of Rhode Island and in accordance with the terms and conditions of this Plan of Merger. The Merger shall be effective upon the filing of the Articles of Merger with the State of Rhode Island (the "Effective Date").
- b. **Articles of Organization.** The Articles of Organization of KRES shall constitute the Articles of Organization of the Surviving Entity and shall continue in full force and effect until altered, amended, or changed in accordance with the laws of the State of Rhode Island.
- c. **Operating Agreement.** The Operating Agreement of KRES, as in force and effective immediately prior to the Effective Date, shall be the Operating Agreement of the Surviving Entity and shall continue in full

force and effect until altered, amended or changed as therein provided or in accordance with the laws of the State of Rhode Island.

- d. Member. Upon the Effective Date, the Sole Member of the Surviving Entity shall remain KRES Holdings, LLC, an Arizona limited liability company, until changed in accordance with the terms of the Operating Agreement or in accordance with the laws of the State of Rhode Island.
- e. Conversion of Securities. At and as of the Effective Date, by virtue of the Merger and without any action on the part of the holders thereof:
  - i. Conversion of Shares. At the Effective Date, each share of Blimpie Newport Ventures, Inc.'s common stock shall be retired and cancelled without consideration.
  - ii. Membership Interest. Each membership interest in KRES outstanding immediately prior to the Effective Date will continue to be an identical membership interest in KRES following the Merger.
- f. Rights, Duties, Powers, Liabilities. At the Effective Date, the separate existence of Blimpie Newport Ventures, Inc. shall cease, and Blimpie Newport Ventures, Inc. shall be merged, in accordance with the provisions of this Plan of Merger, with and into the Surviving Entity, and the Surviving Entity shall continue its existence as a limited liability company under the laws of the State of Rhode Island and thereupon and thereafter all the rights, privileges, properties and leases of each of the Constituent Entities shall vest in the Surviving Entity. The Surviving Entity shall be responsible and liable for all liabilities and obligations of the Constituent Entities, and all other effects of the Merger specified in Rhode Island shall result therefrom.


2. Miscellaneous.

- a. Implementation. Each of the Constituent Entities shall, subject to the terms of the Plan of Merger, take or cause to be taken all action or do or cause to be done all steps necessary or advisable under the laws of the State of Rhode Island to consummate and make effective the Merger.
- b. Termination. This Agreement may be terminated for any reason at any time before the Effective Date by the mutual written consent of the Disappearing Entity and KRES.

- c. Amendment. This Agreement may, to the extent permitted by law, be amended, supplemented or interpreted at any time by action taken by all of the Constituent Entities; provided, however, that this Agreement may not be amended or supplemented after having been approved by the members of a Constituent Entity except by a vote or consent of the members and shareholders of the Constituent Entity in accordance with the laws of the State of Rhode Island.
- d. Shareholder/Member Approval. The shareholders of Blimpie Newport Ventures, Inc. and the sole member of KRES have approved the Plan of Merger in accordance with the laws of the State of Rhode Island.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Plan of Merger as of the date first set forth above.

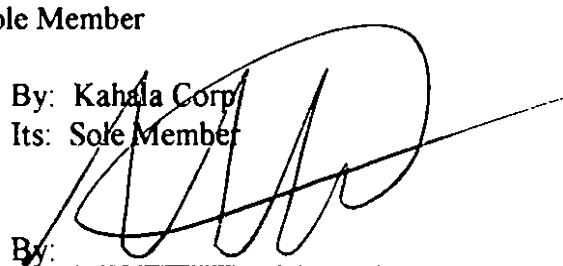
**DISAPPEARING ENTITY:           BLIMPIE NEWPORT VENTURES, INC.**

By:   
David Guarino  
Its: President

**SURVIVING ENTITY:           KRES-RI, LLC**

By: KRES Holdings, LLC  
Its: Sole Member

By: Kahala Corp/  
Its: Sole Member

By:   
Michael Reagan  
Its: Executive Vice President/General Counsel