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2000-01-05 15:27:10  
Cook County Recorder 45.50

File Number 5350-363-2



00012747

State of Illinois  
Office of  
The Secretary of State

Whereas,

ARTICLES OF MERGER OF  
SOLA CUP COMPANY

INCORPORATED UNDER THE LAWS OF THE STATE OF ILLINOIS HAVE BEEN  
FILED IN THE OFFICE OF THE SECRETARY OF STATE AS PROVIDED BY THE  
BUSINESS CORPORATION ACT OF ILLINOIS, IN FORCE JULY 1, A.D. 1984.

Now Therefore, I, Jesse White, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby issue this certificate and attach hereto a copy of the Application of the aforesaid corporation.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, at the City of Springfield, this 29TH day of DECEMBER A.D. 1999 and of the Independence of the United States the two hundred and 24TH .



*Jesse White*

Secretary of State

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Form **BCA-11.25**  
(Rev. Jan. 1999)

## ARTICLES OF MERGER CONSOLIDATION OR EXCHANGE

File # 5350-363-2

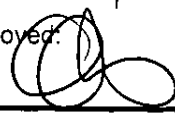
Jesse White  
Secretary of State  
Department of Business Services  
Springfield, IL 62756  
Telephone (217) 782-6961  
http://www.sos.state.il.us

# FILED

DEC 29 1999

JESSE WHITE  
SECRETARY OF STATE

**SUBMIT IN DUPLICATE**

This space for use by  
Secretary of State  
Date 12/29/99  
Filing Fee \$ 100.00  
Approved: 

**DO NOT SEND CASH!**  
Remit payment in check or money order, payable to "Secretary of State."  
Filing Fee is \$100, but if merger or consolidation involves more than 2 corporations, \$50 for each additional corporation.

1. Names of the corporations proposing to ~~consolidate~~ <sup>merge</sup> ~~exchange shares~~, and the state or country of their incorporation:

Name of Corporation	State or Country of Incorporation	Corporation File Number
<u>Solo Cup Company</u>	<u>Illinois</u>	<u>D 5350-363-2</u>
<u>Carnival Brands, Inc.</u>	<u>Illinois</u>	<u>D 5830-889-7</u>

2. The laws of the state or country under which each corporation is incorporated permits such merger, consolidation or exchange.

3. (a) Name of the ~~new~~ <sup>surviving</sup> ~~acquiring~~ corporation: Solo Cup Company  
(b) it shall be governed by the laws of: Illinois

If not sufficient space to cover this point, add one or more sheets of this size.

4. Plan of ~~consolidation~~ <sup>merger</sup> ~~exchange~~ is as follows:

See attached Agreement and Plan of Merger.

# EXPEDITED

DEC 29 1999

SECRETARY OF STATE

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5. Plan of ~~consolidation~~ <sup>merger</sup> ~~exchange~~ was approved, as to each corporation not organized in Illinois, in compliance with the laws of the state under which it is organized, and (b) as to each Illinois corporation, as follows:

*(The following items are not applicable to mergers under §11.30 — 90% owned subsidiary provisions. See Article 7.)*

*(Only "X" one box for each Illinois corporation)*

By the shareholders, a resolution of the board of directors having been duly adopted and submitted to a vote at a meeting of shareholders. Not less than the minimum number of votes required by statute and by the articles of incorporation voted in favor of the action taken.

(§ 11.20)

By written consent of the shareholders having not less than the minimum number of votes required by statute and by the articles of incorporation. Shareholders who have not consented in writing have been given notice in accordance with § 7.10 (§ 11.220)

By written consent of ALL the shareholders entitled to vote on the action, in accordance with § 7.10 & § 11.20

Name of Corporation

_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. *(Not applicable if surviving, new or acquiring corporation is an Illinois corporation)*

It is agreed that, upon and after the issuance of a certificate of merger, consolidation or exchange by the Secretary of State of the State of Illinois:

- a. The surviving, new or acquiring corporation may be served with process in the State of Illinois in any proceeding for the enforcement of any obligation of any corporation organized under the laws of the State of Illinois which is a party to the merger, consolidation or exchange and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such corporation organized under the laws of the State of Illinois against the surviving, new or acquiring corporation.
- b. The Secretary of State of the State of Illinois shall be and hereby is irrevocably appointed as the agent of the surviving, new or acquiring corporation to accept service of process in any such proceedings and
- c. The surviving, new, or acquiring corporation will promptly pay to the dissenting shareholders of any corporation organized under the laws of the State of Illinois which is a party to the merger, consolidation or exchange the amount, if any, to which they shall be entitled under the provisions of "The Business Corporation Act of 1983" of the State of Illinois with respect to the rights of dissenting shareholders.

7. (Complete this item if reporting a merger under § 11.30—90% owned subsidiary provisions.)

a. The number of outstanding shares of each class of each merging subsidiary corporation and the number of such shares of each class owned immediately prior to the adoption of the plan of merger by the parent corporation, are:

Name of Corporation	Total Number of Shares Outstanding of Each Class	Number of Shares of Each Class Owned Immediately Prior to Merger by the Parent Corporation
Carnival Brands, Inc.	1,000	1,000
-----	-----	-----
-----	-----	-----
-----	-----	-----
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b. (Not applicable to 100% owned subsidiaries)

The date of mailing a copy of the plan of merger and notice of the right to dissent to the shareholders of each merging subsidiary corporation was \_\_\_\_\_

(Month & Day) (Year)

Was written consent for the merger or written waiver of the 30-day period by the holders of all the outstanding shares of all subsidiary corporations receive?  Yes  No

(If the answer is "No," the duplicate copies of the Articles of Merger may not be delivered to the Secretary of State until after 30 days following the mailing of a copy of the plan of merger and of the notice of the right to dissent to the shareholders of each merging subsidiary corporation.)

8. The undersigned corporations have caused these articles to be signed by their duly authorized officers, each of whom affirms, under penalties of perjury, that the facts stated herein are true. (All signatures must be in **BLACK INK.**)

Dated December 20, 1999  
(Month & Day) (Year)

Solo Cup Company  
(Exact Name of Corporation)

attested by [Signature]  
(Signature of Secretary or Assistant Secretary)

by [Signature]  
(Signature of President or Vice President)

Ronald L. Whaley, Exec. V.P.  
(Type or Print Name and Title)

Robert L. Hulseman, Chairman/CEO  
(Type or Print Name and Title)

Dated December 20, 1999  
(Month & Day) (Year)

Carnival Brands, Inc.  
(Exact Name of Corporation)

attested by [Signature]  
(Signature of Secretary or Assistant Secretary)

by [Signature]  
(Signature of President or Vice President)

Ronald L. Whaley, Assistant Secretary  
(Type or Print Name and Title)

Robert L. Hulseman, President  
(Type or Print Name and Title)

Dated \_\_\_\_\_  
(Month & Day) (Year)

\_\_\_\_\_  
(Exact Name of Corporation)

attested by \_\_\_\_\_  
(Signature of Secretary or Assistant Secretary)

by \_\_\_\_\_  
(Signature of President or Vice President)

C-195.8 \_\_\_\_\_  
(Type or Print Name and Title)

\_\_\_\_\_  
(Type or Print Name and Title)

AGREEMENT AND PLAN OF MERGER

BETWEEN

SOLO CUP COMPANY

AND

CARNIVAL BRANDS, INC.

This Agreement and Plan of Merger is made as of the \_\_\_\_ day of \_\_\_\_\_, 1999, between Carnival Brands, Inc. an Illinois corporation (herein called "Merged Corporation" or "Carnival"), and Solo Cup Company, an Illinois corporation (herein called "Surviving Corporation" or "Solo"). The Merged Corporation and the Surviving Corporation are referred to collectively herein as "the Parties".

WHEREAS, the Parties contemplate a tax-free-merger of Carnival with and into Solo in a reorganization pursuant to Internal Revenue Code Section 368 (a) (1) (A) ;

WHEREAS, Carnival is a wholly owned subsidiary of Solo; and

WHEREAS, the Parties expect that the merger will further certain of their business objectives;

NOW THEREFORE, the Parties agree as follows:

1. Basic Transaction:

A. The Merger: On and subject to the terms and conditions of this Agreement, Carnival will merge with and into Solo (the "Merger") at the Effective Time (hereinafter defined). Solo shall be the corporation surviving the Merger. All of the property, real, personal and mixed, of each of the Parties, and all debts due to either of them, shall be transferred to and vested in the Surviving Corporation, without further act or deed, as of the Effective Time. As of the Effective Time, the Surviving Corporation shall be responsible and liable for all of the liabilities and obligations of both the Merged Corporation and the Surviving Corporation, and any claim or judgment against either Party.

B. The Closing: The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Fox and Grove, Chartered on the second business day following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective Parties will take at the Closing itself) or such other date as the Parties may mutually determine (the "Closing Date").

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C. Actions at the Closing: At the Closing, (i) Carnival will deliver to Solo all of its issued and outstanding stock certificates and copies of all corporate resolutions and consents which are necessary to consummate the Merger, (ii) Solo will deliver to Carnival copies of all of its corporate resolutions and consents necessary to consummate the Merger, and (iii) the Merged Corporation and the Surviving corporation will file with the Secretary of State of the State of Illinois Articles of Merger in the form attached hereto as Exhibit A (the "Articles of Merger").

D. Effect of Merger:

- (1) General: The Merger shall become effective at the time (the "Effective Time") that the Parties file the Articles of Merger with the Secretary of State of the State of Illinois. The Merger shall have the effect set forth in the Illinois Business Corporation Act of 1983, as amended. The Surviving corporation may, at any time after the Effective Time, take any action (including executing and delivering any document) in the name and on behalf of either the Merged Corporation or the Surviving corporation in order to carry out and effectuate the transactions contemplated by this Agreement.
  - (2) Articles of Incorporation: The Articles of Incorporation of the Surviving Corporation in effect as of the date of this Agreement and as of the Effective Time will remain the Articles of Incorporation of the Surviving Corporation without any modification or Amendment in the Merger.
  - (3) Bylaws: The Bylaws of the Surviving Corporation in effect as of the date of this Agreement and as of the Effective Time will remain the Bylaws of the Surviving Corporation.
  - (4) Directors and Officers: The Directors and Officers of the Surviving Corporation as of the date of this Agreement and as of the Effective Time shall continue to serve until their respective successors are duly elected and qualified pursuant to the Bylaws of the Surviving Corporation.
  - (5) Conversion of Carnival Shares: At and as of the Effective Time, each outstanding share of Carnival shall be cancelled.
  - (6) Surviving Corporation Shares: Each share of the Surviving Corporation issued and outstanding at and as of the Effective Time will remain issued and outstanding.
2. Representations and Warranties of the Merged Corporation: The Merged Corporation represents and warrants to the surviving Corporation that the statements contained in this Section 2 are correct and complete as of the date of this Agreement, and will be correct and complete as of the Closing Date.



- A. Organization, Qualification and Corporate Power: The Merged Corporation is a corporation duly organized, validly existing, and in good standing under the laws of the State of Illinois. The Merged Corporation is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required, except where the lack of such qualification would not have a material adverse effect on the financial condition of the Merged Corporation taken as a whole or the ability of the Parties to consummate the transactions contemplated by this Agreement. The Merged Corporation has full corporate power and authority to carry on the businesses in which it is engaged, and to own and use the properties owned and used by it.
- B. Capitalization: The entire authorized capital stock of the Merged Corporation consists of 10,000 common shares of \$1.00 par value stock, of which 1,000 shares of the Merged Corporation are issued and outstanding. All of the issued and outstanding shares of the Merged Corporation have been duly authorized and are validly issued, fully paid, and nonassessable. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require the Merged Corporation to issue, sell, or otherwise cause to become outstanding any of its capital stock. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or similar rights with respect to the Merged Corporation.
- C. Authorization of Transaction: The Merged Corporation has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder; provided, however, that the Merged Corporation cannot consummate the Merger unless and until it receives the approval of all of its directors. This Agreement constitutes the valid and legally binding obligation of the Merged Corporation, enforceable in accordance with its terms and conditions.
- D. Noncontravention: To the best knowledge of any director or officer of the Merged Corporation, neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Merged Corporation is subject, or any provision of the charter or bylaws of the Merged Corporation, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which any of the Merged Corporation is a party or by which it is bound, or to which any of its assets is subject (or result in the imposition of any security interest upon any of its assets), except where the violation, conflict, breach, default, acceleration, termination, modification, cancellation, failure to give notice, or security interest would not have a material adverse effect on the financial condition of the Merged

Corporation taken as a whole or on the ability of the Parties to consummate the transactions contemplated by this Agreement.

- E. Financial Statements: The financial statements of the Merged Corporation which have been delivered by the Merged Corporation to the Surviving Corporation, fairly present the financial condition of the Merged Corporation as set forth in such statements.
- F. Absence of Undisclosed Liabilities: Except to the extent reflected or reserved against in the financial statements of the Merged Corporation, which have been delivered to the Surviving Corporation, the Merged Corporation did not have at that date any liabilities or obligations (secured, unsecured, contingent or otherwise) of a nature customarily reflected in such statements.
- G. Continuity of Business Enterprise: The Merged Corporation operates at least one significant historic business line, and owns or leases all of its historic business assets, in each case within the meaning of Treas. Reg. Sec. 1.368-1(d). Such business line and business assets shall be merged into the Surviving Corporation.
- H. The Merged Corporation has no subsidiaries.
3. Representations and Warranties of the Surviving Corporation: The Surviving corporation represents and warrants to the Merged Corporation that the statements contained in this Section 3 are correct and complete as of the date, of this Agreement and will be correct and complete as of the Closing Date.
- A. Organization, Qualification and Corporate Power: The Surviving Corporation is a corporation duly organized, validly existing, and in good standing under the laws of the State of Illinois. The Surviving Corporation is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required, except where the lack of such qualification would not have a material adverse effect on the financial condition of the Surviving Corporation taken as a whole or the ability of the Parties to consummate the transactions contemplated by this Agreement. The Surviving Corporation has full corporate power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it.
- B. Capitalization: The entire authorized capital stock of the Surviving Corporation consists of 100,100,000 common shares of \$.01 par value stock, of which 10,234,600 shares of the Surviving Corporation are issued and outstanding. Of the 10,234,600 shares outstanding 10,177,126 are Class A Non-voting common shares and 57,474 are Class B Voting common shares. All of the issued and outstanding shares of the Surviving Corporation have been duly authorized and are validly issued, fully paid, and nonassessable. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or similar rights with respect to the Surviving Corporation.



- C. Authorization of Transaction: The Surviving Corporation has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder; provided, however, that the Surviving Corporation cannot consummate the Merger unless and until it receives the approval of all of its directors. This Agreement constitutes the valid and legally binding obligation of the surviving Corporation, enforceable in accordance with its terms and conditions.
- D. Noncontravention: To the best knowledge of any director or officer of the Surviving Corporation, neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the surviving corporation is subject or any provision of the charter or bylaws of the surviving Corporation, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which any of the Surviving Corporation is a party, or by which it is bound, or to which any of its assets is subject or result in the imposition of any Security Interest upon any of its assets), except where the violation, conflict, breach, default, acceleration, termination, modification, cancellation, failure to give notice, or Security Interest would not have a material adverse effect on the financial condition of the Surviving Corporation taken as a whole or on the ability of the Parties to consummate the transactions contemplated by this Agreement.
- E. Financial Statements: The financial statements of the Surviving Corporation which have been delivered by the Surviving Corporation to the Merged Corporation, fairly represent the financial condition of the Surviving Corporation as set forth in such statements.
- F. Absence of Undisclosed Liabilities: Except to the extent reflected or reserved against in the financial statements of the Surviving Corporation, which have been delivered to the Merged Corporation, the Surviving Corporation did not have at that date any liabilities or obligations (secured, unsecured, contingent or otherwise) of a nature customarily reflected in such statements.
- G. Continuity of Business Enterprise: It is the present intention of the Surviving Corporation to continue at least one historic business line of the Merged Corporation and to use all of the Merged Corporation's historic business assets in its business, in each case within the meaning of Treas. Reg. Sec. 1.368-1(d). Such business line and business assets of the Merged Corporation shall be merged into the Surviving Corporation.

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4. Covenants of the Parties: The Parties agree as follows with respect to the period from and after the date of this Agreement:
- A. General: Each of the parties will use its best efforts to take all action and to do all things necessary in order to consummate and make effective the transactions contemplated by this Agreement.
  - B. Articles of Incorporation and Bylaws: Except as set forth herein, neither the Merged Corporation nor the Surviving Corporation shall make any changes to its respective Articles of Incorporation or Bylaws without the consent of the other Party.
  - C. Corporate Distributions and Changes: Neither the Merged Corporation nor the Surviving Corporation shall make any change in its authorized or issued capital stock, declare or pay any dividend or other distribution, issue, encumber, purchase or otherwise acquire any of its capital stock, issue any note, or other debt or security, or perform any other act that is not within the ordinary course of its business, without the consent of the other Party.
  - D. Full Access: Each of the Parties shall permit representatives of the other to have full access to all premises, properties, personnel, books, records, contracts, and documents of and pertaining to the other Party.
5. Conditions Precedent to Obligation to Close: The obligation of the Parties to consummate this Merger shall be subject to fulfillment on or before the Effective Time of each of the following conditions, unless waived.
- A. Representations and Warranties: The representations and warranties of both parties set forth in this Agreement shall be true and correct in all material respects at and as of the Closing Date.
  - B. Director Approval: This Agreement shall have been adopted by the unanimous vote of the directors of both the Merged Corporation and the Surviving Corporation.
  - C. Compliance with Covenants: Each of the Parties shall have complied in all material respects with the covenants to be performed pursuant to this Agreement.
6. Termination of Agreement: Either of the Parties may terminate this Agreement with the prior authorization of its board of directors as provided below:
- A. Mutual Consent: The Parties may terminate this Agreement by mutual written consent at any time prior to the Effective Time.

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- B. Breach by Merged Corporation: The Surviving Corporation may terminate this Agreement by giving written notice to the Merged Corporation at any time prior to the Effective Time in the event that the Merged Corporation has breached any material representation, warranty, or covenant contained in this Agreement in any material respect; the Surviving Corporation has notified the Merged Corporation of this breach; and the breach has continued without cure for a period of thirty (30) days after the notice of breach.
- C. Breach by Surviving Corporation: The Merged Corporation may terminate this Agreement by giving written notice to the Surviving corporation at any time prior to the Effective Time in the event the surviving corporation has breached any material representation, warranty or covenant contained in this Agreement in any material respect; the Merged Corporation has notified the Surviving Corporation of the breach; and the breach has continued without cure for a period of thirty (30) days after the notice of breach.
- D. Effect of Termination: If any Party terminates this Agreement pursuant to this Section 6, all rights and obligations of the Parties hereunder shall terminate without any liability of any Party to any other Party (except for any liability of any Party then in breach).

7. Notices: Any notice or other communication in this Agreement to be given by either party to the other must be in writing and may be given by any means which provides evidence of receipt, or by delivering the same in person, or to an officer of such party. Notice shall be deemed received upon making an in-person delivery or upon the date shown on a receipted delivery. For purposes of notice, the addresses of the parties shall be as follows:

If to Solo Cup Company:

Solo Cup Company  
1700 Old Deerfield Road  
Highland Park, Illinois 60035

If to Carnival Brands, Inc.:

Carnival Brands, Inc.  
1700 Old Deerfield Road  
Highland Park, Illinois 60035

and a copy to:

Fox and Grove, Chartered  
Suite 6200  
311 South Wacker Drive  
Chicago, Illinois 60606



or to such other addresses as any party may designate for itself by notice given from time to time to the other parties in the manner provided herein.

8. Other Mutual Covenants:

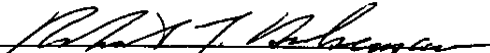
- A. Severability: Each Section of this Agreement and each sentence, clause or phrase contained in such Section shall be considered severable and, if for any reason, any Section or sentence, clause or phrase contained in such Section is determined to be invalid or contrary to any existing or future laws, such invalidity shall not impair the operation of or affect that portion of this Agreement which is valid.
- B. Amendment: This Agreement may be amended, altered or revoked at any time, in whole or in part, by filing with this Agreement a written instrument setting forth such changes signed by all of the parties to this Agreement.
- C. Binding on: This Agreement shall be binding on the parties hereto, and their respective successors, assigns, heirs and legal representatives.
- D. Survival of Covenants: The covenants, undertakings and indemnities herein contained to be performed or observed at any time before the termination of this Agreement shall survive the consummation of the transactions contemplated hereby and the termination of this Agreement.
- E. Section And Other Headings: Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- F. Governing Law: This instrument shall be governed by, and construed in accordance with, the laws of the State of Illinois.
- G. Counterparts: This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.
- H. Gender and Number: Where appropriate, words of the masculine gender include the feminine, and words used in a plural or collective sense include the singular and vice versa.


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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

CARNIVAL BRANDS, INC.

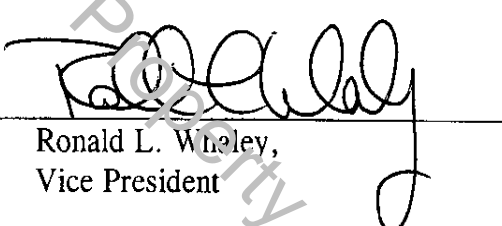
SOLO CUP COMPANY

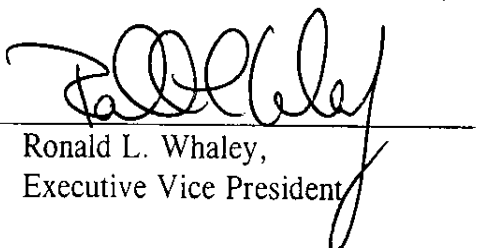
By:   
Robert L. Hulseman,  
President

By:   
Robert L. Hulseman,  
Chairman/CEO

ATTEST:

ATTEST:

  
Ronald L. Whaley,  
Vice President

  
Ronald L. Whaley,  
Executive Vice President

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