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FORM **BCA 11.39** (rev. Dec. 2003)  
**ARTICLES OF MERGER,  
BETWEEN ILLINOIS CORPORATIONS  
AND LIMITED LIABILITY COMPANIES**  
Business Corporation Act



Doc#: 0515806118  
Eugene "Gene" Moore Fee: \$44.50  
Cook County Recorder of Deeds  
Date: 06/07/2005 01:39 PM Pg: 1 of 11

Jesse White, Secretary of State  
Department of Business Services  
Springfield, IL 62756  
Telephone (217) 782-6961  
www.cyberdriveillinois.com

Permit payment in the form of a  
check or money order payable  
to the Secretary of State.

**FILED**

**MAY 12 2005**

JESSE WHITE  
SECRETARY OF STATE

The filing fee is \$100, but if merger  
involves more than 2 corporations,  
\$50 for each additional corporation.

File # 5265-845-4 Filing Fee: \$ 100-00 Approved: lt  
Submit in duplicate Type or Print clearly in black ink Do not write above this line

1 Names of the corporations and limited liability companies proposing to merge and the state or country of their organization or incorporation:

Name of Corporation Limited Liability Company	State or Country of Organization/Incorporation	Corporation File Number
Durst Brokerage, Inc.	Illinois	52658454
Insight Foodservice Sales and Marketing, LLC	Illinois	01003461

2. The laws of the state or country under which each corporation and Limited Liability Company are organized, permit such merger.

3. (a) Name of the surviving party: Durst Brokerage, Inc.  
(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 merger is as follows:

See attached

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5. Plan of merger was approved, as to each limited liability company, in compliance with the laws of the state under which it is organized, and (b) as to each Illinois corporation, as follows:

*(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 (§ 11.20)

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

Name of Corporation

Durst Brokerage, Inc.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 survivor is an Illinois corporation or an Illinois Limited Liability Company)*

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


- a. The surviving limited liability company 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 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 limited liability company.
- b. The Secretary of State of the State of Illinois shall be and hereby is irrevocably appointed as the agent of the surviving limited liability company to accept service of process in any such proceedings, and
- c. The surviving limited liability company 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 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.

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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 May 11 2005

Durst Brokerage, Inc.  
(Exact Name of Corporation)

  
(Any authorized officer's signature)

Thomas Kabat, CBO  
(Type or Print Name and Title)

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

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


\_\_\_\_\_  
(Any authorized officer's signature)

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

The undersigned limited liability companies have caused these articles to be signed by their duly authorized person, who affirms, under penalties of perjury, that the facts stated herein are true. (All signatures must be in **BLACK INK.**)

Dated May 11 2005  
(Year)

Insight Foodservice Sales Mkt.  
(Exact Name of Limited Liability Company)

by   
(Signature)

Richard Prescott, Member  
(Type or Print Name and Title)

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

\_\_\_\_\_  
(Exact Name of Limited Liability Company)

by \_\_\_\_\_  
(Signature)

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

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## AGREEMENT AND PLAN OF MERGER BETWEEN INSIGHT FOODSERVICE SALES AND MARKETING, LLC AND DURST BROKERAGE, INC.

**AGREEMENT AND PLAN OF MERGER** (this "Plan"), dated as of this 11<sup>th</sup> day of May 2005, between Insight Foodservice Sales and Marketing, LLC, a limited liability company duly organized and existing under the laws of the State of Illinois ("Merging Entity"), and Durst Brokerage, Inc., a corporation duly organized and existing under the laws of the State of Illinois ("Surviving Entity").

### WITNESSETH:

**WHEREAS**, the Merging Entity desires to merge with and into the Surviving Entity, and thereby transfer to the Surviving Entity all rights and property owned by it, tangible and intangible, wheresoever situated.

**WHEREAS**, the Surviving Entity desires to merge with the Merging Entity and, as the surviving corporation of the merger (the "Merger"), thereby acquire all of the rights and property of the Merging Entity, tangible and intangible, wheresoever situated, and assume the liabilities of the Merging Entity, on the terms and conditions set forth herein.

**WHEREAS**, Richard Prescott, Peter Vos and Frank Pinn, as members, own 100% of the membership interest ("Membership Interest") in the Merging Entity and no other Membership Interest is issued and outstanding;

**WHEREAS**, the Surviving Entity's capital structure consists of 1000 shares of authorized common stock ("Common Stock"), of which 900 are Class A Voting shares and 100 are Class B Non-Voting shares. 450 Class A and 40 Class B shares are issued to Thomas P. Kabat, 450 Class A and 40 Class B shares are issued to Brenda D. Lotesta and 20 Class B shares are issued to Forrest A. Fairall and no other shares are issued or outstanding;

**WHEREAS**, pursuant to the Merger, 100% of the Membership Interest of the Limited Liability Company shall be converted into shares of the Surviving Entity.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual benefits to be derived from this Plan, the parties hereto, intending to be legally bound, do hereby agree as follows:

### AGREEMENTS

**NOW THEREFORE**, in consideration of the mutual agreements, covenants, provisions, representations and warranties herein, the parties agree as follows:

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## ARTICLE I THE MERGER

As of the Effective Time (as hereinafter defined), the Merging Entity shall be merged with and into the Surviving Entity. The Surviving Entity shall be the surviving corporation of the Merger.

1.1 Merger. Subject to the terms and conditions of this Plan and pursuant to the Illinois Limited Liability Company Act ("Limited Liability Company Act") and the Illinois Business Corporation Act of 1983 ("Corporation Act"), the Merging Entity will be merged with and into the Surviving Entity.

1.2 Surviving Corporation. The separate corporate existence of the Merging Entity shall cease and thereupon the Merging Entity and the Surviving Entity shall be a single corporation and the Surviving Entity's principal place of business shall be 925 Busse Road, Elk Grove Village Illinois 60007.

1.3 Jurisdiction. The Surviving Entity shall succeed to, without other transfer, and shall possess and enjoy all of the rights, privileges, immunities and powers of the Merging Entity and shall be subject to all the duties and liabilities of a corporation organized under the laws of the State of Illinois.

1.4 Transfer of Rights and Property. The Surviving Entity shall possess all rights, privileges, immunities and franchises, of a public as well as of a private nature, of the Merging Entity. All property and all debts due on whatever account and all and every other interest of or belonging to or due to the Merging Entity, shall be taken and deemed to be transferred to and vested in the Surviving Entity without further act or deed.

1.5 Liabilities. The Surviving Entity shall henceforth be responsible and liable for all the liabilities and obligations of the Merging Entity and any claim existing or action or proceeding pending by or against such corporation may be prosecuted as if such Merger had not taken place. Neither the rights of creditors nor any liens upon the property of either corporation shall be impaired by the Merger.

1.6 Name. From and after the Effective Time, the name of the Surviving Entity will be Durst-Insight, Inc.

## ARTICLE II MANNER AND BASIS OF CONVERTING SHARES

The manner and basis of exchanging and converting the shares shall be as follows:

2.1 Conversion. Each member of the Merging Entity shall receive one (1) share of the Surviving Entity voting Common Stock in exchange for each converted Membership Interest of the Merging Entity currently owned by such member, and all Membership Interests of the

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Merging Entity surrendered in such exchange shall be immediately canceled. All Non-Voting Common Stock of the Surviving Entity shall become Voting Common Stock and there will only be one class of Common Stock as of the Effective Time.

2.2 Issuance of Common Stock. The shares of the Surviving Entity shall be deemed to have been issued at the Effective Time and as soon as practical thereafter the Surviving Entity shall issue and deliver to each shareholder of the Surviving Entity a certificate evidencing the shares of Common Stock to which such shareholder is entitled hereunder. From and after the Effective Time, the registered owner on the books and records of the Surviving Entity of the shares of Common Stock shall have and be entitled to exercise any voting and other rights with respect to such shares of Common Stock.

## ARTICLE III

### ARTICLES OF INCORPORATION, BY-LAWS, OFFICERS AND DIRECTORS

3.1 Articles of Incorporation and By-laws. The Articles of Incorporation and By-laws of the Surviving Entity shall be amended in accordance with the provisions of the Business Corporation Act or other applicable rule or regulation and to comply with this Plan. The Articles of Incorporation are hereby amended as follows: (1) Article One: The name of the Surviving Entity is Durst-Insight, Inc.; and (2) Article Five: The authorized shares of the Surviving Entity are 150,000 shares of Common Stock at No Par Value.

3.2 Directors and Officers. The directors and officers of the Surviving Entity at the Effective Time of the Merger shall continue as the directors and officers of the Surviving Entity until their resignation or removal or until their respective successors are duly elected and qualified or appointed, as the case may be.

3.3 Increase of Authorized Shares. The authorized shares of the Surviving Entity shall be 150,000. The Articles of Incorporation are being amended to increase the authorized shares of the Surviving Entity to 150,000 shares.

## ARTICLE IV

### CONDITIONS PRECEDENT

This Plan of Merger has been approved by the respective members and shareholders of the Merging Entity and the Surviving Entity to conform to the requirements of the laws of the States of Illinois as a condition precedent and authority has been given to file the Articles of Merger Between Illinois Corporations and Limited Liability Companies with the Illinois Secretary of State.

## ARTICLE V

### EFFECTIVE TIME

The Merger will be effective (the "Effective Time") upon the filing of this Plan with the Illinois Secretary of State pursuant to Section 37-25 of the Limited Liability Company Act and Section 11.40 of the Illinois Business Corporation Act.

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## ARTICLE VI TERMINATION OF PLAN

This Plan may be terminated at any time before the Effective Time by mutual consent of the merging corporations, expressed by action of the Boards of Directors and Members respectively.

## ARTICLE VII REPRESENTATIONS AND WARRANTIES SURVIVING ENTITY

The Surviving Entity hereby represents and warrants as follows:

7.1 Existence and Good Standing. The Surviving Entity is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, with all necessary corporate power and authority to own its assets and conduct its operations in the jurisdictions where the same are owned and conducted.

7.2 Capitalization. Immediately prior to the Effective Time, the Surviving Entity's authorized capital stock consisted of 1000 shares of common stock ("Common Stock") of which 900 were Class A Voting shares and 100 were Class B Non-Voting shares and of which 450 Class A and 40 Class B shares were issued to Thomas P. Kabat, 450 Class A and 40 Class B shares were issued to Brenda D. Lotesta and 20 Class B shares are issued to Forrest A. Fairall.

7.3 Execution and Validity of Plan. The Surviving Entity has full corporate power and authority to make, execute, deliver and perform the transactions contemplated herein and nothing contained in any other agreement wherein the Surviving Entity is a party does or could prohibit it from fulfilling its obligations herein and waives any right contained in such agreement which could be deemed to prohibit or otherwise limit such a transaction. The execution and delivery of this Plan by the Surviving Entity and the consummation of the transactions contemplated hereby have been duly authorized by all required corporate action on behalf of the Surviving Entity, and this Plan has been duly and validly executed and delivered by the Surviving Entity, and constitutes the valid and binding obligation of the Surviving Entity, enforceable against it in accordance with its terms.

7.4 Undisclosed Liabilities and Indemnification. Except as set forth in the Disclosure Schedule of the Surviving Entity attached as Exhibit "A" hereto, the Surviving Entity has no liabilities of any nature (whether accrued, absolute, contingent or otherwise), other than those liabilities incurred in the ordinary course of business which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Surviving Entity and the Surviving Entity and its shareholders, individually, agree to indemnify and hold harmless each member of the Merging Entity for any and all damages and losses relating to any non-disclosed liability that adversely affects the members as shareholders in the Surviving Entity.

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## ARTICLE VII REPRESENTATIONS AND WARRANTIES MERGING ENTITY

The Merging Entity hereby represents, warrants and agrees as follows:

8.1 Existence and Good Standing. The Merging Entity is an Illinois limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois with all necessary corporate power and authority to own its assets and conduct its operations in the jurisdictions where the same are owned and conducted.

8.2 Ownership. Immediately prior to the Effective Time, one hundred percent (100%) of the Membership Interest was owned by Richard Prescott, Peter Voss and Frank Pinn.

8.3 Execution and Validity of Plan. The Merging Entity has full corporate power and authority to make, execute, deliver and perform the transactions contemplated herein and nothing contained in any other agreement wherein the Merging Entity is a party does or could prohibit it from fulfilling its obligations herein and waive any right contained in such agreement which could be deemed to prohibit or otherwise limit such a transaction. The execution and delivery of this Plan by the Merging Entity and the consummation of the transactions contemplated hereby have been duly authorized by all required corporate action on behalf of the Merging Entity, and this Plan has been duly and validly executed and delivered by the Merging Entity, and constitutes the valid and binding obligation of the Merging Entity, enforceable against it in accordance with its terms.

8.4 Undisclosed Liabilities and Indemnification. Except as set forth in the Disclosure Schedule of the Merging Entity attached as Exhibit "B" hereto, the Merging Entity has no liabilities of any nature (whether accrued, absolute, contingent or otherwise), except those liabilities incurred in the ordinary course of business which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Surviving Entity and the members of the Merging Entity, individually, agree to indemnify and hold harmless the shareholders of the Surviving Entity for any and all damages and losses relating to any non-disclosed liability that adversely affects the shareholders of the Surviving Entity.

## ARTICLE IX MISCELLANEOUS

9.1 Successors. This Plan shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

9.2 Entire Understanding. This Plan and the documents executed in connection with the consummation of the transaction contemplated in this Plan constitutes the entire understanding of the parties and supersedes any and all prior and contemporaneous statements, representations, agreements or understandings of the parties.



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9.3 Further Assurances. At any time, and from time to time after the Effective Time, each party will execute such additional instruments, provide such additional information and take such additional action as may be reasonably requested by the other party to confirm or perfect title to any property transferred hereunder or otherwise to carry out the intent and purposes of this Plan.

9.4 Waiver. Any failure on the part of any party hereto to comply with any of its obligations, agreements or conditions hereunder may be waived in writing by the party to whom such compliance is owed.

9.5 Headings. All headings in this Plan are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Plan.

9.6 Governing Law. The substantive law of the State of Illinois shall govern the validity, interpretation, effect and enforcement of this Plan.

IN WITNESS WHEREOF, the undersigned have executed this Plan of Merger as of the date first above written.

**Durst Brokerage, Inc:**

**Insight Foodservice Sales and Marketing,  
LLC**

  
\_\_\_\_\_  
Thomas P. Kabat, its CEO

By:   
\_\_\_\_\_  
Richard Prescott, Member

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## Exhibit A

### Disclosure Schedule of the Surviving Entity

1. Office Lease for the property located at 925 Busse Road Elk Grove Village Illinois.
2. Monthly payments to William E. Salisbury with approximately three and one half (3 1/2) years remaining.
3. Payments to Ron Lencioni, former employee, for earned commission: less than \$10,000.
4. Bank Note with American Chartered: approx. \$240,000.
5. Potential lawsuit involving Norvergence-liability is uncertain. Minimal legal fees have been paid to date.
6. Leases for office equipment which all pertain to the day-to-day operations of the business.

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## Exhibit B

### Disclosure Schedule of the Merging Entity

1. Monthly payments due to PMI-Eisenhart, Inc. pursuant to the Master Broker Agreement dated October 31, 2003: approx \$400,000.

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