

BK: 2009 PG: 1317
Recorded: 5/1/2009 at 8:51:06.0 AM
Fee Amount: \$72.00
Revenue Tax:
LISA SMITH RECORDER
Madison County, Iowa

CSA ✓

ARTICLES OF MERGER

Recorder's Cover Sheet

Preparer Information: Nathan S. Allen
6400 Westown Parkway
West Des Moines, IA 50266
(515) 457-6222

Taxpayer Information: Bro Retail Group, Inc.
14644 N 74th St.
Scottsdale, AZ 85260

Return Document To: Kum & Go, L.C.
Attn: Nate Allen
6400 Westown Parkway
West Des Moines, IA 50266

Grantors: Bro Retail Group, Inc. **Grantees:** Bro Retail Group, Inc.

Parcel Identification Number: N/A

Legal Description: N/A

Document or instrument number of associated documents previously recorded: N/A

217997-5
5675-NS

ARTICLES OF MERGER
OF
BRO OIL COMPANY, INC.
AN IOWA CORPORATION
INTO
BRO RETAIL GROUP, INC.
A FOREIGN CORPORATION

RECEIVED
MAR 31 1998
SECRETARY OF STATE

542659 MERG10 \$50.00 K100 2

ARTICLE I.

Filed simultaneously with these Articles of Merger is the Plan of Merger which has been adopted by Bro Retail Enterprises, Inc., an Arizona Corporation which is the disappearing corporation, and Bro Retail Group, Inc. a Nevada corporation, which is the surviving corporation.

ARTICLE II.

The surviving corporation is authorized to transact business in Iowa. The name of the surviving corporation is Bro Retail Group, Inc. and its known place of business in the jurisdiction in which it is domiciled is:

c/o Corporate Services Company
723 S. Casino Center Boulevard, 2nd Floor
Las Vegas, Nevada 89101-6716

ARTICLE III.

The name and address of the statutory agent of the surviving corporation is:

Corporate Services Corporation
723 S. Casino Center Boulevard, 2nd Floor
Las Vegas, Nevada 89101-6716

Direct Mail To:
P.O. Box 7346
Las Vegas, Nevada 89125-2346

ARTICLE IV.

The plan of merger does not contain any amendments to the Articles of Incorporation of the surviving corporation.

Approval of the shareholders of one or more of the corporations which are parties to the merger was required. The designation of voting groups in each corporation which is a party to the merger entitled to vote separately on the merger, the number of votes in each, the number of

12

votes represented at the meeting at which the merger was adopted and the votes cast for and against the merger were as follows:

Bro Retail Group, Inc., the surviving corporation.

There is only one voting group eligible to vote on approval of the merger. The voting group consisting of 3 outstanding shares of common stock is entitled to 3 votes. There were 3 votes present at the meeting. There were 3 votes for and zero votes cast against the merger. The number of votes cast for the merger was sufficient for approval by the voting group.

Bro Retail Enterprises, Inc., a Disappearing Corporation

There is only one voting group eligible to vote on approval of the merger. The voting group consisting of 950 outstanding shares of common stock is entitled to 950 votes. There were 950 votes present at the meeting. The voting group cast 950 votes for and zero votes against the merger. The number of votes cast for the merger was sufficient for approval by the voting group.

Bro Oil Company, Inc., a Disappearing Corporation

There is only one voting group eligible to vote on approval of the merger. The voting group consisting of 196 outstanding shares of common stock is entitled to 196 votes. There were 196 votes present at the meeting. The voting group cast 196 votes for and 0 votes against the merger. The number of votes cast for the merger was sufficient for approval by the voting group.

ARTICLE V.

The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation has complied with that law in effecting the merger.

DATED as of this 30 day of March, 1998.

Bro Retail Group, Inc.,
a Nevada Corporation

By: [Signature]
Its: President

FACROSSART.MRG

PLAN OF MERGER

This Plan of Merger is made and entered into as of this 30 day of March, 1998 by and between Bro Retail Group, Inc., a Nevada corporation ("Surviving Corporation"), and Bro Retails Enterprises, Inc. ("Bro Enterprises"), an Arizona corporation and Bro Oil Company, Inc. ("Bro Oil"), an Iowa corporation (collectively "Disappearing Corporations"), Surviving Corporation and Disappearing Corporations will sometimes be referred to as the "Constituent Corporations."

RECITALS:

A. The authorized capital stock of Bro Enterprises consists of 1,000 shares of common stock no par value ("Bro Enterprises Common Stock"), of which 950 shares are issued and outstanding and held by shareholders of record as follows:

Todd Bro	316.667 shares
Kent Bro	316.667 shares
Mervin Bro	316.667 shares

B. The authorized capital stock of Bro Oil consists of 196 shares of common no par value ("Bro Oil Corporation Stock"), of which 196 shares are issued and outstanding and held by shareholders of record as follows:

Todd Bro	98 shares
Kent Bro	98 shares

C. The authorized capital stock of Surviving Corporation consists of 25,000 shares of common stock, no par value ("Surviving Corporation Common Stock"), of which three shares are issued and outstanding and held by shareholders of record as follows:

Todd Bro	1 share
Kent Bro	1 share
Mervin Bro	1 share

D. The respective boards of directors of the Constituent Corporations deem it advisable and generally in the best interests and to the advantage of each corporation, and of the shareholders of each, that Disappearing Corporations be merged with Surviving Corporation in accordance with this Agreement and the laws of the States of Arizona, Iowa and Nevada in order to, among other business purposes, realize economies or operation and management an reduce administrative overhead costs, on terms whereby one share of Surviving Corporation Common Stock will be issued in exchange for each 2.6611 shares of Bro Enterprises Common Stock and in

exchange for 0.3063 shares of Bro Oil Common Stock such that, following the merger described herein, the shareholders of the Surviving Corporation shall own Class A common stock, no par value, of Surviving Corporation Common Stock as follows:

Todd Bro	440 shares
Kent Bro	440 shares
Mervin Bro	120 shares

E. The parties hereto desire to enter into this Agreement to provide for the merger of Disappearing Corporations into Surviving Corporation and to have it submitted to the shareholders of the Constituent Corporations for their consideration, approval and adoption.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants herein contained, the parties hereby agree as follows:

COVENANTS:

ARTICLE I.

Terms and Effect of Merger

1.1 Merger

Upon the Effective Date (as defined in Section 2.2) Disappearing Corporations shall be merged with and into Surviving Corporation on the terms and conditions of this Agreement and in accordance with applicable law and the separate existence of Disappearing Corporations shall cease (the "Merger"). Surviving Corporation, as the surviving corporation, shall continue to exist under and be governed by the laws of the State of Nevada. The Surviving Corporation shall possess all the assets, rights, privileges, powers and franchises and shall be subject to all the restrictions, obligations, liabilities, disabilities and duties of Disappearing Corporation. On and after the Effective Date of the Merger, the Surviving Corporation shall be responsible and liable for all liabilities and obligations of Disappearing Corporations, and any claim existing or action or proceeding pending by or against Disappearing Corporations may be prosecuted as if the merger had not taken place, or the Surviving Corporation may be substituted in the place of Disappearing Corporation. Neither the rights of creditors of Disappearing Corporations nor any liens upon the property of any Disappearing Corporations shall be impaired by the merger.

1.2 Terms of Merger

(a) Conversion of Disappearing Corporation Common Stock. The manner and basis of converting or exchanging the issues stock of each of the Constituent Corporations into different stock or other consideration, and the manner of dealing with any issued stock of the

Constituent Corporations not to be so converted or exchanged on the Effective Date (as defined in Section 2.2) shall be as follows:

(i) Each share of Surviving Corporation Common Stock which is issued and outstanding on the Effective Date shall remain outstanding as one share of Surviving Corporation Common Stock.

(ii) Each share of Disappearing Corporations Common Stock, if any, held in its treasury on the Effective Date shall be canceled.

(iii) Each share of Bro Enterprises Common Stock issued and outstanding on the Effective Date shall be converted into or exchanged by Surviving Corporation into 0.3758 shares of Surviving Corporation Common Stock.

(iv) Each share of Bro Oil Common Stock issued and outstanding on the Effective Date shall be converted into or exchanged by Surviving Corporation into 3.2653 shares of Surviving Corporation Common Stock.

(v) No scrip or fractional share certificates of Surviving Corporation Common Stock shall be issued as a result of the Merger set forth in this Agreement, but in lieu of each fractional interest, a Disappearing Corporation shareholder entitled to a fractional share equal to one-half or more of one share of Surviving Corporation Common Stock shall receive a full share of Surviving Corporation Common Stock and any fractional share equal to less than one-half of one share of Surviving Corporation Common Stock shall be eliminated).

(vi) On the Effective Date of the Merger, except as otherwise provided by applicable law with respect to dissenting stockholders, each outstanding certificate or certificates representing Bro Enterprises or Bro Oil Common Stock shall, by virtue of the Merger and without any action on the part of the holder thereof, be automatically canceled (and a certificate or certificates representing the appropriate number of Surviving Corporation Common Stock shall be issued).

1.3 Assumption of Assets and Liabilities.

All property, real and personal, causes of action, and every other asset of Disappearing Corporations shall vest in the Surviving Corporation without further act or deed; and the Surviving Corporation shall assume and be liable for all of the liabilities, obligations and penalties of Disappearing Corporations. No liability or obligation due or to become due and no claim or demand for any cause existing against either Disappearing Corporations, or any shareholder, officer or director thereof, shall be released or impaired by the Merger, and no action or proceeding, whether civil or criminal, then pending by or against Disappearing Corporations or

any shareholder, officer or director thereof, shall abate or be discontinued by Merger, but may be enforced, prosecuted, settled or compromised as if the Merger has not occurred, or the Surviving Corporation may be substituted in any such action or special proceeding in place of Disappearing Corporations.

1.4 Continuation of Obligations.

The Surviving Corporation shall, for three years after the Effective Date continue, undiminished, any and all policies of insurance in effect prior to the Effective Date indemnifying and holding harmless Disappearing Corporations' officers, directors, employees and agents for their actions prior to the Effective Date in such capacities or in any manner arising by reason of their having so served. The provisions of this paragraph shall survive the Effective Date and shall inure to the benefit of such officers, directors, employees and agents as third party beneficiaries hereof and shall be binding after the Effective Date upon the enforceable against the Surviving Corporation and any entity into which it may be merged or to which all or substantially all of its assets may hereafter be transferred.

1.5 Data.

All books and records of the Disappearing Corporations which pertain to their businesses, including without limitation all financial records, lease records, title data and operating data, shall be assembled and delivered on the Closing Date (as defined in Section 2.1) to Surviving Corporation.

1.7 Further Assurances.

If at any time after the Effective Date the Surviving Corporation shall consider or be advised that any further deeds, assignment or assurances or any other things are necessary, desirable or proper to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation, the title to any property or rights of Disappearing Corporations acquired or to be acquired by reason of, or as a result of, the Merger, Disappearing Corporations agree that they and their proper officers and directors shall and will execute and deliver all such proper deeds, assignments and assurances in law and do all things necessary, desirable or proper to vest, perfect or confirm title to such property or rights in the Surviving Corporation, and otherwise to carry out the purpose of the Agreement and Plan of Merger, and that the proper officers and directors of Disappearing Corporations and of the Surviving Corporation, as the case may be, and they are hereby authorized, empowered and directed to take any and all such action.

ARTICLE II
Effective Date

The Merger shall become effective with respect to Bro Enterprises on the later of the date that the Articles of Merger, duly advised, approved, signed, acknowledged and verified by Disappearing Corporation and the Surviving Corporation as required by applicable law, are filed for record with the Arizona Corporation Commission, or April 1, 1998 and with respect to Bro Oil on April 1, 1998. The time and date as of which the Merger becomes effective are herein referred to as the "Effective Date".

ARTICLE III
Corporate Documents

The Articles of Incorporation and Bylaws of the Surviving Corporation shall be the Articles of Incorporation and Bylaws of the Surviving Corporation from and after the Effective Date, subject to the right of the Surviving Corporation to amend its Articles of Incorporation or Bylaws in accordance with applicable law.

ARTICLE IV.
Conditions to Obligations

4.1 Conditions to Obligations of the Constituent Corporations.

The obligations of each Constituent Corporation under this Agreement are subject to the satisfaction on or prior to the Closing Date of all of the following conditions precedent, compliance with which or the occurrence of which may be waived in whole or in part by such Constituent Corporation in writing.

(a) Accuracy of Representations, Warranties and Covenants.

(i) Except as otherwise contemplated by this Agreement, all representations and warranties of the other Constituent Corporation contained in this Agreement shall be true and correct in every material respect on and as of the Closing Date, with the same effect as though the same had been made on and as of the Effective Date.

(ii) Each Constituent Corporation shall have performed and satisfied all agreements, covenants and conditions required by this Agreement to be performed or satisfied by it on or prior to the Closing Date.

(b) Absence of Litigation.

No action or proceedings shall be pending or shall have been instituted or threatened prior to or at the Closing Date before any court or governmental body or authority, the result of which could prevent or make illegal the consummation of the transactions contemplated by this Agreement or which could be materially adverse to the business of any Constituent Corporation.

(c) No Material Adverse Change.

There shall not have been any material adverse change in the financial condition, properties, results of operations or business prospects of any Constituent Corporation and no Constituent Corporation shall have sustained any material destruction, loss or damage to its properties, whether or not issued, which affects its ability to conduct its business.

(d) Shareholder Approval.

Prior to the Closing Date, the shareholders of both Disappearing Corporations and Surviving Corporation shall have approved this Agreement pursuant to applicable law.

ARTICLE V

Termination and Amendment of Agreement

5.1 By Mutual Agreement.

At any time prior to the Effective Date, whether before or after approval by the shareholders of Surviving Corporation and Disappearing Corporation, the parties' obligations under this Agreement may be terminated by the mutual consent of all the parties hereto with the approval of their respective boards of directors, without liability on the part of any party hereto or its representatives, directors, officers or shareholders.

5.2 Failure of Conditions.

If any of the conditions precedent to any Constituent Corporation's obligations hereunder are not satisfied and are not waived on or prior to the Closing Date, such Constituent Corporation may, at its option, and without prejudice to any rights it may have to damages for the breach or failure of any representation, warranty, covenant, or agreement of the other Constituent Corporation contained in this Agreement, terminate its obligations under this Agreement by delivering written notices of termination to the other Constituent Corporation stating the grounds for such termination.

5.3 Specific Performance.

The parties acknowledge that the subject matter of this Agreement is unique, and if any party fails to perform or observe any of its covenants, agreements or obligations contained in or created by this Agreement, the other party or parties shall have, in addition to all other remedies, the right to enforce specific performance of this Agreement by a suit in equity or otherwise.

5.4 Amendment and Waiver.

At any time prior to the Effective Date, any of the terms or conditions of this Agreement may be waived in writing by the party hereto that is entitled to the benefit thereof by action taken by the board of directors for that purpose. To the extent permitted by law, this Agreement may be amended or modified in whole or in part before or after the approval of the shareholders of Surviving Corporation and Disappearing Corporations by an agreement in writing executed in the same manner as this Agreement after authorization to do so by the boards of directors of the parties hereto; provided, however, that a such agreement or modification shall include any change materially and adversely affecting the rights of such shareholders without first resubmitting any such agreement or modification to them for their approval and consent.

ARTICLE VI
Miscellaneous Provisions

6.1 Notices.

Any notice or demand required or permitted to be given hereunder shall be in writing and shall be deemed effective 48 hours after having been deposited in the United States mail, postage prepaid, registered or certified, return receipt requested and addressed as to each party in the following manner:

To both Surviving Corporation and Disappearing Corporations:

14644 N. 74th Street, Suite 101
Scottsdale, Arizona 85260

Any party may change the address to which such notices are to be addressed by giving the other party notice in the manner set forth herein.

6.2 Entire Agreement.

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties, and there are no warranties, representations or other agreements

among the parties in connection with the subject matter hereof except as specifically set forth herein. No supplement, modification or waiver or termination of this Agreement shall be binding unless executed in writing by the party against whom it is asserted and delivered by that party to each of the other parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.

6.3 Captions.

The title or headings of the various sections, articles and paragraphs hereof are intended solely for convenience of reference and are not intended and shall not be deemed for any purpose whatever to modify or explain or place any construction upon any of the provisions of this Agreement.

6.4 Number.

Throughout this Agreement, wherever the context so requires, the singular shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.

6.5 Severability.

If any provision in this Agreement or in any other agreement or covenant delivered at or prior to the Closing pursuant to the terms of this Agreement shall be held invalid or unenforceable, this Agreement shall be terminated.

6.6 Counterparts.

This Agreement is being executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

6.7 Successors and Assigns.

All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, executors, transferees, successors and assigns.

6.8 Governing Law.

The parties hereby agree that this Agreement shall be construed, enforced and governed by the laws of the State of Arizona.

6.9 Attorneys' Fees.

In the event any party hereto shall institute an action to enforce any rights or collect any damages hereunder, the prevailing party in such action shall be entitled, in addition to any other relief awarded by the court, to such reasonable attorneys' fees as the court may award.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

SURVIVING CORPORATION

Bro Retail Group, Inc., a Nevada Corporation

By: [Signature]
Its: President

DISAPPEARING CORPORATIONS

Bro Retail Enterprises, Inc., an Arizona Corporation

By: [Signature]
Its: President

Bro Oil Company, Inc., an Iowa Corporation

By: [Signature]
Its: President

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FILED
IOWA
SECRETARY OF STATE
3-31-98
1:44 PM
W182625





STATE OF IOWA
Secretary of State Office
62876

I hereby certify that this is a true and complete document(s) to which the seal is affixed as filed in this office beginning MARCH 31, 1997 to and including the date below.

Dated April 21, 2009
Michael A. Meure
Secretary of State

12 pgs by Patty Kinohad

