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McBride Baker & Coles  
A Law Partnership Including Professional Corporations

Maureen A. Drews Paralegal Manager  
T (312)715-5737 E drews@mbc.com

October 16, 2001

VIA FEDERAL EXPRESS

Division of Corporations  
409 E. Gaines St.  
Tallahassee, FL 33299

200004639352--4  
-10/17/01--01038--002  
\*\*\*\*116.75 \*\*\*\*113.75

RE: Articles of Merger of XMGM Company, Inc., XMGM Co. of Florida, and  
XMGM of California, Inc.  
Application by Foreign Corporation for Authorization to  
Transact Business in Florida of XMGM Company, Inc.

Dear Sir or Madam:

Enclosed for filing, in the order presented, are the following filings:

1. Articles of Merger of XMGM Company, Inc., XMGM Co. of Florida, and XMGM of California, Inc., to be filed before the application by Foreign Corporation;
  2. Check for \$116.75 in payment of the filing fee and certified copy;
  3. Application by Foreign Corporation for Authorization to Transact Business in Florida;
  4. Certificate of Good Standing for XMGM Company, Inc., an Illinois corporation;
- and
5. Check for \$78.75 in payment of the filing fee and certified copy;

FILED  
01 DEC -3 PM 2:36  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Please send us certified copies of the filings in the return envelope provided. Do not hesitate to contact us if you have any question or comments. Thank you.

Sincerely yours,

Maureen A. Drews

MAD/dk  
Enclosures  
cc: Kenneth A. Jenero  
1187141

T. LEWIS DEC 3 2001

*merger*

Maureen A. Drews *Paralegal Manager*  
T (312)715-5737 E drews@mbc.com

November 27, 2001

VIA EXPRESS MAIL  
Division of Corporations  
409 E. Gaines St.  
Tallahassee, FL 33299  
Attn: Thelma Lewis

Re: XMGM CO. OF FLORIDA, INC.  
Ref. Number J69461  
Letter Number: 201A00062031

Dear Ms. Lewis

Enclosed please find the Articles of Merger of XMGM Co. of Florida, Inc., which we are resubmitting for filing. Also enclosed is a copy of your rejection letter dated November 19, 2001 and a copy of the Reinstatement of XMGM Co. of Florida, Inc.

Please advise us if you have any questions or comments.  
Thank you for your attention to this matter.

Sincerely yours,



Maureen A. Drews

MAD/dk  
Enclosures  
cc: Kenneth A. Jenero  
1194354



FLORIDA DEPARTMENT OF STATE  
Katherine Harris  
Secretary of State

November 19, 2001

MAUREEN A. DREWS, PARALEGAL MANAGER  
MCBRIDGE BAKER & COLES  
500 W. MADISON ST., 40TH FLOOR  
CHICAGO, IL 60661

SUBJECT: XMGM CO. OF FLORIDA, INC.  
Ref. Number: J69461

We have received your document for XMGM CO. OF FLORIDA, INC. and check(s) totaling \$116.75. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

Our records show the above corporation was administratively dissolved by this office on 9-21-01, for failure to file the 2001 uniform business report.

The corporation must be reinstated before the Merger can be filed. Attached is the reinstatement application the fees are: \$600 reinstatement filing fee and \$150 for the year 2001.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6905.

Thelma Lewis  
Corporate Specialist Supervisor

Letter Number: 201A00062031

Maureen A. Drews Paralegal Manager  
T (312)715-5737 E drews@mbc.com

November 16, 2001

VIA FEDERAL EXPRESS

Attn: Thelma Lewis  
Division of Corporations  
409 E. Gaines St.  
Tallahassee, FL 33299

RE: XMGM Co. of Florida, Inc.  
Corporation Reinstatement

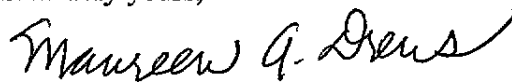
Dear Ms. Lewis:

Pursuant to our previous telephone conversation, concerning the Articles of Merger of XMGM Co. of Florida, Inc. enclosed are the following items:

1. Copy of our Letter of October 16, 2001 and enclosures.
2. Corporation Reinstatement of XMGM Co. of Florida, Inc.
3. Check for \$750 in payment of the filing fee.

We understand that with this filing, it will permit you to process the Articles of Merger and Application by Foreign Corporation for Authorization. Please do not hesitate to contact me should you have any questions or comments or require any additional documents.

Sincerely yours,



Maureen A. Drews

MAD/dk

Enclosures

cc: Kenneth A. Jenero  
Jerald Holisky

1193201

ARTICLES OF MERGER  
Merger Sheet

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MERGING:

XMGM CO. OF FLORIDA, a Florida entity, J69461

XMGM OF CALIFORNIA, INC., a California corporation not authorized to  
transact business in Florida

INTO

**XMGM COMPANY, INC.**, an Illinois entity, F01000005457

File date: December 3, 2001

Corporate Specialist: Thelma Lewis

**ARTICLES OF MERGER**  
**(Profit Corporations)**

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, F.S.

**First:** The name and jurisdiction of the surviving corporation is:

<u>Name</u>	<u>Jurisdiction</u>
<u>XMGM COMPANY, INC.</u>	<u>ILLINOIS</u>

FILED  
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TALLAHASSEE, FLORIDA  
SECRETARY OF STATE

**Second:** The name and jurisdiction of each merging corporation is:

<u>Name</u>	<u>Jurisdiction</u>
<u>XMGM CO. OF FLORIDA</u>	<u>FLORIDA</u>
<u>XMGM OF CALIFORNIA, INC.</u>	<u>CALIFORNIA</u>
_____	_____
_____	_____
_____	_____

**Third:** The Plan of Merger is attached.

**Fourth:** The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State

**OR** \_\_\_\_/\_\_\_\_/\_\_\_\_ (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days in the future.)

**Fifth:** Adoption of Merger by surviving corporation - (COMPLETE ONLY ONE STATEMENT)

The Plan of Merger was adopted by the shareholders of the surviving corporation on JUNE 29, 2001

The Plan of Merger was adopted by the board of directors of the surviving corporation on \_\_\_\_\_ and shareholder approval was not required.



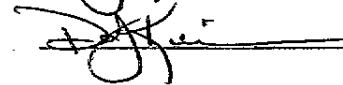
**Sixth:** Adoption of Merger by merging corporation(s) (COMPLETE ONLY ONE STATEMENT)

The Plan of Merger was adopted by the shareholders of the merging corporation(s) on JUNE 29, 2001

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on \_\_\_\_\_ and shareholder approval was not required.

*(Attach additional sheets if necessary)*

**Seventh: SIGNATURES FOR EACH CORPORATION**

<u>Name of Corporation</u>	<u>Signature</u>	<u>Typed or Printed Name of Individual &amp; Title</u>
<u>XMGM COMPANY, INC.</u>		<u>D. J. KEISER VP FINANCE</u>
<u>XMGM CO. OF FLORIDA, INC.</u>		<u>D. J. KEISER VP FINANCE</u>
<u>XMGM OF CALIFORNIA, INC.</u>		<u>D. J. KEISER V. P FINANCE</u>
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**PLAN OF MERGER**  
**(Non Subsidiaries)**

The following plan of merger is submitted in compliance with section 607.1101, F.S. and in accordance with the laws of any other applicable jurisdiction of incorporation.

**First:** The name and jurisdiction of the surviving corporation is:

<u>Name</u>	<u>Jurisdiction</u>
<u>XMGM COMPANY, INC.</u>	<u>ILLINOIS</u>

**Second:** The name and jurisdiction of each merging corporation is:

<u>Name</u>	<u>Jurisdiction</u>
<u>XMGM CO. OF FLORIDA, INC.</u>	<u>FLORIDA</u>
<u>XMGM OF CALIFORNIA, INC.</u>	<u>CALIFORNIA</u>
<u> </u>	<u> </u>
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**Third:** The terms and conditions of the merger are as follows: See Attachment

**Fourth:** The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or, in whole or in part, into cash or other property and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, or other securities of the surviving or any other corporation or, in whole or in part, into cash or other property are as follows:

*(Attach additional sheets if necessary)*

THE FOLLOWING MAY BE SET FORTH IF APPLICABLE:



Amendments to the articles of incorporation of the surviving corporation are indicated below or attached as an exhibit:

**OR**

Restated articles are attached:

Other provisions relating to the merger are as follows:

**PLAN OF MERGER**  
(Merger of subsidiary corporation(s))

The following plan of merger is submitted in compliance with section 607.1104, F.S. and in accordance

with the laws of any other applicable jurisdiction of incorporation.

The name and jurisdiction of the parent corporation owning at least 80 percent of the outstanding shares of each class of the subsidiary corporation is:

<u>Name</u>	<u>Jurisdiction</u>
_____	_____

The name and jurisdiction of each subsidiary corporation is

<u>Name</u>	<u>Jurisdiction</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The manner and basis of converting the shares of the subsidiary or parent into shares, obligations, or other securities of the parent or any other corporation or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, and other securities of the surviving or any other corporation or, in whole or in part, into cash or other property is as follows:

*(Attach additional sheets if necessary)*

If the merger is between the parent and a subsidiary corporation and the parent is not the surviving corporation; a provision for the pro rata issuance of shares of the subsidiary to the holders of the shares of the parent corporation upon surrender of any certificates is as follows:

If applicable, shareholders of the subsidiary corporations, who, except for the applicability of section 607.1104, F.S. would be entitled to vote and who dissent from the merger pursuant to section 607.1320, F.S., may be entitled, if they comply with the provisions of chapter 607 regarding the rights of dissenting shareholders, to be paid the fair value of their shares.

Other provisions relating to the merger are as follows:

**AGREEMENT AND PLAN OF MERGER OF  
XMGM OF CALIFORNIA, INC. AND  
XMGM CO. OF FLORIDA, INC.  
WITH AND INTO XMGM COMPANY, INC.**

THIS AGREEMENT AND PLAN OF MERGER is made and entered in to as of June 29, 2001 by and among XMGM of California, Inc., a California corporation ("XMGM California"), XMGM Co. of Florida, Inc., a Florida corporation ("XMGM Florida"), and XMGM Company, Inc., an Illinois corporation ("XMGM Illinois") (XMGM Illinois sometimes referred to herein as the "Surviving Corporation"). XMGM California, XMGM Florida, and XMGM Illinois are sometimes collectively referred to herein as the "Constituent Corporations".

WHEREAS, each of the Constituent Corporations is engaged in the business of providing maintenance and repair services to railroads, leasing depots and domestic truck carriers; and

WHEREAS, MGM Acquisition Corp., a California corporation, owns all of the issued and outstanding capital stock of each of the Constituent Corporations (MGM Acquisition Corp. referred to herein as the "Shareholder."); and

WHEREAS, the Shareholders and the Board of Directors of each of the Constituent Corporations deem it advisable and in the best interests of each of the Constituent Corporations that XMGM California and XMGM Florida be merged with and into XMGM Illinois, with XMGM Illinois being the Surviving Corporation, under and pursuant to the laws of the States of Illinois, California and Florida, and on the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto agree as follows:

**ARTICLE I  
MERGER**

1.1 XMGM California and XMGM Florida shall be merged with and into XMGM Illinois (the "Merger") in accordance with the laws of the State of Illinois, California and Florida. The Merger shall become effective upon the issuance of a certificate of merger by the Secretary of State of the State of Illinois ("Effective Time").

1.2 At the Effective Time, the separate corporate existence of XMGM California and XMGM Florida shall cease, and XMGM Illinois shall be the surviving corporation.

1.3 From and after the Effective Time,

(a) the Surviving Corporation shall then and thereafter possess all the rights, privileges, immunities and franchises, Constituent Corporations; all property real, personal and mixed, and all debts due on whatever account, including all choses in action, and all and every other interests of or belonging to or due to each of the Constituent Corporations shall be taken and deemed to be transferred to and vested in the Surviving Corporation without further act or deed; and the title to any real estate or any interest therein vested in any way of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger, and

(b) the Surviving Corporation shall be subject to all of the duties and liabilities of a corporation organized under the laws of the State of Illinois and shall be liable and responsible for all the liabilities and obligations of XMGM Illinois as well as for the liabilities and obligations of XMGM California and XMGM Florida immediately prior to the Merger; any claim existing or action or proceeding pending by or against any other Constituent Corporations may be prosecuted to judgment as if the Merger had not taken place, and the Surviving corporation may be substituted in the place of either; and neither the rights of creditors nor any liens upon the property of any of the Constituent Corporations shall be impaired by the Merger.

ARTICLE II  
ARTICLES OF INCORPORATION AND BYLAWS;  
DIRECTORS AND OFFICERS

2.1 The Articles of Incorporation of XMGM Illinois in effect immediately prior to the Effective Time shall, after the Merger, continue to be the Articles of Incorporation of the Surviving Corporation, except as the same may be subsequently amended in accordance with the laws of the State of Illinois; no change to such Articles of Incorporation shall be effected by the Merger.

2.2 The Bylaws of XMGM Illinois, as in effect immediately prior to the Effective Time shall, after the Merger, continue to be the Bylaws of the Surviving Corporation until amended or repealed in accordance with law, and no change to such Bylaws shall be effected by the Merger.

2.3 The directors and officers of XMGM Illinois in office immediately prior the Effective Time shall, after the Merger, constitute the directors and officers of the Surviving Corporation until their respective successors shall have been elected and qualified or until the earlier resignation, removal or replacement in accordance with the Surviving Corporation's Bylaws and the laws of the State of Illinois.

ARTICLE III  
CONVERSION OF SHARES

3.1 The Surviving Corporation currently has issued and outstanding 100 Class A shares, with \$.01 par value per share.

3.2 XMGM California currently has issued and outstanding 1,000 common shares, without par value.

3.3 XMGM Florida currently has issued and outstanding 100 common shares without par value.

3.4 At the Effective Time,

(a) each issued and outstanding common share of XMGM Illinois, by virtue of the Merger, shall be cancelled, converted into and be deemed to constitute one fully paid and non-assessable Class A shares of the Surviving Corporation.

(b) Because each of the Constituent Corporations are wholly-owned by the Shareholder, each of the common shares of the non-survivor corporations (XMGM California and XMGM Florida) outstanding immediately prior to the Merger, by virtue of the Merger described in paragraph 2.1 above, shall be cancelled.

3.5 Promptly after the Effective Time, the Surviving Corporation shall cause to be mailed to the Shareholder of each other Constituent Corporation a letter of instruction for use in effecting the surrender of XMGM California and XMGM Florida share certificates.

ARTICLE IV  
MISCELLANEOUS

4.1 Prior to the Effective time, each of the Constituent Corporations shall take all such actions as shall be necessary or appropriate in order to effect the Merger. If at any time after the Effective Time, the Surviving Corporation shall determine (a) that any further conveyance, assignment or execution of any other document or any other further action is necessary, desirable or appropriate in order to vest in the Surviving Corporation full title to all of the property, assets, rights, privileges and franchises of the Constituent Corporations, then the officers and directors of the Constituent Corporations shall execute and deliver all such instruments and take all such further actions as the Surviving Corporation may determine to be necessary, desirable or appropriate in order to vest in the Surviving Corporation title to and possession of all such property, assets, rights,

privileges, immunities and franchises, and to otherwise carry out the purposes of this Agreement and Plan.

4.2 Notwithstanding the approval of this Agreement and Plan by the Boards of Directors and Shareholders of each of the Constituent Corporations, the Board of Directors of any of the Constituent Corporations may, in its sole discretion, by resolution duly adopted at any time prior to the filing of the Secretary of State Articles of Merger, abandon the Merger if such abandonment is deemed necessary, desirable or otherwise in the best interests of the respective corporation. In the event of such determination and abandonment, the Agreement and Plan shall become null and void and shall have no further effect. Such abandonment shall not give rise to any liability on the part of any of the Constituent Corporations or the directors, officers or Shareholders of any of them, with respect to this Agreement and Plan.

4.3 (a) Shareholders of any of the Constituent Corporations who dissent from the Merger shall be entitled, pursuant to Sections 11.65 and 11.70 of the Illinois Business Corporation Act of 1983, to be paid the fair value of their shares upon compliance with the statutory procedures therein.

(b) The Surviving Corporation agrees to promptly pay to any dissenting shareholder of any Constituent Corporation the amount, if any, which they shall be entitled to receive and at such time as such shareholder is entitled to receive same under the provisions of the BCA.

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement.

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