

822123

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Articles of Merger

filed 5-1-78

23 pgs.

M E R G E R

BURNUP & SIMS, INC.

822123

MERGER MERGING:

FLOYD ENTERPRISES INC., #125056, into the above.

FILED: 5-1-73

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822123

M E R G E R

BURNUP & SIMS INC.

NY-8-78 52 61500 \*\*\*30.10

agreement of merger of

FLOYD ENTERPRISES INC. - 125056 ( Paid and filed its 1978 A.R. )

into and under the above-named corporation

FILED: 5/1/78

AR \$10.00

C. TAX	.....
F LING	\$ 30.00
R. AGENT	.....
C. COPY	.....
TOTAL	\$ 40.00
N. BANK	.....
BALANCE DUE	.....
REFUND	.....
PHOTO COPY	.....

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# Secretary of State

STATE OF FLORIDA  
THE CAPITOL  
TALLAHASSEE 32304

DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
- SUITE 420 -  
6501 N.W. 36th STREET  
MIAMI, FLORIDA 33166

**BRUCE A. SMATHERS**  
SECRETARY OF STATE

May 2, 1978  
**F. R. RITTER, Director**  
Division of Corporations  
904/488-3140

**DAVID C. MACNAMARA**  
ASSISTANT SECRETARY OF STATE

**CT CORPORATION SYSTEM**  
100 Biscayne Blvd.  
Miami, Florida 33132

**SUBJECT: BURNUP & SIMS INC. (A Delaware Corporation) - Merger**

DOCUMENT NUMBER:

This will acknowledge receipt of the following:

1.  Check(s) totalling \$40.00
2. \_\_\_\_\_ Articles of Incorporation filed
3. \_\_\_\_\_ Amendments to Articles of Incorporation filed
4.  Articles of Merger or Consolidation filed 5/1/78 - Merger
5. \_\_\_\_\_ Certificate of Withdrawal filed
6. \_\_\_\_\_ Limited Partnership filed
7. \_\_\_\_\_ Limited Partnership Annual Report filed
8. \_\_\_\_\_ Trademark Application filed
9. \_\_\_\_\_ Application for qualification filed \_\_\_\_\_. It is no longer required to issue a permit. A certificate under seal to this effect may be obtained for \$5.
10. \_\_\_\_\_ Reinstatement filed
11. \_\_\_\_\_ Articles of Dissolution filed
12.  OTHER: **FLOYD ENTERPRISES INC. Paid and filed its 1978 annual report ENCLOSED.**
  1. \_\_\_\_\_ Certified Copy(ies).
  2. \_\_\_\_\_ Certificate(s) Under Seal.
  3. \_\_\_\_\_ Photocopy(ies).
  4. \_\_\_\_\_ OTHER:

Corp. 100  
1/1/77 **mm/lg**

# C T CORPORATION SYSTEM



Associated with The Corporation Trust Company  
100 BISCAYNE BOULEVARD ROOM 1807, MIAMI, FLORIDA 33132 • (305) 377-8326

April 28, 1978

RE: BURNUP & SIMS, INC. (DELAWARE DOMESTIC)  
merging: FLOYD ENTERPRISES, INC.  
COUNSEL: George R. Canty, Jr., V.P. & Gen. Csl.  
Burnup & Sims, Inc.  
P.O. Box 15070  
Plantation, Fla. 33318

Secretary of State  
Corporations  
Miami, Fla.

Dear Sir:

Pursuant to the instructions of counsel named above,  
we enclose for filing on behalf of this corporation, which  
is authorized to do business in your state,

Articles of Merger  
1978 Annual Report

Check in payment of the required fees is attached.  
forward the usual evidence of filing to this office.

FILED  
MAY 1 2 32 PM '78  
SECRETARY OF STATE  
MIAMI, FLORIDA

Yours very truly,

C T CORPORATION SYSTEM

By

(Mrs.) Ana Leon

/al

SPECIAL INSTRUCTIONS:

PLEASE WOLD PENDING INSTRUCTIONS TO FILE/

STATE OF FLORIDA

ARTICLES OF MERGER

OF

FLOYD ENTERPRISES, INC., a Florida Corporation  
(Subsidiary Corporation)

INTO

BURNUP & SIMS INC., a Delaware Corporation  
(Parent Corporation)

FILED  
MAY 1 2 22 PM '78  
SECRETARY OF STATE  
MIAMI, FLORIDA

The undersigned corporations adopt the following Articles of Merger for the purpose of merging them into one of such corporations:

FIRST: The following is the Plan and Agreement of Merger:

That (i) the 97.4% of the common stock of Floyd Enterprises, Inc. (the "Subsidiary Corporation") owned by Burnup & Sims Inc. (the "Parent Corporation"), will be cancelled; (ii) the holders of approximately 2.6% of the common stock of the Subsidiary Corporation, held other than by the Parent Corporation, will, upon their presentment of their certificates, be entitled to receive \$15.75 for each such share, or, alternatively, upon their compliance with the provisions of the Florida General Corporation Act regarding the rights of dissenting shareholders, to receive fair value for their shares; and (iii) the Subsidiary Corporation will be merged into the Parent Corporation, pursuant to applicable law, as more fully set forth in the Plan and Agreement of Merger between the Subsidiary Corporation and the Parent Corporation dated March 22, 1978, attached and incorporated hereinto as Exhibit A hereof.

SECOND: As to the Surviving Corporation, the changes in the Articles of Incorporation to be effected by the Merger are:

None.

THIRD: As to each corporation, the date of adoption of the Plan and Agreement of Merger by the Board of Directors is:

March 22, 1978

FOURTH: As to a Plan and Agreement of Merger adopted by the corporation surviving the Merger by action of its Board of Directors and without a vote of its shareholders, a statement to that effect is as follows:

The Plan and Agreement of Merger was adopted by the Parent Corporation by action of its Board of Directors without the need for the approval of its shareholders, inasmuch as (i) the Parent Corporation had previously held in excess of 90%, or approximately 97.4%, of the common stock of the Subsidiary Corporation. The Plan and Agreement of Merger was similarly adopted by the Subsidiary Corporation by action of its Board of Directors, without the further approval of its shareholders, for this same reason.

FIFTH: As to a Plan and Agreement of Merger providing the cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendments to the Articles of Incorporation of the Surviving Corporation, in the case of Merger, then, unless the Plan and Agreement of Merger is set forth in the Articles of Merger, a statement of the manner in which any

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cancellation of issued shares shall be effected is as follows:

Incidental to, and upon the effectiveness of the Merger, the shareholders of the Subsidiary Corporation, other than the Parent Corporation, will, upon presentation of their stock certificates, receive the right to receive \$15.75 per share in cash, and the common stock of the Subsidiary Corporation held by the Parent Corporation shall be cancelled.

DATED: April 27, 1978.

BURNUP & SIMS INC., a Delaware corporation  
(Parent corporation)

By *Henry J. Kelly* Vice President

And *William J. Mercurio* Secretary

STATE OF FLORIDA )  
                          ) SS.:  
COUNTY OF BROWARD )

I, Marilyn Dash, a Notary Public, do hereby certify that on this 27th day of April, 1978, personally appeared before me George R. Canty, Jr. and William J. Mercurio, who, being by me first duly sworn, declared that they are Vice President and Secretary of Burnup & Sims Inc., a Delaware corporation, that they executed the foregoing document as Vice President and Secretary of the corporation, and that the statements therein contained are true.

(Notarial Seal)

*Marilyn Dash*  
Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES NOV. 28 1981  
BONDED THRU GENERAL INS. UNDERWRITERS

**EXHIBIT**

**A**

EXCERPT COPY

PLAN AND AGREEMENT OF MERGER

Plan and Agreement of Merger (the "Merger") dated March 22, 1978, by and between FLOYD ENTERPRISES, INC., a Florida corporation, ("Floyd"), and BURNUP & SIMS INC., a Delaware corporation, ("Burnup"), Floyd and Burnup sometimes hereinafter referred to as the "Constituent Corporations".

FILED  
MAY 1 1978  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

REGITALS

A. Floyd was incorporated in the State of Florida on August 21, 1961. Its principal office is at 4218 Old Mulberry Road, Lakeland, Florida, and its authorized capital stock consists of 9,400,000 shares divided into two classes consisting of 400,000 shares of Preferred Stock, without par value, of which no shares are issued and outstanding, and 9,000,000 shares of Common Stock, par value \$0.66-2/3 per share (the "Floyd Common"), of which 979,848 shares are issued and outstanding and fully entitled to vote (exclusive of 72,548 shares held in the treasury, and 20,950 shares reserved for issuance on exercise of outstanding stock options;

B. Burnup was incorporated in the State of Delaware on July 26, 1968. Its principal office is at 1333 South University Drive, Plantation, Florida. It is the owner of record of 954,761 shares of Floyd Common, representing 97.4%, or in excess of 90%, of the issued and outstanding shares of such stock, according to applicable law, of the Constituent Corporations, pursuant to the actions of the Constituent Corporations' Boards of Directors, without the further approval of their respective shareholders.

C. The Boards of Directors of Burnup and of Floyd have approved the Merger Agreement and deem it advisable and for the benefit of their respective corporations that Floyd merge with and into Burnup on the terms and conditions



hereinafter set forth (the "Merger").

NOW, THEREFORE, in consideration of the premises and the representations, warranties and agreements contained herein, the parties agree as follows:

#### ARTICLE ONE

##### Principal Terms of the Merger

Section 1.01. Merger. At the effective time of the merger (as hereinafter defined), Floyd shall merge into Burnup, which shall be the Surviving Corporation, on the terms and conditions hereinafter set forth.

Section 1.02. Effective Time of the Merger. The Merger shall become effective as of the date and time of the filing of the Articles of Merger with the Department of State of the States of Delaware and Florida, and such date and time is herein referred to as the "Effective Time of the Merger."

#### ARTICLE TWO

##### Articles, By-Laws, Directors and Officers

Section 2.01. Articles. At the Effective Time of the Merger, the Articles of Burnup shall become the Articles of Floyd and shall thereafter continue to be its Articles until amended as provided by law.

#### ARTICLE THREE

##### Conversion, Cancellation and Payment for Shares

Section 3.01. Cancellation of Shares of Floyd Common. Each share of

Floyd Common, other than shares of Floyd Common held by Burnup, issued and outstanding at the Effective Time of the Merger (the "Public Shares") shall by virtue of the Merger be converted into the right, upon surrender of the certificates therefor, to receive \$15.75 per share in cash in the manner herein provided, or to assert dissenter's rights as provided under the Florida General Corporation Act. Each share of Floyd Common issued and outstanding at the Effective Time of the Merger and held by Burnup shall be thereupon cancelled or otherwise extinguished.

Section 3.02. Manner of Receipt of Cash Payment. Prior to the Effective Time of the Merger, Burnup shall appoint Southeast Banks Trust Co., N.A., Miami, Florida (the "Bank"), as Payment Agent, with instruction to pay to the holders of the Public Shares (excepting Dissenting Shareholders) amounts equal to \$15.75 per their shares, upon surrender of their certificates endorsing ownership to such shares, and it shall provide the Bank with adequate funds for such purpose. Within ten (10) days after the Effective Time of the Merger, Burnup shall deliver to the Bank a certified list of the holders of record of the Public Shares as of the Effective Time of the Merger. Such list shall be accompanied by a letter from Burnup directing the Bank to pay such holders the price per share specified in this Section 3.02 upon surrender to the Bank for cancellation of certificates representing such Public Shares. As soon as practicable after receiving such certificates, the Bank shall commence making such payments. If payment is to be made to a person other than the one in whose name a surrendered certificate is registered, it shall be a condition of such payment that the certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the person requesting such payment

shall have paid any transfer and other taxes required by reason of such payment in a name other than that of the registered holder of the certificate surrendered, or shall have established to the satisfaction of Burrup that such tax has been paid or is not applicable. Pending payment by the Bank, Burrup shall be entitled to receive from the Bank any interest payable with respect to the funds deposited pursuant to this Section 3.02. Any funds remaining unclaimed from the Bank after three (3) months shall be returned to Burrup. After the return to Burrup of such unclaimed funds, if any, it will, upon surrender to it of certificates representing Public Shares, pay to the holder of such Public Shares the price per share specified in this Section 3.02. Burrup shall possess all the rights, privileges, powers and franchises as well of a public and of a private nature, and be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations; and all and singular, the rights, privileges, powers and franchises of each of the said Corporations, and all property, real, personal and mixed, and all debts due to any of the Constituent Corporations on whatever account, and other choses in action or belonging to each of such Corporation shall be vested in Burrup; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of Burrup, as they were of the Constituent Corporations, and the title to any real estate vested by deed or otherwise in any of the Constituent Corporations shall not revert or be in any way impaired; but all rights of creditors and all liens upon any property of any of the Constituent Corporations shall be preserved unimpaired, and all debts, liabilities and duties of the Constituent Corporations shall thenceforth attach to the said Burrup and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

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Section 3.03. No Further Transfers. After the Effective Time of the Merger, the stock transfer books of Floyd shall be closed.

Section 3.04. Floyd Stock Options. The holders of options exercisable to purchase Floyd Common, shall, without respect to their entitlement to exercise such shares at the Effective Time, have the right to receive from Burnup cash amounts equal to the number of shares purchasable by them upon their exercise of their respective stock options, times (i) \$15.75 less (ii) such options' exercise prices. Such amounts shall be paid to such holders upon their release of Floyd and Burnup from their stock option obligations, whereupon such stock option rights shall be extinguished, and rendered null and void.

Section 3.05. Effect of Merger. Upon the Merger becoming effective, the separate existence of Floyd shall (except insofar as it may or must be continued by statute) cease, and it shall be merged with and into Burnup.

#### ARTICLE FOUR

##### Adoption

##### Section 4.01. Filing with the States of Delaware and Florida.

Subject to the provisions of Article Six, the Constituent Corporations shall cause a Certificate of Merger to be filed with the Secretary of State of the State of Delaware pursuant to Section 252(d) of the Delaware General Corporation Law, and Articles of Merger to be executed and delivered to the Secretary of State of the State of Florida for filing pursuant to Section 227(4) of the Florida General Corporation Act as soon as practicable after the thirty (30) day period immediately following the mailing to the Floyd shareholders of the Plan and Agreement of Merger.

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ARTICLE FIVE

Appraisal Rights

Section 5.01. Required Procedure. The following statements under this caption with respect to Sections 607.244 and 607.247 of the Florida General Corporation Act are qualified in their entirety by reference to the full text of such sections, which is attached as Exhibit A hereto and incorporated herein by reference thereto.

Any holder of shares of Common Stock who objects to the Merger may elect to be paid the value of such shares, determined pursuant to such sections, as of the Effective Time of the Merger (exclusive of any appreciation or depreciation in anticipation of the Merger), provided that the holder complies with the requirements of said Sections 607.244 and 607.247.

To be paid the value of his shares pursuant to said Sections 607.244 and 607.247, the objecting holder must make written demand on Floyd for payment of the fair value of such holder's shares within fifteen (15) days of the mailing of this Plan and Agreement of Merger to shareholders. Such demand should be addressed to Floyd Enterprises, Inc., c/o Burrup & Sims Inc., 1333 South University Drive, Plantation, Florida 33318, Attention: Assistant Secretary. Within twenty (20) days after such demand such holder must submit the certificate or certificates for his shares to Floyd for notation thereon that such demand has been made. Failure to submit the certificate or certificates for such violation within such time may, at Floyd's option, terminate the holder's rights herein described, unless a court otherwise directs.

Within ten (10) days after the Effective Time of the Merger, Burrup will give written notice of the effectiveness of the Merger to all holders of record of all shares of Common Stock who have duly made written demand as

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provided above and make an offer to each such shareholder to pay for such holder's shares at a specified price deemed by Burnap to be the fair value thereof.

If, within thirty (30) days after the Merger is effected, Burnap and the shareholders do not agree upon the value of his shares of Common Stock, either Burnap or the shareholder may, within sixty (60) days of the effectuation of the Merger, file an action in a court of competent jurisdiction requesting that a fair value of such shares be found and determined. The costs of the appraisal, including the fees and expenses of any appraiser, but excluding any fees of counsel or experts retained by any party, may be assessed against one or more parties to the proceedings as the Court may deem equitable.

#### ARTICLE SIX

##### Miscellaneous

Section 6.01. Mutual Waiver. At any time prior to approval of this Merger Agreement by the Board of Directors of the Constituent Corporations, if authorized by such Boards, the parties hereto may, by written agreement, amend or supplement any of the provisions of this Merger Agreement; provided, however, that no such amendment shall reduce the amount of cash payable for each Public Share pursuant to this Merger Agreement. Any written instrument or agreement referred to in this Section shall be validly and sufficiently authorized for the purposes of this Merger Agreement if signed on behalf of each of the Constituent Corporations by a person authorized to sign this Merger Agreement.

Section 6.02. Further Assurances. If at any time after the Effective Time of the Merger, Burnap shall consider that any assignments, transfers, deeds or other assurances in law are necessary or desirable to vest, perfect or

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provided above and make an offer to each such shareholder to pay for such holder's shares at a specified price deemed by Burrup to be the fair value thereof.

If, within thirty (30) days after the Merger is effected, Burrup and the shareholders do not agree upon the value of his shares of Common Stock, either Burrup or the shareholder may, within sixty (60) days of the effectuation of the Merger, file an action in a court of competent jurisdiction requesting that a fair value of such shares be found and determined. The costs of the appraisal, including the fees and expenses of any appraiser, but excluding any fees of counsel or experts retained by any party, may be assessed against one or more parties to the proceedings as the Court may deem equitable.

#### ARTICLE SIX

##### Miscellaneous

Section 6.01. Mutual Waiver. At any time prior to approval of this Merger Agreement by the Board of Directors of the Constituent Corporations, if authorized by such Boards, the parties hereto may, by written agreement, amend or supplement any of the provisions of this Merger Agreement; provided, however, that no such amendment shall reduce the amount of cash payable for each Public Share pursuant to this Merger Agreement. Any written instrument or agreement referred to in this Section shall be validly and sufficiently authorized for the purposes of this Merger Agreement if signed on behalf of each of the Constituent Corporations by a person authorized to sign this Merger Agreement.

Section 6.02. Further Assurances. If at any time after the Effective Time of the Merger, Burrup shall consider that any assignments, transfers, deeds or other assurances in law are necessary or desirable to vest, perfect or

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confirm, of record or otherwise, in Burnap title to any property or rights of either of the Constituent Corporations, each Constituent Corporation and its officers and directors shall execute and deliver such documents and do all things necessary and proper to vest, perfect or confirm title to such property or rights in Burnap, and the officers and directors of Burnap are hereby fully authorized in the name of either of the Constituent Corporations or otherwise to take any and all such actions.

Section 6.03. Counterparts. This Merger Agreement may be executed in any number of counterparts, each of which shall be considered to be an original instrument, but such counterparts together shall constitute but one and the same instrument.

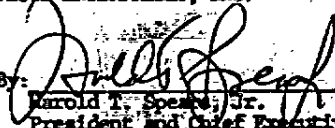
Section 6.04. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or sent by registered or certified mail, postage prepaid: (a) If to Floyd, addressed to it at: 1333 South University Drive, Plantation, Florida 33318, c/o Burnap & Sims Inc., Attention: Secretary, and (b) if to Burnap, addressed to it at: 1333 South University Drive, Plantation, Florida 33318, Attention: Assistant Secretary.

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IN WITNESS WHEREOF, Floyd and Burnap, pursuant to authority duly given by their respective Boards of Directors, have caused this Merger Agreement to be executed in accordance with the laws of the States of Delaware and Florida and their respective corporate seals to be affixed hereto, as of the day and year first above written.

FLOYD ENTERPRISES, INC.


By:   
Harold T. Speck, Jr.  
President and Chief Executive Officer

(CORPORATE SEAL)

Attest:

  
Peter J. Hillman, Secretary

BURNAP & SIMS INC., a Delaware corporation

By:   
Nick A. Caporella  
President and Chief Executive Officer

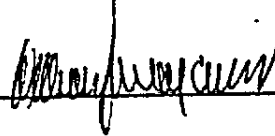
(CORPORATE SEAL)

Attest:

  
William J. Mercurio, Secretary

I, WILLIAM J. MERCURIO, Secretary of Burnup & Sims Inc., a corporation organized and existing under the laws of the State of Delaware, DO HEREBY CERTIFY, as such Secretary and under the seal of Burnup & Sims Inc., that the Plan and Agreement of Merger to which this Certificate is attached was duly adopted pursuant to Section 228 of the General Corporation Law of the State of Delaware, pursuant to the action of the Board of Directors of Burnup & Sims Inc.

IN WITNESS WHEREOF, I have hereunto signed my name as Secretary and affixed the corporate seal of Burnup & Sims Inc. hereto this 22nd day of March, 1978.

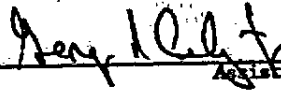


Secretary

(Corporate Seal)

I, GEORGE R. CANTY, JR., Assistant Secretary of Floyd Enterprises, Inc., a corporation organized and existing under the laws of the State of Florida, DO HEREBY CERTIFY, as such Assistant Secretary, and under the seal of Floyd Enterprises, Inc., that the Board of Directors of Floyd Enterprises, Inc. have duly acted to adopt the Plan and Agreement of Merger to which this Certificate is attached.

IN WITNESS WHEREOF, I have hereunto signed my name as Assistant Secretary and affixed the corporate seal of Floyd Enterprises, Inc., this 22nd day of March, 1978.



Assistant Secretary

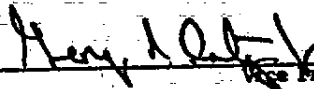
(Corporate Seal)

The foregoing Plan and Agreement of Merger having been executed on behalf of each of the parties thereto and having been adopted by the Board of Directors of each of the parties thereto in accordance with the provisions of the General Corporation Law of the State of Delaware and that fact having been certified on said Plan and Agreement of Merger by the Secretary or an Assistant Secretary of each of the parties thereto, the Chairman of the Board, President or a Vice President of each of the parties thereto does hereby execute said Plan and Agreement of Merger and the Secretary or an Assistant Secretary of each of the parties thereto does hereby attest said Plan and Agreement of Merger under the corporate seal of their respective corporations by authority of the directors thereof and as the respective act, deed and agreement of each of said corporations on this 22nd day of March, 1978.

BURNUP & SIMS INC., a Delaware corporation

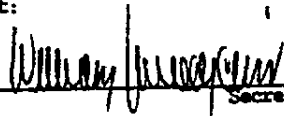
(Corporate Seal)

By



Vice President

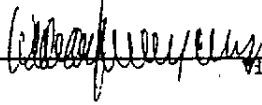
Attest:



Secretary

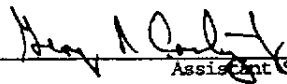
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FLOYD ENTERPRISES, INC.

By  Vice President

(Corporate Seal)

Attest:

  
Assistant Secretary

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**EXHIBIT A**

**SECTIONS 607.244 AND 607.247 OF THE FLORIDA GENERAL CORPORATION ACT**

**Section 607.244. Right of Shareholders to Dissent.**

(1) Any shareholder of a corporation shall have the right to dissent from any of the following corporate actions:

(a) Any plan of merger or consolidation to which the corporation is a party; or

(b) Any sale or exchange of all or substantially all of the property and assets of the corporation, including a sale in dissolution.

(2) A shareholder may dissent as to less than all the shares registered in his name. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(3) Unless the articles of incorporation otherwise provide, this section shall not apply:

(a) To the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger.

(b) To the holders of shares of any class or series which, on the date fixed to determine the shareholders entitled to vote at the meeting of shareholders at which a plan of merger or consolidation or a proposed sale or exchange of property and assets is to be acted upon, were either registered on a national securities exchange or held of record by not less than 2,000 shareholders.

(c) To a sale or exchange pursuant to an order of a court having jurisdiction in the premises.

(d) To a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within 1 year after the date of sale.

**Section 607.247. Rights of Dissenting Shareholders.**

(1) Any shareholder electing to exercise a right of dissent shall file with the corporation, prior to the taking of the vote of shareholders on the proposed corporate action, a written objection to such proposed corporate action. If such

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proposed corporate action be approved by the required vote and such shareholder shall not have voted in favor thereof, such shareholder may, within 10 days after the date on which the vote was taken, make written demand on the corporation or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares.

(2) Notwithstanding subsection (1), when a merger, consolidation, or sale or exchange of assets has been approved by written consent of shareholders pursuant to s. 607.394, any shareholder failing to give consent or, when a corporation is to be merged without a vote of its shareholders into another corporation, any of its shareholders, may, within 15 days after the plan of such merger, consolidation, or sale or exchange of assets shall have been mailed to such shareholders, make written demand on the corporation or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares.

(3) If such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was effected approving the proposed corporate action by the shareholders of the corporation in which the dissenting shareholder owns shares or, in the case of a merger pursuant to s. 607.227, as of the day prior to the date on which a copy of the plan of merger was mailed to each shareholder of record of the subsidiary corporation. In any case, the fair value of shares shall be computed by excluding any appreciation or depreciation in anticipation of such corporation action. Any shareholder failing to make demand within the applicable 10-day or 15-day period shall be bound by the terms of the proposed corporation action. Any shareholder making such demand shall thereafter be entitled only to payment as provided in this section and shall not be entitled to vote or to exercise any other rights of a shareholder.

(4) No such demand may be withdrawn unless the corporation shall consent thereto. However, the right of such shareholder to be paid the fair market value of his shares shall cease, and his status as a shareholder shall be restored without prejudice to any corporate proceedings which may have been taken in the interim, if:

(a) Such demand shall be withdrawn upon consent.

(b) The proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action.

(c) In the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger.

(d) No demand or petition for the determination of fair value by a court shall have been made or filed within the time provided in this section.

(e) A court of competent jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section.

(5) Within 10 days after such corporate action is effected, the corporation or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided, and shall make a written offer to each such shareholder to pay for such shares at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by:

(a) A balance sheet of the corporation, the shares of which the dissenting shareholder holds, as of the latest available date and not more than 12 months prior to the making of such offer; and

(b) A profit and loss statement of such corporation for the 12-month period ended on the date of such balance sheet.

(6) If within 30 days after the date on which such corporate action was effected the fair value of such shares is agreed upon between any such dissenting shareholders and the corporation, payment therefor shall be made within 90 days after the date on which such corporate action was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares.

(7) If within such period of 30 days a dissenting shareholder and the corporation do not so agree, then the corporation, within 30 days after receipt of written demand from any dissenting shareholder given within 60 days after the date on which such corporate action was effected, shall, or at its election at any time within such period of 60 days may, file an action in any court of competent jurisdiction in the county in this state where the registered office of the corporation is located requesting that the fair value of such shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, such petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation shall fail to institute the proceeding as herein provided, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. A copy of the initial pleading shall be served on each dissenting shareholder who is a resident of this state and shall be served on each dissenting shareholder who is a nonresident. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the

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corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholders shall cease to have any interest in such shares.

(8) The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances from the date on which the vote was taken on the proposed corporate action to the date of payment.

(9) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting shareholders who are parties to the proceeding, to whom the corporation shall have made an offer to pay for the shares, if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for, and reasonable expenses of, the appraisers, but shall exclude the fees and expenses of counsel for, and experts employed by, any party. If the fair value of the shares, as determined, materially exceeds the amount which the corporation offered to pay therefor or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding.

(10) Within 20 days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

(11) Shares acquired by a corporation pursuant to payment of the agreed value thereof or to payment of the judgment entered therefor, as provided in this section, may be held and disposed of by such corporation as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide. The shares of the surviving or resulting corporation into which the shares of such dissenting shareholders would have been converted had they assented to the merger or consolidation shall have the status of authorized but unissued shares of the surviving or resulting corporation.