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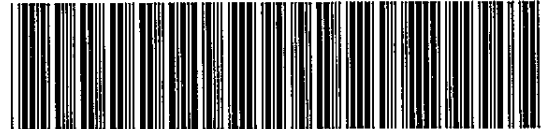
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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

05 APR -5 PM 5:00

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TALLAHASSEE, FLORIDA

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\*00789, 00721, 00672

# CAPITAL CONNECTION, INC.

417 E. Virginia Street, Suite 1 • Tallahassee, Florida 32301  
(850) 224-8870 • 1-800-342-8062 • Fax (850) 222-1222

*Koss Olinger + Company*

*File 2<sup>nd</sup>*

Signature

Requested by:

Name

Date

Time

Walk-In

Will Pick Up

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- ☐ Officer Search
- ☐ Fictitious Search
- ☐ Fictitious Owner Search
- ☐ Vehicle Search
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- ☐ UCC 1 or 3 File
- ☐ UCC 11 Search
- ☐ UCC 11 Retrieval
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FLORIDA DEPARTMENT OF STATE

Glenda E. Hood  
Secretary of State

April 6, 2005

Capital Connection, Inc.  
417 E. Virginia Street  
Suite 1  
Tallahassee, FL 32301

**RE-SUBMIT**  
PLEASE OBTAIN THE ORIGINAL  
FILE DATE

SUBJECT: KOSS, OLINGER AND COMPANY  
Ref. Number: 356050

We have received your document for KOSS, OLINGER AND COMPANY and your check(s) totaling \$78.75. However, the enclosed document has not been filed and is being returned for the following correction(s):

Our records indicate the current name of the entity is as it appears on the enclosed computer printout. Please correct the name throughout the document.

If you have any questions concerning the filing of your document, please call (850) 245-6907.

Annette Ramsey  
Document Specialist

Letter Number: 205A00023470

**RE-SUBMIT**  
PLEASE OBTAIN THE ORIGINAL  
FILE DATE

RECEIVED  
07-07-07 11:45  
STATE  
CORPORATIONS  
DIVISION  
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER  
FOR THE MERGER  
OF  
Koss Acquisition Company  
a Florida corporation,  
INTO  
and  
Koss Olinger Company  
a Florida corporation  
(the Surviving Corporation)

FILED  
05 APR -5 PM 5:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to sections 607.1105 and 607.1107, F.S.

1. The name of the surviving corporation is Koss Olinger<sup>and</sup> Company, a Florida corporation.
2. The name of the merging corporation is Koss Acquisition Company, a Florida corporation.
3. Attached hereto is a copy of the Plan of Merger.
4. The merger shall become effective at 12:00 a.m. April 4, 2005 or such time as these articles are filed.
5. The Plan of Merger was adopted by the shareholders of Koss Acquisition Company on April 4, 2005.
6. The Plan of Merger was adopted by the shareholders of Koss Olinger<sup>and</sup> Company on April 4, 2005.

Date: April 4, 2005

Koss Acquisition Company =

By: John C. DuBose

Name: John C. DuBose

Title: Vice President

Date: April 4, 2005

Koss Olinger<sup>and</sup> Company

By: William D. Olinger III

Name: William D. Olinger III

Title: Vice President

## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of April 4, 2005, between The South Financial Group, Inc., a South Carolina corporation ("TSFG"), Koss Acquisition Company, a Florida corporation and wholly-owned subsidiary of TSFG ("KAC"), Koss Olinger Company, a Florida corporation ("Koss Olinger"), and William F. Koss, an individual resident in Florida, William D. Olinger, an individual resident in Florida, William D. Olinger III, an individual resident in Florida, Kirk E. Klein, an individual resident in Florida, William Rossi, an individual resident in Florida, and Brian Watson, an individual resident in Florida (all such individuals being referred to as the "Shareholders").

### Recitals

The Boards of Directors of TSFG, KAC and Koss Olinger have determined that it is in the best interests of their respective companies and their shareholders to consummate the business combination transaction provided for herein in which KAC will, subject to the terms and conditions set forth herein, merge (the "Merger") with and into Koss Olinger.

The parties desire to make certain representations, warranties and agreements in connection with the Merger and also to prescribe certain conditions to the Merger.

### Agreement

In consideration of the mutual covenants, representations, warranties and agreements contained herein, and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATION

### 1.1 Definitions. The following terms shall have the indicated definitions.

*Additional Earnout.* If the CEBITDA of Koss Olinger and Koss Olinger Consulting, Inc. exceeds \$7,613,000, the Additional Earnout shall mean a number equal to 50% of such excess over \$7,613,000. The Additional Earnout shall be valued at the Fair Market Value and payable in shares of TSFG Common Stock to the Shareholders (Pro Rata). If the CEBITDA of Koss Olinger and Koss Olinger Consulting, Inc. is less than \$7,613,000, the Additional Earnout shall be zero.

*Applicable Rate.* The prime corporate rate of interest publicly announced from time to time by Carolina First Bank.

*Articles of Merger.* The articles of merger complying with the FBCA reflecting the merger of KAC with and into Koss Olinger.

*BHCA.* The Bank Holding Company Act of 1956, as amended.

*Base Earnout.* If the CEBITDA of Koss Olinger and Koss Olinger Consulting, Inc. equals or exceeds \$7,613,000, the Base Earnout shall mean \$3,000,000. If the CEBITDA of Koss Olinger and Koss Olinger Consulting, Inc. equals or exceeds \$4,520,000 but is less than \$7,613,000, then the Base Earnout will equal the following: (CEBITDA for 60 month period - \$4,520,000) / \$3,093,000 x \$3,000,000. (By way of example, if CEBITDA for the 60 month period were \$5,551,000, the Base Earnout would be \$1,000,000.) If the CEBITDA of Koss Olinger and Koss Olinger Consulting, Inc. is less than \$4,520,000, then the Base Earnout shall be -0-. If a Change in Control occurs, and the CEBITDA of Koss Olinger and Koss Olinger Consulting, Inc. has grown at a rate of 15% or greater annualized from the period of time from March 31, 2005 through the date of the Change in Control, then the Base Earnout shall be deemed to have been earned (a "Premature Base Earnout"). The Premature Base Earnout (1) shall be paid on the 21<sup>st</sup> trading day following consummation of the Change in Control (the "Premature Payment Date"), (2) shall be equal to the net present value of \$3,000,000 discounted back from May 17, 2010 to the Premature Payment Date at a rate of 5.5%, and (3) shall be paid in the shares of common stock of the surviving parent entity to the Change in Control transaction, valued based on the closing price of such common stock on the trading day immediately prior to the Premature Payment Date.

*Book Value.* The excess of Koss Olinger's assets over its liabilities as shown on the Effective Date Balance Sheet of Koss Olinger.

*Breach.* A breach of a representation, warranty, covenant, obligation, or other provision of this Agreement or any instrument delivered pursuant to this Agreement will be deemed to have occurred if there is or has been any inaccuracy in or breach of, or any failure to perform or comply with, such representation, warranty, covenant, obligation, or other provision.

*CEBITDA.* The cumulative net earnings before interest, taxes, depreciation and amortization of Koss Olinger and Koss Olinger Consulting, Inc. (added together) for the 60 month period ending March 31, 2010, calculated in accordance with GAAP, but subject to any additional principles set forth on Schedule A. The dispute resolution provisions of Section 7.3 will apply to any determinations with respect to CEBITDA.

"Change in Control" shall mean:

(i) The acquisition, directly or indirectly, by any Person of securities of TSFG representing an aggregate of 50% or more of the combined voting power of TSFG's then outstanding voting securities other than an acquisition by:

- (A) any employee plan established by TSFG;
- (B) TSFG or any of its "affiliates" (as contemplated in applicable federal securities laws);
- (C) an underwriter temporarily holding securities pursuant to an offering of such securities;
- (D) a corporation owned, directly or indirectly, by stockholders of TSFG in substantially the same proportions as their ownership of TSFG; or
- (E) merger, consolidation, or similar transaction of TSFG with any other corporation which is duly approved by the stockholders of TSFG;

(ii) During any period of up to two consecutive years, individuals who, at the beginning of such period, constitute the Board cease for any reason to constitute at least a majority thereof, provided that any person who becomes a director subsequent to the beginning of such period and whose nomination for election is approved by at least two-thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved (other than a director (A) whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of TSFG, as such terms are used in Rule 14a-11 of Regulation 14A under the Exchange Act, or (B) who was designated by a Person who has entered into an agreement with TSFG to effect a transaction described in clause (i) or (iii) hereof) shall be deemed a director as of the beginning of such period; or

(iii) The stockholders of TSFG approve a merger or consolidation of TSFG with any other corporation other than (A) a merger or consolidation that would result in the voting securities of TSFG outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof), in combination with the ownership of any trustee or other fiduciary holding securities under an employee benefit plan of any Company, at least a majority of the combined voting power of the voting securities of TSFG or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation, or (B) a merger or consolidation effected to implement a recapitalization of TSFG (or similar transaction) in which no Person is or becomes the beneficial owner (as defined in clause (i) above), directly or indirectly, of securities of TSFG (not including in the securities beneficially owned by such Person any securities acquired directly from TSFG) representing a majority of the combined voting power of TSFG's then outstanding voting securities; or (C) a plan of complete liquidation of TSFG or an agreement for the sale or disposition of TSFG of all or substantially all of TSFG's assets.

*Closing and Closing Date.* The time and date of consummation of the transactions contemplated herein, which unless expressly agreed otherwise, shall be the same day as the Effective Time.

*Closing Consideration.* The Closing Consideration shall mean \$4,500,000, payable in cash at Closing, as adjusted for the Closing Consideration Adjustment.

*Closing Consideration Adjustment.* The Closing Consideration Adjustment shall mean an adjustment to the Closing Consideration as follows:

- (1) If the Book Value is less than \$1,014, the Shareholders will pay to TSFG an amount equal to such deficiency (plus interest thereon at the Applicable Rate from the Closing Date) within three (3) business days after the date on which the Book Value for Koss Olinger is determined pursuant to Section 7.3. If the Book Value is greater than \$1,014, TSFG will pay to the Shareholders an amount equal to such overage (plus interest thereon at the Applicable Rate from the Closing Date) by wire

- transfer or delivery of other immediately available funds within three (3) business days after the date on which the Book Value for Koss Olinger is determined pursuant to Section 7.3.
- (2) The Shareholders (Pro Rata) agree to repurchase any receivables existing on the Closing Date, included in the calculation of Book Value, and not collected within 90 days immediately following Closing Date.

*Effective Time.* The effective time of the Merger, specified in the Articles of Merger, which shall be April 4, 2005.

*Environmental Laws.* Applicable federal, state and local laws, including common law, regulations and ordinances, and all applicable decrees, orders and contractual obligations relating to pollution or the discharge of, or exposure to, Hazardous Materials in the environment or workplace.

*ERISA.* The Employee Retirement Income Security Act of 1974, as amended.

*Exchange Act.* The Securities Exchange Act of 1934, as amended.

*FBCA.* The Florida Business Corporation Act, as amended.

*FDIC.* The Federal Deposit Insurance Corporation.

*Fair Market Value.* The average of the last reported sale price per share of TSFG Common Stock as reported on the NASDAQ/NMS (as reported in the *Wall Street Journal* or another mutually agreeable authoritative source) on May 14, 2010.

*Federal Reserve Board.* The Board of Governors of the Federal Reserve System.

*GAAP.* Generally accepted accounting principles consistently applied during the periods involved.

*Governmental Entity.* Any court, administrative agency or commission or other governmental authority or instrumentality.

*Hazardous Materials.* Any chemicals, pollutants, contaminants, wastes, toxic substances, petroleum or other regulated substances or materials.

*IRS.* The Internal Revenue Service.

*Material Adverse Effect.* With respect to TSFG or Koss Olinger, as the case may be, a material adverse effect on (i) the business, results of operations or financial condition of such party and its Subsidiaries taken as a whole, other than any such effect attributable to or resulting from (v) any change in banking or similar laws, rules or regulations of general applicability or interpretations thereof by courts or governmental authorities, (w) any change in GAAP or regulatory accounting principles applicable to banks, thrifts or their holding companies generally, (x) changes attributable to or resulting from changes in general economic conditions, including changes in the prevailing level of interest rates, or (y) any action or omission of the Parties taken with the prior written consent of the other parties hereto or (ii) the ability of the Parties to consummate the transactions contemplated hereby.

*Koss Olinger Common Stock.* The common stock, par value \$100.00 per share, of Koss Olinger.

*Koss Olinger Parties.* Koss Olinger and the Shareholders.

*Koss Olinger Stock Certificate.* A certificate, which previous to the Merger represented any shares of Koss Olinger Common Stock.

*Merger Consideration.* Merger Consideration shall mean the following:

- (1) the Closing Consideration, plus
- (2) cash in lieu of any fractional shares, as calculated pursuant to Section 2.9, plus
- (3) the Base Earnout (if applicable), which shall be valued at the Fair Market Value and payable on May 17, 2010 in shares of TSFG Common Stock to the Shareholders (Pro Rata) plus
- (4) the Additional Earnout (if applicable) which shall be valued at the Fair Market Value and payable on May 17, 2010 in shares of TSFG Common Stock to the Shareholders (Pro Rata).

*Parties.* All of the Persons party to this Agreement.

*Per Share Merger Consideration.* An amount equal to the Merger Consideration divided by the total number of shares of Koss Olinger Common Stock outstanding at Closing, excluding any shares of Koss Olinger to be cancelled pursuant to Section 2.4(d) hereof (rounded to three decimal places).

*Person* shall mean any person or entity.

*Pro Rata* shall mean with respect to the Shareholders, pro rata in accordance with the relationship that the number of shares of Koss Olinger Common Stock owned by a particular Shareholders bears to the total number of shares of Koss Olinger Common Stock held by all Shareholders.

*Regulatory Agencies.* The Federal Reserve Board, the FDIC, any applicable state banking commissions or any other state bank regulatory authority and any applicable self-regulatory organization with jurisdiction over the Parties hereto or transactions contemplated herein.

*Rights.* Subscriptions, options, warrants, calls, commitments or agreements of any character to purchase capital stock.

*Related Person.* With respect to a particular individual shall mean: (a) each other member of such individual's Family; (b) any Person that is directly or indirectly controlled by such individual or one or more members of such individual's Family; (c) any Person in which such individual or members of such individual's Family hold (individually or in the aggregate) a Material Interest; and (d) any Person with respect to which such individual or one or more members of such individual's Family serves as a director, officer, partner, executor, or trustee (or in a similar capacity).

With respect to a specified Person other than an individual: (a) any Person that directly or indirectly controls, is directly or indirectly controlled by, or is directly or indirectly under common control with such specified Person; (b) any Person that holds a Material Interest in such specified Person; (c) each Person that serves as a director, officer, partner, executor, or trustee of such specified Person (or in a similar capacity); (d) any Person in which such specified Person holds a Material Interest; (e) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity); and (f) any Related Person of any individual described in clause (b) or (c).

For purposes of this definition, (a) the "Family" of an individual includes (i) the individual, (ii) the individual's spouse and former spouses, (iii) any other natural person who is related to the individual or the individual's spouse within the second degree, and (iv) any other natural person who resides with such individual, and (b) "Material Interest" means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of voting securities or other voting interests representing at least 5% of the outstanding voting power of a Person or equity securities or other equity interests representing at least 5% of the outstanding equity securities or equity interests in a Person.

*SEC.* The Securities and Exchange Commission.

*Subsidiary.* The word "Subsidiary" (1) when used with respect to Koss Olinger shall mean any corporation, partnership or other organization, whether incorporated or unincorporated, which is consolidated with such party for financial reporting purposes, and (2) when used with respect to TSFG shall mean each Subsidiary of TSFG that is a "Significant Subsidiary" within the meaning of Rule 1-02 of Regulation S-X of the SEC.

*Surviving Corporation.* The surviving corporation to the Merger, which shall be Koss Olinger.

*Taxes.* Taxes shall mean all taxes, charges, fees, levies, penalties or other assessments imposed by any United States federal, state, local or foreign taxing authority, including, but not limited to income, excise, property, sales, transfer, franchise, payroll, withholding, social security or other taxes, including any interest, penalties or additions attributable thereto.

*Tax Return.* Any return, report, information return or other document (including any related or supporting information) with respect to Taxes.

*TSFG Common Stock.* The common stock, par value \$1.00 per share, of TSFG.

**1.2 Terms Defined Elsewhere.** The capitalized terms set forth below are defined in the following sections:

"Agreement"

Preamble

"Benefit Agreements"

Section 7.8(c)



"Code"	Section 2.3
"ERISA Affiliate"	Section 4.12(a)
"Injunction"	Section 8.1(e)
"Koss Olinger"	Preamble
"KAC"	Preamble
"Koss Olinger Contract"	Section 4.15(a)
"Koss Olinger Disclosure Schedule"	Section 3.1
"Koss Olinger Financial Statements"	Section 4.7
"Merger"	Recitals
"Plans"	Section 4.12(a)
"Regulatory Agreement"	Section 4.16
"Representatives"	Section 7.3(a)
"TSFG"	Preamble
"TSFG Disclosure Schedule"	Section 3.1
"TSFG Financial Statements"	Section 5.7
"TSFG Preferred Stock"	Section 5.2
"TSFG Reports"	Section 5.5

1.3 Interpretation. When a reference is made in this Agreement to Sections, Exhibits or Schedules, such reference shall be to a Section of or Exhibit or Schedule to this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The phrases "the date hereof" and terms of similar import, unless the context otherwise requires, shall be deemed to refer to April 4, 2005. No provision of this Agreement shall be construed to require Koss Olinger, TSFG or any of their respective affiliates to take any action that would violate any applicable law (including common law), rule or regulation.

## ARTICLE II PLAN OF MERGER

2.1 The Merger. Subject to the terms and conditions of this Agreement, in accordance with the FBCA, at the Effective Time, KAC shall merge with and into Koss Olinger. Koss Olinger shall be the Surviving Corporation, and shall continue its corporate existence under the laws of the State of Florida. The name of the Surviving Corporation shall continue to be "Koss Olinger & Company". Upon consummation of the Merger, the separate corporate existence of KAC shall terminate.

2.2 Effective Time and Effects of the Merger. Subject to the provisions of this Agreement, on the Closing Date, the Articles of Merger shall be duly prepared, executed and delivered for filing with the Secretary of State of the State of Florida. The Merger shall become effective at the Effective Time. At and after the Effective Time, the Merger shall have the effects set forth in the FBCA.

2.3 Tax Consequences. It is intended that the Merger shall not constitute a reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code"). It is intended that the Merger shall constitute a qualified stock purchase within the meaning of Section 338(d)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

### 2.4 Conversion of Koss Olinger Common Stock.

(a) At the Effective Time, subject to Section 2.9, each share of Koss Olinger Common Stock issued and outstanding immediately prior to the Effective Time (other than shares of Koss Olinger Common Stock held directly or indirectly by Koss Olinger) shall, by virtue of this Agreement and without any action on the part of the holder thereof, be converted into and exchangeable for the right to receive, the Per Share Merger Consideration.

(b) All of the shares of Koss Olinger Common Stock converted into the Per Share Merger Consideration pursuant to this Article II shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and each holder of Koss Olinger Stock Certificates shall thereafter cease to have any rights with respect to such securities, except the right to receive for each share (i) the Per Share Merger Consideration and (ii) any cash in lieu of fractional shares pursuant to Section 2.9.

(c) At the Effective Time, all shares of Koss Olinger Common Stock that are owned directly or indirectly by Koss Olinger shall be cancelled and shall cease to exist and no stock of TSFG, cash or other consideration shall be delivered in exchange therefor. All shares of TSFG Common Stock that are owned by Koss Olinger shall be cancelled.

2.5 KAC Common Stock. The outstanding shares of KAC Common Stock shall convert into 100 shares of common stock of the Surviving Corporation. The parties acknowledge that TSFG may contribute the KAC stock to Mercantile Bank prior to the merger of KAC and Koss Olinger.

2.6 Articles of Incorporation and Bylaws. At the Effective Time, the Articles of Incorporation of Koss Olinger, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation of the Surviving Corporation. At the Effective Time, the Bylaws of Koss Olinger, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until thereafter amended in accordance with applicable law.

2.7 Directors and Executive Officers. (a) At and after the Effective Time, the directors of KAC shall consist of all of the directors of KAC serving immediately prior to the Effective Time, each to hold office in accordance with the Articles of Incorporation and Bylaws of the Surviving Corporation until their respective successors are duly elected or appointed and qualified. The executive officers of Koss Olinger immediately prior to the Effective Time shall be the officers of the Surviving Corporation, each to hold office in accordance with the Articles of Incorporation and Bylaws of the Surviving Corporation until their respective successors are duly elected or appointed and qualified.

(b) The parties acknowledge that in the discretion of the President and Executive Vice President of Koss Olinger (the surviving company), Koss Olinger (or any other Koss Olinger-affiliated operation) may establish an advisory board comprised of such persons as may be deemed appropriate from time to time by such officers.

2.8 Issuance of Merger Consideration. At the Effective Time (and subsequently in the case of the Base Earnout and the Additional Earnout, if applicable) and upon receipt of certificates representing shares of Koss Olinger Common Stock, TSFG shall issue or pay (as applicable) the Merger Consideration to the surrendering Koss Olinger shareholders.

2.9 Fractional Shares. Notwithstanding anything to the contrary contained herein, no certificates or scrip representing fractional shares of TSFG Common Stock shall be issued upon the surrender for exchange of Koss Olinger Stock Certificates, no dividend or distribution with respect to TSFG Common Stock shall be payable on or with respect to any fractional share, and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a shareholder of TSFG. In lieu of the issuance of any such fractional share, TSFG shall pay to each former stockholder of Koss Olinger who otherwise would be entitled to receive a fractional share of TSFG Common Stock an amount in cash determined by multiplying (i) the Fair Market Value by (ii) the fraction of a share of TSFG Common Stock which such holder would otherwise be entitled to receive pursuant to Section 2.4 hereof.