

506113

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03 MAR 31 PM 1:40

SECRETARY OF STATE
TALLAHASSEE, FLORIDA



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STATE
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

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(Business Entity Name)

(Document Number)

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

March 31, 2003

Secretary of State, Florida
409 East Gaines Street
Tallahassee FL 32399

Re: Order #: 5816996 SO
Customer Reference 1:
Customer Reference 2:

Dear Secretary of State, Florida:

Please file the attached:

KOHLER CONSTRUCTION COMPANY, INC. (FL)
Merger (Discontinuing Company)
Florida

Enclosed please find a check for the requisite fees. Please return evidence of filing(s) to my attention.

If for any reason the enclosed cannot be filed upon receipt, please contact me immediately at
(850) 222-1092. Thank you very much for your help.

Sincerely,

Jeffrey J Netherton
Sr. Fulfillment Specialist
Jeff_Netherton@cch-lis.com

660 East Jefferson Street
Tallahassee, FL 32301
Tel. 850 222 1092
Fax 850 222 7615



FLORIDA DEPARTMENT OF STATE
Glenda E. Hood
Secretary of State

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03 MAR 31 PM 1:40
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

March 31, 2003

CT CORPORATION
660 EAST JEFFERSON ST.
TALLAHASSEE, FL 32301

SUBJECT: KOHLER CONSTRUCTION COMPANY, INC.
Ref. Number: J06113

We have received your document for KOHLER CONSTRUCTION COMPANY, INC. and your check(s) totaling \$240.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

The plan of merger must provide the name(s) and address(es) of the managers or managing members of the surviving limited liability company.

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) 245-6094.

Agnes Lunt
Document Specialist

Letter Number: 803A0001916

RECEIVED
03 APR - 1 PM 2:29
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

*Please back - date & return & enclosed
along my regular evidence -
Tully*

gml

ARTICLES OF MERGER
Merger Sheet

MERGING:

KOHLER CONSTRUCTION COMPANY, INC. A FLORIDA ENTITY

INTO

KOHLER CONSTRUCTIO CO., LLC, entity not qualified in Florida.

File date: March 31, 2003

Corporate Specialist: Agnes Lunt

**ARTICLES OF MERGER
OF
KOHLER CONSTRUCTION COMPANY, INC.
AND
KOHLER CONSTRUCTION CO., LLC**

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The following articles of merger are being submitted in accordance with Section 607.1109, Florida Statutes.

FIRST: The exact name, street address of its principal office, jurisdiction, and entity type for the merging party is as follows:

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
Kohler Construction Company, Inc. 6425 53rd St. No. Pinellas Park, FL 34665-5629	Florida	Corporation

FEI Number: 592674229

Florida Registration Number: J06113

SECOND: The exact name, street address of its principal office, jurisdiction, and entity type of the surviving party is as follows:

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
Kohler Construction Co., LLC 4440 PGA Boulevard, Suite 500 Palm Beach Gardens, Florida 33410	Delaware	Limited Liability Company

FEI Number: 22-3882757

Florida Registration Number: [TO BE QUALIFIED]

THIRD: The attached Agreement and Plan of Merger meets the requirements of Section 607.1108, Florida Statutes, and was approved by the domestic corporation that is a party to the merger in accordance with Chapter 607, Florida Statutes.

FOURTH: The attached Agreement and Plan of Merger was approved by the other business entity that is a party to the merger in accordance with the laws of the applicable jurisdiction.

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FIFTH: The surviving entity is not incorporated, organized or otherwise formed under the laws of the State of Florida and is deemed to have appointed the Florida Secretary of State as its agent for service of process in any proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation that is a party to the merger. 03 MAR 31 PM 1:40
CLERK OF STATE
TALLAHASSEE, FLORIDA

SIXTH: The surviving entity hereby agrees to pay the dissenting shareholders of the domestic corporation that is a party to the merger the amount, if any, to which they are entitled under Section 607.1302, Florida Statutes.

SEVENTH: The merger is permitted under the respective laws of both applicable jurisdictions and is not prohibited by the regulations or certificate of organization of the limited liability company that is a party to the merger.

EIGHTH: The merger shall become effective as of March 31, 2003 at 11:59 pm

NINTH: The Articles of Merger comply and were executed in accordance with the laws of each party's applicable jurisdiction.

[signatures follow on next page]

FILED

IN WITNESS WHEREOF, Kohler Construction Co., LLC, a Delaware limited liability company, has caused this Certificate of Merger to be duly executed by Richard Dunn, its Secretary, this 31st day of March, 2003, at TALLAHASSEE, FLORIDA.
a Treasurer

KOHLER CONSTRUCTION COMPANY,
INC.

By: Richard L Dunn
Name: Richard L Dunn
Title: Secretary & Treasurer

KOHLER CONSTRUCTION CO., LLC

By: Richard L Dunn
Name: Richard L Dunn
Title: Secretary & Treasurer

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AGREEMENT AND PLAN OF MERGER

BETWEEN

KOHLER CONSTRUCTION COMPANY, INC.
A Florida corporation

AND

KOHLER CONSTRUCTION CO., LLC
A Delaware limited liability company

FILED
03 MAR 31 PM 1:40
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

AGREEMENT AND PLAN OF MERGER, made this 31ST day of March, 2003 (the "Agreement"), by and between Kohler Construction Company, Inc., a Florida corporation (the "Corporation"), and Kohler Construction Co., LLC, a Delaware limited liability company (the "LLC").

WITNESSETH:

WHEREAS, the LLC desires to acquire the property and other assets, and to assume all of the liabilities and obligations of the Corporation by means of a merger (the "Merger") of the Corporation with and into the LLC;

WHEREAS, the Corporation desires to have its property and other assets acquired, and to have all of its liabilities and obligations assumed, by the LLC by means of the Merger;

WHEREAS, Section 18-209 of the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101, et seq. (the "DLLC"), authorizes the merger of a Delaware limited liability company with a foreign corporation and Chapter 607.1108 of the Florida Statutes (the "Act") authorizes the merger of a Florida corporation with and into a foreign limited liability company;

WHEREAS, the LLC and the Corporation desire to set forth the terms and conditions for the consummation of the Merger, following which the LLC shall be the surviving entity (sometimes hereinafter in such capacity, the "Survivor");

WHEREAS, the Board of Directors of the Corporation, has (i) approved this Agreement and the consummation of the Merger, and (ii) directed that this Agreement be submitted to its sole shareholder for approval;

WHEREAS, the Board of Directors of the LLC has (i) approved this Agreement and the consummation of the Merger, and (ii) directed that this Agreement be submitted to its sole member for approval;

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Article I: The Merger

Section 1.01 - The Merger

(a) Pursuant to the terms of this Agreement, the Corporation shall merge with and into the LLC. The LLC shall cause to be filed a Certificate of Merger (the "Merger Certificate") with the Office of the Secretary of State of the State of Delaware and Articles of Merger with the Florida Department of State, Division of Corporations. The Merger will take effect on March 31, 2003 (the "Effective Time").

(b) At the Effective Time, the Corporation shall be merged with and into the LLC, whereupon the separate existence of the Corporation shall cease, and the LLC shall be the surviving entity of the Merger.

(c) The LLC as the surviving entity shall continue its existence as a limited liability company under the laws of the State of Delaware.

Article II: The Survivor

Section 2.01 - The Survivor

The name of the surviving entity is Kohler Construction Co., LLC.

Section 2.02 - Limited Liability Company Agreement

The Limited Liability Company Agreement of the LLC in effect immediately prior to the Effective Time shall be the Limited Liability Company Agreement of the Survivor unless and until amended in accordance with such agreement.

Section 2.03 - Directors and Officers

The directors and officers of the LLC at the Effective Time shall be the directors and officers, respectively, of the Survivor on and after the Effective Time until expiration of their current terms and until their successors are elected and qualified, or prior resignation, removal or death, subject to the Limited Liability Company Agreement of the LLC and subsequent actions by the member and/or directors of the Survivor. The survivor shall be a manager managed entity and such managers are:

Steven Nielsen, 4440 PGA Boulevard, Suite 500, Palm Beach Gardens, Florida 33410
Richard L. Dunn, 4440 PGA Boulevard, Suite 500, Palm Beach Gardens, Florida 33410
Alvin W. Kohler, 6425 53rd Street, North, Pinellas Park, Florida

Article III: Transfer of Assets and Liabilities

Section 3.01 - Transfer and Conveyance

At the Effective Time, all of the rights, privileges and powers of the LLC and the Corporation, and all property, real, personal and mixed, and all debts due to each of the LLC and the Corporation, as well as all other things and causes of action belonging to each of the LLC and the Corporation shall be vested in the LLC as the Survivor, and shall thereafter be the property of the Survivor.

Section 3.02 - Assumption

At the Effective Time, the LLC as the Survivor, shall be liable for all of the liabilities and obligations of Corporation.

Article IV: Treatment of Shares of the Corporation and Interests of the LLC

Section 4.01 - Cancellation of Common Shares of the Corporation

At the Effective Time, each Common Share of the Corporation outstanding immediately prior to the Merger shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled.

Section 4.02 - Interests of the LLC

At the Effective Time, each limited liability company interest in the LLC existing pursuant to the LLC's Limited Liability Company Agreement, outstanding immediately prior to the Merger shall, by virtue of the Merger and without any action on the part of the holder thereof, be unaffected by the Merger and shall remain outstanding as an interest in the LLC.

Article V: Amendment, Termination

Section 5.01 - Termination

This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after approval by the sole shareholder of the Corporation or the sole member of the LLC, by mutual written consent of the Boards of Directors of the Corporation and the LLC.

Section 5.02 - Effect of Termination

If this Agreement is terminated pursuant to Section 5.01, this Agreement shall become void and of no effect with no liability on the part of either party hereto.

Section 5.03 - Amendment

The parties hereto, by mutual consent of the Board of Directors of the Corporation and the Board of Directors of the LLC, may amend, modify or supplement this Agreement in such manner as may be agreed upon by them in writing at any time before or after adoption and approval of this Agreement by the sole shareholder of the Corporation and the sole member of the LLC but not later than the Effective Time; provided, however, that no such amendment, modification or supplement that has not been adopted and approved by the sole shareholder of the Corporation and the sole member of the LLC shall be inconsistent with the provisions of the Act or the DLLC.

Article VI: Covenants of the Corporation

Section 6.01 - Covenants of the Corporation

If at any time the LLC shall consider or be advised that any further assignment, conveyance or assurance is necessary or advisable to vest, perfect or confirm of record in the Survivor the title to any property or right of the Corporation, or otherwise to carry out the provisions hereof, the proper representatives of the Corporation as of the Effective Time shall execute and deliver any and all proper deeds, assignments, and assurances and do all things necessary or proper to vest, perfect or convey title to such property or right in the Survivor, and otherwise to carry out the provisions hereof.

Section 6.02 - Authorization of the Corporation

Upon or after the Effective Time, such persons as shall be authorized by the Board of Directors of the LLC shall be authorized to execute, acknowledge, verify, deliver, file and record, for and in the name of the Corporation, any and all documents and instruments and shall do and perform any and all acts required by applicable law which the Board of Directors deems necessary or advisable, in order to effectuate the Merger and carry out the transactions contemplated hereby.

Article VII: Miscellaneous

Section 7.01 - No Waivers

No failure or delay by any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 7.02 - Integration

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This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, written or oral, between and among the parties with respect to the subject matter hereof. The parties acknowledge that there are no written agreements, contracts, covenants, promises, representations, warranties, inducements or understandings among them, with respect to the subjects hereof, except this Agreement.

Section 7.03 - Successors and Assigns

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other party hereto.

Section 7.04 - GOVERNING LAW

THIS AGREEMENT SHALL IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

Section 7.05 - Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement, and when executed shall be binding on the parties hereto.

Section 7.06 - Severability

In the event that one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

Section 7.07 - Consent to Jurisdiction/Service of Process

Each party hereto (i) irrevocably submits to the non-exclusive jurisdiction of any Delaware State court or Federal court sitting in Wilmington, Delaware in any action arising out of this Agreement, and (ii) consents to the service of process by mail. Nothing herein shall affect the right of any party to serve legal process in any manner permitted by law or affect its right to bring any action in any other court.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties have caused this Agreement and Plan of Merger to be executed as of the date first above written.

03 MAR 31 PM 1:41

KOHLER CONSTRUCTION COMPANY, INC.
TALLAHASSEE, FLORIDA

By: Richard L Dunn
Name: Richard L Dunn
Title: Secretary & Treasurer

KOHLER CONSTRUCTION CO., LLC

By: Richard L Dunn
Name: Richard L Dunn
Title: Secretary & Treasurer