



THE UNITED STATES  
CORPORATION  
COMPANY

L01000002200

ACCOUNT NO. : 072100000032

REFERENCE : 998079 10463A

AUTHORIZATION :

COST LIMIT : \$ 90.00

ORDER DATE : February 9, 2001

ORDER TIME : 3:35 PM

ORDER NO. : 998079-015

CUSTOMER NO: 10463A

700003673327-0

CUSTOMER: Brent Wolmer, Esq  
Cohen Norris Scherer  
Suite 400  
712 U.S. Highway 1  
North Palm Bch, FL 33408-7146

ARTICLES OF MERGER

~~FILE THIRD~~

MODERN CONCRETE, INC.

INTO

MODERN CONCRETE, LLC

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX \_\_\_\_\_ CERTIFIED COPY  
\_\_\_\_\_ PLAIN STAMPED COPY

CONTACT PERSON: Joyce Markley; ext 1130

EXAMINER'S INITIALS:

0259/02710/00671

JB  
2-12-01

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DIVISION OF CORPORATION  
TALLAHASSEE, FLORIDA 01 FEB -9 PM 4:00

APPROVED  
AND  
FILED



FLORIDA DEPARTMENT OF STATE

Katherine Harris  
Secretary of State

February 12, 2001

CSC  
JOYCE MARKLEY

SUBJECT: MODERN CONCRETE, LLC  
Ref. Number: L01000002200

We have received your document for MODERN CONCRETE, LLC and the authorization to debit your account in the amount of \$90.00. However, the document has not been filed and is being returned for the following:

The plan of merger must either provide the name(s) and address(es) of the manager(s) of the limited liability company or state the limited liability company is not managed by one or more managers.

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) 487-6025.

Trevor Brumbley  
Document Specialist

Letter Number: 801A00008567

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER  
Merger Sheet

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MERGING:

MODERN CONCRETE, INC., A FLORIDA ENTITY, 395777

INTO

**MODERN CONCRETE, LLC**, a Florida entity, L01000002200

File date: February 9, 2001

Corporate Specialist: Trevor Brumbley

Account number: 072100000032

Amount charged: 90.00

**ARTICLES OF MERGER  
OF  
MODERN CONCRETE, INC. (A FLORIDA CORPORATION) AND  
MODERN CONCRETE, LLC (A FLORIDA LIMITED LIABILITY COMPANY)**

DATE: February 8, 2001

Pursuant to §607.1109 and §608.4382 of the Florida Statutes, the undersigned corporation and limited liability company submit the following Articles of Merger:

**FIRST:** The Board of Directors and the sole shareholder of MODERN CONCRETE, INC., a Florida corporation ("MODERN INC"), with an address of 1400 Centrepark Blvd., Ste. 900, West Palm Beach, FL 33401 and the sole Manager and sole member of MODERN CONCRETE, LLC, a Florida limited liability company ("MODERN LLC"), with an address of 1400 Centrepark Blvd., Ste. 900, West Palm Beach, FL 33401 have determined that it is in the best interest of the aforementioned corporation and limited liability company for MODERN INC to merge into MODERN LLC with MODERN LLC surviving the merger. The purpose of the merger is to simplify business activities, create a centralized management business structure, promote future growth of the merging corporation and limited liability company and to promote a more successful business structure.

**SECOND:** The sole member of MODERN LLC has approved the merger. The sole shareholder of MODERN INC has approved the merger.

**THIRD:** The sole Manager and the sole member of MODERN LLC and the Board of Directors and the sole shareholder of MODERN INC have adopted and approved the attached Plan of Merger effective the date set forth above, which Plan meets the requirements of Sections 607.1108 and 608.438, Florida Statutes.

**FOURTH:** These Articles of Merger are effective the date of filing by the Secretary of State.

MODERN CONCRETE, LLC (a Florida limited liability company)

By:   
GILBERT SPENCER, Manager

MODERN CONCRETE, INC. (a Florida corporation)

By:   
GILBERT SPENCER, President

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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## PLAN OF MERGER

### MODERN CONCRETE, INC. (a Florida Corporation) INTO MODERN CONCRETE, LLC (a Florida Limited Liability Company)

This is a Plan of Merger effective the 8 day of February, 2001, between MODERN CONCRETE, INC., a Florida corporation (hereinafter called "MODERN INC"), and MODERN CONCRETE, LLC, a Florida limited liability company (hereinafter called "MODERN LLC"), said corporation and limited liability company being hereafter sometimes collectively referred to as the "Constituent Corporations".

#### WITNESSETH:

WHEREAS, MODERN INC is a corporation duly organized and existing under the laws of the State of Florida, having been incorporated on February 14, 1972, and MODERN LLC is a limited liability company, duly organized and existing under the laws of the State of Florida, having been incorporated on February 9, 2001; and

WHEREAS, the authorized capital stock of MODERN INC consists of One Thousand (1,000) shares of common stock, par value \$50.00 per share, of which One Thousand (1,000) shares are outstanding; and

WHEREAS, the authorized membership interests of MODERN LLC consists of Two Thousand (2,000) units, of which one thousand (1,000) units are outstanding; and

WHEREAS, the Board of Directors and Manager of the Constituent Corporations deem it advisable for the general welfare and advantage of the Constituent Corporations and their respective sole shareholder and sole member that the Constituent Corporations merge into a single entity pursuant to this Agreement, and the Constituent Corporations respectively desire to so merge pursuant to this Agreement and pursuant to the applicable provisions of the laws of the State of Florida;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained, the parties agree, in accordance with the applicable provisions of the laws of the State of Florida, that the Constituent Corporations shall be merged into a single entity, to wit: MODERN CONCRETE, LLC, one of the Constituent Corporations, which shall continue its existence and be the entity surviving the merger (said limited liability company hereafter sometimes called the "Surviving Company"), and the terms and conditions of the merger hereby agreed upon (hereafter called the "Merger") which the parties covenant to observe, keep and perform and the mode of carrying the same into effect are and shall be as hereafter set forth:

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ARTICLE I  
Effective Time of the Merger

At the effective time of the merger, the separate existence of MODERN INC shall cease and MODERN INC shall be merged into the Surviving Company. Consummation of this Agreement shall be effected on the date on which Articles of Merger in substantially the form annexed hereto as Exhibit A are filed in the office of the Florida Secretary of State, all after satisfaction of the respective requirements of the applicable laws of said state prerequisite to such filings.

ARTICLE II  
Governing Law; Certificate of Incorporation

The laws which are to govern the Surviving Company are the laws of the State of Florida. The Articles of Organization of MODERN LLC, shall, at the effective time of the Merger remain in effect thereafter until the same shall be further amended or altered in accordance with the provisions thereof.

ARTICLE III  
Operating Agreement

The Operating Agreement of MODERN LLC, if any, at the effective time of the Merger shall be the Operating Agreement of the Surviving Company until the same shall be altered or amended in accordance with the provisions thereof.

ARTICLE IV  
Manager

GILBERT SPENCER shall be the Manager of the Surviving Company. and his address shall be 1400 Centre Park Boulevard, Suite 900, West Palm Beach, Florida 33401.

ARTICLE V  
Conversion and Issuance of Shares and Units in the Merger

The mode of carrying into effect the Merger provided in this Agreement, and the manner and basis of converting the shares of MODERN INC into units of the Surviving Company are as follows:

1. MODERN LLC's Units. None of the units of MODERN LLC issued at the effective time of the Merger shall be converted as a result of the Merger.
2. MODERN INC's Common Stock. At the effective time of the Merger, each share of common stock, par value \$50.00 per share, of MODERN INC issued and

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outstanding shall be converted into and become one (1) unit in the Surviving Company and each holder of outstanding common stock of MODERN INC, upon surrender to the Surviving Company of one or more stock certificates for common stock of MODERN INC for cancellation, shall be entitled to receive one or more membership certificates for the full number of units of the Surviving Company into which the common stock of MODERN INC so surrendered shall have been converted as aforesaid together. Each issued share of MODERN INC common stock held in its treasury at the effective time of the merger shall be canceled and shall not be converted.

3. Surrender of MODERN INC Certificates. As soon as practicable after the Merger becomes effective, the stock certificates representing common stock of MODERN INC issued and outstanding at the time the Merger becomes effective shall be surrendered for exchange to the Surviving Company as above provided. Until so surrendered for exchange, each such stock certificate nominally representing common stock of MODERN INC shall be deemed for all corporate purposes (except for the payment of dividends, which shall be subject to the exchange of stock certificates as above provided) to evidence the ownership of the number of units of the Surviving Company which the holder thereof would be entitled to receive upon its surrender to the Surviving Company.
4. Status of Unit. All units of the Surviving Company into which shares of common stock of MODERN INC are converted as herein provided shall be fully paid and non-assessable and shall be issued in full satisfaction of all rights pertaining to such shares of common stock of MODERN INC.

#### ARTICLE VI Effect of the Merger

At the effective time of the Merger, the Surviving Company shall succeed to, without other transfer, and shall possess and enjoy all the rights, privileges, immunities, powers and franchises both of a public and a private nature, and be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations, and all the rights, privileges, immunities, powers and franchises of each of the Constituent Corporations and all property, real, personal and mixed, and all debts due to either of said Constituent Corporations on whatever account, as well as for all other things in action or belonging to each of said corporation and limited liability company, shall be vested in the Surviving Company; and all property, rights, privileges, immunities, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the Surviving Company as they were of the respective Constituent Corporations, and the title to any real estate vested by deed or otherwise in either of said Constituent Corporations shall not revert or be in any way impaired by reason of the Merger; provided, however, that all rights of creditors and all liens upon any property of either of said Constituent Corporations shall be preserved unimpaired, limited in lien to the property affected by such liens at the effective time of the Merger, and all debts, liabilities and duties of said Constituent Corporations, respectively, shall thenceforth attach to the

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Surviving Company and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by the Surviving Company.

## ARTICLE VII Accounting Matters

The assets and liabilities of the Constituent Corporations as of the effective time of the merger shall be taken up on the books of the Surviving Company at the amounts at which they shall be carried at that time on the books of the respective Constituent Corporations. The transaction shall be treated as the adoption of an IRS Section § 332 liquidation plan for tax purposes.

## ARTICLE VIII Approval of Shareholder and Member; Filing of Articles of Merger

This Agreement shall be submitted to the sole shareholder and sole member of each of the Constituent Corporations as provided by law and their respective Articles of Incorporation and Articles of Organization at meetings which shall be held immediately the effective day of this Agreement, or such later date as the Boards of Directors and Manager of the Constituent Corporations shall mutually approve. The respective designations and numbers of shares of each class of capital stock or units of the Constituent Corporations outstanding on the date hereof and a statement as to the shares of each class of capital stock or units of the Constituent Corporations entitled to vote upon the adoption and approval of the Merger as set forth in Paragraph 2 of Exhibit A hereto. After such adoption and approval, and subject to the conditions contained in this Agreement, Articles of Merger in substantially the form annexed hereto as Exhibit A shall be signed, verified and delivered to the Department of State of the State of Florida for filing as provided in §607.1105 and §608.4382 of the Florida Statutes.

## ARTICLE IX MODERN LLC's Representations and Warranties

MODERN LLC represents and warrants to MODERN INC as follows:

1. Organization, etc. MODERN LLC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida. MODERN LLC has power to carry on its business as it is now being conducted and is qualified to do business in every jurisdiction in which the character and location of the assets owned by it or the nature of the business transacted by it require qualification.
2. Capitalization. MODERN LLC's capitalization consists of two thousand (2,000) authorized units (\$1.00 value per unit), of which one thousand (1,000) units are issued and outstanding as of the date hereof. Each issued unit is validly issued, fully

paid, non-assessable and each outstanding unit is entitled to one vote.

3. Units to be Issued. All units of the Surviving Company into which the common stock of MODERN INC is to be converted will be, immediately after the effective time of the Merger, duly and validly authorized and issued and fully paid and non-assessable, and no member of MODERN LLC will have any preemptive right of subscription or purchase in respect thereof. At the effective time of the Merger, the Surviving Company will have duly reserved for issuance a sufficient number of units of MODERN LLC to permit conversion, at the basic conversion rate applicable thereto, of such units when issued upon such conversion, will be duly and validly authorized and issued and fully paid and non-assessable, and no member of MODERN LLC will have any preemptive right of subscription or purchase in respect thereof.

#### ARTICLE X

##### MODERN INC's Representations and Warranties

MODERN INC represents and warrants to MODERN LLC as follows:

1. Organization, etc. MODERN INC is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida. MODERN INC has corporate power to carry on its business as it is now being conducted and is qualified to do business in every jurisdiction in which the character and location of the assets owned by it or the nature of the business transacted by it require qualification.
2. Capitalization. MODERN INC's capitalization consists of one thousand (1,000) authorized shares of common stock (par value \$50.00 per share), of which, as of the date hereof, one thousand (1,000) shares are issued and outstanding. Each issued share is validly issued, fully paid, non-assessable and each outstanding share is entitled to one vote.
3. Governmental Authorizations. MODERN INC has all licenses, franchises, permits and other governmental authorizations are valid and sufficient for all businesses presently carried on by MODERN INC.

#### ARTICLE XI

##### Conduct of Businesses Pending the Merger

From and after the date of this Agreement and prior to the effective time of the Merger, neither of the Constituent Corporations will, without the prior written consent of the other:

- (a) amend its Articles of Incorporation, Articles of Organization, Bylaws or Operating Agreement, if any, except, in the case of MODERN LLC, as may be necessary to enable to carry out the provisions of this Agreement;

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- (b) engage in any material activity or transaction or incur any material obligation (by contract or otherwise) except in the ordinary course of business;
- (c) issue rights or options to purchase or subscribe to any share of its capital stock or units or subdivide or otherwise change any such shares or units; or
- (d) issue or sell any units or shares of its capital stock or securities convertible into shares of its capital stock.

From and after the date of this Agreement and prior to the effective time of the Merger, MODERN INC will use its best efforts to preserve its business organizations; to keep available to MODERN LLC the services of MODERN INC's present officers and employees; and to preserve for MODERN LLC the goodwill of MODERN INC, MODERN INC's suppliers, customers and others having business relations with any of them. During the same period, MODERN INC will not put into effect any material increase in the compensation or other benefits applicable to officers or other key personnel.

## ARTICLE XII.

### Conditions Precedent; Termination; General Provisions

A. Conditions Precedent to MODERN LLC's Obligation. The obligation of MODERN LLC to effect the Merger shall be subject to the following conditions (which may be waived in writing by MODERN LLC):

1. The representations and warranties of MODERN INC herein contained shall be true as of and at the effective time of the Merger with the same effect as though made at such time; MODERN INC shall have performed all obligations and complied with all covenants required by this Agreement to be performed or complied with by it prior to the effective time of the Merger.
2. No material change in the corporate status, businesses, operations or financial condition of MODERN INC shall have occurred since the effective date of this Agreement (whether or not covered by insurance), other than changes in the ordinary course of business, none of which has been materially adverse in relation to MODERN INC, taken as a whole, and no other event or condition of any character shall have occurred or arisen since that date which shall have materially and adversely affected the corporate status, businesses, operations or financial condition of MODERN INC, taken as a whole.
3. MODERN LLC shall have received such written consents and confirmations (or opinions of counsel to the effect that such consents or confirmations are not required), as it may reasonably request to the effect that the Surviving Company will succeed upon consummation of the Merger to all MODERN LLC's right, title and interest in and to any material contracts, agreements,

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leases and other commitments and that the Surviving Company shall possess and enjoy all material licenses, franchises, permits and other governmental authorizations possessed by MODERN LLC at the date hereof.

B. Conditions Precedent to MODERN INC's Obligation. The obligation of MODERN INC to effect the Merger shall be subject to the following conditions (which may be waived in writing by MODERN INC):

1. The representations and warranties of MODERN LLC herein contained shall be true as of and at the effective time of the Merger with the same effect as though made at such time; MODERN LLC shall have performed all obligations and complied with all covenants required by this Agreement to be performed or complied with by it prior to the effective time of the Merger.
2. No material change in the company status, businesses, operations or financial condition of MODERN LLC shall have occurred since the effective date of this Agreement (whether or not covered by insurance), other than changes in the ordinary course of business, none of which has been materially adverse in relation to MODERN LLC, and no other event or condition of any character shall have occurred or arisen since that date which shall have materially and adversely affected the corporate status, businesses, operations or financial condition of MODERN LLC.

C. Termination and Abandonment. Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be terminated and abandoned at any time before the effective time of the Merger, whether before or after adoption or approval of this Agreement by the sole shareholder and sole member of the Constituent Corporations under any one or more of the following circumstances:

1. By the mutual consent of the Manager and Board of Directors of the Constituent Corporations;
2. By MODERN LLC if, prior to the effective time of the Merger, the conditions set forth in Paragraphs 1 through 3, inclusive, of Section A of this Article XII shall not have been met;
3. By MODERN INC if, prior to the effective time of the Merger, the conditions set forth in Paragraphs 1 and 2 of Section B of this Article XII shall not have been met;
4. By either of the Constituent Corporations if any action or proceeding before any court or other governmental body or agency shall have been instituted or threatened to restrain or prohibit the Merger and such Constituent Corporation deems it advisable to proceed with the Merger; or

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5. By either of the Constituent Corporations if the requisite approval of the sole shareholder and sole member of both Constituent Corporations shall not have been obtained immediately following the effective date of this Agreement or if the Articles of Merger and this Agreement shall not have been filed as provided in Article I hereof on or before the 3rd day following the effective date of this Agreement.

Upon such termination and abandonment, neither party shall have any liability or obligation hereunder to the other.

- D. General. The headings in this Agreement shall not affect in any way its meaning or interpretation. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- E. Amendments. Any of the terms or conditions of this Agreement may be modified or waived at any time before the effective time of the Merger by the party which is, or the sole shareholder or the sole member of which are, entitled to the benefit thereof upon the authority of the Manager or Board of Directors of such party, provided that any such modification or waiver shall in the judgment of the party making it not affect substantially or materially and adversely the benefits to such party or its sole shareholder or sole member intended under this Agreement.

IN WITNESS WHEREOF, this Agreement has been signed by the Manager and sole Director of each of the Constituent Corporations and each of the Constituent Corporations has caused its seal to be hereunto affixed, all as of the day and year first above written.

MODERN CONCRETE, INC., a Florida corporation

  
GILBERT SPENCER, Sole Director

MODERN CONCRETE, LLC, a Florida limited liability company

  
GILBERT SPENCER, Manager

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