

L06000011827

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

(Business Entity Name)

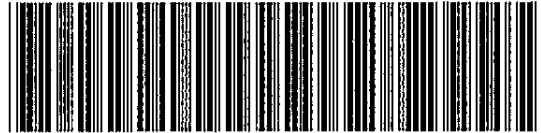
(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

BSK

Office Use Only



300064470873

FILED

2006 FEB -3 PM 2:32

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

RECEIVED

06 FEB -3 PM 1:09

STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA



CORPORATION SERVICE COMPANY

ACCOUNT NO. : 072100000032
REFERENCE : 849585 4346244
AUTHORIZATION : *[Signature]*
COST LIMIT : \$ 50.00

ORDER DATE : February 2, 2006
ORDER TIME : 11:04 AM
ORDER NO. : 849585-005
CUSTOMER NO: 4346244

FILED
2006 FEB -3 PM 2:32
TALLAHASSEE, FLORIDA
SECRETARY OF STATE

ARTICLES OF MERGER

CD III, LLC

INTO

JSF MARINE, LLC

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

____ CERTIFIED COPY
XX _____ PLAIN STAMPED COPY

CONTACT PERSON: Amanda Haddan

EXAMINER'S INITIALS: _____

ARTICLES OF MERGER
OF
CD III, LLC
(a Florida limited liability company)
INTO
JSF MARINE, LLC
(a Florida limited liability company)

FILED
2006 FEB -3 PM 2:32
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

PURSUANT TO THE FLORIDA LIMITED LIABILITY COMPANY ACT

These **ARTICLES OF MERGER** by and between **CD III, LLC**, a Florida limited liability company (the "Merging Party"), and **JSF MARINE, LLC**, a Florida limited liability company (the "Surviving Party") are being submitted on this 2nd day of February, 2006, in accordance with the Florida Limited Liability Company Act (Fla. Stat. Ann §§ 608.401-608.705) (the "Act"), specifically Section 608.4382 of the Act relating to articles of merger.

1. The exact name, street address of its principal office, jurisdiction, and entity type for each party to these Articles are as follows:

CD III, LLC
1550 Avenue C, Riviera Beach, Florida 33404 L05000100957.
Jurisdiction: Florida Florida Document Number: L06000011027
Type: Limited Liability Company

JSF Marine, LLC
1550 Avenue C, Riviera Beach, Florida 33404 L06000011027
Jurisdiction: Florida Florida Document Number: L05000100957
Type: Limited Liability Company

2. The exact name, street address of its principal office, jurisdiction, and entity type of the Surviving Party are as follows:

JSF Marine, LLC
1550 Avenue C, Riviera Beach, Florida 33404
Jurisdiction: Florida
Type: Limited Liability Company

3. The Agreement and Plan of Merger, attached as Exhibit A hereto, was approved by the Merging Party and the Surviving Party in accordance with the applicable provisions of Section 608 of the Act.

4. The merger is permitted under the respective laws of all applicable jurisdictions and is not prohibited by the articles of organization of any limited liability company that is a party to the merger.

5. The merger shall become effective as of the date these Articles of Merger are filed with the Florida Department of State.

6. These Articles of Merger comply and were executed in accordance with the laws of each party's applicable jurisdiction.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, each of the undersigned limited liability companies have caused these Articles of Merger to be signed by a duly authorized member on the date first stated above.

SURVIVING PARTY:

JSF MARINE, LLC, a Florida limited liability company

By: J.S. FAMILY HOLDINGS, INC., its
managing member

By: Ernest M. Nepa
Name: Ernest M. Nepa
Title: Vice President

MERGING PARTY:

CD III, LLC, a Florida limited liability company

By: J.S. FAMILY HOLDINGS, INC., its
managing member

By: Ernest M. Nepa
Name: Ernest M. Nepa
Title: Vice President

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER is made this 1st day of February, 2006, by and between CD III, LLC, a Florida limited liability company (the "Merging Party"), and JSF MARINE, LLC, a Florida limited liability company (the "Surviving Party"), the said entities being hereafter sometimes collectively called the "Participating Parties".

WITNESSETH

WHEREAS, the Merging Party is a limited liability company duly organized and existing under the laws of the State of Florida, having been formed on October 12, 2005 and

WHEREAS, the Surviving Party is a limited liability company duly organized and existing under the laws of the State of Florida, having been formed on February 2, 2006; and

WHEREAS, a majority-in-interest of the Members of the Participating Parties, by written approvals, each have approved this Agreement and Plan of Merger and declare it to be advisable and in the best interests of the Participating Parties and their members that the Merging Party merge with and into the Surviving Party, in the manner and upon the terms and conditions set forth herein (the "Merger") pursuant to the applicable provisions of the Florida Limited Liability Company Act (Fla. Stat. Ann. §§608.401-608.705) (the "Florida Act").

NOW, THEREFORE, for the purpose of effecting such Merger and prescribing the terms and conditions of the mutual covenants and agreements contained herein, the Participating Parties, intending to be legally bound hereby, covenant and agree as follows:

1. Merger. The Merging Party shall be merged with and into the Surviving Party (the "Merger") on the Effective Date (as defined below), in accordance with the Florida Act, and on the terms and conditions set forth in this Agreement and Plan of Merger. From and after the Effective Date, the Surviving Party shall be the surviving limited liability company and shall continue to do business as a limited liability company organized and existing under the laws of the State of Florida, unaffected and unimpaired by the merger, with all rights, privileges, immunities and powers, and subject to all the duties and liabilities of a limited liability company organized and existing under the laws of the State of Florida. The parties hereto shall cause the Merger to be consummated by filing this Agreement or the articles of merger (the "Articles of Merger"), in the form attached hereto as Exhibit A, with the Secretary of State of the State of Florida for filing, as provided in Section 608.4382 of Florida Law (the date and time of such filing being the "Effective Time"). The Participating Parties will endeavor to file the Articles of Merger promptly after the date of this Agreement.

2. Articles of Organization and Operating Agreement of Surviving Party. The Articles of Organization and the Operating Agreement of the Surviving Party, as in effect immediately before the Merger, shall be the Articles of Organization and Operating Agreement of the Surviving Party thereafter until amended as provided by law and in accordance with their respective terms.

3. Conversion of Membership Interests.

(a) On the Effective Date, the Percentage Interests (as defined below) of the Merging Party outstanding immediately prior to the merger shall, by virtue of the merger and without any action on the part of the holders thereof, be converted into the right to receive a pro rata share of the aggregate sum of \$13.65 Million Dollars (\$13,650,000) less all liabilities of the Merging Party and costs of this transaction and (the "Base Consideration") from the Surviving Party; provided, however, that within thirty days after the date of this Agreement the Participating Parties shall endeavor to obtain an appraisal of the real and personal property of the Merging Party described on Schedule 3 attached (the "Appraised Value") within thirty (30) days of the date of this Agreement and Plan of Merger from a qualified appraiser selected by the Managing Member of the Merging Party with the consent of the Surviving Party. In the event that the Appraised Value exceeds the Base Consideration, the Base Consideration shall be subject to increase by an amount equal to the difference between the Appraised Value less all liabilities of the Merging Party and the costs of this transaction (the "Adjusted Appraised Value") and the Base Consideration and shall be paid fifteen days after completion of the appraisal. There shall be no decrease in the amount of the Consideration payable in the event that the Adjusted Appraised Value is less than the Base Consideration. The actual consideration payable in respect of the merger as determined under this Section 3(a) is hereby referred to as the "Total Consideration").

(b) The Merging Party is currently indebted to International Maritime Insurance Company in the sum of \$9,255,822.25 plus accrued interest of \$63,528.61. This liability, along with all other liabilities, will be deducted in determining the Total Consideration and shall be assumed by the Surviving Party pursuant to Section 5(b).

(c) The percentage interest ("Percentage Interests") of the members of the Merging Party are as follows:

| | <u>Member</u> | <u>Percentage Interest</u> |
|------|------------------------------|----------------------------|
| (i) | J.S. Family Holdings, Inc. | 75% |
| (ii) | 2100 Avenue B, LLC ("Carey") | 25% |

(d) The Total Consideration shall be distributed in the following priority:

(i) First to J.S. Family Holdings, Inc. in the amount of any funds required to repay loans and advances made by it to the Merging Party;

(ii) Second, to Carey, the sum of \$250,000 in repayment of the value of the Travellifts contributed by Carey to the Merging Party;

(iv) Third, to Viking and Carey, pro rata in accordance with their Percentage Interests.

4. Carey's Representations, Warranties and Covenants. As a condition precedent to the payment of the Merger Consideration to Carey,;

(a) Carey shall have represented and warranted to the Surviving Party that Carey holds of record and owns beneficially the Percentage Interest set forth next to Carey's name in Section 3(c) above, free and clear of any restrictions on transfer, taxes, security interests, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands, and that Carey is not a party to any option, warrant, purchase right, or other contract or commitment that could require Carey to sell, transfer, or otherwise dispose of any or all of the Percentage Interest of the Merging Party (other than this Agreement), nor is Carey a party to any voting trust, proxy, or other agreement or understanding with respect to the voting of all or any of the Percentage Interest.

(b) Carey shall have caused to be executed and delivered to the Surviving Party a document terminating the Leases of record identified on Schedule 4(b) attached pursuant to the Agreement of October 10, 2005 (each, a "Lease" and collectively, the "Leases"), and hereby agrees to take all further actions required by the Surviving Party to cancel the Leases of record.

(c) Carey shall have caused all sums due to the Merging Party from himself, Florida Marine Services, LLC, Carey-Dunn, Inc. and Carey-Dunn II, Inc. to be paid and satisfied in full, or same shall be deducted from any payment to be made to him hereunder.

(d) Carey shall have executed a document acknowledging the portion payable to him from the Total Consideration to be a final and full payment for his interest in the Merging Party.

5. Effect of Merger.

Upon the Effective Date of the Merger:

(a) The separate existence of the Merging Party shall terminate and the Surviving Party shall become the owner, without other transfer or further act or deed, of all of the rights, privileges, powers, property, franchises, estates and interests of every kind of the Merging Party, as effectually as the property of the Surviving Party as they were of the Merging Party; and (subject to Section 3(d) above) the Surviving Party shall be subject to all debts and liabilities of the Merging Party in the same manner as if the Surviving Party had itself incurred them; and the Surviving Party shall be subject to all of the restrictions, disabilities and duties of both of the Participating Parties, which shall not revert or be in any way impaired by reason of this merger; and rights of creditors and liens upon any property of either of the Participating Parties shall be preserved unimpaired.

(b) The assets and liabilities of the Merging Party shall be taken up on the books of the Surviving Party in the amount at which they shall at that time be carried on the books of the Merging Party.

6. State Filings. The Members of the Participating Parties shall make and execute whatever certificates and documents are required by the State of Florida to effect the Merger, and to cause the same to be filed, in the manner provided by law, and to do all things which may be necessary and proper to effect such Merger.

7. Name and Address of Managing Member. The name and address of the managing member of the Surviving Party is J.S. Family Holdings, Inc., 1550 Avenue C, Riviera Beach, Florida 33404.

8. Further Assurances. If at any time after the Effective Date, the Surviving Party shall determine that any further actions or instruments of conveyance are necessary or desirable in order to vest in and confirm to the Surviving Party full title to and possession of all of the property (real, personal and mixed), rights, privileges, immunities, powers, purposes and franchises or Company, the Members of the Surviving Party, or at the request of persons who were Members of the Merging Party immediately prior to the Effective Date, as such Members, shall have the authority to and shall take all such actions and execute and deliver all such instruments as the Surviving Party may so determine to be necessary or desirable.

9. Miscellaneous.

(a) To the extent permitted by the Florida Act, this Agreement and Plan of Merger may be amended, modified, or supplemented only by written agreement of the parties at any time before the Effective Time with respect to any of the terms contained herein, except that the amount and form of the consideration payable in the Merger may not be altered (other than in accordance with Section 3(a) above) without the approval of the holders of a majority-in-interest of the Percentage Interest of the Merging Party.

(b) All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, effective when delivered, or if delivered by express delivery service or facsimile, effective when delivered, or if mailed by registered or certified mail (return receipt requested), effective three business days after mailing, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to the Merging Party: CD III, LLC
1550 Avenue C
Riviera Beach, FL 33404
Attention: Michael J. Clark

If to the Surviving Party: JSF Marine, LLC
1550 Avenue C
Riviera Beach, FL 33404
Attention: Michael J. Clark

(c) This Agreement and all of its provisions shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned or delegated by any party without the prior written consent of the other parties. This Agreement is not intended to confer upon any other Person except the parties any rights or remedies hereunder.

(d) As used in this Agreement, unless otherwise defined herein:

(i) "including" means "including without limitation";

(ii) "Person" means an individual, a partnership, a limited liability company, a joint venture, a corporation, a trust, an incorporated organization, or a government or any department or agency thereof; and

(iii) all dollar amounts are expressed in United States funds.

(e) This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, without giving effect to choice-of-law principles.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(g) The Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties, and shall not affect the interpretation hereof.

(h) This Agreement, including the Exhibits hereto, embody the entire agreement and understanding of the parties in respect of the subject matter contained herein and supersede all prior agreements and understandings among the parties with respect to that subject matter. There are no restrictions, promises, representations, warranties (express or implied), covenants, or undertakings of the parties, other than those expressly set forth or referred to in this Agreement.

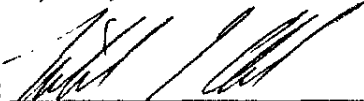
(i) If any provision hereof is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall continue in full force and effect and will in no way be affected or invalidated.

(j) The parties agree that money damages or other remedy at law would not be a sufficient or adequate remedy for any breach or violation of, or default under, this Agreement by them and that in addition to all other remedies available to them, each of them shall be entitled, to the fullest extent permitted by law, to an injunction restraining such breach, violation, or default or threatened breach, violation, or default and to any other equitable relief, including specific performance, without bond or other security being required.

IN WITNESS WHEREOF, the parties hereto have duly executed this Plan and Agreement of Merger on the date first written above.

MERGING PARTY:

CD III, LLC, a Florida Limited Liability Company

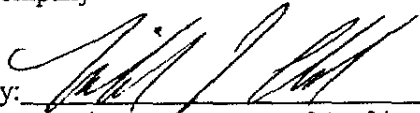
By: 

Name: MICHAEL J. CLARK

Title: V.P. OF J.S. FAMILY HOLDINGS, INC.
MANAGING MEMBER

SURVIVING PARTY:

JSF MARINE, LLC, a Florida Limited Liability
Company

By: 

Name: MICHAEL J. CLARK

Title: V.P. - J.S. FAMILY HOLDINGS, INC.
MANAGING MEMBER

EXHIBIT A
ARTICLES OF MERGER

SCHEDULE 4(b)

LEASES

Rights of Carey Dunn, Inc. and Carey Dunn II, Inc. under Leases between Southern Swan, Inc. and said corporations dated September 20, 1996 and June 7, 1999.