

# L960000001262

**Document Number Only**

CT Corporation System  
660 East Jefferson Street  
Tallahassee, FL 32301  
Tel 850 222 1092  
Fax 850 222 7615  
Attn: Jeff Netherton

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-02/14/00--01063--005  
\*\*\*\*\*60.00 \*\*\*\*\*60.00

**CORPORATION(S) NAME**

Photerra, Inc.

merging: Xstasis, L.C.

☐ Profit ☐ Amendment ☒ Merger

☐ Nonprofit

☐ Foreign

☐ Dissolution/Withdrawal  
☐ Reinstatement

☐ Mark

☐ Limited Partnership

☐ Annual Report

☐ Other

☐ LLC

☐ Name Registration

☐ Change of RA

☐ Fictitious Name

☐ UCC

☐ Certified Copy

☐ Photocopies

☐ CUS

☐ Call When Ready

☐ Call If Problem

☐ After 4:30

☒ Walk In

☐ Will Wait

☒ Pick Up

☐ Mail Out

Name

02/14/00

Availability

Document

Examiner

Updater

Verifier

Acknowledgement

W.P. Verifier

00789 / 02492 / 00524 / 00671

00 FEB 16 AM 9:37  
RECEIVED  
TALLAHASSEE, FLORIDA  
AND  
FILED

VB  
2-18-00



FLORIDA DEPARTMENT OF STATE

Katherine Harris  
Secretary of State

February 14, 2000

CT CORPORATION SYSTEM  
ATTN: JEFF NETHERTON

SUBJECT: XSTASIS, L.C.  
Ref. Number: L96000001262

We have received your document for XSTASIS, L.C. and your check(s) totaling \$60.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

The plan of merger must be attached/included.

A member or authorized representative of a member of the limited liability company must sign the articles of merger.

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: 500A00007649

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AND  
FILED  
00 FEB 14 AM 9:07  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER  
Merger Sheet

-----  
MERGING:

XSTASIS, L.C. A FLORIDA LIMITED LIABILITY COMPANY

INTO

**PHOTERRA, INC.**, corporation not qualified in Florida.

File date: February 14, 2000

Corporate Specialist: Trevor Brumbley

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OCT 11 AM 9 37  
FBI - NEW YORK

SEVENTH: The executed Merger Agreement is on file at the principal place of business of the surviving corporation. The address of the principal place of business of the surviving corporation is 4071 Laguna Street, Coral Gables, FL 33146.

EIGHTH: A copy of the Merger Agreement will be furnished by the surviving corporation, on request and without cost, to any member of Xstasis, L.C., and to any person holding an interest in Photerra, Inc.

NINTH: Photerra, Inc. hereby appoints the Department of State of the State of Florida as its agent for service of process in any proceeding to enforce any obligation or the rights of dissenting members of Xstasis, L.C.

TENTH: Photerra, Inc. has agreed to promptly pay to the dissenting members of Xstasis, L.C. the amount, if any, to which such dissenting members are entitled under FS Section 608.4384.

ELEVENTH: The effective date of the Merger Agreement shall be February 14, 2000.

PHOTERRA, INC.

By: [Signature]  
Tim Hoyt  
President

XSTASIS, L.C.

By: [Signature]  
Tim Hoyt:  
Member-Manager

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## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of February 14, 2000 (this "Agreement"), between PHOTERRA, INC., a Delaware corporation (the "Delaware Corporation"), and XSTASIS, L.C., a Florida limited liability company (the "Florida LLC").

### WITNESSETH:

WHEREAS, the Delaware Corporation desires to acquire the properties and other assets, and to assume all of the liabilities and obligations, of the Florida LLC by means of a merger of the Florida LLC with and into the Delaware Corporation;

WHEREAS, Section 264 of the General Corporation Law of the State of Delaware, 8 Del.C. §101, et seq. (the "GCL") and Section 608.438 et seq. of the Florida Statutes ("FS"), authorize the merger of a Florida limited liability company with and into a Delaware corporation;

WHEREAS, the Delaware Corporation and the Florida LLC now desire to merge (the "Merger"), following which the Delaware Corporation shall be the surviving entity;

WHEREAS, the Delaware Corporation's Amended and Restated Certificate of Incorporation and By-laws permit, and resolutions adopted by the Delaware Corporation's Board of Directors authorize, this Agreement and the consummation of the Merger; and

WHEREAS, since no shares of stock of the Delaware Corporation were issued prior to the adoption by the board of directors of the resolution approving this Agreement, no vote of the stockholders of the Delaware Corporation is necessary to authorize the Merger.

NOW THEREFORE, the parties hereto hereby agree as follows:

### ARTICLE I

#### THE MERGER

##### SECTION 1.01. The Merger.

(a) On February 14, 2000, after satisfaction or, to the extent permitted hereunder, waiver of all conditions to the Merger, as the Delaware Corporation and the Members shall determine, the Delaware Corporation, which shall be the surviving entity, shall merge with the Florida LLC and shall file a certificate of merger substantially in the form of Exhibit 1 hereto (the "Delaware Certificate") with the Secretary of State of the State of Delaware and articles of merger substantially in the form of Exhibit 2 hereto (the "Florida Articles") with the Department of State of the State of Florida and make all other filings or recordings required by Delaware law and Florida law in connection with the Merger. The Merger shall become effective at such time as is specified in the Delaware Certificate and Florida Articles (the "Effective Time").

(b) At the Effective Time, the Florida LLC shall be merged with and into the Delaware Corporation, whereupon the separate existence of the Florida LLC shall cease, and the

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SECRETARY OF STATE  
TALLAHASSEE, FL 32310

Delaware Corporation shall be the surviving entity of the Merger in accordance with FS Section 608.438 et seq. and GCL Section 264.

SECTION 1.02. Exchange of Interests. At the Effective Time:

(a) Each Common Unit of the Florida LLC outstanding immediately prior to the Effective Time shall be converted into a share of Common Stock of the Delaware Corporation;

(b) Each Series A Unit of the Florida LLC outstanding immediately prior to the Effective Time shall be converted into a share of Series A Preferred Stock of the Delaware Corporation; and

(c) Each option to purchase a Common Unit in the Florida LLC outstanding immediately prior to the Effective Time shall be converted into an option to purchase a share of Common Stock in the Delaware Corporation.

ARTICLE II

THE SURVIVING CORPORATION

SECTION 2.01. Certificate of Incorporation and By-laws. The Amended and Restated Certificate of Incorporation and By-laws of the Delaware Corporation in effect at the Effective Time shall be the Amended and Restated Certificate of Incorporation and By-laws of the Delaware Corporation unless and until amended in accordance with its terms and applicable law. The name of the Delaware Corporation shall be Photerra, Inc.

SECTION 2.02. Directors and Officers. From and after the Effective Time, until successors are duly elected or appointed and qualified in accordance with applicable law, (i) the directors of the Delaware Corporation at the Effective Time shall be the directors of the Delaware Corporation, and (ii) the officers of the Delaware Corporation at the Effective Time shall be the officers of the Delaware Corporation.

ARTICLE III

TRANSFER AND CONVEYANCE OF ASSETS  
AND ASSUMPTION OF LIABILITIES

SECTION 3.01. Transfer, Conveyance and Assumption. At the Effective Time, the Delaware Corporation shall continue in existence as the Surviving Corporation, and without further transfer, succeed to and possess all of the rights, privileges and powers of the Florida LLC, and all of the assets and property of whatever kind and character of the Florida LLC shall vest in the Delaware Corporation without further act or deed; thereafter, the Delaware Corporation, as the Surviving Corporation, shall be liable for all of the liabilities and obligations of the Florida LLC, and any claim or judgment against the Florida LLC may be enforced against the Delaware Corporation, as the Surviving Corporation, in accordance with FS Section 608.438 et seq.

SECTION 3.02. Further Assurances. If at any time the Delaware Corporation 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 Surviving Corporation the title to any property or right of the

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SECRETARY OF STATE  
FLORIDA

Florida LLC, or otherwise to carry out the provisions hereof, the proper representatives of the Florida LLC 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 Surviving Corporation, and otherwise to carry out the provisions hereof.

## ARTICLE IV

### TERMINATION

SECTION 4.01. Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time:

(a) by mutual written consent of a majority of the Members, on behalf of the Florida LLC, and the Board of Directors of the Delaware Corporation;

(b) by either a majority of the Members, on behalf of the Florida LLC, or the Board of Directors of the Delaware Corporation, if there shall be any law or regulation that makes consummation of the Merger illegal or otherwise prohibited, or if any judgment, injunction, order or decree enjoining the Delaware Corporation or the Florida LLC from consummating the Merger is entered and such judgment, injunction, order or decree shall become final and nonappealable.

SECTION 4.02. Effect of Termination. If this Agreement is terminated pursuant to Section 4.01, this Agreement shall become void and of no effect with no liability on the part of either party hereto.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. Amendments; No Waivers.

(a) Any provision of this Agreement may, subject to applicable law, be amended, or waived prior to the Effective Time if, and only if, such amendment or waiver is in writing and signed by a majority of the Members, on behalf of the Florida LLC, and by a majority of the directors of the Delaware Corporation.

(b) 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 or further exercise thereof or the exercise of 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 5.02. Integration. All prior or contemporaneous agreements, contracts, promises, representations, and statements, if any, between the Delaware Corporation and the Florida LLC, or their representatives, are merged into this Agreement, and this Agreement shall constitute the entire understanding between the Delaware Corporation and the Florida LLC with respect to the subject matter hereof.

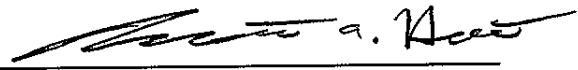
SECTION 5.03. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other party hereto.

SECTION 5.04. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without giving effect to principles of conflicts of law.

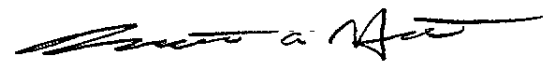
SECTION 5.05. Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received the counterpart hereof signed by the other party hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized representatives as of the day and year first above written.

XSTASIS, L.C.

By:   
Timothy Hoyt  
Manager

PHOTERRA, INC.

By:   
Timothy Hoyt  
President

00 FEB 14 AM 9:37  
FILED  
TALLAHASSEE, FLORIDA  
STATE OF FLORIDA