

M04000000712

Florida Department of State
Division of Corporations
Public Access System

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H06000125835 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

RECEIVED
06 MAY -4 PM 4:13
DIVISION OF CORPORATIONS

Division of Corporations
Fax Number : (850) 205-0380

FROM:
Account Name : C T CORPORATION SYSTEM
Account Number : FCA000000023
Phone : (850) 222-1092
Fax Number : (850) 878-5928

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

06 MAY -4 AM 10:18

FILED

55
Miss

MERGER OR SHARE EXCHANGE

Builders FirstSource - Florida, LLC

Certificate of Status	0
Certified Copy	0
Page Count	14
Estimated Charge	\$70.00

60.00

RECEIVED
06 MAY -4 AM 8:00
DIVISION OF CORPORATIONS

Electronic Filing Menu

Corporate Filing Menu

Help

**ARTICLES OF MERGER
OF
FREEPORT TRUSS COMPANY, INC.
AND
BUILDERS FIRSTSOURCE - FLORIDA, LLC**

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 each merging party are as follows:

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
1. Freeport Truss Company, Inc. Box 577 16664 US Highway 331 South Freeport, Florida 32439	Florida	corporation
2. Builders FirstSource - Florida, LLC 2001 Bryan Street, Suite 1600 Dallas, Texas 75201	Delaware	limited liability company

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

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
Builders FirstSource - Florida, LLC 2001 Bryan Street, Suite 1600 Dallas, Texas 75201	Delaware	limited liability company

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

FOURTH: The attached Plan of Merger was approved by the other business entity that is party to the merger in accordance with the respective laws of all applicable jurisdictions.

FIFTH: The surviving entity hereby appoints the Florida Secretary of State as its agent for substitute service of process pursuant to Chapter 48, Florida Statutes, in any proceeding to enforce any obligation or rights of any dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger.

684215
FILED
06 MAY -4 AM 10:42
SECRETARY OF STATE
TALLAHASSEE FLORIDA
MAY 4 2006

SIXTH: The surviving entity agrees to promptly pay the dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger the amount, if any, to which they are entitled under section(s) 607.1302, Florida Statutes.

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

EIGHTH: The merger shall become effective as of 11:59 p.m. on May 3, 2006.

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

IN WITNESS WHEREOF, the undersigned have executed these Articles of Merger as of May 3, 2006.

FREEMPORT TRUSS COMPANY, INC.

Signature: Jeffrey A. Wier
Jeffrey A. Wier, President

BUILDERS FIRSTSOURCE - FLORIDA, LLC

Signature: Jeffrey A. Wier
Jeffrey A. Wier, Vice President

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

06 MAY -4 AM 10:12

FILED

**PLAN OF MERGER
OF
FREEPORT TRUST COMPANY, INC.
AND
BUILDERS FIRSTSOURCE - FLORIDA, LLC.**

The following plan of merger, which was adopted and approved by each party to the merger in accordance with section 607.1103, is being submitted in accordance with section 607.1109, Florida Statutes.

FILED

06 MAY -4 AM 10:12

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (the "Plan of Merger") dated May 3, 2006 sets forth the terms, conditions, manner of converting interests, and other provisions with respect to the proposed merger (the "Merger") of Prospect Trust Company, Inc., a Florida corporation (the "Corporation"), with and into Builders FirstSource - Florida, LLC, a Delaware limited liability company (the "Company"). The Corporation and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to establish various conditions to the Merger.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Agreement, the parties agree as follows:

ARTICLE I

THE MERGER

1.1 **THE MERGER.** Upon the terms and subject to the conditions set forth in this Plan of Merger, and in accordance with the Florida Business Corporation Act ("FBCA") and the Delaware Limited Liability Act ("DLCA"), the Corporation shall be merged with and into the Company at the Effective Time (as defined in Section 1.2). Following the Effective Time, the separate corporate existence of the Corporation shall cease and the Company shall continue as the surviving entity and shall succeed to and assume all the rights and obligations of the Corporation in accordance with the FBCA and the DLCA. The Company will survive as the wholly-owned subsidiary of Builders FirstSource Holdings, Inc., a Delaware corporation.

1.2 **EFFECTIVE TIME.** Subject to the provisions of this Plan of Merger, the parties shall file a certificate of merger (the "Certificate of Merger") with the Delaware Secretary of State executed in accordance with the relevant provisions of the FBCA and the DLCA, shall deliver articles of merger (the "Articles of Merger") to the Florida Department of State executed in accordance with the relevant provisions of the FBCA and the DLCA and shall make all other filings or recordings required under the FBCA and the DLCA. The Merger shall become effective at 11:59 P.M. E.S.T. on May 3, 2006 or at such other time as the Corporation and the Company shall agree and shall specify in the Certificate of Merger and the Articles of Merger (the time the Merger becomes effective being hereinafter referred to as the "Effective Time").

1.3 **EFFECTS OF THE MERGER.** The Merger shall have the effects specified in Section 18-209 of the DLCA and Section 607.11101 of the FBCA. The separate existence of the Corporation will cease and the Corporation will merge with and into the Company, and the Company will be the surviving entity pursuant to the Plan of Merger.

1.4 **CERTIFICATE OF FORMATION.** The Merger will not effect any change to the Certificate of Formation of the Company. The Certificate of Formation of the Company, as in effect immediately prior to the Effective Time, shall be the Certificate of Formation of the surviving Company until thereafter changed or amended as provided therein or by applicable

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

06 MAY -4 AM 10:12

FILED

law. Additionally, the Limited Liability Company Agreement of the Company, as in effect immediately prior to the Effective Time, shall be the Limited Liability Company Agreement of the surviving Company until thereafter changed or amended as provided therein or by applicable law.

1.5 EFFECT ON THE CORPORATION'S STOCK. As of the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of the Corporation's Common Stock:

(a) Common Stock of the Corporation. Each issued and outstanding share of common stock of the Corporation shall be cancelled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefore.

(b) Cancellation of Treasury Stock. Each share of the Corporation's Common Stock owned by the Corporation shall automatically be cancelled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefore.

1.6 MANAGEMENT. As of the Effective Time, the members of the Board of Managers of the surviving Company, shall be the persons who were the members of the Board of Managers of the surviving Company immediately prior to the Merger, to serve thereafter in accordance with the limited liability company agreement of the surviving Company and until their respective successors shall have been duly elected and qualified in accordance with the limited liability company agreement of the surviving Company and the laws of the State of Delaware. As of the Effective Time, the officers of the surviving Company shall be the officers of the surviving Company immediately prior to the Merger, such officers to serve thereafter in accordance with the limited liability company agreement of the surviving Company and until their respective successors shall have been duly elected and qualified in accordance with such limited liability company agreement and the laws of the State of Delaware. The members of the Board of Managers of the surviving Company are Paul S. Levy, Ramsey Frank, Brett N. Milgrim and Floyd Sherman. The business address of each such member is 2001 Bryan Street, Suite 1600, Dallas, Texas 75201.

ARTICLE II

TERMINATION OF AGREEMENT

2.1 TERMINATION. This Plan of Merger may be terminated at any time prior to the Effective Time:

- (a) by the mutual written consent of the Corporation and the Company; or
- (b) by either party, if a permanent injunction or other order by any federal or state court that would make illegal or otherwise restrain or prohibit the consummation of the Merger will have been issued and will have become final and nonappealable.

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

05 MAY -4 AM 10:12

FILED

ARTICLE III**MISCELLANEOUS**

3.1 GOVERNING LAW; DISPUTE RESOLUTION. The laws of the State of Delaware (without regard to its choice of law principles that might apply the law of another jurisdiction) will govern the validity of this Plan of Merger, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties.

3.2 SEVERABILITY. If any provision of this Plan of Merger, or the application thereof, is for any reason held to any extent to be invalid or unenforceable, then the remainder of this Plan of Merger and application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties. The parties further agree to replace such unenforceable provision of this Plan of Merger with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of the invalid or unenforceable provision.

3.3 COUNTERPARTS. This Plan of Merger may be executed in counterparts, each of which will be an original as regards any party whose signature appears thereon and all of which together will constitute one and the same instrument. This Plan of Merger will become binding when one or more counterparts hereof, individually or taken together, bear the signatures of all parties reflected hereon as signatories.

3.4 OTHER REMEDIES. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law on such party, and the exercise of any one remedy will not preclude the exercise of any other.

3.5 AMENDMENT AND WAIVERS. Any term or provision of this Plan of Merger may be amended, and the observance of any term of this Plan of Merger may be waived (either generally or in a particular instance and either retroactively or prospectively), only by a writing signed by the party to be bound thereby. The waiver by a party of any breach hereof or default in the performance hereof will not be deemed to constitute a waiver of any other default of any succeeding breach or default. This Plan of Merger may be amended by the parties at any time.

3.6 NO WAIVER. The failure of any party to enforce any of the provisions hereof will not be construed to be a waiver of the right of such party thereafter to enforce such provisions. The waiver by any party of the right to enforce any of the provisions hereof on any occasion will not be construed to be a waiver of the right of such party to enforce such provisions on any other occasion.

3.7 CONSTRUCTION OF AGREEMENT; KNOWLEDGE. The language hereof will not be construed for or against either party. A reference to a section, schedule or exhibit refers to a section in, or a schedule or an exhibit to, this Plan of Merger, unless otherwise explicitly set forth. The titles and headings in this Plan of Merger are for reference purposes only and will not in any manner limit the construction of this Plan of Merger.

06 MAY -4 AM 10:12

FILED

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

3.8 FURTHER ASSURANCES. Each party agrees to cooperate fully with the other party and to execute such further instruments, documents and agreements and to give such further written assurances as may be reasonably requested by the other party to evidence and reflect the transactions provided for herein and to carry into effect the intent of this Plan of Merger.

3.9 ABSENCE OF THIRD PARTY BENEFICIARY RIGHTS. No provisions of this Plan of Merger are intended, nor will be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any client, customer, affiliate, partner or employee of any party or any other person or entity, unless specifically provided otherwise herein, and, except as so provided, all provisions hereof will be personal solely between the parties to this Plan of Merger.

IN WITNESS WHEREOF, the Company and the Corporation have each caused this Plan of Merger to be executed in its corporate name all as of the date first above written.

SURVIVING COMPANY

BUILDERS FIRSTSOURCE - FLORIDA, LLC,
a Delaware limited liability company

By: *Jeffrey A. Wier*
Jeffrey A. Wier, Vice President

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

06 MAY -4 AM 10:12

FILED

NON-SURVIVING CORPORATION

FREEPORT TRUST COMPANY, INC.,
a Florida corporation

By: *Jeffrey A. Wier*
Jeffrey A. Wier, President

FREEPORT TRUSS COMPANY, INC.**WRITTEN CONSENT OF SOLE SHAREHOLDER
IN LIEU OF SPECIAL MEETING****As of April 23, 2006**

The undersigned shareholder (the "Shareholder") of Freeport Truss Company, Inc., a Florida corporation (the "Corporation"), being the sole shareholder of the Corporation, acting pursuant to the provisions of Section 607.0704 of the Florida Business Corporation Act, hereby waives notice of meeting; consents to the taking of each action set forth below as if an actual meeting of the shareholders had been held on April 23, 2006; and instructs the Secretary of the Corporation to file this written consent in the minute book of the Corporation. Each of the following actions shall constitute and shall have the same force and effect as if such actions had been authorized and taken at a formal meeting of the shareholders duly convened and held on the above date and as if the Shareholder had been present in person at such meeting and had voted in favor thereof.

WHEREAS, the Corporation is considering a merger with and into Builders FirstSource - Florida, LLC, a Delaware limited liability company, the sole shareholder of the Corporation; and

WHEREAS, the Shareholder has reviewed the agreement and plan of merger (the "Plan of Merger") entered into by and between the Corporation and the Shareholder and believes that it is in the best interest of the Corporation to effect a merger pursuant to the Plan of Merger.

Approval of the Plan of Merger

NOW, THEREFORE, BE IT RESOLVED, that the Shareholder hereby authorizes and approves the Plan of Merger, a form of which has been submitted to and reviewed by the Shareholder.

SECRET
OFFICE OF STATE
TALLAHASSEE, FLORIDA

06 MAY -4 AM 10:13

FILED

Election of Director

RESOLVED, that the Bylaws of the Corporation be amended to reduce the number of director positions to one.

FURTHER RESOLVED, that Jeffrey A. Wier be, and he hereby is, elected as the sole director of the Corporation, to serve until the next annual meeting of the shareholders of the Corporation or until his successor is elected and qualified or until his earlier death, resignation, retirement, disqualification or removal from office.

[The remainder of this page intentionally left blank.]

FILED
06 MAY -4 AM 10:13
SECRETARY OF STATE
TALLAHASSEE FLORIDA

IN WITNESS WHEREOF, the undersigned has hereunto subscribed its name as the sole shareholder of the Corporation as of the above date in attestation to the accuracy of the foregoing consent and of its approval of all actions taken as recited therein.

Builders FirstSource - Florida, LLC,
a Delaware limited liability company,
Sole Shareholder

By: Jeffrey A. Wier
Jeffrey A. Wier, Vice President

FILED
06 MAY -4 AM 10:13
SECRETARY OF STATE
TALLAHASSEE FLORIDA

**WRITTEN CONSENT OF
THE SOLE DIRECTOR OF
FREEPORT TRUSS COMPANY, INC.**

The undersigned, being the sole director of Freeport Truss Company, Inc., a Florida corporation (the "Company"), acting pursuant to Section 607.0821 of the Florida Business Corporation Act, hereby adopts, by this written consent, the following resolutions with the same force and effect as if they had been unanimously adopted at a duly convened meeting of the Board of Directors of the Company (the "Board"), and directs that this written consent be filed with the minutes of the proceedings of the Board.

Merge

WHEREAS, the Board has determined that it is desirable and in the best interest of the Company that the Company be merged with and into Builders FirstSource-Florida, LLC, a Delaware limited liability company ("Florida"), with Florida being the surviving entity, pursuant to the terms and conditions of that certain Agreement and Plan of Merger (the "Plan of Merger") between the Company and Florida (the "Merge").

NOW, THEREFORE, BE IT RESOLVED, that the Plan of Merger, substantially in the form heretofore provided to the Board, is hereby approved by the Board, that the Articles of Merger shall be executed and filed with the Secretary of State of the State of Florida and that a Certificate of Merger shall be executed and filed with the Secretary of State of the State of Delaware; and be it

FURTHER RESOLVED, that in connection with the Merger, (i) upon the effective date of the Merger, all outstanding shares of common stock of the Company will be cancelled and retired and the Company will cease to exist, (ii) after the Merger, Florida will continue as the surviving entity and will succeed to and assume all the rights and obligations of the Company and (iii) the Merger will occur subject to the terms and conditions set forth in the Plan of Merger and the applicable provisions of the laws of the States of Florida and Delaware; and be it

FURTHER RESOLVED, that the officers of the Company be, and each of them hereby is, authorized and directed to negotiate, execute, and deliver, in the name and on behalf of the Company, any other agreements, documents, instruments, or certificates necessary or desirable to consummate the Merger in such form as shall be approved by the officer or officers executing the same on behalf of the Company, the execution thereof by such officer or officers to be conclusive evidence of the approval by them of such documents.

Election of Officers

RESOLVED, that Jeffrey A. Wier be, and he hereby is, elected as the President, Treasurer and Secretary of the Company, to serve until the next annual meeting of the Board or until his successors are elected and qualified or until his earlier death, resignation, retirement, disqualification or removal from office.

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

06 MAY -4, AM 10:13

FILED

General

BE IT RESOLVED, that the officers of the Company be, and they hereby is, authorized and directed to take or to cause to be taken all such further actions, to execute and deliver or to cause to be executed and delivered all such further agreements, documents, instruments, and certificates in the name and on the behalf of the Company, and to incur all such fees and expenses and to engage such advisors and consultants as in their judgment shall be necessary or advisable in order to carry out fully the intent and purposes of the foregoing resolutions; and be it

FURTHER RESOLVED, that any person dealing with any appropriate officer of the Company in connection with any of the foregoing matters shall be conclusively entitled to rely upon the authority of such officer, and by his execution of any document, agreement, instrument, or certificate, the same shall be a valid and binding obligation of the Company in accordance with its terms; and be it

FURTHER RESOLVED, that all actions heretofore taken by any appropriate officer of the Company in connection with the Transactions or the Merger contemplated by the foregoing resolutions be, and they hereby are, approved, ratified and confirmed in all respects.

[SIGNATURE PAGE TO FOLLOW]

SECRETARY OF STATE
TALLAHASSEE FLORIDA

06 MAY -4 AM 10:13

FILED

IN WITNESS WHEREOF, the undersigned, being the sole member of the Board of Directors of the Company has executed this written consent as of the 28th day of April, 2006.


Jeffrey A. Wier

06 MAY -4 AM 10:13
SECRETARY OF STATE
TALLAHASSEE FLORIDA

FILED