

V37988

C T CORPORATION SYSTEM

Requestor's Name

660 East Jefferson Street

Address

Tallahassee, Florida 32301

City

State

Zip

Phone

CORPORATION(S) NAME

200002151582--8

-04/23/97--01027--022

*****70.00 *****70.00

Ecosmart Technologies, Inc.

into:

Ecosmart, Inc.

97 APR 23 PM 12:35
SECRETARY OF STATE
TALLAHASSEE FLORIDA

FILED

☐ Profit

☐ NonProfit

☐ Limited Liability Company

☐ Foreign

☐ Amendment

☐ Dissolution/Withdrawal

☒ Merger

☐ Mark

☐ Limited Partnership

☐ Reinstatement

☐ Limited Liability Partnership

☐ Certified Copy

☐ Annual Report

☐ Reservation

☐ Photo Copies

☐ Call if Problem

☐ Will Wait

☐ Other

☐ Change of R.A.

☐ Fictitious Name

☐ CUS

☐ Call When Ready

☒ Walk In

☐ Mail Out

☐ After 4:30

☒ Pick Up

Name
Availability
Document Examiner
Updater
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PLEASE RETURN EXTRA COPY(S)
FILE STAMPED

4/23/97

corrected
per
melanie

4/23

Tony Menger

97 APR 23 AM 12:27
Division of Corporation



FLORIDA DEPARTMENT OF STATE
Sandra B. Mortham
Secretary of State

April 23, 1997

C T CORPORATION SYSTEM

TALLAHASSEE, FL

SUBJECT: ECOSMART, INC.
Ref. Number: V37988

We have received your document for ECOSMART, INC. and your check(s) totaling \$70.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

Articles of Merger for a profit corporation are filed pursuant to section 607.1105, Florida Statutes. Enclosed is a copy of chapter 607, Florida Statutes. Please refer to section 607.1101 through 607.1107, Florida Statutes, which may pertain to the corporations involved in the merger.

For each corporation, the document must contain the date of adoption of the plan of merger or share exchange by the shareholders or by the board of directors when no vote of the shareholders is required.

Page three, section 4.1 (a) indicates that EcoSmart Delaware will, on or before the effective date of this merger, qualify to transact business in Florida as a foreign corporation --- as it appears that the effective date of this merger would be the date of filing, the Delaware corporation should qualify on or before this date.

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 (904) 487-6957.

Joy Moon-French
Corporate Specialist

Letter Number: 397A00020778

ARTICLES AND AGREEMENT
AND PLAN OF MERGER
OF ECOSMART TECHNOLOGIES, INC.,
A DELAWARE CORPORATION,
AND
ECOSMART, INC.,
A FLORIDA CORPORATION

FILED
97 APR 23 PM 12:35
SECRETARY OF STATE
TALLAHASSEE FLORIDA

THIS AGREEMENT AND PLAN OF MERGER dated as of April 23, 1997 (the "Agreement") is between EcoSmart Technologies, Inc., a Delaware corporation ("EcoSmart Delaware") and EcoSmart, Inc., a Florida corporation ("EcoSmart Florida"). EcoSmart Delaware and EcoSmart Florida are sometimes referred to herein as the "Constituent Corporations."

RECITALS

A. EcoSmart Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 75,000,000 shares, 50,000,000 of which are designated "Common Stock," \$0.0001 par value, and 25,000,000 shares of which are designated "Preferred Stock," \$0.0001 par value. As of the date hereof, 100 shares of Common Stock were issued and outstanding and held by one shareholder. Of the 25,000,000 shares of authorized stock designated Preferred Stock, 11,100,000 shares are designated Series A Preferred Stock and 5,000,000 shares are undesignated Preferred Stock.

B. EcoSmart Florida is a corporation duly organized and existing under the laws of the State of Florida and has an authorized capital of 75,000,000 shares, 50,000,000 of which are designated "Common Stock," \$0.0001 par value, and 25,000,000 shares of which are designated "Preferred Stock," \$0.0001 par value. Of the 25,000,000 shares of authorized stock designated Preferred Stock, 11,100,000 shares are designated Series A Preferred Stock and 5,000,000 shares are undesignated Preferred Stock. As of the date hereof, 11,080,000 shares of Series A Preferred Stock were issued and outstanding, held of record by 50 shareholders, and 20,000 shares of Series A Preferred Stock were held in treasury. As of the date hereof, no other shares of capital stock were issued and outstanding.

C. The Board of Directors of EcoSmart Florida has determined that, for the purpose of effecting the reincorporation of EcoSmart Florida in the State of Delaware, it is advisable and in the best interests of EcoSmart Florida and its shareholders that EcoSmart Florida merge with and into EcoSmart Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors of EcoSmart Delaware and EcoSmart Florida have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective sole stockholder and shareholders. The Board of Directors of EcoSmart Delaware and EcoSmart Florida and the shareholders of EcoSmart Delaware and EcoSmart Florida have approved and adopted this Agreement as of April 22, 1997, and has been executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, EcoSmart Delaware and EcoSmart Florida hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

I. MERGER

1.1 *Merger.* In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the Florida Business Corporation Act, EcoSmart Florida shall be merged with and into EcoSmart Delaware (the "Merger"), the separate existence of EcoSmart Florida shall cease and EcoSmart Delaware shall survive the Merger and shall continue to be governed by the laws of the State of Delaware, and EcoSmart Delaware shall be, and is herein sometimes referred as, the "Surviving Corporation," and the name of the Surviving Corporation shall be EcoSmart, Inc.

1.2 *Filing and Effectiveness.* The Merger shall become effective when the following actions shall have been completed:

(a) This Agreement and Merger shall have been adopted and approved by the stockholders of each Constituent Corporation in accordance with the requirements of the Delaware General Corporation Law and the Florida Business Corporation Act;

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof; and

(c) An executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretaries of State of the States of Delaware and Florida.

The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date of the Merger."

1.3 *Effect of the Merger.* Upon the Effective Date of the Merger, the separate existence of EcoSmart Florida shall cease and EcoSmart Delaware, as the Surviving Corporation (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and EcoSmart Florida's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of EcoSmart Florida in the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of the debts, liabilities and obligations of EcoSmart Delaware as constituted immediately prior to the Effective Date of the Merger, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of EcoSmart Florida in the same manner as if EcoSmart Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the Florida Business Corporation Act.

II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 *Certificate of Incorporation.* The Certificate of Incorporation of EcoSmart Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 *Bylaws.* The Bylaws of EcoSmart Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 *Directors and Officers.* The directors and officers of EcoSmart Florida immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, or the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

III. MANNER OF CONVERSION OF STOCK

3.1 *EcoSmart Florida Series A Preferred Stock.* Upon the Effective Date of the Merger, each share of EcoSmart Florida Series A Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series A Preferred Stock, \$0.0001 par value, of the Surviving Corporation.

3.2 **EcoSmart Delaware Common Stock.** Upon the Effective Date of the Merger, each share of Common Stock, \$0.0001 par value, of EcoSmart Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by EcoSmart Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

3.3 **Exchange of Certificates.** After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of EcoSmart Florida Series A Preferred Stock shall surrender the same for cancellation to Wilson Sonsini Goodrich & Rosati, P.C., as exchange agent (the "Exchange Agent"), attention Steven L. Berson, and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Series A Preferred Stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of EcoSmart Florida Series A Preferred Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Series A Preferred Stock into which such shares of EcoSmart Florida Series A Preferred Stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent, of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Series A Preferred Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Series A Preferred Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of EcoSmart Florida so converted and given in exchange therefore, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws, or other such additional legends as agreed upon by the holder and the Surviving Corporation.

If any certificate for shares of EcoSmart Delaware stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws.

IV. GENERAL

4.1 **Covenants of EcoSmart Delaware.** EcoSmart Delaware covenants and agrees that it will :

(a) qualify to do business as a foreign corporation in the State of Florida and in connection therewith irrevocably appoint an agent for service of process as required under the provisions of Sections 607.1507 and 607.15101 of the Florida Business Corporation Act;

(b) file any and all documents with the Florida Franchise Tax Board necessary for the assumption by EcoSmart Delaware of all of the franchise tax liabilities of EcoSmart Florida; and

(c) take such other actions as may be required by the Florida Business Corporation Act.

4.2 **Further Assurances.** From time to time, as and when required by EcoSmart Delaware or by its successors or assigns, there shall be executed and delivered on behalf of EcoSmart Florida such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by EcoSmart Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of EcoSmart Florida and otherwise to carry out the purposes of this Agreement, and the officers and directors of EcoSmart Delaware are fully

authorized in the name and on behalf of EcoSmart Florida or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 Abandonment. At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either EcoSmart Florida or of EcoSmart Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of EcoSmart Florida or by the sole stockholder of EcoSmart Delaware, or by both.

4.4 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretaries of State of the States of Delaware and Florida, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (a) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation; (b) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger; or (c) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of any Constituent Corporation.

4.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 555 Sun Valley Drive, Suite F-3, Roswell, GA 30076 and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.

4.7 Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the Florida Business Corporation Act.

4.8 Counterparts. In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, this Agreement having first been approved by the resolutions of the Board of Directors of EcoSmart Technologies, Inc., a Delaware corporation, and EcoSmart, Inc., a Florida corporation, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

ECOSMART TECHNOLOGIES, INC.,
a Delaware corporation

By: Steven M. Bessette
Steven M. Bessette
Executive Vice President and Chief Operating Officer

ATTEST:

Mark E. Vernon
Mark E. Vernon
Secretary

ECOSMART, INC.,
a Florida corporation

By: Steven M. Bessette
Steven M. Bessette
Executive Vice President and Chief Operating Officer

ATTEST:

Mark E. Vernon
Mark E. Vernon
Secretary

ECOSMART TECHNOLOGIES, INC.
A Delaware Corporation


OFFICERS' CERTIFICATE

Steven M. Bessette and Mark E. Vernon certify that:

1. They are the Executive Vice President and Chief Operating Officer and the Secretary, respectively, of EcoSmart Technologies, Inc., a corporation organized under the laws of the State of Delaware.
2. The corporation has authorized two classes of stock, designated "Common Stock" and "Preferred Stock," respectively. There is one authorized series of Preferred Stock, designated "Series A Preferred Stock" and undesignated Preferred Stock.
3. There are 100 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto. There are no shares of Preferred Stock outstanding.
4. The principal terms of the Agreement and Plan of Merger were approved by the Board of Directors and by the unanimous written consent of all shareholders entitled to vote.
5. The required percentage of shareholders giving written consent to this Agreement and Plan of Merger was more than 50% of the shares outstanding as of the Record Date.
6. Steven M. Bessette and Mark E. Vernon further declare under penalty of perjury under the laws of the State of Delaware that they have read the foregoing certificate and know the contents thereof and that the same is true of their own knowledge.

Executed on April 23, 1997.


Steven M. Bessette
Executive Vice President and Chief Operating Officer


Mark E. Vernon
Secretary

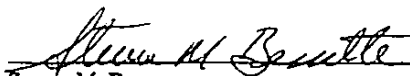
ECOSMART, INC.
A Florida Corporation

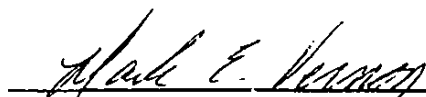
OFFICERS' CERTIFICATE

Steven M. Bessette and Mark E. Vernon certify that:

1. They are the Executive Vice President and Chief Operating Officer and the Secretary, respectively, of EcoSmart, Inc., a corporation organized under the laws of the State of Florida.
2. The corporation has authorized two classes of stock, designated "Common Stock" and "Preferred Stock," respectively. There is one authorized series of Preferred Stock, designated "Series A Preferred Stock" and undesignated Preferred Stock.
3. There were 110,800 shares of Series A Preferred Stock outstanding as of the record date (the "Record Date") and entitled to participate in the action by written consent which approved the Agreement and Plan of Merger attached hereto was approved.
4. The principal terms of the Agreement and Plan of Merger were approved by the Board of Directors and by the unanimous written consent of all shareholders entitled to vote.
5. The required percentage of shareholders giving written consent to this Agreement and Plan of Merger was 100% of the shares outstanding as of the Record Date.
6. Steven M. Bessette and Mark E. Vernon further declare under penalty of perjury under the laws of the State of Florida that they have read the foregoing certificate and know the contents thereof and that the same is true of their own knowledge.

Executed on April 23, 1997.


Steven M. Bessette
Executive Vice President and Chief Operating Officer


Mark E. Vernon
Secretary