

M81810

ARTICLES OF MERGER
Merger Sheet

MERGING:

SUNCOAST MFG. CO., N.C., a Florida corporation, M81810

INTO

U.S. FIBER, INC., a North Carolina corporation not qualified in Florida

File date: May 8, 1997

Corporate Specialist: Joy Moon-French

Account number: 072100000032

Account charged: 122.50



THE UNITED STATES
CORPORATION
COMPANY

M81810

ACCOUNT NO. : 072100000032

REFERENCE : 357325 81386A

AUTHORIZATION :

Patricia Kight

COST LIMIT : \$ 122.50

ORDER DATE : May 7, 1997

ORDER TIME : 10:33 AM

ORDER NO. : 357325-005

CUSTOMER NO: 81386A

CUSTOMER: Robert E. Aylward, Esq
Robert E. Aylward, Esq
Suite 2425
100 North Tampa Street
Tampa, FL 33602

600002170856--9

FILED
97 MAY -8 PM 12:47
SECRETARY OF STATE
TALLAHASSEE FLORIDA

ARTICLES OF MERGER

SUNCOAST MFG. CO., N.C.

INTO

U.S. FIBER, INC.

RECEIVED
97 MAY -8 AM 9:59
DIVISION OF CORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY
 PLAIN STAMPED COPY

CONTACT PERSON: Todd Sterzoy

EXAMINER'S INITIALS:

D.K. for S.P.

518
For merger
C.C.

**ARTICLES OF MERGER
OF
SUNCOAST MFG. CO., N.C.
WITH AND INTO
U.S. FIBER, INC.**

FILED
97 MAY -8 PM 12:47
SECRETARY OF STATE
TALLAHASSEE FLORIDA

These Articles of Merger are made between **U.S. FIBER, INC.** a North Carolina corporation (the "Surviving Corporation"), and **SUNCOAST MFG. CO., N.C.**, a Florida corporation (the "Merging Corporation"), and submitted to the North Carolina Secretary of State and the Department of the State of Florida by each of the companies participating in the merger.

Pursuant to Article 11 of Chapter 55 of the North Carolina General Statutes and Section 607.1105 of the Florida Business Corporation Act, the Merging Corporation and the Surviving Corporation adopt the following Articles of Merger for the purpose of merging the Merging Corporation with and into the Surviving Corporation, which shall be the surviving corporation.

1. The Plan of Merger, dated the 7th day of May, 1997, a copy of which is attached hereto as "Exhibit A" and incorporated herein, was unanimously approved and adopted by the respective stockholders of the Merging Corporation and the Surviving Corporation on that date.

2. Pursuant to the Plan and Agreement of Merger, all issued and outstanding shares of Merging Corporation's stock will be exchanged for common stock of Surviving Corporation's parent, **FCR, INC.**, a Delaware corporation (the "Parent Corporation"), as provided therein.

3. The effective date of the merger shall be the date of filing of these Articles of Merger with both the Secretary of State of North Carolina and the Department of State of Florida.

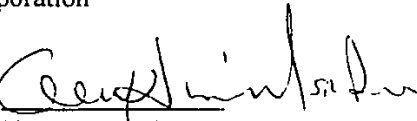
4. Upon the merger becoming effective, the Surviving Corporation shall be deemed (i) to appoint the Secretary of State of Florida as its agent for service of process in the State of Florida in a proceeding to enforce any obligation or the rights of dissenting shareholders of Merging Corporation, and (ii) to agree that it will promptly pay to the dissenting shareholders of the Merging Corporation the amount, if any, to which they are entitled under section 607.1302 of the Florida Business Corporation Act.

IN WITNESS WHEREOF, the parties have executed these Articles of Merger this 7th day of May, 1997.

U.S. FIBER, INC., a North Carolina
corporation

By: Paul A. Garrett
Paul A. Garrett,
President

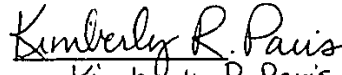
SUNCOAST MFG. CO., N.C., a Florida
corporation

By 
Alfred J. Vincelli, Sr.,
President

STATE OF NORTH CAROLINA
COUNTY OF ~~GUILFORD~~ Mecklenburg

The foregoing instrument was acknowledged, sworn to and subscribed before me this 7th
day of May, 1997, by Paul A. Garrett, as President of U.S. Fiber, Inc., a North Carolina corporation
and a wholly owned subsidiary of FCR, Inc., a Delaware corporation, on behalf of the corporation.
He is personally known to me and did take an oath.

NOTARY PUBLIC:


Name: Kimberly R. Paris

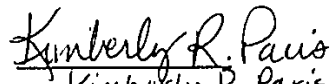
STATE OF NC (SEAL)
My Commission Expires:

November 17, 1999

STATE OF NORTH CAROLINA
COUNTY OF ~~GUILFORD~~ Mecklenburg

The foregoing instrument was acknowledged, sworn to and subscribed before me this 7th
day of May, 1997, by Alfred J. Vincelli, Sr., as President of Suncoast Mfg. Co., N.C., a Florida
corporation, on behalf of the corporation. He is personally known to me and did take an oath.

NOTARY PUBLIC:


Name: Kimberly R. Paris

STATE OF NC (SEAL)
My Commission Expires:

November 17, 1999

**PLAN OF MERGER
OF
SUNCOAST MFG. CO., N.C.
WITH AND INTO
U.S. FIBER, INC.**

This Plan of Merger is entered into on May 7, 1997, by **SUNCOAST MFG. CO., N.C.**, a Florida corporation (the "Merging Corporation"), **U.S. FIBER, INC.**, a North Carolina corporation (the "Surviving Corporation"), and **FCR, INC.**, a Delaware corporation (the "Parent Corporation").

BACKGROUND

The Surviving Corporation is a business corporation of the State of North Carolina with its principal office therein located at 2101 Rexford Road, Suite 236-E, Charlotte, North Carolina 28211, and is a wholly-owned subsidiary of the Parent Corporation.

The Merging Corporation is a business corporation of the State of Florida with its principal office therein located at 905 E. MLK, Jr. Dr., Suite 400, Tarpon Springs, Florida 34689.

The Parent Corporation is a business corporation of the State of Delaware with its principal office located at 2101 Rexford Road, Suite 236-E, Charlotte, North Carolina 28211.

The Merging Corporation and the Surviving Corporation and their respective Boards of Director deem it advisable and in the best interests of the two corporations and their respective stockholders to merge (the "Merger") the Merging Corporation with and into the Surviving Corporation pursuant to the provisions of the Business Corporation Act of the State of Florida and North Carolina Business Corporation Act.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual agreement of the parties, this Plan of Merger being duly entered into by the Merging Corporation and the Surviving Corporation, the parties hereto agree as follows:

Section 1. **Effective Date.**

The effective date (the "Effective Date") of the Merger shall be the date of filing of the Articles of Merger in both the Department of State of Florida and the Secretary of State of North Carolina, in accordance with the applicable corporation laws of the States of North Carolina and Florida.

Section 2. Adoption of Plan of Merger.

The shareholders and directors of the Merging Corporation unanimously adopted and approved this Plan of Merger on May 7, 1997. The shareholder and directors of the Surviving Corporation unanimously adopted and approved this Plan of Merger on May 7, 1997. The directors of Parent Corporation unanimously adopted and approved this Plan of Merger on May 7, 1997.

Section 3. Plan of Merger.

3.1 In accordance with the provisions of the Stock Purchase Agreement and Plan and Agreement of Merger among the Parent Corporation, the Merging Corporation, the Surviving Corporation, and Albert J. Vincelli, Sr., for the purchase of stock of Suncoast Insulation Mfg. Co. and merger of the Merging Corporation with and into the Surviving Corporation (the "Stock Purchase Agreement") and the corporation laws of the States of North Carolina and Florida, at the Effective Date, the Merging Corporation shall be merged with and into the Surviving Corporation, and the Surviving Corporation, as the surviving corporation in the Merger, (a) shall be a wholly owned subsidiary of the Parent Corporation, (b) shall continue its corporate existence under the laws of the State of North Carolina, and (c) shall succeed to all rights, assets, liabilities, and obligations of the Merging Corporation and the Surviving Corporation. The separate corporate existence of the Merging Corporation shall terminate at the Effective Date.

3.2 At the Effective Date, the current Articles of Incorporation of the Surviving Corporation, as in effect immediately prior to the Effective Date, shall be the Articles of Incorporation of the Surviving Corporation after the Effective Date, and thereafter may be amended in accordance with its terms and as provided by applicable law.

3.3 At the Effective Date, the current Bylaws of the Surviving Corporation, as in effect immediately prior to the Effective Date, shall be the Bylaws of the Surviving Corporation, and thereafter may be amended in accordance with their terms and as provided by applicable law.

3.4 Until the election and qualification of their successors, the current members of the Board of Directors of the Surviving Corporation shall be the Board of Directors of the Surviving Corporation in office on the Effective Date, and the current officers of the Surviving Corporation shall be the officers of the Surviving Corporation on the Effective Date.

3.5 At the Effective Date, all of the issued and outstanding shares of stock of the Merging Corporation owned by the shareholder(s) of the Merging Corporation on the Effective Date shall, by virtue of the Merger, and without any action on the part the holders thereof, be converted into an aggregate of (1) Three Hundred Fifty Thousand (350,000) shares of the Parent corporation's common stock (the "Initial Stock"), (2) Two Million dollars (\$2,000,000) in cash paid by the Parent corporation by wire transfer, and (3) the right to receive from the Parent Corporation any additional consideration which may become due under Section 4 below.

3.6 At the Effective Date, the outstanding shares of the Surviving Corporation will not be converted, exchanged or altered in any manner as a result of the Merger and will remain outstanding as shares of the Surviving Corporation.

3.7 Simultaneously with the issuance of the Initial Stock and payment of the cash consideration as set forth in Section 3.5 above, each holder of an outstanding certificate or certificates theretofore representing shares of the capital stock of the Merging Corporation shall surrender the same to the Parent corporation and shall receive in exchange a certificate or certificates representing such holder's pro rata share of the Initial Stock.

3.8 The parties agree that the value of each share of the capital stock of the Merging Corporation on the Effective Date is \$11,000.00 per share, which amount is subject to adjustment pursuant to Section 4 below. The parties further agree that the value of each share of common stock of the Parent Corporation on the Effective Date is \$10.00 per share. The number of issued and outstanding shares of capital stock of the Merging Corporation on the Effective Date shall be 500 shares.

Section 4. Additional Contingent Merger Consideration.

4.1 As additional consideration pursuant to the Merger, the shareholder(s) of the Merging Corporation shall be entitled to 50,000 shares of the Parent Corporation's common stock (said 50,000 shares being subject to proportionate and equitable adjustment in the event of any stock split, stock dividend, combination or similar recapitalization affecting the Parent Corporation's common stock) in the event the EBIT (as defined below) of the Surviving Corporation and Suncoast Insulation Mfg. Co., a Florida corporation ("Suncoast Florida"), for the period of May 1, 1997 through April 30, 1998 ("1997 EBIT") exceeds \$2,250,000 (the "1997 N.C. Earn-Out"), plus an additional 50,000 shares of the Parent Corporation's common stock (subject to proportionate and equitable adjustment as set forth above) in the event the Surviving Corporation and Suncoast Florida's EBIT (as defined below) for the period May 1, 1998 through April 30, 1999 ("1998 EBIT") exceeds \$2,750,000 (the "1998 N.C. Earn-Out" and, together with the 1997 N.C. Earn-Out, the "N.C. Earn-Out"); provided, however, that if the 1997 EBIT is less than \$2,250,000 or the 1998 EBIT is less than \$2,750,000, but the average of the 1997 EBIT and the 1998 EBIT exceeds \$2,500,000, then the North Carolina Earn-Out shall be considered full earned.

"EBIT" shall be the consolidated earnings of the Surviving Corporation and Suncoast Florida before payment or accrual of interest in federal, state and local income taxes, and as adjusted in accordance with the provisions of Schedule 2 of the Stock Purchase Agreement, determined (except as provided in said Schedule 2) in accordance with generally accepted accounting principals consistently applied.

If earned, the 1997 N.C. Earn-Out and the 1998 N.C. Earn-Out shall be paid as follows:

- (i) The Parent Corporation's common stock representing the 1997 N.C. Earn-Out shall be issued by the Parent Corporation to the shareholder(s) of the Merging Corporation, effective on July 1, 1998; provided, however, that so long as there is not then existing an Event of Default as defined in the Credit Agreement among LaSalle National Bank, the Parent Corporation and its Subsidiaries (an "Event of Default"), and so long as no Event of Default would result from the Parent Corporation's compliance with such election: (1) in lieu of such issuance of stock, said shareholder(s) of the Surviving Corporation may, by written notice to the Parent Corporation delivered before July 1, 1998, elect to receive a promissory note from the Parent Corporation, in the form attached as Schedule 2.6 to the Stock Purchase Agreement, providing for payment of \$500,000 from the Parent Corporation in twenty-four (24) successive equal monthly installments of principal, plus accrued interest at eight percent (8%) per annum, beginning on July 31, 1998 and continuing on the last day of each month thereafter through and including June 30, 2000 (provided, however, that the Parent Corporation may prepay such principal amount at any time without penalty or premium), and (2) in lieu of such issuance of stock, and notwithstanding any election by said shareholder(s) of the Surviving Corporation under Clause (1) of this subsection 4.1(i), the Parent Corporation may, by written notice to said shareholder(s) delivered on or before July 31, 1998, elect to pay said shareholder(s) \$500,000 in cash before July 31, 1998, together with interest thereon from July 1, 1998 until the date of payment; and
- (ii) The Parent Corporation's common stock representing the 1998 N.C. Earn-Out shall be issued to the shareholder(s) of the Merging Corporation, effective on July 1, 1999; provided, however, that so long as there is not then existing an Event of Default, and so long as no Event of Default would result from the Parent Corporation's compliance with such election: (1) in lieu of such issuance of stock, said shareholder(s) of the Surviving Corporation may, by written notice to the Parent Corporation delivered before July 1, 1999, elect to receive a promissory note from the Parent Corporation in, the form attached as Schedule 2.6 to the Stock Purchase Agreement, providing for payment of \$500,000 from the Parent Corporation in twenty-four (24) successive equal monthly installments of principal, plus accrued interest at eight percent (8%) per annum, beginning on July 31, 1999 and continuing on the last day of each month thereafter through and including June 30, 2001 (provided, however, that Purchaser may prepay such principal amount at any time without penalty or premium), and (2) in lieu of such issuance of stock, and notwithstanding any election by said shareholder(s) of the Surviving Corporation under Clause (1) of this subsection 4.1(ii), the Parent Corporation may, by written notice to said shareholder(s) delivered on or before July 31, 1999, elect to pay said shareholder(s) \$500,000 in cash before

July 31, 1999, together with interest thereon from July 1, 1999 until the date of payment; and

- (iii) In the event the 1997 EBIT was not sufficient to earn the 1997 N.C. Earn-Out, but the 1997 N.C. Earn-Out subsequently is earned because the average of 1997 EBIT and 1998 EBIT exceeds \$2,500,000, then the foregoing provisions regarding payment of the 1998 N.C. Earn-Out, and all elections relating thereto, shall apply to the 1997 N.C. Earn-Out, so that all such payments, elections, and accruals of interest with respect to the 1997 Earn-Out shall be made as of the dates and within the time periods set forth in Section 4.1(ii) above for the 1998 N.C. Earn-Out.

4.2 Notwithstanding the foregoing provisions of this Section 4, in the event (i) the Parent Company executes an agreement with an underwriter on or prior to April 30, 1998 in connection with a contemplated initial public offering of the Parent Company's common stock, and the initial public offering contemplated by that agreement is subsequently, (either before or after April 30, 1998) consummated (whether or not with the same underwriter), the N.C. Earn-Out shall be considered fully earned, or (ii) the Parent Corporation executes an agreement with an underwriter on or prior to April 30, 1999 in connection with the contemplated initial public offering of the Parent Corporation's common stock, and the initial public offering contemplated by that agreement is subsequently (either before or after April 30, 1999) consummated (whether or not with the same underwriter), the 1998 N.C. Earn-Out shall be considered fully earned. The 1997 N.C. Earn-Out and/or 1998 N.C. Earn-Out (as applicable) shall be issued (subject to any election described under clause (i) or (ii) of Section 4.1), by the Parent Company within five (5) business days following the consummation of the initial public offering, which shall be considered for purposes of this Section 4 to be the date on which the registration statement relating to such offering becomes effective.

Section 5. Further Assurances.


If, at any time after the Effective Date, the Surviving Corporation shall consider or be advised that any further assignments, or assurances in law or any other things, are necessary or desirable to vest, perfect, or confirm of record or otherwise, in the Surviving Corporation, the title to any property, right, privilege, power, immunity, purpose or franchise of the Merging Corporation acquired or to be acquired by reason of, or as a result of the Merger, the Merging Corporation and its proper officers and directors shall and will execute and deliver all such proper deeds, assignments and assurances in law and do all things necessary and proper to vest, perfect or confirm title to the same in the Surviving Corporation and otherwise to carry out the intent and purposes of these Articles and Plan of Merger, and the proper officers and directors of the Surviving Corporation or the Merging Corporation, as the case may be, whether past or remaining in office, are fully authorized in the name of the Merging Corporation or otherwise to take any and all such action.

Section 6. Construction.


This Plan of Merger shall be interpreted without regard to any presumption or rule requiring construction against the party causing this Plan of Merger to be drafted.

IN WITNESS WHEREOF, each of the parties hereto has caused this Plan of Merger to be duly executed and delivered as of the date and year first above written.

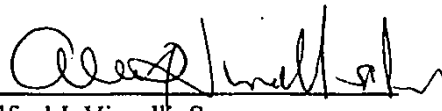
U.S. FIBER, INC., a North Carolina corporation

By: 
Paul A. Garrett.,
President

FCR, INC., a Delaware corporation

By: 
Paul A. Garrett,
Chief Executive Officer

SUNCOAST MFG. CO., N.C., a Florida corporation

By: 
Alfred J. Vincell, Sr.,
President

CERTIFICATE OF SECRETARY OF SUNCOAST MFG. CO., N.C.

The undersigned, being the secretary of **SUNCOAST MFG. CO., N.C.**, does hereby certify that the foregoing Plan of Merger was submitted to the stockholders entitled to vote of the corporation at a special meeting thereof for the purpose of acting on the Plan of Merger. All of the stockholders of the corporation waived, in a writing signed by them, notice of the time, place, and purpose of the meeting, including the lapse of the 20-day period of time otherwise required. At the meeting, the Plan of Merger was considered by the stockholders entitled to vote and, a vote having been taken for the adoption or rejection by them of the Plan of Merger, the stockholders unanimously voted for the adoption of the Plan of Merger.

Dated: May 7, 1997.


Secretary of U.S. FIBER, INC.

Suncoast mfg co n.c.

VINCE L L L PLANMGR