



M99000002062

ACCOUNT NO. : 072100000032

REFERENCE : 526794 4326591

AUTHORIZATION :

COST LIMIT : \$ ~~218.75~~ *Patricia Pujat* 220.00

ORDER DATE : December 22, 1999

ORDER TIME : 11:46 AM

ORDER NO. : 526794-015

CUSTOMER NO: 4326591

000003079520--7

CUSTOMER: Amy Eckard, Legal Assistant  
Fowler White Gillen Boggs  
Suite 1700  
501 East Kennedy Boulevard  
Tampa, FL 33602

ARTICLES OF MERGER

SMI HOLDINGS, INC., ET AL

INTO

SOUTHDOWN SMI HOLDINGS LLC

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY  
       PLAIN STAMPED COPY

CONTACT PERSON: Carrie Vaught

EXAMINER'S INITIALS:

*File 2nd*

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TALLAHASSEE, FLORIDA

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ARTICLES OF MERGER  
Merger Sheet

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MERGING:

SMI HOLINGS, INC., A DELAWARE CORPORATION  
SUNSHINE MATERIALS, INC., A DELAWARE CORPROATION  
SUNSHINE AGGREGATES, INC., A DELAWARE CORPORATION  
IA ACQUISITION L.L.C., A FLORIDA LIMITED LIABILITY COMPANY  
INDEPENDENT BARGE SERVICES, INC., A FLORIDA CORPORATION

INTO

**SOUTHDOWN SMI HOLDING LLC**, a Delaware entity, M99000002062

File date: December 23, 1999, effective January 1, 2000

Corporate Specialist: Gretchen Harvey

Account number: 072100000032

Account charged: 220.00

## ARTICLES OF MERGER

THESE ARTICLES OF MERGER provide for the merger (the "Merger") of SMI Holdings, Inc., a Delaware corporation, Sunshine Materials Inc., a Delaware corporation, Sunshine Aggregates Inc., a Delaware corporation, IA Acquisition L.L.C., a Florida limited liability company, and Independent Barge Services, Inc., a Florida corporation, with and into Southdown SMI Holdings LLC, a Delaware limited liability company.

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1. Attached hereto as Exhibit A and made a part hereof is the Plan of Merger for merging the following entities (the "Non-Surviving Entities"), with and into Southdown SMI Holdings LLC, a Delaware limited liability company (the "Surviving Entity"):

<u>Non-Surviving Entities</u>	<u>Type of Entity and Jurisdiction of Organization</u>
SMI Holdings, Inc. P 39433	a Delaware corporation
Sunshine Materials Inc. P 38897	a Delaware corporation
Sunshine Aggregates Inc. P 39353	a Delaware corporation
IA Acquisition L.L.C. L9960000168	a Florida limited liability company
Independent Barge Services, Inc.	a Florida corporation

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2. The Plan of Merger was duly approved by each Florida corporation that is a party to the Merger in accordance with the applicable provisions of Chapter 607, *Florida Statutes*.

3. The Plan of Merger was duly approved by each Florida limited liability company that is a party to the Merger in accordance with the applicable provisions of Chapter 608, *Florida Statutes*.

4. The Plan of Merger was duly approved by SMI Holdings, Inc., Sunshine Materials, Inc., Sunshine Aggregates, Inc., and the Surviving Entity in accordance the applicable laws of the State of Delaware.

5. The Merger shall be effective as of 12:00 a.m. (Houston, Texas time) on January 1, 2000.

6. The address of the Surviving Entity's principal office under the laws of the State of Delaware is: 1200 Smith Street, Suite 2400, Houston, Texas 77002.

7. The Surviving Entity hereby appoints the Florida Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each Florida corporation that is a party to the Merger. The Surviving Entity has agreed to promptly pay to the dissenting shareholders of each Florida corporation that is a party to the Merger the amount, if any, to which they are entitled under Section 607.1302, *Florida Statutes*.

IN WITNESS WHEREOF, these Articles of Merger have been executed effective as of the 8th day of December, 1999.

SOUTHDOWN SMI HOLDINGS LLC

By: Clarence C. Comer  
Clarence C. Comer, President and  
Chief Executive Officer

SMI HOLDINGS, INC.

By: Clarence C. Comer  
Clarence C. Comer, President and  
Chief Executive Officer

SUNSHINE MATERIALS INC.

By: Clarence C. Comer  
Clarence C. Comer, President and  
Chief Executive Officer

SUNSHINE AGGREGATES INC.

By: Clarence C. Comer  
Clarence C. Comer, President and  
Chief Executive Officer

IA ACQUISITION L.L.C.

By: Clarence C. Comer  
Clarence C. Comer, President and  
Chief Executive Officer

INDEPENDENT BARGE SERVICES, INC.

By: Clarence C. Comer  
Clarence C. Comer, President and  
Chief Executive Officer

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EXHIBIT A

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement") is made and entered into effective as of the 8th day of December, 1999, by and among SOUTHDOWN SMI HOLDINGS LLC, a Delaware limited liability company (the "Company"); SMI HOLDINGS, INC., a Delaware corporation ("SMI"); SUNSHINE MATERIALS INC., a Delaware corporation ("Sunshine Materials"); SUNSHINE AGGREGATES INC., a Delaware corporation ("Sunshine Aggregates"); IA ACQUISITION L.L.C., a Florida limited liability company ("IA Acquisition"); and INDEPENDENT BARGE SERVICES, INC., a Florida corporation ("Independent Barge").

RECITALS

A. Sunshine Materials, Sunshine Aggregates, IA Acquisition, and Independent Barge are each directly or indirectly wholly owned subsidiaries of SMI.

B. SMI and the Company are each wholly owned subsidiaries of Southdown, Inc., a Louisiana corporation ("Southdown").

C. Southdown desires to merge each of SMI, Sunshine Materials, Sunshine Aggregates, IA Acquisition, and Independent Barge with and into the Company.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto hereby agree to be legally bound as follows:

**Section 1. Certain Definitions.** For the purposes of this Agreement, the following terms shall have the following definitions:

A. "Effective Time" means 12:00 a.m. (Houston, Texas time) on January 1, 2000.

B. "Merging Entities" collectively refers to SMI, Sunshine Materials, Sunshine Aggregates, IA Acquisition, and Independent Barge.

**Section 2. Merger.** Pursuant to the applicable provisions of Delaware and Florida law and upon the terms and conditions set forth herein, at the Effective Time, each of the Merging Entities shall be merged with and into the Company, with the Company being the surviving entity in the merger (the "Merger").

**Section 3. Conversion of Interests.** At the Effective Time, by virtue of the mergers herein contemplated and without any action by the Partners:

A. The shares of stock of SMI that are issued and outstanding as of the Effective Time shall not be converted in any manner, but shall instead be surrendered and canceled as of the Effective Time.

B. The shares of stock of Sunshine Materials that are issued and outstanding as of the Effective Time shall not be converted in any manner, but shall instead be surrendered and canceled as of the Effective Time.

C. The shares of stock of Sunshine Aggregates that are issued and outstanding as of the Effective Time shall not be converted in any manner, but shall instead be surrendered and canceled as of the Effective Time.

D. The membership interests in IA Acquisition that exist as of the Effective Time shall not be converted in any manner, but shall instead be surrendered and canceled as of the Effective Time.

E. The shares of stock of Independent Barge that are issued and outstanding as of the Effective Time shall not be converted in any manner, but shall instead be surrendered and canceled as of the Effective Time.

**Section 4. Management of Surviving Entity.** From and after the Effective Time and as set forth more particularly in the Limited Liability Company Agreement, dated December 8, 1999, of the Surviving Entity, the management of the Surviving Entity shall be vested in a Board of Managers initially comprised of the following individuals: Clarence C. Comer, Patrick S. Bullard, Dennis M. Thies, and J. Bruce Tompkins.

**Section 5. Miscellaneous.**

A. **Amendments.** No change, modification, or termination of any of the terms, provisions, or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties hereto. There shall be no oral modifications of this Agreement.

B. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without reference to principles of choice of law thereunder.

C. **Exhibits.** All exhibits, annexes, and schedules hereto are incorporated herein as if fully set forth in this Agreement in their entirety.

D. **Severability.** Each section and paragraph (or other subdivision) of this Agreement constitutes a separate and distinct provision. In the event that such a provision is determined to be invalid or unenforceable, the provision shall be deemed limited in scope and effect to the extent, and only to the extent, necessary to render the same valid and enforceable. If such a limiting construction is impossible, such invalid or unenforceable provision shall be deemed severed

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from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

**E. Headings and Captions.** The headings, titles, captions, and sections contained in this Agreement are provided for convenience of reference only and shall not be considered a part hereof for purposes of interpreting or applying this Agreement; such titles or captions do not define, limit, extend, explain, or describe the scope or extent of this Agreement or any of its terms, provisions, representations, warranties, conditions, etc., in any manner or way whatsoever.

**F. Gender and Number.** All pronouns and variations thereof shall be deemed to refer to the masculine, feminine, or neuter and to the singular or plural as the identity of the person or entity or persons or entities may require.

**G. Binding Effect on Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors, heirs, and assigns.

**H. Recitals; Use of Certain Terms.** Each party agrees that the recitals to this Agreement are true and correct and are incorporated herein by this reference and made a legally binding part of this Agreement. Whenever the terms "hereof," "herein," and "hereunder" are used in this Agreement, such terms shall refer to this Agreement in its entirety and not to any particular section, subsection, paragraph, or other portion of this Agreement.

**I. Entire Agreement; Counterparts.** This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and it supersedes all prior memoranda, correspondence, conversations, and negotiations. This Agreement may be executed in several counterparts that together shall constitute but one and the same Agreement.

**IN WITNESS WHEREOF,** this Agreement has been executed by the duly authorized representatives of both parties hereto effective as of the date first set forth above.

SOUTHDOWN SMI HOLDINGS LLC

By: Clarence C. Comer  
Clarence C. Comer, President and  
Chief Executive Officer

SMI HOLDINGS, INC.

By: Clarence C. Comer  
Clarence C. Comer, President and  
Chief Executive Officer

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SUNSHINE MATERIALS INC.

By: Clarence C. Comer  
Clarence C. Comer, President and  
Chief Executive Officer

SUNSHINE AGGREGATES INC.

By: Clarence C. Comer  
Clarence C. Comer, President and  
Chief Executive Officer

IA ACQUISITION L.L.C.

By: Clarence C. Comer  
Clarence C. Comer, President and  
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INDEPENDENT BARGE SERVICES, INC.

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