

P00000024110

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

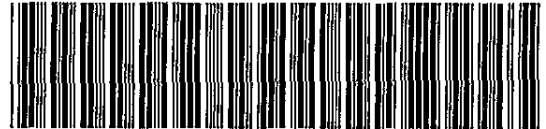
(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

Special Instructions to Filing Officer:

Office Use Only



400023472644

FILED  
03 OCT 29 AM 11:17  
RECEIVED  
03 OCT 29 AM 10:46  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
DIVISION OF CORPORATION

C. Gouletas OCT 29 2003



CORPORATION SERVICE COMPANY™

ACCOUNT NO. : 072100000032

REFERENCE : 296768 4304369

AUTHORIZATION :

*Patricia Pigato*

COST LIMIT : \$ 70.00

-----  
ORDER DATE : October 27, 2003

ORDER TIME : 10:24 AM

ORDER NO. : 296768-010

CUSTOMER NO: 4304369

CUSTOMER: Ms. Inga Scheckel  
Lord, Bissell & Brook LLP  
Suite 3500  
115 South Lasalle Street  
Chicago, IL 60603  
-----

ARTICLES OF MERGER

O'MEARA CAPITAL PARTNERS, INC.

INTO

O'MEARA FERGUSON KEARNS, INC.

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX PLAIN STAMPED COPY

CONTACT PERSON: Susie Knight EX 1156

EXAMINER'S INITIALS: \_\_\_\_\_

FILED  
03 OCT 29 AM 11:17  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER  
OF  
O'MEARA CAPITAL PARTNERS, INC.  
AND  
O'MEARA FERGUSON KEARNS, INC.

To the Department of State  
State of Florida


Pursuant to the provisions of the Florida Business Corporation Act, the domestic business corporation and the foreign business corporation herein named do hereby submit the following articles of merger.

1. Annexed hereto and made a part hereof is the Agreement and Plan of Merger for merging O'MEARA CAPITAL PARTNERS, INC. with and into O'MEARA FERGUSON KEARNS, INC.

2. The shareholders entitled to vote on the aforesaid Agreement and Plan of Merger of O'MEARA CAPITAL PARTNERS, INC. approved and adopted the Agreement and Plan of Merger by unanimous written consent on October 3, 2003.

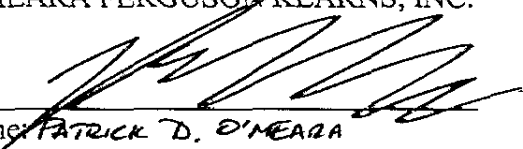
3. The merger of O'MEARA CAPITAL PARTNERS, INC. with and into O'MEARA FERGUSON KEARNS, INC. is permitted by the laws of the jurisdiction of organization of O'MEARA FERGUSON KEARNS, INC. and has been authorized in compliance with said laws. The date of approval and adoption of the Agreement and Plan of Merger by the sole stockholder of O'MEARA FERGUSON KEARNS, INC. was October 3, 2003.

Executed on October 3, 2003.

O'MEARA CAPITAL PARTNERS, INC.  
By: 

Name: PATRICK D. O'MEARA  
Capacity: CHAIRMAN

O'MEARA FERGUSON KEARNS, INC.

By:   
Name: PATRICK D. O'MEARA  
Capacity: CHAIRMAN

## **AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER (hereinafter referred to as this "Agreement") dated as of October 3, 2003, is made and entered into by and between **O'MEARA CAPITAL PARTNERS, INC.**, a Florida corporation ("Old O'Meara") and **O'MEARA FERGUSON KEARNS, INC.**, a Delaware corporation ("New O'Meara").

### **RECITALS**

A. Old O'Meara is a corporation organized and existing under the laws of the State of Florida.

B. Old O'Meara has 125,000 shares of capital stock authorized, par value \$.001 per share, consisting of (i) 25,000 shares of Preferred Stock, none of which are outstanding, and (ii) 100,000 shares of Common Stock consisting of (A) 45,000 shares of which are designated as Class A Common Stock ("Old O'Meara Class A Common Stock"), 11,445 of which are outstanding, (B) 5,000 shares of which are designated as Class B Common Stock, 4,900 of which are outstanding, and (C) 50,000 shares of which are designated as Class C Common Stock, 16,380 of which are outstanding (all shares of each class of Common Stock are referred to collectively as "Old O'Meara Common Stock").

C. Old O'Meara has issued warrants and other commitments that are exercisable into 3,459 shares of Old O'Meara Class A Common Stock.

D. New O'Meara is a wholly-owned subsidiary of Old O'Meara, having been incorporated on September 11, 2003.

E. New O'Meara has 6,000,000 shares of capital stock authorized, consisting of (i) 5,000,000 shares of which are designated as Common Stock, par value \$.01 per share, ("New O'Meara Common Stock"), 100 of which are outstanding and owned by Old O'Meara, and (ii) 1,000,000 shares of which are designated as Preferred Stock, par value \$.01 per share, none of which are outstanding.

NOW THEREFORE, in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that Old O'Meara shall be merged with and into New O'Meara (the "Merger") upon the terms and conditions hereinafter set forth.

### **ARTICLE 1 MERGER**

1.1. In accordance with the provisions of this Agreement and Section 252 of the Delaware General Corporation Law (the "DGCL"), and Section 607.1104 of the Florida 1989 Business Corporation Act ("FBCA"), at the Effective Time (as defined below in Section 1.2) Old O'Meara shall be merged with and into New O'Meara such that the separate existence of Old O'Meara shall cease and New O'Meara shall be the surviving corporation (the "Surviving

Corporation”) in the Merger. By virtue of the Merger, New O’Meara shall be governed by the laws of the State of Delaware.

1.2 The Merger shall become effective on the later of (i) the date that a certificate complying with Section 252(c) of the DGCL (the “Certificate of Merger”) has been duly filed with the Secretary of State of Delaware and (ii) the date that the articles of merger complying with Section 607.1105 of the FBCA have been duly filed with the Department of State of Florida (the date and time of such filings, or if another date and time is specified in such filing, such specified date and time being the “Effective Time”).

## **ARTICLE 2 DIRECTORS AND OFFICERS OF NEW O’MEARA**

2.1. At the Effective Time, the directors of Old O’Meara in office at such time shall be the directors of the Surviving Corporation, the officers of New O’Meara in office at such time shall be the officers of the Surviving Corporation, and such persons shall hold office in accordance with the Bylaws of New O’Meara or until their respective successors shall have been appointed or elected.

## **ARTICLE 3 CERTIFICATE OF INCORPORATION OF NEW O’MEARA**

3.1. The Certificate of Incorporation of New O’Meara in effect on the date hereof shall be the Certificate of Incorporation of the Surviving Corporation without change unless and until amended in accordance with applicable law.

## **ARTICLE 4 BYLAWS OF NEW O’MEARA**

4.1. The Bylaws of New O’Meara in effect on the date hereof shall be the Bylaws of the Surviving Corporation without change until amended or repealed in accordance with applicable law.

## **ARTICLE 5 CONVERSION OF SHARES**

5.1. At the Effective Time, (i) each outstanding share of Old O’Meara Common Stock shall be converted into 27.63653 shares of New O’Meara Common Stock, except for those shares of Old O’Meara Common Stock with respect to which the holders thereof have duly exercised their dissenters’ rights under Section 607.1320 of the FBCA, (ii) any fractional New O’Meara Common Stock interests to which a holder of Old O’Meara Common Stock would be entitled will be canceled with the holder thereof being entitled to receive the next highest number of whole shares of New O’Meara Common Stock, (iii) each outstanding share of New O’Meara Common Stock held by Old O’Meara shall be retired and canceled and shall resume the status of authorized and unissued New O’Meara Common Stock, and (iv) each share of Old O’Meara

Common Stock that is owned by Old O'Meara or any of its subsidiaries shall be canceled without any payment therefor.

5.2. All rights to acquire Old O'Meara Common Stock under or pursuant to any contractual rights which are outstanding on the Effective Time of the Merger will automatically be converted into equivalent rights to purchase that whole number of shares of New O'Meara Common Stock into which the number of shares of Old O'Meara Common Stock subject to such rights immediately prior to the Effective Time would have been converted in the Merger had such rights been exercised immediately prior thereto (with any shares of fractional New O'Meara Common Stock resulting from the exercise being rounded up to the next highest whole number). All plans or agreements of Old O'Meara under which such rights are granted shall be continued and assumed by New O'Meara unless and until amended or terminated in accordance with their respective terms.

5.3 . (a) Prior to, or as soon as practicable after the Effective Time, New O'Meara shall mail to each person who was, at the time of mailing or at the Effective Time, a holder of record of issued and outstanding Old O'Meara Common Stock (i) a form letter of transmittal and (ii) instructions for effecting the surrender of the certificate or certificates, which immediately prior to the Effective Time represented issued and outstanding shares of Old O'Meara Stock ("Old O'Meara Certificates"), in exchange for certificates representing New O'Meara Common Stock. Upon surrender of Old O'Meara Certificates for cancellation, together with a duly executed letter of transmittal, the holder of such Old O'Meara Certificate shall be entitled to receive in exchange therefor a certificate representing that number of shares of New O'Meara Common Stock into which the shares represented by Old O'Meara Certificate so surrendered shall have been converted pursuant to the provisions of this Article 5, and each Old O'Meara Certificate so surrendered shall forthwith be canceled.

(b) If any stock certificate representing New O'Meara Common Stock is to be issued in a name other than that in which Old O'Meara Certificate surrendered with respect thereto is registered, it shall be a condition of such issuance that the Old O'Meara Certificate so surrendered shall be properly endorsed, or otherwise in proper form for transfer, and that the person requesting such issuance shall pay any transfer or other taxes required by reason of the issuance to a person other than the registered holder of the Old O'Meara Certificate surrendered or shall establish to the satisfaction of New O'Meara that such tax has been paid or is not applicable.

(c) After the Effective Time, there shall be no further registration of transfers on the stock transfer books of Old O'Meara of the shares of Old O'Meara Common Stock that were outstanding immediately prior to the Effective Time. If after the Effective Time certificates representing such shares are presented to New O'Meara they shall be canceled and exchanged for certificates representing New O'Meara Common Stock as provided in this Article 5.

## **ARTICLE 6**

### **EFFECT OF MERGER**

6.1. At the Effective Time, the separate existence of Old O'Meara shall cease. Old O'Meara shall be merged with and into New O'Meara in accordance with the provisions of this

Agreement. Thereafter, New O'Meara shall possess all the rights, privileges, powers and franchises, of a public as well as a private nature, and shall be subject to all the restrictions, disabilities and duties of each of the parties to this Agreement; and all and singular, the rights, privileges, powers and franchises of Old O'Meara and New O'Meara, and all property, real, personal and mixed, and all debts due to each of them on whatever account, shall be vested in New O'Meara; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter the property of New O'Meara, as they were of the respective constituent entities, and the title to any real estate whether by deed or otherwise vested in Old O'Meara and New O'Meara or either of them, shall not revert or be in any way impaired by reason of the Merger; but all rights of creditors and all liens upon any property of the parties hereto shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent entities shall thenceforth attach to New O'Meara, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

6.2. Old O'Meara agrees that it will execute and deliver, or cause to be executed and delivered, all such deeds, assignments and other instruments, and will take or cause to be taken such further or other action as New O'Meara may deem necessary or desirable in order to vest in and confirm to New O'Meara title to and possession of all the property, rights, privileges, immunities, powers, purposes and franchises, and all and every other interest, of Old O'Meara and otherwise to carry out the intent and purposes of this Agreement.

## **ARTICLE 7 AMENDMENT; EFFECTIVE TIME**

7.1. The Board of Directors of Old O'Meara and New O'Meara may amend this Agreement at any time prior to the Effective Time, provided that an amendment made subsequent to the approval of the Merger by the shareholders of Old O'Meara shall not (1) alter or change the amount or kind of shares to be received in exchange for or on conversion of all or any of Old O'Meara Common Stock (2) alter or change any term of the Certificate of Incorporation of New O'Meara, or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of Old O'Meara Common Stock.

## **ARTICLE 8 TERMINATION OF MERGER**

8.1. This Agreement may be terminated and the Merger abandoned at any time prior to the filing of this Agreement with the Secretary of State of Florida and the Secretary of State of Delaware, whether before or after shareholder approval of this Agreement, by action of the Board of Directors of Old O'Meara and New O'Meara.

**ARTICLE 9  
MISCELLANEOUS**

9.1. In order to facilitate the filing and recording of this Agreement, this Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all such counterparts shall together constitute one and the same instrument.

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

**O'MEARA CAPITAL PARTNERS, INC.,**  
a Florida corporation

By: \_\_\_\_\_

Name: PATRICK D. O'MEARA

Title: CHAIRMAN

**O'MEARA FERGUSON KEARNS, INC.,**  
a Delaware corporation

By: \_\_\_\_\_

Name: PATRICK D. O'MEARA

Title: CHAIRMAN