

**PD 1000110644**

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐

PICK-UP

☐

WAIT

☐

MAIL

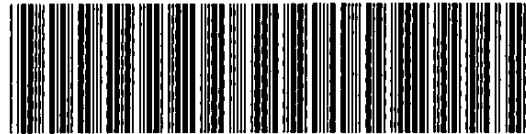
(Business Entity Name)

(Document Number)

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

Special Instructions to Filing Officer:

Office Use Only



**400113372564**

12/28/07--01010--010 \*\*78.75

**EXPIRATION DATE**  
**12-31-07**

**07 DEC 28 PM 1:10**  
**SECRETARY OF STATE**  
**TALLAHASSEE, FLORIDA**

**APPROVED**  
**AND**  
**FILED**

*Morgan*

**O. Gouffette** JAN 03 2008

## JUDITH S. LAMBERT, PLLC

Judith S. Lambert, JD, LLM\*

*Member of the state bars of Florida, Alabama, Texas, and California*

*\*Master of Laws in Taxation*

Lumsden Executive Park  
669A W. Lumsden Road  
Brandon, Florida 33511  
(813) 662-7429  
(813) 681-3391 Fax

December 27, 2007

Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, Florida 32301

Re: Merger of P&W Construction Corp. and  
Pro Manufacturing and Engineering

To Whom it May Concern,

Please find enclosed the Articles of Merger with the attached Agreement and Plan of Merger I am filing on behalf of P&W Construction Corp. and Pro Manufacturing and Engineering, Incorporated. Also enclosed is a check in the amount of \$78.75 for the filing fees and certified copy. Should you have any questions, please feel free to contact me at the above referenced telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith S. Lambert", with a long horizontal flourish extending to the right.

Judith S. Lambert

**(Profit Corporations)**

**EFFECTIVE DATE**  
**12-31-07**

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u> (If known/ applicable)
P&W Construction Corp.	Florida	P01000110644

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u> (If known/ applicable)
Pro Manufacturing and Engineering, Incorporated	Florida	L12602

SECRETARY OF STATE  
TALLAHASSEE FLORIDA

*(Attach additional sheets if necessary)*

**Seventh: SIGNATURES FOR EACH CORPORATION**

Name of Corporation

Signature of an Officer or  
Director

Typed or Printed Name of Individual & Title

P&W Construction Corp.

Phillip L. Peters

Phillip L. Peters, President

Pro Manufacturing and Engineering, Incorporated

Phillip L. Peters

Phillip L. Peters, President

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is made as of December 11, 2007, by and between P & W CONSTRUCTION CORP, a Florida corporation (the "Acquiror") and PRO MANUFACTURING AND ENGINEERING, INCORPORATED, a Florida corporation (the "Target").

### **RECITALS**

- A. Prior to the execution of this Merger Agreement, Acquiror and Target have entered into an Agreement and Plan of Reorganization dated as of December 11, 2007, (the "Plan of Reorganization") providing for certain representations and agreements in connection with the transaction contemplated.
- B. The Boards of Directors of Acquiror and Target have approved the acquisition of Target by Acquiror and have approved the merger of Target into Acquiror (the "Merger") and the transactions contemplated hereby, in accordance with the applicable provisions of the statutes of the State of Florida, which permit such Merger) upon the terms and subject to the conditions set forth herein and in the Plan of Reorganization.
- C. For federal income tax purposes, it is intended that the Merger shall qualify as a reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code").

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement of Merger, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE I: THE MERGER**

**1.1 The Merger.** (a) At the Effective Time (as defined in Section 1.2) and subject to the terms and conditions of this Agreement and the Plan of Reorganization, Target shall be merged into Acquiror and the separate existence of Target shall thereupon cease, in accordance with the applicable provisions of the Florida Business Corporation Act, §607.0101, et seq. of the Florida Statutes.

(b) Acquiror will be the surviving corporation in the Merger (sometimes referred to herein as the "Surviving Corporation") and will continue to be governed by the laws of the State of Florida, and the separate corporate existence of Acquiror and all of its rights, privileges, immunities and franchises, public or private, and all its duties and liabilities as a corporation organized under the Florida Business Corporation Act (the "Corporation Act"), will continue unaffected by the Merger.

(c) The Merger will have the effects specified by the Corporation Act.

**1.2 Effective Time.** As soon as practicable following fulfillment or waiver of the conditions specified in Article V of the Plan of Reorganization and provided that this Agreement has not been terminated or abandoned pursuant to Article IV hereof, the Acquiror will cause Articles of Merger to be filed with the Florida Division of Corporations as provided in §607.1105 of the Corporation Act. Subject to and in accordance with the laws of State of Florida, the Merger will become effective at the date and time the Articles of Merger is filed with the Florida Division of Corporations or at such later time or date as may be specified in the Articles of Merger (the "Effective Time").

## **ARTICLE II: THE SURVIVING CORPORATION**

**2.1 Articles of Incorporation.** The Articles of Incorporation of Acquiror as in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Acquiror after the Effective Time.

**2.2 Bylaws.** The Bylaws of Acquiror as in effect immediately prior to the Effective Time shall be the Bylaws of the Acquiror after the Effective Time.

**2.3 Board of Directors.** From and after the Effective Time, the Board of Directors of Acquiror shall be the Board of Directors of the Acquiror.

## **ARTICLE III: CONVERSION OF SHARES**

**3.1 Conversion of Target Shares in the Merger.** Pursuant to the Merger Agreement, at the Effective Time, by virtue of the Merger and without any action on the part of any holder of any capital stock of Target:

(a) all shares of common stock of Target ("Target Common Stock") owned by Acquiror shall be cancelled and shall cease to exist from and after the Effective Time; and

(b) each remaining issued and outstanding share of Target Common Stock, other than Target Dissenting Shares (as defined in Section 3.3 hereof), shall, subject to Section 3.2(d) hereof, be converted into, and become exchangeable for, the number of shares of validly issued, fully paid and nonassessable common stock of Acquiror ("Acquiror Common Stock") equal to the Conversion Ratio. In this Agreement, the term "Conversion Ratio" means a fraction, the numerator of which is equal to (i) \$1,360,000.00 (the agreed value of Target), divided by (ii) \$4640.00 the agreed value of a share of Acquiror Common stock (the "Valuation Price"); and the denominator of which is equal to the sum of the number of shares of Target Common Stock issued and outstanding as of the date of this Agreement. The consideration referred to in this Section 3.1, together with any cash payments in lieu of fractional shares as provided herein, is hereinafter referred to as the "Merger Consideration."

**3.2 Exchange of Company Capital Stock Certificates.** (a) On or prior to the Closing Date, Acquiror shall make available the certificates representing shares of Acquiror Common Stock required to effect the exchange referred to in Section 3.2(b). Acquiror shall also make available the cash required to make cash payments in lieu of fractional shares referred to in Section 3.2(d) below. Shares of Acquiror Common Stock into which shares of Target Common Stock shall be converted in the Merger shall be deemed to have been issued at the Effective Time.

(b) From and after the Effective Time, each holder of a certificate which immediately prior to the Effective Time represented outstanding shares of Target Common Stock are granted by reason of the Merger under the Corporation Act shall be entitled to receive in exchange therefor, upon surrender thereof, a certificate or certificates representing the number of whole shares of Acquiror Common Stock into which such holder's shares of Target Common Stock were converted pursuant to Section 3.1 and cash in lieu of any fractional shares of such Acquiror Common Stock pursuant to Section 3.2(d). From and after the Effective Time, Acquiror shall be entitled to treat the certificates which immediately prior to the Effective Time represented shares of Target Common Stock and which have not yet been surrendered for exchange as evidencing the ownership of the number of full shares of Acquiror Common Stock into which the shares of Target Common Stock represented by such certificates shall have been converted pursuant to Section 3.1, notwithstanding the failure to surrender such certificates. However, notwithstanding any other provision of this Agreement, until holders or transferees of certificates which immediately prior to the Effective Time represented shares of Target Common Stock have surrendered them for exchange as provided herein, no dividends shall be paid with respect to any shares represented by such certificates and no payment for fractional shares shall be made. Upon surrender of a certificate which immediately prior to the Effective Time represented outstanding shares of Target Common Stock, there shall be paid to the holder of such certificate the amount of any dividends which theretofore became payable, but which were not paid by reason of the foregoing, with respect to the number of whole shares of Acquiror Common Stock represented by the certificate or certificates issued upon such surrender. If any certificate for shares of Acquiror Common Stock is to be issued in a name other than that in which the certificate, which immediately prior to the Effective Time represented shares of Target Common Stock, surrendered in exchange therefor is registered, it shall be a condition of such exchange that the person requesting such exchange shall pay any transfer or other taxes required by reason of the issuance of certificates for such shares of Acquiror Common Stock in a name other than that of the registered holder of any such certificate surrendered.

(c) As soon as practicable after the Effective Time, each holder of record shall be mailed a certificate or certificates that immediately prior to the Effective Time represented outstanding shares of Target Common Stock (collectively, the "Target Certificates") (i) a form letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to Target Certificates shall pass, upon actual delivery of Target Certificates to the holders) and (ii) instructions for use in effecting the surrender of Target Certificates for cancellation, together with a duly executed letter of transmittal and such other documents as may be required, the holder of such Target Certificates shall be entitled to receive in exchange therefor a certificate representing that number of whole shares of Acquiror Common Stock into which the shares of Target Common Stock represented by Target Certificates so surrendered shall have been converted pursuant to the

provisions of Section 3.1, and Target Certificates so surrendered shall forthwith be cancelled. Notwithstanding the foregoing, no party hereto shall be liable to a holder of shares of Target Common Stock for any shares of Acquiror Common Stock or dividends or distributions thereon delivered to a public official pursuant to applicable escheat laws.

(d) Notwithstanding any other provision of this Agreement or the Merger Agreement, no certificates or scrip for fractional shares of Acquiror Common Stock shall be issued upon the surrender for exchange of Target Certificates pursuant to this Article III in the Merger and no Acquiror Common Stock dividend, stock split or interest shall relate to any fractional security, and such fractional interests shall not entitle the owner thereof to vote or any other rights of a security holder. In lieu of any such fractional shares, each holder of Target common Stock who would otherwise have been entitled to a fraction of a share of Acquiror Common stock upon surrender of Target Certificates for exchange pursuant to this Article III shall be entitled to receive a cash payment in lieu of such fractional share equal to such fraction multiplied by the Valuation Price.

**3.3 Dissenting Shares.** Notwithstanding anything to the contrary contained in this Agreement or the Merger Agreement, holders of shares of Target Common Stock with respect to which dissenters' rights, if any, are granted by reason of the Merger under the Corporation Act and who do not vote in favor of the Merger and otherwise comply with the Corporation Act ("Target Dissenting Shares"), shall not be entitled to shares of Acquiror Common Stock pursuant to Section 3.1, unless and until the holder thereof shall have failed to perfect or shall have effectively withdrawn or lost such holder's right to dissent from the Merger under the Corporation Act, and shall be entitled to receive only the payment provided for pursuant to the Corporation Act. If any such holder shall have failed to perfect or shall have effectively withdrawn or lost such holder's dissenters' rights under the Corporation Act, such holders' Target Dissenting Shares shall thereupon be deemed to have been converted into and to have become exchangeable for, as of the Effective Time, the right to receive the Merger Consideration.

**3.4 Closing of Transfer Books.** From and after the Effective Time, the stock transfer books of Target shall be closed and no transfer of shares of Target Common Stock shall thereafter be made. If, after the Effective time, Target Certificates are presented to Acquiror, they shall be cancelled and exchanged for Merger Consideration in accordance with the procedures set forth in this Article III.

#### **ARTICLE IV: MISCELLANEOUS.**

**4.1 Termination.** This Agreement of Merger shall terminate in the event of and upon termination of the Plan of Reorganization.

**4.2 Amendment.** This Agreement may be amended by the parties hereto, at any time before or after approval hereof by the stockholders of Target, but, after any such approval, no amendment shall be made which (a) changes the ratio at which Target Common Stock is to be



converted into Acquiror Common Stock pursuant to Section 3.1. (b) in any way materially adversely affect the rights of holders of Target Common Stock or (c) changes any of the principal terms of this Agreement, in each case, without the further approval of such stockholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

**4.3 Waiver.** At any time prior to the Effective Time, the parties hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid if set forth in an instrument in writing signed on behalf of such party.

**4.4 Notices.** All notices, requests and other communications to any party hereunder will be in writing and, unless otherwise provided in this Agreement, will be deemed to have been duly given upon receipt when delivered in person or when dispatched by electronic facsimile transmission (confirmed by mail or nationally recognized overnight courier service simultaneously dispatched) or dispatched by a nationally recognized overnight courier service to the appropriate party at its address.

**4.5 Governing Law.** This Agreement will be governed by, and construed in accordance with, the law of the State of Florida, without regard to the conflict of laws rules of such state.

**4.6 Entire Agreement.** This Agreement (including any Exhibits hereto) constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement (including any Exhibits hereto) supersedes all prior agreements and understanding, representations and warranties, both oral and written, between the parties with respect to the subject matter hereof.

**4.7 No Assignment.** Neither this Agreement nor any of the rights or obligations of the parties hereunder may be assigned to or assumed by any other person or entity.

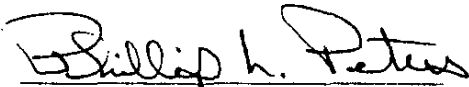
**4.8 No Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and nothing herein expressed or implied will give or be construed to give to any person or entity, other than the parties hereto, any legal or equitable rights hereunder.

**4.9 Counterparts.** This Agreement may be signed in any number of counterparts, each of which will be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

**4.10 Headings.** The headings in this Agreement are for convenience of reference only and will not control or effect the meaning or construction of any provisions hereof.

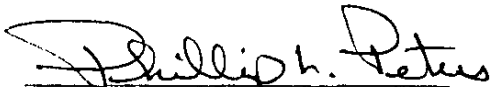
IN WITNESS WHEREOF, the parties hereto have executed this Agreement and Plan of Reorganization as of the day and year first above written.

ACQUIROR:  
P & W CONSTRUCTION CORP.

A handwritten signature in cursive script, reading "Phillip L. Peters". The signature is written in dark ink and is positioned above a horizontal line.

By: Phillip L. Peters, President

TARGET:  
PRO MANUFACTURING AND ENGINEERING, INCORPORATED

A handwritten signature in cursive script, reading "Phillip L. Peters". The signature is written in dark ink and is positioned above a horizontal line.

By: Phillip L. Peters, President