

P95000076928

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Admitted to Practice Law
Kentucky,* Tennessee,*
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VIA OVERNIGHT MAIL

May 21, 2002

Florida Department of State
Division of Corporations
409 E. Gaines Street
Tallahassee, FL 32399

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-05/22/02--01057--026
*****78.75 *****78.75

RE: Articles of Merger and Plan of Merger by and between Diamond May Coal Company,
a Kentucky corporation and Diamond May Mining Company, a Florida corporation

Dear Sir or Madam:

Enclosed you will find a fully executed original of the Articles of Merger and Plan of Merger by and between the companies previously listed. Also enclosed is the filing fee of \$70.00 for the merger of two corporations plus \$8.75 for a certified copy of merger. Please return the certified copy of merger to the following address:

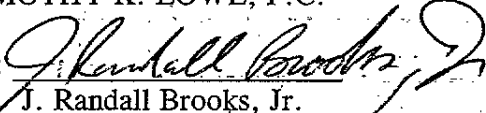
J. Randall Brooks, Jr.
Timothy K. Lowe, P.C.
415 Broad Street, Suite 650
Kingsport, TN 37660

Thank you for your time and attention. Please do not hesitate to contact me should you have any questions or need any additional information.

Very truly yours,

TIMOTHY K. LOWE, P.C.

By:


J. Randall Brooks, Jr.

02 MAY 22 PM 2:39
FILED
merger
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

je

File no: 0551

Enclosures

ARTICLES OF MERGER
Merger Sheet

MERGING:

DIAMOND MAY MINING COMPANY, # P95000076928, A FLORIDA
CORPORATION

INTO

DIAMOND MAY COAL COMPANY, A KENTUCKY CORPORATION. a
Kentucky entity not qualified in Florida

File date: May 22, 2002

Corporate Specialist: Anna Chesnut

ARTICLES OF MERGER
OF
DIAMOND MAY MINING COMPANY
WITH AND INTO
DIAMOND MAY COAL COMPANY

Pursuant to KRS §§ 271B.11-040, 271B.11-050, and 271B.11-070 and Fla. Stat. §§ 607.1104, 607.1105, and 607.1107, Diamond May Coal Company, a Kentucky corporation (the "Surviving Corporation") and Diamond May Mining Company, a Florida corporation (the "Merging Corporation"), adopt the following Articles of Merger:

1. Attached hereto as Exhibit A and incorporated herein by reference is the Agreement and Plan of Merger (the "Plan of Merger") by which the Merging Corporation is to be merged with and into the Surviving Corporation.

2. Approval of the shareholders of the Surviving Corporation and the Merging Corporation was not required as provided in KRS § 271B.11-040 and Fla. Stat. § 607.1104 in that the relationship between the Surviving and Merging Corporations is one of parent and wholly-owned subsidiary, respectively.

IN WITNESS WHEREOF, the Surviving Corporation and the Merging Corporation, pursuant to approval and authority duly given by resolutions adopted by their respective Boards of Directors have caused these Articles of Merger to be executed by their duly authorized officers on this the 10th day of May 2002.

DIAMOND MAY COAL COMPANY

By: _____

Frank A. Schiller
Secretary

Date: May/6, 2002

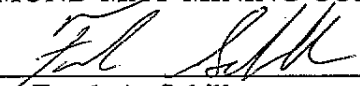
Attest:

By: _____

Robert M. Williams
Assistant Secretary

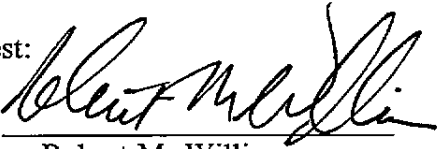
FILED
02 MAY 22 PM 2:39
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

DIAMOND MAY MINING COMPANY

By: 
Frank A. Schiller
Secretary

Date: May 10, 2002

Attest:

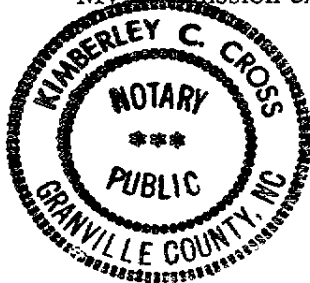
By: 
Robert M. Williams
Assistant Secretary

STATE OF NORTH CAROLINA
COUNTY OF WAKE, to-wit:

I, Kimberley C. Cross, a Notary Public of said County do hereby certify that Frank A. Schiller, its Secretary, who signed the writing above for Diamond May Coal Company, a Kentucky corporation, has this day in ~~my~~ said County, personally appeared before me with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who before me acknowledged the said writing to be the act and deed of said corporation.

WITNESS my hand and official seal at office in the aforesaid State and County, this the 10th day of May 2002.

My commission expires Oct. 25, 2002



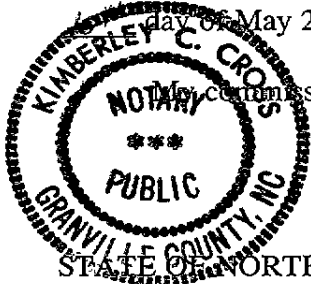

NOTARY PUBLIC

STATE OF NORTH CAROLINA
COUNTY OF WAKE, to-wit:

I, Kimberley C. Cross, a Notary Public of said County do hereby certify that Robert M. Williams, its Assistant Secretary, who signed the writing above for Diamond May Coal Company, a Kentucky corporation, has this day in ~~my~~ said County, personally appeared before me with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who before me acknowledged the said writing to be the act and deed of said corporation.

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My commission expires Oct. 25, 2002.



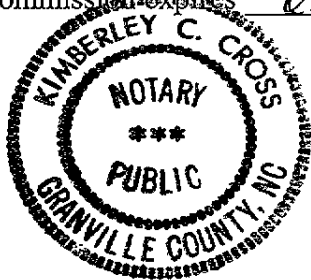
Kimberley C. Cross
NOTARY PUBLIC

STATE OF NORTH CAROLINA
COUNTY OF WAKE, to-wit:

I, Kimberley C. Cross, a Notary Public of said County do hereby certify that Frank A. Schiller, its Secretary, who signed the writing above for Diamond May Mining Company, a Florida corporation, has this day in ~~my~~ said County, personally appeared before me with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who before me acknowledged the said writing to be the act and deed of said corporation.

WITNESS my hand and official seal at office in the aforesaid State and County, this the 10th day of May 2002.

My commission expires Oct 25, 2002.



Kimberley C. Cross
NOTARY PUBLIC

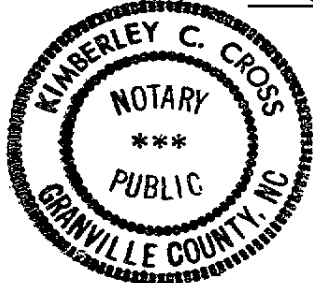
STATE OF NORTH CAROLINA
COUNTY OF WAKE, to-wit:

I, Kimberley C. Cross, a Notary Public of said County do hereby certify that Robert M. Williams, its Assistant Secretary, who signed the writing above for Diamond May Mining Company, a Florida corporation, has this day in ~~my~~ said County, personally appeared before me with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who before me acknowledged the said writing to be the act and deed of said corporation.

WITNESS my hand and official seal at office in the aforesaid State and County, this the 10th day of May 2002.

My commission expires

Oct. 25, 2002



Kimberley C. Cross
NOTARY PUBLIC

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, is made and entered into as of the 10th day of May 2002, by and between DIAMOND MAY COAL COMPANY, a corporation organized and existing under the laws of the Commonwealth of Kentucky (the "Surviving Corporation"), and DIAMOND MAY MINING COMPANY, a corporation organized and existing under the laws of the State of Florida, (the "Merging Corporation").

W I T N E S S E T H:

WHEREAS, the respective Boards of Directors of the Surviving Corporation and the Merging Corporation have adopted resolutions declaring advisable the proposed merger of the Merging Corporation into the Surviving Corporation upon the terms and conditions hereinafter set forth and the Board of Directors of the Surviving Corporation and the Merging Corporation have by resolution adopted and approved this Agreement and Plan of Merger (hereinafter referred to as the "Plan of Merger"), all in accordance with KRS §§ 271B.11-040 and 271B.11-070 and Fla. Stat. §§ 607.1104 and 607.1107.

NOW, THEREFORE, pursuant to KRS §§ 271B.11-040 and 271B.11-070 and Fla. Stat. §§ 607.1104 and 607.1107 and other applicable provisions thereof, and subject to the conditions herein set forth, the Surviving Corporation and the Merging Corporation do hereby agree to merge and the plan, terms, and conditions of such merger (the "Merger"), shall be as follows:

ARTICLE I

1.01 Merger. At the Effective Time (as defined in Section 1.03) of the Merger, the Merging Corporation shall be merged into the Surviving Corporation, the separate existence of the Merging Corporation shall cease, and the Surviving Corporation, as the surviving corporation, shall continue to exist by virtue of and shall be governed by the laws of the Commonwealth of Kentucky and shall continue to have its registered office in said commonwealth c/o C. T. Corp. System, Kentucky Home Life Building, Room 1102, Louisville, Kentucky 40202.

1.02 Articles of Incorporation and Bylaws of the Surviving Corporation. The Articles of Incorporation and Bylaws of the Surviving Corporation as in effect immediately prior to the Effective Time shall be and continue to be the Articles of Incorporation and Bylaws of the Surviving Corporation unless and until further amended in the matter prescribed by law.

1.03 The Effective Time. Articles of Merger (with this Plan of Merger attached as part thereof), setting forth the information required by, and executed and verified in accordance with KRS § 271B.11-050 and Fla. Stat. § 607.1105, shall be delivered to the

Kentucky Secretary of State and the Florida Secretary of State (collectively the "Secretary of State") for filing and recording in such offices, and, upon the issuance by the Secretary of State of a certificate of merger with respect to the Merger, the Merger shall become effective at the close of business, Frankfort, Kentucky, time, on May 31, 2002. The time of such effectiveness is herein called the "Effective Time."

1.04 Effect of Merger. Upon and after the Effective Time, as provided in KRS § 271B.11-060 and Fla. Stat. § 607.1106, the separate existence of the Merging Corporation shall cease and the Surviving Corporation, as the surviving corporation, shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under the Kentucky Business Corporation Act. The Surviving Corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of the Merging Corporation; and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to the Merging Corporation shall be taken and deemed to be transferred to and vested in the Surviving Corporation without further act or deed. The Surviving Corporation shall thenceforth be responsible and liable for all liabilities and obligations of the Merging Corporation; and any claim existing or action or proceeding pending by or against the Merging Corporation may be prosecuted as if the Merger had not taken place, or the Surviving Corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by the Merger. At any time and from time to time after the Effective Time, the last acting officers of the Merging Corporation shall, in the name of the Merging Corporation, execute and deliver all such proper deeds, assignments, and other instruments as the Surviving Corporation may deem necessary or desirable in order to vest, perfect, or confirm the Surviving Corporation's title to and possession of the Merging Corporation's property, rights, privileges, powers, immunities, and franchises and otherwise to carry out the purposes of this Plan of Merger.

Notwithstanding the terminology utilized in this Agreement and Plan of Merger, it is the parties' intention that the Merger constitutes a complete liquidation of a subsidiary corporation into the parent corporation pursuant to Section 332 of the Internal Revenue Code and that pursuant to Section 334 of the Internal Revenue Code, the Surviving Corporation's tax basis in the Merging Corporation's property received by the Surviving Corporation as a result of this Merger shall be the same tax basis as the Merging Corporation had in such property immediately prior to the Merger.

1.05 Further Action. The proper officers of the Surviving Corporation and the Merging Corporation pursuant to Resolutions of each dated May __, 2002, are hereby severally authorized to (i) sign, execute, certify, verify, acknowledge, deliver, accept, file and record any and all instruments and documents, and (ii) take, or cause to be taken, any and all such action, in the name and on behalf of the Surviving Corporation and/or the Merging Corporation, as (in such officer's judgment) is necessary, desirable, or appropriate in order to consummate and make effective the Merger and otherwise effect the purposes of this Plan of Merger.

ARTICLE II

2.01 Merging Corporation Common Stock. Each share of the Common Stock of the Merging Corporation issued and outstanding immediately prior to the Effective Time shall cease to exist as of the Effective Time, and certificates representing such shares shall be canceled.

2.02 Surviving Corporation Common Stock. Each share of the Common Stock of the Surviving Corporation issued and outstanding immediately prior to the Effective Time shall continue to exist as of the Effective Time and Certificates representing such shares shall continue to be valid and effective.

ARTICLE III

3.01 Termination. This Plan of Merger may be terminated at any time before completion of the filings with the Commission pursuant to §1.03 hereof by appropriate resolution of the Board of Directors of the Surviving Corporation for any reason which it deems appropriate.


3.02 Amendment. To the extent permitted by law, this Plan of Merger may be amended, supplemented, or interpreted at any time and in any respect by action taken by the Boards of Directors of the Surviving Corporation and the Merging Corporation and, in the case of an interpretation, the actions of such Boards of Directors shall be binding.

3.03 Approval of Shareholders not Required. As provided in KRS § 271B.11-040 and Fla. Stat. § 607.1104, the Plan of Merger need not and will not be submitted to the shareholders of the Surviving Corporation or the Merging Corporation for approval.

3.04 Expenses. The Surviving Corporation shall pay all expenses of carrying this Plan of Merger into effect and accomplishing the Merger herein provided for.

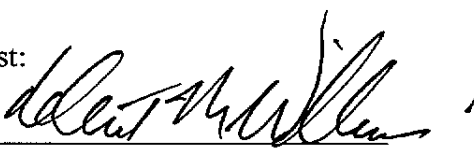
IN WITNESS WHEREOF, the Surviving Corporation and the Merging Corporation, pursuant to the approval and authority duly given by resolutions adopted by their respective Board of Directors have caused this Agreement and Plan of Merger to be executed by the Chairman of the Board or President and attested to by the Secretary or Assistant Secretary of each party hereto, and the corporate seal affixed.

DIAMOND MAY COAL COMPANY

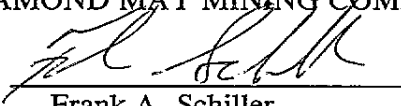
By: 
Frank A. Schiller
Secretary

Date: May 10, 2002

Attest:


By: 
Robert M. Williams
Assistant Secretary

DIAMOND MAY MINING COMPANY

By: 
Frank A. Schiller
Secretary

Date: May 10, 2002

Attest:

By: 
Robert M. Williams
Assistant Secretary

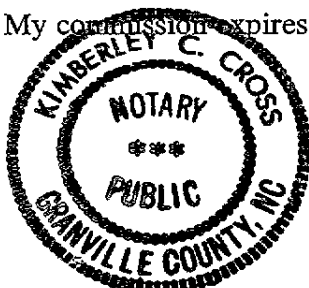
STATE OF NORTH CAROLINA
COUNTY OF WAKE, to-wit:

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WITNESS my hand and official seal at office in the aforesaid State and County, this the 10th day of May 2002.

My commission expires

Oct 25, 2002



Kimberley C. Cross
NOTARY PUBLIC

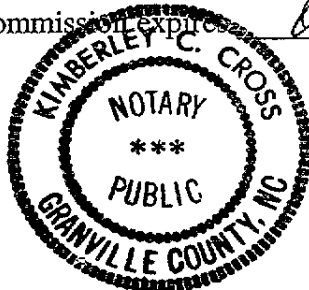
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Oct. 25, 2002



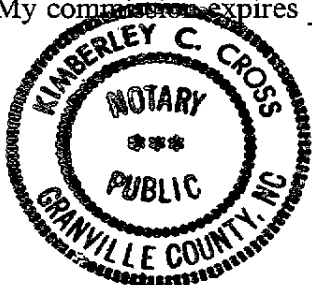
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STATE OF NORTH CAROLINA
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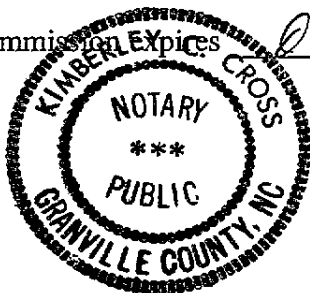
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