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LAW OFFICES

WINTER & SCHAU, P.A.

2300 CORPORATE BLVD., N.W., SUITE 137

BOCA RATON, FLORIDA 33431

TELEPHONE (561) 994-0100

TELEFAX (561) 241-1493



BRUCE E. WINTER, JD, LL.M. (TAX), CPA  
(ALSO ADMITTED TO PENNSYLVANIA BAR)

MARK A. SCHAU, JD, CPA  
(BOARD CERTIFIED IN WILLS, TRUSTS & ESTATES LAW)

OF COUNSEL

LEONARD G. WEISBERG, JD, MBA, CPA  
(ALSO ADMITTED TO OHIO BAR)

PALM BEACH (561) 833-5805  
BROWARD (954) 462-1501

OFFICES IN:

NORTH PALM BEACH, FLORIDA  
BOYNTON BEACH, FLORIDA  
TAMARAC, FLORIDA

Florida Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, Florida 32314

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-12/14/98--01091--003

\*\*\*\*\*78.75 \*\*\*\*\*78.75

Re: MERGER

Dear Sir/Madam:

I am enclosing an **original** and **copy** of the Plan and Agreement of Reorganization by merger of William B. Marcus, Industries, Inc. (NY) with and into William B. Marcus Industries, Inc. (FL) under the name of William B. Marcus Industries, Inc.

Also enclosed is a check in the amount of \$78.75 for the filing fee and for a certified copy.

Sincerely,

Bruce E. Winter, Esq.  
BEW/jr

Enclosures

FILED  
98 DEC 14 AM 8:12  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

merger

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OFFICES IN:

NORTH PALM BEACH, FLORIDA  
BOYNTON BEACH, FLORIDA  
TAMARAC, FLORIDA

January 5, 1999

VIA FED EX

Florida Department of State  
Division of Corporations  
Attn: Thelma Lewis  
P.O. Box 6327  
Tallahassee, Florida 32314

Re: MERGER

Dear Ms. Lewis:

Per your letter dated December 29, 1998, and our telephone conversation, I am enclosing an **original** and **copy** of the Articles of Merger and Plan and Agreement of Reorganization by merger of William B. Marcus, Industries, Inc. (NY) with and into William B. Marcus Industries, Inc. (FL) under the name of William B. Marcus Industries, Inc.

**Per our conversation yesterday, please file the Merger as the date originally received by your office, which was December 14, 1998.**

Sincerely,

Bruce E. Winter, Esq.  
BEW/jr

Enclosures



FLORIDA DEPARTMENT OF STATE  
Sandra B. Mortham  
Secretary of State

December 29, 1998

BRUCE E. WINTER, ESQ.  
LAW OFFICES WINTER & SCHAUM, P.A.  
2300 CORPORATE BLVD., N.W., SUITE 137  
BOCA RATON, FL 33431

SUBJECT: WILLIAM B. MARCUS INDUSTRIES, INC.  
Ref. Number: P98000098745

We have received your document for WILLIAM B. MARCUS INDUSTRIES, INC. and check(s) totaling \$78.75. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

The original Articles of Merger must accompany the Plan of Merger. Setting forth the date of adoption by the Shareholders for each corporation. It must also be signed by an officer for each corporation.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6905.

Thelma Lewis  
Corporate Specialist Supervisor

Letter Number: 398A00060796

ARTICLES OF MERGER  
Merger Sheet

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MERGING:

WILLIAM B. MARCUS INDUSTRIES, INC.(NY), a New York corporation not  
authorized to transact business in Florida

INTO

WILLIAM B. MARCUS INDUSTRIES, INC., a Florida corporation,  
P98000098745

File date: December 14, 1998

Corporate Specialist: Thelma Lewis

**ARTICLES OF MERGER AND  
PLAN AND AGREEMENT OF REORGANIZATION**

by merger of

**WILLIAM B. MARCUS INDUSTRIES, INC. (NY)**

with and into

**WILLIAM B. MARCUS INDUSTRIES, INC. (FL)**

under the name of

**WILLIAM B. MARCUS INDUSTRIES, INC.**

98 DEC 14 AM 8:12  
FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

This is a Plan and Agreement of Merger (Agreement) between WILLIAM B. MARCUS INDUSTRIES, INC. (NY), a New York corporation (the Merging Corporation), and WILLIAM B. MARCUS INDUSTRIES, INC. (FL), a Florida corporation (the Surviving Corporation).

**ARTICLE 1. PLAN OF MERGER**

Plan Adopted

1.01. A plan of merger of WILLIAM B. MARCUS INDUSTRIES, INC. (NY) and WILLIAM B. MARCUS INDUSTRIES, INC. (FL), pursuant to Section 607.1101 of the Florida Statutes is adopted as follows:

(a) WILLIAM B. MARCUS INDUSTRIES, INC. (NY) shall be merged with and into WILLIAM B. MARCUS INDUSTRIES, INC. (FL), to exist and be governed by the laws of the State of Florida.

(b) The name of the Surviving Corporation shall be WILLIAM B. MARCUS INDUSTRIES, INC.

(c) When this agreement shall become effective, the separate corporate existence of WILLIAM B. MARCUS INDUSTRIES, INC. (NY) shall cease, and the Surviving



Corporation shall succeed, without other transfer, to all the rights and property of WILLIAM B. MARCUS INDUSTRIES, INC. (NY) and shall be subject to all the debts and liabilities of the Merging Corporation in the same manner as if the Surviving Corporation had itself incurred them. All rights of creditors and all liens on the property of each constituent corporation shall be preserved unimpaired, limited in lien to the property affected by the liens immediately prior to the merger.

(d) The Surviving Corporation will carry on business with the assets of WILLIAM B. MARCUS INDUSTRIES, INC. (NY), as well as with the assets of WILLIAM B. MARCUS INDUSTRIES, INC. (FL)

(e) The shareholders of WILLIAM B. MARCUS INDUSTRIES, INC. (NY) will surrender all of their shares in the manner hereinafter set forth.

(f) In exchange for the shares of WILLIAM B. MARCUS INDUSTRIES, INC. (NY) surrendered by its shareholders, the Surviving Corporation will issue and transfer to these shareholders, on the basis set forth in Article 4 below, shares of its Common Stock.

(g) The shareholders of WILLIAM B. MARCUS INDUSTRIES, INC. (FL) will retain their shares as shares of the Surviving Corporation.

(h) The Articles of Incorporation of WILLIAM B. MARCUS INDUSTRIES, INC. (FL), as existing on the effective date of the merger, shall continue in full force as the Articles of Incorporation of the Surviving Corporation until altered, amended, or repealed as provided in the Articles or as provided by law, except ARTICLE I - NAME shall be amended to read "The name of the corporation shall be WILLIAM B. MARCUS INDUSTRIES, INC."

#### Effective Date

1.02. The date of adoption of the Articles of Merger and Plan and Agreement of Reorganization by the Shareholders of each corporation was December 8, 1998



## ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF CONSTITUENT CORPORATIONS

### Nonsurvivor

2.01. As a material inducement to the Surviving Corporation to execute this Agreement and perform its obligations under this Agreement, WILLIAM B. MARCUS INDUSTRIES, INC. (NY) represents and warrants to the Surviving Corporation as follows:

(a) WILLIAM B. MARCUS INDUSTRIES, INC. (NY) is a corporation duly organized, validly existing, and in good standing under the laws of the State of New York, with corporate power and authority to own property and carry on its business as it is now being conducted.

(b) WILLIAM B. MARCUS INDUSTRIES, INC. (NY) has an authorized capitalization of \_\_\_\_\_ ( ) shares of common stock, each of \_\_\_\_\_ par value, of which \_\_\_\_\_ ( ) shares are validly issued and outstanding, fully paid, and non assessable on the date of this Agreement.

(c) All required federal, state, and local tax returns of WILLIAM B. MARCUS INDUSTRIES, INC. (NY) have been accurately prepared and duly and timely filed, and all federal, state, and local taxes required to be paid with respect to the periods covered by the returns have been paid. WILLIAM B. MARCUS INDUSTRIES, INC. (NY) has not been delinquent in the payment of any tax or assessment.

### Survivor

2.02. As a material inducement to WILLIAM B. MARCUS INDUSTRIES, INC. (NY) to execute this Agreement and perform its obligations under this Agreement, WILLIAM B. MARCUS INDUSTRIES, INC. (FL) represents and warrants to WILLIAM B. MARCUS INDUSTRIES, INC. (NY) as follows:

(a) WILLIAM B. MARCUS INDUSTRIES, INC. (FL) is a corporation duly organized, validly existing, and in good standing under the laws of the State of Florida, with corporate power and authority to own property and carry on its business as it is now being



conducted.

(b) WILLIAM B. MARCUS INDUSTRIES, INC. (FL) has an authorized capitalization of One Thousand (1,000) shares of common stock, of \$1.00 par value.

#### Securities Law

2.03. The parties will mutually arrange for and manage all necessary procedures under the requirements of federal and Florida securities laws and the related supervisory commissions to the end that this plan is properly processed to comply with registration formalities, or to take full advantage of any appropriate exemptions from registration, and to otherwise be in accord with all antifraud restrictions in this area.

### ARTICLE 3. COVENANTS, ACTIONS, AND OBLIGATIONS PRIOR TO THE EFFECTIVE DATE

#### Interim Conduct of Business; Limitations

3.01. Except as limited by this Paragraph 3.01, pending consummation of the merger, each of the constituent corporations will carry on its business in substantially the same manner as before and will use its best efforts to maintain its business organization intact, to retain its present employees, and to maintain its relationships with suppliers and other business contacts.

#### Submission to Shareholders

3.02. This Agreement shall be submitted separately to the shareholders of the constituent corporations in the manner provided by the laws of the State Florida for approval.

The date of adoption of the Articles of Merger and Plan and Agreement of Reorganization of the Merger by the Shareholders of each corporation was December 8, 1998.





## **ARTICLE 4. MANNER OF CONVERTING SHARES**

### **Manner**

4.01. The holders of shares of WILLIAM B. MARCUS INDUSTRIES, INC. (NY) shall surrender their shares to the Secretary of the Surviving Corporation promptly after the Effective Date, in exchange for shares of the Surviving Corporation to which they are entitled under this Article 4.

### **Basis**

4.02. The shareholders of WILLIAM B. MARCUS INDUSTRIES, INC. (NY) shall be entitled to receive One (1) share of the surviving corporation, for each share of common stock of WILLIAM B. MARCUS INDUSTRIES, INC. (NY)

### **Shares of Survivor**

4.03. The currently outstanding One Hundred (100) shares of common stock of WILLIAM B. MARCUS INDUSTRIES, INC. (FL), each of \$1.00 par value, shall remain outstanding as common stock, each of \$1.00 par value, of the Surviving Corporation.

## **ARTICLE 5. DIRECTORS AND OFFICERS**

### **Directors and Officers of Survivor**

5.01. (a) The present Board of Directors of WILLIAM B. MARCUS INDUSTRIES, INC. (FL) shall continue to serve as the Board of Directors of the Surviving Corporation until the next annual meeting or until their successors have been elected and qualified.

(b) If a vacancy shall exist on the Board of Directors of the Surviving Corporation on the Effective Date of the merger, the vacancy may be filled by the shareholders as provided in the bylaws of the Surviving Corporation.



(c) All persons who as of the Effective Date of the merger shall be executive or administrative officers of WILLIAM B. MARCUS INDUSTRIES, INC. (FL) shall remain as officers of the Surviving Corporation until the Board of Directors of the Surviving Corporation shall determine otherwise. The Board of Directors of the Surviving Corporation may elect or appoint additional officers as it deems necessary.

## **ARTICLE 6. BYLAWS**

### **Bylaws of Survivor**

6.01. The bylaws of WILLIAM B. MARCUS INDUSTRIES, INC. (FL), as existing on the Effective Date of the merger, shall continue in full force as the bylaws of the Surviving Corporation until altered, amended, or repealed as provided in the bylaws or as provided by law.

## **ARTICLE 7. NATURE AND SURVIVAL OF WARRANTS, INDEMNIFICATION, AND EXPENSES OF NON SURVIVOR**

### **Nature and Survival of Representations and Warranties**

7.01. All statements contained in any memorandum, certificate, letter, document, or other instrument delivered by or on behalf of WILLIAM B. MARCUS INDUSTRIES, INC. (NY), WILLIAM B. MARCUS INDUSTRIES, INC. (FL), or the stockholders pursuant to this Agreement shall be deemed representations and warranties made by the respective parties to each other under this Agreement. The covenants, representations, and warranties of the parties and the stockholders shall survive for a period of three years after the Effective Date. No inspection, examination, or audit made on behalf of the parties or the stockholders shall act as a waiver of any representation or warranty made under this Agreement.



## ARTICLE 8. TERMINATION

### Circumstances

8.01. This Agreement may be terminated and the merger may be abandoned at any time prior to the filing of the Articles of Merger with the Secretary of State, notwithstanding the approval of the shareholders of either of the constituent corporations:

(a) By mutual consent of the Board of Directors of the constituent corporations.

(b) At the election of the Board of Directors of either constituent corporation if:

(1) Any material litigation or proceeding shall be instituted or threatened against either constituent corporation, or any of its assets, that, in the opinion of either Board of Directors, renders the merger inadvisable or undesirable.

(2) Any legislation shall be enacted that, in the opinion of either Board of Directors, renders the merger inadvisable or undesirable.

(3) Between the date of this Agreement and the Effective Date, there shall have been, in the opinion of either Board of Directors, any materially adverse change in the business or condition, financial or otherwise, of either constituent corporation. The election of the Board of Directors of WILLIAM B. MARCUS INDUSTRIES, INC. (FL) if the Commissioner of Internal Revenue shall not have ruled, in substance, that for federal income tax purposes the merger will qualify as a reorganization under Section 368(a)(1)(A) of the Internal Revenue Code and that no gain or loss will be recognized to the shareholders of WILLIAM B. MARCUS INDUSTRIES, INC. (NY) on the exchange of their common stock for stock of the Surviving Corporation.



## Notice of and Liability on Termination

8.02. If an election is made to terminate this Agreement and abandon the merger:

(a) The President or any Vice President of the constituent corporation whose Board of Directors has made the election shall give immediate written notice of the election to the other constituent corporation.

(b) On the giving of notice as provided in Subparagraph (a), this Agreement shall terminate and the proposed merger shall be abandoned, and except for payment of its own costs and expenses incident to this Agreement, there shall be no liability on the part of either constituent corporation as a result of the termination and abandonment.

## ARTICLE 9. INTERPRETATION AND ENFORCEMENT

### Further Assurances

9.01. WILLIAM B. MARCUS INDUSTRIES, INC. (NY) agrees that from time to time, as and when requested by the Surviving Corporation or by its successors or assigns, it will execute and deliver or cause to be executed and delivered all deeds and other instruments. WILLIAM B. MARCUS INDUSTRIES, INC. (NY) further agrees to take or cause to be taken any further or other actions as the Surviving Corporation may deem necessary or desirable to vest in, to perfect in, or to conform of record or otherwise to the Surviving Corporation title to and possession of all the property, rights, privileges, powers, and franchises referred to in Article 1 of this Agreement, and otherwise to carry out the intent and purposes of this Agreement.

### Notices

9.02. Any notice or other communication required or permitted under this Agreement shall be properly given when deposited with the United States Postal Service for transmittal by certified or registered mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed as follows:



(a) In the case of WILLIAM B. MARCUS INDUSTRIES, INC. (NY),  
to:

Mr. William B. Marcus  
7233 Promenade Drive, Apt., A-601,  
Boca Raton, FL 33433

or to such other person or address as WILLIAM B. MARCUS INDUSTRIES, INC. (NY) may  
from time to time request in writing.

(b) In the case of WILLIAM B. MARCUS INDUSTRIES, INC. (FL),  
to:

Mr. William B. Marcus  
7233 Promenade Drive, Apt., A-601,  
Boca Raton, FL 33433

or to such other person or address as WILLIAM B. MARCUS INDUSTRIES, INC. (FL) may  
from time to time request in writing.

#### Entire Agreement Counterparts

9.03. This Agreement and the exhibits to this Agreement contain the entire  
agreement between the parties with respect to the contemplated transaction. This Agreement may  
be executed in any number of counterparts, all of which taken together shall be deemed one  
original.

#### Controlling Law

9.04. The validity, interpretation, and performance of this Agreement shall be  
governed by, construed, and enforced in accordance with the laws of the State of Florida.



IN WITNESS WHEREOF, this Agreement was executed on 8<sup>th</sup> day of December 1998.

WILLIAM B. MARCUS INDUSTRIES, INC. (NY)

By W.B. Marcus

ATTEST:

W.B. Marcus (SEAL)

Secretary

W.B. Marcus  
WILLIAM B. MARCUS INDUSTRIES, INC. (FL)

By W.B. Marcus

ATTEST:

W.B. Marcus (SEAL)

Secretary

THIS INSTRUMENT WAS PREPARED BY:

BRUCE E. WINTER, ESQ.  
2300 Corporate Boulevard - Suite 137  
Boca Raton, FL 33431

