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P99000069406

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Requestor's Name  
660 East Jefferson Street

Address  
Tallahassee, FL 32301 (850) 222-1092

City State Zip Phone

CORPORATION(S) NAME

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\*\*\*\*\*70.00 \*\*\*\*\*70.00

Kimmons Corp.

merging into:

Kimmins Reincorporation, Inc.

FILED  
99 OCT 14 PM 4:16  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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| <input type="checkbox"/> Profit                    | <input type="checkbox"/> Amendment              | <input checked="" type="checkbox"/> Merger |
| <input type="checkbox"/> NonProfit                 |   |  |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Dissolution/Withdrawal | <input type="checkbox"/> Mark              |
| <input type="checkbox"/> Foreign                   |   |  |
| <input type="checkbox"/> Limited Partnership       | <input type="checkbox"/> Annual Report          | <input type="checkbox"/> Other             |
| <input type="checkbox"/> Reinstatement             | <input type="checkbox"/> Reservation            | <input type="checkbox"/> Change of R.A.    |
|  |   | <input type="checkbox"/> Petitioner's Name |
| <input type="checkbox"/> Certified Copy            | <input type="checkbox"/> Photo Copies           | <input type="checkbox"/> CUS               |
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10/14  
Merger

T. LEWIS OCT 15 1999

File 15/

ARTICLES OF MERGER  
Merger Sheet

MERGING: -----

KIMMINS CORP., a Delaware corporation, P17472.

INTO

**KIMMINS REINCORPORATION, INC.**, a Florida entity, P99000069406.

File date: October 14, 1999

Corporate Specialist: Thelma Lewis

**ARTICLES OF MERGER**  
**(Profit Corporations)**

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, F.S.

**First:** The name and jurisdiction of the surviving corporation is:

Name Jurisdiction

Kimmins Reincorporation, Inc Florida

**Second:** The name and jurisdiction of each merging corporation is:

Name Jurisdiction

Kimmins Corp Delaware

**Third:** The Plan of Merger is attached.

**Fourth:** The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State

**OR** \_\_\_\_/\_\_\_\_/\_\_\_\_ (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days in the future.)

**Fifth:** Adoption of Merger by surviving corporation - **(COMPLETE ONLY ONE STATEMENT)**

The Plan of Merger was adopted by the shareholders of the surviving corporation on September 9, 1999.

The Plan of Merger was adopted by the board of directors of the surviving corporation on \_\_\_\_\_ and shareholder approval was not required.



**Sixth:** Adoption of Merger by merging corporation(s) **(COMPLETE ONLY ONE STATEMENT).**

The Plan of Merger was adopted by the shareholders of the merging corporation(s) on September 9, 1999.

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on \_\_\_\_\_ and shareholder approval was not required.

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**Seventh: SIGNATURES FOR EACH CORPORATION**

<u>Name of Corporation</u>	<u>Signature</u>	<u>Typed or Printed Name of Individual &amp; Title</u>
Kimmins Reincorporation, Inc.		Joseph M. Williams, Secretary and Treasurer
Kimmins Corp.		Joseph M. Williams, Secretary and Treasurer

## **PLAN AND AGREEMENT OF MERGER**

THIS PLAN AND AGREEMENT OF MERGER, dated August 4, 1999 (the "Agreement"), is entered into between KIMMINS REINCORPORATION, INC., a Florida corporation ("FLORIDA"), and KIMMINS, CORP., a Delaware corporation ("Kimmins").

### **RECITALS**

A. Kimmins has an aggregate authorized capital of 43.5 million shares, consisting of 32.5 million shares of Common Stock, par value \$0.001 per share (the "Kimmins Common Stock"), 10.1 million shares of Class B Common Stock, par value \$0.001 per share (the "Kimmins Class B Common Stock"), and 1.0 million shares of preferred stock, par value \$0.001 per share (the "Kimmins Preferred Stock"). As of August 4, 1999, there were 4,288,956 shares of Kimmins Common Stock, 2,291,569 shares of Kimmins Class B Common Stock and no shares of Kimmins Preferred Stock issued and outstanding.

B. FLORIDA has an aggregate authorized capital stock of 43.5 million shares, consisting of 32.5 million shares of Class A Stock, par value \$0.001 per share (the "FLORIDA Class A Stock"), 10.0 million shares of Class B Common Stock, par value \$0.001 per share (the "FLORIDA Class B Common Stock") and 1.0 million shares of preferred stock, par value \$0.001 per share (the "FLORIDA Preferred Stock"). As of August 4, 1999, there were 100 shares of FLORIDA Class A Stock and no shares of Class B Common Stock or FLORIDA Preferred Stock issued and outstanding.

C. The respective Boards of Directors of FLORIDA and Kimmins believe that the best interests of FLORIDA and Kimmins and their respective stockholders will be served by the merger of Kimmins with FLORIDA under and pursuant to the provisions of this Agreement and the Delaware General Corporation Law and the Florida General Corporation Act.

### **AGREEMENT**

In consideration of the Recitals and of the mutual agreements contained in this Agreement, the parties hereto agree as set forth below.

1. **MERGER.** Kimmins shall be merged with and into FLORIDA (the "Merger").
2. **EFFECTIVE DATE.** The Merger shall become effective immediately upon the later of the filing of this Agreement or a certificate of merger with the Secretary of State of Delaware in accordance with the Delaware General Corporation Law and the filing of articles of merger with the Secretary of State of Florida in accordance with the Florida General Corporation Act. The time of such effectiveness is hereinafter called the "Effective Date."
3. **SURVIVING CORPORATION.** FLORIDA shall be the surviving corporation of the Merger and shall continue to be governed by the laws of the State of Florida. On the Effective Date, the separate corporate existence of Kimmins shall cease.
4. **NAME OF SURVIVING CORPORATION.** On the Effective Date, the Articles of Incorporation of FLORIDA shall be amended to change the name of FLORIDA to "Kimmins Corp."
5. **ARTICLES OF INCORPORATION.** Except as provided in Section 4, the Articles of Incorporation of FLORIDA as it exists on the Effective Date shall be the Articles of Incorporation of

FLORIDA following the Effective Date, unless and until the same shall thereafter be amended or repealed in accordance with the laws of the State of Florida.

6. **BYLAWS.** The Bylaws of FLORIDA as they exist on the Effective Date shall be the Bylaws of FLORIDA following the Effective Date, unless and until the same shall be amended or repealed in accordance with the provisions thereof and the laws of the State of Florida.

7. **BOARD OF DIRECTORS AND OFFICERS.** The members of the Board of Directors and the officers of Kimmins immediately prior to the Effective Date shall be the members of the Board of Directors and the officers, respectively, of FLORIDA following the Effective Date, and such persons shall serve in such offices for the terms provided by law or in the Bylaws, or until their respective successors are elected and qualified.

8. **RETIREMENT OF OUTSTANDING FLORIDA STOCK.** Forthwith upon the Effective Date, each of the 100 shares of the FLORIDA Class A Stock presently issued and outstanding shall be retired, and no shares of FLORIDA Class A stock or other securities of FLORIDA shall be issued in respect thereof.

9. **CONVERSION OF OUTSTANDING KIMMINS STOCK.**

(a) Forthwith upon the Effective Date, each issued and outstanding share of Kimmins Common Stock and all rights in respect thereof shall be converted into one fully-paid and nonassessable share of FLORIDA Class A Stock, and each certificate representing shares of Kimmins Common Stock shall for all purposes be deemed to evidence the ownership of the same number of shares of FLORIDA Class A Stock as are set forth in such certificate. After the Effective Date, each holder of an outstanding certificate representing shares of Kimmins Common Stock may, at such shareholder's option, surrender the same to FLORIDA's registrar and transfer agent for cancellation, and each such holder shall be entitled to receive in exchange therefor a certificate(s) evidencing the ownership of the same number of shares of FLORIDA Class A Stock as are represented by the Kimmins certificate(s) surrendered to FLORIDA's registrar and transfer agent.

(b) Forthwith upon the Effective Date, each issued and outstanding share of Kimmins Class B Common Stock and all rights in respect thereof shall be converted into one fully-paid and nonassessable share of FLORIDA Class B Common Stock, and each certificate representing shares of Kimmins Class B Common Stock shall for all purposes be deemed to evidence the ownership of the same number of shares of FLORIDA Class B Common Stock as are set forth in such certificate. After the Effective Date, each holder of an outstanding certificate representing shares of Kimmins Class B Common Stock may, at such shareholder's option, surrender the same to FLORIDA's registrar and transfer agent for cancellation, and each such holder shall be entitled to receive in exchange therefor a certificate(s) evidencing the ownership of the same number of shares of FLORIDA Class B Common Stock as are represented by the Kimmins certificate(s) surrendered to FLORIDA's registrar and transfer agent.

10. **STOCK OPTIONS, WARRANTS AND CONVERTIBLE DEBT.** Forthwith upon the Effective Date, each stock option, stock warrant, convertible debt instrument and other right to subscribe for or purchase shares of Kimmins Common Stock shall be converted into a stock option, stock warrant, convertible debt instrument or other right to subscribe for or purchase the same number of shares of FLORIDA Class A Stock, and each certificate, agreement, note or other document representing such stock option, stock warrant, convertible debt instrument or other right to subscribe for or purchase shares of Kimmins Common Stock shall for all purposes be deemed to evidence the ownership of a stock option, stock warrant, convertible debt instrument or other right to subscribe for or purchase shares of FLORIDA Class A Stock.

11. **RIGHTS AND LIABILITIES OF FLORIDA.** At and after the Effective Date, and all in the manner of and as more fully set forth in Section 607.1106 of the Florida General Corporation Act and Section 259 of the Delaware General Corporation Law, the title to all real estate and other property, or any interest therein, owned by each of Kimmins and FLORIDA shall be vested in FLORIDA without reversion or impairment; FLORIDA shall succeed to and possess, without further act or deed, all estates, rights, privileges, powers, and franchises, both public and private, and all of the property, real, personal and mixed, of each of Kimmins and FLORIDA without reversion or impairment; FLORIDA shall thenceforth be responsible and liable for all the liabilities and obligations of each of Kimmins and FLORIDA; any claim existing or action or proceeding pending by or against Kimmins or FLORIDA may be continued as if the Merger did not occur or FLORIDA may be substituted for Kimmins in the proceeding; neither the rights of creditors nor any liens upon the property of Kimmins or FLORIDA shall be impaired by the Merger; and FLORIDA shall indemnify and hold harmless the officers and directors of each of the parties hereto against all such debts, liabilities and duties and against all claims and demands arising out of the Merger.

12. **TERMINATION.** This Agreement may be terminated and abandoned by action of the respective Boards of Directors of Kimmins and FLORIDA at any time prior to the Effective Date, whether before or after approval by the stockholders of either or both of the parties hereto.

13. **AMENDMENT.** The Boards of Directors of the parties hereto may amend this Agreement at any time prior to the Effective Date; provided that an amendment made subsequent to the approval of this Agreement by the stockholders of either of the parties hereto shall not: (a) change the amount or kind of shares, securities, cash, property or rights to be received in exchange for or on conversion of all or any of the shares of the parties hereto, (b) change any term of the Articles of Incorporation of FLORIDA, or (c) change any other terms or conditions of this Agreement if such change would adversely affect the holders of any capital stock of either party hereto.

14. **REGISTERED OFFICE.** The registered office of FLORIDA in the State of Florida is located at 1501 Second Avenue East, Tampa, Florida 33607, and Joseph R. Williams is the registered agent of FLORIDA at such address.

15. **INSPECTION OF AGREEMENT.** Executed copies of this Agreement will be on file at the principal place of business of FLORIDA at 1501 Second Avenue, Tampa, Florida 33607. A copy of this Agreement shall be furnished by FLORIDA, on request and without cost, to any stockholder of either Kimmins or FLORIDA.

16. **GOVERNING LAW.** This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Florida.

17. **SERVICE OF PROCESS.** On and after the Effective Date, FLORIDA agrees that it may be served with process in Delaware in any proceeding for enforcement of any obligation of Kimmins or FLORIDA arising from the Merger.

18. **DESIGNATION OF DELAWARE SECRETARY OF STATE AS AGENT FOR SERVICE OF PROCESS.** On and after the Effective Date, FLORIDA irrevocably appoints the Secretary of State of Delaware as its agent to accept service of process in any suit or other proceeding to enforce the rights of any stockholders of Kimmins or FLORIDA arising from the Merger. The Delaware Secretary of State is requested to mail a copy of any such process to FLORIDA at 1501 Second Avenue, Tampa, Florida 33607, Attention: Legal Department.

IN WITNESS WHEREOF, each of the parties hereto, pursuant to authority duly granted by their respective Board of Directors, has caused this Plan and Agreement of Merger to be executed, respectively, by its President and attested by its Secretary.

ATTEST

  
Secretary

KIMMINS REINCORPORATION, INC.,  
a Florida corporation

By: 

ATTEST:

  
Secretary

KIMMINS CORP.,  
a Delaware corporation

By: 