

STEEL HECTOR & DAVIS LLP

Requestor's Name

215 SOUTH MONROE STREET / SUITE 501

Address

TALLAHASSEE

222-2300

City/State/Zip

Phone #

S72897

Office Use Only

CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

- 1. ESI MONTGOMERY COUNTY, INC. S72897  
(Corporation Name) (Document #)
- 2. \_\_\_\_\_  
(Corporation Name) (Document #)
- 3. \_\_\_\_\_  
(Corporation Name) (Document #)
- 4. \_\_\_\_\_  
(Corporation Name) (Document #)

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DIVISION OF CORPORATIONS  
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- Walk in AUG 3 DATE  Pick up time 2:00  Certified Copy
- Mail out  Will wait  Photocopy  Certificate of Status

NEW FILINGS	
<input type="checkbox"/>	Profit
<input type="checkbox"/>	NonProfit
<input type="checkbox"/>	Limited Liability
<input type="checkbox"/>	Domestication
<input type="checkbox"/>	Other

AMENDMENTS	
<input type="checkbox"/>	Amendment <u>CF -52.50</u>
<input type="checkbox"/>	Resignation of R.A., Officer/ Director
<input type="checkbox"/>	Change of Registered Agent
<input type="checkbox"/>	Dissolution/Withdrawal
<input checked="" type="checkbox"/>	Merger

900002948829--4  
-08/03/99--01038--013  
\*\*\*\*\*43.75 \*\*\*\*\*43.75

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-08/06/99--01034--011  
\*\*\*\*\*52.50 \*\*\*\*\*52.50

OTHER FILINGS	
<input type="checkbox"/>	Annual Report
<input type="checkbox"/>	Fictitious Name
<input type="checkbox"/>	Name Reservation

REGISTRATION QUALIFICATION	
<input type="checkbox"/>	Foreign
<input type="checkbox"/>	Limited Partnership
<input type="checkbox"/>	Reinstatement
<input type="checkbox"/>	Trademark
<input type="checkbox"/>	Other

9) wcl

PLEASE CONTACT ELIZABETH  
REGARDING ANY QUESTIONS  
222-2300. THANK YOU

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8/3/99

Examiner's Initials

ARTICLES OF MERGER  
Merger Sheet

MERGING:

ESI MONTGOMERY COUNTY, INC., a Florida corporation, (S72897)

INTO

ESI MONTGOMERY COUNTY, LLC. entity not qualified in Florida

File date: August 3, 1999

Corporate Specialist: Buck Kohr

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FLORIDA DEPARTMENT OF STATE  
Katherine Harris  
Secretary of State

August 4, 1999

STEEL HECTOR & DAVIS LLP

SUBJECT: ESI MONTGOMERY COUNTY, INC.  
Ref. Number: S72897

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We have received your document for ESI MONTGOMERY COUNTY, INC. and your check(s) totaling \$43.75. However, the enclosed document has not been filed and is being returned for the following correction(s):

The fees to file the articles of merger are as follows:  
For each Limited Partnership: \$52.50  
For each Limited Liability Company: 52.50  
For each Corporation: 35.00  
For each General Partnership: 25.00  
All Others: No Charge

The plan of merger must contain the terms and conditions of the merger.

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) 487-6043.

Shawn Logan  
Document Specialist

Letter Number: 099A00039423

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**ARTICLES OF MERGER**

**OF**

**ESI MONTGOMERY COUNTY, INC.**  
**(a Florida corporation)**

**AND**

**ESI MONTGOMERY COUNTY, LLC**  
**(a Delaware limited liability company)**

Pursuant to the provisions of Section 607.1109 of the Florida Business Corporation Act (the "FBCA"), these Articles of Merger provide that:

- 572897
1. ESI Montgomery County, Inc., a Florida corporation ("ESI MC Inc."), shall be merged with and into ESI Montgomery County, LLC, a Delaware limited liability company ("ESI MC LLC"), which shall be the surviving entity.
  2. The merger shall become effective as of the date and time on which these Articles of Merger are filed with the Secretary of State of Florida.
  3. Pursuant to Section 607.1108 of the FBCA, the Plan of Merger dated as of July 30, 1999 (the "Plan of Merger"), pursuant to which ESI MC Inc. shall be merged with and into ESI MC LLC, was approved by the Board of Directors and Shareholder of ESI MC Inc. by joint unanimous written consent dated as of July 30, 1999. The Plan of Merger is attached to these Articles of Merger as Attachment A.
  4. Pursuant to Section 18-209 of the Delaware Limited Liability Company Act, the Plan of Merger was approved by ESI LP, Inc., the sole member of ESI MC LLC, by written consent dated July 30, 1999.
  5. The address of the principal place of business of ESI MC LLC, the surviving entity, is: 700 Universe Boulevard, Juno Beach, Florida 33408.
  6. ESI MC LLC has agreed to appoint the Secretary of State of the State of Florida as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of ESI MC Inc.
  7. ESI MC LLC has agreed to promptly pay to the dissenting shareholders of ESI MC the amount, if any, to which the shareholders are entitled under Section 607.1302 of the FBCA.

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IN WITNESS WHEREOF, these Articles of Merger have been executed on behalf of ESI  
MC Inc. and ESI MC LLC by their authorized representatives as of July 30, 1999.

ESI MONTGOMERY COUNTY, INC.

By: Kenneth P. Hoffman  
Name: Kenneth P. Hoffman  
Title: Vice President

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ESI MONTGOMERY COUNTY, LLC

By: Kenneth P. Hoffman  
Name: Kenneth P. Hoffman  
Title: Vice President

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement") is dated as of July 30, 1999 between ESI Montgomery County, Inc., a Florida corporation ("ESI MC") and ESI Montgomery County, LLC, a Delaware limited liability company ("ESI LLC").

### RECITALS:

WHEREAS, ESI MC is a corporation organized and existing under the laws of the State of Florida, having been incorporated on August 12, 1991;

WHEREAS, ESI LLC is a single member limited liability company formed by ESI LP, Inc. (the "Member") and organized under the laws of the State of Delaware;

WHEREAS, the Board of Directors of ESI MC and the Member of ESI LLC hereto deem it desirable, upon the terms and subject to the conditions herein stated, that ESI MC be merged with and into ESI LLC and that ESI LLC be the surviving entity.

NOW, THEREFORE, in consideration of the premises and of the mutual provisions, agreement and covenants herein contained, the parties agree as follows:

### ARTICLE I PLAN

**Section 1.1 The Merger.** At the Effective Time (as hereinafter defined) of the merger, ESI MC shall be merged (the "Merger") with and into ESI LLC, with ESI LLC as the surviving entity. The identity, existence, purposes, powers, franchises, rights and immunities of ESI LLC shall continue unaffected and unimpaired by the Merger. The corporate identity, existence, purposes, powers, franchises, rights and immunities of ESI MC shall be merged with and into ESI LLC and ESI LLC shall be fully vested therewith. The separate existence of ESI MC, except insofar as otherwise specifically provided by law, shall cease at the Effective Time of the Merger whereupon ESI LLC and ESI MC shall be and become one single entity.

**Section 1.2 Capital Stock.** At the Effective Time and by virtue of the Merger and without any action on the part of the holders thereof:

(a) Each then outstanding share of ESI MC shall be surrendered to ESI LLC and all outstanding shares of stock shall be canceled;

(b) The sole shareholder of ESI MC, ESI Energy, Inc., shall cease to have any rights with respect to the ESI MC shares;

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(c) In consideration for the merger, the Member shall issue 1000 shares of additional stock payable to ESI Energy, Inc. prior to the Effective Time; and

(d) the Member's interests in ESI LLC shall not be affected by the Merger.

All of the actions in Sections 1.1 and 1.2 hereof shall, collectively, constitute the Plan.

**Section 1.3 The Effective Time.** This Agreement shall be approved by the Member of ESI LLC and the Shareholders and Board of Directors of ESI MC, as provided by the applicable laws of the State of Delaware and the State of Florida. If this Agreement is duly adopted by the Member of ESI LLC and the Shareholders and Board of Directors of ESI MC, articles of merger, executed in accordance with the law of the State of Florida and a certificate of merger, executed in accordance with the law of the State of Delaware, shall be filed with the Secretary of State of the State of Florida and the Secretary of State of the State of Delaware, respectively. The Merger shall become effective on the time and date specified in the certificate of merger filed with the Secretary of State of the State of Delaware, herein sometimes referred to as the "Effective Time."

**Section 1.4 Management of ESI LLC.** The management of ESI LLC, the surviving entity, shall be vested in the Member, whose address is 700 Universe Boulevard, Juno Beach, Florida 33408.

**Section 1.5 Tax Consequences.** The parties hereto intend that the Merger shall constitute a tax-free reorganization and thereby meet the requirements of Sections 368(a)(1)(C) and 368(a)(1)(D) of the Internal Revenue Code of 1986, as amended (the "Code").

## **ARTICLE II CONDITION AND TERMINATION**

The conditions specified in Article I of this Agreement shall constitute conditions precedent to the obligations of the parties hereto as therein provided. If by reason of the provisions of Article I of this Agreement, the parties are not obligated to consummate this Plan, then the party or parties not so obligated may terminate this Plan prior to the Effective Time of the Merger by delivering to the other party or parties written notice of such termination prior to the Effective Time of the Merger, and thereupon this Plan shall be terminated without further liability of any party in favor of the others except as otherwise provided in this Agreement.

## **ARTICLE III MISCELLANEOUS**

**Section 6.1 Service of Process.** ESI LLC hereby agrees to appoint the Secretary of State of the State of Florida as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of ESI MC.

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**Section 6.2 Payment to Dissenting Shareholders.** ESI LLC hereby agrees to pay the dissenting shareholders of ESI MC the amount, if any, to which the shareholders are entitled under Section 607.1302 of the Florida Business Corporation Act.

**Section 6.3 Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed to have been duly given or made as of the date delivered, mailed or transmitted, and shall be effective upon receipt, if delivered personally, on the third business day after deposit in the mail if mailed by registered or certified mail (postage prepaid, return receipt requested) or on the day of delivery by Federal Express or other nationally recognized courier to the parties at the following addresses (or at such other address for a party as shall be specified by like changes of address) or sent by electronic transmission to the telecopier number with written confirmation of transmission specified below:

If to ESI MC: 700 Universe Boulevard  
Juno Beach, FL 33408  
Attention: Business Manager  
Telecopier No: (561) 691-7309

If to ESI LLC: 700 Universe Boulevard  
Juno Beach, FL 33408  
Attention: Business Manager  
Telecopier No: (561) 691-7309

In each case with a copy to: Steel Hector & Davis LLP  
1900 Phillips Point West  
777 South Flagler Drive  
West Palm Beach, FL 33401  
Telecopier No.: (561) 832-9368  
Attention: Thomas R. Woolsey, P.A.

**Section 6.4 Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**Section 6.5 Severability.** If any term or other provision of this Agreement is finally adjudicated by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

STATE OF FLORIDA  
SECRETARY OF CORPORATIONS  
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**Section 6.6 Entire Agreement.** This Agreement is intended as a full integration of the parties' understandings, constitutes the entire agreement of the parties and supersedes all prior agreements and undertakings, both written and oral, between the parties, or any of them, with respect to the subject matter hereof.

**Section 6.7 Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each party and to that party's permitted successors, assigns, heirs and personal representatives, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 6.8 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law, the courts of which shall have exclusive jurisdiction over any disputes pertaining to this agreement.

**Section 6.9 Counterparts; Facsimile Signatures.** This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties hereby acknowledge and agree that facsimile signatures of this Agreement and any Exhibit hereto shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, ESI MC and ESI LLC have each caused this Agreement to be executed by its authorized officer as of the date first above written.

**ESI MONTGOMERY COUNTY, INC.**

By: Kenneth P. Hoffman  
Name: Kenneth P. Hoffman  
Title: Vice President

**ESI MONTGOMERY COUNTY, LLC**

By: Kenneth P. Hoffman  
Name: Kenneth P. Hoffman  
Title: Vice President