

52181

# State of Idaho

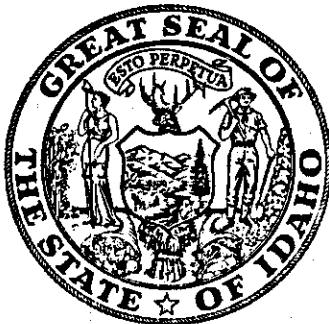
## Department of State

### CERTIFICATE OF MERGER OR CONSOLIDATION

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of merger of ENGINEERED STRUCTURES DEVELOPMENT CORPORATION, an Idaho corporation, File Number C 52181, into ECKHARDT COMPANY, INC., an Idaho corporation, File Number C 71691, duly executed pursuant to the provisions of the Idaho Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this certificate of merger, and attach hereto a duplicate original of the Articles of merger.

Dated: August 27, 1996



*Pete T. Cenarrusa*  
SECRETARY OF STATE

By *L. D. [Signature]*

ARTICLES OF MERGER

AUG 20 4 21 PM '96

OF

AUG 27 7 09 AM '96

SECRETARY OF STATE  
STATE OF IDAHO

ECKHARDT COMPANY, INC.

SECRETARY OF STATE  
STATE OF IDAHO

AUG 20 4 39 PM '96  
SECRETARY OF STATE  
STATE OF IDAHO

Pursuant to the provisions of Idaho Code § 30-1-74, the undersigned domestic corporations adopt the following articles of merger for the purpose of merging Engineered Structures Development Corporation, an Idaho corporation, into Eckhardt Company, Inc., an Idaho corporation.

ARTICLE I

PLAN

The Merger Plan and Agreement attached hereto as Exhibit "A" and incorporated herein was approved by the shareholders of the undersigned domestic corporations in the manner prescribed by the Idaho Business Corporation Act.

Eckhardt Company, Inc., an Idaho corporation, (hereinafter "ECI"), acquired 12,500 shares of Engineered Structures Development Corporation, representing 100% of the issued and outstanding stock of Engineered Structures Development Corporation, an Idaho corporation, (hereinafter "ESDC"), in exchange for a part of ECI's common voting stock.

The Directors, Officers, Bylaws and Articles of Incorporation of the surviving corporation shall remain unchanged and unaffected by this merger. The voting rights of those shares of ESDC acquired by ECI, shall have the same rights as those of ECI.

ARTICLE II

SURVIVING CORPORATION

The name of the surviving corporation is Eckhardt Company, Inc., an Idaho corporation. Engineered Structures Development Corporation, an Idaho corporation, shall cease to exist. As of the date of merger, the capital stock of ECI shall have a \$1.00 par value.

ARTICLE III

OUTSTANDING SHARES

The authorized capital stock of ECI is 500,000 shares of common stock, each having a \$1.00 par value, of which prior to this merger, 10,000 shares of such stock were issued and outstanding.

ARTICLES OF MERGER - 1

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DATE 08/21/1996 0900 19730

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MERGER

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The authorized capital stock of ESDC is 25,000 shares of common stock, each having a \$1.00 par value, of which prior to this merger, 12,500 shares of such stock were issued and outstanding.

#### ARTICLE IV

#### APPROVAL OF SHAREHOLDERS

This merger has been approved by one hundred percent (100%) of ECI's shareholders entitled to vote, representing all ECI's issued and outstanding shares of common stock at a special meeting held on June 30, 1996, and by the board of directors of ECI.

This merger has been approved by one hundred percent (100%) of ESDC's shareholders entitled to vote, representing all ESDC's issued and outstanding shares of common stock at a special meeting held on June 30, 1996, and by the board of directors of ESDC.

DATED this 30th day of June, 1996.

ECKHARDT COMPANY, INC.

an Idaho corporation

By:  
Its:

James Eckhardt  
President

ENGINEERED STRUCTURES  
DEVELOPMENT CORPORATION,  
an Idaho corporation

By:

James Eckhardt  
Its: President

ECKHARDT COMPANY, INC.,

an Idaho corporation

By:  
Its:

Pellie R. Eckhardt  
Secretary

ENGINEERED STRUCTURES  
DEVELOPMENT CORPORATION,  
an Idaho corporation

By:

Pellie R. Eckhardt  
Its: Secretary

STATE OF IDAHO,

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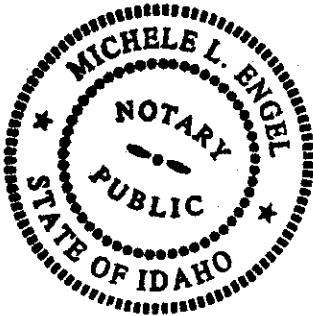
) ss.

County of Ada.

)

On this 30th day of June, 1996, before me, the undersigned, a Notary Public in and for said county and state, personally appeared James Eckhardt, who, being by me first duly sworn declared that he is the President of ECKHARDT COMPANY, INC., an Idaho corporation, and that he signed the foregoing document as President of the corporation, and that the statements contained therein are true.

WITNESS my hand and official seal.



M. Engel  
Notary Public for Idaho  
Residing at Boise, ID  
Commission expires apr 2003

STATE OF IDAHO,

)

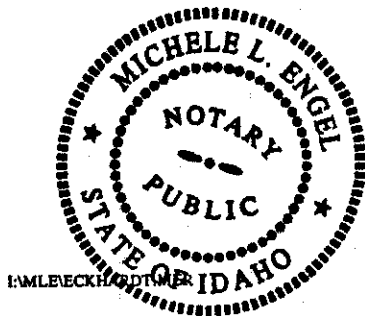
) ss.

County of Ada.

)

On this 30th day of June, 1996, before me, the undersigned, a Notary Public in and for said county and state, personally appeared James Eckhardt, who, being by me first duly sworn declared that he is the President of ENGINEERED STRUCTURES DEVELOPMENT CORPORATION, an Idaho corporation, and that he signed the foregoing document as President of the corporation, and that the statements contained therein are true.

WITNESS my hand and official seal.



M. Engel  
Notary Public for Idaho  
Residing at Boise, ID  
Commission expires 4/03

**PLAN AND AGREEMENT OF MERGER**

AUG 26 3 54 PM '96

THIS PLAN AND AGREEMENT OF MERGER ("Plan") is made effective as of the 1st day of July, 1996, by and between Engineered Structures Development Corporation, an Idaho corporation ("ESDC"), and Eckhardt Company, Inc., an Idaho corporation ("ECI");

The directors of ESDC and the directors of ECI believe that a merger of ESDC and ECI would be advantageous and beneficial to its respective shareholders of those companies;

The parties agree to effectuate such merger of ESDC into ECI in accordance with the applicable laws of the State of Idaho upon the terms and conditions set forth in this Plan.

**ARTICLE 1.**

**DEFINITIONS**

As used in this plan, the following terms shall have meanings respectively ascribed to them in this Article:

- a. "Constituent Corporation": Either ECI or ESDC as the context indicates.
- b. "ESDC Common Shares": The shares of common stock with a par value of \$1.00 of ESDC; of which 25,000 shares are presently authorized, 12,500 shares are presently outstanding and none are held as treasury shares;
- c. "ECI Common Shares": The shares of common stock with a par value of \$1.00 of ECI; of which 500,000 shares are presently authorized, 10,000 shares are presently outstanding and none are held as treasury shares;

## **ARTICLE 2.**

### **APPROVALS**

Within thirty (30) days from the date of this Plan, this Plan shall be submitted for approval and adoption, pursuant to and in accordance with the applicable provisions of the laws of the State of Idaho, to the holders of the ESDC Common Shares and ECI Common Shares at duly held shareholder meetings. This Plan shall be approved and adopted upon receiving an affirmative vote of the holders of a majority of the ESDC Common Shares outstanding on the record date established for determining the holders of the ESDC Common Shares entitled to vote at such ESDC shareholder's meeting and an affirmative vote of a majority of the ECI Common Shares outstanding on the record date established for determining the holders of the ECI Common Shares entitled to vote at such ECI shareholder's meeting. If this Plan shall be so approved and adopted, ECI and ESDC, subject to the provisions of Article 9, immediately shall proceed to effectuate the merger of ESDC and ECI. If this Plan shall not be so approved and adopted, it shall, without further action by the parties other than certification to the other Constituent Corporation of the results of the vote by the secretary of the Constituent Corporation, the shareholders of which shall not have approved and adopted this Plan, be canceled without liability from either party to the other.

## **ARTICLE 3.**

### **MERGER**

Upon approval and adoption of this Plan as provided in Article 2 and subject to the provisions of Article 9, Articles of Merger complying with the applicable provisions of the laws of the State of Idaho shall be duly executed by the appropriate officers of ESDC and ECI and

shall be filed with the Secretary of State of the State of Idaho. Immediately upon the completion of such filings, the merger of ESDC and ECI shall become effective.

#### ARTICLE 4.

##### EFFECTS OF MERGER

Upon the merger of ESDC and ECI, as provided in Article 3,

- a. The existence of ESDC shall cease;
- b. ECI shall continue as a corporation organized under the laws of the State of Idaho and shall be the surviving corporation, the authorized stock of which, as of the effective date of the merger, shall be 500,000 common shares with a par value of \$1.00;
- c. Authorized ESDC Common Shares shall automatically be converted into and become ECI Common Shares as provided in Article 6;
- d. All properties, real, personal and mixed, and all estates, rights, privileges, powers and franchises of the Constituent Corporation and all debts due on whatever account to either of them shall be transferred to and shall vest in ECI, as the surviving corporation without further act or deed;
- e. ECI, as the surviving corporation, shall be responsible for all the liabilities and obligations of each of the Constituent Corporations, but the liabilities of each of the Constituent Corporations or their shareholders, directors or officers shall not be effected nor shall the rights of their creditors or any persons dealing with the Constituent Corporations be impaired; and
- f. ECI, as the surviving corporation, shall be subject to suit in the State of Idaho for any prior obligations of either Constituent Corporation and any obligation thereafter incurred by ECI, as the surviving corporation.

## **ARTICLE 5.**

### **BASIS FOR CONVERSION OF SHARES**

The basis for the conversion of shares of the capital stock of the Constituent Corporations into shares of capital stock of ECI, the surviving corporation, shall be as follows:

- a. None of the shares of any class of capital stock of ECI issued as of the effective date of the merger shall be converted as a result of the merger, but all such shares shall remain unchanged;
- b. All unissued and treasury shares of ESDC Common Shares, if any, shall be canceled by reason of the merger;
- c. Each ESDC Common Share issued and outstanding on the effective date of the merger shall automatically be converted into and become one ECI Common Share.

## **ARTICLE 6.**

### **EXCHANGE OF CERTIFICATES**

- a. After the effective date of the merger, each holder of a certificate representing ESDC Common Shares shall surrender same to ECI, as the surviving corporation, or to such agent as ECI may designate, and receive, in exchange therefor, a certificate or certificates representing the number of whole ECI shares into which such ESDC Common Shares shall have been converted. ECI shall not issue any fraction of a ECI Common Share upon conversion of ESDC Common Shares or the surrender of a certificate of ESDC Common Shares.
- b. After the merger, each holder of a certificate representing ESDC Common Shares, except holders claiming dissenting shareholder's rights, shall, notwithstanding any failure to surrender such certificate for exchange pursuant to paragraph (a) of this Article, be entitled to the rights and privileges, with respect to that number of all ECI Common Shares into which such



ESDC Common Shares shall have been converted, to which holders of ECI Common Shares may be entitled; provided, however, that dividends or other distributions payable to holders of ECI Common Shares of record as of any date subsequent to the effective date of the merger shall be paid to holders of certificates representing ESDC Common Shares when, but not until, such certificates have been surrendered for exchange pursuant to paragraph (a) of this Article.

c. Upon the merger becoming effective, the holders of ESDC Common Shares shall cease to have any rights in respect to the stock, except such rights, if any, as they may have under applicable law.

#### **ARTICLE 7.**

##### **ARTICLES & BYLAWS OF ECI**

Upon the merger becoming effective,

a. The articles of ECI, as the surviving corporation, shall be the same as the present articles of ECI.

b. The bylaws of ECI, as the surviving corporation, shall be the same as the bylaws of ECI in effect immediately prior to the merger.

#### **ARTICLE 8.**

##### **DIRECTORS AND OFFICERS OF ECI**

The directors and officers of ECI, as the surviving corporation, upon the merger becoming effective, shall be the same as the directors and officers of ECI in office immediately prior to the merger and their respective terms in office shall not be changed by the merger.

## **ARTICLE 9.**

### **CONDITIONS**

Notwithstanding anything to the contrary or expressed or implied herein, this Plan may be abandoned and canceled at any time prior to the merger by the board of directors of either Constituent Corporation by resolution adopted and notice received by the other Constituent Corporation before the merger, as follows:

a. By the board of directors of either Constituent Corporation, if there shall occur prior to the merger a material adverse change in the business, properties, operations or financial conditions of the other Constituent Corporation, and its subsidiaries;

b. By the board of directors of either Constituent Corporation, if any litigation or proceeding, other than any litigation or proceeding of which written notice was given to the other Constituent Corporation prior to the date of this Plan, shall be pending or threatened which might materially or adversely affect the financial condition of the other Constituent Corporation and its subsidiaries or the continued operation of their properties or business.

c. By the board of directors of either Constituent Corporation, if prior to the merger (i) there shall be filed with any court or agency having jurisdiction a complaint or proceeding seeking to restrain or enjoin the merger contemplated hereby, or (ii) there shall have been presented to ECI or ESDC or any officer of either of them any process, demand or request which offers reasonable grounds to believe that a complaint or bill in equity may be forthcoming which, if successful, would restrain, enjoin or dissolve the merger, and if, in either case, such board of directors determines that abandonment and cancellation of this Plan is advisable and in the best interest of the Constituent Corporations and their shareholders.

In the event of any such abandonment or cancellation, this Plan shall be void without further action by the shareholders of either of the Constituent Corporations, and without liability on the part of anyone.

#### ARTICLE 10.

#### MISCELLANEOUS


a. Each Constituent Corporation shall give the other immediate notice of any claim, event or transaction which would materially and adversely effect the business, properties, operations or financial condition of the other Constituent Corporation.

b. This Plan shall be construed in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, the undersigned have signed their names on behalf of the respective Constituent Corporations on this 30th day of June, 1996.

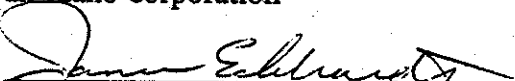
**ESDC:**

Engineered Structures Development  
Corporation, an Idaho corporation

By:   
Its: President

**ECI:**

Eckhardt Company, Inc.,  
an Idaho corporation

By:   
Its: President

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