

388179

DEPARTMENT OF STATE
ACCOUNT FILING COVER SHEET

Account Number FCA000000017

Reference:
(Sub Account)

Date:

10/29/99

Requestor Name: Carlton Fields

Address: Post Office Box 190
Tallahassee, Florida 32302

Telephone: (850) 224-1585

500003029415--6

Contact Name: Joan Perrenot (x243)

Corporation Name:

PAI II, INC.

WITH AND INTO

VITALITY FOODSERVICE, INC.

Entity Number (if applicable):

Authorization:

Ailsa Ancheta

✓ MERGER

✓ Certified Copy (1-9)

UCC'S

Certification Status

New Filings

Plain Stamped Copy

Annual Report

Fictitious Name

Amendments

Registration

() Call When Ready

(X) Call if Problem

() After 4:30

(X) Walk In

() Will Wait

() Pick Up

() Mail Out

S. PAYNE OCT 29 1999

meigke

SP

CF Internal Use Only

Client: 42945 Matter: 95494

TAL#501656.01

FILED
99 OCT 29 PM 2:28
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER
Merger Sheet

MERGING:

PAI II, INC., a nonqualified Delaware corp.

INTO

VITALITY FOODSERVICE, INC., a Florida entity, 388179

File date: October 29, 1999

Corporate Specialist: Susan Payne

Account number: FCA000000017

Account charged: 78.75

**ARTICLES OF MERGER
Of
PAI II, INC.
WITH AND INTO
VITALITY FOODSERVICE, INC.**

FILED
99 OCT 29 PM 2:26
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The following Articles of Merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, *Florida Statutes*.

First: The name of the surviving corporation is Vitality Foodservice, Inc., a Florida corporation.

Second: The name of the merging corporation is PAI II, Inc., a Delaware corporation.

Third: The Plan and Agreement of Merger is attached as Exhibit A.

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

Fifth: The Plan and Agreement of Merger was adopted by the board of directors of the surviving corporation on October 29, 1999, and shareholder approval was not required.

Sixth: The Plan and Agreement of Merger was adopted by the sole shareholder of the merging corporation on October 29, 1999.

PAI II, Inc., a Delaware corporation

By: 

Name: John Langdon

Title: Secretary

Vitality Foodservice, Inc., a Florida corporation

By: 

Name: Rhiannon Kubicka

Title: Secretary

PLAN AND AGREEMENT OF MERGER

of

PAI II, INC.

(a Delaware corporation)

and

VITALITY FOODSERVICE, INC.

(a Florida corporation)

THIS PLAN AND AGREEMENT OF MERGER, dated as of October __, 1999, between **PAI II, INC.**, a Delaware corporation ("PAI"), and **VITALITY FOODSERVICE, INC.**, a Florida corporation ("Vitality").

RECITALS

A. PAI and Vitality deem it advisable and in their best interests to merge PAI with and into Vitality upon the terms and conditions hereinafter set forth.

B. PAI has an authorized capital of 1,000 shares of common stock, par value \$0.01 per share, of which 1,000 shares are issued and outstanding and are owned of record by PAI Funding, Inc., a Delaware corporation ("PAI Funding").

C. Each of (i) the board of directors of PAI and (ii) the board of directors of Vitality, have adopted resolutions approving this Plan and Agreement of Merger (the "Plan") and the merger of PAI with and into Vitality, in accordance with Section 607.1107 of the Florida Business Corporation Act (the "BCL") and Section 252 of the General Corporation Law of the State of Delaware (the "GCL") and, in the case of PAI, directing that this Plan be submitted for adoption by PAI Funding as sole shareholder of PAI.

D. PAI Funding, in its capacity as the sole shareholder of PAI, has adopted this Plan and approved the Merger (as defined below).

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Parties to Merger. At the Effective Time (as defined in Section 3), PAI shall be merged with and into Vitality, in accordance with the BCL, the GCL and the terms and conditions of this Plan, and the separate corporate existence of PAI shall cease (such transaction being hereinafter referred to as the "Merger"). The existence of Vitality shall continue unimpaired and unaffected by the

Merger. (Vitality as existing at and after the Effective Time is sometimes referred to herein as the "Surviving Corporation.")

2. Conversion of Shares. Each share of common stock of PAI issued and outstanding immediately prior to the Effective Time shall by virtue of the Merger be cancelled and shall cease to exist with no payment being made with respect thereto. Each share of capital stock of Vitality issued and outstanding immediately prior to the Effective Time shall, from and after the Effective Time, continue to be a share of the same class of capital stock of the Surviving Corporation. Each shareholder of Vitality with shares outstanding immediately prior to the Effective Time shall, from and after the Effective Time, continue to hold the same number of outstanding shares with the same identifications, designations, preferences, limitations and relative rights.

3. Filing and Effective Time. Articles or a certificate of merger, as the case may be, and such other documents and instruments as are required by, and complying in all respects with, the BCL and the GCL shall be delivered to the appropriate state officials for filing. The Merger shall become effective as of the date and time such filings are accepted by such state officials or such later date and time as PAI and Vitality agree to be set forth in such filings (the "Effective Time").

4. Certificate of Incorporation. The certificate of incorporation of Vitality in effect immediately prior to the Effective Time shall from and after the Effective Time be the certificate of incorporation of the Surviving Corporation, until amended in accordance with applicable law.

5. By-Laws. The by-laws of Vitality in effect immediately prior to the Effective Time shall, from and after the Effective Time, be the by-laws of the Surviving Corporation, until amended in accordance with applicable law.

6. Directors and Officers of Surviving Corporation. The directors and officers of Vitality immediately prior to the Effective Time shall, from and after the Effective Time, be the directors and officers of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal.

7. Repayment of Indebtedness. At the Effective Time, Vitality shall repay or cause to be repaid (i) all amounts owing by PAI to Credit Suisse First Boston under a Credit Agreement dated September 24, 1999 and (ii) a \$1,000,000 (One Million) advance made by Vitality Beverage Group, Inc. (f/k/a Pasco Acquisition, Inc.) to PAI.

8. Termination. At any time prior to the Effective Time, this Plan may be terminated by the Board of Directors of PAI or Vitality.

9. Further Assurances. Prior to the Effective Time, each of PAI and Vitality (together, the "Constituent Corporations") shall take all such actions as shall be necessary or appropriate in order to effectuate the Merger. In case at any time after the Effective Time the Surviving Corporation shall determine that any further conveyance, assignment, or other documents or any further action is necessary or desirable to vest in or confirm to the Surviving Corporation full title to all the properties, assets, rights, privileges, and franchises of the Constituent Corporations, the officers and directors of the Surviving Corporation, in the name and on behalf of each of the Constituent Corporations, shall be authorized to execute and deliver all such instruments and take all such action in the name and on behalf of each of the Constituent Corporations, as may be necessary or desirable in order to vest in and confirm to the Surviving Corporation title to and possession of all such properties, assets, rights, privileges, and franchises, and otherwise to carry out the purposes of this Plan.

10. Interpretation. The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Plan. Words used in this Plan, regardless of the gender or number specifically used, shall be deemed to include any other gender, masculine, feminine or neuter, and any other number, singular or plural, as the context may require.

11. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Plan as
of this 29th day of October 1999.

PAI II, INC.

By: 

Title: Secretary

VITALITY FOODSERVICE, INC.

By: 

Title: Secretary