

Division of Corporations

Page 1 of 1

388179

Florida Department of State  
Division of Corporations  
Public Access System

46419-11601

## Electronic Filing Cover Sheet

(7 pages total)

**Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.**

(((H03000284213 3)))

**Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.**

## To:

Division of Corporations  
Fax Number : (850) 205-0380

## From:

Account Name : CARLTON FIELDS  
Account Number : 076077000355  
Phone : (813) 223-7000  
Fax Number : (813) 229-4133

FILED  
03 SEP 25 AM 10:40  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

RECEIVED

03 SEP 25 AM 9:44

DIVISION OF CORPORATIONS

## MERGER OR SHARE EXCHANGE

## VITALITY FOODSERVICE, INC.

Certificate of Status	0
Certified Copy	1
Page Count	01
Estimated Charge	\$78.75

Electronic Filing Menu

Corporate Filing

Public Access Help

FILED

03 SEP 25 AM 10:40

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Audit No. H03000284213 3

**ARTICLES OF MERGER  
OF  
VITALITY FOODSERVICE CANADA, INC.  
(a Delaware corporation)  
WITH AND INTO  
VITALITY FOODSERVICE, INC.  
(a Florida corporation)**

Pursuant to Sections 607.1104 and 607.1105  
of the Florida Business Corporation Act

Pursuant to Sections 607.1104 and 607.1105 of the Florida Business Corporation Act (the "FBCA"), these Articles of Merger provide as follows:

**ARTICLE I**

**State of Incorporation; Surviving Corporation**

The name and state of incorporation of each of the constituent corporations of the merger is as follows:

Name	State of Incorporation
Vitality Foodservice, Inc.	Florida
Vitality Foodservice Canada, Inc.	Delaware

Vitality Foodservice, Inc., a Florida corporation, shall be the surviving corporation.

Vitality Foodservice, Inc. owns one hundred percent (100%) of the outstanding capital stock of Vitality Foodservice Canada, Inc.

**ARTICLE II**

**Plan of Merger**

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

**ARTICLE III**

**Approval of the Plan**

The Board of Directors of Vitality Foodservice, Inc. reviewed, considered, and pursuant to unanimous action by written consent in accordance with Section 607.0821 of the FBCA duly adopted the Agreement and Plan of Merger (the "Agreement and Plan of Merger"), dated September 24, 2003, by and between Vitality Foodservice, Inc., a Florida corporation, and

Audit No. H03000284213 3

TPAW1351633.2

09/25/2003 09:38 FAX 813 229 4133  
09/24/2003 17:13 B133014630

CARLTON FIELDS-TAMPA  
VFI

0003  
PAGE 15/21

Audit No. H03000284213 3

Vitality Foodservice Canada, Inc., a Delaware corporation and shareholder approval by the shareholders of Vitality Foodservice, Inc. was not required.

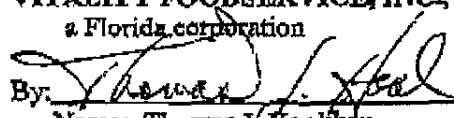
The Board of Directors of Vitality Foodservice Canada, Inc. reviewed, considered, and pursuant to unanimous action by written consent in accordance with Section 141 of the Delaware General Corporation Law ("DGCL") duly adopted the Agreement and Plan of Merger, as of September 24, 2003, and deemed the Agreement and Plan of Merger advisable.

**ARTICLE IV**  
**Effective Time**

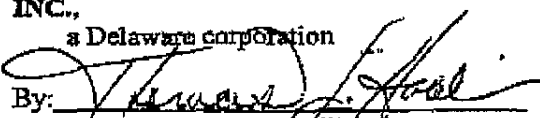
These Articles of Merger shall become effective on September 24, 2003 at 12:01 a.m. Eastern Daylight Time.

IN WITNESS WHEREOF, the undersigned President of the constituent corporations have caused these Articles of Merger to be executed this 24<sup>th</sup> day of September, 2003.

**VITALITY FOODSERVICE, INC.,**  
a Florida corporation

By:   
Name: Thomas J. Hoolihan  
Title: Vice President, General Counsel  
and Secretary

**VITALITY FOODSERVICE CANADA,**  
**INC.,**  
a Delaware corporation

By:   
Name: Thomas J. Hoolihan  
Title: Vice President

Audit No. H03000284213 3

TPA#18516332

Audit No. H03000284213 3

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT is dated as of September 24, 2003 (this "Agreement"), by and between VITALITY FOODSERVICE CANADA, INC., a Delaware corporation (the "Merging Corporation"), and VITALITY FOODSERVICE, INC., a Florida corporation (the "Surviving Corporation"). The Merging Corporation and the Surviving Corporation are sometimes collectively referred to herein as the "Constituent Corporations".

The Merging Corporation and the Surviving Corporation desire to effect a merger (the "Merger") of the Merging Corporation with and into the Surviving Corporation as provided in this Agreement. The Surviving Corporation owns one hundred percent (100%) of the outstanding common stock of the Merging Corporation. The boards of directors of the Constituent Corporations have approved the Merger. This Agreement sets forth a plan of merger pursuant to the provisions of the Florida Business Corporation Act ("FBCA") and an agreement of merger pursuant to the provisions of the Delaware General Corporation Law ("DGCL").

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, agreements and conditions set forth herein, the parties hereto do hereby agree as follows:

### Section 1. TERMS AND CONDITIONS OF MERGER AND MODE OF CARRYING MERGER INTO EFFECT.

(a) At the Effective Time (as defined in Section 5 of this Agreement) of the Merger, the Merging Corporation shall merge into the Surviving Corporation.

(b) Pursuant to the Merger, the articles of incorporation and bylaws of the Surviving Corporation in effect immediately prior to the Effective Time shall be the articles of incorporation and bylaws, respectively, of the Surviving Corporation until otherwise amended or repealed in accordance with applicable law.

(c) Pursuant to the Merger, the persons serving as directors of the Surviving Corporation immediately prior to the Effective Time shall be the directors of the Surviving Corporation and will hold office from the Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the articles of incorporation and bylaws of the Surviving Corporation, or as otherwise provided by law.

(d) Pursuant to the Merger, the persons serving as officers of the Surviving Corporation immediately prior to the Effective Time shall be the officers of the Surviving Corporation and will hold office from the Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the articles of incorporation and bylaws of the Surviving Corporation, or as otherwise provided by law.

(e) At and after the Effective Time, the separate corporate existence of the Merging Corporation shall cease.

(f) All assets and property (including, without limitation, real, personal and mixed, tangible and intangible, choses in action, rights and credits) then owned by the Merging

Audit No. H03000284213 3

TPA#18516252

Audit No. H03000284213 3

Corporation, or which would inure to the benefit of the Merging Corporation, shall immediately, by operation of law and without any conveyance, transfer or further action, become the assets and property of the Surviving Corporation. The Surviving Corporation shall be deemed to be a continuation of the entity of the Merging Corporation, and shall succeed to the rights and obligations of the Merging Corporation, and to the duties and liabilities connected therewith.

(g) All rights of creditors and all liens upon the property of either of the Merging Corporation shall be preserved unimpaired by the Merger, and all debts, liabilities, obligations and duties, of the Merging Corporation shall, at the Effective Time, become the responsibility and liability of the Surviving Corporation, and may be enforced against it to the same extent as if such debts, liabilities, obligations and duties had been incurred or contracted by it. All corporate acts, plans, policies, arrangements, approvals and authorizations of the Merging Corporation, its shareholders, board of directors, officers and agents, which were valid and effective immediately prior to the Effective Time, shall be taken for all purposes as the acts, plans, policies, arrangements, approvals and authorizations of the Surviving Corporation and shall be as effective and binding thereon as the same were with respect to the Merging Corporation.

**Section 2. CANCELLATION OF SHARES OF THE MERGING CORPORATION;  
CONSIDERATION FOR MERGER.**

(a) Each share of capital stock of the Merging Corporation which shall be issued and outstanding at the Effective Time, including shares held in the treasury, shall cease to be outstanding as of the Effective Time.

(b) At the Effective Time, each share of capital stock of the Surviving Corporation which shall be issued and outstanding immediately prior to the Effective Time shall remain outstanding.

**Section 3. CONDITIONS.** Effectuation of the Merger and the other transactions herein provided is conditioned on the receipt of all consents, orders and approvals and satisfaction of all other requirements prescribed by law which are necessary for the consummation of the Merger.

**Section 4. FILING; EFFECTIVE TIME.**

If all of the conditions to the Merger set forth in Section 4 of this Agreement shall have been fulfilled in accordance herewith and this Agreement shall not have been terminated as provided in Section 6 of this Agreement, the Surviving Corporation and the Merging Corporation shall cause articles of merger ("Articles of Merger") and a certificate of merger ("Certificate of Merger") meeting the requirements of the FBCA and the DGCL, respectively, to be properly executed and filed with the Secretary of State of the State of Florida and the Secretary of State of the State of Delaware. The Merger shall become effective on: (i) September 24, 2003 at 12:01 a.m. Eastern Daylight Time or (ii) such other date and time as may be agreed upon in writing by the Surviving Corporation and the Merging Corporation and specified in the Certificate of Merger and the Articles of Merger (the "Effective Time"). In no event shall the Effective Time be a date later than that permitted by the FBCA or the DGCL.

Audit No. H03000284213 3

Audit No. H03000284213 3

**Section 5. FURTHER ASSURANCES.**

Prior to the Effective Time, each of 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 Merging Corporation, 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 Agreement.

**Section 6. TERMINATION AND AMENDMENT.**

(a) At any time prior to the Effective Time, this Agreement may be terminated by the mutual consent of the boards of directors of the Constituent Corporations, whether before or after the approval of this Agreement by the shareholders of either or both of the Constituent Corporations. In the event this Agreement is so terminated, it shall be of no further force or effect and there shall be no liability by reason of this Agreement or its termination on the part of either of the Constituent Corporations or of their respective directors, officers, employees, agents, shareholders or incorporators.

(b) This Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended only by a writing executed by both parties. The Constituent Corporations may, by written agreement between them, amend, modify or supplement this Agreement at any time prior to the Effective Time, provided that no amendment shall be made after the approval of this Agreement by the shareholders of either or both of the Constituent Corporations which changes the terms of this Agreement in a way which is materially adverse to the shareholders of the Constituent Corporations unless such amendment is approved by such shareholders.

**Section 7. CONSTRUCTION OF TERMS.**

All provisions and any variations thereof used herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of such person or persons shall require.

**Section 8. GOVERNING LAW.**

This Agreement shall be governed by the laws of the State of Florida.

**Section 9. COUNTERPARTS.**

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all such counterparts shall together constitute but one and the same instrument.

09/25/2003 09:40 FAX 813 229 4133  
09/24/2003 17:13 8133014638

CARLTON FIELDS-TAMPA  
VFI

0007  
PAGE 09/21

Audit No. H03000284213 3

Each of the Constituent Corporations has caused this Agreement to be duly executed on its behalf by its officers thereunto duly authorized, as of the date first above written.

VITALITY FOODSERVICE CANADA,  
INC., a Delaware corporation

Attest:

By:

Name: THOMAS J. NOBLEMAN  
Title: VICE PRESIDENT

By:

Name: WILLIAM GREGORY HURRAY  
Title: PRESIDENT

VITALITY FOODSERVICE, INC.,  
a Florida corporation

Attest:

By:

Name: THOMAS J. NOBLEMAN  
Title: VICE PRESIDENT & GENERAL COUNSEL

By:

Name: WILLIAM GREGORY HURRAY  
Title: PRESIDENT & CEO

Audit No. H03000284213 3

TPA#1851625.2