

300179

Page 1 of 1

Attn: Trevor

205-0383

Florida Department of State  
Division of Corporations  
Public Access System

Electronic Filing Cover Sheet

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.

((H03000286449 1)))

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

PLEASE ONE ORIGINAL ONE SESSION  
DATE AS FILE DATE

From:  
Account Name : CORPORATE & CRIMINAL RESEARCH SERVICES  
Account Number : 110450000714  
Phone : (850)222-1173  
Fax Number : (850)224-1640

0438.19880

MERGER OR SHARE EXCHANGE

VITALITY FOODSERVICE, INC.

Certificate of Status	0
Certified Copy	1
Page Count	07
Estimated Charge	896.25

\$108.75

03 OCT -1 PM 4:09  
DIVISION OF CORPORATIONS

FILED  
03 SEP 29 AM 8:19  
RECEIVED  
DIVISION OF CORPORATIONS

Electronic Filing Menu

Corporate Filing

Public Access Help

10-203

H03000286449

**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 the following:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u>
Vitality Foodservice, Inc. ("Vitality")	Florida	388179

Second: The name and jurisdiction of the merging limited liability company is the following:

<u>Name</u>	<u>Jurisdiction</u>
Vitality Holdings, LLC ("LLC")	Delaware

Third: The Agreement and Plan of Merger is attached hereto 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 Agreement and Plan of Merger was adopted by the Board of Directors of Vitality on September 25, 2003 and shareholder approval was not required.


Sixth: The Agreement and Plan of Merger was adopted by the Managers and the sole Member of LLC on September 25, 2003.

IN WITNESS WHEREOF, these Articles of Merger have been executed on behalf of each of Vitality and LLC by its authorized officer as of this 29th day of September, 2003.

VITALITY FOODSERVICE, INC.

By:   
Name: THOMAS J. HOLLIMAN  
Title: VICE PRESIDENT

VITALITY HOLDINGS, LLC

By:   
Name: THOMAS J. HOLLIMAN  
Title: VICE PRESIDENT

H03000286449

RECEIVED  
SEP 29 2003  
FILED  
SEP 29 2003  
AM 8:19

H03000286449

Exhibit A

## AGREEMENT AND PLAN OF MERGER

OF

VITALITY HOLDINGS, LLC  
(a Delaware limited liability company)

INTO

VITALITY FOODSERVICE, INC.  
(a Florida corporation)

AGREEMENT AND PLAN OF MERGER entered into on September 29, 2003, by and among Vitality Holdings, LLC, a Delaware limited liability company ("LLC"), Vitality Foodservice, Inc., a Florida corporation ("VFI") and Vitality Beverages, Inc., a Delaware corporation and sole member of LLC ("VBI").

WHEREAS, Section 607.1108 of the Corporations Law of the State of Florida (the "Florida Act") permits the merger of a foreign limited liability company into a domestic corporation; and

WHEREAS, Section 18-209 of the Limited Liability Company Act of the State of Delaware (the "Delaware Act") permits the merger of a domestic limited liability company into a foreign corporation; and

WHEREAS, VBI, LLC and VFI deem it advisable and in their best interests to merge LLC into VFI pursuant to the provisions of the laws of the State of Florida and the State of Delaware upon the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the premises and the covenants herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

1. Merger. VBI, LLC and VFI hereby agree that LLC shall be merged with and into VFI in accordance with the provisions of the Florida Act and the Delaware Act, and VFI shall be the continuing and surviving entity and shall continue to be governed by the laws of the State of Florida.

2. Name. The name of the surviving entity shall be Vitality Foodservice, Inc.

3. Effective Date of Merger. The merger contemplated herein shall become effective upon the filing of the Articles of Merger with the Secretary of State of the State of Florida (the "Effective Date").

H03000286449

RECEIVED  
SEP 29 2003  
VITALITY HOLDINGS, LLC  
VITALITY BEVERAGES, INC.  
VITALITY FOODSERVICE, INC.

03 SEP 29 AM 8:19

FILED

H03000286449

2

4. Filings. LLC and VFI agree that they will cause to be executed and filed or recorded any document or documents prescribed by the laws of the States of Florida and Delaware, and that they will cause to be performed all necessary acts within the States of Florida and Delaware and elsewhere to effectuate the merger.

5. Certificate of Incorporation and By-laws. The Articles of Incorporation, as amended to date, and By-laws, as amended to date, of VFI shall be the Articles of Incorporation and By-laws of the surviving entity.

6. Future Operations. Subject to such changes as may be approved by the Board of Directors of VFI in their judgment, from and after the Effective Date:

(a) The business presently conducted by LLC shall continue to be conducted in substantially the same form by VFI; and

(b) The principal office of VFI shall continue to be located at 400 North Tampa Street, Suite 1700, Tampa, Florida 33602.

7. Membership Interests of LLC. The membership interests in LLC owned by VFI shall not be converted in any manner, but each said membership interest held as of the Effective Date shall be extinguished on the Effective Date.

8. Merger, Assumption of Liabilities. On the Effective Date, LLC shall be deemed merged into VFI as provided by the Florida Act, the Delaware Act and this Agreement. All rights, privileges, and powers of LLC, and all property, real, personal and mixed, and all debts due to LLC, as well as all other things and causes of action belonging to LLC, shall be vested in VFI, and shall thereafter be the property of VFI as they were of LLC. All rights of credits and all liens upon any property of LLC shall be preserved and all debts, obligations, liabilities and duties of LLC shall attach to VFI and may be enforced against VFI to the same extent as if said debts, liabilities and duties had been incurred and contracted by it.

9. Representations and Warranties. LLC hereby represents and warrants to VFI as follows.

(a) It is a Delaware limited liability company validly existing and in good standing under the laws of Delaware.

(b) The signing of this Agreement and the consummation of the transactions contemplated by this Agreement have been approved by all necessary action on its part and do not violate any provisions of its organizational documents or any other agreements or instruments to which it is a party.

VFI hereby represents and warrants to LLC as follows:

(a) It is a Florida corporation validly existing and in good standing under the laws of Florida.

H03000286449

03 SEP 29 AM 8:19  
FILED  
H03000286449

H03000286449

3

(b) The signing of this Agreement and the consummation of the transactions contemplated by this Agreement have been approved by all necessary action on its part and do not violate any provisions of its organizational documents or any other agreements or instruments to which it is a party.

10. Notices. Any notice or request to be given under this Agreement to LLC or VFI shall be in writing and shall be delivered personally or by certified mail, postage prepaid to the addresses set forth in Section 6(b) herein, or to such other addresses as any party may designate in writing to the other.

11. Expenses. VFI will pay the costs and expenses of performance of and compliance with all agreements and conditions contained in this Agreement.

12. Counterparts. This Agreement may be 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.

13. No Other Agreement or Understandings. This Agreement embodies all of the agreements and understandings in relation to the subject matter of this Agreement, and no covenants, understandings or agreements in relation to this Agreement exist between the parties, except as expressly set forth in this Agreement.

14. No Third Party Benefit. Nothing expressed or implied in this Agreement shall be construed to confer upon or give to any person, firm, or limited liability company, other than a party to this Agreement, any rights or remedies under or by reason of this Agreement.

*[Remainder of page intentionally left blank]*

FILED  
03 SEP 29 AM 8:19  
SEATTLE  
ALASKA

H03000286449

41:10 03-10-7

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and delivered this 21<sup>st</sup> day of September, 2003. H03000286449

## VITALITY HOLDINGS, LLC

By: Thomas J. Hall  
Name: THOMAS J. HALL  
Title: Vice President

## VITALITY FOODSERVICE, INC.

By: Thomas J. Hall  
Name: THOMAS J. HALL  
Title: VICE PRESIDENT

## VITALITY BEVERAGES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

03 SEP 29 AM 8:19  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

APPROVED  
AND  
FILED

Major Agreement

TOTAL P.08

H03000286449

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and delivered this 21<sup>st</sup> day of September, 2003.

VITALITY HOLDINGS, LLC

By: \_\_\_\_\_

Name:

Title:

VITALITY FOODSERVICE, INC.

By: \_\_\_\_\_

Name:

Title:

VITALITY BEVERAGES, INC.

By: *[Signature]*Name: *Steven M. Vetter*Title: *Vice President*

Major Agreement

03 SEP 29 AM 8:19  
VITALITY BEVERAGES, INC.  
VITALITY FOODSERVICE, INC.  
VITALITY HOLDINGS, LLCAPPROVED  
AND  
FILED

\*\* TOTAL PAGE 07 \*\*

H03000286449