

P96000089684

Document Number Only

CT Corporation System  
660 East Jefferson Street  
Tallahassee, FL 32301  
Tel 850 222 1092  
Fax 850 222 7615  
Attn: Jeff Netherton

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-07/26/99--01108--021  
\*\*\*\*\*70.00 \*\*\*\*\*70.00

CORPORATION(S) NAME

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The Plank Companies, L.P. (DE)  
merging: The Plank Company (FL)

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<input type="checkbox"/> Nonprofit		
<input type="checkbox"/> Foreign	<input type="checkbox"/> Dissolution/Withdrawal	<input type="checkbox"/> Mark
	<input type="checkbox"/> Reinstatement	
<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Annual Report	<input type="checkbox"/> Other
<input type="checkbox"/> LLC	<input type="checkbox"/> Name Registration	<input type="checkbox"/> Change of RA
	<input type="checkbox"/> Fictitious Name	<input type="checkbox"/> UCC
<input type="checkbox"/> Certified Copy	<input type="checkbox"/> Photocopies	<input type="checkbox"/> CUS
<input type="checkbox"/> Call When Ready	<input type="checkbox"/> Call If Problem	<input type="checkbox"/> After 4:30
<input checked="" type="checkbox"/> Walk In	<input type="checkbox"/> Will Wait	<input checked="" type="checkbox"/> Pick Up
<input type="checkbox"/> Mail Out		

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ARTICLES OF MERGER  
Merger Sheet

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MERGING:

THE PLANK COMPANY, a Florida corporation (P96000089684)

INTO

**THE PLANK COMPANIES, L.P.,** entity not qualified in Florida.

File date: July 26, 1999

Corporate Specialist: Buck Kohr

## ARTICLES OF MERGER

The undersigned, pursuant to Section 607.1109 of the Florida 1989 Business Corporation Act hereby execute the following Articles of Merger:

FIRST: The name, street address of its principal office, type of entity, jurisdiction and Florida document number of the merging party are as follows:

<u>Name and Street Address of Principal Office</u>	<u>Type of Entity</u>	<u>Jurisdiction</u>	<u>Florida Document Number</u>
The Plank Company 44 East Broad Street Tampa, Florida 33606	Corporation	Florida	P96000089684

SECOND: The name, street address of its principal office, type of entity and jurisdiction of the surviving party to the merger are as follows:

<u>Name and Street Address of Principal Office</u>	<u>Type of Entity</u>	<u>Jurisdiction</u>
The Plank Companies, L.P. 8601 Gulf Freeway Houston, Texas 77017	Limited Partnership	Delaware

THIRD: The attached Plan of Merger, which is made a part of these Articles of Merger, meets the requirements of Section 607.1108 of the Florida Statutes, and was approved by The Plank Company in accordance with Chapter 607 of the Florida Statutes.

FOURTH: The attached Plan of Merger was approved by The Plank Companies, L.P., in accordance with the Delaware Revised Uniform Limited Partnership Act.

FIFTH: The Plank Companies, L.P., as the surviving party to the merger, hereby appoints the Florida Secretary of State as its agent for substitute service of process pursuant to Chapter 48 of the Florida Statutes, in any proceeding to enforce any obligation or rights of any dissenting shareholders of The Plank Company.

SIXTH: The Plank Companies, L.P., as the surviving party to the merger, agrees to pay any dissenting shareholders of The Plank Company the amount, if any, to which they are entitled under Section 607.1302 of the Florida Statutes.

SEVENTH: The merger is permitted under the respective laws of the State of Florida and the State of Delaware and is not prohibited by the limited partnership agreement of The Plant Companies, L.P.

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


NINTH: The Articles of Merger comply and were executed in accordance with the laws of the State of Florida and the State of Delaware.

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Signed this 26<sup>th</sup> day of July, 1999.

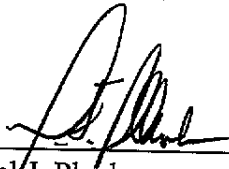
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THE PLANK COMPANY

By:   
Michael J. Plank  
President

THE PLANK COMPANIES, L.P.

By: Plank Management, Inc.,  
its sole General Partner

By:   
Michael J. Plank  
President

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## AGREEMENT AND PLAN OF MERGER

merging

**THE PLANK COMPANY**  
(a Florida corporation)

with and into

**THE PLANK COMPANIES, L.P.**  
(a Delaware limited partnership)

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement"), is made and entered into as of July 26, 1999, pursuant to Section 607.1108 of the Florida 1989 Business Corporation Act, by and between The Plank Company, a Florida corporation ("Plank Florida" or the "Merging Corporation"), and The Plank Companies, L.P., a Delaware limited partnership ("Plank L.P.", and together with the Merging Corporation, the "Constituent Entities").

### WITNESSETH:

WHEREAS, Plank Florida is a corporation duly organized and existing under the laws of the State of Delaware with authorized capital consisting of 100,000 shares of common stock, par value \$1.00 per share, of which 1,000 shares are issued and outstanding (the "Plank Florida Common Stock"); and

WHEREAS, Plank L.P. is a limited partnership duly organized and existing under the laws of the State of Delaware, in which Plank Management, Inc., a Texas corporation (the "General Partner"), holds a 1% interest as the general partner of Plank L.P. (the "General Partner Interest") and The Plank Companies, Inc., a Delaware corporation (the "Limited Partner"), holds a 99% interest as the limited partner of Plank L.P. (the "Limited Partner Interest" and together with the General Partner Interest, the "Partnership Interests"); and

WHEREAS, the Limited Partner is the sole shareholder of the General Partner; and

WHEREAS, the Limited Partner owns 1,000 shares of Plank Florida Common Stock;  
and

WHEREAS, Section 607.1108 of the Florida 1989 Business Corporation Act ("FBCA") and Section 17-211 of the Delaware Revised Uniform Limited Partnership Act ("DRULPA") permit a merger of a corporation incorporated under the laws of the State of Florida with and into a limited partnership formed under the laws of the State of Delaware; and

WHEREAS, the parties hereto desire that Plank Florida be merged with and into Plank L.P. under the Certificate of Limited Partnership and Limited Partnership Agreement of The Plank Companies, L.P., pursuant to the terms and conditions of this Agreement; and

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WHEREAS, the Boards of Directors of Plank Florida and the general partner and limited partner of Plank L.P. have approved the merger of Plank Florida with and into Plank L.P. upon the terms and subject to the conditions set forth herein (the "Merger"); and

WHEREAS, the Boards of Directors of Plank Florida and the sole general partner and limited partner of Plank L.P. have approved and adopted this Agreement, each by unanimous written consent; and

WHEREAS, the sole shareholder of Plank Florida has approved the Merger and has approved and adopted this Agreement by written consent;

NOW, THEREFORE, for and in consideration of the premises and of the covenants and agreements hereinafter set forth, the parties hereto agree that (a) at the Effective Time (as defined in Section 7.1), Plank Florida shall be merged with and into Plank L.P., (b) Plank L.P. shall survive the Merger and shall continue in existence as a limited partnership organized and existing under, and governed by, the laws of the State of Delaware and (c) the terms and conditions of the Merger and the mode of carrying the same into effect are and shall be as hereinafter set forth:

#### ARTICLE 1

##### Certificate of Limited Partnership of the Surviving Entity

The entity surviving the Merger (the "Surviving Entity") shall be Plank L.P. The Certificate of Limited Partnership of Plank L.P. in effect at the Effective Time shall be the Certificate of Limited Partnership of the Surviving Entity.

#### ARTICLE 2

##### Limited Partnership Agreement of the Surviving Entity

The Limited Partnership Agreement of Plank L.P. in effect at the Effective Time shall be the Limited Partnership Agreement of the Surviving Entity.

#### ARTICLE 3

##### Name and Location of the Surviving Entity and General Partner

The name of the Surviving Entity shall be "The Plank Companies, L.P." The established offices and business locations of both Plank Florida and Plank L.P. shall be the offices and locations of the Surviving Entity. Plank Management, Inc. shall be the sole general partner of the Surviving Entity, and its business address shall be 8601 Gulf Freeway, Houston, Texas 77017.

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## ARTICLE 4

### Directors and Officers of the Surviving Entity

4.1 *Directors.* At the Effective Time, the directors of Plank Florida immediately prior to the Effective Time shall cease to be directors. The Surviving Entity shall not have directors and shall be managed by the General Partner in accordance with the Limited Partnership Agreement of the Surviving Entity (the "Limited Partnership Agreement").

4.2 *Officers.* The officers of Plank Florida immediately prior to the Effective Time shall cease to be officers, and the officers of Plank L.P., if any, immediately prior to the Effective Time shall remain officers of the Surviving Entity, and each of them, subject to the Limited Partnership Agreement and to the laws of the State of Delaware, shall hold office from the Effective Time until their successors are elected, they are terminated or as otherwise provided in the Limited Partnership Agreement.

## ARTICLE 5

### Conversion of Shares and Other Securities

At the Effective Time, by virtue of the Merger and without any action on the part of Plank Florida, Plank L.P. or the holder of any of the shares, Partnership Interests and other securities of Plank Florida or Plank L.P., the following will occur:

(a) Any and all shares and other securities or rights to acquire any shares or other securities of Plank Florida issued and outstanding immediately prior to the Effective Time, including, but not limited to, the Plank Florida Common Stock, shall be canceled and extinguished by virtue of the Merger and without any action on the part of the holder thereof. The transfer books of Plank Florida shall be closed and no transfer of Plank Florida Common Stock or exercise of options to acquire the same shall be made at or after the Effective Time.

(b) The Partnership Interests held by the General Partner and the Limited Partner in Plank L.P. as of the Effective Time shall continue after the Merger without effect by the Merger.

## ARTICLE 6

### Effects of Merger

The Merger shall have the effects specified under the FBCA and the DRULPA.



## ARTICLE 7

### General Provisions

7.1 *Effective Time of Merger.* The effective time of the Merger (the "Effective Time") shall occur at the later of the effective time of the Certificate of Merger to be filed with the Secretary of State of the State of Delaware and the Articles of Merger to be filed with the Secretary of State of the State of Florida.

7.2 *Termination.* This Agreement and the Merger may be terminated at any time prior to the Effective Time, whether before or after approval thereof by the shareholders of Plank Florida, by resolution of the Board of Directors of Plank Florida or by consent of the general partner and limited partner of Plank L.P. In the event of the termination and abandonment of the Merger pursuant to the provisions of this Section 7.2, this Agreement and the transactions contemplated hereby shall become void and have no effect, without any liability on the part of Plank Florida or Plank L.P. or their respective directors, officers, shareholders or partners in respect of this Agreement.

7.3 *Amendment or Modification.* With respect to the Merger and subject to the provisions of applicable law, this Agreement may be amended or modified at any time prior to the Effective Time by action taken by the Boards of Directors of Plank Florida and the general partner and limited partner of Plank L.P., provided, however, that any amendment or modification subsequent to the adoption of this Agreement by the shareholders of Plank Florida may not be in contravention to any applicable portion of the FBCA.

7.4 *Sole Agreement of Parties.* This Agreement and the documents referred to herein constitute the full understanding of the parties and a complete and exclusive statement of the terms and conditions of their agreement relating to the subject matter hereof and supersedes any and all prior agreements, whether written or oral, that may exist between the parties with respect thereto. This Agreement may not be amended except in writing signed by both parties.

7.5 *Binding Agreement.* This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

7.6 *Governing Law.* This agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

7.7 *Further Assurances.* Each party hereto agrees from time to time, as and when requested by the other party hereto, or by its successors or assigns, to execute and deliver, or cause to be executed and delivered, all such deeds and instruments and to take or cause to be taken such further or other acts, either before or after the Effective Time, as may be deemed necessary or desirable in order to vest in and confirm to the Surviving Entity title to and possession of any assets of Plank Florida acquired or to be acquired by reason of or as a result of the Merger and otherwise to carry out the intent and purposes hereof, and the officers, directors and partners of the parties hereto are fully authorized in the name of their respective entities to take any and all such actions.

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7.8 *Headings.* All sections and articles referred to herein are sections and articles of this Agreement. Descriptive headings as to the contents of particular articles and sections are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

7.9 *Gender; Plurals.* Each use herein of the masculine, neuter or feminine gender shall be deemed to include the other genders and each use herein of the plural shall include the singular and vice versa, in each case as the context requires or as is otherwise appropriate.

7.10 *Severability.* In the event that any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, then (i) such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof; (ii) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement; and (iii) there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable.

7.11 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same agreement, and shall become binding on the parties hereto when one or more counterparts have been signed by each of the parties hereto and delivered to the other party.

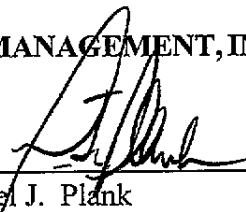
7.12 *Waivers.* Any term, provision or condition of this Agreement may be waived in writing by the party which is, or the party the shareholders or partners of which are, entitled to the benefits thereto.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by its officers or partners thereunto duly authorized, all as of the day and year first above written.

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**THE PLANK COMPANIES, L.P.**  
**(a Delaware limited partnership)**

By: **PLANK MANAGEMENT, INC.**, its General Partner

By:   
\_\_\_\_\_  
Michael J. Plank  
President

**THE PLANK COMPANY**  
**(a Florida corporation)**

By:   
\_\_\_\_\_  
Michael J. Plank  
President