

P 97000045171

CT CORPORATION SYSTEM

CORPORATION(S) NAME

1) CGR Management Corporation &

Southern Cooker Limited Partnership

Merging into: Cooker Restaurant Corporation

2)

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02 SEP 23 PM 1:53  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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<input type="checkbox"/> Profit	<input type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Merger
<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 checked="" 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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DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

Name \_\_\_\_\_  
Availability \_\_\_\_\_  
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Verifier \_\_\_\_\_  
W.P. Verifier \_\_\_\_\_

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Order#: 5601903

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Ref#: \*\*\*\*\*122.50 \*\*\*\*\*122.50

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Amount: \$ \*\*\*\*\*8.75 \*\*\*\*\*8.75

660 East Jefferson Street  
Tallahassee, FL 32301  
Tel. 850 222 1092  
Fax 850 222 7615

ARTICLES OF MERGER  
Merger Sheet

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MERGING:

CGR MANAGEMENT CORPATION A FLORIDA ENTITY  
SOUTHERN COOKER LIMITED PARTNERSHIP A OHIO ENTITY

INTO

**COOKER RESTAURANT CORPORATION A OHIO ENTITY.** entity not qualified  
in Florida

File date: September 23, 2002

Corporate Specialist: Agnes Lunt

## ARTICLES OF MERGER

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The following articles of merger are being submitted in accordance with section(s) 607.1109, 608.4382, and/or 620.203, Florida Statutes.

**FIRST:** The exact name, street address of its principal office, jurisdiction, and entity type for each merging party are as follows:

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
1. CGR Management Corporation 3212 West End Avenue, Suite 500 Nashville, TN 37203	Florida	Corporation
Florida Document/Registration Number: P97000045171		FEI Number: 65-0757864
2. Southern Cooker Limited Partnership 5500 Village Blvd. West Palm Beach, FL 33407	Ohio	Limited Partnership
Florida Document/Registration Number: N/A		FEI Number: 65-0770008
3.		
Florida Document/Registration Number:		FEI Number:
4.		
Florida Document/Registration Number:		FEI Number:

*(Attach additional sheet(s) if necessary)*

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

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
Cooker Restaurant Corporation 2609 West End Avenue Nashville, TN 37203	Ohio	Corporation

Florida Document/Registration Number: N/A FEI Number: 62-1292102

**THIRD:** The attached Plan of Merger meets the requirements of section(s) 607.1108, 608.438, 617.1103, and/or 620.201, Florida Statutes, and was approved by each domestic corporation, limited liability company, partnership and/or limited partnership that is a party to the merger in accordance with Chapter(s) 607, 617, 608, and/or 620, Florida Statutes.

**FOURTH:** If applicable, the attached Plan of Merger was approved by the other business entity(ies) that is/are party(ies) to the merger in accordance with the respective laws of all applicable jurisdictions.

**FIFTH:** If not incorporated, organized, or otherwise formed under the laws of the state of Florida, the surviving entity hereby appoints the Florida Secretary of State as its agent for substitute service of process pursuant to Chapter 48, Florida Statutes, in any proceeding to enforce any obligation or rights of any dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger.

**SIXTH:** If not incorporated, organized, or otherwise formed under the laws of the state of Florida, the surviving entity agrees to pay the dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger the amount, if any, to which they are entitled under section(s) 607.1302, 620.205, and/or 608.4384, Florida Statutes.

**SEVENTH:** If applicable, the surviving entity has obtained the written consent of each shareholder, member or person that as a result of the merger is now a general partner of the surviving entity pursuant to section(s) 607.1108(5), 608.4381(2), and/or 620.202(2), Florida Statutes.

**EIGHTH:** The merger is permitted under the respective laws of all applicable jurisdictions and is not prohibited by the agreement of any partnership or limited partnership or the regulations or articles of organization of any limited liability company that is a party to the merger.

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**NINTH:** The merger shall become effective as of:

The date the Articles of Merger are filed with Florida Department of State




**OR**

(Enter specific date. NOTE: Date cannot be prior to the date of filing.)

**TENTH:** The Articles of Merger comply and were executed in accordance with the laws of each party's applicable jurisdiction.

**ELEVENTH: SIGNATURE(S) FOR EACH PARTY:**

*(Note: Please see instructions for required signatures.)*

<u>Name of Entity</u>	<u>Signature(s)</u>	<u>Typed or Printed Name of Individual</u>
Cooker Restaurant Corporation		Henry R. Hillenmeyer, CEO
CGR Management Corporation		Henry R. Hillenmeyer, CEO
Southern Cooker Limited Partnership		Henry R. Hillenmeyer, CEO of Cookeer Restaurant Corporation, its Managing General Partner

*(Attach additional sheet(s) if necessary)*

**AGREEMENT AND PLAN OF MERGER**

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THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into this 23rd day of September, 2002, by and among Cooker Restaurant Corporation, an Ohio corporation ("Cooker"), CGR Management Corporation, a Florida corporation ("CGR"), and Southern Cooker Limited Partnership, an Ohio limited partnership ("Southern"). CGR and Southern are hereinafter sometimes collectively referred to as the "Subsidiaries," and Cooker and the Subsidiaries are hereinafter sometimes collectively referred to as the "Constituent Entities."

**WITNESSETH:**

WHEREAS, the authorized capital stock of CGR consists of 1,000 shares of capital stock, par value \$1.00 per share ("CGR Stock"), of which 1,000 shares are issued and outstanding;

WHEREAS, Cooker owns all of the issued and outstanding shares of CGR Stock;

WHEREAS, Cooker owns a five percent (5%) partnership interest in, and is the sole general partner of, Southern;

WHEREAS, Florida Cooker LP, Inc., a Florida corporation ("Florida Cooker"), owns a ninety-five percent (95%) partnership interest in, and is the sole limited partner of, Southern;

WHEREAS, Cooker owns all of the issued and outstanding shares of Florida Cooker;

WHEREAS, Cooker, CGR and Southern are each currently debtors in possession in Chapter 11 bankruptcy cases before the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division (the "Bankruptcy Court");

WHEREAS, on September 11, 2002, the Bankruptcy Court issued its Order pursuant to Section 1129 of the Bankruptcy Code (the "Order") confirming the First Amended Plan of Reorganization of Cooker, CGR and Southern dated July 3, 2002 (the "Plan of Reorganization"), ordering that the assets and liabilities of the Constituent Entities be consolidated, that the equity interests in the Subsidiaries be cancelled and extinguished and that CGR and Southern be merged into Cooker pursuant to the Plan of Reorganization, the Order and Exhibit C to the Order (collectively, the "Plan and Order");

WHEREAS, in accordance with the Plan and Order, the Constituent Entities desire to effect a merger of the Subsidiaries with and into Cooker pursuant to Sections 1701.781 and 1782.432 of the Ohio Revised Code and Section 607.1108, Florida Statutes;

WHEREAS, the Constituent Entities intend that, for federal tax purposes, the merger of CGR with and into Cooker shall be treated as a tax-free reorganization pursuant to Section 368(a)(1)(G) of the Internal Revenue Code of 1986, as amended (the "Code");

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WHEREAS, the Constituent Entities intend that, for federal tax purposes, the merger of Southern with and into Cooker shall be treated as a distribution by Florida Cooker of its partnership interest in Southern to its parent Cooker as described in Section 311 of the Code;

WHEREAS, the Constituent Entities intend that, following the merger of the Subsidiaries with and into Cooker, Florida Cooker shall be merged into Cooker and that, for federal tax purposes, the merger of Florida Cooker with and into Cooker shall be treated as a tax-free reorganization pursuant to Section 368(a)(1)(G) of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Board of Directors of CGR has determined that it is advisable and in the best interests of CGR that CGR merge with and into Cooker upon the terms and subject to the conditions herein provided, and has recommended that the sole shareholder of CGR approve this Agreement and the merger contemplated hereby;

WHEREAS, Cooker, as the sole shareholder of CGR, has duly adopted and approved this Agreement and the merger contemplated hereby; and

WHEREAS, Cooker and Florida Cooker, being all of the partners of Southern, have duly adopted and approved this Agreement and the merger contemplated hereby;

NOW, THEREFORE, in consideration of the foregoing, the parties make this agreement for the merger of each of the Subsidiaries with and into Cooker (the "Merger"):

## ARTICLE I The Merger

Section 1.1 Merger. Subject to the terms and provisions of this Agreement, at the Effective Time of the Merger (as defined in Section 1.2 hereof), each of the Subsidiaries shall be merged with and into Cooker. Cooker shall be the surviving corporation of the Merger (the "Surviving Corporation") and shall continue its corporate existence under the laws of the State of Ohio. At the Effective Time of the Merger, the separate corporate existence of each of the Subsidiaries shall cease. Upon execution of this Agreement, or at such other later date as the parties may agree, a Certificate of Reorganization consistent with the terms of this Agreement shall be filed with the Ohio Secretary of State and Articles of Merger consistent with the terms of this Agreement shall be filed with the Florida Department of State.

Section 1.2 Effective Time. The Merger shall be effective upon the filing of the Certificate of Reorganization with the Ohio Secretary of State or, if later, the filing of the Articles of Merger with the Florida Department of State (the "Effective Time of the Merger").

Section 1.3 Name of Surviving Corporation. The name of the Surviving Corporation shall be Cooker Restaurant Corporation.

Section 1.4 Articles of Incorporation. The Second Amended and Restated Articles of Incorporation of Cooker Restaurant Corporation, attached hereto as Exhibit A, shall be the Articles of Incorporation of the Surviving Corporation.

Section 1.5 Code of Regulation. The Second Amended and Restated Code of Regulations of Cooker Restaurant Corporation, attached hereto as Exhibit B, shall be the Code of Regulations of the Surviving Corporation.

Section 1.6 Directors. Each person who is a director of Cooker immediately prior to the Effective Time of the Merger shall be a director of the Surviving Corporation, and each such person shall serve as a director of the Surviving Corporation for the balance of the term for which such person was elected a director of Cooker and until his or her successor is duly elected and qualified in the manner provided in the Second Amended and Restated Articles of Incorporation or the Second Amended and Restated Code of Regulations or as otherwise provided by applicable law or until his or her earlier death, resignation or removal in the manner provided in the Second Amended and Restated Articles of Incorporation or the Second Amended and Restated Code of Regulations or as otherwise provided by law.

Section 1.7 Officers of the Surviving Corporation. Each person who is an officer of Cooker immediately prior to the Effective Time of the Merger shall be an officer of the Surviving Corporation, with each such person to hold the same office in the Surviving Corporation as he or she held in Cooker immediately prior to the Effective Time of the Merger.

Section 1.8 Location of Principal Office. The place in Ohio where the principal office of the Surviving Corporation is located is in the City of Columbus, Franklin County.

Section 1.9 Consent to Service of Process. The Surviving Corporation hereby consents to be sued and served with process in the State of Ohio and irrevocably appoints the Ohio Secretary of State as its agent to accept service of process in any proceeding in Ohio to enforce against the Surviving Corporation any obligation of Southern or to enforce the rights of a dissenting partner of Southern.

Section 1.10 Additional Actions. If, at any time after the Effective Time of the Merger, the Surviving Corporation shall consider or be advised that any further deeds, assignments or assurances in law or any other acts are necessary or desirable (a) to vest, perfect or confirm in the Surviving Corporation title to and possession of any property or right of the Subsidiaries acquired or to be acquired by reason of, or as a result of, the Merger, or (b) otherwise to carry out the purposes of this Agreement, each of the Subsidiaries shall be deemed to have granted to the Surviving Corporation an irrevocable power of attorney to execute and deliver all such proper deeds, assignments and assurances in law and to do all acts necessary or proper to vest, perfect or confirm title to and the possession of such property or rights in the Surviving Corporation and otherwise to carry out the purposes of this Agreement; and the proper officers and directors of the Surviving Corporation are hereby fully authorized in the name of each of the Subsidiaries or otherwise to take any and all such action.



Section 1.11 Effects of the Merger. At the Effective Time of the Merger, the Merger shall have the effects provided for herein and in Sections 1701.82 and 1782.434 of the Ohio Revised Code and Section 607.1106, Florida Statutes.

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ARTICLE II  
Manner, Basis and Effect of Converting Shares

Section 2.1 Effect on CGR Stock. At the Effective Time of the Merger, each share of CGR Stock issued and outstanding immediately prior to the Effective Time of the Merger shall, by virtue of the Plan and Order and the Merger and without any action on the part of the holder thereof, be extinguished and shall cease to exist, and shall not be converted into shares of the Surviving Corporation or the right to receive cash or any other property.

Section 2.2 Effect on Partnership Interests of Southern. At the Effective Time of the Merger, each partnership interest in Southern held immediately prior to the Effective Time of the Merger shall, by virtue of the Plan and Order and the Merger and without any action on the part of the holder thereof, be extinguished and shall cease to exist, and shall not be converted into shares of the Surviving Corporation or the right to receive cash or any other property.

Section 2.3 Effect on Common Shares of Cooker. At the Effective Time of the Merger, each common share of Cooker issued and outstanding immediately prior to the Effective Time of the Merger shall, by virtue of the Plan and Order and the Merger and without any action on the part of the holder thereof, continue to constitute one issued and outstanding share of the Surviving Corporation; provided, however, that pursuant to the Plan of Reorganization, all of such shares shall be cancelled and extinguished, and common shares, without par value, of Cooker authorized by the Second Amended and Restated Articles of Incorporation attached hereto shall be issued or reserved for issuance, as of the effective date of the Plan of Reorganization.

ARTICLE III  
General Provisions

Section 3.1 Amendments. No amendment of any provision of this Agreement will be valid unless the same is in writing signed by each party.

Section 3.2 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signatories had signed the same document. All counterparts must be construed together to constitute one agreement.

Section 3.3 Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of the State of Ohio, without application of conflict of law principles.

Section 3.4 Section Headings. Section headings have been inserted for convenience only and do not affect in any way the meaning or construction of this Agreement.

Section 3.5 Assignment. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and assigns. No party may assign this Agreement or any of its rights, interests or obligations under this Agreement.

Section 3.6 Entire Agreement. This Agreement constitutes the sole and entire agreement and understanding of the parties concerning the subject matter of this Agreement.

IN WITNESS WHEREOF, the Constituent Entities have caused this Agreement to be duly executed by their authorized representatives or officers, effective as of the day and year set forth above.

CGR MANAGEMENT CORPORATION

By:   
Henry R. Hillenmeyer, Chief Executive Officer

COOKER RESTAURANT CORPORATION

By:   
Henry R. Hillenmeyer, Chief Executive Officer

SOUTHERN COOKER LIMITED PARTNERSHIP

By: COOKER RESTAURANT CORPORATION  
Its Managing General Partner

By:   
Henry R. Hillenmeyer, Chief Executive Officer