



11-18-2002



102283503

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005)

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

Tab settings

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
CGR Management Corporation

Individual(s)       Association  
 General Partnership       Limited Partnership  
 Corporation-State  
 Other \_\_\_\_\_

Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies)  
 Name: Cooker Restaurant Corporation  
 Internal Address: Building A, Suite 106  
 Street Address: 5151 Reed Road  
 City: Columbus State: OH Zip: 43220

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State Ohio corporation  
 Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
 (Designations must be a separate document from assignment)  
 Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:  
 Assignment       Merger  
 Security Agreement       Change of Name  
 Other \_\_\_\_\_

Execution Date: September 23, 2002

4. Application number(s) or registration number(s):  
 A. Trademark Application No.(s)  
 B. Trademark Registration No.(s)  
1,498,116

Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
 Name: Bruce A. Tassan  
 Internal Address: Tassan Law Firm  
 Street Address: 4143 27th Street N.  
 City: Arlington State: VA Zip: 22207

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41)..... \$ 40.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
 \_\_\_\_\_  
 (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.  
*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Bruce A. Tassan      [Signature]      November 12, 2002  
 Name of Person Signing      Signature      Date

Total number of pages including cover sheet, attachments, and document 16  
 Mail documents to be recorded with required cover sheet information to:  
 Commissioner of Patent & Trademarks, Box Assignments  
 Washington, D.C. 20231

11/15/2002 LNUELLER 00000320 1498116  
 01 FC:8521      40.00 OP

TRADEMARK  
 REEL: 002618 FRAME: 0257



DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
09/24/2002	200226700554	MERGER/DOMESTIC (MER)	125.00	100.00	.00	5.00	5.00

**Receipt**  
This is not a bill. Please do not remit payment.

VORYS, SATER, SEYMOUR AND PEASE LLP  
52 EAST GAY STREET  
COLUMBUS, OH 43215

# STATE OF OHIO

**Ohio Secretary of State, J. Kenneth Blackwell**

684439

It is hereby certified that the Secretary of State of Ohio has custody of the business records for  
**COOKER RESTAURANT CORPORATION**  
and, that said business records show the filing and recording of:

Document(s)  
**MERGER/DOMESTIC**

Document No(s):  
**200226700554**



United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of  
the Secretary of State at Columbus,  
Ohio this 23rd day of September,  
A.D. 2002.

*J. Kenneth Blackwell*  
Ohio Secretary of State

DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
09/24/2002	200226700554	MERGED OUT OF EXISTENCE (MEX)	.00	.00	.00	.00	.00

**Receipt**

This is not a bill. Please do not remit payment.

VORYS, SATER, SEYMOUR AND PEASE LLP  
52 EAST GAY STREET  
COLUMBUS, OH 43215

# STATE OF OHIO

**Ohio Secretary of State, J. Kenneth Blackwell**

987179

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

**SOUTHERN COOKER LIMITED PARTNERSHIP**

and, that said business records show the filing and recording of:

Document(s)

**MERGED OUT OF EXISTENCE**

Document No(s):

**200226700554**



United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of  
the Secretary of State at Columbus,  
Ohio this 23rd day of September,  
A.D. 2002.

*J. Kenneth Blackwell*  
Ohio Secretary of State



Prescribed by **J. Kenneth Blackwell**

Ohio Secretary of State  
Central Ohio: (614) 466-3910  
Toll Free: 1-877-SOS-FILE (1-877-767-3453)

<b>Expedite this Form: (Select One)</b>	
<b>Mail Form to one of the Following:</b>	
<input checked="" type="radio"/> Yes	PO Box 1390 Columbus, OH 43216
*** Requires an additional fee of \$100 ***	
<input type="radio"/> No	PO Box 1329 Columbus, OH 43216

[www.state.oh.us/sos](http://www.state.oh.us/sos)  
e-mail: busserv@sos.state.oh.us

### CERTIFICATE OF MERGER

(For Domestic or Foreign, Profit or Non-Profit)  
Filing Fee \$125.00

(154-MER)

In accordance with the requirements of Ohio law, the undersigned corporations, banks, savings banks, savings and loan, limited liability companies, limited partnerships and/or partnerships with limited liability, desiring to effect a merger, set forth the following facts:

**I. SURVIVING ENTITY**

A. The name of the entity surviving the merger is:

Cooker Restaurant Corporation

B. Name Change: As a result of this merger, the name of the surviving entity has been changed to the following:

(Complete only if name of surviving entity is changing through the merger)

C. The surviving entity is a: (Please check the appropriate box and fill in the appropriate blanks)

- Domestic (Ohio) For-Profit Corporation, charter number 684439
- Domestic (Ohio) Non-Profit Corporation, charter number \_\_\_\_\_
- Foreign (Non-Ohio) Corporation incorporated under the laws of the state/country of \_\_\_\_\_ and licensed to transact business in the State of Ohio under license number \_\_\_\_\_
- Foreign (Non-Ohio) Corporation incorporated under the laws of the state/country of \_\_\_\_\_ and NOT licensed to transact business in the state of Ohio, \_\_\_\_\_
- Domestic (Ohio) Limited Liability Company, with registration number \_\_\_\_\_
- Foreign (Non-Ohio) Limited Liability Company organized under the laws of the state/country of \_\_\_\_\_ and registered to do business in the State of Ohio under registration number \_\_\_\_\_
- Foreign (Non-Ohio) Limited Liability Company organized under the laws of the state/country of \_\_\_\_\_ and NOT registered to do business in the State of Ohio. \_\_\_\_\_
- Domestic (Ohio) Limited Partnership, with registration number \_\_\_\_\_
- Foreign (Non-Ohio) Limited Partnership organized under the laws of the state/country of \_\_\_\_\_ and registered to do business in the state of Ohio under registration number \_\_\_\_\_

SECRETARY OF STATE

- Foreign (Non-Ohio) Limited Partnership organized under the laws of the state/country of \_\_\_\_\_ and NOT registered to do business in the state of Ohio.
- Domestic (Ohio) Partnership having limited liability, with the registration number \_\_\_\_\_
- Foreign (Non-Ohio) Partnership having limited liability organized under the laws of the state/country of \_\_\_\_\_ and registered to do business in the state of Ohio under registration number \_\_\_\_\_
- Foreign (Non-Ohio) Non-Profit incorporation under the laws of the state/country of \_\_\_\_\_ and licensed to transact business in the state of Ohio under license number \_\_\_\_\_
- Foreign (Non-Ohio) Non-Profit incorporation under the laws of the state/country of \_\_\_\_\_ and not licensed to transact business in the state of Ohio.
- General partnership not registered with the state of Ohio

**II. MERGING ENTITY**

The name, charter/license/registration number, type of entity, state/country of incorporation or organization, respectively, of which is the entities merging out of existence are as follows: (If this is insufficient space to reflect all merging entities, please attach a separate sheet listing the merging entities)

(Please list the Ohio charter, license/registration no. below)

Name / charter, license or registration number	State/Country of Organization	Type of Entity
CGR Management Corporation	Florida	Corporation
Southern Cooker Limited Partnership / #987179	Ohio	Limited Partnership
_____	_____	_____
_____	_____	_____

**III. MERGER AGREEMENT ON FILE**

The name and mailing address of the person or entity from whom/which eligible persons may obtain a copy of the agreement of merger upon written request:

Cooker Restaurant Corporation, Attention CEO      2609 West End Avenue  
(name)      (street)      NOTE: P.O. Box Addresses are NOT acceptable.

Nashville      TN      37203  
(city, village or township)      (state)      (zip code)

**IV. EFFECTIVE DATE OF MERGER**

This merger is to be effective on: \_\_\_\_\_ (If a date is specified, the date must be a date on or after the date of filing; the effective date of the merger cannot be earlier than the date of filing, if no date is specified, the date of filing will be the effective date of the merger).

**V. MERGER AUTHORIZED**

The laws of the state or country under which each constituent entity exists, permits this merger. This merger was adopted, approved and authorized by each of the constituent entities in compliance with the laws of the state under which it is organized, and the persons signing this certificate on behalf of each of the constituent entities are duly authorized to do so. See Exhibit A attached hereto.

VI. STATUTORY AGENT

The name and address of the surviving entity's statutory agent upon whom any process, notice or demand may be served is:

\_\_\_\_\_  
(name) (street) NOTE: P.O. Box Addresses are NOT acceptable.  
\_\_\_\_\_, Ohio  
(city, village or township) (zip code)

(This item MUST be completed if the surviving entity is a foreign entity which is not licensed, registered or otherwise authorized to conduct business in the state of Ohio)

VII. ACCEPTANCE OF AGENT

The undersigned, named herein as the statutory agent for the above referenced surviving entity, hereby acknowledges and accepts the appointment of statutory agent for said entity.

Signature of Agent \_\_\_\_\_

(The acceptance of agent must be completed by the surviving entities if through this merger the statutory agent has changed, or the named agent differs in any way from the name currently on record with the Secretary of State.)

VIII. STATEMENT OF MERGER

Upon filing, or upon such later date as specified herein, the merging entity/entities listed herein shall merge into the listed surviving entity

IX. AMENDMENTS

The articles of incorporation, articles of organization, certificate of limited partnership or registration of partnership having limited liability (circle appropriate term) of the surviving domestic entity have been amended.

Attachments are provided  No Changes

X. QUALIFICATION OR LICENSURE OF FOREIGN SURVIVING ENTITY

A. The listed surviving foreign corporation, bank, savings bank, savings and loan, limited liability company, limited partnership, or partnership having limited liability desires to transact business in Ohio as a foreign corporation, bank, savings bank, savings and loan, limited liability company, limited partnership, or partnership having limited liability, and hereby appoints the following as its statutory agent upon whom process, notice or demand against the entity may be served in the state of Ohio. The name and complete address of the statutory agent is:

\_\_\_\_\_  
(name) (street) NOTE: P.O. Box Addresses are NOT acceptable.  
\_\_\_\_\_, Ohio  
(city, village or township) (zip code)

The subject surviving foreign corporation, bank, savings bank, savings and loan, limited liability company, limited partnership, or partnership having limited liability irrevocably consents to service of process on the statutory agent listed above as long as the authority of the agent continues, and to service of process upon the Secretary of State of Ohio if the agent cannot be found, if the corporation, bank, savings bank, savings and loan, limited liability company, limited partnership, or partnership having limited liability fails to designate another agent when required to do so, or if the foreign corporation's, bank's, savings bank's, savings and loan's, limited liability company's, limited partnership's or partnership having limited liability's license or registration to do business on Ohio expires or is canceled.

B. The qualifying entity also states as follows: (Complete only if applicable)

1. Foreign Notice Under Section 1703.031

(If the qualifying entity is a foreign bank, savings bank, or savings and loan, then the following information must be completed.)

(a.) The name of the Foreign Nationally/Federally chartered bank, savings bank, or savings and loan association is

\_\_\_\_\_

(b.) The name(s) of any Trade Name(s) under which the corporation will conduct business:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c.) The location of the main office (non-Ohio) shall be:

(street address)

NOTE: P.O. Box Addresses are NOT acceptable.

(city, township, or village)

(county)

(state)

(zip code)

(d.) The principal office location in the state of Ohio shall be:

(street address)

NOTE: P.O. Box Addresses are NOT acceptable.

(city, township, or village)

(county)

Ohio

(state)

(zip code)

(Please note, if there will not be an office in the state of Ohio, please list none.)

(e.) The corporation will exercise the following purpose(s) in the state of Ohio:

(Please provide a brief summary of the business to be conducted; a general clause is not sufficient)

\_\_\_\_\_

\_\_\_\_\_

2. Foreign Qualifying Limited Liability Company

(If the qualifying entity is a foreign limited liability company, the following information must be completed.)

(a.) The name of the limited liability company in its state of organization/registration is

\_\_\_\_\_

(b.) The name under which the limited liability company desires to transact business in Ohio is

\_\_\_\_\_

(c.) The limited liability company was organized or registered on \_\_\_\_\_  
under the laws of the state/country of \_\_\_\_\_

(d.) The address to which interested persons may direct requests for copies of the articles of organization, operating agreement, bylaws, or other charter documents of the company is:

\_\_\_\_\_  
(street address) NOTE: P.O. Box Addresses are NOT acceptable.

\_\_\_\_\_  
(city, township, or village) (state) (zip code)

**3. Foreign Qualifying Limited Partnership**

(If the qualifying entity is a foreign limited partnership, the following information must be completed).

(a.) The name of the limited partnership is

\_\_\_\_\_

(b.) The limited partnership was formed on \_\_\_\_\_

(c.) The address of the office of the limited partnership in its state/country of organization is:

\_\_\_\_\_  
(street address) NOTE: P.O. Box Addresses are NOT acceptable.

\_\_\_\_\_  
(city, township, or village) (county) (state) (zip code)

(d.) The limited partnership's principal office address is:

\_\_\_\_\_  
(street address) NOTE: P.O. Box Addresses are NOT acceptable.

\_\_\_\_\_  
(city, township, or village) (county) (state) (zip code)

(e.) The names and business or residence addresses of the General partners of the partnership are as follows:

Name	Address
_____	_____
_____	_____
_____	_____

(If insufficient space to cover this item, please attach a separate sheet listing the general partners and their respective addresses)

(f.) The address of the office where a list of the names and business or residence addresses of the limited partners and their respective capital contributions is to be maintained is:

\_\_\_\_\_  
(street address) NOTE: P.O. Box Addresses are NOT acceptable.

\_\_\_\_\_  
(city, township, or village) (county) (state) (zip code)



The limited partnership hereby certifies that it shall maintain said records until the registration of the limited partnership in Ohio is canceled or withdrawn.

4. Foreign Qualifying Partnership Having Limited Liability

(a.) The name of the partnership shall be

\_\_\_\_\_

(b.) Please complete the following appropriate section (either item b(1) or b(2)):

(1.) The address of the partnership's principal office in Ohio is:

\_\_\_\_\_  
(street address) *NOTE: P.O. Box Addresses are NOT acceptable.*  
\_\_\_\_\_, Ohio \_\_\_\_\_  
(city, village or township) (zip code)

*(If the partnership does not have a principal office in Ohio, then items b2 must be completed)*

(2.) The address of the partnership's principal office (Non-Ohio):

\_\_\_\_\_  
(street address) *NOTE: P.O. Box Addresses are NOT acceptable.*  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(city, township, or village) (state) (zip code)

(c.) The name and address of a statutory agent for service of process in Ohio is as follows:

\_\_\_\_\_  
(name)  
\_\_\_\_\_  
(street address) *NOTE: P.O. Box Addresses are NOT acceptable.*  
\_\_\_\_\_, Ohio \_\_\_\_\_  
(city, village or township) (zip code)

(d.) Please indicate the state or jurisdiction in which the Foreign Limited Liability Partnership has been formed

\_\_\_\_\_

(e.) The business which the partnership engages in is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned constituent entities have caused this certificate of merger to be signed by its duly authorized officers, partners and representatives on the date(s) stated below.

Cooker Restaurant Corporation

(Exact name of entity)

By: [Signature]

Its: Chief Executive Officer

Date: September 23, 2002

CGR Management Corporation

(Exact name of entity)

By: [Signature]

Its: Chief Executive Officer

Date: September 23, 2002

Southern Cooker Limited Partnership

(Exact name of entity)

By: [Signature]

Its: CEO of Cooker Restaurant Corporation,  
Its Managing General Partner

Date: September 23, 2002

(Exact name of entity)

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

(Exact name of entity)

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

(Exact name of entity)

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

(Exact name of entity)

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

(Exact name of entity)

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

(Exact name of entity)

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

(Exact name of entity)

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A

This Certificate of Merger is filed pursuant to Section 1701.75 of the Ohio Revised Code and constitutes a "certificate of reorganization" as described in Section 1701.75. The merger of CGR Management Corporation, a Florida corporation ("CGR"), and Southern Cooker Limited Partnership, an Ohio limited partnership ("Southern Cooker"), with and into Cooker Restaurant Corporation, an Ohio corporation ("Cooker"), and the adoption of Second Amended and Restated Articles of Incorporation of Cooker, the surviving entity, was approved pursuant to an Order issued on September 11, 2002 by the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division, confirming the First Amended Plan of Reorganization of Cooker, CGR and Southern Cooker dated July 3, 2002, as revised.

09/19/02 - 9128581

**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
COOKER RESTAURANT CORPORATION**

**ARTICLE I**

**NAME OF CORPORATION**

The name of the Corporation shall be Cooker Restaurant Corporation.

**ARTICLE II**

**PRINCIPAL OFFICE**

The place in Ohio where the principal office of the Corporation is to be located is in the City of Columbus, Franklin County.

**ARTICLE III**

**PURPOSE**

The purposes for which the Corporation is formed are to engage in any business or activity for which corporations may be formed under Sections 1701.01 to 1701.98, inclusive, of the Ohio Revised Code.

**ARTICLE IV**

**AUTHORIZED SHARES**

Section 1. Number and Class of Shares. The authorized number of shares of the Corporation shall be 35,000,000, all of which shall be common shares, each without par value.

Section 2. Plan of Reorganization. On September 11, 2002, the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division, issued its Order pursuant to Section 1129 of the Bankruptcy Code confirming the First Amended Plan of Reorganization of the Corporation, CGR Management Corporation and Southern Cooker Limited Partnership dated July 3, 2002 (the "Plan of Reorganization") effective as of October 1, 2002 (the "Effective Date"). Pursuant to the Plan of Reorganization, all of the shares of the Corporation issued and outstanding immediately before the Effective Date shall be cancelled and extinguished as of the

Effective Date, and common shares authorized by Section 1 of this Article shall be issued or reserved for issuance as of the Effective Date.

Section 3. Non-Voting Equity Securities Prohibited. The Corporation shall be prohibited from issuing non-voting equity securities within the meaning of Title 11 of the U.S. Code, 11 U.S.C. § 1123(a)(vi).

ARTICLE V

NO PRE-EMPTIVE RIGHTS

No holder of shares of the Corporation shall have any pre-emptive right to subscribe for or to purchase any shares of the Corporation of any class or series, whether now or hereafter authorized.

ARTICLE VI

SHAREHOLDER VOTING

Section 1. General. Notwithstanding any provision of the Ohio Revised Code, now or hereafter in force, requiring for any purpose the vote or consent of the holders of shares entitling them to exercise two-thirds, or any other proportion, of the voting power of the Corporation or of any class or series of shares thereof, such action, unless otherwise expressly required by law, the provisions of this Article VI or the Corporation's Code of Regulations, may be taken by the vote or consent of the holders of shares entitling them to exercise a majority of the voting power of the Corporation, or of such class or series of shares thereof.

Section 2. Vote Required for Certain Business Combinations. In addition to any vote required by law or any other provisions of these Second Amended and Restated Articles of Incorporation, the affirmative vote of the holders of not less than 75 percent of the outstanding shares of "Voting Stock" (as hereinafter defined) and the affirmative vote of the holders of not less than a majority of the outstanding shares of Voting Stock held by shareholders other than an "Interested Person" (as hereinafter defined) shall be required for the approval or authorization of any "Business Combination" (as hereinafter defined) of the Corporation with any Interested Person; provided, however, that the voting requirements set forth above shall not be applicable if:

(a) the "Continuing Directors" (as hereinafter defined) of the Corporation by at least a two-thirds vote (i) have expressly approved in advance the acquisition of the outstanding shares of Voting Stock that caused such Interested Person to become an Interested Person, or (ii) have expressly approved such Business Combination either in advance of or subsequent to such Interested Person's having become an Interested Person; or

(b) the cash or fair market value (as determined by at least two-thirds of the Continuing Directors) of the property, securities or "Other Consideration to be Received" (as

hereinafter defined) per share by holders of Voting Stock of the Corporation in the Business Combination is not less than the "Fair Price" (as hereinafter defined) paid by the Interested Person in acquiring any of its holdings of the Corporation's Voting Stock.

Section 3. **Definitions.** Certain words and terms as used in this Article VI shall have the meanings given to them by the definitions and descriptions in this Section.

3.1. **Business Combination.** The term "Business Combination" shall mean (a) any merger or consolidation of the Corporation or a subsidiary of the Corporation with or into an Interested Person, (b) any sale, lease, exchange, transfer or other disposition, including without limitation, a mortgage or any other security device, of all or any "Substantial Part" (as hereinafter defined) of the assets either of the Corporation (including without limitation, any voting securities of a subsidiary) or of a subsidiary of the Corporation to an Interested Person, (c) any merger or consolidation of an Interested Person with or into the Corporation or a subsidiary of the Corporation, (d) any sale, lease, exchange, transfer or other disposition, including, without limitation, a mortgage or other security device, of all or any Substantial Part of the assets of an Interested Person to the Corporation or a subsidiary of the Corporation, (e) the issuance or transfer by the Corporation or any subsidiary of any securities of the Corporation or a subsidiary of the Corporation to an Interested Person, (f) any reclassification of securities, recapitalization or other comparable transaction involving the Corporation that would have the effect of increasing the voting power of any Interested Person with respect to Voting Stock of the Corporation, and (g) any agreement, contract or other arrangement providing for any of the transactions described in this definition of Business Combination.

3.2. **Interested Person.** The term "Interested Person" shall mean and include any individual, corporation, partnership or other person or entity which, together with its "Affiliates" and "Associates" (as defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934 as in effect on the date of the adoption of these Second Amended and Restated Articles of Incorporation by the shareholders of the Corporation), "Beneficially Owns" (as defined in Rule 13d-3 of the General Rules and Regulations under the Securities Exchange Act of 1934 as in effect on the date of the adoption of these Second Amended and Restated Articles of Incorporation by the shareholders of the Corporation) in the aggregate 10 percent or more of the outstanding Voting Stock of the Corporation, and any Affiliate or Associate of any such individual, corporation, partnership or other person or entity. Without limitation, any share of Voting Stock of the Corporation that any Interested Person has the right to acquire at any time (notwithstanding that Rule 13d-3 deems such shares to be beneficially owned only if such right may be exercised within 60 days) pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise, shall be deemed to be Beneficially Owned by the Interested Person and to be outstanding for purposes of this definition. An Interested Person shall be deemed to have acquired a share of the Voting Stock of the Corporation at the time when such Interested Person became the Beneficial Owner thereof. With respect to the shares owned by Affiliates, Associates or other persons whose ownership is attributed to an Interested Person under the foregoing definition of Interested Person, if the price paid by such Interested Person for such shares is not determinable by two-thirds of the Continuing Directors, the price so paid shall be deemed to be the higher of (a) the price paid upon the acquisition thereof by the Affiliate, Associate or other person or (b) the

market price of the shares in question at the time when the Interested Person became the Beneficial Owner thereof.

3.3. Voting Stock. The term "Voting Stock" shall mean all of the outstanding shares of capital stock of the Corporation, and each reference to a proportion of shares of Voting Stock shall refer to such proportion of the votes entitled to be cast by such shares.

3.4. Continuing Director. The term "Continuing Director" shall mean (a) a Director who was a member of the Board of Directors of the Corporation (i) as of the date these Second Amended and Restated Articles of Incorporation were adopted or (ii) immediately prior to the time that the Interested Person involved in a Business Combination became an Interested Person or (b) a Director who was (i) elected to fill a vacancy after the date the Interested Person became an Interested Person by a majority of the then current Continuing Directors or (ii) nominated to fill a vacancy after the date the Interested Person became an Interested Person by a majority of the then current Continuing Directors and who was subsequently elected as a Director by the shareholders of the Corporation.

3.5. Fair Price. The term "Fair Price" shall mean the following: If there is only one class of capital stock of the Corporation issued and outstanding, the Fair Price shall mean the highest price that can be determined by a majority of the Continuing Directors to have been paid at any time by the Interested Person for any share or shares of that class of capital stock. If there is more than one class of capital stock of the Corporation issued and outstanding, the Fair Price shall mean with respect to each class and series of capital stock of the Corporation, the amount determined by a majority of the Continuing Directors to be the highest per share price equivalent to the highest price that can be determined to have been paid at any time by the Interested Person for any share or shares of any class or series of capital stock of the Corporation. In determining the Fair Price, all purchases by the Interested Person shall be taken into account regardless of whether the shares were purchased before or after the Interested Person became an Interested Person. Also, the Fair Price shall include any brokerage commissions, transfer taxes and soliciting dealers' fees paid by the Interested Person with respect to the shares of capital stock of the Corporation acquired by the Interested Person. In the case of any Business Combination with an Interested Person, a majority of the Continuing Directors shall determine the Fair Price for each Corporation. The Fair Price shall also include interest compounded annually from the date an Interested Person became an Interested Person through the date the Business Combination is consummated at the publicly announced base rate of interest of National City Bank, Cleveland, Ohio less the aggregate amount of any cash dividends paid, and the fair market value of any dividends paid in other than cash, on each share of capital stock in the same time period, in an amount up to but not exceeding the amount of interest so payable per share of capital stock.

3.6. Substantial Part. The term "Substantial Part" shall mean more than 20 percent of the fair market value as determined by two-thirds of the Continuing Directors of the total consolidated assets of the Corporation and its subsidiaries taken as a whole as of the end of its most recent fiscal year ended prior to the time the determination is being made.

3.7. Other Consideration to be Received. The term "Other Consideration to be Received" shall include, without limitation, common shares or other capital stock of the

Corporation retained by its existing shareholders other than Interested Persons or other parties to such Business Combination in the event of a Business Combination in which the Corporation is the surviving corporation.

Section 4. Determinations by the Continuing Directors. In making any determinations, the Continuing Directors may engage such persons, including investment banking firms and the independent accountants who have reported on the most recent financial statements of the Corporation, and utilize employees and agents of the Corporation, who will, in the judgment of the Continuing Directors, be of assistance to the Continuing Directors. Any determinations made by the Continuing Directors, acting in good faith on the basis of such information and assistance as was then reasonably available for such purposes, shall be conclusive and binding upon the Corporation and its shareholders, including any Interested Person.

Section 5. Amendment and Repeal. The provisions set forth in this Article VI may not be amended, altered, changed or repealed in any respect unless such action is approved by the affirmative vote of the holders of not less than 75 percent of the outstanding shares of Voting Stock of the Corporation at a meeting of the shareholders duly called for the consideration of such amendment, alteration, change or repeal; provided, however, that if there is an Interested Person, such action must also be approved in the manner set forth above by the affirmative vote of the holders of not less than a majority of the outstanding shares of Voting Stock held by the shareholders other than the Interested Person.

ARTICLE VII

PURCHASE OF SHARES

The Corporation, by action of its Board of Directors, may purchase or otherwise acquire shares of any class or series issued by it at such times, for such consideration and upon such terms and conditions as the Board of Directors may determine.

ARTICLE VIII

NO CUMULATIVE VOTING

No shareholder of the Corporation may cumulate voting power in the election of directors.

ARTICLE IX

EFFECT OF AMENDMENT

These Second Amended and Restated Articles of Incorporation take the place of and supersede the Corporation's existing Amended and Restated Articles of Incorporation as heretofore amended.