Document Number Only

F99000004274

C T CORPORATION SYSTEM

660 East Jefferson Street

Requestor's Name

Tallahassee, Florida 32301

Address

(850) 222-1092

City State Zip Phone

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*****70.00 *****70.00

500002963345--5
-08/18/99--01063--020
*****17.50 *****8.75

CORPORATION(S) NAME

Deep South Cooling & Heating, Inc.
into
R.S. Andrews of Florida, Inc

Merger

FILED
99 AUG 18 PM 4:57
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

( ) Profit
( ) NonProfit
( ) Limited Liability Company
( ) Foreign

( ) Amendment
( ) Dissolution/Withdrawal

(X) Merger
( ) Mark

( ) Limited Partnership
( ) Reinstatement
( ) Limited Liability Partnership
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TALLAHASSEE, FLORIDA

File 2nd

CR2E031 (1-89)

ARTICLES OF MERGER
Merger Sheet

MERGING:

DEEP SOUTH COOLING & HEATING, INC., a Florida corporation L01185

INTO

R.S. ANDREWS OF FLORIDA, INC., a Georgia corporation, F99000004274

File date: August 18, 1999

Corporate Specialist: Annette Ramsey

FILED
99 AUG 18 PM 4:54
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER

OF

DEEP SOUTH COOLING & HEATING, INC.

WITH AND INTO

R. S. ANDREWS OF FLORIDA, INC.

1.

The Board of Directors and Shareholders of Deep South Cooling & Heating, Inc., a Florida corporation, and the Board of Directors and Shareholders of R. S. Andrews of Florida, Inc., a Georgia corporation, have duly authorized and approved a Plan of Merger in accordance with applicable laws, a copy of which is attached hereto as **Exhibit A.**

2.

The name of the surviving corporation is R. S. Andrews of Florida, Inc., a Georgia corporation.

3.

The Plan of Merger was adopted by the Shareholders of Deep South Cooling & Heating, Inc., on August 16, 1999. The Plan of Merger was adopted by the Shareholders of R. S. Andrews of Florida, Inc., on April 21, 1999.

IN WITNESS WHEREOF, this Certificate of Merger has been duly executed by the merging corporations as of August 17, 1999.

R. S. ANDREWS OF FLORIDA, INC.

By: _____
R. Stephen Andrews, Chief Executive Officer

DEEP SOUTH COOLING & HEATING, INC.

By: _____
Kevin Michael Sharkey, President

EXHIBIT A

PLAN OF MERGER OF

DEEP SOUTH COOLING & HEATING, INC.

WITH AND INTO

R. S. ANDREWS OF FLORIDA, INC.

THIS PLAN OF MERGER (this "**Plan**") is made and entered into as of August 17, 1999, by and between **R. S. Andrews of Florida, Inc.**, a Georgia corporation (the "**Surviving Corporation**"), and **Deep South Cooling & Heating, Inc.**, a Florida corporation (the "**Nonsurviving Corporation**") (the Nonsurviving Corporation and the Surviving Corporation being hereinafter sometimes collectively referred to as the "**Constituent Corporations**").

WHEREAS, the laws of the State of Georgia and the State of Florida permit a merger of the Constituent Corporations; and

WHEREAS, the Boards of Directors and shareholders of each of the Constituent Corporations have determined that it is advisable and for the benefit of each of the Constituent Corporations and their respective shareholders that the Nonsurviving Corporation be merged with and into the Surviving Corporation on the terms and conditions hereinafter set forth, and by resolutions duly adopted have adopted the terms and conditions of this Plan.

NOW, THEREFORE, for and in consideration of the premises, the mutual agreements, promises and covenants contained herein, and all other consideration, the receipt and legal sufficiency of which are hereby acknowledged, it is agreed by and between the parties hereto, subject to the conditions hereinafter set forth and in accordance with the laws of the State of Georgia and the State of Florida, that the Nonsurviving Corporation shall be, at the Effective Time (as hereinafter defined), merged with and into the Surviving Corporation, with the corporate existence of the Surviving Corporation to be continued under the name **R. S. Andrews of Florida, Inc.**, and that the terms and conditions of the merger hereby agreed upon are and shall be as follows:

SECTION 1. MERGER

1.1 At the Effective Time, the Nonsurviving Corporation shall be merged with and into the Surviving Corporation, the separate existence of the Nonsurviving Corporation shall cease, the Surviving Corporation shall continue in existence, and the merger shall in all respects have the effect provided for in Section 14-2-1106 of the Georgia Business Corporation Code and Section 607.1106 of the Florida Statutes Annotated.

1.2 Without limiting the foregoing, from and after the Effective Time, the separate existence of the Nonsurviving Corporation shall cease, and, in accordance with the terms of this Plan, the title to all property owned by each of the Constituent Corporations shall be vested in the Surviving Corporation without reversion or impairment; the Surviving Corporation shall have all liabilities of each of the Constituent Corporations; and any proceeding pending against any Constituent Corporation may be continued as if the merger did not occur, or the Surviving Corporation may be substituted in the proceeding for the Nonsurviving Corporation.

1.3 The Constituent Corporations shall take all such actions as shall be necessary or appropriate in order to effectuate the merger. If at any time after the Effective Time the Surviving Corporation shall consider or be advised that any further assignments, conveyances or assurances in law or any other actions are necessary, appropriate or desirable to vest in the Surviving Corporation, according to the terms hereof, the title to any property or rights of the Nonsurviving Corporation, the last acting officers of the Nonsurviving Corporation, or the corresponding officers of the Surviving Corporation, shall execute and make all such proper assignments and assurances and shall take all actions

necessary and proper to vest title in such property or rights in the Surviving Corporation, and shall otherwise carry out the purposes of this Plan.

SECTION 2. TERMS OF TRANSACTION

The terms of the transaction are set forth in that certain Merger Agreement between and among the Constituent Corporations, **R. S. Andrews Enterprises, Inc.**, a Delaware corporation, and the shareholders of the Nonsurviving Corporation, a copy of which Merger Agreement is attached hereto as **Exhibit A** and incorporated herein by this reference (the "**Merger Agreement**").

SECTION 3. DIRECTORS AND OFFICERS

The persons who are directors and officers of the Surviving Corporation immediately prior to the Effective Time shall continue as the directors and officers of the Surviving Corporation and shall continue to hold office as provided in the Articles of Incorporation and Bylaws of the Surviving Corporation.

SECTION 4. ARTICLES OF INCORPORATION AND BYLAWS

From and after the Effective Time, the Articles of Incorporation and Bylaws of the Surviving Corporation, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation and Bylaws of the Surviving Corporation and shall continue in effect until the same shall be altered, amended or repealed as therein provided or as provided by law.

SECTION 5. SHAREHOLDER APPROVAL; EFFECTIVENESS OF MERGER

This Plan shall be submitted for approval to the shareholders of the Constituent Corporations as provided by the applicable laws of the State of Florida and the State of Georgia. If this Plan is duly authorized and adopted by the requisite votes or written consents of such shareholders and is not terminated and abandoned pursuant to the provisions of Section 6 hereof, Articles of Merger referring to the terms of this Plan shall be filed in accordance with the laws of the State of Florida and a Certificate of Merger referring to the terms of this Plan shall be filed in accordance with the laws of the State of Georgia, as soon as practicable after the date hereof. The Boards of Directors and the proper officers of the Constituent Corporations are authorized, empowered and directed to do any and all acts and things, and to make, execute, deliver, file and record any and all instruments, papers and documents which shall be or become necessary, proper or convenient to carry out or put into effect any of the provisions of this Plan or of the merger herein provided for. Upon the last to occur of the filing of Articles of Merger with the Department of State of Florida, and the filing of a Certificate of Merger with the Secretary of State of Georgia, the merger shall become effective (the "**Effective Time**").

SECTION 6. TERMINATION

At any time prior to the filing of the first of the documents referred to in Section 5 to be filed, the Board of Directors of the Nonsurviving Corporation or the Surviving Corporation may terminate and abandon this Plan, notwithstanding the earlier approval by the Boards of Directors and shareholders of the Constituent Corporations.

IN WITNESS WHEREOF, the Constituent Corporations have executed this Plan effective as of the day and year first above written.

SURVIVING CORPORATION:

R. S. ANDREWS OF FLORIDA, INC.

By: _____
R. Stephen Andrews, Chief Executive Officer

NONSURVIVING CORPORATION:

DEEP SOUTH COOLING & HEATING, INC.

By: _____
Kevin Michael Sharkey, President

Exhibit A

MERGER AGREEMENT

MERGER AGREEMENT

THIS MERGER AGREEMENT (this "**Agreement**") is made and entered into, effective as of August 17, 1999 (the "**Closing Date**"), between and among **R. S. ANDREWS ENTERPRISES, INC.**, a Delaware corporation (the "**Parent**"); **R. S. ANDREWS OF FLORIDA, INC.**, a Georgia corporation (the "**Acquiror**"); **DEEP SOUTH COOLING & HEATING, INC.**, a Florida corporation (the "**Contractor**"); and **KEVIN MICHAEL SHARKEY** and **DEBORAH KAY SHARKEY**, Florida residents and the sole shareholders (as joint tenants with rights of survivorship) of Contractor (each a "**Shareholder**" and collectively, the "**Shareholders**") (the Parent, the Acquiror, the Contractor and the Shareholders are sometimes referred to collectively herein as the "**Parties**", and sometimes referred to individually herein as a "**Party**").

WHEREAS, the Contractor is engaged in the commercial and residential heating, ventilation, air conditioning, and indoor air quality service business in the Stuart, Florida area (the "**Business**"); and

WHEREAS, the Acquiror is a wholly-owned subsidiary of the Parent; and

WHEREAS, the respective Boards of Directors of the Parent, the Acquiror and the Contractor, and the Shareholders, have approved the merger of the Contractor with and into the Acquiror (the "**Merger**"), pursuant to a Plan of Merger in substantially the form attached hereto as **Exhibit A** (the "**Plan of Merger**"), with the Acquiror being the surviving corporation of such Merger; and

WHEREAS, the Parties intend that the Merger qualify as a tax-free reorganization in accordance with Sections 368(a)(1)(A) and 368(a)(2)(D) of the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, the Parties agree as follows:

ARTICLE 1. KEY DEFINITIONS

"**Accounts**" means (i) all customer accounts, names, lists, purchase orders, customer service agreements and contracts (including implied or quantum meruit contractual rights) or other rights of the Contractor to provide commercial and residential heating, ventilation, air conditioning, and indoor air quality services to customers of the Contractor, and all rights to and in connection with any activities commonly associated with such services, customer service agreements and contract rights (including implied or quantum meruit contractual rights) with customers, and (ii) all files, correspondence, records and related proprietary information and material and other intellectual property which is necessary, helpful or related to the providing of such services described above.

"**Affiliates**" shall have the meaning set forth for such term in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act of 1934, as amended.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Employee Benefit Plan**" means any (i) non-qualified deferred compensation or retirement plan or arrangement, (ii) qualified defined contribution retirement plan or arrangement which is an Employee Pension Benefit Plan, (iii) qualified defined benefit retirement plan or arrangement which is an Employee Pension Benefit Plan, or (iv) Employee Welfare Benefit Plan or material fringe benefit or other retirement, bonus or incentive plan or program.

"**Employee Pension Benefit Plan**" has the meaning set forth in Section 3(2) of ERISA.

"**Employee Welfare Benefit Plan**" has the meaning set forth in Section 3(1) of ERISA.

"**Environmental, Health and Safety Requirements**" shall mean all federal, state, local and foreign statutes, regulations, ordinances and other provisions having the force or effect of law, all judicial and administrative orders and

determinations, all contractual obligations and all common law concerning public health and safety, worker health and safety, and pollution or protection of the environment, each as amended and as now or hereafter in effect.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**GAAP**" means United States generally accepted accounting principles as in effect from time to time.

"**Hazardous Materials**" means any substance that has been designated by any governmental authority whose requirements are applicable to the Contractor to be radioactive, toxic, hazardous, or to otherwise pose potential danger to health or the environment, including, but not limited to, volatile organic compounds and all substances listed pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, the federal Resource Conservation Recovery Act, the federal Clean Air Act, the federal Water Pollution Control Act, the Toxic Substance Control Act and the Occupational Safety and Health Act, as such acts are amended, and the regulations and publications promulgated pursuant to said acts, and "extremely hazardous substances" (as said term is defined in Section 302 of the Emergency Planning and Community Right-to-Know Act of 1986, as amended).

"**Knowledge**" means, and an individual will be deemed to have "**Knowledge**" of a particular fact or other matter if:

(a) such individual is actually aware of such fact or other matter; or

(b) such individual has received such notice or communication as to cause a reasonable person to inquire further, and based upon such further inquiry, a reasonable person would have acquired actual knowledge of a particular fact or other matter.

"**Liability**" means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due).

"**Losses**" means any and all direct or indirect demands, claims, payments, obligations, recoveries, deficiencies, fines, penalties, interest, assessments, actions, causes of action, suits, losses, diminution in the value of any of the assets of the Contractor, compensatory, punitive, exemplary damages, Liabilities, costs, expenses (including, without limitation, (i) interest, penalties and reasonable attorneys' fees and expenses, (ii) attorneys' fees and expenses necessary to enforce rights to indemnification hereunder, and (iii) consultant's fees and other costs of defense or investigation); and interest on any amount payable to a third party as a result of the foregoing, whether accrued, absolute, contingent, known, unknown or otherwise.

"**Merger Agreements**" mean, collectively, this Agreement, the Plan of Merger and the Certificates of Merger.

"**Ordinary Course of Business**" means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency).

"**Parent Common Stock**" means the authorized common stock of the Parent.

"**Person**" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof).

"**Security Interest**" means any mortgage, pledge, lien, encumbrance, charge or other security interest, other than (i) mechanic's, materialmen's, and similar liens, (ii) liens for Taxes not yet due and payable or for Taxes that the taxpayer is contesting in good faith through appropriate proceedings, (iii) purchase money liens and liens securing rental payments under capital lease arrangements, and (iv) other liens arising in the Ordinary Course of Business and not incurred in connection with the borrowing of money.

"Subsidiary" means any corporation with respect to which a specified Person (or a Subsidiary thereof) owns a majority of the common stock or has the power to vote or direct the voting of sufficient securities to elect a majority of the directors.

"Tax" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, documentary, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

"Tax Return" means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Working Capital" means the working capital of the Contractor, determined in accordance with GAAP.

ARTICLE 2. THE MERGER

2.1 **The Merger**. Subject to the terms and conditions of the Merger Agreements, the Acquiror, the Contractor and the Parent agree to effect the Merger in accordance with the applicable provisions of the Official Code of Georgia Annotated (the **"Georgia Code"**) and of Florida Statutes Annotated (the **"Florida Code"**).

2.2 **Effective Time of the Merger**. Subject to the terms and conditions of the Merger Agreements, articles or certificates of merger suitable for filing with the Secretaries of State of the States of Georgia and Florida in substantially the form attached hereto as **Exhibit B** (each a **"Certificate of Merger"**) have been duly prepared, authorized, approved and executed by the Acquiror and the Contractor and, in connection with the Closing, will be promptly delivered to the Secretaries of State of the States of Georgia and Florida for filing in such offices as provided in Section 14-2-1105 of the Georgia Code and as provided in Section 607.1105 of the Florida Code. The Merger shall become effective immediately upon the last to occur of the filing of the Certificate of Merger with the Secretary of State of the State of Georgia and the filing of the Certificate of Merger with the Department of State of the State of Florida (the **"Effective Time"**).

2.3 **Merger Consideration; Conversion of the Contractor's Common Stock.** As of the Effective Time, by virtue of the Merger and without any further action by or on the part of the Shareholders (as the sole holders of the shares of the issued and outstanding common stock of the Contractor) or any other Party:

(i) all of the shares of issued and outstanding common stock of the Contractor immediately prior to the Effective Time shall be collectively converted into the right to receive, following surrender of all duly endorsed stock certificates therefor (which duly endorsed stock certificates the Shareholders are hereby delivering to the Acquiror), and on and subject to the other terms set forth in this Agreement: (1) **Six Hundred Nineteen Thousand Two Hundred Ninety-One and No/100 Dollars ($619,291)** in cash, to be paid by federal funds wire transfer delivery to the Shareholders (as tenants by the entirety) at the Effective Time (the **"Cash Consideration"**); and (2) **Eight Hundred Forty-Two Thousand Two Hundred Seventy-Six and No/100 Dollars ($842,276)** in Parent Common Stock, to be paid by the issuance to the Shareholders (as tenants by the entirety) of **Three Hundred Ninety-One Thousand Seven Hundred Fifty-Six (391,756)** shares of duly authorized, unissued, fully paid and nonassessable Parent Common Stock (the **"Stock Consideration"**) (the Cash Consideration and the Stock Consideration are sometimes collectively referred to as the **"Merger Consideration"**);

(ii) each share of common stock of the Contractor held in the treasury of the Contractor immediately prior to the Effective Time shall no longer be outstanding and shall be canceled and

retired and shall cease to exist, without conversion thereof; and any options or other rights to purchase or subscribe for any capital stock or other securities of the Contractor which remain outstanding as of the Effective Time shall automatically be canceled and retired as a result of the Merger without consideration therefor, and shall cease to exist, and any holder thereof shall cease to have any rights with respect thereto; and

(iii) the shares of issued and outstanding common stock of the Acquiror immediately prior to the Effective Time shall not be affected by the Merger.

2.4 **Post-Closing Adjustment to Merger Consideration.** Promptly after the Closing, the Acquiror will conduct an audit of the Contractor and the Business as of the Effective Time, and will prepare, review and deliver to the Shareholders a closing date balance sheet. The Merger Consideration will be subject to a dollar for dollar reduction if and to the extent the closing date balance sheet reveals that the Working Capital of the Contractor as of the Effective Time was less than **$52,200.** The Acquiror's calculation of Working Capital shall be used in determining any such adjustment to the Merger Consideration unless, within thirty (30) days after the initial determination of Working Capital has been delivered to the Shareholders, the Shareholders give the Acquiror and the Parent written notice (the **"Dispute Notice"**) that the Shareholders dispute the calculation of Working Capital, which notice shall set forth in reasonable detail the exclusions or calculations being disputed in good faith. In the event a Dispute Notice is timely given to the Acquiror and the Parent, the Parties shall have fifteen (15) days to resolve the dispute, and if not resolved, the dispute shall be submitted to a nationally recognized "Big Five" accounting firm or its successor chosen by lot (the **"Arbitrator"**), which shall be instructed to arbitrate such disputed item(s) and determine Working Capital within thirty (30) days. The resolution of disputes by the Arbitrator shall be set forth in writing and shall be conclusive and binding upon, and nonappealable by, the Parties, and the determination of Working Capital shall become final upon the date of such resolution, and may be entered as a final judgment in any court of proper jurisdiction.

2.5 **The Closing.** The signing of the documents relating to the transactions contemplated by this Agreement (the **"Closing"**) is taking place at the offices of Chorey, Taylor & Feil, A Professional Corporation, Suite 1700, The Lenox Building, 3399 Peachtree Road, N.E., Atlanta, Georgia 30326, commencing at 9:00 a.m. local time on the Closing Date. Notwithstanding any provision of this Agreement (or any of the other agreements or documents described in this Agreement) to the contrary, the Closing (and the execution of such other agreements and documents) shall be deemed to have occurred and to be effective for all business, accounting, financial, tax, legal and other purposes as of the Effective Time.

2.6 **Employment Agreement.** Contemporaneously herewith, the Acquiror and each Shareholder shall enter into, execute and deliver to each other an employment agreement substantially in the form of **Exhibit C** attached hereto (the **"Employment Agreement"**), providing for the employment of the Shareholders by the Acquiror after the Effective Time.

2.7 **Noncompetition Agreement.** Contemporaneously herewith, each Shareholder shall enter into, execute and deliver to the Acquiror an agreement, substantially in the form of **Exhibit D** attached hereto (the **"Noncompetition Agreement"**), restricting the Shareholder's ability to compete with the Acquiror in the Business, and to solicit the customers, suppliers and employees of the Business, the Contractor and/or the Acquiror for a period of two (2) years after the Effective Time.

2.8 **Release.** Contemporaneously herewith, each Shareholder shall enter into, execute and deliver to the Acquiror an agreement, substantially in the form of **Exhibit E** attached hereto (the **"Release"**), effecting certain releases agreed upon by the Parties.

2.9 **Certificate of Acceptance, Adoption and Agreement.** Contemporaneously herewith, the Shareholders shall enter into, execute and deliver to the Parent an agreement, substantially in the form of **Exhibit F** attached hereto (the **"Certificate of Acceptance, Adoption and Agreement"**), whereby the Shareholders shall accept, adopt and agree to be subject to and bound by the terms and conditions of the Stockholders Agreement of the Parent,

as amended to date, a copy of which is attached as an exhibit to the Certificate of Acceptance, Adoption and Agreement (the "**Stockholders Agreement**").

2.10 **Stock Pledge**. At Closing, and contemporaneously with the delivery to the Shareholders of the Stock Consideration, the Shareholders shall enter into, execute and deliver to the Acquiror an agreement, substantially in the form of **Exhibit G** attached hereto (the "**Stock Pledge Agreement**"), pursuant to which the Shareholders will pledge all of the Stock Consideration to the Acquiror, for a period of three (3) years from and after the Effective Time, to secure the performance of all of the Contractor's and the Shareholders' obligations under the Merger Agreements.

2.11 **Lease**. Contemporaneously herewith, the Acquiror and the Shareholders shall enter into, execute and deliver to each other a lease substantially in the form of **Exhibit H** attached hereto (the "**Lease**"), pursuant to which the Acquiror shall lease certain real property owned by the Shareholders.

2.12 **Other Contemporaneous Deliveries by the Contractor and the Shareholders.** Contemporaneously herewith, the Contractor and the Shareholders are delivering the following certificates, instruments and documents to the Acquiror and the Parent:

(a) Stock certificates representing all of the shares of issued and outstanding common stock of the Contractor, duly executed and endorsed in blank by the Shareholders;

(b) A certified copy of the resolutions of the Board of Directors of the Contractor and the Shareholders unanimously authorizing and approving the Merger Agreements, the consummation of the Merger and the other transactions contemplated by the Merger Agreements;

(c) A certificate of good standing issued by the Florida Department of State, and certificates from the applicable Florida governmental agencies evidencing that the Contractor has paid all of its income, withholding, unemployment and sales and use Taxes;

(d) Copies of all consents and/or waivers (in substantially the form previously approved by the Acquiror's counsel) necessary for the consummation of the Merger and the other transactions contemplated hereby;

(e) Resignations of all directors and officers of the Contractor, effective as of the Effective Time, in substantially the form previously approved by the Acquiror's counsel;

(f) The Plan of Merger and the Certificates of Merger executed on behalf of the Contractor;

(g) A certificate executed on behalf of the Contractor by its Secretary and President certifying as to the incumbency of, and authenticating the signatures of, those officers of the Contractor executing the Merger Agreements and the documents related thereto on behalf of the Contractor.

2.13 **Other Contemporaneous Deliveries by the Acquiror and the Parent.** Contemporaneously herewith, the Acquiror and the Parent are delivering the following certificates, instruments and documents to the Contractor and the Shareholders:

(a) A certified copy of the resolutions of the Board of Directors of the Acquiror and (if applicable) the Parent unanimously authorizing and approving the Merger Agreements, the consummation of the Merger and the other transactions contemplated by the Merger Agreements;

(b) The Plan of Merger and the Certificates of Merger executed on behalf of the Acquiror and the Parent;

(c) Certificates executed on behalf of the Acquiror and the Parent by their respective Secretaries and Presidents certifying as to the incumbency of, and authenticating the signatures of, those officers of the Acquiror and the Parent executing the Merger Agreements and the documents related thereto on behalf of the Acquiror and the Parent; and

(d) A Bill of Sale pursuant to which the Acquiror, as successor-in-interest to the Contractor, transfers all of its right, title and interest in and to those vehicles and that account receivable described on **Schedule 1** to the Shareholders.

2.14 **Confidentiality.** The Contractor and the Shareholders agree that for a period of five (5) years after the Closing Date, neither they nor any other person connected with any of them shall at any time divulge, and each of them shall instruct their respective agents, employees and Affiliates not to divulge, the existence and terms of the negotiations resulting in this Agreement, the terms and conditions of this Agreement and the financing arrangements of the Acquiror and its Affiliates, except as required by applicable federal, state or local statutes or pursuant to subpoena or court order.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR AND THE SHAREHOLDERS

The Contractor and the Shareholders jointly and severally represent and warrant to the Acquiror that the statements contained in this Article 3 are correct and complete as of the Closing Date, except as set forth in the disclosure schedule accompanying this Agreement and initialed by the Parties (the **"Disclosure Schedule"**). The Disclosure Schedule will be arranged in sections corresponding to the lettered and numbered sections contained in this Article 3.

3.1 **Organization of the Contractor.** The Contractor is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. The Contractor is duly authorized to conduct the Business, and is in good standing, under the laws of each jurisdiction where such qualification is required.

3.2 **Authorizations.** The Contractor has full power and authority (including full corporate power and authority) to execute and deliver the Merger Agreements and each of the agreements related thereto to which the Contractor is a party, and to perform its obligations thereunder. Without limiting the generality of the foregoing, the Board of Directors of the Contractor, and the Shareholders, have duly authorized the execution, delivery and performance of the Merger Agreements, and each of the agreements related thereto to which the Contractor is a party, by the Contractor. The Shareholders have full power and authority to execute and deliver the Merger Agreements and each of the agreements related thereto to which the Shareholders, or either of them, are a party, and to perform such Shareholders' obligations thereunder. Each of the Merger Agreements, and each of the agreements related thereto, constitutes the valid and legally binding obligation of the Contractor (if a party thereto) and the Shareholders (if a party thereto), enforceable in accordance with its terms and conditions.

3.3 **Noncontravention.** Except as set forth on **Section 3.3** of the Disclosure Schedule, to the Knowledge of the Contractor and the Shareholders, neither the execution and the delivery of the Merger Agreements by the Contractor and the Shareholders, nor the consummation by the Contractor and the Shareholders of the transactions contemplated thereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, stipulation, ruling, charge or other restriction of any government, governmental agency, or court to which the Contractor or the Shareholders are subject, or any provision of the charter or bylaws of the Contractor, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify or cancel, or require any notice under, any agreement, contract, lease, Permit (defined below), instrument or other arrangement to which the Contractor or the Shareholders are a party, or by which the

Contractor or the Shareholders are bound or to which any assets of the Contractor or the Shareholders are subject (or result in the imposition of any Security Interest upon any assets of the Contractor or the Shareholders). To the Knowledge of the Contractor and the Shareholders, except as otherwise described in this Agreement, the Contractor does not need to give any notice to, make any filing with, or obtain any authorization, consent or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement.

3.4 **Contractor Shares; Brokers' Fees.** The Shareholders hold of record and beneficially own all of the shares of issued and outstanding capital stock of the Contractor, and in those numbers set forth next to such Shareholders' names in **Section 3.4** of the Disclosure Schedule. Except as set forth on **Section 3.4** of the Disclosure Schedule, neither the Contractor nor the Shareholders has any Liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which the Acquiror or the Parent could become liable or obligated.

3.5 **Title to Assets.** The Contractor has good and marketable title to, or a valid leasehold interest in, all of the properties and assets used by it, located on its premises, or shown on the balance sheet contained within the Most Recent Financial Statements (the **"Most Recent Balance Sheet"**) or acquired after the date thereof, free and clear of all Security Interests, other than those set forth on the Most Recent Balance Sheet.

3.6 **Subsidiaries.** The Contractor has no Subsidiaries.

3.7 **Financial Statements.** Attached hereto as **Exhibit I** are the following financial statements (collectively, the **"Financial Statements"**): (i) unaudited financial statements, including a balance sheet, income statement and a statement of cash flows as of and for the fiscal years ended December 31, 1997 and December 31, 1998 (the **"Most Recent Fiscal Year End"**) for the Contractor; and (ii) unaudited financial statements, including a balance sheet, an income statement and a statement of cash flows (the **"Most Recent Financial Statements"**) as of and for the seven (7) month period ended July 31, 1999 (the **"Most Recent Fiscal Month End"**) for the Contractor. The Financial Statements (including the notes thereto) were prepared in accordance with GAAP consistently applied and present fairly the financial condition of the Contractor as of such dates and the results of operations of the Contractor for such periods, are correct and complete, and are consistent with the books and records of the Contractor (which books and records are correct and complete).

3.8 **Events Subsequent to Most Recent Fiscal Month End.** Since the Most Recent Fiscal Month End, there has not been any adverse change in the Business, financial condition, operations, results of operations, or future prospects of the Contractor. Without limiting the generality of the foregoing, since that date: (i) the Contractor has not sold, leased, transferred, pledged or assigned any of its assets, tangible or intangible, other than for a fair consideration in the Ordinary Course of Business; (ii) the Contractor has not entered into (or issued), accelerated, terminated, modified or canceled any agreement, contract, lease, note, bond, debt security or license either involving more than $5,000 or outside the Ordinary Course of Business; (iii) the Contractor has not made any capital expenditure (or series of related capital expenditures) either involving more than $10,000 or outside the Ordinary Course of Business; (iv) the Contractor has not delayed or postponed the payment of accounts payable and other Liabilities outside the Ordinary Course of Business; (v) the Contractor has not canceled, compromised, waived or released any right or claim (or series of related rights and claims) either involving more than $5,000 or outside the Ordinary Course of Business; (vi) the Contractor has not issued, sold, disposed of or granted any rights to purchase any of its capital stock, or declared, set aside, or paid any dividend or made any distribution with respect to its capital stock (whether in cash or in kind), or redeemed, purchased or otherwise acquired any of its capital stock; (vii) the Contractor has not experienced any damage, destruction or loss (whether or not covered by insurance) to its property; (viii) the Contractor has not made any loan to, or entered into any other transaction with, any of its directors, officers or employees outside the Ordinary Course of Business; (ix) the Contractor has not (1) entered into any employment or consulting contract or collective bargaining agreement, written or oral, or modified the terms of any existing such contract or agreement; (2) granted any increase in the base compensation of any of its directors, officers or employees (or made any other change in employment terms for such persons) outside the Ordinary Course of Business; or (3) adopted, amended, modified or

terminated any Employee Benefit Plan; (x) to the Knowledge of the Contractor and the Shareholders, there has not been any other occurrence, event, incident, action, failure to act, or transaction outside the Ordinary Course of Business involving the Contractor; and (xi) the Contractor has not committed to any of the foregoing.

3.9 Undisclosed Liabilities. The Contractor has no Liability (and there is no basis for any present or future Action (defined below) against the Contractor giving rise to any Liability), except for (i) Liabilities set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto), and (ii) Liabilities which have arisen after the Most Recent Fiscal Month End in the Ordinary Course of Business (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, or infringement or violation of law).

3.10 Legal Compliance. To the Knowledge of the Contractor and the Shareholders, the Contractor has complied with all applicable laws (including rules, statutes, regulations, codes, permits, plans, injunctions, judgments, orders, decrees, rulings and charges thereunder) (collectively, the "**Laws**") of federal, state, local and foreign governments (and all agencies thereof) (collectively, the "**Governments**"), and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand or notice (each an "**Action**") has been filed or commenced against any of them alleging any failure so to comply. None of the Shareholders and the directors, officers and management employees of the Contractor have any Knowledge of any basis which could result in (i) any failure by the Acquiror (based upon its acquisition of the Business) to comply after the Closing with any and all applicable Laws of any Governments, or (ii) any Action being filed or commenced after the Closing against the Acquiror or any of its Affiliates alleging any failure to so comply.

3.11 Tax Matters. The Contractor has filed all Tax Returns that it has been required to file. All such Tax Returns were correct and complete in all respects. All Taxes owed by the Contractor (whether or not shown on any Tax Return) have been paid. No claim has ever been made by any Government in a jurisdiction where the Contractor does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. The Contractor has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, Shareholder or other third party. Neither the Shareholders nor any director or officer (or employee responsible for Tax matters) of the Contractor expect any authority to assess any additional Taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Tax Liability of the Contractor either (i) claimed or raised by any Government or (ii) as to which the Shareholders or any of the directors or officers (or employees responsible for Tax matters) of the Contractor have Knowledge based upon personal contact with any agent of such Government. **Section 3.11** of the Disclosure Schedule lists all income Tax Returns filed with respect to the Contractor for taxable periods ended on or after December 31, 1995, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. The Contractor has delivered to the Acquiror correct and complete copies of all federal and state income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by the Contractor since December 31, 1995. The unpaid Taxes of the Contractor (1) did not, as of the Most Recent Fiscal Month End, exceed the reserve for Tax Liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and tax income) set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto), and (2) do not exceed that reserve as adjusted for the passage of time through the Closing in accordance with the past custom and practice of the Contractor in filing its Tax Returns.

3.12 Real Property. **Section 3.12** of the Disclosure Schedule lists and describes briefly all real property leased or subleased to, or not owned but otherwise used by, the Contractor. The Contractor has delivered to the Acquiror correct and complete copies of the leases and subleases (as amended to date) required to be listed in **Section 3.12** of the Disclosure Schedule. With respect to each such lease and sublease: (1) the lease or sublease is legal, valid, binding, enforceable and in full force and effect; (2) the lease or sublease will continue to be legal, valid, binding, enforceable and in full force and effect on identical terms following the consummation of the transactions contemplated hereby; (3) no party to the lease or sublease is in breach or default thereof, and no event has occurred which, with notice or lapse of time, would constitute a breach or default thereof or permit termination, modification or acceleration thereunder; (4) there are no disputes, oral agreements or forbearance programs in effect as to the lease or sublease, and

no party to the lease or sublease has repudiated any provision thereof; (5) with respect to each sublease, the representations and warranties set forth in subsections (1) through (4) above are true and correct with respect to the underlying lease; (6) the Contractor has not assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any interest in the leasehold or subleasehold; (7) all facilities leased or subleased thereunder have received all approvals of all applicable Governments (including Permits) required in connection with the operation thereof, and have been operated and maintained in accordance with applicable Laws; (8) all facilities leased or subleased thereunder are supplied with utilities and other services necessary for the operation of said facilities; (9) to the Knowledge of the Contractor and the Shareholders, no Hazardous Material has been present in, on or under such real property at any time prior to the Closing Date, including any land and the improvements, ground water and surface water thereof, except in accordance with applicable Laws; and (10) there are and have been no storage tanks located on or under such property. With respect to each such property used by but not owned by, leased to or subleased to, the Contractor, **Section 3.12** of the Disclosure Schedule states the nature and terms of the relationship pursuant to which such property is used.

3.13 **Tangible Assets.** The Contractor owns, holds or leases all buildings, machinery, vehicles, equipment, inventory, other tangible assets, Permits and agreements necessary for the conduct of the Business as presently conducted and as presently proposed to be conducted. To the Knowledge of the Contractor and the Shareholders, each such tangible asset is in good operating condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it is presently (and presently proposed to be) used. There are no defects in the assets of the Contractor which affect the plumbing, electrical, sewer, heating, ventilation or air conditioning systems thereof.

3.14 **Contracts.** **Section 3.14** of the Disclosure Schedule lists all contracts and other agreements to which the Contractor is a party. The Contractor has delivered to the Acquiror a correct and complete copy of each written agreement (as amended to date) required to be listed in **Section 3.14** of the Disclosure Schedule. With respect to each such agreement: (i) to the Knowledge of the Contractor and the Shareholders, the agreement is legal, valid, binding, enforceable and in full force and effect; (ii) the agreement will continue to be legal, valid, binding, enforceable and in full force and effect on identical terms following the consummation of the transactions contemplated hereby; (iii) no party thereto is in breach or default thereof, and no event has occurred which with notice or lapse of time would constitute a breach or default thereof, or permit termination, modification or acceleration thereunder; and (iv) no party thereto has repudiated any provision of the agreement.

3.15 **Powers of Attorney.** There are no outstanding powers of attorney executed by or on behalf of the Contractor.

3.16 **Insurance.** **Section 3.16** of the Disclosure Schedule lists each insurance policy (including policies providing property, casualty, liability, and workers' compensation coverage and bond and surety arrangements) to which the Contractor is a party, a named insured or otherwise the beneficiary of coverage. With respect to each such insurance policy: (i) the policy is legal, valid, binding, enforceable and in full force and effect; (ii) the policy will continue to be legal, valid, binding, enforceable and in full force and effect on identical terms following the consummation of the transactions contemplated hereby; (iii) neither the Contractor nor any other party to the policy is in breach or default thereof (including with respect to the payment of premiums or the giving of notices), and to the Knowledge of the Contractor and the Shareholders, no event has occurred which, with notice or the lapse of time, would constitute such a breach or default thereof, or would permit termination, modification or acceleration under the policy; and (iv) no party to the policy has repudiated any provision thereof. The Contractor has been covered during the past three (3) years by insurance in scope and amount customary and reasonable for the Business and the other businesses in which it has engaged during the aforementioned period. **Section 3.16** of the Disclosure Schedule describes any self-insurance arrangements affecting the Contractor, as well as any pending claims with respect to insurance coverage owned by the Contractor, including amounts held in reserve by the Contractor in connection with any such claim.

3.17 **Litigation.** **Section 3.17** of the Disclosure Schedule sets forth each instance in which the Contractor (i) is subject to any outstanding injunction, judgment, order, decree, ruling or charge or (ii) is a party, or is threatened

to be made a party, to any Action of, in or before any court, arbitrator or Government. None of such Actions could result in any adverse change in the Business, financial condition, operations, results of operations or future prospects of the Contractor. None of the Shareholders and the directors and officers (and employees with responsibility for litigation matters) of the Contractor have any reason to believe that any such Action may be brought or threatened against the Contractor in the future.

3.18 Service Warranty and Liability. To the Knowledge of the Contractor and the Shareholders, each service provided or delivered by the Contractor has been in conformity with all applicable contractual commitments and all express and implied warranties, and the Contractor has no Liability (and there is no basis for any present or future Action against the Contractor giving rise to any Liability) (i) for damages in connection therewith, or (ii) arising out of any injury to individuals or property as a result of the use of any service provided or delivered by the Contractor. No service provided or delivered by the Contractor is subject to any guaranty, warranty or other indemnity beyond the applicable standard terms and conditions of sale. **Section 3.18** of the Disclosure Schedule includes copies of the standard terms and conditions of sale and/or service for the Contractor (containing applicable guaranty, warranty and indemnity provisions).

3.19 Employees and Independent Contractors. **Section 3.19** of the Disclosure Schedule contains a complete list of all employees and independent contractors of the Contractor engaged in the conduct of the Business, and for each employee or independent contractor required to be listed on **Section 3.19** of the Disclosure Schedule, his or her address, social security number, current annual base salary or hourly rate and years of employment or engagement with the Contractor. To the Knowledge of the Contractor and the Shareholders, no executive, key employee, group of employees, key independent contractor or group of independent contractors has any plans to terminate employment or engagement with the Contractor (or with the Acquiror if the Acquiror employs or engages such Person). The Contractor is not a party to or bound by any collective bargaining agreement, and has not experienced any strikes, grievances, claims of unfair labor practices or other collective bargaining disputes. To the Knowledge of the Contractor and the Shareholders, the Contractor has not committed any unfair labor practice or taken any action which would give rise to a claim under any Law restricting discrimination in employment. None of the Shareholders and the directors and officers (and employees with responsibility for employment matters) of the Contractor have any Knowledge of any organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of the Contractor.

3.20 Employee Benefits. **Section 3.20** of the Disclosure Schedule lists each Employee Benefit Plan that the Contractor maintains or to which the Contractor contributes or has any obligation to contribute. To the Knowledge of the Contractor and the Shareholders, the Contractor has complied, and each such Employee Benefit Plan (and each related trust, insurance contract or fund) complies in form and in operation, in all respects with the applicable requirements of ERISA, the Code and other applicable Laws.

3.21 Guaranties. The Contractor is not a guarantor or otherwise liable or responsible for any Liability of any other Person.

3.22 Environmental, Health and Safety Matters.

(a) To the Knowledge of the Contractor and the Shareholders, the Contractor has complied with all Environmental, Health and Safety Requirements, and no Action has been filed or commenced against it, or is threatened to be filed or commenced against it, alleging any failure so to comply. None of the Shareholders and the directors and officers (and employees with responsibility for environmental matters) of the Contractor have any reason to believe that any such Action may be brought or threatened against the Contractor.

(b) To the Knowledge of the Contractor and the Shareholders, the Contractor has no Liability for damage to any site, location or body of water (surface or subsurface), for any illness of or personal injury to any employee or other individual, or for any other reason, under any Environmental, Health and Safety Requirements.

(c) To the Knowledge of the Contractor and the Shareholders, all properties and equipment used in the Business of the Contractor have been free of asbestos, PCBs, methylene chloride, trichloroethylene, 1, 2-trans-dichloroethylene, dioxins, dibenzofurans, and all Hazardous Materials.

(d) To the Knowledge of the Contractor and the Shareholders, the Contractor has not transported, stored, treated or disposed of, nor allowed or arranged for any third person to transport, store, treat or dispose of, waste to or at any location other than a site lawfully permitted to receive such waste for such purposes. To the Knowledge of the Contractor and the Shareholders, the Contractor has not transported, stored, treated or disposed of, nor allowed or arranged for any third person to transport, store, treat or dispose of, (1) any Hazardous Materials, or (2) any other waste to or at any location designated for remedial action pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as from time to time amended, or any similar Law assigning responsibility for the costs of investigating or remediating releases of contaminants into the environment.

(e) To the Knowledge of the Contractor and the Shareholders, **Section 3.22(e)** of the Disclosure Schedule is a complete and accurate list of: (1) locations (identified by name, address, owner/operator, type of facility and type of waste) to which the Contractor has ever transported, or ever caused to be transported, or ever allowed or arranged for any third party to transport, any type of waste material, generated by the Contractor or customers of the Contractor, for storage (other than at a customer's facility), treatment, burning, recycling or disposal; and (2) storage (other than at a customer's facility), treatment, burning, recycling or disposal activities which the Contractor has undertaken, at any time, at locations then or presently owned or occupied by the Contractor (such list to include property address, nature of the interest of the Contractor in the property, nature of the activity conducted at such location, type and form of waste, estimated volume of waste disposal on or in ground, and period of time the activity was conducted).

(f) The Contractor has not received any notification (including requests for information directed to the Contractor or the Shareholders) from any Government or any other Person asserting that the Contractor is or may be a "potentially responsible person" or otherwise liable with respect to a remediation or the payment of response costs at a waste storage treatment or disposal action facility, pursuant to the provisions of the federal Comprehensive Environmental Response, Compensation and Liability Act, as from time to time amended, or any similar Law assigning responsibility for the costs of investigating or remediating releases of contaminants into the environment.

3.23 **Certain Business Relationships.** The Shareholders have not been involved in any business arrangement or relationship with the Contractor within the past twelve (12) months which has caused or resulted in increased gross revenues for the Contractor from the Business and which, if not continued subsequent to the Closing, will cause or result in decreased revenues for the Acquiror from the Business; and except as set forth on **Section 3.23** of the Disclosure Schedule, the Shareholders do not own or lease any asset, tangible or intangible, which is used in the Business of the Contractor. Neither the Contractor nor the Shareholders own or have any interest in a Person (other than the Contractor) conducting any business substantially similar to the Business.

3.24 **Investment.** The Contractor and the Shareholders acknowledge that the issuance to the Shareholders of the Parent Common Stock is not being registered under the Securities Act of 1933, as amended (the "**Securities Act**"), that the Parent is and will be under no contractual obligation to register the Parent Common Stock (except to the extent set forth in the Stockholders Agreement), and that it is a condition to the consummation of the transactions contemplated hereby that the issuance and delivery to the Shareholders of the Parent Common Stock be exempt from the registration requirements of the Securities Act. Accordingly, the Contractor and the Shareholders jointly and severally covenant, warrant, represent and agree that the Parent Common Stock to be received by the Shareholders pursuant to Article 2 above is being acquired solely for investment purposes and not with a view to or in connection with any sale or other distribution thereof, within the meaning of the Securities Act, except to the extent that such Parent Common Stock may be sold under an effective registration statement under the Securities Act and any applicable state securities law or pursuant to an exemption under the Securities Act and any applicable state securities

law. Furthermore, the Contractor and the Shareholders jointly and severally covenant, warrant, represent and agree that:

(a) all of the Parent Common Stock will be issued to the Shareholders without registration and in reliance upon certain exemptions under the Securities Act, and in reliance upon certain exemptions from registration requirements under applicable state securities Laws;

(b) the Shareholders will not make any transfer or assignment of any of the Parent Common Stock except in compliance with the Securities Act and any other applicable securities Laws;

(c) prior to any transfer or disposition not registered under the Securities Act of any of the Parent Common Stock, each Shareholder will give written notice to the Parent, expressing the Shareholder's intention to effect such transfer or disposition and describing the proposed transfer or disposition. Such notice shall be accompanied by an opinion of counsel for the Shareholder reasonably acceptable to the Parent, that the transfer is made pursuant to Rule 144 of the Securities Act, and that the proposed transfer is exempt under the Securities Act and applicable state securities Laws;

(d) no Government has made any recommendation or endorsement of the Parent Common Stock or any finding or determination as to the fairness of the investment in such Parent Common Stock;

(e) neither the Parent nor any Person acting on its behalf has offered the Parent Common Stock to the Shareholders by means of general or public solicitation or general or public advertising, such as by newspaper or magazine advertisements, by broadcast media, or at any seminar or meeting whose attendees were solicited by such means;

(f) consummating the transactions contemplated hereby involves a speculative investment, and the Shareholders can bear the economic risks of such an investment for an indefinite period of time;

(g) each Shareholder has substantial knowledge and experience in financial and business matters, and particularly the business conducted by the Acquiror and the Parent, and is capable of evaluating the risk of the investment in the Parent Common Stock contemplated by the Merger Agreements;

(h) each Shareholder has carefully read the Merger Agreements, the Stockholders Agreement, and all other agreements to be signed by him pursuant thereto, and discussed with legal counsel their respective requirements and other applicable limitations (including those set forth in Rule 144) upon the transfer or other disposition of the Parent Common Stock; and each Shareholder has had the opportunity to (1) analyze and review all documents the Shareholder has desired to see (including financial statements and projections of the Parent and its Subsidiaries), and (2) ask questions of and receive answers from the Parent or a person or persons acting on its behalf, in each case concerning (i) the financial condition, Liabilities, past operations, business and future prospects of the Parent and its Subsidiaries, (ii) the terms and conditions of the Shareholder's investment in the Parent Common Stock, and (iii) such other information that the Shareholder has desired in order to evaluate such investment; and the information contained in such documents has been satisfactory to the Shareholder, and all such questions have been answered to the full satisfaction of the Shareholder; and

(i) each Shareholder acknowledges that the desirability of an investment in the Parent may be influenced by the federal income Tax consequences, and by the various state and local Tax

consequences, arising from the Merger. Each Shareholder has consulted his own Tax advisor with respect to such Tax consequences and has not relied upon the Parent or its representatives as to such matters. Each Shareholder and his advisors have taken into account the effects of Tax Laws on the consummation of the transactions contemplated hereby.

3.25 Licenses and Permits. The Contractor possesses, free from any burdensome restrictions, all franchises, certificates, licenses, permits, clearances, consents and other authorizations from Governments that are necessary for (i) the ownership, maintenance and operation of the Business and the other businesses conducted by the Contractor, as currently being operated and conducted, (ii) the operation, use and ownership of the assets of the Contractor, as currently being operated and used, and (iii) the servicing of the Accounts, as currently being serviced (collectively the **"Permits"**). **Section 3.25** of the Disclosure Schedule sets forth all of the Permits and, for each Permit, accurately describes the expiration and/or renewal date thereof. Except as set forth on such **Section 3.25**, each Permit is freely assignable to the Acquiror, and consummation of the transactions contemplated hereby will not violate or render void or terminate any such Permit. The Contractor is not in violation of any of the Permits, and the Contractor has complied with all applicable covenants and conditions of each of the Permits. There is no Action, pending or threatened, concerning or relating to any of the Permits.

3.26 Third Party Relationships. The Contractor has good working relationships in accordance with past practices with all suppliers, customers, subcontractors, governmental regulators and other Persons necessary or appropriate for the normal operation of the Business. To the Knowledge of the Contractor and the Shareholders, the consummation of the transactions contemplated hereby will not result in any injury to or disruption of such relationships, and neither the Shareholders, nor the directors and officers of the Contractor, have any Knowledge that the Acquiror will incur any costs or expenses in order to continue such relationships as they had been maintained prior to the Closing.

3.27 Ownership and Assignability of Accounts. The Contractor is the lawful owner of all of the Accounts, and all of such Accounts are free and clear of all Security Interests, including, but not limited to, financing arrangements (including receivables financing). There are no outstanding rights of any kind to acquire from either the Contractor or the Shareholders, either separately or jointly, any interest whatsoever, whether current or future, in the Accounts, held by any Person other than the Acquiror. All Accounts are freely assignable by the Contractor, and consummation of the transactions contemplated hereby will not constitute or result in a breach, violation or default of any agreements relating to such Accounts, and such agreements and Accounts shall remain in full force and effect as if there had been no such consummation.

3.28 Disclosure. The representations and warranties contained in this Article 3 do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements and information contained in this Article 3 not misleading.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF THE ACQUIROR

The Acquiror represents and warrants to the Contractor and the Shareholders that the statements contained in this Article 4 are correct and complete as of the Closing Date, except as set forth in the Disclosure Schedule. The Disclosure Schedule will be arranged in sections corresponding to the lettered and numbered sections contained in this Article 4.

4.1 Organization of the Acquiror. The Acquiror is a corporation duly organized and validly existing under the laws of the State of Georgia.

4.2 Authorization of Transaction. The Acquiror has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of the Acquiror, enforceable in accordance with its terms and conditions, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other

laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general equitable principles.

4.3 Noncontravention. Neither the execution and the delivery of the Merger Agreements by the Acquiror, nor the consummation by the Acquiror of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, stipulation, ruling, charge or other restriction of any Government or court to which the Acquiror is subject or any provision of its charter or bylaws, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify or cancel, or require any notice under, any agreement, contract, lease, Permit, instrument or other arrangement to which the Acquiror is a party or by which it is bound or to which any of its assets is subject. Except as otherwise described in this Agreement, the Acquiror does not need to give any notice to, make any filing with, or obtain any authorization, consent or approval of, any Government in order for the Parties to consummate the transactions contemplated by this Agreement.

4.4 Brokers' Fees. The Acquiror has no Liability to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which the Contractor or the Shareholders could become liable or obligated.

4.5 Private Placement Memorandum. To the Knowledge of the Acquiror, the July 23, 1999 draft of the Private Placement Memorandum of the Parent does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements and information contained therein not misleading.

ARTICLE 5. INDEMNIFICATION

5.1 Survival Period. All representations, warranties, agreements, covenants and obligations made or undertaken by the Contractor and the Shareholders in this Agreement are, whether specified as such or not, the joint and several representations, warranties, agreements, covenants and obligations of the Contractor and the Shareholders, are material, have been relied upon by the Acquiror, shall survive the Closing hereunder, and shall not merge in the performance of any obligation by any Party; and, as to the representations and warranties, shall terminate or expire on the third (3rd) anniversary of the Closing, provided that such representations and warranties shall not terminate or expire, but shall continue, during the pendency of any Action brought in respect of such representations and warranties prior to the termination or expiration of such three (3) year period. Notwithstanding the above, all representations and warranties made by the Contractor and the Shareholders in this Agreement that in any manner relate to (i) Tax matters, (ii) environmental matters and (iii) title matters, or as to the terms and performance of this Agreement (collectively, the **"Special Matters"**), or any of the foregoing, shall terminate or expire only upon the termination or expiration of all applicable statutes of limitation. All representations, warranties, agreements, covenants and obligations made or undertaken by the Acquiror and the Parent in this Agreement shall survive the Closing hereunder, and shall not merge in the performance of any obligation by any Party; and, as to the representations and warranties, shall terminate or expire on the third (3rd) anniversary of the Closing, provided that such representations and warranties shall not terminate or expire, but shall continue, during the pendency of any Action brought in respect of such representations and warranties prior to the termination or expiration of such three (3) year period.

5.2 Obligation of the Shareholders to Indemnify. Subject to the limitations contained in this Article 5, the Shareholders shall defend, indemnify and hold the Acquiror and the Parent, and their respective shareholders, officers, directors, employees, counsel, agents, Affiliates and assigns (collectively, the **"Acquiror Indemnitees"**), harmless from and against any and all Losses asserted against, imposed upon or incurred by the Acquiror Indemnitees, or any of them, by reason of or resulting from, arising out of, based upon or otherwise in respect of:

(a) any inaccuracy in any representation or warranty made by the Contractor or any Shareholder in the Merger Agreements, or in any agreement related thereto;

(b) any breach of any covenant or agreement made or to be performed by the

Contractor or any Shareholder in or pursuant to the Merger Agreements, or in or pursuant to any agreement related thereto;

(c) any violation or alleged violation of any Environmental, Health and Safety Requirements that affects the Contractor's Business, or the presence of any Hazardous Materials on the assets of the Contractor, that occurred at any time prior to Closing;

(d) any Liability resulting from, arising out of, based upon or otherwise in respect of the Action described on **Section 3.17** of the Disclosure Schedule; and/or

(e) any Liability of the Contractor (not otherwise set forth above in this Section 5.2) of any nature whatsoever, except for (i) Liabilities set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto) and (ii) Liabilities which have arisen after the Most Recent Fiscal Month End in the Ordinary Course of Business, to the extent such Liabilities do not result from, do not arise out of, do not relate to, are not in the nature of, or were not caused by, any breach of contract, breach of warranty, tort, or infringement or violation of law by the Contractor or any Shareholder.

5.3 **Obligation of the Acquiror to Indemnify.** Subject to the limitations contained in this Article 5, the Acquiror shall defend, indemnify and hold the Shareholders, and their respective agents, Affiliates and assigns (collectively, the **"Shareholder Indemnitees"**), harmless from and against any and all Losses asserted against, imposed upon or incurred by the Shareholder Indemnitees, or any of them, by reason of or resulting from, arising out of, based upon or otherwise in respect of:

(a) any inaccuracy in any representation or warranty made by the Acquiror in the Merger Agreements, or in any agreement related thereto;

(b) any breach of any covenant or agreement made or to be performed by the Acquiror or the Parent in or pursuant to the Merger Agreements, or in or pursuant to any agreement related thereto; and/or

(c) the enforcement by any third party of any personal guarantee signed by one or more of the Shareholders in favor of such third party that relates solely to the Liabilities of the Contractor set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto) .

The Acquiror will use good faith efforts to obtain the releases of all such personal guarantees described in Section 5.3(c)as soon as practicable after the Closing. The parties acknowledge and agree that the provisions of Section 5.3(c) above shall not diminish, alter or reduce the indemnification obligations of the Shareholders to the Acquiror Indemnitees hereunder.

5.4 **Matters Involving Third Parties.**

(a) If any third party shall notify any Person that is entitled to seek indemnification pursuant to Sections 5.2 or 5.3 hereof (the **"Indemnified Party"**) with respect to any matter (a **"Third Party Claim"**) which may give rise to a good faith claim for indemnification against any other Person (the **"Indemnifying Party"**) under this Article 5, then the Indemnified Party shall promptly notify the Indemnifying Party thereof in writing; provided, however, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party is thereby prejudiced.

(b) The Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party so long as (1) the Indemnifying Party notifies the Indemnified Party in writing, within fifteen (15) days after the Indemnified Party has given the Indemnifying Party notice of the Third Party Claim, that the Indemnifying Party will indemnify the Indemnified Party from and against all Losses the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of or caused by the Third Party Claim; (2) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party has the financial resources to defend against the Third Party Claim and to fulfill its indemnification obligations hereunder; (3) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief; (4) settlement of, or an adverse judgment with respect to, the Third Party Claim is not, in the good faith judgment of the Indemnified Party, likely to establish a precedential custom or practice adverse to the continuing business interests of the Indemnified Party; and (5) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently.

(c) So long as the Indemnifying Party is conducting the defense of the Third Party Claim: (1) the Indemnified Party may retain separate co-counsel at its cost and expense and participate in the defense of the Third Party Claim; (2) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (not to be withheld unreasonably); and (3) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably).

(d) In the event any of the conditions in Section 5.4(b) above is or becomes unsatisfied: (1) the Indemnified Party shall thereafter have the sole right to defend against, and consent to the entry of any judgment or enter into any settlement with respect to, the Third Party Claim in any manner it reasonably may deem appropriate (and the Indemnified Party need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith); (2) the Indemnifying Party will reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses); and (3) the Indemnifying Party will remain responsible for any and all Losses the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of or caused by the Third Party Claim to the fullest extent provided in this Article 5.

5.5 **Indemnification Payments.** An Indemnifying Party shall pay to the Indemnified Party the full amount of any and all Losses (other than Losses resulting from a Third Party Claim) for which it is required to indemnify the Indemnified Party under this Article 5, within thirty (30) days after its receipt of notice thereof from the Indemnified Party; and the full amount of any and all Losses resulting from a Third Party Claim for which it is required to indemnify the Indemnified Party under this Article 5, within thirty (30) days after final settlement or adjudication thereof; and in each case, thereafter the amount of any such Losses shall bear interest at the rate of interest publicly announced in Atlanta, Georgia from time to time by NationsBank of Georgia, N.A. as its prime rate, plus four percent (4%) per annum. The Acquiror and the Parent shall be entitled to offset from any payments due the Shareholders (including, but not limited to, the Merger Consideration or any employment compensation), the full amount of any and all Losses for which the Shareholders are required to indemnify any Acquiror Indemnitee pursuant to Section 5.2 hereof, and the Acquiror and the Parent shall not be liable for any amounts so offset.

5.6 **Limits on Indemnification** The Shareholders shall have no obligation under this Article to indemnify the Acquiror Indemnitees, or any of them, in an aggregate amount in excess of the Merger Consideration)(the "**Cap**"). Notwithstanding the above, the Cap shall not apply to Losses related to the Special Matters.

5.7 **Other Rights and Remedies Not Affected.** The indemnification rights of the Parties and other Persons under this Article 5 are independent of and in addition to such other rights and remedies that the Parties and such other Persons may have at law or in equity or otherwise for any misrepresentation, breach of warranty or failure to fulfill any agreement or covenant hereunder on the part of any Party hereto, including, without limitation, the right

to offset or to seek specific performance, rescission or restitution, none of which rights or remedies shall be adversely affected or diminished hereby.

ARTICLE 6. MISCELLANEOUS

6.1 Taxes. Notwithstanding any provision of this Agreement to the contrary, the Shareholders shall pay all Taxes, if any, due with respect to the receipt of the Merger Consideration as a result of the consummation of transactions contemplated hereby. Furthermore, to the extent not addressed in Section 3.11 above, the Shareholders shall cause to be filed on behalf of the Contractor final Tax Returns for the Contractor for all periods prior to the Closing, and shall pay the entire amount of Taxes due with respect thereto.

6.2 Notices. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be (i) delivered by hand, (ii) mailed by United States registered or certified mail, return receipt requested, first class postage prepaid and properly addressed, or (iii) sent by national overnight courier service to the Parties or their permitted assignees at the addresses set forth opposite the Parties' signatures hereto. Copies of such notices, requests, demands and other communications to the Shareholders will be sent to Laurie Rusk Sewell, Esq., Kramer, Sewell, Sopko & Levenstein, P.A., 2307 South East Monterey Road, Stuart, Florida 34996. All notices, requests, instructions or documents given to any Party in accordance with this Section 6.2 shall be deemed to have been given (1) on the date of receipt if delivered by hand or overnight courier service, or (2) on the date five (5) business days after depositing with the United States Postal Service if mailed by United States registered or certified mail, return receipt requested, first class postage prepaid and properly addressed. Any Party may change its address specified for notices herein by designating a new address by notice in accordance with this Section 6.2.

6.3 Entire Agreement. All Exhibits and Schedules (including the Disclosure Schedule) referred to herein are intended to be, and hereby are, specifically incorporated into and made a part of this Agreement. This Agreement, the Merger Agreements and the agreements evidenced by the Exhibits constitute the entire agreement among the Parties relating to the subject matter hereof, and supersede all prior and contemporaneous negotiations, writings and agreements relating to the subject matter of this Agreement.

6.4 Modifications, Amendments and Waivers. The Parties may, by mutual written agreement and in no other manner, modify or amend the terms of this Agreement. The failure or delay of any Party at any time or times to require the performance of any provision of this Agreement shall in no manner affect its right to enforce that provision. No single or partial waiver by any Party of any condition of this Agreement, or the breach of any term, agreement or covenant of, or the inaccuracy of any representation or warranty in, this Agreement, whether by conduct or otherwise, in any one or more instances shall be construed or deemed to be a further or continuing waiver of any such condition, breach or inaccuracy or a waiver of any other condition, breach or inaccuracy.

6.5 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the Parties, and their respective successors and permitted assigns. This Agreement may not be assigned by any Party without the prior written consent of the other Parties, except that the Acquiror and the Parent may assign this Agreement and their rights and obligations hereunder to one or more of their respective Affiliates, or to any of their respective lenders as collateral security.

6.6 Governing Law. This Agreement shall be controlled, construed and enforced in accordance with the substantive Laws of the State of Georgia, without regard to any laws related to choice or conflicts of laws.

6.7 Severability. Should any one or more of the provisions of this Agreement be determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be adversely affected or impaired thereby. The Parties shall endeavor in good faith to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as practicable to that of the invalid, illegal or unenforceable provisions.

6.8 Attorneys' Fees and Expenses. In any Action arising out of, under or in connection with this Agreement in which one Party prevails over another Party, the reasonable attorneys' fees, paralegal fees, expert witness fees, costs and expenses incurred by the prevailing Party in connection with such Action shall be paid for or reimbursed by the opposing Party or Parties in such Action, including all such fees and costs at all appellate levels.

6.9 No Benefit to Others. The representation, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the Parties and, in the case of Article 5 hereof, the other Indemnified Parties, and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns, and they shall not be construed as conferring any rights on any other Persons.

6.10 Construction. Nothing in any Schedule (including the Disclosure Schedule) attached hereto shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the Schedule identifies the exception with particularity and describes the relevant facts in detail (and in terms of Liabilities, quantifies the amount thereof with specificity). Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein, unless the representation or warranty has to do with the existence of the document or other item itself. The Parties intend that each representation, warranty and covenant contained herein shall have independent significance. If any Party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty or covenant.

6.11 Expenses. Except as otherwise provided herein, each of the Parties will bear such Party's own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby. Notwithstanding the above, the Shareholders shall pay for, or shall otherwise reimburse and indemnify the Acquiror to the extent the Contractor has paid for, all of the Contractor's and the Shareholders' costs and expenses described in this Section 6.11.

6.12 Further Assurances. From time to time, at any Party's request and without further consideration (unless the requesting Party is entitled to indemnity therefor as provided herein), the other Parties will execute and deliver to the requesting Party such documents and take such other action as such Party may reasonably request in order to consummate more effectively the transactions contemplated hereby.

6.13 Submission to Jurisdiction; Waivers. Each of the Parties hereby irrevocably and unconditionally: (i) agrees that any Action related to this Agreement shall be brought in, and hereby submits himself or itself and his or its property to the jurisdiction of, the federal and state courts of the State of Georgia; (ii) consents to the venue of any such Action in any of said courts, and waives any objection that he or it may have, now or hereafter, that such Action was brought in an inconvenient court, and agrees not to plead or claim the same; and (iii) agrees that service of process in any such Action may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Party against whom the Action is brought at his or its address set forth in Section 6.2.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

CONTRACTOR:

DEEP SOUTH COOLING & HEATING, INC.

Address: 3102 Southeast Jay Street
Stuart, Florida 34997

By: _____
Kevin Michael Sharkey, President

SHAREHOLDERS:

Address: 3102 Southeast Jay Street
Stuart, Florida 34997

_____
Kevin Michael Sharkey

Address: 3102 Southeast Jay Street
Stuart, Florida 34997

_____
Deborah Kay Sharkey

ACQUIROR:

R. S. ANDREWS OF FLORIDA, INC.

Address: 3510 Dekalb Technology Parkway
Atlanta, Georgia 30340

By: _____
R. Stephen Andrews, Chief Executive Officer

PARENT:

R. S. ANDREWS ENTERPRISES, INC.

Address: 3510 Dekalb Technology Parkway
Atlanta, Georgia 30340

By: _____
R. Stephen Andrews, Chief Executive Officer