



J19642

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WALK IN
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CERTIFIED COPY _____ CUS _____

PHOTO COPY _____ FILING *Merger*

1.) *Profiles Plus, Inc.*
(CORPORATE NAME & DOCUMENT #)

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Availability	3/26/98
Document Examiner	<i>Don</i>
Updater	<i>Don</i>
Update Verifier	<i>Don</i>
Acknowledgement	<i>Don</i>
W.P. Verifier	<i>Don</i>

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98 MAR 26 PM 2:48
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

RECORDED
98 MAR 25 AM 10:07
DIVISION OF CORPORATIONS

SPECIAL INSTRUCTIONS _____

ARTICLES OF MERGER
Merger Sheet

MERGING:

PROFILES PLUS, INC., a Florida corporation J19642
,

INTO

BACKGROUND AMERICA OF FLORIDA, INC. a Tennessee corporation not
qualified in Florida

File date: March 26, 1998

Corporate Specialist: Annette Hogan

FILED
98 MAR 26 PM 2:48
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER
OF
PROFILES PLUS, INC.
INTO
BACKGROUND AMERICA OF FLORIDA, INC.

Under Sections 607.1105 and 607.1107 of
Florida Statutes

Pursuant to the provisions of Sections 607.1105 and 607.1107 of the Florida Statutes, the undersigned hereby certify by these Articles of Merger as follows:

FIRST: The names of the corporations which are parties to the merger are **BACKGROUND AMERICA OF FLORIDA, INC.**, a Tennessee corporation, and **PROFILES PLUS, INC.**, a Florida corporation. The surviving corporation is **BACKGROUND AMERICA OF FLORIDA, INC.**, and is to be governed by the laws of the State of Tennessee.

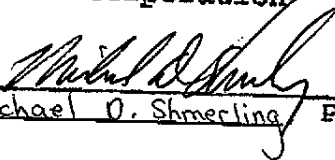
SECOND: The Agreement and Plan of Merger is annexed hereto as Exhibit "A" and incorporated herein by reference in its entirety.

THIRD: The Agreement and Plan of Merger was duly adopted by all of the shareholders of **BACKGROUND AMERICA OF FLORIDA, INC.**, as of the 19th day of March, 1998, and was duly adopted by all of the shareholders of **PROFILES PLUS, INC.** as of the 21st day of March, 1998.

FOURTH: The Merger shall become effective upon the filing of these Articles of Merger with the Secretary of State of the State of Tennessee.

IN WITNESS WHEREOF, each of the corporations party to the merger has caused these Articles of Merger to be executed on its behalf by its duly authorized officers this 25th day of March, 1998.

BACKGROUND AMERICA OF FLORIDA, INC.,
a Tennessee corporation

By: 
Michael D. Shmerling President

PROFILES PLUS, INC., a Florida corporation

By: 
David Cuffe President

6787-001-0493752.01

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement"), made and entered as of the 23rd day of March, 1998, is by and among GERRY BELKO, GERARD R. SCHWALJE, PAULA SCHWALJE and DAVID CUFFE (individually, a "Shareholder" and collectively, the "Shareholders"), PROFILES PLUS, INC., a Florida corporation (the "Company"), BACKGROUND AMERICA OF FLORIDA, INC., a Tennessee corporation and a wholly-owned subsidiary of BAI ("BAI Florida") and is joined in by BACKGROUND AMERICA, INC., a Tennessee corporation ("BAI").

WITNESSETH:

WHEREAS, the sole business of the Company is the business of performing background searches and pre-employment screening (the "Business");

WHEREAS, the respective Boards of Directors and the shareholders of each of BAI Florida and the Company are of the opinion that the merger of the Company with and into BAI Florida, with BAI Florida being the surviving corporation, is in the best interests of the parties; and

WHEREAS, At the effective time of such merger, the outstanding shares of common stock of the Company shall be converted into the right to receive shares of common stock of BAI as described herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and agreements contained herein, the parties hereto do hereby agree as follows:

ARTICLE I THE MERGER

Section 1.1 The Transactions and Terms of Merger. Subject to the terms and conditions of this Agreement, at the Effective Time, the Company shall merge with and into BAI Florida in accordance with the applicable provisions of the Tennessee Business Corporations Act and the Florida Business Corporations Act (the "Merger"). BAI Florida shall be the surviving corporation resulting from the Merger and shall be governed by the laws of the State of Tennessee. The Merger shall be consummated pursuant to the terms of this Agreement, which shall have been approved and adopted by the respective boards of directors and shareholders of the Company and BAI Florida.

Section 1.2 Time and Place of Closing. The Closing, including the execution and delivery by the parties of this Agreement and the other documents described herein, will take place at 10:00 a.m. local time in Nashville, Tennessee, on March 23, 1998, at the offices of Sherrard & Roe, PLC, 424 Church Street, Nashville, Tennessee, or at such other time and place as may be mutually agreed upon by the parties.

Section 1.3 Effective Time. The Merger and the other transactions contemplated in this Agreement shall become effective on the date and at the time that Articles of Merger become effective with the Secretary of State Tennessee and the Secretary of State of Florida (the "Effective

Time"). The parties shall use their best efforts to cause the Effective Time to occur as soon as practicable following the Closing.

Section 1.4 Charter. The Charter of BAI Florida in effect immediately prior to the Effective Time shall be the charter of the surviving corporation of the Merger after the Effective Time until otherwise amended or repealed.

Section 1.5 Bylaws. The Bylaws of BAI Florida in effect immediately prior to the Effective Time of the Merger shall be the Bylaws of the surviving corporation of the Merger after the Effective Time until otherwise amended or repealed.

Section 1.6 Absence of Dissenting Shareholders. Prior to the execution of this Agreement, each Shareholder shall have executed a written waiver of his or her dissenters' rights of appraisal as such rights are contemplated by Sections 607.1301 - .1302 and 607.1320 of the Florida Business Corporations Act in form and substance satisfactory to BAI (the "Dissenters' Rights Waiver").

Section 1.7 Rights of Former Company Shareholders. At the Effective Time, the stock transfer books of the Company shall be closed and no transfer of Company Common Stock by holders of such Common Stock shall be made or recognized. Until surrendered for exchange in accordance with the provisions of this Agreement, each certificate theretofore representing shares of Company Common Stock (other than those shares, if any, canceled pursuant to the terms of this Agreement) shall from and after such time represent for all purposes the corresponding amount of BAI Common Stock provided for herein.

Section 1.8 Manner of Converting Shares. Subject to the provisions of this Agreement (including Section 1.9 below regarding the escrow of certain Merger consideration), at the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, the shares of the constituent corporations to the Merger shall be converted as follows:

(i) Each share of common stock, par value \$1.00 per share, of the Company (the "Common Stock") (excluding treasury shares) issued and outstanding at the Effective Time shall cease to be outstanding and each such share shall be converted into and exchanged for the right to receive 2.7778 shares of BAI common stock, no par value per share (such shares, the "BAI Shares").

(ii) Treasury shares representing Common Stock shall be canceled as a result of the Merger and no consideration shall be issued therefor.

Section 1.9 Exchange of Shares. (a) At the Closing, BAI shall deposit with BAI, as escrow agent (the "Escrow Agent"), certificates representing, in the aggregate, 8,333 of the BAI Shares otherwise issuable as consideration for the Merger, which shares shall be subject to the terms and conditions of the Escrow Agreement, of even date herewith, by and among BAI, BAI (as Escrow Agent) and the Shareholders (the "Escrow Agreement") for a period of one (1) year following the Closing.

(b) Within thirty (30) days after the Effective Time, BAI shall issue to each Shareholder appropriate transmittal materials, which shall contain an affidavit for lost or stolen stock certificates,

and which shall specify that delivery shall be effective, and the risk of loss of stock certificates representing shares of Common Stock shall pass, only upon delivery of such certificates to BAI by the former shareholders of the Company. Promptly upon receipt of the transmittal materials, each Shareholder shall surrender the certificate or certificates representing such shares of Common Stock to BAI and BAI shall promptly upon surrender thereof issue a certificate for the number of BAI Shares provided for herein.

(c) The BAI Shares shall be allocated among the Shareholders in accordance with the terms of Schedule 1.9 hereto.

Section 1.10 Put Option.

(a) Grant of Put Option. BAI hereby grants to each of the Shareholders an option to put to BAI all, but not less than all, of the BAI Shares owned by such Shareholder, on the terms and conditions set forth herein (the "Put Option").

(b) Exercise Period; Put Option Termination Date. At any time during the period beginning June 1, 1998 and ending June 30, 1998, each of the Shareholders shall have the right to elect to exercise the Put Option. In the event that any of the Shareholders fail to exercise the Put Option prior to June 30, 1998, then the Put Option of any non-exercising Shareholder(s) and all rights hereunder with respect thereto shall terminate and become null and void on such date. In the event BAI, at any time prior to June 30, 1998, shall enter into a definitive agreement regarding (i) any sale of substantially all of the assets of BAI, (ii) any sale or acquisition of BAI, by merger, share exchange or otherwise, in which BAI is not the surviving entity or (iii) an underwriter's firm commitment to underwrite the sale of registered stock of BAI in a public offering, then the Put Option and all rights hereunder with respect thereto shall terminate and become null and void on the date fourteen (14) days after BAI gives written notice to the Shareholders of the execution by BAI of such agreement and BAI's intent to accelerate the termination of the Put Option (the earlier to occur of June 30, 1998 and the date of the above-described termination, the "Put Option Termination Date").

(c) Method of Exercise. Each Shareholder may exercise the Put Option only with respect to all of the BAI Shares owned by such Shareholder by giving to BAI written notice, executed by such Shareholder, of election to exercise (each such notice a, "Put Option Exercise Notice") prior to the Put Option Termination Date. Within thirty (30) days of BAI's receipt of the Put Option Exercise Notice, BAI shall deliver or cause to be delivered to the Shareholder the full payment of the Put Option Price (as defined in Section 1.10(d) hereof) for the BAI Shares, and all right, title, interest, and obligation of the Shareholder in, to, and under the BAI Shares immediately shall become vested in BAI. Concurrent with the delivery of the Put Option Price by BAI and as a condition precedent thereto, the Shareholder shall deliver or cause to be delivered to BAI all certificates representing the BAI Shares theretofore owned by the Shareholder, such certificates to be duly endorsed or accompanied by duly executed stock powers. The aforesaid power shall be deemed to be coupled with an interest. BAI covenants to take all action necessary to reflect the transfer of the BAI Shares from the Shareholder to BAI on the stock transfer records of BAI.

(d) Put Option Price. The price of the BAI Shares shall be equal to the product of \$6.00 multiplied by the actual number of BAI Shares owned by the Shareholder putting the BAI Shares (the "Put Option Price").

Section 1.11 Board Representation. On and after the date hereof, the Shareholders shall be entitled to appoint one (1) person as an advisory member of the Board of Directors of BAI. Such advisory member shall not sit on the Board of Directors of BAI in any official capacity and shall not be entitled to vote on any matter before the Board of Directors. The right of the Shareholders to appoint such advisory member of the Board of Directors shall terminate on the earlier to occur of (i) the date on which the Shareholders cease to own, in the aggregate, at least 50,000 BAI Shares or (ii) the date BAI shall enter into any of the definitive agreements described in Section 1.10(b) hereof.

Section 1.12 Registration Rights. BAI agrees that if at any time or times after the date hereof BAI shall propose to file a registration statement with respect to any of BAI Common Stock on a form suitable for a secondary offering (including BAI's initial public offering, if any, and each subsequent offering), it will give notice in writing to such effect to the Shareholders who are then owners of record of BAI Shares (for purposes of this Section 1.6, the "Holders") at least thirty (30) days prior to each such filing, and, at the written request of any such Holder, made within ten (10) days after the receipt of such notice, will include therein at BAI's cost and expense (including the fees and expenses of counsel to such Holders, but excluding underwriting discounts and commissions attributable to the BAI Shares included therein) such of the BAI Shares as such Holders shall request; provided, however, that if the offering being registered by BAI is underwritten and if in the opinion of a representative of the underwriters the inclusion therein of the BAI Shares would materially and adversely affect the sale of the securities to be sold by BAI thereunder, then BAI shall be required to include in the offering only that number of securities owned by its shareholders, including the Holders of BAI Shares, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (such securities so included to be apportioned pro rata among all selling shareholders according to the total amount of such securities entitled to be included therein (but for this proviso and any other similar cutback provisions to which other selling shareholders are subject)). In an underwritten offering, all Holders proposing to distribute their BAI Shares through such underwriting shall (together with BAI and the other shareholders distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by BAI. If any Holder disapproves of the terms of any such underwriting, it may elect to withdraw therefrom by written notice to BAI, the managing underwriter and the Holders. Any BAI Shares which are excluded from the underwriting by reason of the underwriter's marketing limitation or withdrawn from such underwriting shall be withdrawn from such registration.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE SHAREHOLDERS

Recognizing that BAI and BAI Florida will be relying on the information and on the representations and warranties set forth herein, the Shareholders, jointly and severally, hereby acknowledge, represent, and warrant to BAI and BAI Florida, as of the date hereof, as follows:

Section 2.1 Organization and Authorization of the Company. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Florida. The Company is duly qualified to do business in each jurisdiction in which such qualification is required by reason of the business conducted or the properties owned and operated by it and where the failure of the Company to be so qualified would have a materially adverse effect on the Company's business. Attached hereto as Schedule 2.1 is (i) a list of each state in which the Company is qualified to do business, (ii) a list of each state in which the Company is conducting business, and (iii) a list of each state in which the Company owns and operates property. The Company has the corporate power and authority to own or lease its properties and to carry on its business as presently conducted. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the Shareholders and the board of directors of the Company, and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or to carry out any of the transactions contemplated hereby. This Agreement is a valid and binding obligation of the Company enforceable against it in accordance with its terms.

Section 2.2 No Violation. With respect to the Company, neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby:

- (a) Requires or will require the approval of any governmental authority;
- (b) Violates or will violate any statute, law, rule, regulation, order, judgment, or decree of any court or governmental authority affecting the Company or any Shareholder in any way; or
- (c) Violates or will violate, or conflicts with or will conflict with, or constitutes a default under or will constitute a default under, the Articles of Incorporation or Bylaws of the Company, as amended, or any contract, commitment, agreement, understanding, arrangement, or restriction or any kind to which the Company or a Shareholder is a party, by which the Company or a Shareholder is bound, or which otherwise in any way affects the Company or any Shareholder.

Section 2.3 Capital Stock. The authorized capital stock of the Company consists of (i) 1,000,000 shares of voting common stock, par value \$1.00 per share, of which 30,000 shares are issued and outstanding in the names and in the amounts set forth on Schedule 2.3 (such issued and outstanding shares of common stock referred to in this Section 2.3 as the "Stock") and (ii) 1,000,000 shares of non-voting common stock, par value \$1.00 per share, of which none are issued and outstanding. All shares of Stock are duly authorized, validly issued, fully paid, and non-assessable. The Stock is owned by each of the Shareholders free from the liens, claims, or encumbrances or rights of any other person or entity. The Stock constitutes all of the issued and outstanding capital stock of the Company.

Section 2.4 No Outstanding Warrants, Options, or Rights. There are no outstanding warrants, options, or rights of any kind to acquire securities of any kind from the Company or any of the Shareholders.

Section 2.5 [Reserved.]

Section 2.6 [Reserved.]

Section 2.7 Financial Statements of the Company. The financial statements of the Company for the fiscal years ended December 31, 1995, December 31, 1996 and December 31, 1997, and the financial statements as of and for the one (1) month ended January, 1998, and the related notes (collectively, the "Financial Statements"), copies of which are attached hereto as Schedule 2.7, are accurate, true and complete in all material respects, fairly present the financial position, results of operations, cash flows and changes in stockholders' equity of the Company at the respective dates of and for the periods to which they apply in such Financial Statements and, except as set forth on Schedule 2.7, have been prepared in all material respects in accordance with accounting principles consistently applied throughout the periods indicated, subject, in the case of interim Financial Statements, to normal recurring year-end adjustments (the effect of which will not, individually or in the aggregate, have a materially adverse effect on the Company or its business) and the absence of notes (that, if presented, would not differ materially from those included in the most recent annual Financial Statements). The Financial Statements do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained in this Section or therein not misleading. No financial statements of any other person(s) are required by Generally Accepted Accounting Principles ("GAAP") to be included in the financial statements of the Company.

Section 2.8 Liabilities. Except as set forth on Schedule 2.8, the Company has no liabilities or obligations, whether accrued, absolute, contingent, or otherwise, except (a) those reflected or accounted for in the Financial Statements; and (b) usual and normal obligations incurred on a current basis in the ordinary course of business since the latest date of the Financial Statements. Except (i) as set forth in Schedule 2.8 or (ii) as and to the extent specifically reflected, reserved against, or disclosed in the Financial Statements, the Company is not directly or indirectly liable, by guaranty, indemnity, or otherwise (other than as an endorser of a check in the ordinary course of business), or obligated, by discount or repurchase agreement, or in any other way, to provide funds in respect to, or to guarantee or assume any debt, dividend, or other obligation of, any person, corporation, association, partnership, or other entity.

Section 2.9 Tax Matters. The Company has timely filed (taking into account extensions) all federal, state, and local tax returns required to be filed by it, and has paid in full or made adequate provision by the establishment of reserves for all taxes which have become due or will become due with respect to any period or partial period ending on or before the Closing Date. All such tax returns are true, complete, and accurate in all material respects. There is no tax deficiency proposed or threatened against the Company. There are no investigations being conducted with respect to any taxes or tax returns of the Company. There are no tax liens that materially affect any property or assets of the Company, and there are no federal, state, local, or foreign tax audits, administrative proceedings, or court proceedings currently being conducted with regard to any taxes or tax returns of the Company.

Section 2.10 Sensitive Payments. Neither the Company nor any of the Company's officers, directors, shareholders, or agents has, on behalf of or for the benefit of the Shareholders or the Company, made or received any "sensitive" payments, and the Company has not and does not

maintain any unrecorded cash or non-cash assets out of which any "sensitive" payments might be made. "Sensitive" payments shall mean, whether legal or illegal, (i) unrecorded payments to or from governmental officials or employees; (ii) commercial bribes, influence payments, or kick-backs; (iii) amounts paid with an understanding that rebates or refunds will be made in contravention of the laws of any jurisdiction, either directly or through a third party; (iv) political contributions; or (v) payments or commitments (whether made in the form of commissions, payments, or fees for goods or services received or otherwise) made with the understanding that all or part thereof is to be or may be paid by the recipient to a governmental official or employee as a commercial bribe, influence payment, or kick-back.

Section 2.11 Title to and Condition of Assets.

(a) Schedule 2.11 contains a complete list of all tangible and intangible assets owned, leased, licensed, or used by the Company and identifies the location of such assets.

(b) With respect to all tangible and intangible assets of the Company listed on Schedule 2.11, (i) with respect to owned assets, the Company owns all right, title, and interest in and to such assets, free and clear of all liens, claims, mortgages, pledges, encumbrances, or charges of every kind, nature, and description whatsoever, (ii) with respect to leased or licensed assets, the Company owns all right, title, and interest in and to each such lease or license, free and clear of all liens, claims, mortgages, pledges, encumbrances, or charges of every kind, nature, and description whatsoever, (iii) there have been no claims made against the Company asserting the invalidity, abuse, misuse, or unenforceability of the Company's rights in any such assets, and there are no grounds for the same, (iv) none of such assets or the conduct of the Company's business infringe on any rights of any person, (v) neither the Company nor any of the Shareholders has received any notice of any claim of any such infringement during the past ten (10) years, (vi) since the date of its incorporation, neither the Company nor any of the Shareholders has received any notice that purports to restrict or calls into question the right to conduct the business of the Company as heretofore conducted, (vii) the Company has the right to conduct its existing business under the name(s) set forth in Schedule 2.11, and (viii) neither the Company nor any of the Shareholders knows of any claim on the part of any third party that such third party has the right to the use of any such names to the exclusion of the Company.

(c) For purposes of this Agreement, the term "intangible assets" shall mean all right, title, and interest of the Shareholders, or any of them, and the Company in and to all intangible assets of any kind including, without limitation, proprietary rights, the "Profiles Plus, Inc." name, together with all other trade names and trade styles, all trademarks, trademark registrations, trademark applications, copyrights, copyright applications, copyright registrations, patents, patent applications, patent registrations, proprietary or licensed software, trade secrets, confidential information, logos, technology, know-how, service marks, service names, assumed names, processes, permits, licenses, and the goodwill associated with all such intangible assets.

(d) Except as set forth on Schedule 2.11, with respect to any intangible assets or proprietary rights which may be perfected by filing or registering with any state or federal authorities, all such filings or registrations have been duly made and maintained.

(e) The tangible assets of the Company are fit for the purposes for which they are intended and are in reasonable operating condition, normal wear and tear excepted, and are being operated in material compliance with all currently applicable federal, state, and local laws, rules, and regulations.

(f) The inventory and supplies of the Company consist of items of a quality and quantity usable in the normal course of the Company's business.

(g) The assets and properties of the Company constitute, in the aggregate, all of the property reasonably necessary for the conduct of its businesses in the manner in which and to the extent to which it is currently being conducted.

Section 2.12 Owned Real Property. The Company does not and has not ever owned, directly or indirectly, any real property.

Section 2.13 Leased Real Property. Attached hereto as Schedule 2.13 are complete and accurate copies of each lease agreement, together with any and all amendments thereto, (the "Lease Agreements"), covering any parcel of real property that is now or was leased by the Company within one (1) year of the Closing Date (the "Leasehold Premises"). Each Shareholder represents that the Company has not committed a material breach of any such Lease Agreement which gives, or would give rise, to a default of any such Lease Agreement. No event has occurred which, with the passage of time or the giving of notice or both, would cause a material breach of or default under any such Lease Agreement. To the best of each Shareholder's knowledge, there has been no breach or anticipated breach by any other party to any such Lease Agreement.

Section 2.14 Licenses and Permits. The Company possesses all licenses and other required governmental or official approvals, permits, or authorizations, the failure to possess which would have a materially adverse effect on the business, financial condition, or results of operations of the Company. Schedule 2.14 contains a complete list of all such licenses, approvals, permits, and authorizations. Other than as disclosed on Schedule 2.14, all such licenses, approvals, permits, and authorizations are in full force and effect; the Company is in material compliance with the requirements thereof; and no proceeding is pending or threatened to revoke or amend any of them. None of such licenses, approvals, permits, and authorizations are or will be impaired or in any way affected by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

Section 2.15 Insurance. Schedule 2.15 completely and accurately sets forth a description of all insurance policies, programs of self-insurance, and surety bonds carried by the Company relating to its business, assets, employees, and liabilities. All premiums and other payments which have become due under the policies of insurance listed in Schedule 2.15 have been paid in full; all of such policies are now in full force and effect; and the Company has received no notice from any insurer, agent, or broker of the cancellation of, or any increase in premium with respect to, any of such policies or bonds. Except as set forth in Schedule 2.15, the Company has received no notification from any insurer, agent, or broker denying or disputing any claim or denying or disputing any coverage for any such claim or the amount of any claim. Except as set forth in Schedule 2.15, the Company has no pending or anticipated material claim against any of its insurers

under any of such policies, and there has been no occurrence of any kind which would give rise to any material claim. The parties hereto acknowledge and agree that coverage under all insurance policies, programs of self-insurance, and surety bonds currently carried by the Company related to its business, assets, employees, and liabilities shall, unless the parties otherwise agree, continue in effect on and after the Closing Date.

Section 2.16 Bank Accounts. Schedule 2.16 completely and accurately sets forth the name of each bank in which the Company has an account or safe-deposit box, the name in which the account or box is held, and the names of all persons authorized to draw thereon or to have access thereto.

Section 2.17 Litigation. Except as disclosed on Schedule 2.17, there are no actions, suits, claims, or arbitration proceedings pending, or threatened against or affecting the Company or any of its assets or properties, and there is no basis for the foregoing. There are no governmental investigations pending or threatened against or affecting the Company or any of its assets or properties, and there is no basis for the foregoing. There are no outstanding orders, decrees, or stipulations issued by any federal, state, local, or foreign judicial or administrative authority in any proceeding to which the Company is or was a party.

Section 2.18 Records. Except as disclosed on Schedule 2.18, the books and records of the Company are true, complete and correct in all material respects and have been maintained in accordance with good business practices and contain a true, complete and correct record of any meetings or proceedings of the board of directors or shareholders of the Company required to be so reflected. No action has been taken which requires the approval of a board of directors or shareholders of the Company which is not accurately reflected in the minute book of the Company. Notwithstanding the disclosure of any exception to the representations in this Section 2.18 set forth on Schedule 2.18, the Shareholders, jointly and severally, shall save, indemnify and hold BAI and the Company harmless from and against any and all losses in connection with such books or records.

Section 2.19 Compliance with Laws. The Company is in material compliance with all laws, regulations, and orders applicable to it, its assets, properties, or business. The Company has not received notification of any asserted past or present failure by the Company to comply with any such laws, regulations, or orders, and no proceeding with respect to any such violation is contemplated.

Section 2.20 Environmental Matters. Except as disclosed in Schedule 2.20, the Company: (i) is currently in compliance in all material respects with all applicable environmental laws, and has obtained all permits and other authorizations needed to operate the Business, (ii) has not violated in any material respect any applicable environmental law, and (iii) is unaware of any present requirements of any applicable environmental law which is due to be imposed upon it which will materially increase its cost of complying with the environmental laws. In addition, all past on-site generation, treatment, storage, and disposal of waste, including hazardous waste, by the Company have been conducted in material compliance with the then-applicable environmental laws, and (iv) all past off-site treatment, storage and disposal of waste, including hazardous waste, generated by the Company have been conducted by delivery of such materials to qualified parties whom the Company reasonably believes to have disposed of such materials in accordance with applicable

environmental laws. As used in this Agreement, (i) the term "environmental laws" includes but is not limited to any federal, state or local law, statute, charter or ordinance, and any rule, regulation, binding interpretation, binding policy, permit, order, court order, or consent decree issued pursuant to any of the foregoing, which pertains to, governs, or otherwise regulates any of the following activities, (a) the emission, discharge, release, or spilling of any substance into the air, surface water, groundwater, soil, or substrata, (b) the manufacturing, processing, sale, generation, treatment, storage, disposal, labeling, or other management of any waste, hazardous substance, or hazardous waste; and (ii) the terms "waste," "hazardous substance," and "hazardous waste" include any substance defined as such by an applicable environmental law.

Section 2.21 Labor Relations. The Company is not a party to or bound by any collective bargaining agreement or any other agreement with a labor union, and there has been no effort by any labor union to organize any employees of the Company into one or more collective bargaining units. There is not pending or threatened any labor dispute, strike, or work stoppage which affects or which may affect the business of the Company or which may interfere with its continued operation. To the knowledge of the Shareholders, and each of them, neither the Company nor any of its agents, representatives, or employees has committed any unfair labor practice as defined in the National Labor Relations Act, as amended, and there is not now pending or threatened any charge or complaint against the Company by or with the National Labor Relations Board or any representative thereof. There has been no strike, walkout, or work stoppage involving any of the employees of the Company during the five (5) year period prior to the date hereof.

Section 2.22. Employees; Employee Benefits.

(a) Except as set forth on Schedule 2.22, the Company does not maintain or contribute to, or at any time has maintained or contributed to: (i) any non-qualified deferred compensation or retirement plans or arrangements, (ii) any qualified defined contribution retirement plans or arrangements, (iii) any qualified defined benefit pension plan, (iv) any other plan, program, agreement, or arrangement under which former employees of the Company or their beneficiaries are entitled, to medical, health, life insurance, or other benefits other than pursuant to benefit continuation rights granted by state or federal law, or (v) any other employee benefit, health, welfare, medical, disability, life insurance, stock, stock purchase or stock option plan, program, agreement, arrangement, or policy. The Company has no plans, programs, agreements, or arrangements and has made no other commitments to its employees, former employees, or their beneficiaries under which it has any obligation to provide any retiree benefit payments which are not adequately funded through a trust or other funding arrangement. The parties hereto acknowledge and agree that the Shareholders shall retain all obligations and liabilities, and shall indemnify BAI for all losses in connection with, the operation of any of the foregoing employee benefit plans prior to the Closing Date.

(b) Except as set forth in Schedule 2.22, there are no pending or threatened claims by employees, former employees, or their beneficiaries of any violations of ERISA or any related state or federal laws governing retirement benefits, any violations of applicable wage and hour statutes or regulations, and there are no facts or occurrences which would provide any basis for such claims.

Section 2.23 Indebtedness. Schedule 2.23 sets forth (i) a complete and correct list of all loans, credit agreements, indentures, purchase agreements, promissory notes and other evidences of indebtedness, guaranties, capital leases and other instruments, agreements and arrangements presently in effect providing for or relating to extensions of credit (including agreements and arrangements for the issuance of letters of credit or for acceptance financing) in respect of which the Company or any of its properties is in any manner directly or contingently obligated; (ii) the maximum principal or face amounts of the credit in question that are outstanding and that can be outstanding are correctly stated; and (iii) a complete and correct list of all liens, pledges or security interests of any nature given or agreed to be given as security therefor or in connection therewith correctly described or indicated in such Schedule. Consummation of the transactions hereby contemplated will not result in any breach of, or constitute a default under, or require the consent of any person under, any loan, credit agreement, indenture, purchase agreement, promissory note or other evidences of indebtedness, guaranty, capital lease or other instrument, agreement or arrangement set forth on Schedule 2.23 and for which the Company has not obtained an effective waiver. All indebtedness of the Company, as of January 31, 1998, is accurately reflected on the Financial Statements of such date, and with respect to any indebtedness for money borrowed, the Company is not in breach or default (or with a lapse of time, the giving of notice, or both would not be in breach or default) in a manner which permits the acceleration of such indebtedness.

Section 2.24 Power of Attorney. Except as set forth on Schedule 2.24, the Company has neither given nor granted any power of attorney, whether limited or general, to any person, firm, corporation, or otherwise that is in effect as of the date hereof or is continuing in effect.

Section 2.25 Contracts. Schedule 2.25 contains a true, correct, and complete list of each material written or oral agreement not set forth in Schedule 2.23 to which the Company is currently a party or which is currently in effect. For purposes of this Section 2.25, any agreement or contract shall be deemed material if (i) such contract or agreement relates to payments by or to the Company in any calendar year in excess of \$5,000, (ii) it requires performance by the Company of any obligation after the Effective Date, (iii) it evidences, creates, guarantees, or secures indebtedness of the Company for the deferred purchase price of property, (iv) it provides for or authorizes any person or entity to act as agent, salesperson, broker, attorney-in-fact, or in a similar representative capacity for the Company, (v) it establishes or provides for any joint venture, partnership, or similar arrangement between the Company and any other person or entity, or (vi) it guarantees or endorses the obligations of any other person or entity, other than check endorsements in the ordinary course of business. The Company is not in material breach or default in connection with any document, contract, agreement, or other commitment referred to in Schedule 2.25, nor, to the knowledge of the Shareholders after inquiry of the Company's officers and representatives, is there any basis for any claim of breach or default by the Company or by any other party (including, without limitation, any claim of breach or default arising as a result of the passage of time, the giving of notice or both) in any material respect under any of the foregoing. Except as set forth in Schedule 2.25, all rights of the Company under contracts and agreements disclosed in Schedule 2.25 shall not be affected by the Closing of this Agreement or the transactions contemplated hereby.

Section 2.26 No Materially Adverse Change. Except as disclosed on Schedule 2.26, since the latest date of the Financial Statements there have not been any changes in the business or properties of the Company or in its financial condition which have had or could reasonably be

expected to have a materially adverse effect on the business, properties, financial condition, or operating results of the Company.

Section 2.27 Making of Warranties at Closing; Accuracy. All representations and warranties contained herein shall be true and correct as of the Closing Date. No representation or warranty by a Shareholder contained in this Agreement or any Schedule hereto, or any statement in any document, certificate, or other instrument furnished or to be furnished to BAI pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain, as of the Closing Date, any untrue statement of a material fact, or omits or will omit, as of the Closing Date, any material fact that is necessary in order to make the statements contained therein or herein not misleading.

Section 2.28 No Undisclosed Information. Neither this Agreement nor any other document, certificate, or statement furnished or to be furnished in connection with the transactions provided for herein contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they are made.

Section 2.29 No Other Assets Used in Business. As a result of this transaction, BAI Florida shall be receiving all of the assets used or required in the conduct of the Business, and neither any of the Shareholders nor the Company knows of any other assets owned or used by the Company or any of the Shareholders (either directly or indirectly) in the Business that are not being included in the transaction. In this regard, each Shareholder personally agrees to execute such bills of sale, assignments, or other transfer or conveyance documents as may be necessary or desirable to assure transfer and delivery to BAI Florida of good and marketable title to all assets used in, or in connection with, the Business, whether or not scheduled pursuant to this Agreement.

Section 2.30 Absence of Legal, Tax, or Regulatory Approvals. As a result of, or in connection with, this transaction, neither the Company nor BAI shall incur any state or local tax or other tax or regulatory obligations or liabilities. To the knowledge of the Shareholders, the transaction does not require compliance with any bulk sales or other state or local requirements, and no governmental approvals, permits, or licenses are necessary in connection with the transaction.

Section 2.31 Survival of Representations and Warranties. The Shareholders, and each of them, acknowledge and agree that, prior to the Closing Date, BAI intends to perform such investigation of the Company as BAI may deem appropriate; *however*, no such investigation shall diminish or obviate the representations, warranties, covenants, or agreements made or to be performed by any of the Shareholders pursuant to this Agreement, or BAI's right to rely fully upon the accuracy and completeness of such representations, warranties, covenants, and agreements as of the Closing Date. All such representations, warranties, covenants, and agreements made or to be performed by any of the Shareholders pursuant to this Agreement shall survive the execution and delivery hereof and the Closing. The Shareholders, and each of them, hereby release and forever discharge the Company from all liability for indemnification or contribution in connection with any claims based on the indemnification obligations of the Shareholders, or any of them, contained in Article VII.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES OF BAI**

Recognizing that the Shareholders will be relying on the information and on the representations and warranties set forth herein, BAI and, where indicated, BAI Florida, hereby acknowledges, represents, and warrants to the Shareholders as follows:

Section 3.1 Organization and Authorization of BAI. Each of BAI and BAI Florida is a corporation duly organized, validly existing, and in good standing under the laws of the State of Tennessee. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the boards of directors of BAI and BAI Florida, and by the sole shareholder of BAI Florida, and no other corporate proceedings on the part of BAI or BAI Florida are necessary to authorize this Agreement or to carry out the transactions contemplated hereby. This Agreement is a valid and binding obligation of each of BAI and BAI Florida enforceable against them in accordance with its terms.

Section 3.2 No Violation. With respect to BAI and BAI Florida, neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby:

- (a) Requires or will require the approval of any governmental authority;
- (b) Violates or will violate any statute, law, rule, regulation, order, judgment, or decree of any court or governmental authority affecting BAI or BAI Florida in any way; or
- (c) Violates or will violate, or conflicts with or will conflict with, or constitutes a default under or will constitute a default under, the Amended and Restated Charter or Bylaws of BAI, or the Charter or Bylaws of BAI Florida, in each case as amended, or any contract, commitment, agreement, understanding, arrangement, or restriction or any kind to which BAI is a party, by which BAI or BAI Florida is bound or which otherwise in any way affects BAI or BAI Florida.

Section 3.3 Capital Stock. The authorized capital stock of BAI consists of 20,000,000 shares of common stock, no par value, of which 2,144,572 shares are issued and outstanding and 5,000,000 shares of preferred stock, \$1.00 par value per share, with rights and preferences to be designated by the board of directors of BAI, of which 1,200,000 shares have been designated as Series A Preferred Stock, 1,143,700 of which are issued and outstanding. All such shares of capital stock are duly authorized, validly issued, fully paid, and non-assessable.

Section 3.4 No Outstanding Warrants, Options, or Rights. Except as set forth on Schedule 3.4, there are no outstanding warrants, options, or rights of any kind to acquire securities of any kind from BAI or any of the Shareholders.

Section 3.5 Financial Statements of BAI. The financial statements of BAI for the fiscal years ended December 31, 1996 and December 31, 1997, and the financial statements as of and for the one (1) month ended January 31, 1998, and the related notes (collectively, the "BAI Financial Statements"), copies of which have been delivered to the Shareholders, are accurate, true and

complete in all material respects, fairly present the financial position, results of operations, cash flows and changes in stockholders' equity of BAI at the respective dates of and for the periods to which they apply in such BAI Financial Statements and have been prepared in all material respects in accordance with generally accepted accounting principles ("GAAP") consistently applied throughout the periods indicated, subject, in the case of interim BAI Financial Statements, to normal recurring year-end adjustments (the effect of which will not, individually or in the aggregate, have a materially adverse effect on BAI or its business) and the absence of notes (that, if presented, would not differ materially from those included in the most recent annual BAI Financial Statements). The BAI Financial Statements do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained in this Section or therein not misleading. No financial statements of any other person(s) are required by GAAP to be included in the financial statements of BAI.

Section 3.6 Liabilities. Except as set forth on Schedule 3.6, BAI has no liabilities or obligations, whether accrued, absolute, contingent, or otherwise, except (a) those reflected or accounted for in the Financial Statements; and (b) usual and normal obligations incurred on a current basis in the ordinary course of business since the latest date of the BAI Financial Statements. Except (i) as set forth in Schedule 3.6 or (ii) as and to the extent specifically reflected, reserved against, or disclosed in the BAI Financial Statements, BAI is not directly or indirectly liable, by guaranty, indemnity, or otherwise (other than as an endorser of a check in the ordinary course of business), or obligated, by discount or repurchase agreement, or in any other way, to provide funds in respect to, or to guarantee or assume any debt, dividend, or other obligation of, any person, corporation, association, partnership, or other entity.

Section 3.7 Litigation. Except as disclosed on Schedule 3.7, there are no actions, suits, claims, or arbitration proceedings pending, or threatened against or affecting BAI or any of its assets or properties, and there is no basis for the foregoing. There are no governmental investigations pending or threatened against or affecting BAI or any of its assets or properties, and there is no basis for the foregoing. There are no outstanding orders, decrees, or stipulations issued by any federal, state, local, or foreign judicial or administrative authority in any proceeding to which BAI is or was a party.

Section 3.8 No Undisclosed Information. Neither this Agreement nor any other document, certificate, or statement furnished or to be furnished in connection with the transactions provided for herein contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they are made.

Section 3.9 No Materially Adverse Change. Except as disclosed on Schedule 3.9, since the latest date of the BAI Financial Statements there have not been any changes in the business or properties of BAI or in its financial condition which have had or could reasonably be expected to have a materially adverse effect on the business, properties, financial condition, or operating results of BAI.

Section 3.10 Making of Warranties at Closing. All representations and warranties contained herein shall be true and correct as of the Closing Date.

Section 3.11 Survival of Representations and Warranties. BAI acknowledges and agrees that, prior to the Closing Date, the Shareholders intend to perform such investigation of BAI as they may deem appropriate; *however*, no such investigation shall diminish or obviate the representations, warranties, covenants, or agreements made or to be performed by BAI pursuant to this Agreement, or the Shareholders' right to rely fully upon the accuracy and completeness of such representations, warranties, covenants, and agreements as of the Closing Date. All such representations, warranties, covenants, and agreements made or to be performed by BAI pursuant to this Agreement shall survive the execution and delivery hereof and the Closing.

ARTICLE IV CONDITIONS TO THE OBLIGATIONS OF BAI

The obligations of BAI to consummate the transactions contemplated herein shall be subject to the fulfillment (to the reasonable satisfaction of BAI) at or prior to the Closing of each of the following conditions:

Section 4.1 Accuracy of Representations and Warranties and Compliance with Obligations. The representations and warranties of the Company and the Shareholders contained in this Agreement, or in any schedule or document to be delivered pursuant hereto, shall have been true and correct in all material respects at and as of the date hereof, and shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as though made at and as of that time, and each Shareholder and the Company shall have performed and complied with all covenants and obligations required of him or her by this Agreement, or in any schedule or document to be delivered pursuant hereto, to be performed or complied with at or prior to the Closing Date.

Section 4.2 Shareholders' Certificate. The Shareholders shall have delivered to BAI a certificate, dated the Closing Date, signed by each of the Shareholders and an officer of the Company substantially in form and substance satisfactory to BAI.

Section 4.3 Satisfactory Proceedings. All proceedings taken in connection with the transactions contemplated by this Agreement, and all documents necessary to the consummation thereof, shall be reasonably satisfactory in form and substance to BAI and BAI's counsel, and the Company shall have delivered to BAI a certificate, dated the Closing Date, signed by the Secretary of the Company substantially in form and substance satisfactory to BAI.

Section 4.4 The Company's Existence and Authority. The Company shall have delivered to BAI the following certificates of public officials, in each case as of a date within ten (10) days of the Closing Date:

(a) the Articles of Incorporation of the Company certified by the Secretary of State or other appropriate official in the jurisdiction such entity is incorporated;

(b) a certificate as to the legal existence and good standing of the Company issued by the Secretary of State or other appropriate official in the jurisdiction such entity is incorporated; and

(c) a certificate as to the qualification to do business as a foreign corporation and good standing of the Company issued by the Secretary of State or other appropriate official in each jurisdiction listed in Schedule 2.1.

Section 4.5 Receipt of Necessary Consents. Attached hereto as Schedule 4.5 are copies of all necessary consents or approvals of third parties in connection with any of the transactions contemplated hereby, the absence of which would affect materially BAI's rights hereunder. BAI shall have received trademark searches, UCC-11 searches, and such other investigative reports as BAI may reasonably request in connection with the transaction, and shall have approved the results of such searches, reports or investigations.

Section 4.6 No Adverse Litigation. There shall not be pending or threatened any action or proceeding by or before any court, regulatory agency, or other governmental body which shall seek to restrain, prohibit, or invalidate any of the transactions contemplated hereby, or which might materially affect the right of BAI to consummate such transactions, or which, in the reasonable judgment of BAI, makes it inadvisable to proceed with such transactions.

Section 4.7 Resignations and Releases. BAI shall have received written resignations of all directors and officers of the Company.

Section 4.8 Delivery of Documents. The Shareholders shall have delivered or caused to be delivered or made available to BAI, within a reasonable time prior to the Closing, in form and substance reasonably satisfactory to BAI, and to the extent requested by BAI: (a) all corporate and other records of the Company, including but not limited to minute books, stock books, stock registers, books of accounts, leases, and contracts, and (b) such other documents or certificates as shall be reasonably requested by BAI.

Section 4.9 Regulatory Approvals. BAI shall have received from the Company copies of all necessary approvals, in a form satisfactory to BAI, by appropriate federal, state, and local governmental authorities with respect to all aspects of this transaction.

Section 4.10 No Change in Laws, etc. There shall have occurred no change in any tax or other laws or regulations which may, in the reasonable judgment of BAI, have a materially adverse effect upon its decision to proceed with the Merger.

Section 4.11 Absence of Materially Adverse Change. There shall have occurred no change in the financial condition or operations of the Company which, in the reasonable judgment of BAI, shall constitute a materially adverse change as described in Section 2.26 of this Agreement.

Section 4.12 Approval of Schedules. The Company shall deliver, or cause to be delivered or made available to BAI, within a reasonable time prior to Closing, all schedules to be delivered to BAI pursuant to the terms of this Agreement, and BAI shall have the opportunity to review and approve such schedules, and such schedules and the disclosures therein shall be reasonably satisfactory to BAI.

Section 4.13 Escrow Agreement. The Company and the Shareholders shall have delivered to BAI a fully executed copy of the Escrow Agreement.

Section 4.14 Non-Exclusive Independent Contractor Agreement. Mr. Gerry Belko shall have delivered to BAI a fully executed copy of a Non-Exclusive Independent Contractor Agreement in form and substance satisfactory to BAI (the "Non-Exclusive Independent Contractor Agreement").

Section 4.15 Non-Competition Agreements. Each of David Cuffe and Gerard R. Schwalje shall have delivered to BAI a fully executed copy of a Non-Competition Agreement in form and substance satisfactory to BAI (collectively, the "Non-Competition Agreements"). Each Shareholder hereby acknowledges that his agreement to be bound by the terms of such Non-Competition Agreement is a condition to BAI's consummation of the transactions contemplated by this Agreement and is necessary and reasonable in light of such Shareholder's relationship with the Company.

Section 4.16 Dissenters' Rights Waiver. Each of the Shareholders shall have delivered to BAI a fully executed copy of that certain Dissenters' Rights Waiver, as described in Section 1.6.

Section 4.17 BAI Shareholders' Agreement. Each of the Shareholders shall have delivered to BAI a fully executed copy of a Shareholders' Agreement in form and substance satisfactory to BAI (the "BAI Shareholders' Agreement").

Section 4.18 Releases. Each of the Shareholders and the former shareholders of the Company (other than Ken Larsen) shall have delivered to BAI a fully executed copy of a Release in form and substance satisfactory to BAI.

Section 4.19 Investment Letter. Each of the Shareholders shall have delivered to BAI a fully executed copy of that certain Investment Letter in form and substance satisfactory to BAI.

Section 4.20 SouthTrust Pay-Off Letter. BAI shall have received a payoff letter (the "SouthTrust Pay-Off Letter"), executed by an officer of SouthTrust Bank of Florida, N.A. ("SouthTrust"), indicating the amount of principal and related accrued interest outstanding as of a recent date and a per diem accrual amount under SouthTrust Loan Nos. 9501657-01, 91003910 and 9501657-05, by and between the Company and SouthTrust (the aggregate of such amounts, in each case as of the date of Closing, the "SouthTrust Line Balance"). The Shareholders hereby represent and warrant that the SouthTrust Line Balance as of the date of the Closing does not exceed \$140,000.

Section 4.21 Waiver of Conditions. If on the Closing Date the conditions specified in this Article IV have not been fulfilled, BAI may thereupon elect to be relieved of all further obligations under this Agreement. Without limiting the foregoing, if the conditions specified in this Article IV have not been fulfilled, BAI may waive compliance by the Company with any such condition to such extent as BAI, in BAI's sole discretion, may determine. Nothing in this Section 4.21 shall operate to relieve the Company or the Shareholders, or any of them, of any of its or his or her obligations hereunder or to waive any of BAI's rights against the Company or any of the Shareholders.

ARTICLE V
CONDITIONS TO THE OBLIGATIONS OF THE SHAREHOLDERS

The obligations of the Shareholders to consummate the transactions contemplated herein shall be subject to the fulfillment (to the reasonable satisfaction of the Shareholders) at or prior to the Closing of each of the following conditions:

Section 5.1 Accuracy of Representations and Warranties and Compliance with Obligations. The representations and warranties of each of BAI and BAI Florida contained in this Agreement, or in any schedule or document to be delivered pursuant hereto, shall have been true and correct in all material respects at and as of the date hereof, and shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as though made at and as of that time, and each of BAI and BAI Florida shall have performed and complied with all covenants and obligations required of it by this Agreement, or in any schedule or document to be delivered pursuant hereto, to be performed or complied with at or prior to the Closing Date.

Section 5.2 Officer's Certificate. Each of BAI and BAI Florida shall have delivered to the Shareholders a certificate, dated the Closing Date, signed by an officer of each of them, in form satisfactory to the Shareholders.

Section 5.3 Satisfactory Proceedings. All proceedings taken in connection with the transactions contemplated by this Agreement, and all documents necessary to the consummation thereof, shall be reasonably satisfactory in form and substance to the Shareholders and the Shareholders' counsel, and each of BAI and BAI Florida shall have delivered to the Shareholders a certificate, dated the Closing Date, signed by the Secretary of each of them in form and substance satisfactory to the Shareholders.

Section 5.4 No Adverse Litigation. There shall not be pending or threatened any action or proceeding by or before any court, regulatory agency, or other governmental body which shall seek to restrain, prohibit, or invalidate any of the transactions contemplated hereby, or which might materially affect the right of the Shareholders to consummate such transactions, or which, in the reasonable judgment of the Shareholders, makes it inadvisable to proceed with such transactions.

Section 5.5 Regulatory Approvals. The Shareholders shall have received from BAI copies of all necessary approvals, in a form satisfactory to the Shareholders, by appropriate federal, state, and local governmental authorities with respect to all aspects of this transaction.

Section 5.6 No Change in Laws, etc. There shall have occurred no change in any tax or other laws or regulations which may, in the reasonable judgment of the Shareholders, have a materially adverse effect upon their decision to proceed with the Merger.

Section 5.7 Title to the BAI Stock. The Shareholders shall obtain at the Closing record title and beneficial ownership to the BAI Stock, free and clear of any liens, claims, encumbrances, or rights of another, except as provided in the BAI Shareholders' Agreement.

Section 5.8 Absence of Materially Adverse Change. There shall have occurred no change in the financial condition or operations of BAI which, in the reasonable judgment of the Shareholders, shall constitute a materially adverse change as described in Section 3.9 of this Agreement.

Section 5.9 Approval of Schedules. BAI shall deliver, or cause to be delivered or made available to the Shareholders, within a reasonable time prior to Closing, all schedules to be delivered to the Shareholders pursuant to the terms of this Agreement, and the Shareholders shall have the opportunity to review and approve such schedules, and such schedules and the disclosures therein shall be reasonably satisfactory to the Shareholders.

Section 5.10 Escrow Agreement. BAI shall have delivered to the Shareholders a fully executed copy of the Escrow Agreement.

Section 5.11 Non-Exclusive Independent Contractor's Agreement. BAI shall have delivered to Mr. Gerry Belko a fully executed copy of the Non-Exclusive Independent Contractor Agreement.

Section 5.12 Pay-off of SouthTrust Line Balance. BAI shall have paid to SouthTrust the SouthTrust Line Balance as reflected in the SouthTrust Pay-Off Letter.

Section 5.13 Waiver of Conditions. If on the Closing Date the conditions specified in this Article V have not been fulfilled, the Shareholders may thereupon elect to be relieved of all further obligations under this Agreement. Without limiting the foregoing, if the conditions specified in this Article V have not been fulfilled, the Shareholders may waive compliance by BAI and/or BAI Florida with any such condition to such extent as the Shareholders, in their sole discretion, may determine. Nothing in this Section 5.13 shall operate to relieve BAI of any of its obligations hereunder or to waive any of the Shareholders' rights against BAI.

ARTICLE VI POST-CLOSING COVENANTS

Section 6.1 Covenant of the Shareholders.

(a) If, at any time after the Closing, BAI shall consider or be advised that any assignments, assurances, or any other actions or things are necessary or desirable to carry out this Agreement, each Shareholder shall execute and deliver, upon request, all such assignments or assurances, and shall take and do all such other actions and things as may be necessary or desirable to carry out this Agreement.

(b) The Shareholders, and each of them, agree that they shall not make any contributions to any employee benefit plans of the Company at any time after the Closing.

Section 6.2 Covenant of BAI.

If, at any time after the Closing, the Shareholders shall consider or be advised that any assurances, or any other actions or things are necessary or desirable to carry out this Agreement, BAI and BAI Florida shall execute and deliver, upon request, all such assurances and shall take and do all such other actions and things as may be necessary or desirable to carry out this Agreement.

ARTICLE VII INDEMNIFICATION

Section 7.1 Obligation of the Shareholders to Indemnify. Subject to the opportunity to contest in Section 7.5 hereof, the Shareholders (and not the Company) hereby jointly and severally agree to indemnify, defend, and hold harmless BAI, BAI Florida, the Company, and their affiliates, controlling persons, directors, officers, employees, representatives, agents, partners, joint venturers and assigns from and against any Losses (as defined in Section 7.3) relating to, based upon, arising out of, or otherwise in respect of any falsity or breach of any representation or warranty or breach of any covenant or agreement made or to be performed by the Shareholders, or any of them, pursuant to this Agreement. This obligation to indemnify shall continue in full force and effect for a period of two (2) years from the Closing Date. The Shareholders shall not have liability under this Section 7.1 until the aggregate amount of all Losses to BAI, BAI Florida, the Company or their affiliates exceeds \$5,000. In no event shall the aggregate amount of the Shareholders' joint and several liability under this Section 7.1 exceed \$500,000 in respect of all such claims for indemnification; provided, however, that with respect to Losses arising from falsity or breach of any representation or warranty contained in Sections 2.3 or 2.4 hereof, such \$500,000 dollar limitation shall not apply. At least twenty percent (20%) of the amount of each claim by BAI for an indemnifiable Loss shall be paid to BAI by the Shareholders in cash, with the remaining amount of such claim being paid to BAI by the Shareholders in BAI Shares, such shares being valued for purposes of this Section 7.1 at the rate of \$6.00 per BAI Share (subject to adjustment for stock splits, combinations, etc.). To the extent that any Shareholder exercises the Put Option described in Section 1.10 hereof, the minimum percentage of each claim by BAI for an indemnifiable Loss required to be paid by the Shareholders in cash shall be increased from 20% to equal (A) 0.20 plus (B) 0.80 times the result obtained by dividing the number of BAI Shares with respect to which the Put Option was exercised times the total number of BAI Shares issued as consideration for the Merger.

Section 7.2 Obligation of BAI to Indemnify. Subject to the opportunity to contest in Section 7.5 hereof, BAI and BAI Florida hereby jointly and severally agree to indemnify, defend, and hold each Shareholder harmless from and against any Losses relating to, based upon, arising out of, or otherwise in respect of any falsity or breach of any representation or warranty or breach of any covenant or agreement made or to be performed by either party pursuant to this Agreement. This obligation to indemnify shall continue in full force and effect for a period of two (2) years from the Closing Date. In no event shall the aggregate amount of BAI's liability under this Section 7.2 exceed \$500,000 in respect of all such claims for indemnification.

Section 7.3 Definition of "Losses." As used in this Agreement, the term "Loss" or "Losses" means any and all claims, actions, suits, proceedings, demands, assessments, judgments, losses, remedial action requirements, costs, expenses, deficiencies, damages, fines, penalties, liabilities, or expenses (including, but not limited to, reasonable attorneys' fees), after giving effect to offsetting recoveries or related proceeds actually received from insurance policies or similar

arrangements or from third parties. The fact that indemnification is being sought shall not, in and of itself, preclude any party from contesting the liability pursuant to Section 7.5 hereof. Losses shall not include costs, fines or penalties incurred by BAI or the Company as a result of Shareholders' breach of (i) that portion of Section 2.1 regarding qualification to do business as a foreign corporation, (ii) that portion of Section 2.9 regarding taxes owed to any governmental entity other than the United States of America, the State of Florida and Pinellas County, Florida or (iii) that portion of Section 2.14 regarding licensure by any governmental entity other than the United States of America or the State of Florida, in each case if such costs, fines or penalties were the result of any affirmative effort by BAI or the Company to retroactively correct any deficiency in connection therewith; provided, however, that neither (i) cooperation with the relevant authorities upon inquiry initiated thereby nor (ii) truthful responses by BAI or the Company to any question or inquiry posed in connection with any application by BAI or the Company in respect of prospective qualification, taxation or licensure thereof, shall be considered such an affirmative effort.

Section 7.4 Notice of Loss or Asserted Liability. Promptly, but not more than ninety (90) days (or such lesser time as is reasonably necessary to allow the indemnifying party to answer any asserted claim), after (a) becoming aware of circumstances that have resulted in a Loss for which the party seeking indemnification (the "Indemnitee") intends to seek indemnification under this Article VII, or (b) receipt by the Indemnitee of written notice from any third party of any demand, claim, or circumstance which gives rise or, with the lapse of time, the giving of notice or both, would give rise to a claim or the commencement of (or threatened commencement) of any action, proceeding, or investigation (an "Asserted Liability") that may result in a Loss, the Indemnitee shall give written notice thereof (the "Claims Notice") to the party (or parties) obligated to provide indemnification pursuant to this Article VII (the "Indemnifying Party"). The Claims Notice shall describe the Loss or the Asserted Liability in reasonable detail, and shall indicate the amount (or an estimate, if necessary) of the Loss that has been or may be suffered by the Indemnitee. The Claims Notice may be amended by written notice on one or more occasions with respect to the amount of the Asserted Liability or the Loss at any time prior to final resolution of the obligation to indemnify relating to the Asserted Liability or the Loss.

Section 7.5 Opportunity to Contest. Subject to the provisions of this Agreement, the Indemnifying Party may elect to compromise or contest, at its own expense and by its own counsel, any Asserted Liability. If the Indemnifying Party elects to compromise or contest such Asserted Liability, it shall within thirty (30) days (or sooner, if the nature of the Asserted Liability so requires) (the "Notice Period") notify the Indemnitee of its intent to do so by sending a written Contest Notice to the Indemnitee (the "Contest Notice"), and the Indemnitee or Indemnitees shall cooperate, at the expense of the Indemnifying Party, in the compromise or contest of such Asserted Liability; *provided, however*, that the Indemnitee shall have the right to approve, to its reasonable satisfaction, any counsel retained in connection with such Asserted Liability. If, within the Notice Period, the Indemnifying Party elects not to compromise or contest the Asserted Liability, fails to notify the Indemnitee of its election as herein provided, or contests its obligation to indemnify under this Agreement, the Indemnitee (upon further written notice to the Indemnifying Party) shall have the right to pay, compromise, or contest such Asserted Liability on behalf of and for the account and risk of the Indemnifying Party, and the Indemnifying Party shall have no further right to assume the compromise or contest of such Asserted Liability. Anything in this Section 7.5 to the contrary notwithstanding, (i) the Indemnitee shall have the right, at its own cost and expense and for its own

account without claim for reimbursement, to compromise or contest any Asserted Liability, and (ii) the Indemnifying Party shall not, without the Indemnitee's written consent, settle or compromise any Asserted Liability or consent to the entry of any judgment which does not include an unconditional release of Indemnitee from all liability in respect of such Asserted Liability. In any event, any Indemnitee may participate, at its own expense, in the contest of such Asserted Liability.

Section 7.6 Attorneys' Fees. In the event of a dispute between the Shareholders, or any of them, and BAI, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expenses, and costs. Nothing contained herein shall be construed to alter the inclusion of attorneys' fees, expenses, and costs in otherwise indemnifiable Losses, as provided herein.

Section 7.7 Right to Set-Off. The Shareholders, and each of them, acknowledge and agree that BAI may set off any amount to which it may be entitled pursuant to this Article VII by giving notice of a claim in such amount pursuant to the provisions of the Escrow Agreement. Neither the exercise of nor the failure to exercise such right of set-off or to give notice of a claim under the Escrow Agreement will constitute an election of remedies or limit BAI in any manner in the enforcement of any other remedies that may be available to it.

Section 7.8 Remedies Cumulative. The remedies provided herein shall be cumulative and shall not preclude the assertion by any party hereto of any other rights or the seeking of any other remedies against the other party hereto.

ARTICLE VIII MISCELLANEOUS

Section 8.1 Commissions. Each of the parties hereto represents and warrants that, except as provided on Schedule 8.1, there are no claims for finder's fees or brokerage commissions owed in connection with the transactions contemplated by this Agreement, and each party shall hold the other party harmless from any such claims arising by, through, or under such party, as provided in Article VII hereof.

Section 8.2 Expenses. The Shareholders (and not the Company) and BAI shall separately bear their costs and expenses (including, without limitation, attorneys' and accountants' fees) incurred after November 10, 1997 in respect of the negotiation and preparation of this Agreement and the other documents contemplated hereby and in connection with all things required to be done by them hereby. The Shareholders hereby represent that the amount of such costs and expenses incurred prior to November 10, 1997 (the expense of which the Shareholders shall not separately bear and which shall be borne by the Company) is \$10,027.01.

Section 8.3 Assignability. No party to this Agreement shall assign, transfer, or otherwise dispose of any of its rights, duties, or obligations hereunder without the prior written consent of the other party hereto, and any attempted assignment without such prior written consent shall be void *ab initio*.

Section 8.4 Entire Agreement; Amendments. This Agreement, including any schedules, lists, and other documents and writings referred to herein or delivered pursuant hereto, all of which

form a part hereof, contains the entire understanding of the parties with respect to its subject matter. It merges and supersedes all prior and/or contemporaneous agreements and understandings between the parties, written or oral, with respect to its subject matter and there are no restrictions, agreements, promises, warranties, covenants, or undertakings between the parties with respect to the subject matter hereof other than those expressly set forth herein. This Agreement may be amended only by a written instrument duly executed by all parties or their respective heirs, successors, permitted assigns, or personal representatives.

Section 8.5 Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.6 Severability. In the event that any provision of this Agreement, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, or the application of the invalid, illegal, or unenforceable provision to any other person or circumstance, and this Agreement shall then be construed as if such invalid, illegal, or unenforceable provision had not been contained in this Agreement, but only to the extent of such invalidity, illegality, or unenforceability.

Section 8.7 Notices. All communications provided for hereunder shall be in writing and shall be delivered personally, or mailed by certified mail return receipt requested, or by prepaid overnight air courier, or by facsimile communication, in each case addressed:

If to BAI: Background America, Inc.
1900 Church Street, Suite 400
Nashville, Tennessee 37203
Fax: (615) 321-9585
Attention: Chief Executive Officer

with a copy to: Sherrard & Roe, PLC
424 Church Street, Suite 2000
Nashville, Tennessee 37219
Fax: (615) 742-4539
Attention: Steven A. King

If to the Shareholders: Jerry or Paula Schwalje
3150 Timberview
Dunedin, Florida 34698

David Cuffe
1101 Ashland Ave.
Tarpon Springs, Florida 34689

Gerry Belko
474 Oakdale
Glencoe, IL 60022

with a copy to: Annis, Mitchell, Cockey, Edwards & Roehn
One Tampa City Center, Suite 2100
Tampa, FL 33602
Attention: Randolph J. Wolfe

or such other address as BAI may designate to the Shareholders in writing, or such other address as the Shareholders may in writing designate to BAI, *provided, however*, that a notice sent by overnight air courier shall only be effective if delivered at a street address designated for such purpose by such person and a notice sent by facsimile communication shall only be effective if made by confirmed transmission at a telephone number designated for such purpose by such person.

Section 8.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

Section 8.9 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, with the same effect as if the signatories executing the several counterparts had executed one counterpart. All such executed counterparts shall together constitute one and the same instrument.

Section 8.10 Waivers. The terms, covenants, representations, warranties, and conditions of this Agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of any party at any time to require performance of any provision hereof shall, in no manner, affect the right at a later date to enforce the same. No waiver by any party of any condition, or breach of any provision, term, covenant, representation, or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation, or warranty of this Agreement.

Section 8.11 No Third Party Beneficiary. No provision of this Agreement shall create, or be deemed to create, any legal or equitable right in any person not a party to this Agreement or give any such person any claim against any party to this Agreement that such party would not have but for this Agreement.

Section 8.12 - Neutral Interpretation. The parties hereto acknowledge and agree that this Agreement shall be interpreted neutrally and without regard to the party that drafted it and, in particular, no rule of construction shall be applied as against any party that would result in the resolution of an ambiguity contained herein against the drafting party.

[Remainder of page intentionally left blank.]

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be executed by themselves or their duly authorized representative as of the day and year first written above.

THE SHAREHOLDERS:

SS #: 305-28-6467

Gerry Belko
Gerry Belko

SS #: _____

Gerard R. Schwalje
Gerard R. Schwalje

SS #: _____

Paula J. Schwalje
Paula J. Schwalje

SS# : 152-34-9535

THE COMPANY:
PROFILES PLUS, INC.

By: _____
Name: _____
Its: _____

BAI:
BACKGROUND AMERICA, INC.

By: _____
Name: _____
Its: _____

BAI FLORIDA:
BACKGROUND AMERICA OF FLORIDA, INC.

By: _____
Name: _____
Its: _____

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be executed by themselves or their duly authorized representative as of the day and year first written above.

THE SHAREHOLDERS:

SS #: _____

Gerry Belko

SS #: 147-32-5891

Gerard R. Schwalje
Gerard R. Schwalje

SS #: 012-34-4388

David Cuffe
David Cuffe

SS# : 152-34-9535

Paula J. Schwalje
Paula J. Schwalje

THE COMPANY:
PROFILES PLUS, INC.

By: *David Cuffe*
Name: David Cuffe
Its: President

BAI:

BACKGROUND AMERICA, INC.

By: _____
Name: _____
Its: _____

BAI FLORIDA:

BACKGROUND AMERICA OF FLORIDA, INC.

By: _____
Name: _____
Its: _____

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

IN WITNESS WHEREOF, the parties hereto have caused this Stock Purchase Agreement to be executed by themselves or their duly authorized representative as of the day and year first written above.

THE SHAREHOLDERS:

SS #: _____
Gerry Belko

SS #: _____
Gerard R. Schwalje

SS #: _____
David Cuffe

THE COMPANY:

PROFILES PLUS, INC.

By: _____
Name: _____
Its: _____

BAI:

BACKGROUND AMERICA, INC.

By: Michael D. Shmerling
Name: Michael D. Shmerling
Its: Chairman / CEO

BAI FLORIDA:

BACKGROUND AMERICA OF FLORIDA, INC.

By: Michael D. Shmerling
Name: Michael D. Shmerling
Its: President