

Document Number Only  
**P00000027394**

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

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-09/13/00--01057--003  
\*\*\*\*\*70.00 \*\*\*\*\*70.00

CORPORATION(S) NAME

Merger

BandRags, Inc. (DE)

Merging: BandRags, Inc. (FL)

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

Name 9/13/00 09/13/00  
Availability 9/13/00  
Document AB  
Examiner AB  
Updater BR  
Verifier \_\_\_\_\_  
Acknowledgement \_\_\_\_\_  
W.P. Verifier \_\_\_\_\_

RECEIVED  
00 SEP 13 AM 11:01  
DIVISION OF CORPORATION

FILED

00 SEP 13 PM 3:30  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER  
Merger Sheet

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MERGING:

BANDRAGS, INC., a Florida corporation P00000027394  
,

INTO

**BANDRAGS, INC.**, a Delaware corporation not qualified in Florida.

File date: September 13, 2000

Corporate Specialist: Annette Ramsey

**ARTICLES OF MERGER**  
(Profit Corporations)

FILED  
00 SEP 13 PM 3:30  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, F.S.

**First:** The name and jurisdiction of the surviving corporation is:

<u>Name</u>	<u>Jurisdiction</u>
<u>BandRags, Inc.</u>	<u>Delaware</u>

**Second:** The name and jurisdiction of each merging corporation is:

<u>Name</u>	<u>Jurisdiction</u>
<u>BandRags, Inc.</u>	<u>Florida</u>
_____	_____
_____	_____
_____	_____
_____	_____

**Third:** The Plan of Merger is attached.

**Fourth:** The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State

**OR**     /     /     (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days in the future.)

**Fifth:** Adoption of Merger by surviving corporation - (COMPLETE ONLY ONE STATEMENT)

The Plan of Merger was adopted by the shareholders of the surviving corporation on \_\_\_\_\_.

The Plan of Merger was adopted by the board of directors of the surviving corporation on August 31, 2000 and shareholder approval was not required.

**Sixth:** Adoption of Merger by merging corporation(s) (COMPLETE ONLY ONE STATEMENT)

The Plan of Merger was adopted by the shareholders of the merging corporation(s) on \_\_\_\_\_.

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on August 31, 2000 and shareholder approval was not required.

(Attach additional sheets if necessary)

Seventh: SIGNATURES FOR EACH CORPORATION

Name of Corporation

Signature

Typed or Printed Name of Individual & Title

BandRags, Inc.

*Doug Horlick*

Doug Horlick, Chief Executive Officer

BandRags, Inc.

*Doug Horlick*

Doug Horlick, Chief Executive Officer

## **PLAN OF MERGER**

**(Non Subsidiaries)**

The following plan of merger is submitted in compliance with section 607.1101, F.S. and in accordance with the laws of any other applicable jurisdiction of incorporation.

**First:** The name and jurisdiction of the surviving corporation is:

Name

Jurisdiction

BandRags, Inc.

Delaware

**Second:** The name and jurisdiction of each merging corporation is:

Name

Jurisdiction

BandRags, Inc.

Florida

**Third:** The terms and conditions of the merger are as follows:

See attached Agreement of Merger.

**Fourth:** The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or, in whole or in part, into cash or other property and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, or other securities of the surviving or any other corporation or, in whole or in part, into cash or other property are as follows:

Each share of common stock of the Target shall be converted into one share of common stock of the Survivor.

*(Attach additional sheets if necessary)*

## AGREEMENT OF MERGER

THIS AGREEMENT OF MERGER (the "Agreement") is made as of August 31<sup>st</sup>, 2000 by and between BandRags, Inc., a Delaware corporation (the "Survivor"), and BandRags, Inc., a Florida corporation (the "Target").

### Recitals

The Survivor and the Target wish to combine their respective businesses to achieve greater operating efficiencies. Each of the Survivor and the Target have approved the execution, delivery and performance of this Agreement.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein, the parties hereby agree as follows:

## ARTICLE I

### THE MERGER

**Section 1.1** The Merger: Surviving Entity. At the Merger Time, as defined in Section 1.2, the Target shall be merged with and into the Survivor and the separate existence of the Target shall cease. The Survivor shall be the surviving entity in the Merger.

**Section 1.2** Merger Time. Subject to the provisions and conditions of this Agreement, articles of merger ("Articles of Merger") will be duly executed and filed by the Target with the Secretary of State of Florida and the certificate of merger ("Certificate of Merger") will be duly executed and filed by the Survivor with the Secretary of State of Delaware. The Merger shall occur upon the filing of the Articles of Merger with the Secretary of State of Florida and the filing of the Certificate of Merger with the State of Delaware (the "Merger Time").

**Section 1.3** Effect of the Merger. At and after the Effective Date, all of the rights, privileges and powers of the Survivor and the Target, and all property, real, personal and mixed, and all debts due to the Survivor and the Target, as well as all other things and causes of action belonging to each, shall be vested in the Survivor, and shall thereafter be the property of the Survivor as they were of each of the Survivor and the Target, and the title to any real property vested by deed or otherwise, under the laws of the States of Delaware or Florida, in either of the Survivor or the Target, shall not revert or be in any way impaired by reason of the Delaware General Corporation Laws or the Florida Business Corporation Act, as amended, but all rights of creditors and all liens upon any property of the Survivor and the Target shall be preserved unimpaired, and all debts, liability and duties of the Survivor and the Target shall thenceforth attach to the Survivor, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

**Section 1.4** Additional Actions. If, at any time after the Merger Time, the Survivor shall consider or be advised that any further assignments or assurances in law or any other acts

are necessary or desirable to (a) vest, perfect or confirm, of record or otherwise, in the Survivor its rights, title or interest in, to or under any of the rights, properties or assets of the Target acquired or to be acquired by the Survivor as a result of, or in connection with, the Merger, or (b) otherwise carry out the purposes of this Agreement, the Target shall be deemed to have granted to the Survivor an irrevocable power of attorney to execute and deliver all such proper deeds, assignments and assurances in law and to do all acts necessary or proper to vest, perfect or confirm title to and possession of such rights, properties or assets in the Survivor and otherwise to carry out the purposes of this Agreement.

## **ARTICLE II**

### **THE SURVIVOR**

**Section 2.1** Name. The name of the Survivor shall be BandRags, Inc.

## **ARTICLE III**

### **CONVERSION OF SHARES**

**Section 3.1** Conversion of Shares. At the Merger Time, each share of common stock in the Target (a "Target Share") shall be converted into one share of the Survivor (a "Survivor Share"). The Survivor shall evidence the issuance of the Survivor Shares to the shareholder(s) of the Target by preparing and delivering a stock certificate(s) of the Survivor in the applicable number of Survivor Shares.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES OF THE TARGET**

The Target represents and warrants to the Survivor as follows:

**Section 4.1** Organization. The Target is a corporation duly organized and validly existing in good standing under the laws of the State of Florida. The Target has the requisite power and authority, and all material licenses, permits and authorizations necessary, to own its property and assets and to transact the business in which it is engaged or presently proposes to engage. The Target is qualified to do business in all states except where the failure to be qualified would not have a material adverse effect on the business, financial condition, or results of operations of the Target.

**Section 4.2** Authority. The Target has the power to execute, deliver and perform its obligations under the terms of this Agreement, and has taken all necessary action, including, without limitation, obtaining all shareholder and director consents, to authorize the execution, delivery and performance of this Agreement and the other agreements and transactions

contemplated hereby. Each of this Agreement and any other agreement contemplated hereby has been duly executed and delivered by the Target and is a valid and legally binding obligation of the Target, enforceable in accordance with its terms.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF THE SURVIVOR

The Survivor represents and warrants to the Target as follows:

**Section 5.1** Organization. The Survivor is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware. The Survivor has the requisite power and authority, and all material licenses, permits and authorizations necessary, to own its property and assets and to transact the business in which it is engaged or presently proposes to engage. The Survivor is qualified to do business in all states except where the failure to be qualified would not have a material adverse effect on the business, financial condition, or results of operations of the Survivor.

**Section 5.2** Authority. The Survivor has the power to execute, deliver, and perform its obligations under the terms of this Agreement, and has taken all necessary action, including, without limitation, obtaining all shareholder and director consents, to authorize the execution, delivery and performance of this Agreement and the other agreements and transactions contemplated hereby. Each of this Agreement and any other agreement contemplated hereby has been duly executed and delivered by the Survivor and is a valid and legally binding obligation of the Survivor, enforceable in accordance with its terms.

## ARTICLE VI

### COVENANTS OF THE PARTIES

**Section 6.1** Consents; Approvals. Each of the Target and the Survivor shall use its respective best efforts to obtain all consents, waivers, approvals, authorizations or orders (including without limitation all governmental and regulatory rulings and approvals) and shall make all filings (including without limitation all filings with governmental or regulatory agencies) required for the authorization, execution, delivery and performance of this Agreement.

**Section 6.2** Conduct of Business. From and after the execution and delivery of this Agreement and until the Merger Time, except as otherwise provided by the prior written consent of the Survivor, (a) the Target will conduct its business and operations in the manner in which the same have heretofore been conducted and the Target will use its best efforts to (i) preserve its business organization intact, (ii) keep available the services of its officers, employees, agents and distributors, (iii) preserve its relationships with customers, suppliers and others having dealings with the Target and (iv) maintain all of its properties in customary repair, order and condition,



reasonable wear and use and damage by unavoidable casualty excepted, and to maintain insurance of such types and in such amounts upon all of its properties and with respect to the conduct of its business as are in effect on the date of this Agreement and (b) the Target will not (i) authorize or issue any additional securities, (ii) declare or make any distribution to its partners or purchase or redeem any of its shareholder(s) or purchase or redeem any of its shares, (iii) except in the ordinary course of business, pay any bonus or increase the rate of compensation of any of its employees or enter into any new employment agreement or amend any existing employment agreement; (iv) sell, lease, transfer or assign any of its assets other than in the ordinary course of business; (v) make or obligate itself to make capital expenditures aggregating more than \$50,000; or (vi) incur any material obligations or liabilities or enter into any material transaction.

## ARTICLE VII

### MISCELLANEOUS

**Section 7.1** Amendment and Modification. The parties hereto may amend, modify and supplement this Agreement in such manner as may be agreed upon by them in writing.

**Section 7.2** Expenses. Each party to this Agreement shall pay all of the expenses incurred by it in connection with this Agreement, including without limitation its legal and accounting fees and expenses, the commissions, fees and expenses of any person employed or retained by it to bring about, or to represent it in, the transactions contemplated hereby.

**Section 7.3** Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and legal representatives.

**Section 7.4** Entire Agreement. This instrument and the exhibits and schedules attached hereto contain the entire agreement of the parties hereto with respect to the Merger, and supersede all prior understandings and agreements of the parties with respect to the subject matter hereof. Any reference herein to this Agreement shall be deemed to include the schedules and exhibits attached hereto.

**Section 7.5** Headings. The descriptive headings in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

**Section 7.6** Execution in Counterpart. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

**Section 7.7** Notices. Any notice, request, information or other document to be given hereunder shall be in writing. Any notice, request, information or other document shall be

deemed duly given four business days after it is sent by registered or certified mail, postage prepaid, to the intended recipient, addressed as follows:

If to the Target, addressed to such party as follows:

BandRags, Inc.  
c/o Thad Thompson  
15 South Orange Avenue  
Orlando, Florida 32801

If to the Survivor, addressed to:

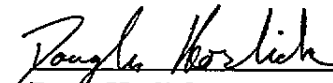
BandRags, Inc.  
c/o Douglas Horlick  
616 W. Fulton Street, Suite 403  
Chicago, Illinois 60661

Any party may send any notice, request, information or other document to be given hereunder using any other means (including personal delivery, courier, messenger service, facsimile transmission, telex or ordinary mail), but no such notice, request, information or other document shall be deemed duly given unless and until it is actually received by the party for whom it is intended. Any party may change the address to which notices hereunder are to be sent to it by giving written notice of such change of address in the manner herein provided for giving notice.

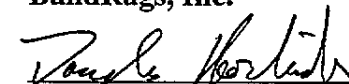
**Section 7.8 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the States of Delaware and Florida applicable to contracts made and to be performed therein.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed and delivered as of the day and year first above written.

**BandRags, Inc.**

  
Doug Horlick  
Chief Executive Officer

**BandRags, Inc.**

  
Doug Horlick  
Chief Executive Officer