

FROM FOLEY & LARDNER

813-221-4210

(WED) 1. 20' 99 13:47/ST. 13:46 NO. 4260231883 P 2

P98000045585

Florida Department of State

Division of Corporations

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Katherine Harris, Secretary of State

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From:

Account Name : FOLEY & LARDNER OF TAMPA  
Account Number : 071344001620  
Phone : (813) 229-2300  
Fax Number : (813) 221-4210

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TALLAHASSEE, FLORIDA

MERGER OR SHARE EXCHANGE

Building Blocks Home Health Services, Inc.

Certificate of Status	1
Certified Copy	0
Page Count	30
Estimated Charge	\$78.75

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Mergers 37  
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FROM FOLEY & LARDNER

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FOLEY & LARDNER

ATTORNEYS AT LAW

100 NORTH TAMPA STREET, SUITE 2700

TAMPA, FLORIDA 33602-5804

TELEPHONE: (813) 229-2300

FACSIMILE: (813) 225-4108

## FACSIMILE TRANSMISSION

Total # of Pages 33 (including this page)

TO:	PHONE:	FAX #:
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Date:	January 20, 1999
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**From:**

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**MERGER OR SHARE EXCHANGE****Building Blocks Home Health Services, Inc.**

Certificate of Status	1
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FOLEY & LARDNER  
ATTORNEYS AT LAW  
100 NORTH TAMPA STREET, SUITE 2700  
TAMPA, FLORIDA 33602-5804  
TELEPHONE: (813) 229-2300  
FACSIMILE: (813) 225-4103

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## MERGER OR SHARE EXCHANGE

Building Blocks Home Health Services, Inc.

Certificate of Status	1
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FLORIDA DEPARTMENT OF STATE  
Katherine Harris  
Secretary of State

January 19, 1999

BUILDING BLOCKS INTERNATIONAL, INC.  
5313 JOHNS ROAD #201  
TAMPA, FL 33634

SUBJECT: BUILDING BLOCKS INTERNATIONAL, INC.  
REF: P98000045585

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Darlene Connell  
Corporate Specialist

FAX Aud. #: H99000001384  
Letter Number: 499A00002458

ARTICLES OF MERGER  
Merger Sheet

-----  
MERGING:

BUILDING BLOCKS INTERNATIONAL, INC., a Florida corporation, document  
number P98000045585

INTO

**BUILDING BLOCKS HOME HEALTH SERVICES, INC..** a California  
corporation not qualified in Florida

File date: January 20, 1999

Corporate Specialist: Karen Gibson

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## ARTICLES OF MERGER

of

BUILDING BLOCKS INTERNATIONAL, INC., a Florida corporation,

(the "Terminating Corporation")

with and into

BUILDING BLOCKS HOME HEALTH SERVICES, INC., a California corporation

(the "Surviving Corporation")

Pursuant to the provisions of the Florida Business Corporation Act and the provisions of the California General Corporation Law, Building Blocks International, Inc., a Florida corporation, and Building Blocks Home Health Services, Inc., a California corporation, do hereby adopt the following Articles of Merger:

**FIRST:** The names of the corporations which are parties to the merger (the "Merger") contemplated by these Articles of Merger are Building Blocks International, Inc., a Florida corporation (hereinafter referred to as the "Terminating Corporation") and Building Blocks Home Health Services, Inc., a California corporation (hereinafter referred to as the "Surviving Corporation").

**SECOND:** The plan of merger is set forth in that certain Agreement and Plan of Merger and Reorganization (the "Plan of Merger"), dated May 29, 1998, a copy of which is attached hereto as Exhibit A.

**THIRD:** The Plan of Merger was adopted by the Board of Directors and the sole shareholder of the Terminating Corporation by written actions dated May 20, 1998. The Plan of Merger was adopted by the Board of Directors and a majority of the shareholders of the Surviving Corporation by written actions dated May 28, 1998 and May 31, 1998, respectively.

**FOURTH:** The Merger shall become effective upon the filing of these Articles of Merger with the Florida Secretary of State as required by Section 607.1105 of the Florida Business Corporation Act and the filing of Certificates of Approval of the Agreement and Plan of Merger and Reorganization with the California Secretary of State in compliance with the provisions of the California General Corporation Law.

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These Articles of Merger may be executed in counterparts, all of which when taken together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed as of this 15th day of January, 1999.

**"Terminating Corporation"**

**BUILDING BLOCKS INTERNATIONAL,  
INC.**

Attest: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**"Surviving Corporation"**

**BUILDING BLOCKS HOME HEALTH  
SERVICES, INC.**

Attest: Jennifer H. Ray

By: Catherine Prophet  
Name: Catherine Prophet  
Title: President/CEO

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These Articles of Merger may be executed in counterparts, all of which when taken together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed as of this 15th day of January, 1999.

**"Terminating Corporation"**

**BUILDING BLOCKS INTERNATIONAL,  
INC.**

Attest: \_\_\_\_\_

*Benedict Maniacaker*

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Charles Bros*  
*CEO*

**"Surviving Corporation"**

**BUILDING BLOCKS HOME HEALTH  
SERVICES, INC.**

Attest: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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813-221-4210

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AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

among:

AMERICAN ENTERPRISE SOLUTIONS, INC., a Florida corporation,

BUILDING BLOCKS INTERNATIONAL, INC., a Florida corporation,

and

BUILDING BLOCKS HOME HEALTH SERVICES, INC., a California corporation

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Dated as of May 29, 1998

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**AGREEMENT AND PLAN  
OF MERGER AND REORGANIZATION**

This Agreement and Plan of Merger and Reorganization ("Agreement") is made and entered into as of May 29, 1998, by and among: AMERICAN ENTERPRISE SOLUTIONS, INC., a Florida corporation ("AES"); BUILDING BLOCKS INTERNATIONAL, INC., a Florida corporation and a wholly-owned subsidiary of AES (the "Subsidiary"); and BUILDING BLOCKS HOME HEALTH SERVICES, INC., a California corporation ("Building Blocks"). Certain capitalized terms used in this Agreement are defined in Exhibit A.

**RECITALS**

A. The parties intend to effect a merger of the Subsidiary into Building Blocks in accordance with this Agreement and the California Corporations Code and the Florida Business Corporation Act (the "Merger"). Upon consummation of the Merger, the Subsidiary will cease to exist, and Building Blocks will continue to exist as the surviving corporation of the Merger.

B. It is intended that the Merger qualify as a tax-free reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code").

C. This Agreement has been adopted and approved by the respective boards of directors of the parties.

D. The capitalization of Building Blocks consists of 90,000,000 shares of voting common stock, no par value, of which 2,008,577 shares are issued and outstanding (the "Building Blocks Common Stock").

E. AES and National Diagnostics, Inc., a Florida corporation ("NDI"), have heretofore entered into that certain Merger Agreement, dated February 23, 1998 (as amended, the "AES/NDI Merger Agreement"), pursuant to which it is contemplated that AES will be merged with and into NDI (the "AES/NDI Merger").

**AGREEMENT**

The parties to this Agreement agree as follows:

**Section 1.  
Description of Transaction**

1.1 **Merger of the Subsidiary into Building Blocks.** Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time (as defined in Section 1.3), the Subsidiary shall be merged with and into Building Blocks, and the separate existence of the Subsidiary shall cease. Building Blocks will continue as the surviving corporation in the Merger (the "Surviving Corporation").

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**1.2 Effect of Merger.** The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the California Corporations Code and the Florida Business Corporation Act.

**1.3 Closing; Effective Time.** The consummation of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of AES at 1:00 p.m. local time on June 2, 1998 or such other date as the parties may agree ("Closing Date"). Contemporaneously with or as promptly as practicable after the Closing, a properly executed certificate of merger for the merger of the Subsidiary into Building Blocks, conforming to the requirements of the California Corporations Code, shall be filed with the Commissioner of Corporations of California, and properly executed articles of merger for the merger of the Subsidiary into Building Blocks, conforming to the requirements of the Florida Business Corporation Act, shall be filed with the Secretary of State of the State of Florida. The Merger shall take effect at the time such articles of merger are filed with the Secretary of State of the State of Florida and the certificate of merger is filed with the Commissioner of Corporations of California (the "Effective Time").

**1.4 Articles of Incorporation and Bylaws; Directors and Officers.** Unless the parties agree otherwise prior to the Effective Time:

(a) the Articles of Incorporation of Building Blocks shall continue as the Articles of Incorporation of the Surviving Corporation; and

(b) the Bylaws of Building Blocks shall continue as the Bylaws of the Surviving Corporation.

**1.5 Conversion of Shares.** Subject to Section 1.9(c), at the Effective Time, by virtue of the Merger and without any further action on the part of AES, Building Blocks, or the Subsidiary, each share of the Subsidiary's common stock outstanding immediately prior to the Effective Time shall be canceled and retired and each share of Building Blocks Common Stock outstanding immediately prior to the Effective Time shall be exchanged for and converted into a pro rata share of the aggregate Merger Consideration described in Section 1.10. The Subsidiary's separate existence shall cease and Building Blocks will become a wholly-owned subsidiary of AES.

**1.6 Conversion of Debt Securities.** Subject to Section 1.9(c), at and after the Effective Time, by virtue of the Merger and without any further action on the part of AES, Building Blocks, or the Subsidiary, each Building Blocks debt security convertible into Building Blocks Common Stock (with or without the payment of additional consideration) immediately prior to the Effective Time shall be and become convertible into AES common stock on the same terms and conditions as presently convertible into Building Blocks Common Stock, except the number of shares of AES common stock into which the indebtedness is convertible shall be adjusted in the same manner and proportion that Building Blocks Common Stock is exchanged for AES common stock. Such AES common stock shall be in addition to the Merger Consideration.

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**1.7 Conversion of Other Securities.** Subject to Section 1.9(c), at and after the Effective Time, by virtue of the Merger and without any further action on the part of AES, Building Blocks, or the Subsidiary, each other Building Blocks security convertible into Building Blocks Common Stock (with or without the payment of additional consideration) immediately prior to the Effective Time shall be and become convertible into AES common stock on the same terms and conditions as presently convertible into Building Blocks Common Stock, except the number of shares of AES common stock into which the security is convertible shall be adjusted in the same manner and proportion that Building Blocks Common Stock is exchanged for AES common stock. Such AES common stock shall be in addition to the Merger Consideration.

**1.8 Closing of Building Blocks Transfer Books.** At the Effective Time, the holders of certificates representing shares of Building Blocks Common Stock that were outstanding immediately prior to the Effective Time shall cease to have any rights as shareholders of Building Blocks and shall thereafter be and become shareholders of AES, and the stock transfer books of Building Blocks shall be closed with respect to all shares of Building Blocks Common Stock outstanding immediately prior to the Effective Time. No further transfer of any such shares of Building Blocks capital stock shall be made on such stock transfer books after the Effective Time, except to AES. If, after the Effective Time, a valid certificate previously representing any of such shares of Building Blocks Common Stock (an "Building Blocks Stock Certificate") is presented to AES, such Building Blocks Stock Certificate shall be transferred to AES and shall be exchanged as provided in Section 1.9. At and after the Effective Time, the holders of securities convertible into shares of Building Blocks Common Stock shall cease to have any rights as security holders of Building Blocks, except as provided herein. No further transfer or exercise of any such securities of Building Blocks shall be made after the Effective Time.

**1.9 Exchange of Certificates.**

(a) Following the Closing, the shareholders of Building Blocks shall surrender their Building Blocks Stock Certificate(s) to AES, together with such transmittal documents as AES may reasonably require, and AES and Building Blocks shall deliver to the shareholders of Building Blocks their respective shares of the Merger Consideration to be paid at Closing pursuant to Section 1.10.

(b) Following the Closing, the holders of Building Blocks securities convertible into Building Blocks Common Stock shall surrender such documents as may evidence the securities to AES, together with such transmittal documents as AES may reasonably require, and AES and Building Blocks shall deliver to them replacement securities evidencing the conversion privileges outlined herein.

(c) No fractional shares of AES common stock shall be issued in connection with the Merger, and no certificates for any such fractional shares shall be issued. In lieu of such fractional shares, any shareholder who would otherwise be entitled to receive a fraction of a share of AES common stock (after aggregating all fractional

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divisions, share dividends, or share combinations), then NDI (as the surviving corporation of the AES/NDI Merger) shall issue to the shareholders of Building Blocks that number of shares of NDI Common Stock (the "Additional Merger Consideration") which, taken together with the Initial Merger Consideration, shall have an aggregate market value, in each case based on the 30-Day Average Price, of \$5,000,000.00. Certificates of Building Blocks not later than 60 days following the effective date of the AES/NDI Merger. In the event the AES/NDI Merger does not close, the provisions of this Section 1.10(b), requiring Additional Merger Consideration to be provided to the shareholders of Building Blocks, shall apply to any other merger between AES and an entity whose shares are publicly traded or to any public offering by AES, if the aggregate value of the shares of the publicly traded entity that the shareholders of Building Blocks (or their successors) hold does not equal or exceed \$5,000,000.00, based on the 30-day average closing price immediately following the event by which the stock of AES is converted to the stock of the publicly-held entity or itself becomes publicly-held.

(c) In the event the AES/NDI Merger is not consummated for any reason, AES will make a good faith effort to file a registration statement for its common stock prior to December 31, 1999, or otherwise provide its shareholders with access to public trading markets. No representation or warranty is or can be made that AES will be successful in this regard, as the success of registration depends on many factors outside the control of an issuer, including the requirements of regulatory authorities.

**1.11 Tax Consequences.** For federal income tax purposes, the Merger is intended to constitute a reorganization within the meaning of Section 368 of the Code. The parties to this Agreement hereby adopt this Agreement as a "plan of reorganization" within the meaning of Sections 1.368-2(g) and 1.368-3(a) of the United States Treasury Regulations.

**1.12 Further Action.** If, at any time after the Effective Time, any further action is determined by AES to be necessary or desirable to carry out the purposes of this Agreement or to vest AES with full right, title and possession of and to all Building Blocks Common Stock, the officers and directors of AES shall be fully authorized (in the name of Building Blocks and otherwise) to take such action. AES agrees that following the Closing, it will provide at least \$1,000,000 in capital to Building Blocks in the form of cash, marketable securities, and other assets.

AES has also been provided a schedule showing Building Blocks' cash requirements for 1998 and 1999, and AES will directly be providing working capital to meet those needs.

**1.13 Incentive Compensation.** AES shall allocate \$1,000,000 of AES Common Stock for incentive programs for employees and other individuals, including board members, agents, vendors, and other individuals or entities.

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shares of AES common stock issuable to such holder) shall, upon surrender of such shareholder's Building Blocks Stock Certificate(s), be paid in cash at a rate of \$10.00 per share in lieu of such fractional shares.

(c) Until surrendered as contemplated by this Section 1.9, each Building Blocks Stock Certificate shall be deemed, from and after the Effective Time, to represent only the right to receive a pro rata share of the Merger Consideration. If any Building Blocks Stock Certificate shall have been lost, stolen or destroyed, AES may, in its discretion and as a condition precedent to the issuance of any certificate representing AES common stock, require the owner of such lost, stolen or destroyed Building Blocks Stock Certificate to provide an appropriate affidavit and to deliver a bond (in such sum as AES may reasonably direct) as indemnity against any claim that may be made against AES with respect to such Building Blocks Stock Certificate.

(d) The securities of AES to be issued in the Merger shall be characterized as "restricted securities" for purposes of Rule 144 under the Securities Act, and each certificate representing any of such shares shall bear a legend identical or similar in effect to the following legend (together with any other legend or legends required by applicable state securities laws or otherwise):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

#### **1.10 Merger Consideration.**

(a) Subject to adjustment as provided in Section 1.10(b), the initial merger consideration to be paid by AES or the Subsidiary to the shareholders of Building Blocks in consideration of the Merger (the "Initial Merger Consideration") shall consist of 500,000 shares of AES common stock. Certificates representing the Merger Consideration shall be delivered to the shareholders of Building Blocks at closing.

(b) As a consequence of the AES/NDI Merger, the issued and outstanding common stock of AES (including the Initial Merger Consideration held by the shareholders of Building Blocks) will, upon closing of the AES/NDI Merger, be converted into shares of common stock, no par value, of NDI ("NDI Common Stock"). In the event that the average of the closing bid price of the NDI Common Stock for each of the trading days during the period commencing on the first business day following the effective date of the AES/NDI Merger and ending on the 30th trading day thereafter (the "30-Day Average Price") shall be less than \$10.00 per share (such price to be adjusted for share

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**Section 2.**  
**Representations and Warranties of Building Blocks**

Building Blocks represents and warrants, to and for the benefit of AES and the Subsidiary, as follows as of the date hereof and as of the Closing Date:

**2.1 Due Organization.** Building Blocks is a corporation duly organized, validly existing and in good standing under the laws of the State of California and has all necessary power and authority to conduct its business in the manner in which its business is currently being conducted.

**2.2 Capitalization, Etc.**

(a) The authorized capital stock of Building Blocks consists of 90,000,000 shares of voting common stock, of which 2,008,577 shares have been issued and are outstanding. All of the outstanding shares of Building Blocks common stock have been duly authorized and validly issued, and are fully paid and non-assessable, and none of such shares is subject to any repurchase option or restriction on transfer, except as provided in Schedule 2.2(a). All of such shares have been issued in compliance with applicable securities laws.

(b) Except as provided in Schedule 2.2(b), there is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire or otherwise relating to, any shares of the capital stock or other securities of Building Blocks; (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of Building Blocks; (iii) Contract under which Building Blocks is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities; or (iv) condition or circumstance that may give rise to or provide a basis for the assertion of a claim by any Person to the effect that such Person is entitled to acquire or receive any shares of capital stock or other securities of Building Blocks. Building Blocks has never issued or granted any expired option, call, warrant or right to acquire or otherwise relating to, any shares of its capital stock or other securities.

**2.3 Financial Statements.** Building Blocks has delivered to AES the following financial statements and notes (collectively, the "Company Financial Statements"): the audited balance sheet, income statement, and statement of cash flows of Building Blocks as of December 31, 1996, the unaudited balance sheet, income statement, and statement of cash flows of Building Blocks as of December 31, 1997, and the unaudited balance sheet of Building Blocks as of March 31, 1998, and the related unaudited statements of income, shareholder's equity and cash flow of Building Blocks for three-month-period then ended. The Company Financial Statements are accurate and complete in all material respects and present fairly the financial position of Building Blocks as of the date thereof and the results of operations and cash flows of Building Blocks for the period covered thereby. Except as disclosed on Schedule 2.3, there has been no material adverse

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change in Building Blocks' financial condition, business or properties since the date of the most recent Company Financial Statements. Except as disclosed on Schedule 2.3 attached hereto, Building Blocks is not liable for or subject to any liabilities, except for those liabilities reflected on the Company Financial Statements and not heretofore paid or discharged and those liabilities arising in the ordinary course of its business consistent with past practice under any contract, commitment or agreement specifically disclosed on any Schedule to this Agreement.

**2.4 Tax Matters.** Except as set forth on Schedule 2.4, all Tax Returns required to be filed by or on behalf of Building Blocks with any Governmental Body with respect to any transaction occurring or any taxable period ending on or before the Closing Date (the "Company Returns") (i) have been or will be filed when due, and (ii) have been, or will be when filed, accurately and completely prepared in compliance with all applicable Legal Requirements.

**2.5 Insurance.** Building Blocks has maintained, and will maintain through the Closing Date, insurance coverage against liability, loss or casualty with respect to the operations of Building Blocks. Copies of all such policies are hereto attached as Schedule 2.5

**2.6 Legal Proceedings.** Except as set forth on Schedule 2.6, there is no pending Legal Proceeding, and, to the best of the knowledge of Building Blocks, no Person has threatened to commence any Legal Proceeding: (i) that involves Building Blocks or any of the assets owned or used by Building Blocks and which, if decided against Building Blocks, would have a Material Adverse Effect on the financial condition, business or properties of Building Blocks; or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger or any of the other transactions contemplated by this Agreement.

**2.7 Authority; Binding Nature of Agreement.** Building Blocks has the absolute and unrestricted right, power and authority to enter into and to perform its obligations under this Agreement; and the execution, delivery and performance by Building Blocks of this Agreement has been duly authorized by all necessary action on the part of Building Blocks and its board of directors and shareholders. This Agreement constitutes the legal, valid and binding obligation of Building Blocks, enforceable against Building Blocks in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. At the Closing, Building Blocks will deliver to AES such evidence of the authorization of Building Blocks's execution, delivery, and performance of this Agreement as AES may reasonably request.

**2.8 Non-Contravention.** Neither (i) the execution, delivery or performance of this Agreement or any of the other agreements referred to in this Agreement, nor (ii) the consummation of the Merger or any of the other transactions contemplated by this Agreement, will directly or indirectly (with or without notice or lapse of time):

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(a) contravene, conflict with or result in a violation of (i) any of the provisions of Building Blocks's articles of incorporation or bylaws, or (ii) any resolution adopted by Building Blocks's shareholders, board of directors, or any committee of Building Blocks's board of directors;

(b) contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under, any Legal Requirement or any order, writ, injunction, judgment or decree to which Building Blocks, or any of the assets owned or used by Building Blocks, is subject; or

(c) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Company Contract, or give any Person the right to (i) declare a default or exercise any remedy under any Company Contract, (ii) accelerate the maturity or performance of any Company Contract, or (iii) cancel, terminate or modify any Company Contract.

Except as set forth in Section 1.3, Building Blocks is not and will not be required to make any filing with or given any notice to, or to obtain any Consent from, any Person in connection with (x) the execution, delivery or performance of this Agreement or any of the other agreements referred to in this Agreement, or (y) the consummation of the Merger or any of the other transactions contemplated by this Agreement.

## 2.9 Environmental Matters.

(a) Building Blocks has complied with and is in compliance with all federal, state, local and foreign statutes (civil and criminal), common laws, ordinances, regulations, rules, notices, permits, judgments, orders and decrees applicable to it and its properties, assets, operations and businesses relating to environmental protection (collectively "Environmental Laws"), including without limitation Environmental Laws relating to air, water, land and the generation, storage, use, handling, transportation, treatment or disposal of Hazardous Wastes and Hazardous Substances (as such terms are currently defined in any applicable Environmental Law), except to the extent that noncompliance with any Environmental Law, either singly or in the aggregate, does not and would not have a Material Adverse Effect;

(b) Building Blocks has obtained and adhered to all necessary permits and other approvals necessary to treat, transport, store, dispose of and otherwise handle Hazardous Wastes and Hazardous Substances and has reported, to the extent required by all Environmental Laws, all past and present sites owned and operated by Building Blocks where Hazardous Wastes or Hazardous Substances have been treated, stored, disposed of or otherwise handled, except to the extent that a failure to do so, either singly or in the aggregate, does not and would not have a Material Adverse Effect;

(c) There have been no releases or threats of releases (as defined in Environmental Laws) by Building Blocks at, from, in or on any property owned or operated

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by Building Blocks except as permitted by Environmental Laws or where such releases do not and would not have a Material Adverse Effect; and

(d) Building Blocks knows of no on-site or off-site location to which Building Blocks has transported or disposed of Hazardous Wastes and Hazardous Substances or arranged for the transportation of Hazardous Wastes and Hazardous Substances, which site is the subject of any federal, state, local or foreign enforcement action or any other investigation which could lead to any claim against Building Blocks for any clean-up cost, remedial work, damage to natural resources or personal injury, including without limitation any claim under United States or Florida environmental statutes, as amended.

**2.10 Significant Customers; Material Contracts and Commitments.** Schedule 2.10 hereto contains an accurate list of (i) all significant customers (i.e. those customers representing 5% or more of Building Blocks's revenues for the 12 months ending on the date of the most recent Company Financial Statements and (ii) all material contracts, commitments, leases, instruments, agreements, licenses or permits to which Building Blocks is a party or by which it or its properties are bound (including without limitation contracts with significant customers, joint venture or partnership agreements, contracts with any labor organizations, loan agreements, indemnity or guaranty agreements, bonds, mortgages, options to purchase land, liens, pledges or other security agreements, employment contracts, and employee benefit plans) (collectively, the "Building Blocks Material Contracts"). Except to the extent set forth on Schedule 2.10 hereto, (i) none of Building Blocks's significant customers have canceled or substantially reduced or, to the knowledge of Building Blocks are currently attempting or threatening to cancel or substantially reduce service, (ii) Building Blocks has complied with its material commitments and obligations and are not in default under any of the Building Blocks Material Contracts and no notice of default has been received with respect to any thereof and (iii) there are no Building Blocks Material Contracts that were not negotiated at arm's length with third parties not affiliated with Building Blocks or any officer, director or stockholder of Building Blocks. Building Blocks is not bound by or subject to (and none of its respective assets or properties is bound by or subject to) any arrangement with any labor union. No employees of Building Blocks are represented by any labor union or covered by any collective bargaining agreement and, to the best of Building Blocks's knowledge, no campaign to establish such representation is in progress. Building Blocks considers its relationship with its employees to be good.

**2.11 Employee Benefit Plans.** All employee benefit plans, programs and policies (whether formal or informal, and whether maintained for the benefit of a single individual or more than one individual) maintained or contributed to by Building Blocks for the benefit of any current or former employee of Building Blocks or in which such employees are entitled to participate are listed in Schedule 2.11 (the "Building Blocks Benefit Plans"), and copies of all such written plans and policies, written descriptions of all such oral plans and policies, and all other documentation relating to such plans and policies have been delivered or made available to AES. Except as disclosed on Schedule 2.11: (i) each Building Blocks Benefit Plan and the administration thereof complies, and has at all times

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complied, in all material respects with the requirements of all applicable law; (ii) no suit, action or other litigation (excluding claims for benefits incurred in the ordinary course of plan activities) has been brought against or with respect to any Building Blocks Benefit Plan; and (iii) all required contributions to Building Blocks Benefit Plans have been made, and all benefits accrued under any unfunded Building Blocks Benefit Plan will have been paid, accrued or otherwise adequately reserved in accordance with GAAP, and Building Blocks has performed all material obligations required to be performed under the Building Blocks Benefit Plans. If reasonably requested by AES, Building Blocks will terminate any Building Blocks Benefit Plan contemporaneously with the Closing.

**2.12 Full Disclosure.** This Agreement, and all documents delivered by Building Blocks or the shareholders of Building Blocks to AES in connection with the transactions contemplated herein, do not (i) contain any representation, warranty or information that is false or misleading with respect to any material fact, or (ii) omit to state any material fact necessary in order to make the representations, warranties and information contained and to be contained herein and therein not false or misleading.

### Section 3.

#### Representations and Warranties of AES and the Subsidiary

AES and the Subsidiary, jointly and severally, represent and warrant to Building Blocks and the shareholders of Building Blocks as follows:

**3.1 Due Organization.** AES and the Subsidiary are each a corporation duly organized, validly existing and in good standing under the laws of the Florida and each has all necessary power and authority to conduct its business in the manner in which its business is currently being conducted.

#### 3.2 Capitalization, Etc.

(a) The authorized capital stock of AES consists of 100,000,000 shares of voting common stock, of which 5,280,450 shares have been issued and are outstanding. All of the outstanding shares of AES common stock have been duly authorized and validly issued, and are fully paid and non-assessable, and none of such shares is subject to any repurchase option or restriction on transfer, except as provided in Schedule 2.2(a). The authorized capital stock of the Subsidiary consists of 7,500 shares of voting common stock, of which 100 shares have been issued and are outstanding. All of the outstanding shares of the Subsidiary's common stock have been duly authorized and validly issued, and are fully paid and non-assessable, and none of such shares is subject to any repurchase option or restriction on transfer, except as provided in Schedule 3.2(a). All of such shares have been issued in compliance with applicable securities laws.

(b) Except as provided in Schedule 3.2(b), there is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire or otherwise relating to, any shares of the capital stock or other securities of AES or the Subsidiary; (ii) outstanding security, instrument or obligation that is or may become

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convertible into or exchangeable for any shares of the capital stock or other securities of AES or the Subsidiary; (iii) Contract under which AES or the Subsidiary is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities; or (iv) condition or circumstance that may give rise to or provide a basis for the assertion of a claim by any Person to the effect that such Person is entitled to acquire or receive any shares of capital stock or other securities of AES or the Subsidiary. Neither AES nor the Subsidiary has ever issued or granted any expired option, call, warrant or right to acquire or otherwise relating to, any shares of its capital stock or other securities.

**3.3 Financial Statements.** AES has delivered to Building Blocks the following financial statements and notes (collectively, the "AES Financial Statements"): the unaudited balance sheet, income statement, and statement of cash flows of AES as of December 31, 1997, and the unaudited balance sheet, income statement, and statement of cash flows of AES as of March 31, 1998, and the related unaudited statements of income, shareholder's equity and cash flow of AES for three-month-period then ended. The AES Financial Statements are accurate and complete in all material respects and present fairly the financial position of AES as of the date thereof and the results of operations and cash flows of AES for the period covered thereby. Except as disclosed on Schedule 3.3, there has been no material adverse change in AES's financial condition, business or properties since the date of the most recent AES Financial Statements. Except as disclosed on Schedule 3.3 attached hereto, AES is not liable for or subject to any liabilities, except for those liabilities reflected on the AES Financial Statements and not heretofore paid or discharged and those liabilities arising in the ordinary course of its business consistent with past practice under any contract, commitment or agreement specifically disclosed on any Schedule to this Agreement. The Subsidiary is a start-up entity with no financial or operating history.

**3.4 Tax Matters.** Except as set forth on Schedule 3.4, all Tax Returns required to be filed by or on behalf of AES or the Subsidiary with any Governmental Body with respect to any transaction occurring or any taxable period ending on or before the Closing Date (the "AES Returns") (i) have been or will be filed when due, and (ii) have been, or will be when filed, accurately and completely prepared in compliance with all applicable Legal Requirements.

**3.5 Insurance.** AES and the Subsidiary have maintained, and will maintain through the Closing Date, insurance coverage against liability, loss or casualty with respect to their respective operations. Copies of all such policies are hereto attached as Schedule 3.5

**3.6 Legal Proceedings.** Except as set forth on Schedule 3.6, there is no pending Legal Proceeding, and, to the best of the knowledge of AES and the Subsidiary, no Person has threatened to commence any Legal Proceeding: (i) that involves AES, the Subsidiary, or any of the assets owned or used by AES or the Subsidiary and which, if decided against AES or the Subsidiary, would have a Material Adverse Effect on the financial condition, business or properties of AES or the Subsidiary; or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger or any of the other transactions contemplated by this Agreement.

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**3.7 Authority; Binding Nature of Agreement.** AES and the Subsidiary have the absolute and unrestricted right, power and authority to enter into and to perform their obligations under this Agreement; and the execution, delivery and performance by AES and the Subsidiary of this Agreement have been duly authorized by all necessary action on the part of AES, the Subsidiary, and their respective boards of directors and, in the case of the Subsidiary, its shareholders. This Agreement constitutes the legal, valid and binding obligation of AES and the Subsidiary, enforceable against each in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. At the Closing, AES and the Subsidiary will deliver to Building Blocks such evidence of the authorization of their execution, delivery, and performance of this Agreement as Building Blocks may reasonably request.

**3.8 Non-Contravention.** Neither (i) the execution delivery or performance of this Agreement or any of the other agreements referred to in this Agreement, nor (ii) the consummation of the Merger or any of the other transactions contemplated by this Agreement, will directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with or result in a violation of (i) the provisions of the respective Articles of Incorporation or Bylaws of AES or the Subsidiary, or (ii) any resolution adopted by the respective shareholders or Board of Directors of AES or the Subsidiary;

(b) contravene, conflict with or result in a violation of , or give any Governmental Body or any Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under, any Legal Requirement or any order, writ, injunction, judgment, or decree to which AES or the Subsidiary, or any of the assets owned or used by either of them, is subject; or

(c) contravene, conflict with or result in a violation of , or breach of, or result in a default under, any provision of any Contract to which AES or the Subsidiary is a party, or give any Person the right to (i) declare a default or exercise any remedy under any such Contract, (ii) accelerate the maturity or performance of any such Contract, (iii) cancel, terminate or modify any such Contract. Neither (i) the execution, delivery or performance of this Agreement or any of the other agreements referred to in this Agreement, nor (ii) the consummation of the Merger or any of the other transactions contemplated by this Agreement, will directly or indirectly (with or without notice or lapse of time):

Except as set forth in Section 1.3, AES is not and will not be required to make any filing with or given any notice to, or to obtain any Consent from, any Person in connection with (x) the execution, delivery or performance of this Agreement or any of the other agreements referred to in this Agreement, or (y) the consummation of the Merger or any of the other transactions contemplated by this Agreement.

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**3.9 Environmental Matters.**

(a) AES has complied with and is in compliance with all federal, state, local and foreign statutes (civil and criminal), common laws, ordinances, regulations, rules, notices, permits, judgments, orders and decrees applicable to it and its properties, assets, operations and businesses relating to environmental protection (collectively "Environmental Laws"), including without limitation Environmental Laws relating to air, water, land and the generation, storage, use, handling, transportation, treatment or disposal of Hazardous Wastes and Hazardous Substances (as such terms are currently defined in any applicable Environmental Law), except to the extent that noncompliance with any Environmental Law, either singly or in the aggregate, does not and would not have a Material Adverse Effect;

(b) AES has obtained and adhered to all necessary permits and other approvals necessary to treat, transport, store, dispose of and otherwise handle Hazardous Wastes and Hazardous Substances and has reported, to the extent required by all Environmental Laws, all past and present sites owned and operated by AES where Hazardous Wastes or Hazardous Substances have been treated, stored, disposed of or otherwise handled, except to the extent that a failure to do so, either singly or in the aggregate, does not and would not have a Material Adverse Effect;

(c) There have been no releases or threats of releases (as defined in Environmental Laws) by AES from, in or on any property owned or operated by AES except as permitted by Environmental Laws or where such releases do not and would not have a Material Adverse Effect; and

(d) AES knows of no on-site or off-site location to which AES has transported or disposed of Hazardous Wastes and Hazardous Substances or arranged for the transportation of Hazardous Wastes and Hazardous Substances, which site is the subject of any federal, state, local or foreign enforcement action or any other investigation which could lead to any claim against AES for any clean-up cost, remedial work, damage to natural resources or personal injury, including without limitation any claim under United States or Florida environmental statutes, as amended.

**3.10 Significant Customers; Material Contracts and Commitments.** Schedule 3.10 hereto contains an accurate list of (i) all significant customers (i.e. those customers representing 5% or more of AES's revenues for the 12 months ending on the date of the most recent AES Financial Statements and (ii) all material contracts, commitments, leases, instruments, agreements, licenses or permits to which AES is a party or by which it or its properties are bound (including without limitation contracts with significant customers, joint venture or partnership agreements, contracts with any labor organizations, loan agreements, indemnity or guaranty agreements, bonds, mortgages, options to purchase land, liens, pledges or other security agreements, employment contracts, and employee benefit plans) (collectively, the "AES Material Contracts"). Except to the extent set forth on Schedule 3.10 hereto, (i) none of AES's significant customers have canceled or substantially reduced or, to the knowledge of AES are currently attempting or threatening to cancel or substantially reduce service, (ii) AES has complied with its material

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commitments and obligations and are not in default under any of the AES Material Contracts and no notice of default has been received with respect to any thereof and (iii) there are no AES Material Contracts that were not negotiated at arm's length with third parties not affiliated with AES or any officer, director or stockholder of AES. AES is not bound by or subject to (and none of its respective assets or properties is bound by or subject to) any arrangement with any labor union. No employees of AES are represented by any labor union or covered by any collective bargaining agreement and, to the best of AES's knowledge, no campaign to establish such representation is in progress. AES considers its relationship with its employees to be good.

**3.11 Employee Benefit Plans.** All employee benefit plans, programs and policies (whether formal or informal, and whether maintained for the benefit of a single individual or more than one individual) maintained or contributed to by AES or the Subsidiary for the benefit of any current or former employee of AES or the Subsidiary or in which such employees are entitled to participate are listed in Schedule 3.11 (the "AES Benefit Plans"), and copies of all such written plans and policies, written descriptions of all such oral plans and policies, and all other documentation relating to such plans and policies have been delivered or made available to Building Blocks. Except as disclosed on Schedule 3.11: (i) each AES Benefit Plan and the administration thereof complies, and has at all times complied, in all material respects with the requirements of all applicable law; (ii) no suit, action or other litigation (excluding claims for benefits incurred in the ordinary course of plan activities) has been brought against or with respect to any AES Benefit Plan; and (iii) all required contributions to AES Benefit Plans have been made, and all benefits accrued under any unfunded AES Benefit Plan will have been paid, accrued or otherwise adequately reserved in accordance with GAAP, and AES and the Subsidiary have performed all material obligations required to be performed under the AES Benefit Plans.

**3.12 Full Disclosure.** This Agreement, and all documents delivered by AES or the Subsidiary to Building Blocks or its shareholders in connection with the transactions contemplated herein, do not (i) contain any representation, warranty or information that is false or misleading with respect to any material fact, or (ii) omit to state any material fact necessary in order to make the representations, warranties and information contained and to be contained herein and therein not false or misleading.

**3.13 Valid Issuance.** The AES Common Stock to be issued as Merger Consideration will, when issued in accordance with the provisions of this Agreement, be validly issued, fully paid and nonassessable. AES intends to issue the Merger Consideration in reliance on exemptions from registration and qualification under various federal and state securities laws. In the event such exemptions are determined not to be available, AES will make a good-faith effort to cure any noncompliance by undertaking to register or qualify the Merger Consideration by filing a registration statement that includes the Merger Consideration on or before December 31, 1999.

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**Section 4.**  
**Conditions Precedent to Obligations of AES and the Subsidiary**

The obligations of AES and the Subsidiary to effect the Merger and otherwise consummate the transactions contemplated by this Agreement are subject to the satisfaction, at or prior to the Closing, of each of the following conditions:

**4.1 Accuracy of Representations.** Each of the representations and warranties made by Building Blocks in this Agreement and in each of the other agreements and instruments delivered to AES in connection with the transactions contemplated by this Agreement shall have been accurate in all respects as of the date of this Agreement, and shall be accurate in all respects as of the Closing Date as if made on the Closing Date.

**4.2 Performance of Covenants.** Each covenant or obligation that Building Blocks is required to comply with or to perform at or prior to the Closing shall have been complied with and performed in all respects.

**4.3 Consents.** All Consents required to be obtained in connection with the Merger and the other transactions contemplated by this Agreement shall have been obtained and shall be in full force and effect.

**4.4 Agreements and Documents.** AES shall have received a certificate executed by Building Blocks containing the representation and warranty of Building Blocks that each of the representations and warranties set forth in Section 2 is accurate in all material respects as of the Closing Date as if made on the Closing Date and that the conditions set forth in Section 4 have been duly satisfied (the "Building Blocks Closing Certificate"). AES shall also have received certificates from each of Building Blocks's officers attesting that the representations and warranties of Building Blocks that are herein contained are true and correct.

**Section 5.**  
**Conditions Precedent to the Obligations of Building Blocks.**

The obligations of Building Blocks to effect the Merger and otherwise consummate the transactions contemplated by this Agreement are subject to the satisfaction, at or prior to the Closing, of the following conditions:

**5.1 Accuracy of Representations.** Each of the representations and warranties made by AES and the Subsidiary in this Agreement and in each of the other agreements and instruments delivered to Building Blocks in connection with the transactions contemplated by this Agreement shall have been accurate in all respects as of the date of this Agreement, and shall be accurate in all respects as of the Closing Date as if made on the Closing Date.

**5.2 Performance of Covenants.** All of the covenants and obligations that AES is required to comply with or to perform at or prior to the Closing shall have been complied

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with and performed in all respects.

**5.3 Consents.** All Consents required to be obtained in connection with the merger and the other transactions contemplated by this Agreement shall have been obtained and shall be in full force and effect.

**5.4 Agreements and Documents.** Building Blocks shall have received a certificate executed by AES and the Subsidiary, and containing the representation and warranty of AES and the Subsidiary that each of the representations and warranties set forth in Section 3 are accurate in all material respects as of the Closing Date as if made on the Closing Date and that the conditions set forth in Section 5 have been duly satisfied (the "AES Closing Certificate").

## **Section 6. Indemnification, Etc.**

**6.1 Survival of Representations and Warranties.** All of the representations and warranties of Building Blocks, AES and the Subsidiary contained in this Agreement shall survive the Closing and shall continue for a period of one year following the Closing Date. The expiration of any representation or warranty shall not affect any party's right to claim indemnification for a breach of such representation or warranty, provided such party gives notice of such claim in accordance with the provisions of this Section 6 prior to the expiration of such representation or warranty.

**6.2 The Management of Building Blocks's Indemnity Agreement.** Subject to the provisions of Section 6.4 hereof, the officers of Building Blocks shall, jointly and severally, defend, indemnify and hold harmless AES and the Surviving Corporation (and their respective directors, officers, employees, agents, affiliates, successors and assigns) from and against any and all demands, claims, payments, defenses, obligations, recoveries, deficiencies, fines, penalties, interest, assessments, actions, liens, causes of action, suits, proceedings, judgments, losses, damages (including without limitation punitive, exemplary or consequential damages, lost income and profits, interruptions of business and diminution in the value of stock), liabilities, costs, and expenses of any kind (including without limitation (i) interest, penalties and reasonable attorneys' fees and expenses, (ii) attorneys' fees and expenses necessary to enforce their rights to indemnification hereunder, and (iii) consultants' fees and other costs of defending or investigating any claim hereunder), whether accrued, absolute, contingent, known, unknown, or otherwise as of the Closing Date or thereafter asserted against, imposed upon or incurred by AES, the Surviving Corporation or any of their respective directors, officers, employees, agents, affiliates, successors or assigns (a "Loss of AES") by reason of, resulting from, arising out of, based upon, awarded or asserted against or otherwise in respect of:

(a) any period or periods of Building Blocks ending prior to the Closing and which involve any claims against AES, Building Blocks, the Surviving Corporation or their respective properties or assets, relating to actions or inactions of Building Blocks or its respective officers, directors, shareholder, employees or agents prior to Closing, or the

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operation of the business of Building Blocks prior to the Closing unless such liability was disclosed on the Company Financial Statements and adequate reserves were established therefor;

(b) any breach of any representation and warranty contained in this Agreement or any misrepresentation in or omission on the part of Building Blocks contained in any certificate furnished or to be furnished to AES by Building Blocks pursuant to this Agreement; and

(c) any claim by a broker, agent, or finder alleged to be employed by, representing, or otherwise involved with Building Blocks in connection with this Agreement.

**6.3 Indemnity Agreement of AES and the Surviving Corporation.** AES shall indemnify and hold harmless the shareholders, officers, and directors of Building Blocks (and their successors and assigns) from and against any and all direct or indirect requests, demands, claims, payments, defenses, obligations, recoveries, deficiencies, fines, penalties, interest, assessments, actions, liens, causes of action, suits, proceedings, judgments, losses, damages (including without limitation punitive, exemplary or consequential damages and lost income and profits and interruptions of business), liabilities, costs, and expenses of any kind (including without limitation (i) interest, penalties and reasonable attorneys' fees and expenses, (ii) attorneys' fees and expenses necessary to enforce their rights to indemnification hereunder, and (iii) consultants' fees and other costs of defending or investigating any claim hereunder) whether accrued, absolute, contingent, known, unknown or otherwise as of the Closing Date or thereafter asserted against, imposed upon or incurred by Shareholder or its respective representatives or assigns, (a "Loss of Shareholder") by reason of, resulting from, arising out of, based upon, awarded or asserted against in respect of or otherwise in respect of:

(a) any breach of any representation and warranty contained in this Agreement, or any misrepresentation in or omission from any certificate furnished or to be furnished to Building Blocks or the shareholders of Building Blocks by AES or the Subsidiary pursuant to this Agreement; and

(b) any claim by a broker, agent, or finder alleged to be employed by, representing, or otherwise involved with AES or the Subsidiary in connection with this Agreement.

**6.4 Indemnification Procedure.**

(a) Upon obtaining knowledge thereof, the party to be indemnified hereunder (the "Indemnitee") shall promptly notify the indemnifying party hereunder (the "Indemnitor") in writing of any damage, claim, loss, liability or expense or other matter which the Indemnitee has determined has given or could give rise to a claim for which indemnification rights are granted hereunder (such written notice referred to as the "Notice of Claim"). The Notice of Claim shall specify, in all reasonable detail, the nature and estimated amount of any such claim giving rise to a right of indemnification, to the extent

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the same can reasonably be estimated. Any failure on the part of an Indemnitee to give timely notice to the Indemnitor of a claim shall not affect the right of the Indemnitee to obtain indemnification from the Indemnitor with respect to such claim unless the Indemnitor is materially and adversely affected thereby.

(b) With respect to any matter set forth in a Notice of Claim relating to a third party claim the Indemnitor shall defend, in good faith and at its expense, any such claim or demand, and the Indemnitee, at its expense, shall have the right to participate in the defense of any such third party claim. So long as Indemnitor is defending, in good faith, any such third party claim, the Indemnitee shall not settle or compromise such third party claim. The Indemnitee shall make available to the Indemnitor or its representatives all records and other materials reasonably required by them for use in contesting any third party claim and shall cooperate fully with the Indemnitor in the defense of all such claims.

If the Indemnitor does not defend any such third party claim or if the Indemnitor does not provide the Indemnitee with prompt and reasonable assurances that the Indemnitor will satisfy the third party claim, the Indemnitee may, at its option, elect to defend any such third party claim, at the Indemnitor's expense. An Indemnitor may not settle or compromise any claim without obtaining a full and unconditional release of the Indemnitee, unless the Indemnitee consents in writing to such settlement or compromise.

(c) Notwithstanding anything to the contrary herein contained, no claim for indemnity shall be made under this Section 6 unless an individual Loss of AES or Loss of Shareholder exceeds \$25,000.00, and no aggregate of claims for indemnity shall be made under this Section 6 unless the aggregate of Loss of AES or Loss of Shareholder exceeds \$100,000.00 (if no individual Loss of AES or Loss of Shareholder exceeds \$25,000.00). The total indemnity obligation of Ron Rawson, Mark McConnell, and Greg Taylor, as the officers of Building Blocks, to any other party hereunder shall not exceed the total value of the Merger Consideration received by them and their affiliates, and the total indemnity obligation of any one of such individuals shall not exceed the total value of the Merger Consideration received by him and his affiliates. The total indemnity obligation of AES to any other party hereunder shall not exceed the total value of the Merger Consideration received by Ron Rawson, Mark McConnell, and Greg Taylor, the officers of Building Blocks, their affiliates (calculated at an agreed value of \$10.00 per share of AES Common Stock).

## **Section 7. Miscellaneous Provisions**

**7.1 Further Assurances.** Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request (prior to, at or after the Closing) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

**7.2 Fees and Expenses.** All fees, costs and expenses (including legal fees and accounting fees) that have been incurred or that are incurred in the future by such party

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in connection with the transactions contemplated by this Agreement, including all fees, costs and expenses incurred by such party in connection with or by virtue of (a) any investigation and review conducted by such party of the other parties' business (and the furnishing of information in connection with such investigation and review), (b) the negotiation, preparation and review of this Agreement and all agreements, certificates, opinions and other instruments and documents delivered or to be delivered in connection with the transactions contemplated by this Agreement, (c) the preparation and submission of any filing or notice required to be made or given in connection with any of the transactions contemplated by this Agreement, and the obtaining of any Consent required to be obtained in connection with any of such transactions, and (d) the consummation of the Merger shall be paid: (i) by AES, if incurred by AES or the Subsidiary; and (ii) by Building Blocks, if incurred by Building Blocks.

**7.3 Attorneys' Fees.** If any action or proceeding relating to this Agreement or the enforcement of any provision of this Agreement is brought against any party hereto, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing party may be entitled).

**7.4 Notices.** Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service or by facsimile) to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such party shall have specified in a written notice given to the other parties hereto):

if to AES or the Subsidiary:

American Enterprise Solutions, Inc.  
5313 Johns Road, Suite 201  
Tampa, Florida 33634  
Attention: President  
Facsimile: (813) 290-9030

with a copy to:

Agliano, Hodges & Whittemore, P.A.  
400 North Tampa Street  
P.O. Box 190  
Tampa, Florida 33601-0190  
Attn: G. Todd Hodges, Esq.  
Facsimile: (813) 224-0070

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if to Building Blocks:

Building Blocks Home Health Services, Inc.  
4100 Campus Drive, Suite 230  
Newport Beach, California 92660  
Attention: President  
Facsimile: (714) 752-9595

with a copy to:

George M. Kraw, Esq.  
Kraw & Kraw  
RiverPark Tower, Tenth Floor  
333 West San Carlos  
San Jose, California 95110  
Facsimile: (408) 275-8418

**7.5 Confidentiality.** On and at all times after the Closing Date, Building Blocks shall keep confidential, and shall not use or disclose to any other Person, any non-public document or other non-public information in Building Blocks's possession that relates to the business of AES or the Subsidiary.

**7.6 Severability.** In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**7.7 Headings.** The bold-faced Section headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

**7.8 Counterparts.** This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

**7.9 Governing Law; Venue.**

(a) This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Florida (without giving effect to principles of conflicts of laws).

(b) Any legal action or other legal proceeding relating to this Agreement

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or the enforcement of any provision of this Agreement shall be brought to or otherwise commenced in any state or federal court located in Hillsborough County, Florida. Each party to this Agreement:

(i) expressly and irrevocably consents and submits to the jurisdiction of each state and federal court located in Hillsborough County, Florida in connection with any such legal proceeding;

(ii) agrees that each state and federal court located in Hillsborough County, Florida shall be deemed to be a convenient forum; and

(iii) agrees not to assert (by way of motion, as a defense or otherwise), in any such legal proceeding commenced in any state or federal court located in Hillsborough County, Florida, any claim that such party is not subject personally to the jurisdiction of such court, that such legal proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

**7.10 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may not be assigned by any party without the consent of the other parties hereto, except that AES may assign this Agreement to NDI as part of the NDI Merger.

**7.11 Remedies Cumulative; Specific Performance.** The rights and remedies of the parties hereto shall be cumulative (and not alternative). The parties to this Agreement agree that, in the event of any breach or threatened breach by any party to this Agreement of any covenant, obligation or other provision set forth in this Agreement for the benefit of any other party to this Agreement, such other party shall be entitled (in addition to any other remedy that may be available to it) to (a) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision, and (b) an injunction restraining such breach or threatened breach.

**7.12 Waiver.**

(a) No failure on the part of any party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

(b) No party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written

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instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

**7.13 Amendments.** This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered on behalf of all of the parties hereto.

**7.14 Parties in Interest.** Except for the provisions of Section 6, none of the provisions of this Agreement is intended to provide any rights or remedies to any Person other than the parties hereto and their respective successors, heirs, personal representatives and assigns (if any).

**7.15 Entire Agreement.** This Agreement and the other agreements referred to herein set forth the entire understanding of the parties hereto relating to the subject matter hereof and thereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter hereof and thereof.

**7.16 Board Appointment.** AES will appoint Mark McConnell to its Board of Directors at the first meeting of the Board following Closing, and he shall serve until at least May, 1999, or, if later, the next meeting of shareholders at which directors are elected. Following the closing of the AES/NDI Merger, AES will cause Mark McConnell to be appointed to the NDI Board of Directors during such time.

**7.17 Construction.**

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(b) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation."

(d) Except as otherwise indicated, all references in this Agreement to "Sections" and "Exhibit" are intended to refer to Sections of this Agreement and Exhibit to this Agreement.


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The parties hereto have caused this Agreement to be executed and delivered as of the date first above written.


AMERICAN ENTERPRISE SOLUTIONS, INC.,  
a Florida corporation

By:  Pres  
Its: President Cardwell C. Nuckols

By:   
Its: Secretary Anthony F. Maniscalco

BUILDING BLOCKS INTERNATIONAL, INC.  
a Florida corporation

By:   
Its: President Charles Broes

By:   
Its: Secretary Benedict S. Maniscalco

BUILDING BLOCKS HOME HEALTH SERVICES,  
INC., a California corporation

By: \_\_\_\_\_  
Its: President Greg Taylor

By: \_\_\_\_\_  
Its: Secretary Ron Rawson

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FROM FOLEY & LARDNER

813-221-4210

(WED) 1. 20' 99 14:00/ST. 13:46/NO. 4260231883 P 33

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The parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

AMERICAN ENTERPRISE SOLUTIONS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Its: President Cardwell C. Nuckols

By: \_\_\_\_\_  
Its: Secretary Anthony P. Maniscalco

BUILDING BLOCKS INTERNATIONAL, INC.  
a Florida corporation

By: \_\_\_\_\_  
Its: President Charles Broes

By: \_\_\_\_\_  
Its: Secretary Benedict S. Maniscalco

BUILDING BLOCKS HOME HEALTH SERVICES,  
INC., a California corporation

By: \_\_\_\_\_  
Its: President Greg Taylor

By: \_\_\_\_\_  
Its: Secretary Ron Rawson

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