

Division of Corporations

Page 1 of 1

P99000040543

Florida Department of State
Division of Corporations
Public Access System
Katherine Harris, Secretary of State

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

(((H99000011576 8)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:

Division of Corporations
Fax Number : (850) 922-4000

From:

Account Name : MEDICAL INDUSTRIES OF AMERICA, INC.
Account Number : I19980000026
Phone : (561) 737-2227
Fax Number : (561) 265-2869

99 MAY 18 PM 5:00
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

FILED

MERGER OR SHARE EXCHANGE

MIS ACQUISITION COMPANY I, INC.

Certificate of Status	0
Certified Copy	1
Page Count	11
Estimated Charge	\$78.75

Merger

Electronic Filing Menu

Corporate Filing

Public Access Help

05-19-99

DC

ARTICLES OF MERGER
Merger Sheet

MERGING:

VALLEY PAIN CENTERS, INC., a Florida corporation, P97000108240

INTO

MIS ACQUISITION COMPANY I, INC., a Florida corporation, P99000040543

File date: May 18, 1999

Corporate Specialist: Darlene Connell

May 18, 1999

MIS ACQUISITION COMPANY I, INC.
2710 REW CIRCLE
OCOE, FL 34761

SUBJECT: MIS ACQUISITION COMPANY I, INC.
REF: P99000040543

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

The current name of the entity is as referenced above. Please correct your document accordingly.

The FAX audit number must be on the top and bottom of each page of the document.

Please label the PLAN OF MERGER Exhibit A, as mentioned within your document.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6906.

Darlene Connell
Corporate Specialist

FAX Aud. #: H99000011576
Letter Number: 199A00027445

Fax Audit No: H990000115768

STATE OF FLORIDA
ARTICLES OF MERGER
OF

VALLEY PAIN CENTERS, INC.
a Florida corporation,

INTO

MIS ACQUISITION COMPANY I, INC.
a Florida corporation

FILED
99 MAY 18 PM 5:00
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

To the Secretary of State
State of Florida

Pursuant to the provisions of Section 607.1105 of the Florida Business Corporation Act (the "Act"), the corporations herein named do hereby adopt the following articles of merger:

1. The Agreement and Plan of Merger effective May 6, 1999 (the "Plan of Merger") by and among MINIMALLY INVASIVE SURGERY CORPORATION, a Delaware corporation ("MISC"), MIS Acquisition Company I, Inc., a Florida corporation (the "Acquisition Corp") and VALLEY PAIN CENTERS, INC., a Florida corporation (the "Company"), with Company merging with and into Acquisition Corp, has been adopted by the Board of Directors of Acquisition Corp effective May 6, 1999, by the Board of Directors of Company effective May 6, 1999, by MISC, as the sole shareholder of Acquisition Corp, effective May 6, 1999, and by the shareholders of Company effective May 6, 1999. A copy of the relevant portions of the Plan of Merger, as required by the provisions of section 607.1101 of the Act, is attached hereto as Exhibit A and made a part hereof.
2. Acquisition Corp shall continue in existence as the surviving corporation in accordance with its Articles of Incorporation.
3. The merger herein provided for shall be effective on May 6, 1999.

Fax Audit Number: H990000115768
Prepared by: E. Nicholas Davis III
Medical Industries of America, Inc.
1903 S. Congress Avenue, Suite 400
Boynton Beach, FL 33426
(561) 737-2227

05/18/99 TUE 14:47 FAX 5612652869

MEDICAL IND OF AMERICA

003

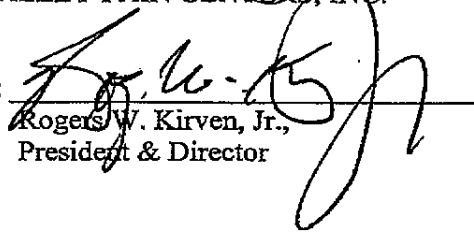
Fax Audit No: H99000011576 8

Executed as of the 6 day of May, 1999.

MIS ACQUISITION COMPANY I, INC.

By: 
Joe Palazzola, President and Director

VALLEY PAIN CENTERS, INC.

By: 
Rogers W. Kirven, Jr.,
President & Director

Fax Audit Number: H99000011576 8
Prepared by: E. Nicholas Davis III
Medical Industries of America, Inc.
1903 S. Congress Avenue, Suite 400
Boynton Beach, FL 33426
(561) 737-2227

Fax Audit No: H99000011576 8**Exhibit A****PLAN OF MERGER**

This AGREEMENT AND PLAN OF MERGER, dated as of the 6th day of May, 1999, is by and between Minimally Invasive Surgery Corporation, a Delaware Corporation ("MIS"), MIS Acquisition Company I, Inc., a Florida corporation ("Acquisition Company") and Valley Pain Centers, Inc., a Florida corporation ("VPC").

In consideration of the mutual covenants and agreements contained in this Agreement, and intending to be legally bound hereby, MIS and VPC hereby agree as follows:

ARTICLE 1**DEFINITIONS**

1.1 Defined Terms. As set for in the Agreement of Merger.

ARTICLE 2**THE MERGER**

2.1 The Merger. At the Effective Time and subject to and upon the terms and conditions of this Agreement, the Delaware Act and the Florida Act, VPC shall be merged with and into Acquisition Company, the separate existence of VPC shall cease and Acquisition Company, which shall change its name to Valley Pain Centers, Inc., shall continue as the surviving corporation. Acquisition Company after the Merger shall be governed by the Florida Act and is hereinafter sometimes referred to as the "Surviving Corporation". The Surviving Corporation shall remain a wholly-owned subsidiary of MIS.

2.2 Effective Time. As promptly as practicable after the satisfaction or waiver of the conditions set forth in Articles 8 and 9 of the Agreement of Merger the parties shall cause the Merger to be consummated by filing Articles of Merger with the Secretary of State of Florida in such form as required by, in executed in accordance with, the relevant provisions of the Florida Act (the filing being the "Effective Time"). At the Effective Time, MIS will irrevocably instruct its stock transfer agent to issue and deliver in the manner provided in Articles 2 and 3 hereof the certificates evidencing the Merger Shares to be issued in the Merger.

2.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the Florida Act. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all property, rights, privileges, powers and franchises of Acquisition Company and VPC shall vest in the Surviving Corporation, and all debts, liabilities and duties of Acquisition Company and VPC shall become the debts, liabilities and duties of the Surviving Corporation.

2.4 Subsequent Actions. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to (i) vest, perfect or conform of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or Assets of VPC or Acquisition Company acquired or to be acquired by the Surviving

Fax Audit No: H99000011576 8

Corporation as a result of, or in connection with, the Merger or (ii) otherwise carry out this Agreement, then the officers and directors of the Surviving Corporation shall be authorized to (x) execute and deliver, in the name and on behalf of either VPC or Acquisition Company all such deeds, bills of sale, assignments, assurances and (y) to take and do, in the name of and on behalf of each such other corporation or otherwise, all such actions and things as may be necessary or desirable, to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise carry out this Agreement.

2.5 Articles of Incorporation; By-Laws; Directors and Officers.

(a) At the Effective Time and as part of the Merger, the Articles of Incorporation of the Surviving Corporation shall be in the form as previously delivered to the parties, until thereafter amended as provided by law, its by-laws and such Articles of Incorporation.

(b) At the Effective Time and as part of the Merger, the By-Laws of the Surviving Corporation shall be in the form as previously delivered to the parties, until thereafter amended as provided by law, the Articles of Incorporation and such By-Laws.

(c) After the Effective Time, the Board of Directors of the Surviving Corporation will consist of David S. Klein, M.D., Rogers W. Kirven, Jr., and Jere Palazzolo.

(d) After the Effective Time, the Board of Directors of MIS will consist of John Chiu, M.D., Jere Palazzolo, an appointee of Dr. Chiu and Mr. Palazzolo, David S. Klein, M.D., Rogers W. Kirven, Jr., an appointee of Dr. Klein and Mr. Kirven and an appointee mutually agreed to by Messrs. Chiu, Palazzolo, Klein and Kirven.

2.6 Board and Stockholder Approval. This Agreement is subject to, and it is a condition to the consummation of the Merger, that MIS Board Approval, MIS Stockholder Approval, Acquisition Company Board Approval, VPC Board Approval and VPC Stockholder Approval be obtained.

2.7 Tax Consequences. It is intended that this Transaction shall constitute a reorganization within the meaning of Section 368 of the Code, and that this Agreement shall constitute a "plan of reorganization" for purposes of Section 368 of the Code.

ARTICLE 3

MERGER CONSIDERATION

In exchange for merging VPC into Acquisition Company and canceling and extinguishing the VPC Capital Stock in accordance with this Merger Agreement, the VPC Stockholders, as designated and in the amounts set forth in Agreement of Merger, shall receive the following Merger Consideration:

3.1 Merger Consideration. MIS agrees, subject to the provisions of this Merger Agreement, to pay to the VPC Stockholders an amount up to, but not exceeding, Eight Million Two Hundred Fifty Thousand Dollars (\$8,250,000.00) as set forth below (hereinafter the "Purchase Price"). The Purchase Price has been initially calculated and the Installment Payments (as defined below) are conditioned upon MIS recognizing the Formula Profits (as defined below).

Fax Audit No: H99000011576 8

Fax Audit No: H99000011576 8

(a) Initial Payment. MIS will pay, at Closing, the VPC Class A Common Stockholders the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) (the "Initial Payment"). The Initial Payment shall be made in non-registered MIS Common Stock (the "Initial MIS Shares"). For purposes of determining the number of Initial MIS Shares the VPC Class A Common Stockholders will receive with respect to the Initial Payment, the following calculation shall be made: the amount of the Initial Payment shall be divided by \$3.00 with the resulting quotient equaling the number of MIOA Shares that shall be delivered to the VPC Class A Common Stockholders in respect of such payment (i.e., 1,500,000) (which shall not be subject to any adjustments for subdivisions or other recapitalizations of MIS that would otherwise have the effect of reducing the number of issued and outstanding shares of MIS that occur prior to Closing).

Notwithstanding, in the event the MIS Common Stock or its successor's common stock does not have a Fair Market Value of at least \$3.00 per share (which shall for these purposes be increased by the ratio of any MIS Common Stock combinations or decreased by the ratio of any MIS Common Stock subdivisions that occur subsequent to Closing) during the period beginning on the first anniversary date of the Closing and ending on the second anniversary date of the Closing Date (the "Trading Period"), the VPC Class A Common Stockholders will receive additional shares of MIS Common Stock equal to the difference between \$3.00 and the Fair Market Value per share for the Trading Period. The Fair Market Value per share for these purposes shall equal the average of the close prices of the MIS Common Stock as reported on NASDAQ or other national exchange for each trading day during the Trading Period. If the price of the stock is not quoted on NASDAQ or other national exchange then, in such event, the Fair Market Value shall equal the average of the lowest bid price per share of such stock on each day during the Trading Period as reported on the OTC Bulletin Board Service or by the National Quotation Bureau, Incorporated or other comparable service; or if the price of the stock is not quoted on NASDAQ or another national exchange or reported on the OTC Bulletin Board Service or by the National Quotation Bureau, Incorporated or other comparable service then, in such event, the Fair Market Value shall be determined by taking the average of the fair market value of such stock as determined by three (3) independent appraisers engaged in the business of providing appraisals of companies similar to MIS. One appraiser shall be selected by MIS, one by the VPC Stockholders and the third by the other two appraisers.

To illustrate, the VPC Class A Common Stockholders will receive 1,500,000 Initial MIS Shares in respect of the Initial Payment (i.e., \$4,500,000.00/\$3.00) and if the per share Fair Market Value of the MIS Common Stock (as calculated above) for the Trading Period is less than \$3.00 then, in such event, divide \$4,500,000.00 by the Fair Market Value per share of the MIS Common Stock for the Trading Period; then subtract 1,500,000 from the resulting quotient to determine the additional number of MIS Common Shares the VPC Class A Common Stockholders will receive. For example, if the per share Fair Market Value is \$2.50, then the VPC Class A Common Stockholders will receive 300,000 more MIS Common Shares ($\$4,500,000.00/\$2.50 = 1,800,000$; $1,800,000 - 1,500,000 = 300,000$).

(b) Exchange of Shares. The manner and basis of exchanging shares of VPC Capital Stock and MIS Capital Stock into stock of the Surviving Corporation shall be as follows:

(i) Except as provided in Section 3.2, each share of VPC Capital Stock which shall be outstanding immediately prior to the Effective Time shall at the Effective Time, by virtue of the Merger, and without any action on the part of the holder hereof, be exchanged into only the right to receive the number of shares of MIS Common Stock as provided herein and the Convertible Debentures (defined below) (the "Exchange Ratio"). The common shares to be

Fax Audit No: H99000011576 8

Fax Audit No: H99000011576 8

issued by MIS with respect to the VPC Capital Stock are collectively hereinafter referred to as "Merger Shares". The Exchange Ratio shall be subject to equitable adjustment in the event of any stock split, stock dividend or other recapitalization of MIS after the date hereof but prior to Closing, except for capital stock combinations or other recapitalizations that have the effect of reducing the number of Merger Shares the VPC Class A Common Stockholders would otherwise receive pursuant to this transaction. After the Effective Time, no VPC Capital Stock shall be recognized or deemed to be issued outstanding, and the holders thereof shall not have any rights other than as set forth in Article 3.

(ii) Each share of VPC Capital Stock, if any, held in the treasury of VPC shall automatically be cancelled, shall not be converted into the right to receive Merger Shares, and shall be extinguished without exchange thereof and no payment will be made with respect thereto.

(iii) Each share of Acquisition Company Capital Stock which shall be outstanding immediately prior to the Effective Time shall at the Effective Time, by virtue of the Merger, and without any action on the part of the holder hereof, remain outstanding.

(iv) Except as otherwise specifically set forth herein, each share of MIS Capital Stock which shall be outstanding immediately prior to the Effective Time shall at the Effective Time remain outstanding. In no event shall the MIS Capital Stock issued and outstanding on a fully diluted basis exceed on a fully diluted basis 9,500,000 shares at the Closing or at the closing of the Permitted Equity Financing described in subsection (v) immediately below.

(v) The parties acknowledge that the other party may, prior to the Closing and with respect to MIS within 60 days subsequent to the Closing and with the consent of the other party hereto, issue additional shares of its capital stock (and/or securities convertible into shares of its capital stock) in connection with (i) those offerings previously identified so long as the conditions with respect to each such offering are satisfied, including but not limited to the condition that any such offering is closed no later than: (1) in the case of VPC, the Closing Date; or (2) in the case of MIS, the date which is 60 days subsequent to the Closing Date, or (ii) any offering of such issuer's securities issued as consideration for the Merger of assets or equity interests of another entity if the securities issued in such offering have an aggregate fair market value of less than \$3,800,000 (each, a "Permitted Equity Financing"), provided, that in either case, such offering must be made in compliance with all applicable securities laws and structured so that it will not be integrated with the offering of Merger Shares and/or Option Shares as contemplated herein, and in the case of MIS with respect to its offering previously identified shall the MIS Capital Stock issued and outstanding on a fully diluted basis exceed 9,500,000 shares (excluding 1.8 million warrants previously authorized to MIS historical shareholders) at the closing of such Permitted Equity Financing. In the event that either MIS or VPC desires to issue additional shares of its capital stock (and/or securities convertible into shares of its capital stock) in an offering that does not constitute a Permitted Equity Financing, then MIS and VPC shall attempt in good faith to agree upon the terms and conditions of the proposed offering and how the resulting percentage ownership of MIS will be allocated on a fully diluted basis (using the treasury stock method) among the holders of VPC Equity Interest or the holders of MIS Equity Interest, as the case may be, issued in connection with such offering.

(vi) MIS shall be required to effect a registration in accordance with the Registration Rights Agreement in the form as previously delivered to the parties on Form S-1 (or other applicable form) to register the Merger Shares, the common shares underlying the

Fax Audit No: H99000011576 8

Fax Audit No: H99000011576 8

Debentures and the common shares underlying the Option/Warrant shares to be issued to the VPC Stockholders in connection with the Merger. MIS shall pay the fees and expenses incurred by it that are associated with the Registration Statement and the registration of the Merger Shares, the shares underlying the Debentures and the common shares underlying the Option/Warrant Shares.

(c) Installment Payments. On the Effective Time, the VPC Class B Common Stockholders shall have the right to earn the remaining portion of the Purchase Price (i.e., \$3,750,000.00) (hereinafter the "Installment Payments") during the Formula Periods in accordance with the following formula:

(i) Formula Period 1. In respect of Formula Period 1 as defined below: (x) If Formula Profits of MIS equal One Million Five Hundred Dollars (\$1,500,000.00) (hereinafter the "Formula Period 1 Earnings Target"), MIS shall pay the VPC Class B Common Stockholders an amount equal to One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) (hereinafter the "Formula Period 1 Installment Payment"); (y) If Formula Profits exceed the Formula Period 1 Earnings Target, MIS shall pay the VPC Class B Common Stockholders the Formula Period 1 Installment Payment plus One Dollar (\$1.00) for each dollar (\$1.00) of Formula Profits in excess of the Formula Period 1 Earnings Target; or, (z) If Formula Profits are less than the Formula Period 1 Earnings Target, MIS shall pay the VPC Class B Common Stockholders an amount equal to: the actual Formula Profits of MIS divided by the Formula Period 1 Earnings Target; with the resulting quotient (i.e., percentage) multiplied by the Formula Period 1 Installment Payment.

(ii) Formula Period 2. In respect of Formula Period 2 as defined below: (x) If Formula Profits of MIS equal One Million Eight Hundred Thousand Dollars (\$1,800,000.00) (hereinafter the "Formula Period 2 Earnings Target"), MIS shall pay the VPC Class B Common Stockholders an amount equal to One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) (hereinafter the "Formula Period 2 Installment Payment"); (y) If Formula Profits exceed the Formula Period 2 Earnings Target, MIS shall pay the VPC Class B Common Stockholders the Formula Period 2 Installment Payment plus One Dollar (\$1.00) for each dollar (\$1.00) of Formula Profits in excess of the Formula Period 2 Earnings Target; or, (z) If Formula Profits are less than the Formula Period 2 Earnings Target, MIS shall pay the VPC Class B Common Stockholders an amount equal to: the actual Formula Profits of MIS divided by the Formula Period 2 Earnings Target; with the resulting quotient (i.e., percentage) multiplied by the Formula Period 2 Installment Payment.

(iii) Formula Period 3. In respect of Formula Period 3 as defined below: (x) If Formula Profits of MIS equal Two Million One Hundred Sixty Thousand Dollars (\$2,160,000.00) (hereinafter the "Formula Period 3 Earnings Target"), MIS shall pay the VPC Class B Common Stockholders an amount equal to One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) (hereinafter the "Formula Period 3 Installment Payment"); (y) If Formula Profits exceed the Formula Period 3 Earnings Target, MIS shall cause pay the VPC Class B Common Stockholders the Formula Period 3 Installment Payment plus One Dollar (\$1.00) for each dollar (\$1.00) of Formula Profits in excess of the Formula Period 3 Earnings Target; or, (z) If Formula Profits are less than the Formula Period 3 Earnings Target, MIS shall pay the VPC Class B Common Stockholders an amount equal to: the actual Formula Profits of MIS divided by the Formula Period 3 Earnings Target; with the resulting quotient (i.e., percentage) multiplied by the Formula Period 3 Installment Payment.

(d) Maximum Payments. The foregoing notwithstanding, the maximum amount of Installment Payments the VPC Class B Common Stockholders may receive pursuant to

Fax Audit No: H99000011576 8

Fax Audit No: H99000011576 8

these provisions shall not exceed Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00).

(e). Acceleration of Installment Payments. In the event MIS or any successor company undertakes a public offering, merger, recapitalization, consolidation or otherwise (hereinafter a "Dilutive Transaction") whereby more than 50 percent of its issued and outstanding Capital Stock is issued to third parties prior to the expiration of the Formula Periods, the VPC Class B Common Stockholders shall, at their election, be paid the portion of the unpaid Installment Payments immediately prior to the effectiveness of such Dilutive Transaction by applying the above formula to the proforma Formula Profits for the remainder of the Formula Period(s) calculated based on the immediately preceding twelve (12) month period or such shorter period if less than 12 months.

(f). Formula Profits. For the purposes of this Agreement, the term "Formula Profits" shall mean the pre-tax consolidated net profits of MIS, as calculated utilizing generally accepted accounting principles by MIS's independent certified public accountants for annual Formula Periods, where possible, and as calculated by MIS otherwise. Notwithstanding the foregoing, for purposes of determining Formula Profits: (i) there shall not be included any non-recurring charges, losses, profits, gains, or non-cash adjustments not related to the ongoing operations of the business, including, but not limited to discount operations, extraordinary items, acquisition costs, goodwill charges, or unusual or infrequent items as they are defined under generally accepted accounting principles, and (ii) there shall not be included any charge related to grants or exercises of the Options/Warrant Shares pursuant to the Employment Agreements or other agreements with the officers of the Surviving Company.

(g). Formula Periods. The period commencing on the Effective Time and ending on the last day of the 12th month following the Effective Date shall be deemed to be "Formula Period 1". The period commencing on the first day following Formula Period 1 and ending on the last day of the 12th month following Formula Period 1 shall be deemed to be "Formula Period 2". The period commencing on the first day following Formula Period 2 and ending on the last day of the 12th month following Formula Period 2 shall be deemed to be "Formula Period 3".

(h). Calculation Timing. MIS shall cause the aforementioned calculations to be made as soon as reasonably possible and the Installment Payments paid to the VPC Class B Common Stockholders within fifteen (15) days of such calculation but in no event later than the 90th day following each Formula Period.

(i). Payment of Installment Payments. The Installment Payments shall be made within fifteen (15) days of calculating the Installment Payment for each Formula Period but in no event later than the 90th day following the end of each Formula Period by delivering to the VPC Class B Common Stockholders, in accordance with their percentage of ownership interest, a series of convertible collateralized promissory notes (the "Debentures"), one to each VPC Merger Shareholder for each Installment Payment. The Debentures will bear interest at the Applicable Federal Rate and the payment of such Debentures will be secured by the issued and outstanding capital stock of the Surviving Corporation. To that end, MIS will enter into with the VPC Class B Common Stockholders a pledge agreement in the form previously delivered to the parties (hereinafter the "Pledge Agreement"). Interest will be paid on the Formula Earnings as calculated herein on a quarterly basis, in arrears, commencing at the end of the first calendar quarter following the Effective Time and will be subject to adjustment at the end of each Formula Period based upon the principal face value of the applicable Debenture earned during such

Fax Audit No: H99000011576 8

Fax Audit No: H99000011575 8

Formula Period. If excess interest is paid pursuant to this Section in any Formula Period as the result of the foregoing, such excess interest will be offset first against any future interest to be paid pursuant to this Section and then, if necessary, against the principal face value of the Debentures. The principal face value, if any, of each Debenture together with all accrued but unpaid interest on said Debenture shall be due and payable on the first anniversary date of its issuance. The Debentures may be prepaid by MIS at any time without penalty or additional interest. The VPC Class B Common Stockholders may convert the principal face value of the Debentures at any time prior to redemption into MIS Common Stock at the rate of \$3.00 per share. Cash will be paid in lieu of any fractional shares.

(j) Capital Adjustments. In case of any consolidation or merger of MIS with or into another corporation or the conveyance of all or substantially all of the assets of MIS to another corporation or a share exchange transaction, the Debentures shall thereafter be convertible into the number of shares of stock, options or other securities or property to which a holder of the number of shares of common stock deliverable upon entitlement to the MIS Common Stock would have been entitled upon such consolidation, merger, conveyance, conversion or exchange; and, in any such case, appropriate adjustment shall be made in the application of the provisions herein set forth with respect to the rights and interest thereafter of the VPC Class B Common Stockholders' rights to receive Debentures to the end that the provisions set forth herein shall thereafter be applicable, as nearly as reasonably possible, in relation to any shares of stock, options or other property thereafter deliverable upon entitlement to the Debentures.

3.2 Fractional Shares. No scrip or fractional shares of the capital stock of MIS shall be issued in the Merger, nor will any outstanding fractional share interest entitle the owner thereof to vote, to receive dividends or to exercise any other right as a stockholder of MIS. All fractional shares of the common stock to which a holder of multiple certificates of VPC Class A Common Stock immediately prior to the Effective Time would otherwise be entitled at the Effective Time shall be aggregated. If a fractional share results from such aggregation, the number of shares of the Merger Shares to which such stockholder shall be entitled, after the Effective Time shall be rounded to the nearest whole number of Merger Shares.

3.3 Stock Options and Warrants. Except as previously disclosed, VPC does not presently have nor will it have at the time of Closing any options or warrants issued or outstanding nor has it committed to issue any options and/or warrants.

3.4 Delivery of Merger Shares.

(a) Except as set forth in this Agreement, from and after the Effective Time, each holder of a certificate or certificates that immediately prior to the Effective Time represented outstanding shares of VPC Capital Stock ("Certificate(s)") shall be entitled to receive in exchange therefor, upon surrender thereof to the Exchange Agent, the appropriate number and type of Merger Shares for each share of VPC Class A Common Stock so represented by the Certificate(s) surrendered by such holder and the right to earn the appropriate amount of the Debentures for each share of VPC Class B Common Stock so represented by the Certificate(s) surrendered by such holder.

(b) At or simultaneous with the Closing, (1) MIS will furnish to MIS's transfer agent (the "Exchange Agent") irrevocable instructions to issue certificates to holders of VPC Class A Common Stock which represent that number and type of Merger Shares to which each such holder of VPC Class A Common Stock is entitled hereunder, and (2) MIS will cause the

Fax Audit No: H99000011576 8

Fax Audit No: H99000011576 8

Exchange Agent to mail a letter of transmittal (with instructions for its use) to each record holder of outstanding VPC Class A Common Stock for the holder to use in surrendering the Certificate(s) that represented such holder's VPC Class A Common Stock in exchange for a stock certificate representing the number of type of Merger Shares to which the holder is entitled. Such letter of transmittal shall specify that delivery shall be effected, and risk of loss and title to the Certificate(s) shall pass, only upon proper delivery of the Certificate(s) for exchange therefor. Upon surrender to the Exchange Agent of Certificate(s), together with such letter of transmittal duly executed and completed in accordance with the instructions thereon, and such other documents as may be reasonably requested by the Exchange Agent, the Exchange Agent shall, pursuant to this Agreement, promptly deliver the appropriate number and type of Merger Shares to the person entitled to such Merger Shares for each share of VPC Class A Common Stock so represented by the Certificate(s) surrendered by such holder thereof, and such Certificate(s) shall forthwith be cancelled.

(c) If delivery of all or part of the Merger Shares is to be made to a person other than the person in whose name a surrendered Certificate is registered, it shall be a condition of such delivery or exchange that the Certificate so surrendered shall be properly endorsed or shall be otherwise in proper form for transfer and that the person requesting such delivery or exchange shall have paid any transfer and other taxes required by reason of such delivery or exchange in a name other than that of the registered holder of the Certificate surrendered or shall have established to the reasonable satisfaction of VPC that such tax either has been paid or is not payable.

(d) Until surrendered and exchanged in accordance with this Section 3.4 each such Certificate shall, after the Effective Time, represent solely the right to receive the Merger Shares, in an amount and of the type determined in accordance with Section 3.1 hereof, and shall have no ownership or other rights. No interest shall accrue or be payable on any Merger Shares. Neither MIS or VPC shall be liable to any holder of VPC Capital Stock for any Merger Shares (or dividends or distributions with respect thereto) delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

(e) From and after the Effective Time, no holder of Certificate(s) shall be entitled to receive any dividend or other distribution from MIS until proper surrender by such holder of such Certificate(s) for stock certificate(s) representing Merger Shares. Upon such surrender, the holder shall be paid the amount of any dividends or other distributions (without interest) that theretofore became payable by MIS after the Effective Time but prior to such surrender, but were not paid by reason of the foregoing with respect to the number and type of Merger Shares represented by the certificate(s) issued upon such surrender. From and after the Effective Time, MIS shall, however, be entitled to treat such Certificate(s) that have not yet been surrendered or exchanged as evidencing the ownership of the type and aggregate number of Merger Shares into which the shares of VPC Capital Stock represented by such Certificate(s) would have been exchanged, notwithstanding any failure to surrender such Certificate(s).

(f) MIS shall be responsible for the payment of all changes and expenses of the Exchange Agent.

(g) If any Certificate shall have been lost, stolen or destroyed, upon the receipt by MIS of an indemnity agreement and the making of an affidavit by the person claiming such Certificate to be lost, stolen or destroyed and, if required by MIS, the posting by such person of a bond in such reasonable amount as MIS may direct as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will issue in exchange for

Fax Audit No: H99000011576 8

Fax Audit No: H99000011576 8

such lost, stolen or destroyed Certificate the number and type of Merger Shares and any cash in lieu of fractional shares, and unpaid dividends and distributions on the number and type of Merger Shares deliverable in respect thereof pursuant to this Agreement.

3.5 **Closing.** The closing of the Transactions (the "Closing") shall take place on or before May ^{19th} 1999, at the offices of VPC in Orlando, Florida, or another mutually agreed upon location on the Business Day following compliance or waiver of the terms, conditions and contingencies contained in this Agreement or such other date as is mutually agreed upon by the parties hereto (such date to be herein referred to as the "Closing Date"). All computations, adjustments, and transfers for the purposes hereof shall be effective as of the close of business on the Closing Date. Each of the parties will take all such reasonable and lawful action as may be necessary or appropriate in order to effectuate the Merger as promptly as possible subject to the satisfaction of the closing conditions set forth in Agreement of Merger.

Fax Audit No: H99000011576 8