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## MERGER OR SHARE EXCHANGE

## AWAY ACQUISITION CORPORATION

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ARTICLES OF MERGER  
Merger Sheet

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MERGING:

HBA TRAVEL, INC., a Florida corporation, P93000035032

A.T.T. MARKETING, INC., a Florida corporation, P98000050019

LINDA TOURS, INC., a Florida corporation, P98000069140

INTO

**AWAY ACQUISITION CORPORATION**, a Florida corporation, P99000048090

File date: July 19, 1999

Corporate Specialist: Darlene Connell

FAX AUDIT NO.  
H990000175945

ARTICLES OF MERGER  
OF  
AWAY ACQUISITION CORPORATION  
HBA TRAVEL, INC.  
A.T.T. MARKETING, INC.  
AND  
LINDA TOURS, INC.

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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Pursuant to the provisions of Section 607.1105 of the Florida Statutes, the undersigned hereby certify that:

1. HBA Travel, Inc., a Florida corporation, A.T.T. Marketing, Inc., a Florida corporation, and Linda Tours, Inc., a Florida corporation (collectively, the "Target Corporations"), shall be merged with and into AWAY ACQUISITION CORPORATION, a Florida corporation ("Acquisition"), which shall be the Surviving Corporation, (the "Merger").
2. The Merger shall become effective on the day that these Articles of Merger have been filed by the Secretary of State of Florida (the "Effective Date").
3. The Articles of Incorporation of ACQUISITION as in effect on the Effective Date shall remain in effect and be the Articles of Incorporation of the Surviving Corporation.
4. The Agreement and Plan of Merger dated as of June 30, 1999, pursuant to which the Merger shall be accomplished and a certified copy of which is attached hereto; was adopted in accordance with Section 607.1101 of the Florida Statutes by the directors and shareholders of the Target Corporations by unanimous written consent dated as of May 28, 1999, and by the directors of Acquisition by unanimous written consent dated as of May 26, 1999. Shareholder approval of Acquisition is not required.

PREPARED BY: MARK S. SCOTT, ESQ.  
FL. BAR NO. 142549  
WHITE & CASE LLP  
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MIAMI, FL 33131  
(305) 371-2700

FAX AUDIT NO.  
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IN WITNESS WHEREOF, these Articles of Merger have been executed on behalf  
of the Merger Subs and Acquisition by their respective authorized officer as of June 30, 1999.

AWAY ACQUISITION CORPORATION, a  
Florida corporation

By: Linda Pille  
Name: Linda Pille  
Title: PRESIDENT

EBA TRAVEL, INC. a Florida corporation

By: Linda Pille  
Name: Linda Pille  
Title: PRESIDENT

LINDA TOURS, INC. a Florida corporation

By: Linda Pille  
Name: Linda Pille  
Title: PRESIDENT

A.T.T. MARKETING, INC. a Florida corporation

By: M. L. Hunt  
Name: MURRAY SCHUBERT  
Title: Pres.

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FAX AUDIT NO.  
H990000175945

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**AGREEMENT AND PLAN OF MERGER**

**BY AND AMONG**

**BYE BYE NOW.COM, INC., AWAY ACQUISITION CORPORATION,**

**HBA TRAVEL, INC., A.T.T. MARKETING, INC., LINDA TOURS, INC.**

**AND**

**CERTAIN SELLING SHAREHOLDERS**

**DATED AS OF JUNE 30, 1999**

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FROM WHITE & CASE LLP

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## **AGREEMENT AND PLAN OF MERGER**

This AGREEMENT AND PLAN OF MERGER (the "Agreement"), dated as of the 30<sup>th</sup> day of June, 1999, by and among BYE BYE NOW.COM, INC., a Florida corporation ("Purchaser"), AWAY ACQUISITION CORPORATION, a Florida corporation ("Acquisition"), HBA TRAVEL, INC. D/B/A AWAY TO TRAVEL, a Florida corporation, A.T.T. MARKETING, INC., a Florida corporation and Linda Tours, Inc., a Florida corporation, (each a "Corporation" and collectively, the "Corporations"), and the shareholders of the Corporations listed on the signature pages hereto (collectively, the "Sellers"). Terms used herein and not otherwise defined shall have the meanings set forth in Section 12.3 hereof.

WHEREAS, the Corporations desire to merge with and into Acquisition and Acquisition desires that the Corporations be merged with and into Acquisition, so that Acquisition will be the surviving corporation, all upon the terms and subject to the conditions set forth herein and in accordance with the laws of the State of Florida; and

WHEREAS, the terms and conditions of such merger, the mode of carrying the same into effect, the manner of converting the capital stock of the Corporations into the right to receive preferred stock and such other terms and conditions as may be required or permitted to be stated in this Agreement, are set forth below.

NOW, THEREFORE, in consideration of the representations and warranties, covenants and agreements, and subject to the conditions contained herein, the Sellers and the Corporations, jointly and severally, and the Purchaser and Acquisition hereby agree as follows:

### **ARTICLE I**

#### **THE MERGER**

1.1 The Merger. At the Effective Time, the Corporations shall be merged with and into Acquisition upon the terms and conditions hereinafter set forth in accordance with the requirements of Florida law (the "Merger"). Thereupon, the corporate existence of Acquisition, with all its rights, privileges, immunities, powers and purposes, shall continue unaffected and unimpaired by the Merger, and Acquisition, as the corporation surviving the Merger, shall be fully vested therewith, the separate existence of the Corporations shall cease upon the Merger becoming effective as herein provided and thereupon Acquisition and the Corporations shall be a single corporation (herein sometimes referred to as the "Surviving Corporation").

1.2 Filing. As soon as practicable following fulfillment of the conditions specified in Article VII and Article VIII hereof, and provided that this Agreement has not been terminated and abandoned pursuant to Article X hereof, Acquisition and the Corporations will cause an executed counterpart of the Articles of Merger in substantially the form of Exhibit 1.2(a) hereto (the "Articles of Merger") to be filed with the Department of State of the State of Florida in accordance with the provisions of Section 607.1105 of the Florida Business Corporation Act (the "FBCA").

1.3 Effective Time of the Merger. The Merger shall be effective at the time that the filing of the counterpart of the Articles of Merger with the Secretary of State of the State of Florida referred to in Section 1.2 is completed, which time is herein sometimes referred to as the "Effective Time."

1.4 Effect of the Merger. The Merger shall have the effects set forth in Section 607.1106 of the FBCA.

1.5 Articles of Incorporation. At the Effective Time, the Articles of Incorporation of Acquisition shall be the Articles of Incorporation of the Surviving Corporation and may be amended from time to time after the Effective Time as provided by law.

1.6 Bylaws. The Bylaws of Acquisition as in effect immediately prior to the Effective Time shall continue unchanged as the By-Laws of the Surviving Corporation until the same shall thereafter be altered, amended or repealed in accordance with law, the Articles of Incorporation or said By-laws.

1.7 Directors and Officers.

(a) From and after the Effective Time, the members of the Board of Directors of the Surviving Corporation shall consist of the members of the Board of Directors of Acquisition immediately prior to the Effective Time.

(b) From and after the Effective Time, the officers of Acquisition immediately prior to the Effective Time shall become the officers of the Surviving Corporation in the same capacities they respectively held in Acquisition.

1.8 Conversion. At the Effective Time, all of the issued and outstanding shares of capital stock of the Corporations shall, by virtue of the Merger and without any action on the part of the respective holders thereof, become and be converted into the right to receive Series C Convertible Preferred Stock of the Purchaser, par value \$.001 (the "Preferred Shares"), as the case may be, as follows:

(a) each issued and outstanding share of capital stock and each outstanding Option of the Corporations (individually a "Share," collectively, the "Shares") (excluding any treasury shares of the Corporations), shall be converted into and become the right to receive Preferred Shares in accordance with Section 1.13;

(b) each outstanding share of common stock, par value \$.001 per share, of Acquisition shall be converted into one share of common stock, par value \$.001 per share, of the Surviving Corporation; and

(c) each treasury share of capital stock of each Corporation, if any, shall be canceled, and no payment shall be made in respect thereof.

1.9 Surrender of Shares.

(a) At the Effective Time, each holder of a certificate or certificates theretofore representing issued and outstanding Shares entitled to receive Preferred Shares therefor may surrender such certificates to the Surviving Corporation and receive in exchange therefor Preferred Shares as provided in Section 1.13 immediately upon such surrender. In case any exchange pursuant to this Section 1.9 is to be made to a holder other than the registered owner of a surrendered certificate, it shall be a condition of such exchange that the certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that all applicable transfer and other similar taxes shall have been paid.

(b) Until surrendered in accordance with the provisions of this Section 1.9, the certificate or certificates which immediately prior to the Effective Time represented all the issued and outstanding Shares shall represent for all purposes the right to receive Preferred Shares as provided below.

1.10 Closing of Transfer Books. At the Effective Time, the stock transfer books of the Corporations shall be closed and no transfer of Shares or Options shall thereafter be made. If, after the Effective Time, Certificates are presented to the Surviving Corporation, they shall be canceled and exchanged for the Merger Consideration in accordance with Section 1.13. From and after the Effective Time, no Shares shall be deemed to be outstanding, and holders of Certificates shall cease to have any rights with respect thereto except as provided herein or by law.

1.11 Actions Taken at Closing. At the Closing, (a) the Corporations shall deliver to the Purchaser the various certificates, instruments and documents required to be delivered to the Purchaser by the Corporations and the Sellers as a condition precedent to the Purchaser's obligations hereunder pursuant to Article VII, (b) the Purchaser shall deliver to the Corporations the various certificates, instruments and documents required to be delivered to the Corporations and the Sellers by the Purchaser as a condition precedent to the Corporations' obligations hereunder pursuant to Article VIII, (c) the Corporations shall execute and file with the Secretary of State of the State of Florida the Articles of Merger and shall have the executed Plan of Merger attached thereto and (d) the Purchaser, the Corporations and the Escrow Agent shall execute and deliver the Escrow Agreement attached hereto as Exhibit 1.11 (the "Escrow Agreement") and the Purchaser shall deposit funds with the Escrow Agent in accordance with Section 1.12.

1.12 Escrow.

(a) On the Closing Date, the Purchaser will withhold 20,000 Preferred Shares of the Merger Consideration payable pursuant to Section 1.13 (the "Escrow Fund"), for the purpose of securing the indemnification obligations of the shareholders of the Corporations and the post-Closing adjustment of the Merger Consideration set forth in this Agreement. The Escrow Fund shall be held by the Purchaser under the Escrow Agreement pursuant to the terms thereof. The Escrow Fund shall be held as a trust fund and shall not be subject to any lien, attachment, trustee process or any other judicial

process of any creditor of any party, and shall be held and disbursed solely for the purposes and in accordance with the terms of the Escrow Agreement.

(b) The adoption of this Agreement and the approval of the Merger by the Corporations' stockholders shall constitute approval of the Escrow Agreement and of all of the arrangements relating thereto, including without limitation the placement in escrow of 20,000 Preferred Shares of the Merger Consideration.

1.13 Consideration for Merger. At the Effective Time, each Share issued and outstanding immediately prior to the Effective Time shall be converted into Preferred Shares in the ratios as set forth on Exhibit 1.13 hereto (the "Merger Consideration"). The Purchaser shall use all commercially reasonable efforts to have the issuance of common stock, issuable upon conversion of the Preferred Shares, registered under the Securities Act of 1933, as amended by including the Preferred Shares in the registration statement on Form S-4 it is filing in connection with its proposed acquisitions of other target companies concurrently with its proposed initial public offering.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF THE SELLERS

The Sellers jointly and severally represent and warrant to the Purchaser as of the date hereof and as of the Closing Date:

2.1 Corporate Organization, Etc. Each Corporation is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation with full corporate power and authority to carry on its business as it is now being conducted and to own, operate and lease its properties and assets. Each of the Corporations is duly qualified or licensed to do business and is in corporate and tax good standing in every jurisdiction in which the conduct of its business, the ownership or lease of its properties, require it to be so qualified or licensed. Such jurisdictions are set forth in Schedule 2.1(a) hereto. True, complete and correct copies of each Corporation's charter and bylaws as presently in effect are set forth in Schedule 2.1(b) hereto.

2.2 Subsidiaries and Affiliates. Set forth on Schedule 2.2(a) hereto is a list of all Subsidiaries of the Corporations. Each Subsidiary is a corporation duly organized, validly existing and in corporate and tax good standing under the laws of its jurisdiction of incorporation with full corporate power and authority to carry on its business as it is now being conducted and to own, operate and lease its properties and assets. Each Subsidiary is duly qualified or licensed to do business and is in corporate and tax good standing in every jurisdiction in which the conduct of its business, the ownership or lease of its properties, require it to be so qualified or licensed. Such jurisdictions are set forth in Schedule 2.2(b) hereto. All of the outstanding shares of the capital stock of each Subsidiary are owned by the Corporations, are duly authorized, validly issued, fully paid and nonassessable, and have been issued in compliance with all applicable securities laws. Each Corporation has good and marketable title to all of the shares of outstanding capital stock of

each Subsidiary, free and clear of all Liens, Contracts or other limitations whatsoever. True, complete and correct copies of each Subsidiary's charter and bylaws as presently in effect are set forth in Schedule 2.2(c) hereto. No shares of capital stock of any Subsidiary are reserved for issuance and there are no outstanding Options, Claims, Contracts, convertible or exchangeable securities or other commitments, contingent or otherwise, relating to the capital stock of any Subsidiary or pursuant to which any Subsidiary is or may become obligated to issue or exchange any shares of capital stock.

2.3 Stock Record Books. The stock record books of the Corporations that have been delivered to the Purchaser for inspection prior to the date hereof are complete and correct in all material respects. The authorized, issued and outstanding capital stock of each Corporation is as set forth in Schedule 2.3 hereto. There are no shares of capital stock of the Corporations held in the treasury of the Corporations and no shares of capital stock of the Corporations are currently reserved for issuance for any purpose or upon the occurrence of any event or condition.

2.4 Books and Records. The corporate minute books of the Corporations that have been made available to the Purchaser for inspection are complete and correct in all material respects and contain all of the proceedings of the shareholders and directors of the Corporations. A true and complete list of the incumbent directors and officers of the Corporations is set forth in Schedule 2.4 hereto. None of the Corporations nor any of their Subsidiaries has any of its records, systems, controls, data or information recorded, stored, maintained, operated or otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) which (including all means of access thereto and therefrom) are not under the exclusive ownership and direct control of any of the Corporations or one of their Subsidiaries.

2.5 Title to Stock. All of the outstanding shares of the capital stock of each of the Corporations are owned by the Sellers, are duly authorized, validly issued, fully paid and nonassessable, are free of all Liens and Contracts, and have been issued in compliance with all applicable securities laws. All of the Shares were acquired from third parties or the Corporations in compliance with all applicable securities laws, free and clear of any rescission rights. There is no outstanding Contract with the Corporations or any other Person to purchase, redeem or otherwise acquire any outstanding shares of the capital stock of the Corporations, or securities or obligations of any kind convertible into any shares of the capital stock of the Corporations. The Corporations have not redeemed any securities in violation of any Contract or Regulation. Upon the exchange of the Merger Consideration to the Sellers at the Closing, the Sellers will convey good and marketable title to the Shares, free and clear of all Liens, Contracts or other limitations whatsoever. The assignments, endorsements, stock powers and other instruments of transfer delivered by the Sellers to the Purchaser at the Closing will be sufficient to transfer the Sellers' entire interest, legal and beneficial, in the Shares to the Purchaser.

2.6 Authorization, Etc.

(a) Each of the Corporations has full power and authority to enter into this Agreement and the agreements contemplated hereby and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this

Agreement and all other agreements and transactions contemplated hereby have been duly authorized by the Board of Directors of the Corporations and no other corporate proceedings on their part are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement and all other agreements contemplated hereby to be entered into by each of the Corporations each constitutes a legal, valid and binding obligation of the Corporations enforceable against the Corporations in accordance with its terms.

(b) Each Seller is the sole owner of and has full right, power and authority to sell and vote the Shares set forth opposite the signature line for such Seller's name below. Each Seller has full power and authority to enter into this Agreement and the agreements contemplated hereby and to deliver the Shares and the certificates evidencing such Shares to the Purchaser as provided for herein, free and clear of all Liens. This Agreement and all other agreements contemplated hereby to be entered into by the Sellers each constitute a legal, valid and binding obligation of the Seller who is a party thereto enforceable against such Seller in accordance with its terms.

2.7 Options and Rights. On the Closing Date there shall be no outstanding Options with respect to any of the Corporations' outstanding capital stock. There are no existing Contracts or Options between a Seller on the one hand, and any other Person, on the other hand, regarding the Shares.

2.8 No Violation. Except as set forth in Schedule 2.8 hereto, the execution, delivery and performance by the Corporations and the Sellers of this Agreement, and all other agreements contemplated hereby, and the fulfillment of and compliance with the respective terms hereof and thereof by the Corporations and the Sellers, do not and will not (a) conflict with or result in a breach of the terms, conditions or provisions of, (b) constitute a default or event of default under (with due notice, lapse of time or both), (c) result in the creation of any Lien upon the Corporations' capital stock or assets pursuant to, (d) give any third party the right to accelerate any obligation under, (e) result in a violation of, or (f) require any authorization, consent, approval, exemption or other action by, notice to, or filing with any Authority pursuant to, the charter or bylaws of the Corporations or any applicable Regulation (including, without limitation, approvals pursuant to the Hart-Scott-Rodino Act), Order or any Contract to which the Corporations, the Sellers or their respective properties or the Shares are subject and which would have a Material Adverse Effect on the Corporations. Each of the Sellers and each Corporation has complied with all applicable Regulations and Orders in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby.

2.9 Financial Statements.

(a) Attached as Schedule 2.9(a) hereto is an audited year-end balance sheet and statement of operations, shareholders' equity and cash flow of HBA Travel, Inc. as of December 31, for the fiscal year 1997, an unaudited year-end balance sheet and statement of operations, shareholders' equity and cash flow of the Corporations as of December 31, 1998 for HBA Travel, Inc. and A.T.T. Marketing, Inc. and unaudited balance sheets for the Corporation as of June 15, 1999. Such balance sheets and the notes thereto fairly



present the financial position of the Corporations at the respective dates thereof, and such statements of operations, changes in shareholders' equity and cash flow and the notes thereto (i) fairly present the results of operations for the periods therein referred to, all in accordance with GAAP (except as stated therein or in the notes thereto), (ii) fairly present the financial condition of the Corporations at the respective date of, and for the period covered by such statements in accordance with GAAP and (iii) were prepared from the books and records of the Corporations, except that the unaudited financial statements have no notes attached thereto and do not have year-end adjustments (none of which would be recurring). All properties used in the Corporations' business operations as of the Financial Statement Date are reflected in the Financial Statements in accordance with and to the extent required by GAAP. The foregoing balance sheet and statements of operations, shareholders' equity and cash flow and the notes thereto are herein collectively referred to as the "Financial Statements" and December 31, 1998 is herein referred to as the "Financial Statement Date."

(b) Except as set forth in Schedule 2.9(b) hereto, the Corporations do not have any material Indebtedness, obligation or liability (whether accrued, absolute, contingent, unliquidated or otherwise, known or unknown to the Corporations, whether due or to become due) arising out of transactions entered into at or prior to the Closing Date, or any state of facts existing at or prior to the Closing Date, other than: (i) liabilities set forth in the Financial Statements (including any notes thereto), or (ii) liabilities and obligations that have arisen after the Financial Statement Date in the ordinary course of business (none of which is a liability resulting from breach of Contract, breach of warranty, tort, infringement or Claim).

(c) Except as otherwise provided in this Agreement, on the Closing Date the Corporations will have no Indebtedness except for (i) Indebtedness set forth on the Financial Statements and (ii) the obligations agreed to by the Purchaser and set forth on Schedule 2.9(b) hereto.

2.10 Employees. Schedule 2.10 sets forth a list of all officers, directors and key employees (meaning those earning more than \$50,000 annually) of the Corporations, together with a description of the rate and basis for their total compensation. The Corporations are in compliance with all Federal, state and local Regulations or Orders affecting employment and employment practices applicable to the Corporations, including terms and conditions of employment and wages and hours. The Corporations have no collective bargaining agreements and, since January 1, 1995, there have been no strikes, work stoppages nor any demands for collective bargaining by any union or labor organization. There is no dispute or controversy with any union or other organization of the Corporations' employees and no arbitration proceedings pending or to the best knowledge of the Corporations threatened involving a dispute or controversy affecting the Corporations. At the Closing the Corporations will not have any material liability to any of their employees, officers or directors other than for the payment of salaries and director fees to be paid in the ordinary course of business.

2.11 Absence of Certain Changes. Since the Financial Statement Date, there has not been any (a) Material Adverse Change in the business, operations, properties, assets, condition

(financial or otherwise), results, plans, strategies or prospects of the Corporations; (b) damage, destruction or loss, whether covered by insurance or not, having a Material Adverse Effect, with regard to the Corporations' property and business; (c) declaration, setting aside or payment of any dividend or distribution (whether in cash, stock or property) in respect of the Corporations' capital stock, or any redemption or other acquisition of such stock by the Corporations; (d) increase in the compensation payable to or to become payable by the Corporations to their officers or employees or any adoption of or increase in any bonus, insurance, pension or other employee benefit plan, payment or arrangement made to, for or with any such officers or employees or any Affiliate of the Corporations; (e) entry into any material Contract not in the ordinary course of business, including without limitation, any borrowing or capital expenditure; (f) change by the Corporations in accounting methods or principles; (g) failure to promptly pay and discharge current liabilities; or (h) Lien placed on any property of the Corporations other than Permitted Liens.

## 2.12 Contracts.

(a) Except as set forth in Schedule 2.12 hereto, as of the Closing Date, the Corporations are not a party to any written or oral: (i) pension, profit sharing, stock option, employee stock purchase or other plan providing for deferred or other compensation to employees or any other employee benefit or any Contract with any labor union; (ii) Contract relating to loans to officers, directors, or Affiliates; (iii) Contract relating to the borrowing of money or the mortgaging, pledging or otherwise placing a Lien on any asset of the Corporations; (iv) Guarantee of any obligation; (v) Contract under which the Corporations have advanced or loaned any Person amounts in the aggregate exceeding \$10,000; (vi) Contract pursuant to which the Corporations are lessors of or permit any third party to hold or operate any property, real or personal, owned or controlled by the Corporations; (vii) warranty Contract with respect to their services rendered or their products sold or leased; (viii) Contract or non-competition provision in any Contract prohibiting them from freely engaging in any business or competing anywhere in the world; (ix) Contracts with independent agents, brokers, dealers or distributors [which provide for annual payments in excess of \$25,000; (x) employment, consulting, sales, commissions, advertising or marketing Contracts; (xi) Contracts providing for "take or pay" or similar unconditional purchase or payment obligations; (xii) Contracts with Persons with which, directly or indirectly, a Seller also has a Contract; (xiii) any other Contract which is material to their operations and business prospects or involves a consideration in excess of \$25,000 annually, excluding any purchase orders in the ordinary course of business; or (xiv) Contract that requires the consent of any party in connection with the execution, delivery or performance of this Agreement.

(b) Each of the Corporations has performed in all material respects all obligations required to be performed by them and is not in default in any respect under or in breach of nor in receipt of any Claim of default or breach under any material Contract to which the Corporation is subject (including without limitation all performance bonds, warranty obligations or otherwise); no event has occurred which with the passage of time or the giving of notice or both would result in a default, breach or event of non-

compliance under any material Contract to which any of the Corporations is subject (including without limitation all performance bonds, warranty obligations or otherwise); none of the Corporations has any present expectation or intention of not fully performing all such obligations; none of the Corporations has any knowledge of any breach or anticipated breach by the other parties to any such Contract to which it is a party.

(c) The Corporations have delivered to the Purchaser true and complete copies of all the Contracts and documents listed in the schedules to this Agreement.

2.13 Year 2000 Compliance. Except as set forth on Schedule 2.13 hereto, as of the Closing Date, all Date Data and Date-Sensitive Systems are Year 2000 Compliant. "Date Data" means any data of any type that includes date information or which is otherwise derived from, dependent on or related to date information. "Date-Sensitive System" means any software, microcode or hardware system or component, including any electronic or electronically controlled system or component, that processes any Date Data and that is installed, in development or on order by the Corporations for their internal use, or that the Corporations sell, lease, license, assign or otherwise provide, or the provision or operation of which the Corporations provide the benefit, to their customers, vendors, suppliers, affiliates or any other third party. "Year 2000 Compliant" means (i) with respect to Date Data, that such data is in proper format and accurate for all dates in the twentieth and twenty-first centuries, and (ii) with respect to Date-Sensitive Systems, that each such system accurately processes all Date Data, including for the twentieth and twenty-first centuries, without loss or any functionality or performance, including but not limited to calculating, comparing, sequencing, storing and displaying such Date Data (including all leap year considerations), when used as a stand-alone system or in combination with other software or hardware. The Corporations have obtained written representations or assurances from each entity that (x) provides Date Data to the Corporations, (y) processes in any way Date Data for the Corporations or otherwise provides any material product or service to the Corporations that is dependent on Year 2000 Compliant Date Data or a Year 2000 Compliant Date-Sensitive System, that all of such entity's Date Data and Date-Sensitive Systems that are used for, or on behalf of, the Corporations are Year 2000 Compliant.

2.14 Title and Related Matters.

(a) Except as set forth in Schedule 2.14(a) hereto, the Corporations have good and marketable title to all real and personal property and other assets reflected in the Financial Statements or acquired after the Financial Statement Date, free and clear of all Liens, except Permitted Liens. All properties used in the Corporations' business operations as of the Financial Statement Date are reflected in the Financial Statements and are reflected therein in accordance with and to the extent required by GAAP, except as to those assets that are leased. Schedule 2.14(b) hereto sets forth a complete and accurate list of all leased assets that have annual rental payments in excess of \$5,000 (including the expiration date of such lease, the name of the lessor, the annual rental payment and whether a consent is required from the lessor to consummate the transactions contemplated hereby).

(i) All the Corporations' leases are in full force and effect, and valid and enforceable in accordance with their respective terms. The Corporations have not received any notice of any, and to the best of their knowledge there exists no event of default or event which constitutes or would constitute (with notice or lapse of time or both) a default by the Corporations or any other Person under any lease.

(ii) All rent and other amounts due and payable with respect to the Corporations' leases have been paid through the date of this Agreement and all rent and other amounts due and payable with respect to the Corporations' leases that are due and payable on or prior to the Closing Date will have been paid prior to the Closing Date.

(iii) All lessors under the Corporations' real property leases have consented (where such consent is necessary) or prior to Closing will have consented (where such consent is necessary) to the consummation of the transactions contemplated by this Agreement without requiring material modification in the rights or obligations thereunder.

(iv) The Corporations have received no written notice that the landlord with respect to any real property lease would refuse to renew such lease upon expiration of the period thereof upon substantially the same terms, except for rent increases consistent with past experience or market rentals.

(b) None of the assets belonging to the Corporations are or will be on the Closing Date subject to any (i) Contracts of sale or lease (except as disclosed in Schedule 2.14(b)), except Contracts for the sale of inventory in the ordinary and regular course of business or (ii) Liens, except for Permitted Liens and the Liens set forth in Schedule 2.14(c) hereto. Except as set forth in Schedule 2.14(c) hereto, the buildings, structures and improvements included within the Corporations' real property (collectively, the "Improvements") comply in all material respects with all applicable restrictions, building ordinances and zoning ordinances and all Regulations, and no material alteration, repair, improvement or other work that could give rise to a Lien has been performed in respect to such Improvements within the last 120 days. The Improvements and the mechanical systems situated therein, including without limitation the heating, electrical, air conditioning and plumbing systems, are in good operating condition and repair, ordinary wear and tear excepted, and are adequate and suitable for the purposes for which they are presently being used, and the roof of each Improvement is in satisfactory condition and is not in need of current repair. The Corporations' real property and its continued use, occupancy and operation as currently used, occupied and operated does not constitute a nonconforming use under any Regulation or Order affecting the real property (other than possible set back violations, none of which will have a Material Adverse Effect on the Corporations' real property or its continued use, occupancy and operation as currently used, occupied and operated), and the continued existence, use, occupancy and operation of each Improvement, and the right and ability to repair and/or rebuild such Improvements in the event of casualty, is not dependent on any special Permit, exception, approval or

variance. There is no pending, threatened or proposed proceeding or governmental action to modify the zoning classification of, or to take by the power of eminent domain (or to purchase in lieu thereof), or to classify as a landmark, or to impose special assessments on, or otherwise to take or restrict in any way the right to use, develop or alter, all or any part of the Corporations' real property which would have a Material Adverse Effect. There are no encroachments upon any of the Corporations' real property, and no portion of any Improvement owned by the Corporations, encroaches upon any property not included within the Corporations' real property or upon the area of any easement affecting the Corporations' real property. Each Improvement has direct access, adequate for the operation of the business of the Corporations, in the ordinary course, to a public street adjoining the Corporations' real property on which such Improvement is situated, and no existing way of access to any Improvement crosses or encroaches upon any property or property interest not owned by the Corporations.

(c) There has not been since the Financial Statement Date and will not be prior to the Closing Date, any sale, lease, or any other disposition or distribution by any of the Corporations of any of their assets or properties, now or hereafter owned by it, except transactions in the ordinary and regular course of business or as otherwise consented to by the Purchaser. After the Closing, the Purchaser will own, or have the unrestricted right to use all properties and assets that are currently used in connection with the Corporations' businesses.

2.15 Litigation. Except as set forth in Schedule 2.15 hereto, there is no Claim pending or, to the best knowledge of the Corporations, threatened against the Corporations which, if adversely determined, would have a Material Adverse Effect on the Corporations, nor is there any Order outstanding against the Corporations having, or which, insofar as can be reasonably foreseen, in the future may have, a Material Adverse Effect on the Corporations.

2.16 Tax Matters.

(a) Except as set forth on Schedule 2.16(a) hereto, the Corporations each have filed all Tax Returns required to be filed and have duly paid all relevant Taxes due or claimed to be due by all Taxing Authorities. The Corporations have not requested any extension of time within which to file or send any Tax Return. All Taxes applicable for all periods prior to the date hereof have been paid or fully reserved against on the Financial Statements in accordance with GAAP, except as provided in Schedule 2.16(a) hereto. From the date hereof until the Closing Date, the Corporations shall fully reserve on their financial statements all amounts necessary for the payment of all Taxes that have accrued up to and including the Closing Date. All Taxes which are required to be withheld or collected by the Corporations have been duly withheld or collected and, to the extent required, have been paid to the proper Taxing Authority or properly segregated or deposited as required by applicable law. The Corporations have disclosed on their Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income tax within the meaning of section 6662 of the Code. There are no Liens for Taxes upon any property or assets of either Corporation, except for Liens for Taxes not yet due and payable. The Corporations have not executed any waiver of the statute of

limitations on the right of the Internal Revenue Service or any other Taxing Authority to assess additional Taxes or to contest the income or loss with respect to any Tax Return. No Claim has ever been made by a Taxing Authority in a jurisdiction where the Corporations do not file Tax Returns that they are or may be subject to taxation by that jurisdiction. The Corporations have not been a member of an affiliated group filing consolidated or combined federal, state, local or foreign income Tax Returns or have any liability for the Taxes of any other Person under Treasury regulation § 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract, or otherwise. The basis of any depreciable assets, and the methods used in determining allowable depreciation (including cost recovery), of the Corporations, are, to the best knowledge of the Corporations, correct and in compliance with the Code.

(b) No issues have been raised that are currently pending by any Taxing Authority in connection with any Tax Returns. No material issues have been raised in any examination by any Taxing Authority with respect to the Corporations which, by application of similar principles, reasonably could be expected to result in a proposed deficiency for any other period not so examined. There are no unresolved issues or unpaid deficiencies relating to such examinations. The items relating to the business, properties or operations of the Corporations on the Tax Returns filed by the Corporations for all taxable years (including the supporting schedules filed therewith), available copies of which have been supplied (or will be promptly supplied upon request) to the Purchaser, state accurately, in all material respects the information requested with respect to the Corporations and such information was derived from the Corporations' books and records.

(c) The Corporations are not subject to any joint venture, partnership, or other arrangement or Contract which is treated as a partnership for federal income tax purposes. The Corporations are not party to any tax sharing agreement.

(d) The Corporations have not filed a consent under Section 341(f) of the Code or comparable provisions of any state statutes.

(e) Schedule 2.16(e) hereto lists all federal, state, local and foreign income Tax Returns and all other Tax Returns for which the annual tax liability is at least \$25,000 for taxable periods ending on or after December 31, 1996, if applicable and indicates those Tax Returns that have been audited and those that are the subject of audit.

(f) None of the assets of the Corporations constitute tax-exempt bond financed property or tax exempt use property within the meaning of Section 168 of the Code, and none of the assets of the Corporations are subject to a lease, safe harbor lease, or other arrangement as a result of which the Corporations are not treated as the owner for federal income tax purposes.

(g) The Corporations have not made any payments, are not obligated to make any payments nor are a party to any agreement that under certain circumstances could

obligate them to make any payments that will not be deductible under Section 280G of the Code.

(h) The Corporations are not foreign corporations within the meaning of Section 897(a) of the Code and will provide the Purchaser with the appropriate certification described in Treas. Reg. 1.1445-2 on the Closing Date.

(i) Except as set forth on Schedule 2.16(i) hereto, no power of attorney has been granted by the Corporations with respect to any matter relating to Taxes which is currently in force.

**2.17 Compliance with Law and Applicable Government Regulations.** The Corporations are presently in compliance with regard to their operations, practices, real property, plants, structures, machinery, equipment and other property, and all other aspects of their businesses, with all applicable Regulations and Orders, including, but not limited to, all Regulations relating to the safe conduct of business, environmental protection, quality and labeling, antitrust, Taxes, consumer protection, equal opportunity, discrimination, health, sanitation, fire, zoning, building and occupational safety. There are no Claims pending, or threatened, nor have the Corporations received any written notice, regarding any violations of any Regulations and Orders enforced by any Authority claiming jurisdiction over the Corporations including any requirement of OSHA or any pollution and environmental control agency (including air and water).

**2.18 ERISA and Related Matters.** Neither the Sellers, nor any ERISA Affiliate of the Sellers, is a party to or participates in or has any liability or contingent liability with respect to: (i) any "employee welfare benefit plan" or "employee pension benefit plan" or "multiemployer plan" (as those terms are respectively defined in Sections 3(1), 3(2) and 3(37) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")); or (ii) any retirement or deferred compensation plan, incentive compensation plan, stock plan, unemployment compensation plan, vacation pay, severance pay, bonus or benefit arrangement, insurance or hospitalization program or any other fringe benefit arrangements for any employee, director, consultant or agent, whether pursuant to Contract, arrangement, custom or informal understanding, which does not constitute an "employee benefit plan" (as defined in Section 3(3) of ERISA).

**2.19 Intellectual Property.**

(a) The operation of the businesses of the Corporations require no Proprietary Rights other than the Rights listed on Schedule 2.19(a) hereto and rights granted to the Corporations pursuant to Contracts listed on Schedule 2.19(a). Within the six year period immediately prior to the date of this Agreement, the businesses of the Corporations made use of no Proprietary Rights other than the Proprietary Rights listed on Schedule 2.19(a) and Proprietary Rights granted to the Corporations pursuant to Contracts listed on Schedule 2.19(a). Except as otherwise set forth on Schedule 2.19(a), the Corporations own all right, title and interest in the Proprietary Rights listed on Schedule 2.19(a) including, without limitation, exclusive rights to use and license the same. Each item of Proprietary Rights listed on Schedule 2.19(a) has been duly registered with, filed in, or issued by the appropriate domestic or foreign governmental agency, to the extent required,

and each such registration, filing and issuance remains in full force and effect. Except as set forth on Schedule 2.19(a), no Claim adverse to the interests of the Corporations in the Proprietary Rights or Contracts listed in Schedule 2.19(a) has been made in litigation or otherwise. Schedule 2.19(a) hereto sets forth a complete and accurate list of all of the Corporations' Proprietary Rights, together with a copy of any assignment, license or Contract related thereto. The Corporations have delivered to the Purchaser correct and complete copies of all Proprietary Rights (that are in written form) as amended to date and have made available to the Purchaser correct and complete copies of all other written documentation evidencing ownership of, and any Claims relating to, each such item. The Corporations have taken all reasonable measures to protect the proprietary nature of each Proprietary Right, and to maintain in confidence all trade secrets and confidential information that they own or use.

(b) To the knowledge of the Corporations, (i) no other Person has any rights to any of the Proprietary Rights owned or used by the Corporations except pursuant to agreements or licenses specified in Schedule 2.19(b) hereto, (ii) no other Person is infringing, violating or misappropriating any such Proprietary Right that the Corporations own or use, and (iii) no Proprietary Right is subject to any Outstanding Order or Claim.

(c) The current software applications used by the Corporations in the operation of their business, as set forth and described on Schedule 2.19(c) hereto (the "Software"), to the extent it has been designed or developed by the Corporations' management information or development staffs or by consultants on the Corporations' behalf, is original and capable of copyright protection in the United States, and the Corporations have complete rights to and ownership of such Software. No part of any such Software is an imitation or copy of, or infringes upon, the software of any other Person or violates or infringes upon any common law or statutory rights of any other person, including, without limitation, rights relating to defamation, contractual rights, copyrights, trade secrets, and rights of privacy or publicity. The Corporations have not sold, assigned, licensed, distributed or in any other way disposed of or encumbered the Software. The Software, to the extent it is licensed from any third party licensor or constitutes "off-the-shelf" software, is held by the Corporations legitimately and is fully transferable to the Purchaser without any third party consent. All of the Corporations' computer hardware has legitimately-licensed software installed therein. The Corporations warrant that the Software is free from any significant software defect or programming or documentation error, operates and runs in a reasonable and efficient business manner, conforms to the specifications thereof, and, with respect to owned Software, the applications can be recreated from their associated source code. The Corporations have not knowingly altered the data or any Software or supporting software which may, in turn, damage the integrity of the data stored in electronic, optical or magnetic form. The Corporations have furnished all documentation relating to the use, maintenance and operation of the Software, all of which, to the knowledge of the Corporations, is true and accurate.

2.20 Customer Warranties. There are no pending, nor to the best knowledge of the Corporations, threatened, any Claims, under or pursuant to any warranty, whether expressed or



implied, on products or services sold prior to the Closing Date by the Corporations that are not disclosed or referred to in the Financial Statements and that are not fully reserved against. Set forth hereto on Schedule 2.20 are the standard terms and conditions of sale or lease and the aggregate amount of warranty Claims incurred by the Corporations in fulfillment of their obligation under any Guarantee. There is no reason to expect an increase in warranty claims in the future.

2.21 Environmental Matters. Except as disclosed in Schedule 2.21: (a) neither the Corporations' businesses nor the operation thereof violates any applicable Environmental Law in effect as of the date hereof and no condition or Occurrence which, with notice or the passage of time or both, would constitute a violation of any Environmental Law; (b) the Corporations are in possession of all Environmental Permits required under any applicable Environmental Law for the conduct or operation of the Corporations' businesses (or any part thereof), and the Corporations are in full compliance with all of the requirements and limitations included in such Environmental Permits; (c) the Corporations have not stored or used any pollutants, contaminants or hazardous or toxic wastes, substances or materials on or at any of their property or facilities except for inventories of chemicals which are used or to be used in the ordinary course of the Corporations' businesses (which inventories have been sorted or used in accordance with all applicable Environmental Permits and all Environmental Laws, including all so-called "Right to Know" laws); (d) the Corporations have not received any notice from any Authority or any private Person that the Corporations' businesses or the operation of any of their facilities is in violation of any Environmental Law or any Environmental Permit or that they are responsible (or potentially responsible) for the cleanup of any pollutants, contaminants, or hazardous or toxic wastes, substances or materials at, on or beneath any of the Corporations' properties, or at, on or beneath any land adjacent thereto or in connection with any waste or contamination site; (e) the Corporations are not the subject of any Federal, state, local, or private Claim involving a demand for damages or other potential liability with respect to a violation of Environmental Laws or under any common law theories relating to operations or the condition of any facilities or property (including underlying groundwater) owned, leased, or operated by the Corporations; (f) the Corporations have not buried, dumped, disposed, spilled or released any pollutants, contaminants or hazardous or wastes, substances or materials on, beneath or adjacent to any of their properties or any property adjacent thereto; (g) no by-products of any manufacturing or mining process employed in the operation of the Corporations' businesses which may constitute pollutants, contaminants or hazardous or toxic wastes, substances or materials under any Environmental Law are currently stored or otherwise located on any of the Corporations' properties; (h) no property now or previously owned, leased or operated by the Corporations, is listed or proposed for listing on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any other federal or state list of sites requiring investigation or clean-up; (i) there are no underground storage tanks, active or abandoned, including petroleum storage tanks, on or under any property now or previously owned, leased or operated by the Corporations; (j) the Corporations have not directly transported or directly arranged for the transportation of any Hazardous Material to any location which is listed or proposed for listing on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any federal or state list or which is the subject of federal, state or local enforcement actions or other investigations which may lead to material Claims against the Corporations for any remedial work, damage to natural resources or personal injury, including

claims under CERCLA; and (k) there are no polychlorinated biphenyls, radioactive materials or friable asbestos present at any property now or previously owned or leased by the Corporations. The Corporations have timely filed all reports required to be filed with respect to all of their property and facilities and has generated and maintained all required data, documentation and records under all applicable Environmental Laws.

**2.22 Capital Expenditures and Investments.** The Corporations have outstanding Contracts for capital expenditures and investments as set forth in Schedule 2.22 hereto which includes a schedule of all monies disbursed on account of capital expenditures and investments made by the Corporations since the Financial Statement Date.

**2.23 Dealings with Affiliates.** Schedule 2.23(a) hereto sets forth a complete and accurate list, including the parties, of all oral or written Contracts to which the Corporations are, will be or have been a party and to which any one or more Affiliates or Sellers is also a party. Except as set forth on Schedule 2.23(b) hereto, since December 31, 1995, the Corporations have not made any payments, loaned any funds or property or made any credit arrangement with any Seller, Affiliate or employee of the Corporations except for the payment of employee salaries and director compensation in the ordinary course of business.

**2.24 Insurance.** Each Corporation currently has, and through the Closing Date will have, Policies in full force and effect that provide for coverages that are usual and customary as to amount and scope in the business of the Corporation. All of the Policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the Closing Date have been paid or accrued therefor, and no notice of cancellation or termination has been received with respect to any Policy. Schedule 2.24 hereto sets forth a complete and accurate summary of all Policies, including name of insurer, the types, dates and amounts of coverage, and any material coverage exclusion. Neither Corporation has breached or otherwise failed to perform in any material respects its obligations under any of the Policies nor has either Corporation received any adverse notice or communication from any of the insurers party to the Policies with respect to any such alleged breach or failure in connection with any of the Policies. All Policies are sufficient for compliance with all Regulations and all Contracts to which the Corporations are subject, are to the Corporations' knowledge valid, outstanding, collectible and enforceable policies, and will not in any way be affected by, or terminate or lapse by reason of, the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby. Except as set forth in Schedule 2.24 hereto, all of the Policies remain in full force and effect through thirty (30) days after the Closing Date. The Corporations have not during the last five years been refused any insurance with respect to their assets or operations, nor has coverage ever been limited by any insurance carrier to which the Corporations have applied for any Policy or with which they have carried a Policy.

**2.25 Accounts Receivable.** The accounts receivable of the Corporations reflected in the Financial Statements and such additional accounts receivable as are reflected on the books of the Corporations on the date hereof are good and collectible except to the extent reserved against thereon (which reserves have been determined based upon actual prior experience and are consistent with prior practices). All such accounts receivable (except to the extent so reserved against) are valid, genuine and subsisting, arise out of bona fide sales and deliveries of goods,

performance of services or other business transactions and are not subject to defenses, set-offs or counterclaims.

2.26 Brokerage. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement binding upon the Corporations.

2.27 Customers and Suppliers. No unfilled customer order or commitment obligating the Corporations to process, manufacture or deliver products or perform services will result in a loss to the Corporations upon completion of performance. No purchase order or commitment of the Corporations is in excess of normal requirements, nor are prices provided therein in excess of current market prices for the products or services to be provided thereunder. No material supplier of the Corporations has advised the Corporations in writing within the past year that it will stop, or decrease the rate of, supplying materials, products, or services to the Corporations and no material customer of the Corporations has advised the Corporations in writing within the past year that it will stop, or decrease the rate of, buying materials, products or services from the Corporations. Schedule 2.27 hereto sets forth a complete and accurate list of (a) each customer that accounted for more than 5% of the consolidated revenues of the Corporations during the last full fiscal year and the interim period through the Financial Statement Date and the amount of revenues accounted for by such customer during each such period and (b) each supplier that is the sole supplier of any significant product or component to the Corporations. The consummation of the transactions contemplated hereby will not have a Material Adverse Effect on either Corporation's relationship with any customer or supplier listed on Schedule 2.27.

2.28 Permits. The Permits listed on Schedule 2.28 hereto are the only Permits that are required for the Corporations to conduct their business as presently conducted, except for those the absence of which would not have any Material Adverse Effect on the assets, financial condition, results of operations or future prospects of the Corporations. Each such Permit is in full force and effect and, to the best of the knowledge of the Corporations, no suspension or cancellation of any such Permit is threatened and there is no basis for believing that such Permit will not be renewable upon expiration.

2.29 Utilities. The Corporations have sufficient power, fuel oil, natural gas and water supplies and adequate sewerage and waste disposal systems for the operation of their business as presently conducted, and, to the best of either Corporation's knowledge, all such supplies and systems will be available after the Closing. To the best of either Corporation's knowledge, except as disclosed in Schedule 2.29 hereto, all such systems are in full compliance with all federal, state and local environmental and other Closing Regulations.

2.30 Improper and Other Payments. Except as set forth on Schedule 2.30 hereto, (a) neither the Corporations, any director, officer, employee thereof, nor, to the Corporations' knowledge, any agent or representative of the Corporations nor any Person acting on behalf of any of them, has made, paid or received any unlawful bribes, kickbacks or other similar payments to or from any Person or Authority, (b) no contributions have been made, directly or indirectly, to a domestic or foreign political party or candidate, (c) no improper foreign payment (as defined in the Foreign Corrupt Practices Act) has been made, and (d) the internal accounting controls of the

Corporations are believed by the Corporations' management to be adequate to detect any of the foregoing under current circumstances.

2.31 Knowledge of the Sellers. Where any representation or warranty contained in this Agreement is expressly qualified by reference to the best knowledge, information and belief of the Sellers, the Sellers confirm that they have made due and diligent inquiry as to the matters that are the subject of such representations and warranties.

2.32 Disclosure. Neither this Agreement nor any of the exhibits, attachments, written statements, documents, certificates or other items prepared for or supplied to the Purchaser by or on behalf of the Corporations or the Sellers with respect to the transactions contemplated hereby contains any untrue statement of a material fact or omits a material fact necessary to make each statement contained herein or therein not misleading. There is no fact which the Sellers or the Corporations have not disclosed to the Purchaser herein and of which the Sellers or the Corporations, or any of their respective officers, directors or executive employees is aware and which could reasonably be anticipated to have a Material Adverse Effect on the Corporations or the ability of the Purchaser to continue the businesses of the Corporations in the same manner as the Corporations conducted their businesses prior to the Closing Date. The Corporations have disclosed to the Purchaser all material information relating to the business of the Corporations or the transactions contemplated by this Agreement.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Sellers as follows as of the date hereof and as of the Closing Date:

3.1 Corporate Organization, Etc. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation with full corporate power and authority to carry on its business as it is now being conducted and to own, operate and lease its properties and assets. The Purchaser is duly qualified or licensed to do business and is in corporate and tax good standing in every jurisdiction in which the conduct of its business, the ownership or lease of its properties, or the execution of, and performance of the transactions contemplated by, this Agreement, require it to be so qualified or licensed.

3.2 Authorization, Etc. The Purchaser has full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby and thereby. The Board of Directors of the Purchaser has duly authorized the execution, delivery and performance of this Agreement and to consummate the transactions contemplated hereby, and no other corporate proceedings on their part are necessary to authorize this Agreement and the transactions contemplated hereby and thereby. This Agreement constitutes the legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms.

3.3 No Violation. Except as set forth in Schedule 3.3 hereto, the execution, delivery and performance by the Purchaser of this Agreement, and all other agreements contemplated hereby, and the fulfillment of and compliance with the respective terms hereof and thereof by the Purchaser, do not and will not (a) conflict with or result in a breach of the terms, conditions or provisions of, (b) result in a violation of, or (c) require any authorization, consent, approval, exemption or other action by, or notice to, or filing with any court or Authority pursuant to, the charter or bylaws of the Purchaser or, to the best knowledge of the Purchaser, any applicable Regulation (including, without limitation, approvals pursuant to the Hart-Scott-Rodino Act), Order or any Contract to which the Purchaser, or its properties are subject. The Purchaser will comply in all material respects with all applicable Regulations and Orders in connection with its execution, delivery and performance of this Agreement and the transactions contemplated hereby.

3.4 Investment Intent. The Purchaser represents and warrants to the Sellers that it is purchasing the Shares for investment purposes and not with a view to distribution thereof and agrees that it shall not make any sale, transfer or other disposition of the Shares in violation of any applicable securities law.

#### ARTICLE IV

##### COVENANTS OF THE CORPORATIONS AND THE SELLERS

Until the Closing Date, except as otherwise consented to or approved by the Purchaser in writing, the Corporations and the Sellers agree that they shall act, or refrain from acting where required hereinafter, to comply (and in the case of the Sellers, to cause the Corporations to comply) with the following:

4.1 Regular Course of Business. Each Corporation shall operate its business diligently and in good faith, consistent with past management practices; shall maintain all of its properties in customary repair, order and condition, reasonable wear and tear excepted; shall maintain (except for expiration due to lapse of time) all leases and Contracts in effect without change except as expressly provided herein; shall comply in all material respects with the provisions of all Regulations and Orders applicable to the Corporation and the conduct of its business; shall not cancel, release, waive or compromise any debt, Claim or right in its favor having a value in excess of \$5,000 other than in connection with returns for credit or replacement in the ordinary course of business; shall not alter the rate or basis of compensation of any of its officers, directors or employees other than in the ordinary course of business; and shall maintain insurance coverage up to the Closing Date with the coverage and in the amounts set forth in Schedule 2.24 hereto.

4.2 Amendments. Except as required for the transactions contemplated in this Agreement, no change or amendment shall be made in the charter or bylaws of either Corporation. The Corporations shall not merge into or consolidate with any other Person or change the character of their business.

4.3 Capital Changes; Pledges. The Corporations shall not issue or sell any shares of their capital stock of any class or issue or sell any securities convertible into, or Options to

subscribe for any shares of their capital stock and the Corporations shall not pledge or otherwise encumber any shares of their capital stock. In addition, the Corporations shall not allow the transfer of any Shares of their capital stock on the stock transfer ledger or other books and records.

4.4 Dividends. The Corporations shall not declare, pay or set aside for payment any dividend or other distribution in respect of their capital stock, nor shall the Corporations, directly or indirectly, redeem, purchase or otherwise acquire any shares of their capital stock.

4.5 Capital and Other Expenditures. The Corporations shall not make any capital expenditures, or commitments with respect thereto, except as provided in Section 2.22. The Corporations shall not make any loan or advance to any Affiliate and shall collect in full any amounts outstanding now due from any Affiliate.

4.6 Borrowing. The Corporations shall not incur, assume or Guarantee any Indebtedness not reflected on the Financial Statements except in the ordinary course of business under existing credit facilities or for purposes of consummation of transactions contemplated by this Agreement and in any case only after consultation with the Purchaser.

4.7 Other Commitments. Except as set forth in this Agreement, incurred or transacted in the ordinary course of business, or permitted in writing by the Purchaser, the Corporations shall not enter into any transaction or make any commitment or incur any obligation (including entering into any real property leases).

4.8 Interim Financial Information and Audit. The Corporations shall supply the Purchaser with unaudited monthly operating statements within thirty (30) days after the end of each month ending between the date hereof and the Closing Date, certified by the Corporations' chief financial officers as having been prepared in accordance with procedures employed by the Corporations in preparing prior monthly operating statements and certifying that such financial statements were prepared in accordance with GAAP applied on a basis consistent with the Financial Statements and include all adjustments (all of which were normal recurring adjustments) necessary to fairly present, in all material respects, the Corporations' financial position, results of operations and changes in financial position at and for such period.

4.9 Full Access and Disclosure.

(a) The Corporations shall afford to the Purchaser and its counsel, accountants, agents and other authorized representatives and to financial institutions specified by the Purchaser reasonable access during business hours to the Corporations' plants, properties, books and records in order that the Purchaser may have full opportunity to make such reasonable investigations as it shall desire to make of the affairs of the Corporations; and the Corporations shall cause their officers, employees and auditors to furnish such additional financial and operating data and other information as the Purchaser shall from time to time reasonably request including, without limitation, any internal control recommendations made by its independent auditors in connection with any audit of the Corporations.

(b) From time to time prior to the Closing Date, the Corporations shall promptly supplement or amend information previously delivered to the Purchaser with respect to any matter hereafter arising which, if existing or occurring at the date of this Agreement, would have been required to be set forth or disclosed; provided, however, that such supplemental information shall not be deemed to be an amendment to any schedule or exhibit hereto.

4.10 Breach of Agreement. The Corporations shall not take any action which if taken prior to the Closing Date would constitute a breach of this Agreement. The Corporations shall not allow any of their Subsidiaries to take any action prohibited by this Article IV or refrain from taking any action required by this Article IV.

4.11 Action of Shareholders of the Corporations; Voting and Disposition of the Shares. The Corporations shall take all action necessary, in accordance with the Shareholders Agreement and their respective articles of incorporation, as amended, and bylaws, to convene a meeting of the holders of the outstanding Shares (the "Special Meeting") as promptly as practicable after the execution of this Agreement to consider and vote upon the Merger and shall solicit proxies from their shareholders pursuant to proxy materials approved by the Purchaser's counsel which recommend that such shareholders vote in favor of the Merger, all in accordance with the Corporations' and their directors' fiduciary duty to the Corporations' shareholders and subject to the requirements of applicable law. The affirmative vote of holders of outstanding Shares required for approval of the Merger shall be no less than the [majority] of the outstanding Shares. At the Special Meeting, the Sellers shall, pursuant to Section 6.4, vote, or cause to be voted, all of the Shares then owned by any of them in favor of the Merger.

4.12 Fulfillment of Conditions Precedent. The Corporations and Sellers shall use their best efforts to obtain at their expense all such waivers, Permits, consents, approvals or other authorizations from third parties and Authorities, and to do all things as may be necessary or desirable in connection with transactions contemplated by this Agreement.

## ARTICLE V

### COVENANTS OF THE PURCHASER

The Purchaser hereby covenants and agrees with the Corporations and the Sellers that:

5.1 Confidentiality. The Purchaser agrees that unless and until the transactions contemplated hereby have been consummated, the Purchaser and its representatives and its Affiliates and their representatives and advisors will hold in strict confidence all data and information obtained from the Sellers, the Corporations or any of their Affiliates in connection with the transactions contemplated hereby, except any of the same which (i) was, is now, or becomes generally available to the public (but not as a result of a breach of any duty of confidentiality by which the Purchaser and its representatives and its Affiliates and their representatives and advisors is bound); (ii) was known to the Purchaser prior to its disclosure to the Purchaser as demonstrated by Purchaser's written records; or (iii) is disclosed to the

Purchaser by a third party not subject to any duty of confidentiality to the Sellers, the Corporations or any of their Affiliates prior to its disclosure to the Purchaser by the Sellers, the Corporations or any of their Affiliates. The Purchaser will use such data and information solely for the specific purpose of evaluating the transactions contemplated hereby. If this Agreement is terminated, the Purchaser and its Affiliates and their representatives and advisors will promptly return to the Sellers all such data, information and other written material (including all copies thereof) which has been obtained by the Purchaser, and the Purchaser will make no further use whatsoever of any of such or the information and knowledge contained therein or derived therefrom.

5.2 ARC Approval. The Purchaser agrees that unless and until the Surviving Corporation receives ARC Approval, the Surviving Corporation cannot and will not issue any airline tickets without the consent of one of the current officers or directors of the Corporations, unless issued in the ordinary course of business.

## ARTICLE VI

### OTHER AGREEMENTS

The parties further agree as follows:

6.1 Agreement to Defend. In the event any action, suit, proceeding or investigation of the nature specified in Section 7.5 or Section 8.3 hereof is commenced, whether before or after the Closing Date, all the parties hereto agree to cooperate and use their best efforts to defend against and respond thereto.

6.2 Further Assurances. Subject to the terms and conditions of this Agreement, the parties hereto shall use their best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable Regulations and Orders to consummate and make effective as promptly as possible the transactions contemplated by this Agreement, and to cooperate with each other in connection with the foregoing, including without limitation using all reasonable efforts (a) to obtain all necessary waivers, consents, and approvals from other parties to loan agreements, leases, mortgages and other Contracts, (b) to obtain all necessary Permits, consents, approvals and authorizations as are required to be obtained under any Regulation, (c) to lift or rescind any injunction or restraining order or other Order adversely affecting the ability of the parties to consummate the transactions contemplated hereby, (d) to effect all necessary registrations and filings including, but not limited to, filings under the Hart-Scott-Rodino Act and submissions of information requested by Authorities, and (e) to fulfill all conditions to the obligations of the parties under this Agreement. Each of the Purchaser and each Corporation further covenants and agrees that it shall use its respective best efforts to prevent, with respect to a threatened or pending preliminary or permanent injunction or other Regulation or Order the entry, enactment or promulgation thereof, as the case may be.

6.3 No Solicitation or Negotiation. Unless and until this Agreement is terminated, neither the Sellers, the Corporations nor any Subsidiary shall, and shall use its best efforts to cause



its directors, officers, employees, representatives, agents, advisors, accountants and attorneys not to, initiate or solicit, directly or indirectly, any inquiries or the making of any proposal with respect to, or engage in negotiations concerning, or provide any confidential information or data to any Person with respect to, or have any discussions with any Person relating to, any acquisition, business combination or purchase of all or any significant asset of, or any equity interest in, directly or indirectly, the Corporations or any Subsidiary, or otherwise facilitate any effort or attempt to do or seek any of the foregoing, and shall immediately cease and cause to be terminated any existing activities, discussions or negotiations with any parties conducted heretofore with respect to any of the foregoing.

**6.4 Voting Agreement and Grant of Proxy.** Each Seller revokes any and all previous proxies with respect to such Seller's Shares, and agrees that all of such Seller's Shares, and any other Shares which such Seller may own, or have the power to vote, at the time a vote is taken on the Merger, will be voted (a) in favor of the Merger and the transactions contemplated thereby, (b) on any other matters in a manner which will effectuate the intent of this Agreement and the Merger, (c) against any other mergers, recapitalizations, business combinations, liquidations or similar transactions involving the Corporations or any Subsidiary, or any other matters which would be inconsistent herewith or with the transactions contemplated hereby. In furtherance of the Seller's voting agreement in this Section 6.4, each Seller hereby grants to the Purchaser and such individuals or corporations as the Purchaser may designate an irrevocable proxy to vote all of the Shares owned by Seller in accordance with this Section 6.4 on any matters which may be presented to shareholders of the Corporations during the term of this Agreement relating to or impeding the Merger. Each Seller hereby agrees that the proxy granted hereby is coupled with an interest and further agree to execute such additional documents as the Purchaser may reasonably request to effectuate its voting rights under this Section 6.4.

**6.5 No Termination of Sellers' Obligations by Subsequent Incapacity, Dissolution, Etc.** Each Seller specifically agrees that the obligations of such Seller hereunder, including, without limitation, obligations pursuant to Article XI and Section 6.4 shall not be terminated by the dissolution of such Seller, by operation of law or by the death or incapacity of any individual Seller.

**6.6 Deliveries After Closing.** From time to time after the Closing, at the Purchaser's request and without expense to the Corporations or any Subsidiary and without further consideration from the Purchaser, the Corporations or any Subsidiary, the Sellers shall execute and deliver such other instruments of conveyance and transfer and take such other action as the Purchaser reasonably may require to convey, transfer to and vest in the Purchaser and to put the Purchaser in possession of any rights or property to be sold, conveyed, transferred and delivered hereunder.

**6.7 Non-Competition.** During the "Restricted Period" (as hereinafter defined), each Seller agrees not to, directly or indirectly, alone or as a partner, officer, director, employee, consultant, agent, independent contractor, member or stockholder of any company or Person, engage in any business activity, including but not limited to any business activity related to the Surviving Corporation, in the "Restricted Area" (as hereinafter defined) which is directly or indirectly related to the internet travel and/or vacation business or otherwise in competition with

the products or services being developed, manufactured, marketed, sold or otherwise provided by the Corporations or which is directly or indirectly detrimental to the business of the Corporations or any Subsidiary; provided, however, that the record or beneficial ownership by a Seller of five percent (5%) or less of the outstanding publicly traded capital stock of any such company or Person for investment purposes shall not be deemed to be in violation of this Section 6 so long as a Seller is not an officer, director, employee or consultant of such company or Person. The Sellers further agree that, during the Restricted Period, the Sellers shall not in any capacity, either separately, jointly or in association with others, directly or indirectly do any of the following: (a) employ or seek to employ any Person or agent who is then employed or retained by the Corporations or any Subsidiary (or who was so employed or retained at any time within the two (2) years prior to the date the Seller employs or seeks to employ such person); and (b) solicit, induce, or influence any proprietor, partner, stockholder, lender, director, officer, employee, joint venturer, investor, consultant, agent, lessor, supplier, customer or any other Person which has a business relationship with the Corporations or any Subsidiary, at any time during the Restricted Period, to discontinue or reduce or modify the extent of such relationship with the Corporations or any Subsidiary. The "Restricted Period" shall mean one (1) year after the date of this Agreement, unless specifically stipulated otherwise in a separate agreement. The "Restricted Area" shall mean the United States of America.

6.8 Public Announcements. Neither the Sellers, the Corporations nor the Purchaser nor any Affiliate, representative or shareholder of either of such persons, shall disclose any of the terms of this Agreement to any third party without the other party's prior written consent. The form, content and timing of all press releases, public announcements or publicity statements with respect to this Agreement and transactions contemplated hereby shall be subject to the prior approval of both the Sellers and the Purchaser, which approval shall not be unreasonably withheld. No press releases, public announcements or publicity statements shall be released by either party without such prior mutual agreement.

6.9 Hart-Scott-Rodino Act. Each of the Parties shall promptly file any Notification and Report Forms and related material that it may be required to file with the Federal Trade Commission and the Antitrust Division of the United States Department of Justice under the Hart-Scott-Rodino Act, shall use its best efforts to obtain an early termination of the applicable waiting period, and shall make any further filings or information submissions pursuant thereto that may be necessary, proper or advisable. Notwithstanding any other provision in this Agreement, the Purchaser shall not be obligated to respond to formal requests for additional information or documentary material pursuant to 16 C.F.R. 803.20 under the Hart-Scott-Rodino Act.

## ARTICLE VII

### CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER

Each and every obligation of the Purchaser under this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each of the following conditions unless waived in writing by the Purchaser:

7.1 Representations and Warranties: Performance. The representations and warranties of the Corporations and the Sellers contained in Article II and elsewhere in this Agreement and all information contained in any exhibit or schedule hereto delivered by, or on behalf of, the Corporations or the Sellers, to the Purchaser, shall be true and correct when made and on the Closing Date as though then made, except as expressly provided herein. The Corporations and the Sellers shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed and complied with by them prior to the Closing Date. The presidents of the Corporations shall have delivered to the Purchaser a certificate (which shall be addressed to the Purchaser and its lenders), dated the Closing Date, in the form designated Exhibit 7.1 hereto, certifying to the foregoing.

7.2 Consents and Approvals. The Purchaser and the Corporations shall have obtained any and all consents, approvals, Orders, qualifications, licenses, Permits or other authorizations, including compliance with the Hart-Scott-Rodino Act, required by all applicable Regulations, Orders and Contracts of the Corporations or binding on their properties and assets, with respect to the execution, delivery and performance of the Agreement, the financing and consummation of the transactions contemplated herein and the conduct of the business of the Corporations in the same manner after the Closing Date as before the Closing Date.

7.3 Opinion of the Corporations' Counsel. The Purchaser shall have received opinions of the Corporations' counsel (which will be addressed to the Purchaser and its lenders), dated the Closing Date, in the form of Exhibit 7.3 hereto.

7.4 No Material Adverse Change. There shall have been no Material Adverse Change since the date of this Agreement. The Purchaser shall have received certificates (which shall be addressed to the Purchaser and its lenders), dated the Closing Date, of the presidents and chief financial officers of the Corporations, in the form of Exhibit 7.4 hereto, certifying to the foregoing.

7.5 No Proceeding or Litigation. No preliminary or permanent injunction or other Order issued by a court of competent jurisdiction or by any Authority, or any Regulation or Order promulgated or enacted by any Authority shall be in effect, which would prevent the consummation of the transactions contemplated hereby.

7.6 Accounting Matters. The Purchaser shall have received (a) a certificate, dated the Closing Date, of the Corporations' chief financial officers in form and substance satisfactory to the Purchaser, as to the accuracy of all of the Corporations' financial statements for the fiscal years ending December 31, 1997, 1998, and for the five month period ending on May 31, 1999, respectively in the form of Exhibit 7.6 hereto.

7.7 Condition of Assets. The Corporations' assets and properties shall not have been damaged or destroyed, prior to the Closing Date, by fire or other casualty, whether or not fully covered by insurance, in an aggregate amount exceeding \$100,000.

7.8 Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such

transactions shall be reasonably satisfactory in form and substance to the Purchaser and the Purchaser's counsel, and the Corporations shall have made available to the Purchaser for examination the originals or true, complete and correct copies of all records and documents relating to the business and affairs of the Corporations that the Purchaser may reasonably request in connection with said transaction.

7.9 **Secretary's Certificate.** The Purchaser shall have received a certificate, by the secretaries of the Corporations, as to the charter and bylaws of the Corporations, the resolutions adopted by the directors and stockholders of the Corporations in connection with this Agreement, the incumbency of certain officers of the Corporations and the jurisdictions in which the Corporations are qualified to conduct business in the form of Exhibit 7.9 hereto.

**7.10 Payroll Taxes.** Except for the payroll taxes referenced in footnote 1 to Section 2.16 of this Agreement, the Corporations shall have paid all payroll taxes that are outstanding as of the Closing Date.

7.11 Certificates of Good Standing. At the Closing, the Corporations shall have delivered to the Purchaser certificates issued by the appropriate governmental authorities evidencing the good standing, with respect to both the conduct of business and the payment of all Taxes, of the Corporations as of a date not more than fifteen (15) days prior to the Closing Date as a corporation organized under the laws of the state and as a foreign corporation authorized to do business under the laws of the jurisdictions listed in the exhibits hereto.

**7.12 Leases.** The Corporations' leases shall not terminate, be subject to renegotiation or be limited or restricted in any way as a result of the transactions contemplated by this Agreement. Each of the Corporations' lessors of real property shall have executed a landlord estoppel letter in the form of Exhibit 7.12 hereto.

7.13 Employment Agreements. Ms. Linda Gibbs and Mr. Fred Schwartz shall have each executed and delivered employment agreements substantially in the form of Exhibit 7.13 hereto providing for the employment of such persons with the and containing certain noncompetition provisions.

7.14 Joinder of All Shareholders. All of the existing shareholders of the Corporations shall have executed this Agreement, or a counterpart hereof, and shall have delivered at the Closing stock certificates representing all of the Shares, duly endorsed to the Purchaser, together with stock powers executed in blank.

**7.15 Termination of Affiliate Contracts.** With the exception of those certain Sales Agency Agreements between HBA Travel, Inc. and Mrs. Cheryl Holowacz, dated February 22, 1999 and between HBA Travel, Inc. and Elizabeth E. Schwartz, dated February 12, 1999 and the Lease Agreement between Honest Ballot Association, Inc. and HBA Travel, Inc., dated as of \_\_\_\_\_, the Sellers shall have caused all Contracts between the Corporations and their Affiliates and the Sellers to terminate at Closing without any further liability to the Corporations.

7.16 Consulting Agreement. Mr. Murray Schwartz shall have executed a consulting agreement in substantially the form of Exhibit 7.16 hereto.

7.17 Creditor Consents. The creditors set forth on Schedule 7.17 hereto shall have agreed in writing with the Corporations as to the amounts owed in order for such creditors to have been paid in full and to release all Liens in favor of such creditors. The creditors set forth on Schedule 7.17 shall provide at Closing such UCC termination statements, releases of mortgages and other releases of Liens as shall be required by the Purchaser and its lenders.

7.18 Escrow Agreement. The Sellers shall have executed the Escrow Agreement substantially in the form of Exhibit 1.11 hereto.

7.19 Satisfaction of Loans Payable to Murray Schwartz. With the exception of \$19,600, Acquisition shall have satisfied the balance of all indebtedness of the Corporations to Mr. Murray Schwartz through the issuance of 49,000 Preferred Shares to Mr. Murray Schwartz. In connection with the remaining \$19,600, (i) Acquisition shall have placed \$14,600 in the Escrow Account, which funds shall be used solely to satisfy the potential payroll tax liability reflected on Schedule 2.16(a) hereto (the "Payroll Tax Matter"), with any remaining cash funds to be released to Mr. Murray Schwartz upon the settlement of the Payroll Tax Matter, and (ii) Acquisition, at Acquisition's option shall either have repaid the remaining \$5,000 to Mr. Murray Schwartz or shall have properly reflected the remaining \$5,000 as a continuing obligation of Acquisition on the books and records of Acquisition.

7.20 Assignment of Pending Action. The Purchaser and Acquisition shall have assigned to Mr. Murray Schwartz all of their right, title and interest to any potential recovery by the plaintiff in the action captioned HBA Travel, Inc. d/b/a Away to Travel, Plaintiff against Paulette Aaronson, Ricki Black and Vivian Berner, which matter is currently pending in the Supreme Court of the State of New York, County of Queens (the "Pending Action") and Mr. Murray Schwartz shall have agreed to indemnify the Purchaser for any and all expenses, including any tax liabilities, resulting from such assignment and/or resulting from potential counterclaims or similar claims in connection with the Pending Action in substantially the form of agreement attached hereto as Exhibit 7.20.

7.21 Other Documents. The Corporations shall have furnished the Purchaser with such other and further documents and certificates, including certificates of the Corporations' officers and others, as the Purchaser shall reasonably request to evidence compliance with the conditions set forth in this Agreement.

ARTICLE VIII

**CONDITIONS TO THE OBLIGATIONS OF THE CORPORATIONS AND THE SELLERS**

Each and every obligation of the Corporations and the Sellers under this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each of the following conditions unless waived in writing by the Corporations, and the Sellers:

8.1 **Representations and Warranties; Performance.** The representations and warranties of the Purchaser contained in Article III and elsewhere in this Agreement and all information contained in any exhibit or schedule hereto delivered by, or on behalf of, the Purchaser to the Corporations, each Subsidiary and the Sellers, shall be true and correct when made and on the Closing Date as though then made, except as expressly provided herein. The Purchaser shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed and complied with by it prior to the Closing Date. The president of the Purchaser shall have delivered to the Corporations, each Subsidiary and the Sellers a certificate, dated the Closing Date, in the form designated Exhibit 8.1 hereto, certifying to the foregoing.

8.2 **Consents and Approvals.** The Purchaser, the Sellers, the Corporations and each Subsidiary shall have obtained any and all material consents, approvals, Orders, qualifications, licenses, permits or other authorizations, including compliance with the Hart-Scott-Rodino Act, required by all applicable Regulations or Orders, with respect to the execution, delivery and performance of the Agreement, and the consummation of the transactions contemplated herein.

8.3 **No Proceeding or Litigation.** No preliminary or permanent injunction or other Order issued by a court of competent jurisdiction or by any Authority, or any Regulation or executive order promulgated or enacted by any Authority shall be in effect, which would prevent the consummation of the transactions contemplated hereby.

8.4 **Consulting Agreement.** Mr. Murray Schwartz shall have executed a consulting agreement in substantially the form of Exhibit 7.16 hereto.

8.5 **Employment Agreements.** Ms. Linda Gibbs and Mr. Fred Schwartz shall have executed Employment Agreements in substantially the form of Exhibit 7.13 hereto.

8.6 **Secretary's Certificate.** The Sellers shall have received a certificate, by the secretary of the Purchaser, dated the Closing Date, as to the charter and bylaws of the Purchaser, the resolutions adopted by the directors of the Purchaser in connection with this Agreement, the incumbency of certain officers of the Purchaser and the jurisdictions in which the Purchaser is qualified to conduct business in the form of Exhibit 8.6 hereto.

8.7 **Geller Loan Repayment.** All monies owed to Mr. David Geller by the Corporations shall have been satisfied by issuance of such number of Preferred Shares as are equal to the monies owed to Mr. David Geller by the Corporations divided by 3.

8.8 Opinion of the Purchasers' Counsel. The Sellers shall have received opinions of the Purchasers' counsel, dated the Closing Date, in the form of Exhibit 8.8 hereto.

8.9 No Material Adverse Change. There shall have been no Material Adverse Change since the date of this Agreement. The Sellers shall have received certificates, dated the Closing Date, of the presidents and chief financial officers of the Purchaser, in the form of Exhibit 8.9 hereto, certifying to the foregoing.

8.10 Certificates of Good Standing. At the Closing, the Purchaser shall have delivered to the Sellers certificates issued by the appropriate governmental authorities evidencing the good standing, with respect to the conduct of business of the Purchaser as of a date not more than fifteen (15) days prior to the Closing Date as a corporation organized under the laws of the state and as a foreign corporation authorized to do business under the laws of the respective jurisdictions.

8.11 Additional Loans. Mr. Murray Schwartz shall have been paid back in full for all advances to any of the Corporations, excluding those amounts stipulated in Section 7.19 of this Agreement.

8.12 Satisfaction of Loans Payable to Murray Schwartz. With the exception of \$19,600, Acquisition shall have satisfied the balance of all indebtedness of the Corporations to Mr. Murray Schwartz through the issuance of 49,000 Preferred Shares to Mr. Murray Schwartz. In connection with the remaining \$19,600, (i) Acquisition shall have placed \$14,600 in the Escrow Account, which funds shall be used solely to satisfy the potential payroll tax liability reflected on Schedule 2.16(a) hereto (the "Payroll Tax Matter"), with any remaining cash funds to be released to Mr. Murray Schwartz upon the settlement of the Payroll Tax Matter, and (ii) Acquisition, at Acquisition's option shall either have repaid the remaining \$5,000 to Mr. Murray Schwartz or shall have properly reflected the remaining \$5,000 as a continuing obligation of Acquisition on the books and records of Acquisition.

8.13 Assignment of Pending Action. The Purchaser and Acquisition shall have assigned to Mr. Murray Schwartz all of their right, title and interest to any potential recovery by the plaintiff in the action captioned HBA Travel, Inc. d/b/a Away to Travel, Plaintiff against Paulette Aaronson, Ricki Black and Vivian Berner, which matter is currently pending in the Supreme Court of the State of New York, County of Queens (the "Pending Action") and Mr. Murray Schwartz shall have agreed to indemnify the Purchaser for any and all expenses, including any tax liabilities, resulting from such assignment and/or resulting from potential counterclaims or similar claims in connection with the Pending Action in substantially the form of agreement attached hereto as Exhibit 7.20.

## ARTICLE IX

### CLOSING

9.1 Closing. Unless this Agreement shall have been terminated or abandoned pursuant to the provisions of Article X hereof, a closing of the transactions contemplated by this Agreement (the "Closing") shall be held on June 30, 1999, or on such other date (the "Closing Date") designated by the Purchaser upon five days notice to the Corporations in the offices of the Purchaser's lender's counsel, provided that the Closing shall not occur, in any event, after July 9, 1999.

9.2 Intervening Litigation. If prior to the Closing Date any preliminary or permanent injunction or other Order issued by a court of competent jurisdiction or by any other Authority shall restrain or prohibit this Agreement or the consummation of the transactions contemplated herein for a period of fifteen (15) days or longer, the Closing shall be adjourned at the option of either party for a period of not more than thirty (30) days. If at the end of such thirty (30) day period such injunction or Order shall not have been favorably resolved, either party may, by written notice thereof to the other, terminate this Agreement, without liability or further obligation hereunder.

## ARTICLE X

### TERMINATION AND ABANDONMENT

10.1 Methods of Termination. This Agreement may be terminated and the transactions herein contemplated may be abandoned at any time:

- (a) by mutual consent of the Purchaser, the Corporations and Sellers;
- (b) by the Purchaser or the Corporations if this Agreement is not consummated on or before June 30, 1999; provided that if any party has breached or defaulted with respect to its respective obligations under this Agreement on or before such date, such party may not terminate this Agreement pursuant to this Section 10.1(b), and each other party to this Agreement shall at its option enforce its rights against such breaching or defaulting party and seek any remedies against such party, in either case as provided hereunder and by applicable law;
- (c) by the Purchaser if as of the Closing Date any of the conditions specified in Article VII hereof have not been satisfied or if the Sellers or the Corporations or any Subsidiary are otherwise in default under this Agreement or if at any time prior to the Closing Date it becomes apparent to the Purchaser that the Sellers, the Corporations or any Subsidiary will be unable to so satisfy one or more of the representations and warranties in Article II or one or more of the covenants or agreements in Articles IV or VI; or



(d) by the Purchaser, the Corporations, or any Subsidiary if they do not accept, or are not deemed to have accepted, the schedules or exhibits.

10.2 Procedure Upon Termination. In the event of termination and abandonment pursuant to Section 10.1 hereof, and subject to the proviso contained in Section 10.1(b) this Agreement shall terminate and shall be abandoned, without further action by any of the parties hereto. If this Agreement is terminated as provided herein:

(a) each party shall redeliver all documents and other material of any other party relating to the transactions contemplated hereby, whether obtained before or after the execution hereof, to the party furnishing the same;

(b) all information received by any party hereto with respect to the business of any other party or the Corporations or any Subsidiary (other than information which is a matter of public knowledge or which has heretofore been or is hereafter published in any publication for public distribution or filed as public information with any governmental authority) shall not at any time be used for the advantage of, or disclosed to third parties by, such party to the detriment of the party furnishing such information; and

(c) other than as provided in Section 12.15 no non breaching party hereto shall have any liability or further obligation to any other party to this Agreement.

## ARTICLE XI

### SURVIVAL OF TERMS; INDEMNIFICATION

11.1 Survival. All of the terms and conditions of this Agreement, together with the representations, warranties and covenants contained herein or in any instrument or document delivered or to be delivered pursuant to this Agreement, shall survive the execution of this Agreement and the Closing Date until all obligations set forth therein shall have been performed and satisfied notwithstanding any investigation heretofore or hereafter made by or on behalf of any party hereto; provided, however, that all representations and warranties, and the agreements of the Sellers and the Purchaser to indemnify each other set forth in this Article XI, shall survive and continue for, and all claims with respect thereto shall be made prior to the end of, 12 months from the Closing Date, except for the covenants contained herein which shall survive until, and all claims with respect thereto shall be made within, sixty days after the expiration of the applicable statute of limitations, and (ii) representations, warranties and indemnities for which an indemnification claim shall be pending as of the end of the applicable period referred to above, in which event such indemnities shall survive with respect to such claim until the final disposition thereof.

#### 11.2 Limitations

(a) Neither party shall be required to indemnify the other party under Sections 11.3(a) and 11.4(a) until the indemnifiable damages, individually or in the aggregate, exceed \$5,000 (the "Hurdle Rate"), at which point such indemnifying party shall be

responsible for all indemnifiable damages that may arise, irrespective of the Hurdle Rate; and provided that indemnifiable damages shall accumulate until such time as they exceed the Hurdle Rate, whereupon the party to be indemnified shall be entitled to seek indemnification for the full amount of such damages.

(b) Absent fraud, the aggregate amount of indemnifiable damages for which an individual Seller shall be liable with respect to breaches of the representations and warranties made by such Seller in Article II (other than Section 2.5 or for knowing or intentional misrepresentations or breaches of covenants and agreements) shall not exceed the Seller's pro rata portion (based on the number of Shares held) of \$150,000.

(c) In the event the transactions contemplated hereby are not consummated as a result of a breach hereunder by the Purchaser, the maximum aggregate amount of indemnifiable damages for which the Purchaser shall be liable for hereunder shall equal \$50,000. The parties hereto agree that such amount is a fair estimate of the maximum amount of the Sellers' potential damages and hereby agree not to assert any Claim in excess of such amount.

(d) Notwithstanding any other provision hereof, after the Closing the aggregate amount of indemnifiable damages for which the Sellers shall be liable under this Article XI shall not exceed \$150,000. If the aggregate amount of identifiable damages exceeds \$150,000, then the Purchaser at his option may rescind this Agreement.

(e) Indemnification claims shall be reduced, by and to the extent, that an indemnitee shall actually receive proceeds under insurance policies, risk sharing pools, or similar arrangements specifically as a result of, and in compensation for, the subject matter of an indemnification claim by such indemnitee.

11.3 Indemnification by Sellers. Subject to Sections 11.1 and 11.2, the Sellers agree to, and shall, jointly and severally, indemnify the Purchaser and its subsidiaries and the Surviving Corporation and their respective officers, directors, employees, shareholders, representatives and agents and hold each of them harmless at all times after the date of this Agreement, against and in respect of any and all damage, loss, deficiency, liability, obligation, commitment, cost or expense (including the fees and expenses of counsel) resulting from, or in respect of, any of the following:

(a) Any misrepresentation, breach of warranty, or non-fulfillment of any obligation on the part of the Corporations, or the Sellers under this Agreement, any document relating hereto or thereto or contained in any exhibit to this Agreement or from any misrepresentation in or omission from any certificate, schedule, other agreement or instrument by the Sellers or the Corporations hereunder.

(b) Any and all liabilities of the Corporations of any nature whether accrued, absolute, contingent or otherwise, and whether known or unknown, existing at the Closing Date (or arising subsequent to the Closing Date in the case of claims described in Section 11.2(b) with respect to products manufactured, shipped, sold or delivered by or on behalf of the Corporations or any Subsidiary prior to the Closing Date) to the extent not

reflected and reserved against in the financial statements of the Corporations, including, without limitation:

- (i) All liability of the Corporations for Taxes, but excluding any taxes for which there is an adequate accrual and reserve on the Financial Statements of the Corporations and any tax liability of the Corporations arising in connection with the transactions contemplated hereby. Any Taxes, penalties or interest attributable to the operations of the Corporations payable as a result of an audit of any Tax Return shall be deemed to have accrued in the period to which such Taxes, penalties or interest are attributable; and
- (ii) All products liability Claims arising against or involving the Corporations or concerning any product manufactured, shipped, sold or delivered by or on behalf of the Corporations related to or resulting from an alleged defect in design, manufacture, materials or workmanship of any product manufactured, shipped, sold or delivered by or on behalf of the Corporations or any alleged failure to warn, or any alleged breach of express or implied warranties or representations.
- (iii) All environmental liability relating to the Corporations' properties, including federal, state and local environmental liability, together with any interest or penalties thereon or related thereto, through the Closing Date, but excluding any amount for which there is an adequate accrual and reserve on the Financial Statements of the Corporations.
- (c) Any failure of any Seller to have good, valid and marketable title to the issued and outstanding Shares held by such Seller, free and clear of all Liens.
- (d) Any Claim by a shareholder or former shareholder of the Corporations or any other Person seeking to assert: (i) ownership or rights to ownership of any shares of capital stock of the Corporations or any Subsidiary; (ii) any rights of a shareholder (other than the right to receive the Merger Consideration in accordance with the terms of this Agreement) including any Option, preemptive rights or rights to receive notice or to vote; (iii) any rights under the Corporations' charter, bylaws or other constituent documents; or (iv) any Claim that his shares of capital stock were improperly repurchased by either Corporation.
- (e) All demands, assessments, judgments, costs and reasonable legal and other expenses arising from, or in connection with, any action, suit, proceeding or Claim incident to any of the foregoing.

11.4 Indemnification by the Purchaser. Subject to Sections 11.1 and 11.2, the Purchaser agrees to, and shall, indemnify the Corporations, and their officers, directors, employees, shareholders, representatives and agents and the Sellers and hold each of them harmless at all times after the date of this Agreement, against and in respect of any and all

damage, loss, deficiency, liability, obligation, commitment, cost or expense (including the fees and expenses of counsel) resulting from, or in respect of, any of the following:

(a) Any misrepresentation, breach of warranty or non-fulfillment of any obligation on the part of the Purchaser under this Agreement, any document relating hereto or thereto or contained in any exhibit to this Agreement or from any misrepresentation in or omission from any certificate, schedule, other agreement or instrument by the Purchaser hereunder.

(b) All demands, assessments, judgments, costs and reasonable legal and other expenses arising from, or in connection with, any action, suit, proceeding or Claim incident to any of the foregoing.

#### 11.5 Third-Party Claims.

(a) Except as otherwise provided in this Agreement, the following procedures shall be applicable with respect to indemnification for third-party Claims. Promptly after receipt by the party seeking indemnification hereunder (hereinafter referred to as the "Indemnitee") of notice of the commencement of any (a) tax audit or proceeding for the assessment of tax by any Taxing Authority or any other proceeding likely to result in the imposition of a tax liability or obligation or (b) any action or the assertion of any Claim, liability or obligation by a third party (whether by legal process or otherwise), against which Claim, liability or obligation the other party to this Agreement (hereinafter the "Indemnitor") is, or may be, required under this Agreement to indemnify such Indemnitee, the Indemnitee will, if a Claim thereon is to be, or may be, made against the Indemnitor, notify the Indemnitor in writing of the commencement or assertion thereof and give the Indemnitor a copy of such Claim, process and all legal pleadings. The Indemnitor shall have the right to participate in the defense of such action with counsel of reputable standing. The Indemnitor shall have the right to assume the defense of such action unless such action (i) may result in injunctions or other equitable remedies in respect of the Indemnitee or its business; (ii) may result in liabilities which, taken with other then existing Claims under this Article XI, would not be fully indemnified hereunder; or (iii) may have an adverse effect on the business or financial condition of the Indemnitee after the Closing Date (including an effect on the tax liabilities, earnings or ongoing business relationships of the Indemnitee) or (vi) is for an alleged amount of less than \$25,000. The Indemnitor and the Indemnitee shall cooperate in the defense of such Claims. In the case that the Indemnitor shall assume or participate in the defense of such audit, assessment or other proceeding as provided herein, the Indemnitee shall make available to the Indemnitor all relevant records and take such other action and sign such documents as are reasonable necessary to defend such audit, assessment or other proceeding in a timely manner. If the Indemnitee shall be required by judgment or a settlement agreement to pay any amount in respect of any obligation or liability against which the Indemnitor has agreed to indemnify the Indemnitee under this Agreement, the Indemnitor shall promptly reimburse the Indemnitee in an amount equal to the amount of such payment plus all reasonable expenses (including legal fees and expenses) incurred by such Indemnitee in connection with such obligation or liability subject to this Article XI. No Indemnitor, in the defense

of any such Claim, shall, except with the consent of the Indemnatee, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnatee of a release from all liability with respect to such Claim. In the event that the Indemnitor does not accept the defense of any matter for which it is entitled to assume such defense as provided above, the Indemnatee shall have the full right to defend against any such Claim, and shall be entitled to settle or agree to pay in full such claim or demand, in its sole discretion. With respect to any matter as to which the Indemnitor is not entitled to assume the defense pursuant to the terms of this paragraph, the Indemnatee shall not enter into any settlement for which an indemnification claim will be made hereunder without the approval of the Indemnitor, which will not be unreasonably withheld.

(b) Prior to paying or settling any Claim against which an Indemnitor is, or may be, obligated under this Agreement to indemnify an Indemnatee, the Indemnatee must first supply the Indemnitor with a copy of a final court judgment or decree holding the Indemnatee liable on such Claim or failing such judgment or decree, must first receive the written approval of the terms and conditions of such settlement from the Indemnitor. An Indemnitor or Indemnatee shall have the right to settle any Claim against it, subject to the prior written approval of the other, which approval shall not be unreasonably withheld.

(c) An Indemnatee shall have the right to employ its own counsel in any case, but the fees and expenses of such counsel shall be at the expense of the Indemnatee unless (i) the employment of such counsel shall have been authorized in writing by the Indemnitor in connection with the defense of such action or claim, (ii) the Indemnitor shall not have employed counsel in the defense of such action or claim, or (iii) such Indemnatee shall have reasonably concluded that there may be defenses available to it which are contrary to, or inconsistent with, those available to the Indemnitor, in any of which events such fees and expenses of not more than one additional counsel for the indemnified parties shall be borne by the Indemnitor.

**11.6 Security for the Indemnification Obligation.** Each Seller hereby agrees that, subject to the following provisions of this Section 11.6, any claims for indemnification by the Purchaser against the Sellers (or any of them) hereunder may be satisfied by the Purchaser by recourse against the Escrow Shares pursuant to the terms of the Escrow Agreement. All payments for indemnifiable damages made pursuant to this Article XI (including the cancellation of any Escrow Shares) shall be treated as adjustments to the Merger Consideration. If the Escrow Shares are insufficient to set off any claim for indemnifiable damages made hereunder (or have been delivered to the holders prior to the making or resolution of such claim), then the Purchaser may take any action or exercise any remedy available to it against the Sellers by appropriate legal proceedings to collect such indemnifiable damages. To the extent the Escrow Fund are sufficient in value to cover all of the Purchaser's indemnification claims, then the Purchaser agrees to first seek indemnification against the Escrow Shares prior to seeking redress against any of the Seller's other assets.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Amendment and Modification. Subject to applicable law, this Agreement may be amended, modified and supplemented only by written agreement of the parties hereto, at any time prior to the Closing Date with respect to any of the terms contained herein.

12.2 Waiver of Compliance; Consents. Any failure of any party hereto to comply with any obligation, covenant, agreement or condition herein may be waived in writing by the other parties hereto, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing.

12.3 Certain Definitions.

"Affiliate" means, with regard to any Person, (a) any Person, directly or indirectly, controlled by, under common control of, or controlling such Person, (b) any Person, directly or indirectly, in which such Person holds, of record or beneficially, five percent or more of the equity or voting securities, (c) any Person that holds, of record or beneficially, five percent or more of the equity or voting securities of such Person, (d) any Person that, through Contract, relationship or otherwise, exerts a substantial influence on the management of such Person's affairs, (e) any Person that, through Contract, relationship or otherwise, is influenced substantially in the management of their affairs by such Person, or (f) any director, officer, partner or individual holding a similar position in respect of such Person.

"Agreement" shall have the meaning as set forth in the recitals.

"ARC Approval" shall mean the consent by the Airline Reporting Company as to the transfer of ownership of HBA Travel, Inc.

"Articles of Merger" shall have the meaning as set forth in Section 1.2.

"Authority" means any governmental, regulatory or administrative body, agency, commission, board, arbitrator or authority, any court or judicial authority, any public, private or industry regulatory authority, whether international, national, federal, state or local.

"CERCLA" means Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and the Regulations thereunder.

"CERCLIS" means Comprehensive Environmental Response, Compensation, and Liability Information System.

"Certificate of Merger" shall have the meaning as set forth in Section 1.2.

"Certificates" shall have the meaning as set forth in Section 7.11.

"Claim" means any action, claim, lawsuit, demand, suit, inquiry, hearing, investigation, notice of a violation, litigation, proceeding, arbitration, appeals or other dispute, whether civil, criminal, administrative or otherwise.

"Closing" shall have the meaning set forth in Section 9.1.

"Closing Date" shall have the meaning set forth in Section 9.1.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the Regulations thereunder.

"Contract" means any agreement, contract, commitment, instrument or other binding arrangement or understanding, whether written or oral.

"Corporations" shall have the meaning as set forth in the recitals to this Agreement.

"Effective Time" shall have the meaning as set forth in Section 1.3.

"Environmental Law" shall mean any Regulation, Order, settlement agreement or Authority requirement, which relates to or otherwise imposes liability or standards of conduct concerning mining or reclamation of mined land, discharges, emissions, releases or threatened releases of noises, odors or any pollutants, contaminants or hazardous or toxic wastes, substances or materials, whether as matter or energy, into ambient air, water, or land, or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of pollutants, contaminants, or hazardous wastes, substances or materials, including (but not limited to) the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act of 1976, as amended, the Toxic Substances Control Act, as amended, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act, the Occupational Safety and Health Act, any so-called "Superlien" law, all as now or hereafter amended or supplemented, and the Regulations promulgated thereunder, and any other similar Federal, state or local statutes.

"Environmental Permit" shall mean Permits, certificates, approvals, licenses and other authorizations relating to or required by Environmental Law and necessary or desirable for the Corporations' business.

"ERISA Affiliate" shall mean any trade or business, whether or not incorporated, that together with the Corporations would be deemed a "single employer" within the meaning of Section 4001(b)(i) of ERISA.

"Escrow Agreement" shall have the meaning set forth in Section 1.11.

**"Escrow Amount"** shall mean all amounts deposited from time to time in the Escrow Account.

**"Escrow Fund"** shall have the meaning set forth in Section 1.12.

**"Financial Statements"** shall have the meaning as set forth in Section 2.9.

**"Financial Statements Date"** shall have the meaning as set forth in Section 2.9.

**"GAAP"** means generally accepted accounting principles, consistently applied, as in existence at the date hereof.

**"Guarantee"** means any guarantee or other contingent liability (other than any endorsement for collection or deposit in the ordinary course of business), direct or indirect with respect to any obligations of another Person, through an agreement or otherwise, including, without limitation, (a) any endorsement or discount with recourse or undertaking substantially equivalent to or having economic effect similar to a guarantee in respect of any such obligations and (b) any Contract (i) to purchase, or to advance or supply funds for the payment or purchase of, any such obligations, (ii) to purchase, sell or lease property, products, materials or supplies, or transportation or services, in respect of enabling such other Person to pay any such obligation or to assure the owner thereof against loss regardless of the delivery or nondelivery of the property, products, materials or supplies or transportation or services or (iii) to make any loan, advance or capital contribution to or other investment in, or to otherwise provide funds to or for, such other Person in respect of enabling such Person to satisfy an obligation (including any liability for a dividend, stock liquidation payment or expense) or to assure a minimum equity, working capital or other balance sheet condition in respect of any such obligation.

**"Hart-Scott-Rodino Act"** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and the Regulations promulgated thereunder, as amended from time to time.

**"Hurdle Rate"** shall have the meaning set forth in Section 11.2(a).

**"Improvements"** shall have the meaning set forth in Section 2.14(b).

**"Indebtedness"** with respect to any Person means any obligation of such Person for borrowed money, but in any event shall include (a) any obligation or liabilities incurred for all or any part of the purchase price of property or other assets or for the cost of property or other assets constructed or of improvements thereto, other than accounts payable included in current liabilities and incurred in respect of property purchased in the ordinary course of business, (whether or not such Person has assumed or become liable for the payment of such obligation) (whether accrued, absolute, contingent, unliquidated or otherwise, known or unknown, whether due or to become due), (b) the face amount of all letters of credit issued for the account of such Person and all drafts drawn thereunder, (c) obligations incurred for all or any part of the purchase price of property or other assets or for the cost of property or other assets constructed or of improvements thereto, other



than accounts payable included in current liabilities and incurred in respect of property purchased in the ordinary course of business (whether or not such Person has assumed or become liable for the payment of such obligation) secured by Liens, (d) capitalized lease obligations, and (e) all Guarantees of such Person.

"Indemnitee" shall have the meaning set forth in Section 11.5.

"Indemnitor" shall have the meaning set forth in Section 11.5.

"Lien" means any security interest, lien, mortgage, pledge, hypothecation, encumbrance, Claim, easement, charge, restriction on transfer or otherwise, or interest of another Person of any kind or nature.

"Merger" shall have the meaning as set forth in Section 1.1.

"Merger Consideration" shall have the meaning as set forth in Section 1.13.

"Material Adverse Change" means any developments or changes which would have a Material Adverse Effect.

"Material Adverse Effect" means any circumstances, state of facts or matters which might reasonably be expected to have a material adverse effect in respect of the Corporations' business, operations, properties, assets, condition (financial or otherwise), results, plans, strategies or prospects.

"Occurrence" means any accident, happening or event which occurs or has occurred at any time prior to the Closing Date that is caused or allegedly caused by any hazard or defect in manufacture, design, materials or workmanship including, without limitation, any failure or alleged failure to warn or any breach or alleged breach of express or implied warranties or representations with respect to a product manufactured, shipped, sold or delivered by or on behalf of the Corporations which results or is alleged to have resulted in injury or death to any person or damage to or destruction of property (including damage to or destruction of the product itself) or other consequential damages, at any time.

"Option" means any subscription, option, warrant, right, security, Contract, commitment, understanding, outstanding or stock appreciation, phantom stock option, profit participation or arrangement by which (i) with respect the Corporations, the Corporations are bound to issue any additional shares of their capital stock or rights pursuant to which any Person has a right to purchase shares of the Corporations' capital stock or (ii) with respect to a Seller, the Seller is bound to sell or allow another Person to vote, encumber or control the disposition of any shares of the Corporations' capital stock or rights pursuant to which any Person has a right to purchase, vote, encumber or control the disposition of shares of the Corporations' capital stock from the Seller.

"Order" means any decree, order, judgment, injunction, rule, ruling, Lien, voting right, consent of or by an Authority.

**"Permits"** means all permits, licenses, registrations, certificates, Orders or approvals from any Authority or other Person (including without limitation those relating to the occupancy or use of owned or leased real property) issued to or held by the Corporations.

**"Permitted Liens"** means (i) statutory Liens not yet delinquent, (ii) such imperfections or irregularities of title or Liens as do not materially detract from or interfere with the present use of the properties or assets subject thereto or affected thereby, otherwise impair present business operations at such properties, or do not detract from the value of such properties and assets, (iii) Liens reflected in the Financial Statements or the notes thereto, (iv) the rights of customers of the Corporations with respect to inventory or work in progress under orders or Contracts entered into by the Corporations in the ordinary course of business, (v) mechanics', carriers', workers', repairmen's, warehousemen's, or other similar Liens arising in the ordinary course of business in respect of obligations not overdue or which are being contested in good faith and covered by a bond in an amount at least equal to the amount of the Lien, and (vi) deposits or pledges to secure workmen's compensation, unemployment insurance, old age benefits or other social security obligations in connection with, or to secure the performance of, bids, tenders, trade contracts not for the payment of money or leases, or to secure statutory obligations or surety or appeal bonds or other pledges or deposits for purposes of like nature in the ordinary course of business.

**"Person"** means any corporation, partnership, joint venture, organization, entity, Authority or natural person.

**"Policies"** means all Contracts that insure (i) the Corporations' or any of their Subsidiaries properties, plant and equipment for loss or damage, and (ii) the Corporations or any of their Subsidiaries or their officers, directors, employees or agents against any liabilities, losses or damages (or lost profits) for any reason or purpose.

**"Preferred Shares"** shall have the meaning as set forth in 1.8(a).

**"Proprietary Rights"** means all (i) patents, patent applications, patent disclosures and all related continuation, continuation-in-part, divisional, reissue, reexamination, utility, model, certificate of invention and design patents, patent applications, registrations and applications for registrations, (ii) trademarks, service marks, trade dress, logos, trade names and corporate names and registrations and applications for registration thereof, (iii) copyrights and registrations and applications for registration thereof, (iv) mask works and registrations and applications for registration thereof, (v) computer software, data and documentation, (vi) trade secrets and confidential business information, whether patentable or unpatentable and whether or not reduced to practice, know-how, manufacturing and production processes and techniques, research and development information, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, (vii) other proprietary rights relating to any of the foregoing and (viii) copies and tangible embodiments thereof.

"Recalls" means product recall, rework or post-sale warning or similar action.

"Regulation" means any rule, law, code, statute, regulation, ordinance, requirement, announcement or other binding action of or by an Authority.

"Restricted Area" shall have the meaning set forth in Section 6.7.

"Restricted Period" shall have the meaning set forth in Section 6.7.

"Shareholders Agreement" shall mean the Shareholders Agreement among all Shareholders of the Surviving Corporation, dated as of the date hereof.

"Shares" shall have the meaning set forth in Section 1.8.

"Software" shall have the meaning set forth in Section 2.19(c).

"Special Meeting" shall have the meaning set forth in Section 4.11.

"Subsidiary" any Person in which the Corporations have (i) an ownership interest, (ii) advanced funds or provided financial accommodations to which, in each case, is secured by an ownership interest in or has an Option to acquire an ownership interest in such Person.

"Surviving Corporation" shall have the meaning as set forth in Section 1.1.

"Tax Returns" means federal, state, foreign and local tax reports, returns, information returns and other documents.

"Taxes" means including without limitation income, gross receipts, net proceeds, alternative or add-on minimum, ad valorem, value added, turnover, sales, use, property, personal property (tangible and intangible), stamp, leasing, lease, user, excise, duty, franchise, transfer, license, withholding, payroll, employment, foreign, fuel, excess profits, occupational and interest equalization, windfall profits, severance, and other charges (including interest and penalties).

"Taxing Authorities" means Internal Revenue Service and any other Federal, state, or local authority which has the right to impose Taxes on the Corporations or the Sellers.

12.4 Notices. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand or mailed, first class certified mail with postage paid or by overnight receipted courier service:

(a) If to the Corporations or the Sellers, to:

FAX AUDIT NO.  
H990000175945

Away To Travel, Inc./A.T.T. Marketing, Inc./Linda Tours, Inc.  
7343 Lake Worth Road  
Lake Worth, FL  
Attn: Mr. Fred Schwartz

with a copy to:

Adorno & Zeder, P.A.  
2601 S. Bayshore Drive, Suite 1600  
Miami, Florida 33133  
Attn: Michael B. Atman, Esq.

or to such other Person or address as the Corporations shall furnish by notice to the Purchaser in writing.

(b) If to the Purchaser, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

with a copy to:

White & Case LLP  
200 South Biscayne Boulevard  
Suite 4900  
Miami, Florida 33131  
Attn: Jorge L. Freeland, Esq.

or to such other Person or address as the Purchaser shall furnish by notice to the Corporations in writing.

**12.5 Assignment.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties, except that the Purchaser may, without the prior approval of the Sellers, assign its rights, interests and obligations hereunder to any Affiliate, and may grant Liens in respect of its rights and interests hereunder to its lenders (and any agent for the lenders), and the parties hereto consent to any exercise by such lenders (and such agent) of their rights and remedies with respect to such collateral.

**12.6 Governing Law.** The Agreement shall be governed by the internal laws of the State of Florida as to all matters, including but not limited to matters of validity, construction, effect and performance.

FAX AUDIT NO.  
H990000175945

12.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

12.9 Entire Agreement. This Agreement, including the schedules and exhibits hereto and the documents, certificates and instruments referred to herein, embodies the entire agreement and understanding of the parties hereto in respect of the transactions contemplated by this Agreement and supersedes all prior agreements, representations, warranties, promises, covenants, arrangements, communications and understandings, oral or written, express or implied, between the parties with respect to such transactions. There are no agreements, representations, warranties, promises, covenants, arrangements or understandings between the parties with respect to such transactions, other than those expressly set forth or referred to herein.

12.10 Consent to Jurisdiction; Service of Process. The Corporations, each Subsidiary and each of the Sellers hereby irrevocably submit to the jurisdiction of the state or federal courts located in Miami-Dade County Florida in connection with any suit, action or other proceeding arising out of or relating to this Agreement and the transactions contemplated hereby, and hereby agree not to assert, by way of motion, as a defense, or otherwise in any such suit, action or proceeding that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced by such courts.

12.11 Binding Effect. This Agreement shall not be construed so as to confer any right or benefit upon any Person other than the signatories to this Agreement and each of their respective successors and permitted assigns.

12.12 Injunctive Relief. The parties hereto agree that in the event of a breach of any provision of this Agreement, the aggrieved party or parties may be without an adequate remedy at law. The parties therefore agree that in the event of a breach of any provision of this Agreement, the aggrieved party or parties may elect to institute and prosecute proceedings in any court of competent jurisdiction to enforce specific performance or to enjoin the continuing breach of such provision, as well as to obtain damages for breach of this Agreement. By seeking or obtaining any such relief, the aggrieved party shall not be precluded from seeking or obtaining any other relief to which it may be entitled.

12.13 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party hereto, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party hereto of any breach

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or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement must be made in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

12.14 Severability. Unless otherwise provided herein, if any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12.15 Expenses. The Purchaser shall bear its own expenses, including without limitation, legal fees and expenses, with respect to this Agreement and the transactions contemplated hereby. The Corporations and the Sellers shall each bear its and their own respective expenses, including without limitation, legal fees and expenses, with respect to this Agreement and the transactions contemplated hereby.

12.16 Waiver of Jury Trial. EACH OF THE PARTIES HERETO KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY EXHIBIT HERETO, OR ANY COURSE OF CONDUCT, COURSE OF DEALING OR STATEMENTS (WHETHER VERBAL OR WRITTEN) RELATING TO THE FOREGOING. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT.

\* \* \*

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IN WITNESS WHEREOF, the parties hereto have made and entered into this Agreement  
the date first hereinabove set forth.

**BYE BYE NOW.COM, INC.**

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

**AWAY ACQUISITION CORPORATION**

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

**HBA TRAVEL, INC.**

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

**A.T.T. MARKETING, INC.**

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

**LINDA TOURS, INC.**

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

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**SURRENDERED SHARES      REPLACEMENT SHARES**

HBA Travel      57.5 shares  
Linda Tours      350.0 shares  
ATT Marketing      100.0 shares

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Murray Schwartz

HBA Travel      30.0 shares

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Jeanette Schwartz

HBA Travel      30.0 shares  
Linda Tours      150.0 shares

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Linda Gibbs

HBA Travel      25.0 shares

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Jack Lawrence

HBA Travel      7.5 shares

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David Geller



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EXHIBIT 1.13

- (a) Every share of capital stock of Linda Tours, Inc. will convert into one Preferred Share.
- (b) Every share of capital stock of A.T.T. Marketing, Inc. will convert into five Preferred Shares.
- (c) Every share of capital stock of HBA Travel, Inc. will convert into two thousand Preferred Shares.

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FROM WHITE & CASE LLP