

48761
RECEIVED
STATE OF TENNESSEE
1988 SEP 14 AM 11:29
GENTRY CROWELL
SECRETARY OF STATE

034 0103

ARTICLES OF MERGER

OF

TPI RESTAURANTS, INC.

AUG 19 1992

with and into

SHONEY'S SOUTH, INC.

Bryan M. [Signature]
SECRETARY OF STATE

Pursuant to the provisions of section 48-21-105

of the Tennessee Business Corporation Act, the under-
signed corporations adopt the following Articles of
Merger:

1. The Agreement and Plan of Merger (the
"Plan") is attached hereto and is incorporated herein by
reference (Attachment A).

2. Pursuant to the Plan, Shoney's South, Inc.
is the surviving corporation in the Merger. Pursuant to
Section 48-21-106(5) of the Tennessee Business Corpora-
tion Act and pursuant to Section 2.04 of the Plan, the
charter of the surviving corporation is amended in its
entirety to be the same as the charter of TPI Restau-
rants, Inc., immediately prior to the Merger, except that
the name of the surviving corporation shall be "Shoney's
South, Inc." Accordingly, the charter of the surviving
corporation is in the form attached hereto as Attach-
ment B.

Inst # 1992-1977B

09/11/1992-1977B
11:52 AM CERTIFIED
JUDGE OF PROBATE

Land Dill

RECEIVED
STATE OF TENNESSEE
1988 SEP 14 AM 11:29
GENTRY COJWELL
SECRETARY OF STATE

254 0102

3. As to TPI Restaurants, Inc., a Tennessee corporation, the Plan was duly adopted by unanimous written consent of the Board of Directors as of March 21, 1988, and duly approved by written consent of its sole shareholder dated as of September 14, 1988. *[Signature]*
AUG 19 1992
SECRETARY OF STATE

4. As to Shoney's South, Inc., a Tennessee corporation, the Plan was duly adopted by its Board of Directors on March 21, 1988, and was duly approved by its shareholders at the Special Meeting of Shareholders held on September 14, 1988.

The merger is to be effective upon the filing of these Articles of Merger with the Secretary of State of the State of Tennessee.

TPI RESTAURANTS, INC.

BY:

NAME: *[Signature]* Joseph P. Cowan, Jr.
TITLE: Secretary

SHONEY'S SOUTH INC.

BY:

NAME: *[Signature]* James H. Prentiss
TITLE: President

DATE: September 14, 1988

RECEIVED
STATE OF TENNESSEE

1988 SEP 14 AM 11:29

GENTRY CROWELL
SECRETARY OF STATE

ATTACHMENT A

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of March 21, 1988 (the "Agreement"), by and between TPI Enterprises, Inc., a New Jersey corporation ("Buyer"), and Shoney's South, Inc., a Tennessee corporation (the "Company").

WHEREAS, the Board of Directors of Buyer and the Company have approved the acquisition of the Company by a wholly owned subsidiary of Buyer to be formed under the laws of the State of Tennessee ("Sub");

WHEREAS, in furtherance thereof it is proposed that Sub will make an offer to purchase for cash (the "Offer") all of the issued and outstanding shares of common stock, par value \$.05 per share (the "Company Shares"), of the Company, at a price of \$18.25 per Company Share net to the seller in cash (the "Offer Consideration");

WHEREAS, as a condition to Buyer's willingness to enter into this Agreement, Buyer and the Company have entered into a Stock Option Agreement of even date herewith (the "Stock Option Agreement"), pursuant to which, among other things, the Company has agreed, subject to the terms and conditions thereof, to sell to Buyer up to 1,641,007 Company Shares at a price of \$18.25 per share; and

WHEREAS, as a further condition to Buyer's willingness to enter into this Agreement, Buyer and certain of the Company's stockholders have entered into a Stock Purchase Agreement of even date herewith (the "Stock Purchase Agreement"), pursuant to which, among other things, Buyer has agreed, subject to the terms and conditions thereof, to purchase Company Shares from such stockholders at a price of \$18.25 per share;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE I

THE OFFER

SECTION 1.01 *The Offer*. So long as none of the events set forth in Annex A hereto shall have occurred or be existing, as soon as practicable, but in no event later than the expiration of the date which is five business days after the public announcement hereof, Buyer shall cause Sub to commence the Offer and, subject to the terms and conditions of the Offer, to accept for payment and to pay for all Company Shares tendered thereunder in accordance with the terms thereof. The obligation of Sub to commence the Offer and to accept for payment and to pay for any Company Shares tendered pursuant to the Offer shall be subject only to the conditions set forth in Annex A hereto including, among other things, that the "Minimum Number" (as hereinafter defined) of Company Shares shall have been validly tendered into the Offer and not withdrawn (without giving effect to Company Shares tendered pursuant to a "notice of guaranteed delivery" procedure) (the "Minimum Condition"). The "Minimum Number" of Company Shares shall be such number of Company Shares, which when added to the number of Company Shares, if any, which Buyer and its subsidiaries (as hereinafter defined) have the right, to acquire substantially concurrently with Sub's acceptance for payment of Company Shares under the Offer equals 51 percent of the outstanding Company Shares on a fully diluted basis. The Company agrees that no Company Shares held by any subsidiary of the Company will be tendered into the Offer.

SECTION 1.02 *Company Actions*. The Company hereby consents to the Offer and represents that its Board of Directors (at a meeting duly called and held) has (i) determined that as of the date of such meeting the Offer Consideration was fair to the Company's stockholders and that this Agreement was fair to the stockholders of the Company, and (ii) resolved to recommend acceptance of the

RECEIVED
STATE OF TENNESSEE

1988 SEP 14 AM 11:29

Offer and approval of the Merger and adoption of this Agreement by the stockholders of the Company. The Company hereby agrees to prepare and file, after review by Buyer, with the Securities and Exchange Commission (the "SEC") contemporaneously with the commencement of the Offer a Solicitation/Recommendation Statement on Schedule 14D-9 (the "Schedule 14D-9") containing such recommendation. In connection with the Offer, the Company will promptly, after receipt of a request from Sub (and in no event more than two business days after the date thereof) furnish Sub with mailing labels, security position listings and any available listing or computer file containing the names and addresses of the record holders of the Company Shares as of a recent date, and shall furnish Sub with such information and assistance as Sub or its agents may reasonably request in communicating the Offer to the stockholders of the Company.

CERTIFIED COPY

SECTION 1.03 *Directors*. Promptly upon the direct or indirect acquisition by Buyer of and payment for (treating the transfer of funds to the Depository under the Offer as constituting payment for tendered Company Shares) a majority of the outstanding Company Shares (an "Acquisition by Buyer of a Majority Ownership"), Buyer (or its affiliates) shall, subject to compliance with the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and other applicable law, if any, be entitled to designate a majority of the directors. The Company shall, upon request by Buyer, promptly increase the size of the Board of Directors of the Company to the extent permitted by its charter and by-laws and exercise its best efforts to secure the resignations of such number of directors as is necessary to enable Buyer's designees to be elected to the Board of Directors of the Company and shall cause Buyer's designees to be so elected. Buyer and Sub will supply to the Company any information relating to Buyer or its designees required by Section 14(f) of the Exchange Act and Rule 14f-1 thereunder, and the Company will take such action to effect the foregoing as may be necessary under Section 14(f) of the Exchange Act and Rule 14f-1 thereunder. The foregoing is without prejudice to any rights which the Buyer (or its affiliates) may have under the Tennessee Business Corporation Act (the "TBCA").

ARTICLE II

THE MERGER

SECTION 2.01 *The Merger*. Upon the terms and subject to the conditions hereof, and in accordance with the TBCA, Sub shall be merged with and into the Company (the "Merger") as soon as practicable following the satisfaction or waiver, if permissible, of the conditions set forth in Article VII hereof. Following the Merger, the Company shall continue as the surviving corporation (the "Surviving Corporation") and the separate corporate existence of Sub shall cease. Notwithstanding this Section 2.01, Buyer may elect, at any time prior to the Effective Time and subject to any additional approvals required by applicable law, instead of merging Sub into the Company as hereinabove provided, to merge the Company into Sub or another direct or indirect wholly owned subsidiary of Buyer. In such event, the parties agree to execute an appropriate amendment to this Agreement in order to reflect the foregoing and to provide that Sub or such other subsidiary of Buyer shall be the Surviving Corporation and will continue under the name "Shoney's South, Inc."

SECTION 2.02 *Effective Time*. The Merger shall be consummated, as and when provided in Section 2.12 hereof, by filing with the Secretary of State of the State of Tennessee articles of merger in such form as is required by, and executed in accordance with, and subject to Section 2.01, the relevant provisions of the TBCA (the time of such filing being herein called the "Effective Time").

SECTION 2.03 *Effects of the Merger*. The Merger shall have the effects set forth in Section 48-21-106 of the TBCA. As of the Effective Time and subject to Section 2.01 hereof, the Company shall be a subsidiary of Buyer.

SECTION 2.04 *Certificate of Incorporation and By-Laws*. Subject to Section 6.07 hereof, the Certificate of Incorporation and the By-laws of Sub, in each case as in effect at the Effective Time,

RECEIVED
STATE OF TENNESSEE

1988 SEP 14 AM 11:29

shall be the Certificate of Incorporation and By-laws of the Surviving Corporation, except that the name of the Surviving Corporation shall be "Shoney's South, Inc."

GENERIC COMPANY
SECRETARY OF STATE

SECTION 2.05 *Directors*. The directors of Sub at the Effective Time shall constitute the Board of Directors of the Surviving Corporation until their respective successors are duly elected and qualified.

SECTION 2.06 *Officers*. The officers of the Company at the Effective Time shall be the officers of the Surviving Corporation until their respective successors are duly elected and qualified. 1992

SECTION 2.07 *Conversion of Shares*. Each Company Share issued and outstanding immediately prior to the Effective Time (other than Company Shares held by Buyer, the Company or any subsidiary of Buyer or of the Company, which shall be cancelled) shall by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to receive \$18.25 in cash, net to the seller in cash or any higher price which may be paid pursuant to the Offer (the "Merger Consideration"), subject to applicable withholding or back-up withholding taxes, if any, payable to the holder thereof, without interest thereon, upon surrender of the certificate representing such Company Share.

SECTION 2.08 *Employee Stock Options; Employee Benefit Plans*. Buyer and the Company shall use their best efforts to provide, as soon as practicable after the date hereof, that immediately prior to the Merger (a) each outstanding option to purchase Company Shares (an "Option") granted under any employee stock option plan of the Company, whether or not exercisable or vested, shall become fully exercisable and vested, and (b) each Option shall be cancelled and the holders of Options in respect of which the amount set forth in clause (i) below is positive shall have the right to receive a payment from the Company in respect thereof in an amount equal to the product of (i) the excess of the Merger Consideration over the exercise price thereof and (ii) the number of Company Shares subject thereto; provided that the foregoing (i) shall be subject to the obtaining of any necessary consents of optionees and (ii) shall not require any action which violates any employee stock option plan of the Company; provided further, that the Company and the Buyer will use their best efforts to obtain any such consents and to amend any such plan if necessary. Except as provided herein, the Company will take all steps necessary to cause the Company's employee stock option plans to be terminated as of the Effective Time and, to the extent legally possible, to provide that no holder of Options or participant in any employee benefit plans or programs of the Company will have any right to acquire any interest in the Company on or after the Effective Time as a result of the exercise of such options or participation in such plans or programs.

SECTION 2.09 *Conversion of Sub Common Stock*. Each share of common stock of Sub issued and outstanding immediately prior to the Effective Time shall by virtue of the Merger and without any action on the part of the holder thereof be converted into and thereafter represent one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation.

SECTION 2.10 *Stockholders' Meeting*. If required by applicable law in order to consummate the Merger, the Company, acting through its Board of Directors, shall, in accordance with applicable law:

(a) duly call, give notice of, convene and hold a special meeting (the "Special Meeting") of its stockholders for the purpose of considering and taking action upon this Agreement as soon as practicable following the expiration or termination of the Offer;

(b) include in the Definitive Proxy Statement (as defined in Section 4.12 hereof) the recommendation of its Board of Directors that stockholders of the Company vote in favor of the approval of the Merger and adoption of this Agreement; and

(c) in connection with the Special Meeting, the Company shall prepare and file with the SEC, and Buyer and Sub shall cooperate with the Company in such preparation and filing, a preliminary proxy statement, in form satisfactory to Buyer, relating to the transactions contemplated by this Agreement (the "Preliminary Proxy Statement") and shall use its best efforts to

RECEIVED
STATE OF TENNESSEE

1988 SEP 14 AM 11:29

GENTRY CROFT
SECRETARY OF STATE

respond to the comments of the SEC and to cause the Definitive Proxy Statement to be mailed to the stockholders of the Company, all as soon as reasonably practicable after the completion of the Offer. The Company shall notify Buyer promptly of the receipt of comments from the SEC and of any request by the SEC for amendments or supplements to the Preliminary Proxy Statement or the Definitive Proxy Statement or for additional information, and shall supply Buyer with copies of all correspondence between the Company or its representative, on the one hand, and the SEC or members of its staff, on the other hand, with respect to the Preliminary Proxy Statement or the Definitive Proxy Statement. If at any time prior to the Special Meeting, any event should occur relating to the Company or its officers or directors which should be described in an amendment or supplement to the Definitive Proxy Statement, the Company shall promptly inform Buyer. Whenever any event occurs which should be described in an amendment of, or a supplement to, the Definitive Proxy Statement, the Company, with Buyer's cooperation, shall, upon learning of such event, promptly prepare, file and clear with the SEC and mail to the Company's stockholders such amendment or supplement; *provided, however*, that prior to such mailing, (a) the Company shall consult with Buyer with respect to such amendment or supplement, (b) the Company shall afford Buyer reasonable opportunity to comment thereon and (c) each such amendment or supplement shall be satisfactory to Buyer. Buyer agrees that, at the Special Meeting, all of the Company Shares then owned by Bu, or, Sub or any other subsidiary of Buyer or affiliate of Buyer will be voted in favor of the Merger.

SECTION 2.11 Merger Without Meeting of Stockholders. Notwithstanding the foregoing, in the event that Sub, or any other direct or indirect subsidiary of Buyer, shall acquire at least 90 percent of the outstanding Company Shares, the parties hereto agree, at the request of Buyer or Sub, to take all necessary and appropriate action to cause the Merger to become effective, as soon as practicable after the expiration of the Offer, if made, without a meeting of stockholders of the Company, in accordance with Section 48-21-104 of the TBCA.

SECTION 2.12 Closing. Upon the terms and subject to the conditions hereof, as soon as practicable after expiration or termination of the Offer, if any, and, if required by law, after the vote of the stockholders of the Company in favor of the approval of this Agreement has been obtained, the Company shall execute in the manner required by the TBCA and deliver to the Secretary of State of the State of Tennessee duly executed articles of merger, and the parties shall take such other and further actions as may be required by law to make the Merger effective. Prior to the filings referred to in this Section, a closing (the "Closing") will be held at the offices of Skadden, Arps, Slate, Meagher & Flom in Chicago, Illinois (or such other place as the parties may agree) for the purpose of confirming all of the foregoing. The date and time of such Closing are herein referred to as the "Closing Date."

ARTICLE III

EXCHANGE OF SHARES

SECTION 3.01 Exchange of Shares. (a) Prior to the Effective Time, Buyer shall designate a bank or trust company or similar entity which is authorized to exercise corporate trust or stock powers to act as Exchange Agent in the Merger (the "Exchange Agent"). At or immediately following the Effective Time, Buyer will take all steps necessary to enable and cause it or the Surviving Corporation to provide the Exchange Agent the aggregate funds necessary to make the payments contemplated by Section 2.07 hereof.

(b) Promptly after the Effective Time, the Exchange Agent shall mail to each record holder, as of the Effective Time, of an outstanding certificate or certificates which immediately prior to the Effective Time represented outstanding Company Shares (the "Certificates"), a form letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Exchange Agent) and instructions for use in effecting the surrender of the Certificate or payment therefor. Upon surrender to the Exchange

RECEIVED
STATE OF TENNESSEE

1988 SEP 14 AM 11:29

Agent of a Certificate, together with such letter of transmittal duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor cash in an amount equal to the product of the number of Company Shares represented by such Certificate multiplied by the amount of the Merger Consideration, and such Certificate shall then be cancelled. No interest will be paid or accrued on the cash payable upon the surrender of the Certificate. If payment is to be made to a person other than the person in whose name the Certificate surrendered is registered, it shall be a condition of payment that the Certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the person requesting such payment shall pay transfer or other taxes required by reason of the payment to a person other than the registered holder of the Certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not applicable. Until surrendered in accordance with the provisions of this Section 3.01, each Certificate (other than Certificates representing Company Shares held by Buyer or any subsidiary of Buyer or of the Company) shall represent for all purposes the right to receive the Merger Consideration in cash multiplied by the number of Company Shares evidenced by such Certificate, without any interest thereon. Any funds remaining with the Exchange Agent one year following the Effective Time shall be returned to Buyer or the Surviving Corporation, as specified by Buyer, after which time former stockholders of the Company, subject to applicable law, shall look only to the Surviving Corporation for payment of amounts due hereunder, without interest thereon, and shall have no greater rights against the Surviving Corporation than may be accorded to general creditors of the Surviving Corporation under Tennessee law.

(c) After the Effective Time there shall be no transfers on the stock transfer books of the Surviving Corporation of the Company Shares which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation, they shall be cancelled and exchanged for cash as provided in this Article III.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Buyer and Sub as follows:

SECTION 4.01 Organization and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Tennessee and has the requisite corporate power to carry on its business as currently conducted and is qualified to do business in all states where such qualification is necessary except where failure to so qualify would not materially and adversely affect the business of the Company or the ability to hold its assets, taken as a whole.

SECTION 4.02 Certificate of Incorporation; Corporate Documents. The copies of the Certificate of Incorporation and all amendments thereto, and of the By-Laws of the Company which have been furnished to Buyer are true, correct and complete copies thereof. The corporate minutes of the Company constitute complete records of the proceedings heretofore taken by its stockholders and directors.

SECTION 4.03 Subsidiaries. Except as set forth on Exhibit 4.03 hereto, the Company has no subsidiaries or investments in any other person, firm, corporation, partnership, joint venture or other form of business enterprise.

SECTION 4.04 Capitalization. The authorized capital stock of the Company consists of 20,000,000 Company Shares. As of the date hereof, 6,564,028 Company Shares were validly issued, outstanding, fully paid and nonassessable and 647,000 Company Shares were held in the Company's treasury. Except as set forth in Exhibit 4.04 hereto or pursuant to the Stock Option Agreement, there are no options, warrants or other rights, agreements or commitments obligating the Company or any of its subsidiaries to issue shares of its capital stock or any securities convertible into or exchangeable for shares of its capital stock.

RECEIVED
STATE OF TENNESSEE

1988 SEP 14 AM 11:29

SECTION 4.05 *Authority Relative to this Agreement.* The Company has the requisite corporate power and authority to enter into this Agreement and to carry out its obligations hereunder and this Agreement was approved by at least a majority of the Company's Continuing Directors (as defined in the Company's Certificate of Incorporation). The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the Company's Board of Directors and, except for the approval of the holders of a majority of the outstanding Company Shares, no other corporate proceedings on the part of the Company are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Company and constitutes a valid and binding agreement of the Company.

SECTION 4.06 *Financial Statements and Reports.* The Company has previously furnished to Buyer a draft of its Annual Report on Form 10-K for the year ended December 27, 1987, and each prospectus, definitive proxy statement and report filed by the Company with the SEC since January 1, 1985. None of such statements or reports contained as of their respective dates any untrue statement of a material fact or any omission to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of the consolidated balance sheets included in such reports (including any related notes) fairly present the consolidated financial position of the Company and its consolidated subsidiaries as of its date and the other financial statements included therein (including any related notes) fairly present the consolidated results of operation, changes in financial position and changes in stockholders' equity, as the case may be, of the Company and its consolidated subsidiaries for the periods therein set forth (and, in the case of any unaudited statements, reflect all adjustments, consisting only of normal recurring accruals), in each case in accordance with generally accepted accounting principles consistently applied during the periods involved (except as otherwise stated therein).

SECTION 4.07 *Registration under the Exchange Act; Filing of Reports.* The Company is registered under Section 12(g) of the Exchange Act and the Company Shares are included for trading on the National Market System of the National Association of Securities Dealers Automated Quotation System ("NASDAQ"). The Company has duly filed all reports heretofore required to be filed by it with the SEC under the Exchange Act. The Company has not been informed by the SEC that any such reports were not timely filed.

SECTION 4.08 *Consents and Approvals; No Violations.* Except for (a) the filings by the Company and Buyer, if any, required by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"), (b) filings with the SEC under Sections 13 and 14 of the Exchange Act and the rules and regulations thereunder, and (c) the filing of articles of merger and other appropriate merger documents, if any, as required by the TBCA, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not: (i) violate any provision of the Certificate of Incorporation or By-laws (or comparable governing documents) of the Company or any of its subsidiaries; (ii) violate any statute, ordinance, rule, regulation, order or decree of any court or arbitrator or of any public, governmental or regulatory body, agency or authority, federal, state or foreign (collectively, "Governmental Bodies"), applicable to the Company or any of its subsidiaries or by which any of their respective properties or assets may be bound; (iii) require any filing with, or permit, consent or approval of, or the giving of any notice to, any Governmental Body, or (iv) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of, any note, bond, mortgage, indenture, license, franchise, permit, agreement or other instrument or obligation to which the Company or any of its subsidiaries is a party, or by which any of them or any of their respective properties or assets may be bound (other than leases of real or personal property which may require lessors' consents), or result in any purchase obligation of the Company or any of its subsidiaries under any note, loan agreement or other similar instrument

RECEIVED
STATE OF TENNESSEE

1989 SEP 14 AM 11:29

GENTRY
SECRETARY OF STATE

or obligation, excluding from the foregoing clauses (ii), (iii) and (iv) violations, breaches and defaults which, and filings, notices, permits, consents and approvals the absence of which, in the aggregate, would not have a Material Adverse Effect and excluding from clause (iv) above, the Company's bank revolving credit line with NCNB National Bank of North Carolina and no representation is made hereunder as to whether or not Shoney's Inc., the franchisor of the Company's Shoney's and Captain D's restaurants, has the right under its franchise agreements with the Company or otherwise under applicable law to consent to, approve or impose conditions upon the Company with respect to a change of control of the Company.

CERTIFIED COPY

SECTION 4.09 Title to Properties. The Company has good and marketable fee or leasehold title to all of the material tangible properties and assets owned by it, or ~~owned by it~~ to the extent significant to its business, free and clear of all liens, mortgages, pledges, security interests, charges or encumbrances whatsoever except those liens or encumbrances which do not materially detract from the value of such property taken as a whole, or which are reflected in its financial statements.

SECTION 4.10 No Material Adverse Changes. Since December 27, 1987, (i) there has been no material adverse change in the Company's consolidated financial condition, assets, liabilities or business; (ii) no dividend, stock splits or other distributions in respect of stock have been declared, set aside or paid by the Company; (iii) there has been no sale or transfer of any of the assets of the Company or other transaction entered into by the Company other than in the regular and customary course of business; (iv) no material loss, damage or destruction of its property of a nature which would interfere with the ordinary conduct of the business of the Company (whether or not covered by insurance) has been suffered, and no material rights of value have been waived by the Company; and (v) there have been no strikes or work stoppages.

SECTION 4.11 Contracts and Compliance with Applicable Law. Neither the Company nor any of its subsidiaries (nor, to the best knowledge of the officers of the Company without inquiry, any other party thereto) is in violation of or in default in respect of any contract, lease, agreement or instrument to which it is a party or by which it or any of its properties or assets is bound, except for such violations and defaults which neither (i) in the aggregate would have a Material Adverse Effect nor (ii) in the case of leases, give the lessor thereunder a right of termination with respect thereto. Except for such violations and defaults which in the aggregate would not have a Material Adverse Effect, the Company and each of its subsidiaries currently holds and is in compliance with the terms of all trademark, patent or other licenses, permits and authorizations of any kind necessary for the lawful conduct of their respective businesses, and has complied with, and neither the Company and its subsidiaries nor their occupation and use of real property is in violation of, or in default in any respect under, the applicable statutes, ordinances, rules, regulations, orders or decrees of all Governmental Bodies having, asserting or claiming jurisdiction over it or over any part of its operations or assets.

SECTION 4.12 Offer Documents; Proxy Statements; Other Information. None of the information relating to the Company and its subsidiaries supplied by or on behalf of the Company for inclusion in the Offer to Purchase and Letter of Transmittal relating to the Offer (the "Offer Documents"), including any amendments or supplements thereto and any schedules or exhibits required to be filed with the SEC in connection therewith, will at the time the Offer Documents, or any amendments or supplements thereto or any such schedules or exhibits are filed with the SEC, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Schedule 14D-9 will comply in all material respects with the Exchange Act. If a proxy statement is required for the consummation of the merger under applicable law, the Definitive Proxy Statement will comply in all material respects with the Exchange Act, except that no representation is made by the Company with respect to information supplied by Buyer or Sub for inclusion in the Definitive Proxy Statement. The letter to stockholders, notice of meeting, proxy

RECEIVED
STATE OF TENNESSEE

1989 SEP 14 AM 11:29

GENTRY, GEORGE
SECRETARY

statement and form of proxy, or the information statement, as the case may be, to be distributed to stockholders in connection with the Merger, or any schedules required to be filed with the SEC in connection therewith are collectively referred to herein as the "Definitive Proxy Statement."

SECTION 4.13 Board Recommendation. The Board of Directors of the Company has, pursuant to the recommendation of a committee of disinterested directors and by resolutions duly adopted at a meeting of such Board duly held on March 21, 1988, approved this Agreement and the transactions contemplated hereby and recommended that the stockholders of the Company approve this Agreement and the transactions contemplated hereby and determined that the Merger is in the best interests of the holders of Company Shares. The Offer and Merger are not subject to Chapter 28 or Chapter 29 of the TBCA. CERTIFIED COPY

SECTION 4.14 Taxes. The Company has filed or caused to be filed all material federal, state, local and foreign income and other tax returns, reports and declarations which are required by applicable law to be filed by them and have paid, or made provision for the payment of, all federal, state, local and foreign income and other taxes which have or may become due for the periods covered by such returns, reports and declarations and for all subsequent periods through the date hereof, except such taxes, if any, that are adequately reserved against or such taxes which the failure to pay would not have a Material Adverse Effect.

SECTION 4.15 Litigation. Except as described in any of the documents referred to in Section 4.06 hereof or Exhibit 4.15, (i) no significant investigation or review by any governmental entity with respect to the Company is pending or, to the knowledge of the Company, threatened, and (ii) there is no action, suit or proceeding pending or, to the knowledge of the Company, threatened against or affecting the Company or its subsidiaries at law or in equity, or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, which either singly or in the aggregate may reasonably be expected to have a Material Adverse Effect.

SECTION 4.16 Employment Agreements. Except as set forth in Exhibit 4.16, there are no severance agreements or understandings for periods of time greater than one year between the Company or any of its subsidiaries, on the one hand, and any current directors, officers or other employees of the Company or any of its subsidiaries, on the other hand. Except as set forth in such Schedule, none of such severance agreements are activated solely by a change of control of the Company.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to the Company as follows:

SECTION 5.01 Organization and Qualification. Buyer is, and Sub will be at the commencement of the Offer, a corporation duly organized, validly existing and in good standing under the laws of the respective jurisdiction of its incorporation, and Buyer has, and Sub will have at the commencement of the Offer, the requisite corporate power to carry on its business as it is now being conducted.

SECTION 5.02 Authority Relative to This Agreement. Buyer has, and at the commencement of the Offer Sub will have, the requisite corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the Board of Directors of Buyer and, at the commencement of the Offer will have been authorized by the Board of Directors of Sub, and by Buyer as the sole stockholder of Sub and no other corporate proceedings on the part of Buyer or Sub are or will be necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and constitutes a valid and binding agreement of Buyer.

RECEIVED
STATE OF TENNESSEE

1988 SEP 14 AM 11:30

SECTION 5.03 *Consents and Approvals; No Violations.* Except for (a) the filings by the Company and Buyer, if any, required by Title II of the HSR Act, (b) filings with the SEC under Sections 13 and 14 of the Exchange Act and the rules and regulations thereunder, and (c) the filing of articles of merger and other appropriate merger documents, if any, as required by the TBCA, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not: (i) violate any provision of the Certificate of Incorporation or By-laws (or comparable governing documents) of Buyer or Sub; (ii) violate any statute, ordinance, rule, regulation, order or decree of any court or arbitrator or of any Governmental Body, applicable to Buyer or Sub or by which any of their respective properties or assets may be bound; (iii) require any filing with, or permit, consent or approval of, or the giving of any notice to, any Governmental Body; or (iv) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, franchise, permit, agreement or other instrument or obligation to which Buyer or Sub is a party, or by which any of them or any of their respective properties or assets may be bound, excluding from the foregoing clauses (ii), (iii) and (iv) violations, breaches and defaults which, and filings, notices, permits, consents and approvals the absence of which, in the aggregate, would not have a Material Adverse Effect on Buyer.

SECTION 5.04 *Offer Documents; Definitive Proxy Statement.* The Offer Documents and the Offer will comply in all material respects with the Exchange Act, except that no representation is made by Buyer or Sub with respect to information supplied by the Company for inclusion in the Offer Documents. None of the information supplied by Buyer and its affiliates specifically for inclusion in the Definitive Proxy Statement will, at the time the Definitive Proxy Statement is mailed, or, at the time of the Special Meeting or at the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

SECTION 5.05 *Financial Statements.* Buyer has previously furnished to the Company a draft of Buyer's financial statements for the year ended December 31, 1987. Such financial statements did not contain as of the date of such financial statements any untrue statement of a material fact or any omission to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The consolidated balance sheet included in such financial statements (including any related notes) fairly present the consolidated financial position of Buyer and its consolidated subsidiaries as of its date and the other financial statements included therein (including any related notes) fairly present the consolidated results of operation, changes in financial position and changes in stockholders' equity, as the case may be, of the Company and its consolidated subsidiaries for the periods therein set forth, in each case in accordance with generally accepted accounting principles consistently applied during the periods involved (except as otherwise stated therein).

ARTICLE VI

COVENANTS

SECTION 6.01 *Conduct of Business by the Company Pending the Merger.* The Company covenants and agrees that, prior to the Effective Time, unless Buyer shall otherwise agree in writing or except as otherwise contemplated or expressly permitted by this Agreement:

(a) the business of the Company shall be conducted in the ordinary and usual course in all material respects and consistent with past practices, the Company shall use its best reasonable efforts to preserve intact its business organization and good will, keep available the services of its respective officers and employees and maintain satisfactory relationships with suppliers, distributors, customers and others having business relationships with them (unless in any such case the Company shall have determined that it is not in its overall best interest to do so and, in any

RECEIVED
STATE OF TENNESSEE

NOV SEP 14 AM 11:30

GENTRY CROWE
SECRETARY OF STATE

such event which is material, the Company shall advise and consult with Buyer concerning the same) and the Company shall promptly notify Buyer of any event or occurrence or emergency material to, and not in the ordinary and usual course of, the business of the Company.

(b) the Company shall not (i) propose or adopt any amendments to its Certificate of Incorporation or By-Laws or (ii) split, combine or reclassify any shares of its capital stock or declare, set aside or pay any dividend or distribution payable in cash, stock or property with respect to any shares of its capital stock;

(c) neither the Company nor any of its subsidiaries will issue or agree to issue any additional shares of, or rights of any kind to acquire any shares of, its capital stock of any class other than pursuant to rights or options currently outstanding and listed on Exhibit 4.04 hereto;

(d) the Company and its subsidiaries shall not make any capital expenditures or commitments for capital expenditures in excess of \$100,000 on an individual basis without prior consultation with Buyer, or create, incur or assume any long-term or short-term indebtedness for money borrowed except in the ordinary course of business and consistent in all material respects with past practice;

(e) the Company shall not adopt, enter into or amend any bonus, profit sharing, compensation, stock option, warrant, pension, retirement, deferred compensation, employment, severance, termination or other employee benefit plan, agreement, trust fund or arrangement for the benefit or welfare of any officer, director or employee, the effect of which is materially to increase in the aggregate the total cost to the Company. Except pursuant to the terms of existing employee benefit plans or arrangements, the Company shall not agree to any increase in the compensation payable or to become payable to any officer or director without first consulting with Buyer. The Company may increase compensation to employees other than officers in the ordinary course of business and consistent in all material respects with past practices;

(f) the Company shall not sell, lease (as lessor), mortgage, encumber, or otherwise dispose of or grant any interest in any of its assets or properties which, in the aggregate, are material to the business of the Company and its subsidiaries taken as a whole;

(g) the Company will not enter into any agreement if the performance thereof would violate any of the foregoing covenants.

SECTION 6.02 No Solicitation, etc. The Company shall not (nor will it permit any of its subsidiaries, officers, directors or agents to) directly or indirectly solicit, encourage (including by way of providing any non-public information concerning the Company or its subsidiaries to any person), initiate or participate in any negotiations or discussions, or enter into (or authorize) any agreement or agreement in principle, or announce any intention to do any of the foregoing, with respect to any offer or proposal to acquire all or a substantial part of its or its subsidiaries' business and properties or any of its or its subsidiaries' capital stock whether by merger, purchase of assets, tender offer or otherwise. The Company shall immediately cease and cause to be terminated all contacts or negotiations with third parties with respect to the foregoing existing on the date hereof.

SECTION 6.03 Access to Information.

(a) Between the date of this Agreement and the Effective Time, the Company will give the Buyer and Sub and their respective accountants, counsel and other authorized representatives reasonable access to the plants, offices, warehouses and other facilities and to the books and records of it and its subsidiaries, will permit Buyer, Sub and their respective authorized representatives to make such reasonable inspections as they may require and will cause its officers and those of its subsidiaries to furnish Buyer and Sub and their respective authorized representatives with such financial and operating data and other information with respect to the business and properties of the Company and its subsidiaries as Buyer and Sub may from time to time reasonably request.

RECEIVED
STATE OF TENNESSEE
330 SEP 14 AM 11:30

GENTRY CROWELL
SECRETARY OF STATE

(b) Except as may be reasonably necessary to carry out this Agreement and the transactions contemplated hereby, Buyer and Sub will, and will instruct their employees and agents to, hold in strict confidence, all Confidential Information (as hereinafter defined), and will not disclose the same to any person without the prior consent of the Company, unless compelled to disclose any such Confidential Information by judicial or administrative process or, in the opinion of their counsel, by other requirements of law. If this Agreement is terminated, Buyer and Sub will promptly return to the Company or destroy all documents (including all copies thereof) furnished by the Company and received by Buyer and Sub containing such Confidential Information. For purposes hereof, "Confidential Information" shall mean all information of any kind concerning the Company, wherever obtained, except information (i) ascertainable or obtained from public or published information, (ii) received from a third party not known to Buyer and Sub to be under an obligation to the Company to keep such information confidential, (iii) which is or becomes known to the public (other than through a breach of this Agreement), (iv) which Buyer and Sub can demonstrate was rightfully in its possession prior to disclosure thereof to Buyer and Sub in connection with this Agreement and the consummation of the transactions contemplated thereby, or (v) which Buyer and Sub can demonstrate was independently developed by it.

SECTION 6.04 Reasonable Efforts. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use all reasonable 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 laws and regulations to consummate and make effective the transactions contemplated by this Agreement including obtaining all consents, authorizations, orders and approvals required in connection with, and waivers of any violations, breaches and defaults that may be caused by, the consummation of the Merger or the other transactions contemplated by this Agreement. In case at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each party to this Agreement shall take all such necessary action.

SECTION 6.05 Public Announcements. Buyer and the Company will consult with each other before issuing any press release or otherwise making any public statements with respect to the Offer or the Merger and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by law or by obligations pursuant to any listing agreement with any national securities exchanges.

SECTION 6.06 Indemnification. Buyer agrees that all rights to indemnification now existing in favor of the employees, agents, directors or officers of the Company and its subsidiaries as provided in their respective charters or by-laws or otherwise in effect on the date hereof shall survive the Merger and shall continue in full force and effect for a period of not less than seven years from the Effective Time; provided that, in the event any claim or claims are asserted or made within such seven-year period, all rights to indemnification in respect of any such claim or claims shall continue until disposition of any and all such claims. The Company represents to Buyer that the only rights to indemnification existing in favor of any of the Indemnified Parties are pursuant to the respective charters and by-laws of the Company and its subsidiaries or applicable state corporate law.

SECTION 6.07 Fair Price Statute. If any "fair price", "control share acquisition" or "business combination" statute or other similar statute or regulation (collectively, "Takeover Statutes") shall become applicable to the transactions contemplated hereby, the Company and the members of the Board of Directors of the Company shall use their best efforts to grant such approvals and take such actions as are necessary so that the transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to minimize the effects of such statute or regulation on the transactions contemplated hereby.

RECEIVED
STATE OF TENNESSEE
1998 SEP 14 AM 11:30
GENTRY CROWELL
SECRETARY OF STATE

ARTICLE VII

CONDITIONS TO CONSUMMATION OF THE MERGER

SECTION 7.01 *Conditions to Each Party's Obligation to Effect the Merger.* The respective obligations of each party to effect the Merger are subject to the satisfaction or waiver, where permissible, prior to the Effective Time of each of the following conditions: AUG 19 1992

(a) This Agreement shall have been adopted by the affirmative vote of the stockholders of the Company by the requisite vote in accordance with applicable law, if such vote is required by applicable law;

(b) The waiting period, if any, applicable to the consummation of the Merger under the HSR Act shall have expired or been terminated;

(c) No statute, rule, regulation, executive order, decree, injunction or restraining order shall have been enacted, entered, promulgated or enforced by any court of competent jurisdiction or governmental authority which prohibits or restricts consummation of the Merger.

SECTION 7.02 *Additional Conditions to Obligations of Buyer and Sub to Effect the Merger.* The obligations of Buyer and Sub to effect the Merger are further subject to each of the following conditions:

(a) Sub shall have accepted for payment and paid for Company Shares tendered pursuant to the Offer;

(b) The Company and its subsidiaries shall have complied with and performed its agreements and obligations contained herein in all material respects, in every case, on or prior to the Effective Time;

(c) The representations and warranties of the Company set forth in this Agreement shall be true and correct in all material respects at and as of the Effective Time as if made at and as of such time;

(d) Buyer shall have received a certificate of the Company, dated the Closing Date, signed by the President and a Vice-President of the Company, to the effect that, to the best of the knowledge, information and belief of each such officer, the conditions specified in paragraphs (b) and (c) of this Section 7.02 have been fulfilled;

(e) No suit, action or proceeding before any court or any Governmental Body shall have been commenced and be pending by any person against the Company, Buyer or Sub or any of their affiliates, associates, officers or directors (i) seeking to restrain, prevent, change or delay in any material respect the transactions contemplated hereby challenging any of the terms or provisions of this Agreement or seeking material damages in connection with any of such transactions or (ii) which is of a nature described in clauses (b)(iii) or (b)(iv) of Annex A hereto;

(f) None of the matters set forth in paragraph (c) of Annex A hereto shall have occurred.

ARTICLE VIII

TERMINATION; AMENDMENTS; WAIVER

SECTION 8.01 *Termination.* This Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time notwithstanding approval thereof by the stockholders of the Company, but prior to the Effective Time:

(a) by mutual written consent duly authorized by the Boards of Directors of the Company (excluding any representative of Buyer or an affiliate of Buyer), Buyer and Sub;

RECEIVED
STATE OF TENNESSEE
1988 SEP 14 AM 11:30

GENTRY CROWELL
SECRETARY OF STATE

(b) by Buyer if the Company's Board of Directors shall have modified or amended in any respect its recommendation of the Merger or the Offer which materially diminishes its recommendation with respect to the Offer or taken any position inconsistent therewith or shall have resolved to do so, including a failure to (i) call, give notice of or hold the Special Meeting because the Company's Board of Directors does not recommend approval and adoption of this Agreement by the stockholders of the Company or (ii) include in the Schedule 14D-9 the Board of Directors' recommendation that stockholders tender their Company Shares into the Offer;

(c) by Buyer or the Company if the Offer shall not have been consummated within 120 days after the date hereof unless Buyer shall have acquired directly or indirectly Shares pursuant to the Company Option or shall otherwise have acquired directly or indirectly at least 10% of the then outstanding Company Shares within 30 business days after the Offer shall have expired or been terminated;

(d) by Buyer or the Company if the Merger shall not have been consummated within 180 days after the date hereof unless Buyer shall have acquired directly or indirectly at least a majority of the then outstanding Company Shares (on a fully diluted basis including Company Shares then subject to the Company Option);

(e) by Buyer or the Company if Buyer shall have exercised its rights under Section 5 of the Company Option; or

(f) by Company if Sub shall have refused to accept and pay for Company Shares tendered pursuant to the Offer other than pursuant to the terms and conditions of the Offer and this Agreement.

SECTION 8.02 Effect of Termination. The rights of termination provided for in Section 8.01 shall not be an exclusive remedy hereunder but shall be in addition to any other legal or equitable remedies that may be available to any nondefaulting party hereto arising out of any default hereunder by any other party hereto; provided, however, that the provisions of Sections 6.03(b) and 9.09 shall survive the termination of this Agreement.

SECTION 8.03 Amendment. This Agreement may be amended by action taken by or on behalf of parties hereto at any time before or, subject to receipt of the requisite stockholder approval, if any, or otherwise in accordance with applicable law, after adoption of this Agreement by the stockholders of the Company. This Agreement may not be amended except by an instrument in writing signed on behalf of all the parties.

SECTION 8.04 Extension; Waiver. At any time prior to the Effective Time, the parties hereto may (i) extend the time for the performance of any of the obligations or other acts of any other applicable party hereto, (ii) waive any inaccuracies in the representations and warranties contained herein by any other applicable party or in any document, certificate or writing delivered pursuant hereto by any other applicable party or (iii) waive compliance with any of the agreements of any other applicable party or with any conditions to its own obligations.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01 Survival of Representations and Warranties. The representations and warranties made in this Agreement shall not survive beyond the Effective Time. This Section 9.01 shall not limit any covenant or agreement of the parties hereto, which by its terms contemplates performance after the Effective Time.

SECTION 9.02 Brokerage Fees and Commissions. Except for the arrangements between the Company and Robinson Humphrey Inc., the terms and provisions of which have been disclosed to

RECEIVED
STATE OF TENNESSEE

1988 SEP 14 AM 11:30

Buyer by the Company on or prior to the date hereof, the Company hereby represents and warrants to
GEN. SEC. 111
SECRETARY OF STATE
Company that no person or entity is entitled to receive from the
Company any investment banking, brokerage or finder's fee or fees for financial consulting or
advisory services in connection with this Agreement or the transactions contemplated hereby.

SECTION 9.03 *Entire Agreement; Assignment.* This Agreement (a) constitutes the entire agree-
ment among the parties with respect to the subject matter hereof and supersedes all other prior
agreements and understandings, both written and oral, among the parties or any of them with respect
to the subject matter hereof and (b) shall not be assigned by operation of law or otherwise, provided
that, subject to any approvals required by applicable law, Buyer or Sub may assign its respective
rights and obligations to any wholly owned, direct or indirect, subsidiary or subsidiaries of Buyer, but
no such assignment shall relieve Buyer of its obligations hereunder. SECRETARY OF STATE

It is understood and agreed that either Buyer, Sub or any other, direct or indirect, wholly owned
subsidiary or subsidiaries of Buyer may commence the Offer or purchase Company Shares
thereunder.

SECTION 9.04 *Validity.* The invalidity or unenforceability of any provision of this Agreement
shall not affect the validity or enforceability of any other provisions of this Agreement, each of which
shall remain in full force and effect.

SECTION 9.05 *Notices.* All notices, requests, claims, demands and other communications here-
under shall be in writing and shall be deemed to have been duly given when delivered in person, by
cable, telegram or telex, or by registered or certified mail (postage prepaid, return receipt requested)
to the respective parties as follows:

If to Buyer or Sub:

TPI Enterprises, Inc.
885 Third Avenue
New York, New York 10022
Attention: Stephen R. Cohen

with a copy to:

Skadden, Arps, Slate, Meagher & Flom
333 West Wacker Drive, Suite 2100
Chicago, Illinois 60606
Attention: John R. Schmidt, Esq.

If to the Company:

Shoney's South, Inc.
2158 Union Avenue
Memphis, Tennessee 38174
Attention: President

with copies to:

Dr. Daniel Hankey
3645 Northside Drive, N.W.
Atlanta, Georgia 30305

and

RECEIVED
STATE OF TENNESSEE

1988 SEP 14 AM 11:30

GENTRY CROWELL
SECRETARY OF STATE
Smith, Gambrell & Russell
Atlanta Financial Center
3333 Peachtree Road, N.E.
Suite 18090, East Tower
Atlanta, Georgia 30326
Attention: Michael T. Turner

and

Harkavy, Shainberg, Kosten & Pinsten
770 Estate Place
Memphis, Tennessee 38119
Attention: Raymond M. Shainberg, Esq.

AUG 19 1992

CERTIFIED COPY

or to such other address as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above (provided that notice of any change of address shall be effective only upon receipt thereof).

SECTION 9.06 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

SECTION 9.07 Descriptive Headings. The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning of interpretation of this Agreement.

SECTION 9.08 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

SECTION 9.09 Expenses: Fees.

(a) To compensate Buyer for entering into this Agreement, taking action to consummate the transactions hereunder and incurring related costs and expenses and other losses and damages, including the forgoing by Buyer of other opportunities, the Company has agreed to pay to Buyer the sum of \$3.5 million promptly after, but in no event later than two days following, whichever of the following first occurs (provided that Buyer or Sub is not then in material breach of this Agreement): (a) any material breach by the Company of its obligations under this Agreement, or any inaccuracy in any representation or warranty by the Company in this Agreement which has a Material Adverse Effect (provided that any inaccuracy with respect to any representation of financial condition or valuation of assets of the Company shall have an adverse impact, in the aggregate, of \$3 million or more on the balance sheet of the Company, provided, that no effect shall be given to downward adjustment in the valuation of, or carried amounts for, intangible assets); (b) the Board of Directors of the Company shall have publicly withdrawn or modified its recommendation that the stockholders of the Company accept the Offer or vote in favor of this Agreement and the Merger and the transactions contemplated hereby or shall have failed publicly to reconfirm any such recommendation within 10 business days after a written request for such reconfirmation by Buyer; or (c) a Third Party Acquisition (as hereinafter defined) shall occur. A "Third Party Acquisition" shall occur if at any time from the date hereof until one year after abandonment or termination of the transactions contemplated hereby (i) the Company enters into an agreement in principle or definitive agreement providing for the acquisition of the Company or 30% or more of its stock or assets by a third party (such assets being disposed of to be valued at the higher of book value or fair market value, with all other assets to be valued at book value), or (ii) any "person" or "group" (other than Buyer or Sub), as such terms are defined in Section 13(d) of the Exchange Act, commences a tender offer for 30% or more of the outstanding shares of the Common Stock or acquires beneficial ownership of 30% or

RECEIVED
STATE OF TENNESSEE

1988 SEP 14 AM 11:30

GENTRY GRIFFIN
SECRETARY OF STATE

more of the outstanding shares of the Common Stock (even if such acquisition is later than one year after abandonment or termination of the transactions contemplated herein).

(b) If this Agreement is terminated and the Company shall be obligated to make a payment pursuant to Section 9.09(a) hereof, then the Company shall reimburse Buyer, Sub and their affiliates for all reasonable out-of-pocket expenses (including all fees and expenses of counsel, accountants, experts and consultants to Buyer, Sub and their affiliates) incurred by them or on their behalf in connection with the consummation of the transactions contemplated by this Agreement; provided, however, that the Company shall not be obligated to pay an aggregate amount in excess of \$1.0 million. Nothing contained in this Section 9.09(b) shall in any way affect the Company's obligations pursuant to Section 9.09(a) hereof.

(c) Except as provided otherwise in Sections 9.09(a) and (b) hereof, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses (including, in any event in the case of the Company, the costs of printing the Definitive Proxy Statement and any other filings to be printed, and in each case all exhibits, amendments or supplements thereto).

SECTION 9.10 Certain Definitions.

(a) "subsidiary" shall mean, when used with reference to an entity, any corporation, a majority of the outstanding voting securities of which are owned directly or indirectly by such entity.

(b) "Material Adverse Effect" shall mean any adverse change in the condition (financial or other), assets, liabilities, business, revenues, income, results of operations or operations of the Company and its subsidiaries which is material to the Company and its subsidiaries taken as a whole.

(c) "Material Adverse Effect on Buyer" shall mean any adverse change in the condition (financial or other), assets, liabilities, business, revenues, income, results of operations or operations of Buyer and its subsidiaries (including Sub) which is material to Buyer and its subsidiaries (including Sub) taken as a whole.

(d) "person" shall include individuals, corporations, partnerships, trusts, other entities and groups.

(e) "beneficial ownership" shall, unless otherwise indicated, be calculated in accordance with the provisions of the Exchange Act and the rules thereunder.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized, all as of the day and year first above written.

ATTEST:

/s/GARY P. CULLEN

ATTEST:

/s/MORRIS J. KRIGER

TPI ENTERPRISES, INC.

By: /s/JOSEPH P. GOWAN
Title: Executive Vice President

SHONEY'S SOUTH, INC.

By: /s/JAMES H. PRENTISS
Title: President # 1992-19778

09/11/1992-19778
11:52 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
I-16 : 018 MCB 49.00