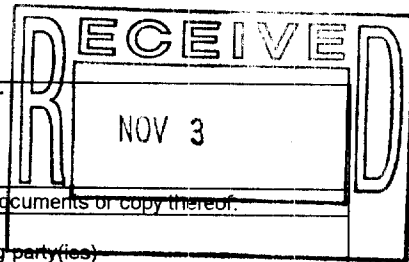


11-09-1998



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RE

SHEET

100872826

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Wilderness Systems, Inc.

- Individual(s)
- General Partnership
- Corporation - State of North Carolina
- Other: _____
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)

Name: Confluence Holdings Corporation

Street Address: 3761 Old Glenola Road

City: Trinity State: NC Zip: 27370

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation - State of Delaware
- Other: _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a different document from assignments)
Additional name(s) & address(es) attached? Yes No

3. Nature of Conveyance:

- Assignment
- Security Agreement
- Other: _____
- Merger
- Change of Name

Execution Date: October 5, 1998

4. Application number(s) or registration number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Trademark Application No.(s)

74/667,890; 75/433,453; 75/447,617

B. Registration No.(s)

1,221,657; 2,158,103

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Chris Wilson

Internal Address: _____

Street Address: Arnold & Porter

555 Twelfth Street N.W.

City: Washington State: DC ZIP: 20004-1202

6. Total number of applications and registrations involved: 5

7. Total fee (37 CFR 3.41).....\$ 140.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

01-2510

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

James T. Walsh, Esq.

Name of Person Signing

Signature

October 30, 1998

Date

Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

11/06/1998 SIBKNS 00000145 012510 74667890

01 FC:481 40.00 CH
02 FC:482 100.00 CH

TRADEMARK
REEL: 1810 FRAME: 0340

ASSIGNMENT

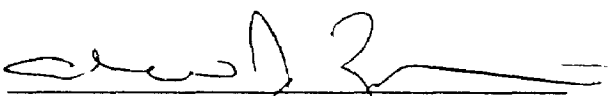
WHEREAS, Wilderness Systems, Inc., a North Carolina corporation (hereinafter Assignor), has adopted, used and is using the trademarks, trademark applications and/or registrations listed in Attachment A, for which applications have been filed in the United States Patent and Trademark Office; and

WHEREAS, Confluence Holdings Corp., a Delaware corporation (hereinafter Assignee), is desirous of acquiring the trademark applications and/or registrations listed on Attachment A;

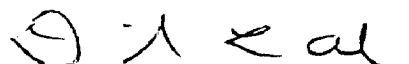
NOW, THEREFORE, in consideration of and in exchange for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, said Assignor does hereby assign unto Assignee all rights, title, and interest in and to the trademark applications and/or registrations on Attachment A, together with the good will of the business symbolized by the trademarks.

This Assignment is executed at the offices of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C. 20004, this the 5th day of October, 1998.

WILDERNESS SYSTEMS, INC.

By: 
Name: Andrew J. Zimmerman
Title: President

ATTEST:


David L. Olson
Secretary

ATTACHMENT A

Registration No. 1,221,657 Issued: December 12, 1982 Trademark: Wind Rider

Registration No. 2,158,103 Issued: May 19, 1998 Trademark: Wilderness
Systems

Serial No. 74/667,890 Filed: May 1, 1995 Trademark: Windrider

Serial No. 75/433,453 Filed: February 12, 1998 Trademark: Rave

Serial No. 75/447,617 Filed: March 10, 1998 Trademark: WindRider Rave

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of October 5, 1998, by and between WILDERNESS SYSTEMS, INCORPORATED, a North Carolina corporation (the "Company"), and CONFLUENCE HOLDINGS CORP., a Delaware corporation ("Purchaser").

WHEREAS, the Company is engaged in the business of the manufacturing, marketing and sales of kayaks, canoes, boats and related accessories and equipment under the trademarks and related logotypes "Wilderness Systems"; and

WHEREAS, the Company wishes to sell, and Purchaser wishes to purchase, the Assets (as hereinafter defined), upon the terms and conditions hereinafter set forth,

NOW, THEREFORE, in consideration of the mutual terms, conditions and other agreements set forth herein, Purchaser and the Company hereby agree as follows:

ARTICLE I
TRANSFER OF ASSETS; CONSIDERATION

1.1 Transfer of Assets. On the terms and subject to the conditions set forth in this Agreement, the Company will sell, transfer, assign, convey and deliver to Purchaser, and Purchaser will purchase and pay for, at the Closing, free and clear of all Liens other than Permitted Liens, all of the right, title and interest of the Company in and to the following Assets and Properties (collectively, the "Assets"). Except as specifically excluded pursuant to Section 1.2, the Assets include, without limitation, all of the right, title and interest of the Company in or to the following:

(a) [intentionally omitted]

(b) Real Property Leases. All leases and subleases of real property described in Section 1.1(b) of the Disclosure Schedule as to which the Company is the lessee or sublessee, together with any options to purchase the underlying property and leasehold improvements thereon, and in each case all other rights, subleases, licenses, permits, deposits and profits appurtenant to or related to such leases and subleases (the "Real Property Leases");

(c) Inventory. All inventories or raw materials, work-in-process, finished goods, merchandise, products under research and development, demonstration equipment, packaging materials and other accessories related thereto which are held at, or are in transit from or to, the locations at which the Business is conducted, or located at suppliers' premises or customers' premises on consignment, in each case, which are used

Confirmed to be a true copy
George W. W.
10/29/98
TRADEMARK

or held for use by the Company in the conduct of the Business, together with all rights of the Company against suppliers of such inventories (the "Inventory");

(d) **Accounts Receivable.** All trade accounts receivable and all notes, bonds and other evidences of Indebtedness of and rights to receive payments arising out of sales occurring in the conduct of the Business and the security agreements related thereto, including any rights of the Company with respect to any third party collection proceedings which have been commenced in connection therewith (the "Accounts Receivable");

(e) **Tangible Personal Property.** All fixtures, equipment and other tangible personal property (other than Motor Vehicles and Inventory) used or held for use in the conduct of the Business at the locations at which the Business is conducted or at suppliers' premises or customers' premises on consignment, or otherwise used or held for use by the Company in the conduct of the Business, including any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person ("Tangible Personal Property");

(f) **Personal Property Leases.** (i) The leases or subleases of Tangible Personal Property described in Section 1.1(f)(i) of the Disclosure Schedule as to which each Company is the lessor or sublessor and (ii) to the extent their transfer is permitted under the terms thereof, all leases of Tangible Personal Property described in Section 1.1(f)(i) of the Disclosure Schedule as to which each Company is the lessee or sublessee and (iii) any options to purchase the property underlying the leases in clause (ii) above as described in Section 1.1(f)(ii) of the Disclosure Schedule (the leases and subleases described in subclauses (i) and (ii), the "Personal Property Leases");

(g) **Business Contracts.** All Contracts to which the Company is a party and which are utilized in the conduct of the Business, including without limitation Contracts relating to suppliers, sales representatives, distributors, designers, consultants, purchase orders, marketing and purchasing arrangements and manufacturing arrangements, including but not limited to the Material Contracts listed in Section 1.1(g) of the Disclosure Schedule (the "Business Contracts");

(h) **Prepaid Expenses.** All prepaid expenses relating to the Business;

(i) **Intangible Personal Property.** All intellectual property rights used or held for use in the conduct of the Business (including the Company's goodwill therein) and all rights, privileges, claims, causes of action and options relating or pertaining to the Business or the Assets, including but not limited to patents and applications therefor, knowhow, trade secrets, business and marketing plans, websites and domains, computer software (including source codes) and related documentation, copyrights and applications therefor, trademarks and applications therefor, trade names, service marks and all names

and slogans used by the Company in connection with the Business, as described in Section 1.1(i) of the Disclosure Schedule (the "Intangible Personal Property");

(j) **Licenses.** All licenses, permits, franchises, approvals and authorizations (including applications therefor) utilized in the conduct of the Business, including but not limited to those listed in Section 1.1(j) of the Disclosure Schedule (the "Business Licenses");

(k) **Security Deposits.** All security deposits deposited by or on behalf of the Company as lessee or sublessee under the Real Property Leases or the Personal Property Leases;

(l) **Motor Vehicles.** All motor vehicles owned or leased by Seller and used in the conduct of the Business, including but not limited to the vehicles listed in Section 1.1(l) of the Disclosure Schedule ("Motor Vehicles").

(m) **Warranties.** All rights of the Company under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors in connection with products sold to or services provided to the Company for the Business, or affecting the property, machinery or equipment used in the conduct of the Business; and

(n) **Telephone Numbers.** All transferable telephone exchange numbers.

(o) **Tradename and Logo.** All of Seller's right, title and interest in and to all trade names and logos, including without limitation the names "Wilderness Systems" and "WindRider" and the Wilderness System, WindRider and Trinity Bay logos; and

1.2 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, the following Assets and Properties of the Company set forth on Schedule 1.2 (the "Excluded Assets") shall be excluded from and shall not constitute Assets.

1.3 Assumed Liabilities. In connection with the sale, transfer, conveyance, assignment and delivery of the Assets pursuant to this Agreement, on the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser will assume and agree to pay, perform and discharge when due the following obligations of the Company arising in connection with the operation of the Business, as the same shall exist on the Closing Date (the "Assumed Liabilities"), and no others:

(a) **Real Property Lease Obligations.** All obligations of the Company under the Real Property Leases;

(b) **Accounts Payable.** All obligations of the Company with respect to accounts payable reflected or reserved against in the Balance Sheet or those arising in the ordinary course of business since the Financial Statement Date;

(c) **Personal Property Lease Obligations.** All obligations of the Company under the Personal Property Leases;

(d) **Obligations under Contracts and Licenses.** All obligations of the Company under the Business Contracts and Business Licenses;

(e) **Accrued Expenses.** All obligations of the Company with respect to accrued expenses reflected or reserved against in the Balance Sheet or those incurred in the ordinary course of business since the Financial Statement Date; and

(f) **Product Liabilities.** All liabilities arising out of claims of third parties for damage or injury suffered as the result of defective products sold by the Company prior to the Closing Date but only to the extent that the Company's liability insurance policies do not provide coverage with respect to such liabilities, except that the Purchaser assumes no liability for claims arising out of the intentional acts of the Company or its employees or agents.

The assumption by Purchaser of the Assumed Liabilities, and the transfer thereof by the Company shall in no way expand the rights or remedies of any third party against Purchaser or the Company or their respective officers, directors, employees, shareholders and advisors as compared to the rights and remedies which such third party would have had against such parties had Purchaser not assumed such liabilities. Without limiting the generality of the preceding sentence, the assumption by Purchaser of said liabilities shall not create any third party beneficiary rights.

1.4 Retained Liabilities. Except for the Assumed Liabilities, Purchaser shall not assume by virtue of this Agreement or the transactions contemplated hereby, and shall have no liability for, any Liabilities of the Company (including, without limitation, those related to the Business) of any kind, character or description whatsoever, including without limitation the obligations of the Company under the Contracts listed on Schedule 1.4 (the "**Retained Liabilities**"). The Company shall discharge in a timely manner or shall make adequate provision for all of the Retained Liabilities, provided that the Company shall have the ability to contest, in good faith, any such claim of liability asserted in respect thereof.

1.5 Consideration. The consideration (the "**Purchase Consideration**") for the Assets to be purchased by Purchaser from the Company hereunder shall consist of (i) TEN MILLION ONE HUNDRED SIXTY THOUSAND Dollars (\$10,160,000) in cash, \$50,000 of which has already been paid to the Company as earnest money (the "**Cash Payment**"), (ii) 9% Subordinated Notes due October 5, 2005 (the "**Subordinated Notes**") having an aggregate principal amount equal to Two Million, Five Hundred Thirty-Five Thousand Dollars

(\$2,535,000) (the "Subordinated Note Payment"), (iii) warrants to purchase common stock of the Purchaser representing 12.5% of the capital stock of the purchaser for an aggregate exercise price of \$833,926 (which exercise price shall be paid by reducing the principal balance of the Subordinated Notes by \$833,926) (the "Warrant Payment"). The parties agree that (x) the Subordinated Note Payment shall be deemed to have a fair market value of \$2,535,000 and (y) the Warrant Payment shall be deemed to have a value of \$5,000. The Purchase Consideration shall be allocated among the Assets such that a portion of the Purchase Consideration equal to the aggregate book value of the fixed assets of the Company is allocated among the fixed assets of the Company in proportion to their respective book values and that any excess Purchase Consideration will be allocated to goodwill. Such allocation shall be made consistent with the requirements of Sections 1060 and 707 of the Code and the regulations thereunder. Neither party shall take a position on any Tax Return, before any governmental agency charged with the collection of any Tax, or in any judicial proceeding, that is in any way inconsistent with the allocation of the Purchase Consideration provided for in Schedule 1.5, without the consent of the other party.

1.6 Closing. The consummation of the purchase and sale of the Assets (the "Closing") will take place at the offices of Arnold & Porter, 555 12th Street, N.W., Washington, D.C. 20004 or at such other place as Purchaser and the Company mutually agree, at 10:00 A.M. local time, on the Closing Date. Immediately prior to the Closing, the Purchaser shall wire transfer the amounts required to satisfy and pay in full each of the promissory notes and equipment leases of the Company described on Section 5.2 of the Disclosure Schedule hereto to the obligees or counterparties thereto. At the Closing, (i) Purchaser will pay the Cash Payment (less the \$50,000 of earnest money which has already been paid to the Company) by wire transfer of immediately available funds to the accounts set forth on Schedule 1.6 hereto and (ii) Purchaser will deliver to the Company or its designees the promissory notes representing the Subordinated Note Payment and warrants representing the Warrant Payment. Simultaneously, (a) the Company will assign and transfer to Purchaser good and valid title in and to the Assets (free and clear of all Liens, other than Permitted Liens) by delivery of (i) a General Assignment and Bill of Sale substantially in the form of Exhibit A hereto (the "General Assignment"), duly executed by the Company and (ii) such other good and sufficient instruments of conveyance, assignment and transfer, in form and substance reasonably acceptable to Purchaser's counsel, as shall be effective to vest in Purchaser good title to the Assets (the General Assignment and the other instruments referred to in clause (ii) being collectively referred to herein as the "Assignment Instruments"), and (b) Purchaser will assume from the Company the due payment, performance and discharge of the Assumed Liabilities by delivery of (i) an Assumption Agreement substantially in the form of Exhibit B hereto (the "Assumption Agreement"), duly executed by Purchaser, and (ii) such other good and sufficient instruments of assumption, in form and substance reasonably acceptable to the Company's counsel, as shall be effective to cause Purchaser to assume the Assumed Liabilities as and to the extent provided in Section 1.3 (the Assumption Agreement and such other instruments referred to in clause (ii) being collectively referred to herein as the "Assumption Instruments"). At the Closing, there shall also be delivered to the Company and Purchaser the opinions, certificates and other Contracts, documents and instruments to be delivered under ARTICLES VI and VII.

1.7 Third-Party Consents. To the extent that any Business Contract or Business License is not assignable without the consent of another party, this Agreement shall not constitute an assignment or an attempted assignment thereof if such assignment or attempted assignment would constitute a breach thereof or a default thereunder. Seller and Purchaser shall use their best efforts to obtain the consent of such other party to the assignment of any such Business Contract or Business License to Purchaser in all cases in which such consent is or may be required for such assignment. If any such consent shall not be obtained, Seller shall cooperate with Purchaser in any reasonable arrangement designed to provide for Purchaser the benefits intended to be assigned to Purchaser under the relevant Business Contract or Business License, including enforcement at the cost and for the account of Purchaser of any and all rights of Seller against the other party thereto arising out of the breach or cancellation thereof by such other party or otherwise. If and to the extent that such arrangement cannot be made, Purchaser shall have no obligation pursuant to Section 1.3 or otherwise with respect to any such Business Contract or Business License. The provisions of this Section 1.7 shall not affect the right of Purchaser not to consummate the transactions contemplated by this Agreement if the condition to its obligations hereunder contained in Section 6.5 has not been fulfilled.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Purchaser as follows:

2.1 Organization of the Company. (a) The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of North Carolina, and has full corporate power and authority to conduct its business as and to the extent now conducted and to own, use and lease its Assets and Properties. Section 2.1(a) of the Disclosure Schedule lists all lines of business in which the Company is participating or engaged.

(b) The Company is duly qualified, licensed or admitted to do business and is in good standing in those jurisdictions specified in Section 2.1(b) of the Disclosure Schedule, which are the only jurisdictions in which the nature of its business or Assets and Properties makes such qualification, licensing or admission necessary, except for those jurisdictions in which the adverse effect of failure by the Company to be qualified, licensed or admitted and in good standing is not material to the Business.

2.2 Validity of Agreement. The execution and delivery by the Company of this Agreement and the Operative Agreements to which it is a party, and the performance by the Company of its obligations hereunder and thereunder, have been duly and validly authorized by the Board of Directors, no other corporate action on the part of the Company or its shareholders being necessary. This Agreement has been duly and validly executed and delivered by the Company and constitutes, and upon the execution and delivery by the Company of the Operative Agreements to which it is a party, such Operative Agreements will constitute, legal, valid and binding obligations of the Company enforceable against it in accordance with its their terms.

2.3 No Conflicts. The execution and delivery by the Company of this Agreement do not, and the execution and delivery by the Company of the Operative Agreements to which it

is a party, the performance by the Company of its obligations under this Agreement and such Operative Agreements and the consummation of the transactions contemplated hereby and thereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the articles of incorporation or bylaws (or other comparable corporate charter documents) of the Company;

(b) conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to the Company or any of its Assets and Properties; or

(c) except as disclosed in Section 2.3 of the Disclosure Schedule, (i) conflict with or result in a violation or breach of, (ii) constitute (with or without notice or lapse of time or both) a default under, (iii) require the Company to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, (iv) result in or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to, (v) result in or give to any Person any additional rights or entitlement to increased, additional, accelerated or guaranteed payments under, or (vi) result in the creation or imposition of any Lien upon the Company or any of its Assets and Properties under, any Contract (other than the Contracts listed in Section 5.2 of the Disclosure Schedule) or License to which the Company is a party or by which any of its Assets and Properties is bound.

2.4 Governmental Approvals and Filings. No consent, approval or action of, filing with or notice to any Governmental or Regulatory Authority on the part of the Company is, to the Knowledge of the Company, required in connection with the execution, delivery and performance of this Agreement or any of the Operative Agreements to which it is a party or the consummation of the transactions contemplated hereby or thereby except those as would be required solely as a result of the identity or the legal or regulatory status of Purchaser or any of its Affiliates.

2.5 Assets.

(a) **[intentionally omitted]**

(b) **Intangible Personal Property.** Section 1.1(i) of the Disclosure Schedule hereto sets forth a true, correct and complete list, as of the date of this Agreement, of all material Intangible Personal Property (to the extent reducible to written form) owned or used by the Company solely with respect to the conduct of the Business. To the Knowledge of the Company, none of the Intangible Personal Property set forth in Section 1.1(i) of the Disclosure Schedule infringes upon the rights of any other Person, the effect of which, individually or in the aggregate, could reasonably be expected to be materially adverse to the Business nor, to the Knowledge of the Company, is such Intangible Personal Property infringed upon by any other Person where such infringement, individually or in the aggregate, could reasonably be expected to be materially adverse to the Business.

(c) **Personal Property Leases.** Section 1.1(f) of the Disclosure Schedule hereto sets forth a true, correct and complete list, as of the date of this Agreement, of all Personal Property Leases to which the Company is a party and which relate solely to the conduct of the Business. The Company has heretofore delivered to Purchaser true, correct and complete copies of all of such Personal Property Leases.

(d) **Material Contracts.** (i) Section 1.1(g) of the Disclosure Schedule hereto sets forth a true, correct and complete list, as of the date of this Agreement, of each of the following contracts and other agreements to which the Company is a party and which relate solely to the conduct of the Business (other than contracts and other agreements which (x) are not included in the Assumed Liabilities or (y) are not included in the Assets) (collectively, the "Material Contracts"):

(A) contracts and other agreements for the future acquisition or sale of any assets involving \$25,000 individually (or in the aggregate, in the case of any related series of contracts and other agreements), other than acquisitions or sales of Inventory in the ordinary course of business;

(B) contracts and other agreements relating to partnerships or similar arrangements

(C) contracts and other agreements calling for future aggregate purchase prices or payments to or from the Company in any one year of more than \$25,000 in any one case (or in the aggregate, in the case of any related series of contracts and other agreements);

(D) contracts and other agreements containing covenants of the Company prohibiting or materially limiting the right to compete in any line of business or prohibiting or restricting its ability to conduct business with any Person or in any geographical area;

(E) contracts and other agreements relating to the acquisition by the Company of any operating business, the capital stock of any other Person or, except for Inventory and Tangible Personal Property acquired in the ordinary course of business, any other assets or property (real or personal);

(F) contracts and other agreements requiring the payment by or to the Company of a royalty, override or similar commission or fee of more than \$10,000;

(G) all collective bargaining agreements;

(H) contracts and other agreements relating to the creation of liens or the guarantee of the payment of liabilities or performance of obligations of any other Person by the Company; and

(I) contracts and other agreements pursuant to which any Person has granted to the Company or has been granted by the Company the right to use or purchase any Tangible Personal Property or Intangible Personal Property and involving the payment of amounts in excess of \$10,000.

True and complete copies (or, if none, reasonably complete and accurate written descriptions) of all of the Material Contracts, together with all amendments and supplements thereto, have been delivered by the Company to Purchaser.

(e) **Validity of Material Contracts.** Each of the Material Contracts is a binding agreement of the Company and, to the Knowledge of the Company, of each other party thereto; and neither the Company nor, to the Knowledge of the Company, any other party to any Material Contract is in violation or breach of or default under any such Material Contract (or with notice or lapse of time or both, would be in violation or breach of or default under any such Material Contract).

2.6 Financial Statements. Prior to the execution of this Agreement, the Company has delivered to Purchaser true and complete copies of the unaudited balance sheets of the Company as of [July 31, 1998], and the related unaudited statements of operations and cash flows for the portion of the fiscal year then ended. Except as set forth in the notes thereto, all such financial statements were prepared in accordance with GAAP and fairly present the financial condition and results of operations of the Company as of the respective dates thereof and for the respective periods covered thereby.

2.7 Absence of Changes. Except for the execution and delivery of this Agreement and the transactions to take place pursuant hereto on the Closing Date, since the Financial Statement Date there has not been any material adverse change, or any event or development which, individually or together with other such events, could reasonably be expected to result in a material adverse change, in the Business. Without limiting the foregoing, except as disclosed in Section 2.7 of the Disclosure Schedule, there has not occurred between the Financial Statement Date and the date hereof:

(i) any declaration, setting aside or payment of any dividend or other distribution in respect of the capital stock of the Company, or any direct or indirect redemption, purchase or other acquisition by the Company of any such capital stock of or any Option with respect to the Company not wholly owned by the Company;

(ii) (x) any increase in the salary, wages or other compensation of any officer, employee or consultant of the Company other than in the ordinary course of business; (y) any establishment or modification of (A) targets, goals, pools or similar provisions in respect of any fiscal year under any Employee Plan, employment Contract or other employee compensation arrangement or (B) salary ranges, increase guidelines or similar provisions in respect of any Employee Plan, employment Contract or other employee compensation arrangement; or (z) any adoption, entering into, amendment, modification or termination (partial or complete) of any Employee Plan except to the extent required by applicable Law;

(iii) any physical damage, destruction or other casualty loss (whether or not covered by insurance) affecting any of the plant, real or personal property or equipment of the Company in an aggregate amount exceeding \$10,000;

(iv) any material change in (x) any pricing, investment, accounting, financial reporting, inventory, credit, allowance or Tax practice or policy of the Company, (y) any method of calculating any bad debt, contingency or other reserve of the Company for accounting, financial reporting or Tax purposes or (z) the fiscal year of the Company;

(v) any acquisition or disposition of, or incurrence of a Lien (other than a Permitted Lien) on, any Assets and Properties of the Company, other than in the ordinary course of business;

(vi) any (x) amendment of the articles of incorporation or bylaws (or other comparable corporate charter documents) of the Company, (y) reorganization, liquidation or dissolution of the Company or (z) Business Combination involving the Company and any other Person;

(vii) any entering into, amendment, modification, termination (partial or complete) or granting of a waiver under or giving any consent with respect to (A) any Material Contract or (B) any material License held by the Company;

(viii) capital expenditures or commitments for additions to property, plant or equipment of the Company constituting capital assets in an aggregate amount exceeding \$25,000;

(ix) any commencement or termination by the Company of any line of business;

(x) any transaction by the Company with any officer, director, Affiliate or Associate of the Company or any Associate of any such officer, director or Affiliate (other than the Company) (A) outside the ordinary course of business consistent with past practice or (B) other than on an arm's-length basis;

(xi) any entering into of an agreement to do or engage in any of the foregoing after the date hereof; or

(xii) any other transaction involving or development affecting the Company outside the ordinary course of business.

2.8 No Undisclosed Liabilities. Since the Financial Statement Date, except as disclosed in Section 2.8 of the Disclosure Schedule or reflected or reserved against in the Financial Statements, the Company has not incurred any Liabilities which in the aggregate are material to the Business, other than Liabilities incurred in the ordinary course of business.

2.9 Taxes. To the Knowledge of the Company, the Company has (i) duly filed with the appropriate federal, state, local and other governmental agencies (including foreign governmental authorities, where appropriate) all returns for income, profits, sales, use, property, excise, payroll and other taxes ("Taxes"), information returns and reports required to be filed, and (ii) paid in full all Taxes (including taxes withheld from employees' salaries, wages and other withholding taxes and obligations), interest, penalties, assessments or deficiencies shown to be due to any taxing authority on such returns. All information reported on such returns is accurate and complete in all materials respects, and the Company is not currently the beneficiary of any extension of time within which to file any such return. The Company is not a party to, and has no Knowledge of, any pending or threatened action or proceeding against the Company for the assessment or collection of Taxes by any governmental agency, foreign or domestic. There are no audits pending with respect to any liabilities of the Company for Taxes. The Company has made a valid and effective election to be treated as an S corporation for income tax purposes and such election has not been revoked or terminated.

2.10 Legal Proceedings. Except as disclosed in Section 2.10 of the Disclosure Schedule (with paragraph references corresponding to those set forth below),:

(a) there are no Actions or Proceedings pending or, to the Knowledge of the Company, threatened against, relating to or affecting the Company or any of the Assets which could reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Operative Agreements;

(b) there are no facts or circumstances known to the Company that could reasonably be expected to give rise to any Action or Proceeding that would be required to be disclosed pursuant to clause (a) above; and

(c) there are no Orders outstanding against the Company.

Prior to the execution of this Agreement, the Company has delivered to Purchaser all responses of counsel for the Company to auditors' requests for information delivered in connection with the Financial Statements (together with any updates provided by such counsel) regarding Actions or Proceedings pending or threatened against, relating to or affecting the Company.

2.11 Compliance With Laws and Orders. The Company is not, to its Knowledge, in violation of or in default under any Law or Order applicable to the Business or the Assets.

2.12 Employee Plans. Section 2.12 of the Disclosure Schedule contains a list of all pension, profit sharing, retirement, stock purchase, stock option, bonus, incentive compensation and deferred compensation plans, all life, health, dental, accident or disability plans, workers' compensation and other insurance plans, all severance or separation plans, and any other employee benefit plans, practices, policies or arrangements of any material nature, whether written or oral, which are maintained by the Company for the benefit of (or under which the Company has any obligations, whether absolute or contingent, to) any of its officers, directors or employees (including former officers, directors or employees), including but not limited to

any "employee benefit plan" which is subject to ERISA (hereinafter collectively referred to as "Employee Plans"). True and correct copies of each of the Employee Plans and of any related trust agreements, insurance contracts or other related agreements have been furnished by the Company to Purchaser. The Company has also furnished to Purchaser with respect to each of the Employee Plans the most recent summary plan description and the two most recent Form 5500s for each Employee Plan. Each of the Employee Plan complies in all material respects with ERISA, the Code, and all other statutes, rules and regulations, agreements and instruments by which it is governed, and no event has occurred which could result in the imposition of an excise tax, penalty or other liability on the Company, a Employee Plan or any fiduciary with respect to a Employee Plan. All applicable ERISA requirements as to the filing of reports, documents and notices regarding such plans with the Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation, and the furnishing of such documents to participants and beneficiaries on or prior to the date hereof, have been complied with in all material respects. There are no actions, suits, investigations, or proceedings pending or, to the Company's Knowledge, threatened against such Employee Plans or any fiduciaries thereof respecting their duties to the Employee Plans or the assets or any trust under any of Employee Plans. At no time during the five-year period preceding the Closing Date has the Company or any entity aggregated with the Company under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA maintained or contributed to any plan which is a multiemployer plan as defined in Section 4001(a)(3) of ERISA, or any plan which is a defined benefit pension plan subject to Title IV of ERISA. .

2.13 Real Estate.

(a) A true and correct list of each Real Property Lease where the Company is lessee is set forth in Section 1.1(b) of the Disclosure Schedule. The Company does not own any real property.

(b) The Company has a valid and subsisting leasehold estate in and the right to quiet enjoyment of the real properties leased by it for the full term of the lease thereof. Each lease referred to in paragraph (a) above is a legal, valid and binding agreement of the Company and, to the Knowledge of the Company, of each other Person that is a party thereto, and except as set forth in Section 2.13 of the Disclosure Schedule, to the Knowledge of the Company, there is no default (or any condition or event which, after notice or lapse of time or both, would constitute a default) thereunder. The Company does not owe any brokerage commissions with respect to any such leased space. To the Knowledge of the Company, there are no condemnation or appropriation proceedings pending or threatened against any of real property leased by it or the improvements thereon.

(c) The Company has delivered to Purchaser prior to the execution of this Agreement true and complete copies of all Real Property Leases (including any amendments and renewal letters) and, to the extent reasonably available, all deeds, leases, mortgages, deeds of trust, certificates of occupancy, title insurance policies, title reports, surveys and similar documents, and all amendments thereof, with respect to the real property subject to Real Property Leases described in Section 1.1(b) of the Disclosure Schedule.

2.14 Tangible Personal Property. The Company is in possession of and has good title to, or has valid leasehold interests in or valid rights under Contract to use, all Tangible Personal Property used in and individually or in the aggregate with other such property material to the Business, including all Tangible Personal Property reflected on the Balance Sheet and Tangible Personal Property acquired since the Financial Statement Date other than property disposed of since such date in the ordinary course of business. All such Tangible Personal Property is free and clear of all Liens, other than Permitted Liens and Liens disclosed in Section 2.18 of the Disclosure Schedule, and is in good working order and condition, ordinary wear and tear excepted, and its use complies in all material respects with all applicable Laws.

2.15 [intentionally omitted]

2.16 [intentionally omitted]

2.17 Licenses. Section 1.1(j) of the Disclosure Schedule contains a true and complete list of all Licenses used in and individually or in the aggregate with other such Licenses material to the Business (and all pending applications for any such Licenses), setting forth the grantor, the grantee, the function and the expiration and renewal date of each. Prior to the execution of this Agreement, the Company has delivered to Purchaser true and complete copies of all such Licenses. The Company owns or validly holds all Licenses that are material to the Business. Each Business License listed in Section 1.1(j) of the Disclosure Schedule is a valid and binding agreement of the Company and, to the Knowledge of the Company, of each other party thereto. Neither the Company nor, to the Knowledge of the Company, any other party to a Business License is in default (or with the giving of notice or lapse of time or both, would be in default) under any Business License in any material respect.

2.18 Title; Liens. Except for Permitted Liens, the Company owns outright and has good and marketable title and, at the Closing, the Company will convey to Purchaser good and marketable title to all of the Assets, in each case free and clear of any Lien.

2.19 Entire Business. The sale of the Assets by the Company to Purchaser pursuant to this Agreement will effectively convey to Purchaser the entire Business of, and all of the tangible and Intangible Personal Property used by, the Company (whether owned, leased or held under license by the Company or by others) in connection with the conduct of the Business as heretofore conducted by the Company (except for the Excluded Assets) including, without limitation, all tangible Assets and Properties of the Company reflected in the Balance Sheet and Assets and Properties acquired since the Financial Statement Date in the conduct of the Business, other than the Excluded Assets and Assets and Properties disposed of since such date, consistent with Section 2.7(v).

2.20 Insurance. Section 2.20 of the Disclosure Schedule contains a true and complete list (including the names and addresses of the insurers, the expiration dates thereof, the annual premiums and payment terms thereof and a brief description of the interests insured thereby) of all liability, property, workers' compensation, directors' and officers' liability and other insurance policies currently in effect that insure the Business or employees of the Company or affect or relate to the ownership, use or operation of any of the Assets and Properties of the

Company and that (i) have been issued to the Company or (ii) to the Knowledge of the Company, have been issued to any Person (other than the Company) for the benefit of the Company. The insurance coverage provided by the policies described in clause (i) above will not terminate or lapse by reason of the transactions contemplated by this Agreement. Each policy listed in Section 2.20 of the Disclosure Schedule is valid and binding and in full force and effect, no premiums due thereunder have not been paid and neither the Company nor the Person to whom such policy has been issued has received any notice of cancellation or termination in respect of any such policy or is in default thereunder in any material respect. The Company has not received notice that any insurer under any policy referred to in this Section 2.20 of the Disclosure Schedule is denying liability with respect to a claim thereunder or defending under a reservation of rights clause.

2.21 Employees; Labor Relations.

(a) Section 2.21 of the Disclosure Schedule contains a list of the name of each officer of the Company at the date hereof. The Company has heretofore delivered to Purchaser a list containing the name, position or function, annual base salary or wages and any incentive or bonus arrangement with respect to each of the Company's 10 most highly compensated full-time employees, which list remains true and correct in all material respects on the date hereof. The Company has not received any information that would lead it to believe that a material number of such persons will or may cease to be employees, or will refuse offers of employment from Purchaser, because of the consummation of the transactions contemplated by this Agreement.

(b) No employee of the Company is presently a member of a collective bargaining unit and, to the Knowledge of the Company, there are no threatened or contemplated attempts to organize for collective bargaining purposes any of the employees of the Company, and (ii) no unfair labor practice complaint or sex or age discrimination claim has been brought during the last five years against the Company before the National Labor Relations Board or any other Governmental or Regulatory Authority. Since the Company's incorporation, there has been no work stoppage, strike or other concerted action by employees of the Company. During that period, the Company has complied in all material respects with all applicable Laws relating to the employment of labor, including without limitation those relating to wages, hours and collective bargaining.

2.22 Environmental Matters. To its Knowledge, the Company has obtained all Licenses which are required in connection with the conduct of the Business or the ownership of the Assets under applicable Environmental Laws. To its Knowledge, the Company is in compliance in all material respects with the terms and conditions of all such Licenses and with any applicable Environmental Law. Section 2.22 of the Disclosure Schedule describes the environmental situation with respect to the real property underlying the Real Property Lease described in Section 1.1(b) of the Disclosure Schedule. In the event that the Purchaser suffers any loss, liability or expense arising as a result of its decision to exercise the option to acquire such property and the subsequent ownership of such property, the Purchaser's sole remedy will be to pursue its rights under that certain indemnification agreement between the Company and Cone Mills Corporation attached as Exhibit B to the Purchase and Lease Agreement dated May

13, 1997 by and between Cone Mills Corporation and the Company, which agreement is being assigned to the Purchaser in connection with the transactions contemplated hereby.

2.23 Substantial Customers and Suppliers. The Company has provided the Purchaser with lists of (i) the ten (10) largest customers of the Company, on the basis of revenues for goods sold or services provided for the most recent fiscal year, and (ii) the ten (10) largest suppliers of the Company, on the basis of cost of goods or services purchased for the most recent fiscal year. No such customer or supplier has ceased or materially reduced its purchases from or sales or provision of services to the Company since the Financial Statement Date, or to the Knowledge of the Company, has threatened to cease or materially reduce such purchases or sales or provision of services after the date hereof. To the Knowledge of the Company, no such customer or supplier is threatened with bankruptcy or insolvency.

2.24 Bank and Brokerage Accounts; Investment Assets. Section 2.24 of the Disclosure Schedule sets forth a list of each Investment Asset and a brief description thereof.

2.25 No Powers of Attorney. The Company has no powers of attorney or comparable delegations of authority outstanding.

2.26 Accounts Receivable. The accounts and notes receivable of the Company reflected on the Balance Sheet, and all accounts and notes receivable arising subsequent to the Financial Statement Date, (i) arose from bona fide sales transactions in the ordinary course of business and are payable on ordinary trade terms, (ii) are, to the Knowledge of the Company, legal, valid and binding obligations of the respective debtors, (iii) are not subject to any valid set-off or counterclaim, (iv) do not represent obligations for goods sold on consignment, on approval or on a sale-or-return basis or subject to any other repurchase or return arrangement, (v) are, to the Knowledge of the Company, collectible in the ordinary course of business in the aggregate recorded amounts thereof, net of any applicable reserve reflected in the Balance Sheet, and (vi) are not the subject of any Actions or Proceedings brought by or on behalf of the Company. All steps necessary to render all such security arrangements legal, valid, binding and enforceable, and to give and maintain for the Company a perfected security interest in the related collateral, have been taken.

2.27 Inventory. All inventory of the Company reflected on the Balance Sheet consisted, and all such inventory acquired since the Financial Statement Date consists, of a quality and quantity usable or salable in the ordinary course of business, subject to normal and customary allowances in the industry for spoilage, damage and outdated items, except for obsolete items or items below standard quality, all of which have been written off or written down to their net realizable value. Except as disclosed in the notes to the Financial Statements, all items included in the inventory of the Company are the property of the Company, free and clear of any Lien other than Permitted Liens, have not been pledged as collateral, are not held by the Company on consignment from others and conform in all material respects to all standards applicable to such inventory or its use or sale imposed by Governmental or Regulatory Authorities.

2.28 Investment Bankers. Except for The Evolution Consulting Group, Inc., whose fees, commissions and expenses are the sole responsibility of the Company, all negotiations relative to this Agreement and the transactions contemplated hereby have been carried out by the Company directly with Purchaser without the intervention of any Person on behalf of the Company in such manner as to give rise to any valid claim by any Person against Purchaser or the Company for a finder's fee, brokerage commission or similar payment.

2.29 Disclosure. All material facts relating to the Business or Condition of the Company have been disclosed to Purchaser in or in connection with this Agreement. No representation or warranty contained in this Agreement, and no statement contained in the Disclosure Schedule or in any certificate, list or other writing furnished to Purchaser pursuant to any provision of this Agreement (including without limitation the Financial Statements), contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements herein or therein, in the light of the circumstances under which they were made, not misleading.

ARTICLE III **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to the Company as follows:

3.1 Organization. Purchaser is a corporation duly organized and validly existing under the Laws of the State of Delaware. Purchaser has full power and authority to execute and deliver this Agreement and the Operative Agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.

3.2 Authority. The execution and delivery by Purchaser of this Agreement and the Operative Agreements to which it is a party, and the performance by Purchaser of its obligations hereunder and thereunder, have been duly and validly authorized by the Board of Directors of Purchaser, no other action on the part of Purchaser or its partners being necessary. This Agreement has been duly and validly executed and delivered by Purchaser and constitutes, and upon the execution and delivery by Purchaser of the Operative Agreements to which it is a party, such Operative Agreements will constitute, legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with its terms.

3.3 No Conflicts. The execution and delivery by Purchaser of this Agreement do not, and the execution and delivery by Purchaser of the Operative Agreements to which it is a party, the performance by Purchaser of its obligations under this Agreement and such Operative Agreements and the consummation of the transactions contemplated hereby and thereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the certificate of incorporation or by-laws (or other comparable corporate charter document) of Purchaser;

(b) conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to Purchaser or any of its Assets and Properties (other than such conflicts, violations or breaches which could not in the aggregate reasonably be expected to adversely affect the validity or enforceability of this Agreement or any of such Operative Agreements); or

3.4 Governmental Approvals and Filings. No consent, approval or action of, filing with or notice to any Governmental or Regulatory Authority on the part of Purchaser is required in connection with the execution, delivery and performance of this Agreement or the Operative Agreements to which it is a party or the consummation of the transactions contemplated hereby or thereby, except where the failure to obtain any such consent, approval or action, to make any such filing or to give any such notice could not reasonably be expected to adversely affect the ability of the Company to consummate the transactions contemplated by this Agreement or any of such Operative Agreements or to perform its obligations hereunder or thereunder.

3.5 Legal Proceedings. There are no Actions or Proceedings pending or, to the knowledge of Purchaser, threatened against, relating to or affecting Purchaser or any of its Assets and Properties which could reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Operative Agreements.

3.6 Brokers. All negotiations relative to this Agreement and the transactions contemplated hereby have been carried out by Purchaser directly with the Company without the intervention of any Person on behalf of Purchaser in such manner as to give rise to any valid claim by any Person against the Company for a finder's fee, brokerage commission or similar payment.

ARTICLE IV **COVENANTS OF THE COMPANY**

The Company covenants and agrees with Purchaser that, at all times from and after the date hereof until the Closing and, with respect to any covenant or agreement by its terms to be performed in whole or in part for a specified period after the Closing, for the period specified herein, the Company will comply with all covenants and provisions of this ARTICLE IV, except to the extent Purchaser may otherwise consent in writing.

4.1 Regulatory and Other Approvals. The Company shall (a) take all commercially reasonable steps necessary or desirable, and proceed diligently and in good faith and use all commercially reasonable efforts, as promptly as practicable to obtain all consents, approvals or actions of, to make all filings with and to give all notices to Governmental or Regulatory Authorities or any other Person required of the Company to consummate the transactions contemplated hereby and by the Operative Agreements, (b) provide such other information and communications to such Governmental or Regulatory Authorities or other Persons as such Governmental or Regulatory Authorities or other Persons may reasonably request and (c) provide reasonable cooperation to the Purchaser in

obtaining all consents, approvals or actions of, making all filings with and giving all notices to Governmental or Regulatory Authorities or other Persons required of Purchaser to consummate the transactions contemplated hereby and by the Operative Agreements. The Company will provide prompt notification to Purchaser when any such consent, approval, action, filing or notice referred to in clause (a) above is obtained, taken, made or given, as applicable, and will advise Purchaser of any communications (and, unless precluded by Law, provide copies of any such communications that are in writing) with any Governmental or Regulatory Authority or other Person regarding any of the transactions contemplated by this Agreement or any of the Operative Agreements.

4.2 Investigation by Purchaser. The Company will (a) provide (i) the Purchaser, (ii) any Person who is considering providing financing to Purchaser to finance all or any portion of the Purchase Price who has executed a confidentiality agreement satisfactory to the Company and (iii) the respective officers, directors, employees, agents, counsel, accountants, financial advisors, consultants and other representatives of the Persons specified in clauses (i) and (ii) of this Section 4.2 (together, "**Representatives**") with full access, upon reasonable prior notice and during normal business hours, to all officers, employees, agents and accountants of the Company and its Assets and Properties and Books and Records, but only to the extent that such access does not unreasonably interfere with the Business and (b) furnish Purchaser and such other Persons with all such information and data (including without limitation copies of Contracts, Employee Plans and other Books and Records) concerning the business and operations of the Company as Purchaser or any of such other Persons reasonably may request in connection with such investigation, except to the extent that furnishing any such information or data would violate any Law, Order, Contract or License applicable to the Company or by which any of its Assets and Properties is bound.

4.3 No Solicitations. The Company will not take (or authorize or permit any investment banker, financial advisor, attorney, accountant or other Person retained by or acting for or on behalf of the Company) to take, directly or indirectly, any action to initiate, assist, solicit, receive, negotiate, encourage or accept any offer or inquiry from any Person (a) to engage in any Business Combination with the Company, (b) to reach any agreement or understanding (whether or not such agreement or understanding is absolute, revocable, contingent or conditional) for, or otherwise attempt to consummate, any Business Combination with the Company or (c) to furnish or cause to be furnished any information with respect to the Company to any Person who the Company (or any such Person acting for or on their behalf) knows or has reason to believe is in the process of considering any Business Combination with the Company. If the Company (or any such Person acting for or on their behalf) receives from any Person any offer, inquiry or informational request referred to above, the Company will promptly advise such Person, by written notice, of the terms of this Section 4.3 and will promptly, orally and in writing, advise Purchaser of such offer, inquiry or request and deliver a copy of such notice to Purchaser.

4.4 Conduct of Business. The Company shall (a) conduct its business only in the ordinary course and in such a manner so that the representations and warranties contained in ARTICLE II shall continue to be true and correct in all material respects on and as of the Closing Date as if made on and as of the Closing Date (except as otherwise expressly

contemplated herein) and (b) without the prior written consent of Purchaser, not undertake any of the actions specified in Section 4.8 hereof.

4.5 Financial Statements and Reports.

(a) As promptly as practicable and in any event no later than forty-five (45) days after the end of each fiscal quarter ending after the date hereof and before the Closing Date (other than the fourth quarter) or ninety (90) days after the end of each fiscal year ending after the date hereof and before the Closing Date, as the case may be, the Company will deliver to Purchaser true and complete copies of (in the case of any such fiscal year) the audited and (in the case of any such fiscal quarter) the unaudited consolidated balance sheet, and the related audited or unaudited consolidated statements of operations, stockholders' equity and cash flows, of the Company, in each case as of and for the fiscal year then ended or as of and for each such fiscal quarter and the portion of the fiscal year then ended, as the case may be, together with the notes, if any, relating thereto, which financial statements shall be prepared on a basis consistent with the Financial Statements.

(b) As promptly as practicable, the Company will deliver to Purchaser true and complete copies of such other financial statements, reports and analyses as may be prepared or received by the Company relating to the business or operations of the Company or as Purchaser may otherwise reasonably request.

4.6 Employee Matters. Except as may be required by Law, the Company will refrain from directly or indirectly:

(a) making any representation or promise, oral or written, to any officer, employee or consultant of the Company concerning any Employee Plan, except for statements as to the rights or accrued benefits of any officer, employee or consultant under the terms of any Employee Plan;

(b) making any increase in the salary, wages or other compensation of any officer, employee or consultant of the Company other than in the ordinary course of business;

(c) adopting, entering into, amending, modifying or terminating (partially or completely) any Employee Plan except to the extent required by applicable Law and, in the event compliance with legal requirements presents options, only to the extent that the option which the Company reasonably believes to be the least costly is chosen; or

(d) establishing or modifying any (i) targets, goals, pools or similar provisions in respect of any fiscal year under any Employee Plan, employment Contract or other employee compensation arrangement or (ii) salary ranges, increase guidelines or similar provisions in respect of any Employee Plan, employment Contract or other employee compensation arrangement.

The Company will administer each Employee Plan, or cause the same to be so administered, in all material respects in accordance with the applicable provisions of the Code, ERISA and all other applicable Laws. The Company will promptly notify Purchaser in writing of each receipt by the Company (and furnish Purchaser with copies) of any notice of investigation or administrative proceeding by the IRS, Department of Labor, PBGC or other Person involving any Employee Plan.

4.7 [Intentionally Omitted]

4.8 Certain Restrictions. The Company will refrain from:

(a) amending its articles of incorporation or bylaws (or other comparable corporate charter documents) or taking any action with respect to any such amendment or any reorganization, liquidation or dissolution of the Company;

(b) other than in the ordinary course of business, acquiring or disposing of, or incurring any Lien (other than a Permitted Lien) on, any Assets and Properties and individually or in the aggregate with other such Assets and Properties material to the Business;

(c) (i) entering into, amending, modifying, terminating (partially or completely), granting any waiver under or giving any consent with respect to (A) any Contract that would, if in existence on the date of this Agreement, be required to be disclosed pursuant to Section 2.5(d), or (B) any material License or (ii) granting any irrevocable powers of attorney;

(d) violating, breaching or defaulting under in any material respect, or taking or failing to take any action that (with or without notice or lapse of time or both) would constitute a material violation or breach of, or default under, any term or provision of any License held or used by the Company or any Contract to which the Company is a party or by which any of their respective Assets and Properties is bound;

(e) engaging with any Person in any Business Combination;

(f) making any material change in the lines of business in which it participates or is engaged;

(g) writing off or writing down any of its Assets and Properties other than in the ordinary course of business; or

(h) entering into any agreement to do or engage in any of the foregoing.

4.9 Noncompetition.

(a) **Covenants Against Competition.** The Company covenants and agrees that:

(i) The Company shall not in the United States of America, directly or indirectly, for a period commencing on the Closing Date and terminating on the date five (5) years following the Closing Date (the "Restricted Period"), (x) engage in the Business for the Company's own account; (y) render any services to any Person (other than Purchaser) engaged in such activities; or (z) become interested in any such Person (other than Purchaser) as a partner, shareholder, principal, agent, trustee, consultant or in any other similar relationship or capacity; provided, however, that notwithstanding the above the Company may own, directly or indirectly, solely as an investment, securities of any Person which are traded on any national securities exchange or NASDAQ if the Company (A) is not a controlling Person or, or a member of a group which controls such Person and (B) does not, directly or indirectly, own 2% or more of any class of securities of such Person.

(ii) During and after the Restricted Period, the Company shall keep secret and retain in strictest confidence, and shall not use for the benefit of itself or others except in connection with the business and affairs of Purchaser and its Affiliates, all confidential information with respect to the Company and its Business and the Assets, or learned by the Company heretofore or hereafter directly or indirectly from Purchaser, including, without limitation, information with respect to (A) prospective facilities, (B) sales figures, (C) profit or loss figures, (D) customers, clients, suppliers, sources of supply and customer lists (the "Confidential Company Information"), and shall not disclose such Confidential Company Information to anyone outside of Purchaser and its Affiliates except with Purchaser's express written consent and except for Confidential Company Information which (i) is at the time of receipt or thereafter becomes publicly known through no wrongful act of either of the Company or (ii) is received from a third party not under an obligation to keep such information confidential and without breach of this Agreement.

(iii) During the Restricted Period, the Company shall not, directly or indirectly, knowingly solicit or encourage to leave the employment of Purchaser, any employee of Purchaser or hire any employee who has left the employment of Purchaser after the date of this Agreement within two (2) years of the termination of such employee's employment with Purchaser.

(b) **Rights and Remedies Upon Breach.** If the Company breaches, or threatens to commit a breach of, any of the provisions of Section 4.9(a) (the "Restrictive Covenants"), Purchaser shall have the following rights and remedies (upon compliance with any necessary prerequisites imposed by law upon the availability of such remedies), each of which rights and remedies shall be independent of the other and severally enforceable, and all of which rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to Purchaser under law or in equity:

(i) The right and remedy to have the Restrictive Covenants specifically enforced (without posting any bond) by any court having equity jurisdiction, including, without limitation, the right to an entry against the Company of restraining orders and injunctions preliminary, mandatory, temporary and permanent) against

violations, threatened or actual, and whether or not then continuing, of such covenants, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to Purchaser and that money damages will not provide adequate remedy to Purchaser, and

(ii) The right and remedy to require the Company to account for and pay over to Purchaser all compensation, profits, monies, accruals, increments or other benefits (collectively, "Benefits") derived or received by such person the result of any transactions constituting a breach of any of the Restrictive Covenants, and such person shall account for and pay over such Benefits to Purchaser.

(c) Severability of Covenants. If any court determines that any of the Restrictive Covenants, or any part thereof, is invalid or unenforceable, the remainder of the Restrictive Covenants shall not thereby be affected and shall be given full effect, without regard to the invalid portions.

(d) Blue-Pencilling. If any court determines that any of the Restrictive Covenants, or any part thereof, is unenforceable because of the duration of such provision or the area covered thereby, such court shall have the power to reduce the duration or area of such provisions and, in its reduced form, such provision shall then be enforceable and shall be enforced.

(e) Enforceability in Jurisdictions. The parties intend to and hereby confer jurisdiction to enforce the Restrictive Covenants upon the courts of any jurisdiction within the geographical scope of the Restrictive Covenants. If the courts of any one or more of such jurisdictions hold the Restrictive Covenants wholly unenforceable by reason of the breadth of such scope or otherwise, it is the intention of Purchaser and the Company that such determination not bar or in any way affect Purchaser's right to the relief provided above in the courts of any other jurisdiction within the geographical scope of such Restrictive Covenants, as to breaches of such Restrictive Covenants in such other respective jurisdictions, such Restrictive Covenants as they relate to each jurisdiction being, for this purpose, severable into diverse and independent covenants, subject, where appropriate, to the doctrine of res judicata.

4.10 Books and Records. On the Closing Date, the Company will take all commercially reasonable steps to deliver to Purchaser at the offices of the Company copies of all of the Books and Records material to the ongoing operation of the Business, and if at any time after the Closing the Company discovers in its possession or under its control any other Books and Records material to the ongoing operation of the Business, it will forthwith deliver copies of such Books and Records to Purchaser.

4.11 Notice and Cure. The Company will notify Purchaser promptly in writing of, and contemporaneously will provide Purchaser with true and complete copies of any and all information or documents relating to, and will use all commercially reasonable efforts to cure before the Closing, any event, transaction or circumstance occurring after the date of this Agreement that causes or will cause any covenant or agreement of the Company under this

Agreement to be breached or that renders or will render untrue any representation or warranty of the Company contained in this Agreement as if the same were made on or as of the date of such event, transaction or circumstance. No notice given pursuant to this Section shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein or shall in any way limit Purchaser's right to seek indemnity under ARTICLE X.

4.12 Name Change. Simultaneously with the Closing, the Company shall amend its certificate or articles of incorporation or similar governing document to change its name to AZJS, Inc.

4.13 Fulfillment of Conditions. The Company will execute and deliver at the Closing each Operative Agreement that either the Company is required hereby to execute and deliver as a condition to the Closing, will take all commercially reasonable steps necessary or desirable and proceed diligently and in good faith to satisfy each other condition to the obligations of Purchaser contained in this Agreement and will not take or fail to take any action that could reasonably be expected to result in the nonfulfillment of any such condition.

ARTICLE V COVENANTS OF THE PURCHASER

Purchaser covenants and agrees with the Company that Purchaser will comply with all covenants and provisions of this ARTICLE V, except to the extent the Company may otherwise consent in writing.

5.1 Regulatory and Other Approvals. At all times from and after the date hereof until the Closing, Purchaser will (a) take all commercially reasonable steps necessary or desirable, and proceed diligently and in good faith and use all commercially reasonable efforts, as promptly as practicable to obtain all consents, approvals or actions of, to make all filings with and to give all notices to Governmental or Regulatory Authorities or any other Person required of Purchaser to consummate the transactions contemplated hereby and by the Operative Agreements, (b) provide such other information and communications to such Governmental or Regulatory Authorities or other Persons as such Governmental or Regulatory Authorities or other Persons may reasonably request in connection therewith and (c) provide reasonable cooperation to the Company in obtaining all consents, approvals or actions of, making all filings with and giving all notices to Governmental or Regulatory Authorities or other Persons required of the Company to consummate the transactions contemplated hereby and by the Operative Agreements. Purchaser will provide prompt notification to the Company when any such consent, approval, action, filing or notice referred to in clause (a) above is obtained, taken, made or given, as applicable, and will advise the Company of any communications (and, unless precluded by Law, provide copies of any such communications that are in writing) with any Governmental or Regulatory Authority or other Person regarding any of the transactions contemplated by this Agreement or any of the Operative Agreements.

5.2 Release of Guarantees. Prior to the Closing, Purchaser shall cooperate with the Company in seeking to have the Company, Andrew J. Zimmerman and Andrew Scott released from the guarantees that the Company, Andrew J. Zimmerman or Andrew Scott, as the case may be, has given in respect of Indebtedness of the Company described in Section 5.2 of the Disclosure Schedule.

5.3 Insurance. Purchaser shall have in place at Closing and shall maintain liability insurance of the same type and at the levels as the liability insurance maintained by the Company immediately prior to Closing as described in Section 2.20 and Exhibit B to the Disclosure Schedule and shall cause the Company, Andrew J. Zimmerman, Andrew Scott, David Olson and John Sheppard to be named as additional insureds on such insurance policies.

5.4 Fulfillment of Conditions. Purchaser will execute and deliver at the Closing each Operative Agreement that Purchaser is hereby required to execute and deliver as a condition to the Closing, will take all commercially reasonable steps necessary or desirable and proceed diligently and in good faith to satisfy each other condition to the obligations of the Company contained in this Agreement and will not take or fail to take any action that could reasonably be expected to result in the nonfulfillment of any such condition.

ARTICLE VI CONDITIONS TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser hereunder to purchase the Assets and to assume and pay, perform and discharge the Assumed Liabilities are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in whole or in part by Purchaser in its sole discretion):

6.1 Representations and Warranties. Each of the representations and warranties made by the Company in this Agreement shall be true and correct in all respects material to the validity and enforceability of this Agreement and the Operative Agreements and to the Business on and as of the Closing Date as though such representation or warranty was made on and as of the Closing Date, and in the case of any representation or warranty made as of a specified date earlier than the Closing Date, such representation or warranty shall have been true and correct in all material respects on and as of such earlier date. The Purchaser shall have received a certificate of an officer of the Company dated the Closing Date substantially in the form of Exhibit C hereto.

6.2 Performance. The Company shall have performed and complied with, in all material respects, each agreement, covenant and obligation required by this Agreement to be so performed or complied with by the Company at or before the Closing.

6.3 Orders and Laws. There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Operative Agreements.

6.4 Regulatory Consents and Approvals. All consents, approvals and actions of, filings with and notices to any Governmental or Regulatory Authority necessary to permit Purchaser and the Company to perform their obligations under this Agreement and the Operative Agreements and to consummate the transactions contemplated hereby and thereby (a) shall have been duly obtained, made or given, (b) shall be in form and substance reasonably satisfactory to Purchaser, (c) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (d) shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental or Regulatory Authority necessary for the consummation of the transactions contemplated by this Agreement and the Operative Agreements shall have occurred.

6.5 Third Party Consents. All consents (or in lieu thereof waivers) to the performance by Purchaser and the Company of their obligations under this Agreement and the Operative Agreements or to the consummation of the transactions contemplated hereby and thereby as are required under any Contract to which Purchaser or the Company is a party or by which any of their respective Assets and Properties are bound and where the failure to obtain any such consent (or in lieu thereof waiver) could reasonably be expected, individually or in the aggregate with other such failures, to materially adversely affect Purchaser or the Business or Condition of the Company, (a) shall have been obtained, (b) shall be in form and substance reasonably satisfactory to Purchaser, (c) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (d) shall be in full force and effect.

6.6 Opinion of Counsel. Purchaser shall have received the opinion of Schell Bray Aycock Abel & Livingston P.L.L.C., counsel to the Company, dated the Closing Date, substantially in the form and to the effect of Exhibit E hereto, and to such further effect as Purchaser may reasonably request.

6.7 Good Standing Certificates. The Company shall have delivered to Purchaser (a) copies of the certificates or articles of incorporation (or other comparable corporate charter documents), including all amendments thereto, of the Company certified by the Secretary of State or other appropriate official of the jurisdiction of incorporation, (b) certificates from the Secretary of State or other appropriate official of the respective jurisdictions of incorporation to the effect that each of the Company is in good standing or subsisting in such jurisdiction, listing all charter documents of the Company on file and attesting to its payment of all franchise or similar Taxes, and (c) a certificate from the Secretary of State or other appropriate official in each jurisdiction in which the Company are qualified or admitted to do business to the effect that the Company is duly qualified or admitted and in good standing in such jurisdiction.

6.8 Operative Agreements. The Company shall have executed and delivered to Purchaser the Operative Agreements to which it is a party. Additionally, Andrew J. Zimmerman, John A. Sheppard and David L. Olson shall have each executed and delivered to Purchaser their respective Employment Agreement with the Purchaser substantially in the forms attached hereto as Exhibit D-1, Exhibit D-2 and Exhibit D-3. The Assumption Agreement, the General Assignment and the Employment Agreements are collectively referred to herein as the "Operative Agreements".

6.9 Contemporaneous Transaction. The transactions contemplated under that certain Asset Purchase Agreement dated October 5, 1998 among Purchaser, Mad River Canoe, Inc., and Kathryn W. Henry shall have been consummated to the satisfaction of Purchaser and its counsel.

ARTICLE VII CONDITIONS TO OBLIGATIONS OF THE COMPANY

The obligations of the Company hereunder to sell the Assets are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in whole or in part by the Company in its sole discretion):

7.1 Representations and Warranties. Each of the representations and warranties made by Purchaser in this Agreement shall be true and correct in all material respects on and as of the Closing Date as though such representation or warranty was made on and as of the Closing Date.

7.2 Performance. Purchaser shall have performed and complied with, in all material respects, each agreement, covenant and obligation required by this Agreement to be so performed or complied with by Purchaser at or before the Closing.

7.3 Orders and Laws. There shall not be in effect on the Closing Date any Order or Law that became effective after the date of this Agreement restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Operative Agreements.

7.4 Regulatory Consents and Approvals. All consents, approvals and actions of, filings with and notices to any Governmental or Regulatory Authority necessary to permit the Company and Purchaser to perform their obligations under this Agreement and the Operative Agreements and to consummate the transactions contemplated hereby and thereby (a) shall have been duly obtained, made or given, (b) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (c) shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental or Regulatory Authority necessary for the consummation of the transactions contemplated by this Agreement and the Operative Agreements, shall have occurred.

7.5 Third Party Consents. All consents (or in lieu thereof waivers) to the performance by the Company of its obligations hereunder and to the consummation of the transactions contemplated hereby as are required under the Material Contracts shall have been obtained, (b) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (c) shall be in full force and effect.

7.6 Proceedings. All proceedings to be taken on the part of Purchaser in connection with the transactions contemplated by this Agreement and all documents incident thereto shall be reasonably satisfactory in form and substance to the Company, and the Company shall have

received copies of all such documents and other evidences as the Company may reasonably request in order to establish the consummation of such transactions and the taking of all proceedings in connection therewith.

7.7 Contemporaneous Transaction. The transactions contemplated under that certain Asset Purchase Agreement dated October 5, 1998 among Purchaser, Mad River Canoe, Inc., and Kathryn W. Henry shall have been consummated to the satisfaction of Purchaser and its counsel.

7.8 Opinion of Counsel. The Company shall have received the opinion of George Woron, Esq., counsel to Purchaser, dated the Closing Date, substantially in the form and to the effect of Exhibit F hereto, and to such further effect as the Company may reasonably request.

7.9 Offer of Employment to Employees. Purchaser shall have offered employment to the employees of the Company employed by the Company as of the Closing Date other than those covered by the employment agreements referenced in Section 6.8 hereof, in accordance with ARTICLE VIII hereof.

7.10 Deliveries. Purchaser shall have delivered to the Company the Assumption Agreement and the other Assumption Instruments.

ARTICLE VIII EMPLOYMENT - RELATED MATTERS

8.1 Certain Definitions. For purposes of this ARTICLE VIII, "Employee" means any person employed by the Company in connection with the Business immediately prior to the Closing (other than Andrew J. Zimmerman, John A. Sheppard and David L. Olson).

8.2 Offers of Employment.

(a) Effective the Closing Date, Purchaser shall make an offer of employment (each an "Offer") to each Employee, for employment effective immediately following Closing.

(b) In the case of each Employee, such Offer shall include (i) compensation at a rate not less than that in effect for such Employee immediately before Closing and (ii) position and duties substantially the same as those assigned to such Employee immediately before Closing.

(c) Purchaser shall hire each Employee who accepts such Offer, and shall employ such Employee in the Business, commencing immediately following Closing.

(d) In the case of each Employee who does not accept his or her Offer, the Company shall, effective the Closing Date, (1) terminate the employment of such Employee, (ii) to the extent not reflected as current liabilities, satisfy all payment obligations to such

Employee (including without limitation any accrued vacation pay, sick pay or severance pay) from Company's cash or cash equivalents, and (iii) hold Purchaser harmless from and with respect to any and all obligations or liabilities regarding such Employee.

8.3 Benefits Continuation. As of the Closing Date, Purchaser and the Company shall execute and deliver the Assumption and Continuation Agreement in the form of Exhibit G hereto, wherein Purchaser shall assume, and the Company shall transfer, as of the Closing Date, those certain Employee Plans listed in Exhibit G.

8.4 COBRA. With respect to each Employee or former employee of the Company (or any dependent thereof) who, as a result of termination of employment in the Business or other qualifying event (whether before, on or after the Closing Date and whether by Purchaser or the Company), has rights to continued coverage under COBRA, Purchaser will make such coverage available to such individual (and each such individual's dependent) in accordance with COBRA.

8.5 Accrued Vacation Pay and Accrued Sick Pay. Purchaser shall assume and pay when due all obligations contained within the current liabilities to provide accrued paid vacation (or pay in lieu thereof) and accrued paid sick days (or pay in lieu thereof) to each Employee who accepts such Offer.

8.6 Cooperation. The Company and Purchaser agree to fully cooperate with respect to any filings and information necessary to effect the transactions contemplated by this ARTICLE VIII, including transfer of employment records.

8.7 Forms W-2. With respect to each Employee who accepts such Offer, Purchaser shall timely furnish Forms W-2 (in accordance with the Code and regulations thereunder) reflecting all wages paid to such Employee during 1998 by Purchaser and all such wages paid by Company and, pursuant to Section 5.01 of Revenue Procedure 96-60, the Company shall be relieved from furnishing Forms W-2 for 1998 to such Employee. Purchaser (as "successor") and the Company (as "predecessor") shall follow the procedures prescribed by Revenue Procedure 96-90.

8.8 No Third-Party Beneficiaries. Noting stated in this ARTICLE VIII shall give any rights, remedies or benefits to any person or entity other than the parties hereto and this successors and permitted assigns.

ARTICLE IX **SURVIVAL OF REPRESENTATIONS, WARRANTIES, COVENANTS AND** **AGREEMENTS.**

9.1 Survival. Notwithstanding any right of Purchaser to investigate the affairs of the Company or any right of any party to investigate the accuracy of the representations and warranties of the other party contained in this Agreement, each of the Company and Purchaser shall have the right to rely fully upon the representations, warranties, covenants and agreements

of the other contained in this Agreement. The representations, warranties, covenants and agreements of each the Company and Purchaser contained in this Agreement will survive the Closing until the expiration of all applicable statutes of limitation (including all periods of extension, whether automatic or permissive) with respect to matters covered by Section 2.9 (Taxes), and Section 2.18 (Title; Liens) or with respect to each other covenant or agreement contained in this Agreement, for a period of two years following the Closing Date.

9.2 No Other Representations. Notwithstanding anything to the contrary contained in this Agreement, it is the explicit intent of each party hereto that the Company is making no representation or warranty whatsoever, express or implied, including but not limited to any implied representation or warranty as to condition, merchantability or suitability as to any of the Assets or other properties of the Business, except those representations and warranties contained in ARTICLE II. It is understood that, except to the extent otherwise expressly provided herein, Purchaser takes the Assets "as is" and "where is". In particular, the Company makes no representation or warranty to Purchaser with respect to any financial projection or forecast relating to the Business. With respect to any such projection or forecast delivered by or on behalf of the Company to Purchaser, Purchaser acknowledges that (i) there are uncertainties inherent in attempting to make such projections and forecasts, (ii) it is familiar with such uncertainties, (iii) it is taking full responsibility for making its own evaluation of the adequacy and accuracy of all such projections and forecasts furnished to it and (iv) it shall have no claim against the Company with respect thereto.

ARTICLE X INDEMNIFICATION

Section 10.1 In General. (a) The Company agree to indemnify Purchaser and its officers, directors, employees, agents and Affiliates (collectively, the "**Purchaser Indemnified Parties**") in respect of, and hold each of them harmless from and against, any and all Losses suffered, incurred or sustained by any of them or to which any of them becomes subject within twenty-four (24) months of the Closing Date, resulting from, arising out of or relating to (i) any misrepresentation, breach of warranty or nonfulfillment of or failure to perform any covenant or agreement on the part of the Company contained in this Agreement (determined in all cases as if the terms "material" or "materially" were not included therein) or (ii) a Retained Liability. Subject to the limitations set forth in Section 10.2, any obligation of the Company to make indemnification payments pursuant to this ARTICLE X shall be satisfied by reducing the aggregate principal amount payable to the holders of the Subordinated Notes by the amount of the indemnification payment required to be made hereunder on a pro rata basis based on the principal amount of Subordinated Notes held by each such holder at the time of such indemnification payment.

(b) Purchaser agrees to indemnify the Company and its officers, directors, employees, agents and Affiliates (the "**Company Indemnified Parties**") in respect of, and hold each of them harmless from and against, any and all Losses suffered, incurred or sustained by any of them or to which any of them becomes subject, resulting from, arising out of or relating to (i) any misrepresentation, breach of warranty or nonfulfillment of or failure to perform any covenant

or agreement on the part of Purchaser contained in this Agreement (determined in all cases as if the terms "material" or "materially" were not included therein) or (ii) an Assumed Liability.

Section 10.2 Limitations. Notwithstanding anything to the contrary contained in this Agreement, no amounts of indemnity shall be payable as a result of any claim in respect of a Loss arising under paragraph (a) or (b) of Section 10.1:

(i) in the case of a claim by a Purchaser Indemnified Party or a Company Indemnified Party, as the case may be, unless, until and then only to the extent that the Purchaser Indemnified Parties or the Company Indemnified Parties, as applicable, have suffered, incurred, sustained or become subject to Losses referred to in such paragraphs in excess of \$50,000 in the aggregate;

(ii) in the case of a claim by a Purchaser Indemnified Party or a Company Indemnified Party, as the case may be, for any Losses to the extent that the Purchaser Indemnified Parties or the Company Indemnified Parties, as applicable, have received payments in respect of claims made under such paragraphs in excess of \$1 million in the aggregate;

(iii) with respect to any claim for indemnification thereunder, unless the Indemnified Party has given the Indemnifying Party a Claim Notice or Indemnity Notice, as applicable, with respect to such claim, setting forth in reasonable detail the specific facts and circumstances pertaining thereto, (A) as soon as practical following the time at which the Indemnified Party discovered or reasonably should have discovered such claim (except to the extent the Indemnifying Party is not prejudiced by any delay in the delivery of such notice) and (B) in any event prior to the applicable Cut-off Date;

(iv) with respect to any Loss resulting from a misrepresentation, breach of warranty or nonfulfillment or failure to be performed of a covenant or agreement that is either (A) disclosed in a written notice, setting forth in reasonable detail the specific facts and circumstances pertaining thereto, delivered by the Indemnifying Party to the Indemnified Party after the date of this Agreement and at or prior to the Closing or (B) otherwise actually known to the Indemnified Party prior to the Closing, if the Indemnified Party nevertheless elects to close (regardless of whether the Indemnified Party waives such misrepresentation, breach, nonfulfillment or failure in writing or otherwise);

(v) with respect to any Loss, to the extent that the Indemnified Party had a reasonable opportunity, but failed, in good faith to mitigate the Loss, including but not limited to the failure to use commercially reasonable efforts to recover under a policy of insurance or under a contractual right of set-off or indemnity; or

(vi) with respect to any Loss suffered, incurred or sustained by any Purchaser Indemnified Party or to which any of them becomes subject to the extent it arises from or was caused by actions taken or failed to be taken by Purchaser or any of its Affiliates after the Closing;

provided that the limitations contained in clauses (i) and (ii) shall not apply to Losses arising from breach of (x) the representations contained in Sections 2.28 and 3.6 or the agreements of the Company contained in Sections 13.3, 13.5 and 13.14 and of Purchaser contained in Sections 13.3 and 13.5 and (y) Purchaser's and the Company's respective obligations hereunder with respect to Assumed Liabilities and Retained Liabilities.

Section 10.3 Method of Asserting Claims. The party making a claim under this ARTICLE X is referred to as the "**Indemnified Party**" and the party against whom such claims are asserted under this ARTICLE X is referred to as the "**Indemnifying Party**". All claims by any Indemnified Party under this ARTICLE X shall be asserted and resolved as follows:

(a) In the event any claim or demand in respect of which an Indemnified Party might seek indemnity under Section 10.1 is asserted against or sought to be collected from such Indemnified Party by a Person other than the Company, Purchaser or any Affiliate of the Company or Purchaser (a "**Third Party Claim**"), the Indemnified Party shall deliver a Claim Notice with reasonable promptness to the Indemnifying Party. The Indemnifying Party will notify the Indemnified Party as soon as practicable within the Dispute Period whether the Indemnifying Party disputes its liability to the Indemnified Party under Section 10.1 and whether the Indemnifying Party desires, at its sole cost and expense, to defend the Indemnified Party against such Third Party Claim.

(i) If the Indemnifying Party notifies the Indemnified Party within the Dispute Period that the Indemnifying Party desires to defend the Indemnified Party with respect to the Third Party Claim pursuant to this Section 10.3(a), then the Indemnifying Party will have the right to defend, at the sole cost and expense of the Indemnifying Party, such Third Party Claim by all appropriate proceedings, which proceedings will be vigorously and diligently prosecuted by the Indemnifying Party to a final conclusion or will be settled at the discretion of the Indemnifying Party. The Indemnifying Party will have full control of such defense and proceedings, including any settlement thereof; provided, however, that the Indemnified Party may, at the sole cost and expense of the Indemnified Party, at any time prior to the Indemnifying Party's delivery of the notice referred to in the first sentence of this Section 10.3(a)(i), file any motion, answer or other pleadings or take any other action that the Indemnified Party reasonably believes to be necessary or appropriate to protect its interests and not prejudicial to the Indemnifying Party (it being understood and agreed that, except as provided in clause (ii) below, if an Indemnified Party takes any such action that is prejudicial and causes a final adjudication that is adverse to the Indemnifying Party, the Indemnifying Party will be relieved of its obligations hereunder with respect to the portion of such Third Party Claim prejudiced by the Indemnified Party's action); and provided further, that if requested by the Indemnifying Party, the Indemnified Party will, at the sole cost and expense of the Indemnifying Party, cooperate with the Indemnifying Party and its counsel in contesting any Third Party Claim that the Indemnifying Party elects to contest, or, if appropriate and related to the Third Party Claim in question, in making any counterclaim against the Person asserting the Third Party Claim, or any cross-complaint against any Person (other than the Indemnified Party or any of its Affiliates). The Indemnified Party may participate in, but not control, any defense or settlement of any Third Party Claim

controlled by the Indemnifying Party pursuant to this Section 10.3(a)(i), and except as provided in the preceding sentence, the Indemnified Party will bear its own costs and expenses with respect to such participation. Notwithstanding the foregoing, the Indemnified Party may take over the control of the defense or settlement of a Third Party Claim at any time if it irrevocably waives its right to indemnity under Section 10.1 with respect to such Third Party Claim.

(ii) If the Indemnifying Party fails to notify the Indemnified Party within the Dispute Period that the Indemnifying Party desires to defend the Third Party Claim pursuant to Section 10.3(a), or if the Indemnifying Party gives such notice but fails to prosecute vigorously and diligently or settle the Third Party Claim, or if the Indemnifying Party fails to give any notice whatsoever within the Dispute Period, then the Indemnified Party will have the right to defend, at the sole cost and expense of the Indemnifying Party, the Third Party Claim by all appropriate proceedings, which proceedings will be vigorously and diligently prosecuted by the Indemnified Party to a final conclusion or will be settled at the discretion of the Indemnified Party (with the consent of the Indemnifying Party, which consent will not be unreasonably withheld). The Indemnified Party will have full control of such defense and proceedings, including (except as provided in the immediately preceding sentence) any settlement thereof; provided, however, that if requested by the Indemnified Party, the Indemnifying Party will, at the sole cost and expense of the Indemnifying Party, cooperate with the Indemnified Party and its counsel in contesting any Third Party Claim which the Indemnified Party is contesting, or, if appropriate and related to the Third Party Claim in question, in making any counterclaim against the Person asserting the Third Party Claim, or any cross-complaint against any Person (other than the Indemnified Party or any of its Affiliates). Notwithstanding the foregoing provisions of this Section 10.3(a)(ii), if the Indemnifying Party has notified the Indemnified Party within the Dispute Period that the Indemnifying Party disputes its liability hereunder to the Indemnified Party with respect to such Third Party Claim and if such dispute is resolved in favor of the Indemnifying Party in the manner provided in clause (iii) below, the Indemnifying Party will not be required to bear the costs and expenses of the Indemnified Party's defense pursuant to this Section 10.3(a)(ii) or of the Indemnifying Party's participation therein at the Indemnified Party's request, and the Indemnified Party will reimburse the Indemnifying Party in full for all reasonable costs and expenses incurred by the Indemnifying Party in connection with such litigation. The Indemnifying Party may participate in, but not control, any defense or settlement controlled by the Indemnified Party pursuant to this Section 10.3(a)(ii), and the Indemnifying Party will bear its own costs and expenses with respect to such participation.

(iii) If the Indemnifying Party notifies the Indemnified Party that it does not dispute its liability to the Indemnified Party with respect to the Third Party Claim under Section 10.1 or fails to notify the Indemnified Party within the Dispute Period whether the Indemnifying Party disputes its liability to the Indemnified Party with respect to such Third Party Claim, the Loss in the amount specified in the Claim Notice will be conclusively deemed a liability of the Indemnifying Party under Section 10.1 and the Indemnifying Party shall pay the amount of such Loss to the Indemnified Party on demand. If the Indemnifying Party has timely disputed its liability with respect to such

claim, the Indemnifying Party and the Indemnified Party will proceed in good faith to negotiate a resolution of such dispute, and if not resolved through negotiations within the Resolution Period, such dispute shall be resolved by arbitration in accordance with Section 10.4.

(b) In the event any Indemnified Party should have a claim under Section 10.1 against any Indemnifying Party that does not involve a Third Party Claim, the Indemnified Party shall deliver an Indemnity Notice with reasonable promptness to the Indemnifying Party. If the Indemnifying Party notifies the Indemnified Party that it does not dispute the claim described in such Indemnity Notice or fails to notify the Indemnified Party within the Dispute Period whether the Indemnifying Party disputes the claim described in such Indemnity Notice, the Loss in the amount specified in the Indemnity Notice will be conclusively deemed a liability of the Indemnifying Party under Section 10.1 and the Indemnifying Party shall pay the amount of such Loss to the Indemnified Party on demand. If the Indemnifying Party has timely disputed its liability with respect to such claim, the Indemnifying Party and the Indemnified Party will proceed in good faith to negotiate a resolution of such dispute, and if not resolved through negotiations within the Resolution Period, such dispute shall be resolved by arbitration in accordance with Section 10.4.

(c) In the event of any Loss resulting from a misrepresentation, breach of warranty or nonfulfillment or failure to be performed of any covenant or agreement contained in this Agreement as to which an Indemnified Party would be entitled to claim indemnity under Section 10.1 but for the provisions of Section 10.2(ii), such Indemnified Party may nevertheless deliver a written notice to the Indemnifying Party containing the information that would be required in a Claim Notice or an Indemnity Notice, as applicable, with respect to such Loss. In the case of a Claim Notice, the provisions of Section 10.3(a)(i) will be applicable. If the Indemnifying Party notifies the Indemnified Party that it does not dispute the claim described therein or fails to notify the Indemnified Party within the Dispute Period whether the Indemnifying Party disputes the claim described in such Claim Notice or Indemnity Notice, as the case may be, the Loss specified in the notice will be conclusively deemed to have been incurred by the Indemnified Party for purposes of making the determination set forth in Section 10.2(ii). If the Indemnifying Party has timely disputed the claim described in such Claim Notice or Indemnity Notice, as the case may be, the Indemnifying Party and the Indemnified Party will proceed in good faith to negotiate a resolution of such dispute, and if not resolved through negotiations within the Resolution Period, such dispute shall be resolved by arbitration in accordance with Section 10.4.

Section 10.4 Arbitration. Any dispute pursuant to this ARTICLE X shall be finally and conclusively determined by the decision of a board of arbitration consisting of three (3) members (hereinafter sometimes called the "Board of Arbitration") selected as hereinafter provided. Each of the Indemnified Party and the Indemnifying Party shall select one (1) member and the third member shall be selected by mutual agreement of the other members, or if the other members fail to reach agreement on a third member within twenty (20) days after their selection, such third member shall thereafter be selected by the American Arbitration Association upon application made to it for such purpose by the Indemnified Party. The Board of Arbitration shall meet in Boston, Massachusetts or such other place as a majority of the members

of the Board of Arbitration determines more appropriate, and shall reach and render a decision in writing (concurring in by a majority of the members of the Board of Arbitration) with respect to the amount, if any, which the Indemnifying Party is required to pay to the Indemnified Party in respect of a claim filed by the Indemnified Party. In connection with rendering its decisions, the Board of Arbitration shall adopt and follow such rules and procedures as a majority of the members of the Board of Arbitration deems necessary or appropriate. To the extent practical, decisions of the Board of Arbitration shall be rendered no more than thirty (30) calendar days following commencement of proceedings with respect thereto. The Board of Arbitration shall cause its written decision to be delivered to the Indemnified Party and the Indemnifying Party. Any decision made by the Board of Arbitration (either prior to or after the expiration of such thirty (30) calendar day period) shall be final, binding and conclusive on the Indemnified Party and the Indemnifying Party and entitled to be enforced to the fullest extent permitted by law and entered in any court of competent jurisdiction. Each party to any arbitration shall bear its own expense in relation thereto, including but not limited to such party's attorneys' fees, if any, and the expenses and fees of the member of the Board of Arbitration appointed by such party, provided, however, that the expenses and fees of the third member of the Board of Arbitration and any other expenses of the Board of Arbitration not capable of being attributed to any one member shall be borne in equal parts by the Indemnifying Party and the Indemnified Party.

10.5 Exclusivity. After the Closing, to the extent permitted by Law, the indemnities set forth in this ARTICLE X and Section 13.14 shall be the exclusive remedies of Purchaser and the Company and their respective officers, directors, employees, agents and Affiliates for any misrepresentation, breach of warranty or nonfulfillment or failure to be performed of any covenant or agreement contained in this Agreement, and the parties shall not be entitled to a rescission of this Agreement or to any further indemnification rights or claims of any nature whatsoever in respect thereof, all of which the parties hereto hereby waive.

ARTICLE XI **TERMINATION**

11.1 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned:

(a) at any time before the Closing, by mutual written agreement of the Company and Purchaser;

(b) at any time before the Closing, by the Company or Purchaser, in the event that any Order or Law becomes effective restraining, enjoining, or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Operative Agreements, upon notification of the non-terminating party by the terminating party; or

(c) at any time before the Closing, by the Company or Purchaser, in the event (i) of a material breach hereof by the non-terminating party if such non-terminating party fails

to cure such breach within five (5) Business Days following notification thereof by the terminating party or (ii) upon notification of the non-terminating party by the terminating party that the satisfaction of any condition to the terminating party's obligations under this Agreement becomes impossible or impracticable with the use of commercially reasonable efforts if the failure of such condition to be satisfied is not caused by a breach hereof by the terminating party; or

(d) at any time after the date hereof by the Company or Purchaser upon notification of the non-terminating party by the terminating party if the Closing shall not have occurred on or before such date and such failure to consummate is not caused by a breach of this Agreement by the terminating party.

11.2 Effect of Termination. If this Agreement is validly terminated pursuant to Section 11.1, this Agreement will forthwith become null and void, and there will be no liability or obligation on the part of the Company or Purchaser (or any of their respective officers, directors, employees, agents or other representatives or Affiliates), except as provided in the next succeeding sentence and except that the provisions with respect to expenses in Section 13.3 and confidentiality in Section 13.5 will continue to apply following any such termination. Notwithstanding any other provision in this Agreement to the contrary, upon termination of this Agreement pursuant to Section 11.1(c) or (d), the Company will remain liable to Purchaser for any willful breach of Section 4.13 of this Agreement by the Company existing at the time of such termination, and Purchaser will remain liable to the Company for any willful breach of Section 5.4 of this Agreement by Purchaser existing at the time of such termination, and the Company or Purchaser may seek such remedies, including damages and fees of attorneys, against the other with respect to any such breach as are provided in this Agreement or as are otherwise available at Law or in equity.

ARTICLE XII DEFINITIONS

12.1 Definitions. (a) As used in this Agreement, the following defined terms shall have the meanings indicated below:

“**Accounts Receivable**” has the meaning ascribed to it in Section 1.1(d).

“**Actions or Proceedings**” means any action, suit, proceeding, arbitration or Governmental or Regulatory Authority investigation or audit.

“**Affiliate**” means any Person that directly, or indirectly through one of more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by Contract or otherwise and, in any event and without limitation of the previous sentence, any Person owning ten percent (10%) or more of the voting securities of a second Person shall be deemed to control that second Person.

"Agreement" means this Asset Purchase Agreement and the Exhibits, the Disclosure Schedule and the Schedules hereto and the certificates delivered in accordance with Section 6.1, as the same shall be amended from time to time.

"Assets" has the meaning ascribed to it in Section 1.1.

"Assets and Properties" of any Person means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, whether absolute, accrued, contingent, fixed or otherwise and wherever situated), including the goodwill related thereto, operated, owned or leased by such Person, including without limitation cash, cash equivalents, Investment Assets, accounts and notes receivable, chattel paper, documents, instruments, general intangibles, real estate, equipment, inventory and goods.

"Assignment Instruments" has the meaning ascribed to it in Section 1.8.

"Associate" means, with respect to any Person, any corporation or other business organization of which such Person is an officer or partner or is the beneficial owner, directly or indirectly, of ten percent (10%) or more of any class of equity securities, any trust or estate in which such Person has a substantial beneficial interest or as to which such Person serves as a trustee or in a similar capacity and any relative or spouse of such Person, or any relative of such spouse, who has the same home as such Person.

"Assumed Liabilities" has the meaning ascribed to it in Section 1.3.

"Assumption Agreement" has the meaning ascribed to it in Section 1.6.

"Assumption Instruments" has the meaning ascribed to it in Section 1.6.

"Balance Sheet" shall mean the balance sheet of the Company and related notes thereto included in the Financial Statements of the Company dated July 31, 1998.

"Board of Arbitration" has the meaning ascribed to it in Section 10.3(d).

"Board of Directors" means the board of directors of the Company.

"Books and Records" means all files, documents, instruments, papers, books and records relating to the Business or Condition of the Company, including without limitation financial statements, Tax Returns and related work papers and letters from accountants, budgets, pricing guidelines, ledgers, journals, deeds, title policies, minute books, stock certificates and books, stock transfer ledgers, Contracts, Licenses, customer lists, computer files and programs, retrieval programs, operating data and plans and environmental studies and plans.

"Business" means the manufacturing, marketing and sales of kayaks, canoes, boats and related accessories and equipment by the Company.

“**Business Combination**” means with respect to any Person any merger, consolidation or combination to which such Person is a party, any sale, dividend, split or other disposition of capital stock or other equity interests of such Person or any sale, dividend or other disposition of all or substantially all of the Assets and Properties of such Person.

“**Business Contracts**” has the meaning ascribed to it in Section 1.1(g).

“**Business Day**” means a day other than Saturday, Sunday or any day on which banks located in Boston, Massachusetts are authorized or obligated to close.

“**Business Licenses**” has the meaning ascribed to it in Section 1.1(j).

“**Cash Payment**” has the meaning ascribed to it in Section 1.5.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and the rules and regulations promulgated thereunder.

“**Claim Notice**” means written notification pursuant to Section 10.3(a) of a Third Party Claim as to which indemnity under Section 10.1 is sought by an Indemnified Party, enclosing a copy of all papers served, if any, and specifying the nature of and basis for such Third Party Claim and for the Indemnified Party’s claim against the Indemnifying Party under Section 10.1, together with the amount or, if not then reasonably ascertainable, the estimated amount, determined in good faith, of such Third Party Claim.

“**Closing**” has the meaning ascribed to it in Section 1.8.

“**Closing Date**” means (a) October 5, 1998 or (b) such other date as Purchaser and the Company mutually agree upon in writing.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“**Company**” has the meaning ascribed to it in the forepart of this Agreement.

“**Company Indemnified Parties**” has the meaning ascribed to it in Section 10.2.

“**Contract**” means any agreement, lease, evidence of Indebtedness, mortgage, indenture, security agreement or other contract (whether written or oral).

“**Cut-off Date**” means, with respect to any representation, warranty, covenant or agreement contained in this Agreement, the date on which such representation, warranty, covenant or agreement ceases to survive as provided in Section 9.1.

“**Disclosure Schedule**” means the record delivered to Purchaser by the Company herewith and dated as of the date hereof, containing all lists, descriptions, exceptions and other

information and materials as are required to be included therein by the Company pursuant to this Agreement.

"Dispute Period" means the period ending thirty (30) calendar days following receipt by an Indemnifying Party of either a Claim Notice or an Indemnity Notice.

"Employee Plan" has the meaning ascribed to it in Section 2.12.

"Environmental Law" means any Law relating to human health, safety or protection of the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants or Hazardous Materials in the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), or otherwise relating to the treatment, storage, disposal, transport or handling of any Hazardous Material.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"Excluded Assets" has the meaning ascribed to it in Section 1.2.

"Financial Statements" means the financial statements of the Company delivered to Purchaser pursuant to Section 2.6 or Section 4.5.

"Financial Statement Date" means July 31, 1998.

"GAAP" means generally accepted accounting principles, consistently applied throughout the specified period and in the immediately prior comparable period.

"General Assignment" has the meaning ascribed to it in Section 1.8.

"Governmental or Regulatory Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision.

"Hazardous Material" means (A) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls (PCBs); (B) any chemicals, materials, substances or wastes which are now or hereafter become defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants" or words of similar import, under any Environmental Law; and (C) any other chemical, material, substance or waste, exposure to which is now or hereafter prohibited, limited or regulated by any Governmental or Regulatory Authority under any Environmental Law.

"Indebtedness" of any Person means all obligations of such Person (i) for borrowed money, (ii) evidenced by notes, bonds, debentures or similar instruments, (iii) for the

deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of business), (iv) under capital leases and (v) in the nature of guarantees of the obligations described in clauses (i) through (iv) above of any other Person.

“**Indemnified Party**” means any Person claiming indemnification under any provision of ARTICLE X, including without limitation a Person asserting a claim pursuant to Section 10.3(c) .

“**Indemnifying Party**” means any Person against whom a claim for indemnification are being asserted under any provision of ARTICLE X, including without limitation a Person against whom a claim is asserted pursuant to Section 10.3(c) .

“**Indemnity Notice**” means written notification pursuant to Section 10.3(b) of a claim for indemnity under ARTICLE X by an Indemnified Party, specifying the nature of and basis for such claim, together with the amount or, if not then reasonably ascertainable, the estimated amount, determined in good faith, of such claim.

“**Intangible Personal Property**” has the meaning specified in Section 1.1(h).

“**Inventory**” has the meaning specified in Section 1.1(c).

“**Investment Assets**” means all debentures, notes and other evidences of Indebtedness, stocks, securities (including rights to purchase and securities convertible into or exchangeable for other securities), interests in joint ventures and general and limited partnerships, mortgage loans and other investment or portfolio assets owned of record or beneficially by the Company and that are not listed on Schedule 1.2.

“**IRS**” means the United States Internal Revenue Service.

“**Knowledge**” shall mean, with respect to the Company, the actual knowledge of Andrew J. Zimmerman, John A. Sheppard and David L. Olson or or such knowledge that a senior executive officer of the Company reasonably could be expected to have on the date hereof.

“**Laws**” means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision or of any Governmental or Regulatory Authority.

“**Liabilities**” means all Indebtedness, obligations and other liabilities of a Person (whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due).

“**Licenses**” means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted or issued by any Governmental or Regulatory Authority.

"Liens" means any mortgage, pledge, assessment, security interest, lease, lien, adverse claim, levy, charge or other encumbrance of any kind, or any conditional sale Contract, title retention Contract or other Contract to give any of the foregoing.

"Loss" means any and all damages, fines, fees, penalties, deficiencies, losses and expenses (including without limitation interest, court costs, reasonable fees of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any claim, default or assessment).

"Material Contracts" has the meaning ascribed to it in Section 2.5(d).

"Operative Agreements" means, collectively, the General Assignment and the other Assignment Instruments, the Assumption Agreement and the other Assumption Instruments, the employment agreements of Andrew J. Zimmerman, John A. Sheppard and David L. Olson and any support or other agreements to be entered into in connection with the transaction.

"Option" with respect to any Person means any security, right, subscription, warrant, option, "phantom" stock right or other Contract that gives the right to (i) purchase or otherwise receive or be issued any shares of capital stock of such Person or any security of any kind convertible into or exchangeable or exercisable for any shares of capital stock of such Person or (ii) receive any benefits or rights similar to any rights enjoyed by or accruing to the holder of shares of capital stock of such Person, including any rights to participate in the equity, income or election of directors or officers of such Person.

"Order" means any writ, judgment, decree, injunction or similar order of any Governmental or Regulatory Authority (in each such case whether preliminary or final).

"Permitted Lien" means (i) any Lien for Taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of business by operation of Law with respect to a Liability that is not yet due or delinquent, (iii) any Lien securing an Assumed Liability, (iv) any Lien securing Indebtedness of the Company that will be satisfied and paid in full at the Closing and (v) any minor imperfection of title or similar Lien which individually or in the aggregate with other such Liens could not reasonably be expected to materially adversely affect the Business.

"Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental or Regulatory Authority.

"Personal Property Leases" has the meaning ascribed to it in Section 1.1(f).

"Purchase Consideration" has the meaning ascribed to it in Section 1.5.

"Purchaser" has the meaning ascribed to it in the forepart of this Agreement.

“**Purchaser Indemnified Parties**” means Purchaser and its officers, directors, employees, agents and Affiliates.

“**Real Property Leases**” has the meaning ascribed to it in Section 1.1(b).

“**Representatives**” has the meaning ascribed to it in Section 4.2.

“**Resolution Period**” means the period ending sixty (60) calendar days following receipt by an Indemnified Party of a written notice from an Indemnifying Party stating that it disputes all or any portion of a claim set forth in a Claim Notice or an Indemnity Notice..

“**Retained Liabilities**” has the meaning ascribed to it in Section 1.4.

“**Subordinated Note**” has the meaning ascribed to it in Section 1.5.

“**Subordinated Note Payment**” has the meaning ascribed to it in Section 1.5.

“**Tangible Personal Property**” has the meaning ascribed to it in Section 1.1(e).

“**Taxes**” has the meaning ascribed to it in Section 2.9.

“**Third Party Claim**” has the meaning ascribed to it in Section 10.3.

“**Transfer Taxes**” means sales, use, transfer, real property transfer, recording, gains, stock transfer and other similar taxes and fees arising out of or in connection with the transactions effected pursuant to this Agreement.

“**Warrant Payment**” has the meaning ascribed to it in Section 1.5.

(b) Construction. Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement; (iv) the terms “Article” or “Section” refer to the specified Article or Section of this Agreement; and (v) the phrases “ordinary course of business” refer to the business and practice of the Company in connection with the Business. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP. Any representation or warranty contained herein as to the enforceability of a Contract shall be subject to the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar law affecting the enforcement of creditors’ rights generally and to general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at Law).

ARTICLE XIII **MISCELLANEOUS**

13.1 Notices. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally or by facsimile transmission or mailed (first class postage prepaid) to the parties at the following addresses or facsimile numbers:

If to Purchaser, to:

Confluence Holdings Corp.
c/o Lochridge & Company Incorporated
420 Boylston Street
Boston, MA 02116
Facsimile No.: 617-267-8438
Attn: Charles Cherington

with a copy to:

George Woron
75 State Street, Suite 1520
Boston, MA 02109
Facsimile No.: 617-566-6364

If to the Company, to:

David Olson
c/o Confluence Holdings Corp.
3761 Old Glenola Road
Trinity, NC 27370
Facsimile No.: 336-434-6912
Attn: David Olson

with a copy to:

Schell Bray Aycock Abel & Livingston P.L.L.C.
Suite 1500 Renaissance Plaza
230 North Elm Street
Greensboro, NC 27401
Facsimile No.: 336-370-8830
Attn: Doris Bray, Esq.

All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section, be deemed given upon delivery, (ii) if delivered by facsimile transmission to the facsimile number as provided in this Section, be deemed given upon receipt, and (iii) if delivered by mail in the manner described above to the address as provided in this Section, be deemed given upon receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice is to be delivered pursuant to this Section). Any party from time to time may change its address,

facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

13.2 Entire Agreement. This Agreement and the Operative Agreements supersede all prior discussions and agreements between the parties with respect to the subject matter hereof and thereof, including without limitation that certain letter of intent between the parties dated July 9, 1998, as extended by that certain extension letter dated August 28, 1998 and contains the sole and entire agreement among the parties hereto with respect to the subject matter hereof and thereof.

13.3 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are consummated, each party will pay its own costs and expenses, and the Company shall pay its own costs incurred in connection with the negotiation, execution and closing of this Agreement and the Operative Agreements and the transactions contemplated hereby and thereby.

13.4 Public Announcements. At all times at or before the Closing, the Company and Purchaser will not issue or make any reports, statements or releases to the public or generally to the employees, customers, suppliers or other Persons to whom the Company sells goods or provide services or with whom the Company otherwise have significant business relationships with respect to this Agreement or the transactions contemplated hereby without the consent of the other, which consent shall not be unreasonably withheld. If either party is unable to obtain the approval of its public report, statement or release from the other party and such report, statement or release is, in the opinion of legal counsel to such party, required by Law in order to discharge such party's disclosure obligations, then such party may make or issue the legally required report, statement or release and promptly furnish the other party with a copy thereof. The Company and Purchaser will also obtain the other party's prior approval of any press release to be issued immediately following the Closing announcing the consummation of the transactions contemplated by this Agreement.

13.5 Confidentiality. Each party hereto will hold, and will use its best efforts to cause its Affiliates (and, in the case of Purchaser, any Person who has provided, or who is considering providing, financing to Purchaser to finance all or any portion of the Purchase Price) and their respective Representatives to hold, in strict confidence from any Person (other than any such Affiliate, Person who has provided, or who is considering providing, financing or Representative), unless (i) compelled to disclose by judicial or administrative process (including without limitation in connection with obtaining the necessary approvals of this Agreement and the transactions contemplated hereby of Governmental or Regulatory Authorities) or by other requirements of Law or (ii) disclosed in an Action or Proceeding brought by a party hereto in pursuit of its rights or in the exercise of its remedies hereunder, all documents and information concerning the other party or any of its Affiliates furnished to it by the other party or such other party's Representatives in connection with this Agreement or the transactions contemplated hereby, except to the extent that such documents or information can be shown to have been (a) previously known by the party receiving such documents or information, (b) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no fault of such receiving party or (c) later acquired by the receiving party from another

source if the receiving party is not aware that such source is under an obligation to another party hereto to keep such documents and information confidential; provided that following the Closing the foregoing restrictions will not apply to Purchaser's use of documents and information concerning the Company furnished by the Company hereunder. In the event the transactions contemplated hereby are not consummated, upon the request of the other party, each party hereto will, and will cause its Affiliates, any Person who has provided, or who is considering providing, financing to such party and their respective Representatives to, promptly (and in no event later than five (5) days after such request) redeliver or cause to be redelivered all copies of documents and information furnished by the other party in connection with this Agreement or the transactions contemplated hereby and destroy or cause to be destroyed all notes, memoranda, summaries, analyses, compilations and other writings related thereto or based thereon prepared by the party furnished such documents and information or its Representatives.

13.6 Further Assurances; Post-Closing Cooperation. (a) At any time or from time to time after the Closing, the Company shall execute and deliver to Purchaser such other documents and instruments, provide such materials and information and take such other actions as Purchaser may reasonably request more effectively to vest title to the Assets in Purchaser and, to the full extent permitted by Law, to put Purchaser in actual possession and operating control of the Company and its Assets and Properties, and otherwise to cause the Company to fulfill its obligations under this Agreement and the Operative Agreements to which it is a party.

(b) Following the Closing, each party will afford the other party, its counsel and its accountants, during normal business hours, reasonable access to the books, records and other data relating to the Business or Condition of the Company in its possession with respect to periods prior to the Closing and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting party in connection with (i) the preparation of Tax Returns, (ii) the determination or enforcement of rights and obligations under this Agreement, (iii) compliance with the requirements of any Governmental or Regulatory Authority, (iv) the determination or enforcement of the rights and obligations of any Indemnified Party or (v) in connection with any actual or threatened Action or Proceeding. Further, each party agrees for a period extending six (6) years after the Closing Date not to destroy or otherwise dispose of any such books, records and other data unless such party shall first offer in writing to surrender such books, records and other data to the other party and such other party shall not agree in writing to take possession thereof during the ten (10) day period after such offer is made.

(c) If, in order properly to prepare its Tax Returns, other documents or reports required to be filed with Governmental or Regulatory Authorities or its financial statements or to fulfill its obligations hereunder, it is necessary that a party be furnished with additional information, documents or records relating to the Business or Condition of the Company not referred to in paragraph (b) above, and such information, documents or records are in the possession or control of the other party, such other party shall use its best efforts to furnish or make available such information, documents or records (or copies thereof) at the recipient's request, cost and expense. Any information obtained by the Company in accordance with this paragraph shall be held confidential by the Company in accordance with Section 13.5.

(d) Notwithstanding anything to the contrary contained in this Section, if the parties hereto are in an adversarial relationship in litigation or arbitration, the furnishing of information, documents or records in accordance with any provision of this Section shall be subject to applicable rules relating to discovery.

13.7 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

13.8 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party hereto.

13.9 No Third Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other Person other than any Person entitled to indemnity under ARTICLE X.

13.10 Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

13.11 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

13.12 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of North Carolina applicable to a Contract executed and performed in such State without giving effect to the conflicts of laws principles thereof.

13.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

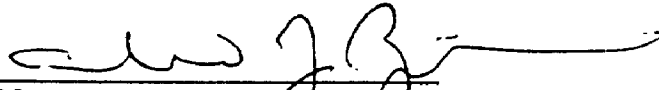
13.14 Bulk Sales Act. The parties hereby waive compliance with the bulk sales act or comparable statutory provisions of each applicable jurisdiction. The Company shall indemnify Purchaser and its officers, directors, employees, agents and Affiliates in accordance

with the provisions of ARTICLE X in respect of, and hold each of them harmless from and against, any and all Losses suffered, occurred or sustained by any of them or to which any of them becomes subject, resulting from, arising out of or relating to the failure of the Company to comply with the terms of any such provisions applicable to the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each party hereto as of the date first above written.


The Company:

WILDERNESS SYSTEMS, INCORPORATED.

By: 
Name: Andrew J. Zimmerman
Title: President

Purchaser:

CONFLUENCE HOLDINGS CORP.

By: 
Name: James Schubauer
Title: Chairman

GENERAL ASSIGNMENT AND BILL OF SALE

THIS GENERAL ASSIGNMENT AND BILL OF SALE is entered into this 5th day of October, 1998 by and between CONFLUENCE HOLDINGS CORP. , a Delaware corporation ("Purchaser"), and WILDERNESS SYSTEMS, INCORPORATED, a North Carolina corporation (the "Seller").

WHEREAS, Purchaser and Seller have entered into an Asset Purchase Agreement, dated as of October 5, 1998 (the "Asset Purchase Agreement"; capitalized terms not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement), pursuant to which Seller has agreed to sell, transfer, convey, assign and deliver to Purchaser and Purchaser has agreed to purchase from Seller substantially all of the assets used or held for use by Seller in connection with the conduct of the Business, and Purchaser has agreed, in partial consideration therefor, to assume certain obligations in connection therewith by executing an Assumption Agreement of even date herewith;

WHEREAS, Seller desires to transfer and assign to Purchaser the assets described below pursuant to Section 1.5 of the Asset Purchase Agreement and Purchaser desires to accept the sale, transfer, conveyance, assignment and delivery thereof;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller hereby irrevocably sells, transfers, conveys, assigns and delivers to Purchaser free and clear of all Liens, other than Permitted Liens, all of Seller's right, title and interest in, to and under the Assets and Properties of Seller described in Section 1.1 of the Asset Purchase Agreement (the "Assigned Assets"), TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

Purchaser hereby accepts the sale, transfer, conveyance, assignment and delivery of the Assigned Assets.

Seller represents, warrants, covenants and agrees that it: (a) has good and marketable title to the Assigned Assets, free and clear of all Liens other than Permitted Liens; and (b) will warrant and defend the sale of the Assigned Assets against all and every Person or Persons whomsoever claiming against any or all of the same, subject to the terms and provisions of the Asset Purchase Agreement.

At any time or from time to time after the date hereof, at Purchaser's request and without further consideration, Seller shall execute and deliver to Purchaser such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as Purchaser may reasonably deem necessary or desirable in order more effectively to transfer, convey and assign to Purchaser, and to confirm Purchaser's title to, all of the Assigned Assets, and, to the full extent permitted by Law, to

put Purchaser in actual possession and operating control of the Assigned Assets and to assist Purchaser in exercising all rights with respect thereto.

Seller hereby constitutes and appoints Purchaser the true and lawful attorney of Seller, with full power of substitution. in the name of Seller or Purchaser, but on behalf of and for the benefit of Purchaser: (i) to demand and receive from time to time any and all of the Assigned Assets and to make endorsements and give receipts and releases for and in respect of the same and any part thereof; (ii) to institute, prosecute, compromise and settle any and all Actions or Proceedings that Purchaser may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to the Assigned Assets; (iii) to defend or compromise any or all Actions or Proceedings in respect of any of the Assigned Assets; and (iv) to do all such acts and things in relation to the matters set forth in the preceding clauses (i) through (iii) as Purchaser shall deem desirable. Seller hereby acknowledges that the appointment hereby made and the powers hereby granted are coupled with an interest and are not and shall not be revocable by it in any manner or for any reason. Purchaser shall indemnify and hold harmless Seller and its officers, directors, employees, agents and Affiliates from any and all Losses caused by or arising out of any breach of Law by Purchaser in its exercise of the aforesaid powers.

This General Assignment and Bill of Sale may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

This General Assignment and Bill of Sale shall be governed by and construed in accordance with the laws of the State of North Carolina applicable to a contract executed and performed in such State without giving effect to the conflicts of laws principles thereof, except that if it is necessary in any other jurisdiction to have the law of such other jurisdiction govern this General Assignment and Bill of Sale in order for this General Assignment and Bill of Sale to be effective in any respect. then the laws of such other jurisdiction shall govern this General Assignment and Bill of Sale to such extent.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized officers to execute this General Assignment and Bill of Sale on the day and year first above written.

CONFLUENCE HOLDINGS CORP.

By: _____
Name:
Title:

WILDERNESS SYSTEMS, INCORPORATED

By: _____
Name:
Title:

ASSUMPTION AGREEMENT

THIS ASSUMPTION AGREEMENT is entered into this 5th day of October, 1998 by and between CONFLUENCE HOLDINGS CORP. , a Delaware corporation ("Purchaser"), and WILDERNESS SYSTEMS, INCORPORATED., a North Carolina corporation ("Seller").

WHEREAS, Purchaser and Seller have entered into an Asset Purchase Agreement, dated as of October 5, 1998 (the "Asset Purchase Agreement"; capitalized terms not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement), pursuant to which Seller has agreed to sell, transfer, convey, assign and deliver to Purchaser and Purchaser has agreed to purchase from Seller substantially all of the assets used or held for use by Seller in connection with the conduct of the Business, and Purchaser has agreed, in partial consideration therefor, to assume certain obligations in connection therewith by executing this Assumption Agreement;

WHEREAS, pursuant to Section 1.5 of the Asset Purchase Agreement, Purchaser is required to execute and deliver to Seller this Agreement whereby Purchaser assumes such obligations;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Purchaser hereby undertakes and agrees from and after the date hereof, subject to the limitations contained herein, to assume and to pay, perform and discharge when due the Assumed Liabilities.

Nothing contained herein shall require Purchaser to pay or discharge any debts or obligations expressly assumed hereby so long as Purchaser shall in good faith contest or cause to be contested the amount or validity thereof.

Other than as specifically stated above or in the Asset Purchase Agreement, Purchaser assumes no debt, liability or obligation of Seller, including without limitation the Retained Liabilities, by this Assumption Agreement, and it is expressly understood and agreed that all debts, liabilities and obligations not assumed hereby by Purchaser shall remain the sole obligation of Seller, its successors and assigns.

No Person other than Seller, its successors and assigns shall have any rights under this Assumption Agreement or the provisions contained herein.

This Assumption Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

This Assumption Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina applicable to a contract executed and performed in such State without giving effect to the conflicts of laws principles thereof, except that if it is necessary in any other jurisdiction to have the law of such other jurisdiction govern this Assumption Agreement in order for this Assumption Agreement to be effective in any respect, then the laws of such other jurisdiction shall govern this Assumption Agreement to such extent.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized officers to execute this Assumption Agreement on the day and year first above written.

CONFLUENCE HOLDINGS CORP.

By: _____
Name:
Title:

WILDERNESS SYSTEMS, INCORPORATED

By: _____
Name:
Title:

WILDERNESS SYSTEMS, INC.
(a North Carolina corporation)

COMPLIANCE CERTIFICATE

Pursuant to Section 6.1 of the Asset Purchase Agreement, dated as of October 5, 1998 (the "Agreement"), the undersigned, David Olson, hereby certifies that:

1. He is the duly elected and acting Secretary/Treasurer of Wilderness Systems, Inc. (the "Company").
2. Attached as Exhibit A hereto is a true and correct copy of the Company's Articles of Incorporation.
3. Attached as Exhibit B hereto is a true and correct copy of the Company's Bylaws.
4. Attached as Exhibit C hereto is a true and correct copy of the written consent of the directors of the Company authorizing the transactions contemplated by the Agreement.
5. Attached as Exhibit D hereto is a true and correct copy of the written consent of the shareholders of the Company authorizing the transactions contemplated by the Agreement.

Dated October 5, 1998

David Olson, Secretary/Treasurer

*Exhibit D-1 To
Asset Purchase Agreement*

**ZIMMERMAN
EMPLOYMENT AGREEMENT**

**SHEPPARD
EMPLOYMENT AGREEMENT**

*Exhibit D-3 To
Asset Purchase Agreement*

**OLSON
EMPLOYMENT AGREEMENT**

[Opinion of Schell Bray et al.]

October 5, 1998

Confluence Holdings Corp.
3761 Old Glenola Road
Trinity, North Carolina 27370

Ladies and Gentlemen:

We have acted as counsel to Wilderness Systems, Incorporated, a North Carolina corporation ("Seller") in connection with the transactions contemplated by that certain Asset Purchase Agreement dated as of October 5, 1998 (the "Agreement") between Seller and Confluence Holdings Corp., a Delaware corporation ("Purchaser"). Unless otherwise expressly provided herein, the capitalized terms used herein shall have the same respective meanings assigned to them in the Agreement. This opinion is being delivered to you pursuant to and in satisfaction of Section 6.6 of the Agreement.

In connection with the preparation of this opinion, we have reviewed the originals or copies, certified or otherwise identified to our satisfaction, of the following documents:

1. the Asset Purchase Agreement;
2. the Assignment Agreement;
3. the Assumption Agreement;
4. the Assumption and Continuation Agreement;
- (e) the Employment Agreements of each of Andrew J. Zimmerman, John Sheppard and David L. Olson with the Purchaser;

- (f) Articles of Incorporation of Seller certified by the Secretary of State of North Carolina on July 30, 1998;
- (g) a Certificate of Existence of Seller certified by the Secretary of State of North Carolina on September 24, 1998;
- (h) the bylaws of Seller; and
- (i) corporate resolutions of Seller, authorizing the execution, delivery and performance of the Agreement and the consummation of the transactions provided for therein.

The documents described in paragraph (a) through (i) above are hereinafter referred to collectively as the "Transaction Documents." We have also examined such questions of law as we have deemed relevant or necessary as a basis for the opinions hereinafter set forth.

In giving the opinions expressed herein and in making our investigations in connection herewith, we have assumed (a) the parties other than Seller have all requisite power and authority to enter into and perform, and have duly authorized, executed and delivered, the Transaction Documents, (b) the Transaction Documents constitute the legal, valid and binding obligation of all parties thereto other than Seller, (c) the genuineness of all signatures on original documents, (d) the authenticity of all documents submitted to us as originals, (e) the conformity to the originals of all documents presented to us as copies and the authenticity of the originals of such documents, (f) the integrity and completeness of Seller's corporate minute books and stock records presented for our review and, (g) as to certificates or statements or both of public officials, we have assumed that they have been properly given and are accurate. We have made no independent factual investigation in connection with the preparation of this opinion letter. To the extent that any other matters of fact may be deemed material to this opinion letter, we have relied on the representations and warranties of Seller in the Transaction Documents.

Please be advised that we are members of the Bar of the State of North Carolina and do not purport to be experts in the laws of any jurisdiction other than the State of North Carolina and applicable federal laws of the United States. No opinion is expressed with respect to the laws of any other state or jurisdiction.

Whenever any opinion of fact set forth in this opinion letter is qualified by the words, "to the best of our knowledge," "known to us" or other words of similar meaning, the quoted words mean the current awareness by Doris R. Bray or A. Nicholas Purrington of factual matters such lawyers recognize as being relevant to the opinion so qualified.

Based solely upon and subject to the foregoing, and the qualifications, limitations and exceptions set forth herein, we are of the opinion that:

14. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina. Seller has full corporate power and authority to own, lease and operate its properties and to carry on the business as presently conducted. Seller has all requisite corporate power and authority to enter into the Transaction Documents and perform its obligations thereunder.
15. Seller's execution, delivery and performance of the Transaction Documents and the consummation of the transactions provided for therein have been duly authorized by all requisite corporate action on the part of Seller.
- 3 The Transaction Documents have been duly executed and delivered by Seller and each constitutes the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms.
4. Except as disclosed on the Disclosure Schedule, the execution, delivery and performance of the Transaction Documents by Seller and the consummation of the transactions contemplated thereby will not (a) violate, conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the acceleration of the performance of the obligations of Seller under (i) its Articles of Incorporation or bylaws, (ii) to the best of our knowledge any laws, governmental rules or regulations having the force of law having applicability to Seller, (iii) to the best of our knowledge, any material written agreements to which Seller or the Assets are bound (other than agreements with respect to Indebtedness to be paid off in connection with the consummation of the transactions contemplated by the Agreement), or (iv) to the best of our knowledge, any judicial or administrative decree, writ, judgment or order to which Seller or the Assets are subject, or (b) to the best of our knowledge, do not require any consent of, or prior notice to, or prior filing with, any governmental authority or third party.
5. To the best of our knowledge, there is neither any pending nor any overtly (by written communication) threatened litigation, investigation, administrative proceeding or claim (including claims for worker's compensation) pending or threatened against Seller or the Assets or the transactions contemplated by the Agreement. To the best of our knowledge, there is no outstanding execution, order, writ, injunction, judgment or decree of any court or Governmental or Regulatory Authority against Seller or the Assets, or to which Seller or the Assets is subject.

The opinions expressed above are subject to the following qualifications and limitations:

1. The enforceability of the Transaction Documents may be limited by (i) applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, or similar laws relating to or affecting the enforcement of creditors' rights or the collection of debtors' obligations in general including without limitation any state or federal fraudulent conveyance or fraudulent transfer laws and (ii) general principles of equity (regardless of whether considered in a proceeding in equity or at law) the application of which may deny Purchaser certain of the rights and remedies granted to Purchaser under the Transaction Documents, including rights to specific performance, injunctive relief and the appointment of a receiver.
- (b) We express no opinion regarding the enforceability of any agreement by any person limiting his or her ability to compete.
- (c) We express no opinion concerning the possible application to any of the Transaction Documents, the transactions contemplated thereby, or the obligations of the parties thereunder of Section 548 of the Bankruptcy Code, 11 U.S.C. 548, or any comparable provision of state law (including without limitation, sections 39-15 through 39-22 of the North Carolina General Statutes).
- (d) We express no opinion with respect to the title or ownership by any party of the real property covered by the Real Property Lease or any leasehold interest created thereunder or as to the sufficiency of the legal description.
- (e) We express no opinion with respect to the validity of title to any of the assets being transferred in this transaction.
- (f) Provisions of the Transaction Documents purporting to require a party thereto to pay or reimburse attorneys' fees incurred by another party, or to indemnify another party therefor, may be limited by applicable statutes and decisions relating to the collection and award of attorneys' fees.
- (g) In rendering the opinions in paragraphs 5(a)(ii) and 5(b) above, we have only considered the applicability of statutes, rules or regulations that a lawyer exercising customary professional diligence would reasonably recognize as being directly applicable to the Purchaser, or to the purchase and sale, or both.
- (h) The enforceability of provisions in the Transaction Documents to the effect that terms may not be waived or modified except in writing may be limited under certain circumstances.

- (i) We express no opinion as to the enforceability of any provisions of the Transaction Documents whereby the Seller appoints the Purchaser as an agent or attorney-in-fact.
- (j) We express no opinion as to the effect of noncompliance of the transactions contemplated by the Agreement with the provisions of the North Carolina Uniform Commercial Code - Bulk Transfers and any other similar bulk sales laws that may be applicable.
- (k) We express no opinion as to the ownership or validity of any patent, patent application, trademark, service mark, copyright or registration of any of the foregoing or any assignment to Purchaser of Seller's right, title and interest (if any) in any such patent, patent application, trademark, service mark, copyright or registration thereof.
- (l) We call to your attention that registration of an amendment to the Memorandum of Lease and Purchase Contract filed with the Office of the Register of Deeds of Randolph County, North Carolina on July 10, 1997 is required in order for the property interest passed under the Real Property Lease to be valid against lien creditors or purchasers for a valuable consideration.

This opinion is limited to the matters expressly stated herein. The opinions expressed herein are solely for your use in connection with the Agreement and may not be used, quoted or relied upon by you for any other purpose, or by any person or entity for any purpose without our prior written consent; provided however, that the opinions expressed herein may be relied upon by American Capital Strategies, Ltd.

Very truly yours,

SCHELL BRAY AYCOCK ABEL & LIVINGSTON P.L.L.C.

Schedule 1.2

Excluded Assets

1. The rights of the Company in, to and under the Shareholder's Agreement dated July 6, 1993 by and between Andrew J. Zimmerman, John Sheppard, Andrew Scott and the Company.
2. The rights of the Company in, to and under the Stock Purchase Agreement dated as of January 1, 1996 by and between David Olson.
3. The rights of the Company in, to and under the Joinder Agreement to the Shareholder's Agreement dated as of January 1, 1996 by David Olson.
4. \$108,000 Promissory Note dated January 1, 1996 made by David Olson.
5. Receivables from Andrew Zimmerman (\$95,877), Andrew Scott (\$5,393), David Olson (\$19,447) and John Sheppard (\$21,366).
6. The rights of the Company in, to and under all Contracts of any nature, the obligations of the Company under which expressly are not assumed by Purchaser pursuant to Section 1.3 (including without limitation those listed on Schedule 1.4)
7. Cash, commercial paper, certificates of deposit and other bank deposits, treasury bills and other cash equivalents held by the Company on the date of Closing.
8. All refunds or credits, if any, of Taxes due to or from the Company which cannot be assigned by law.
9. The minute books, stock transfer books and corporate seal of the Company.
10. The Company's rights under this Agreement.

Schedule 1.4

Retained Liabilities

1. The obligations of the Company under the Management Consulting Agreement dated November 1, 1995 between the Company and The Evolution Consulting Group, Inc.

Index to Disclosure Schedule

Section 1.1(b)	Real Property Leases
Section 1.1(f)(i)	Personal Property Leases (Company Lessor)
Section 1.1(f)(ii)	Personal Property Leases (Company Lessee)
Section 1.1(f)(iii)	Options to Purchase Leased Personal Property
Section 1.1(g)	Material Contracts
Section 1.1(i)	Intangible Personal Property
Section 1.1(j)	Business Licenses
Section 1.1(l)	Motor Vehicles
Section 2.1(a)	Lines of Business
Section 2.1(b)	Jurisdictions where Qualified to do Business
Section 2.3	Conflicts
Section 2.7	Changes Since July 31, 1998
Section 2.8	Liabilities
Section 2.10	Legal Proceedings
Section 2.12	List of Employee Plans
Section 2.13	Potential Default under Real Estate Lease
Section 2.20	Insurance
Section 2.21	Officers of the Company
Section 2.22	Environmental Matters
Section 2.24	Investment Assets
Section 5.2	Indebtedness to be Paid Off at Closing

Section 1.1(b) Real Property Leases.

1. Purchase and Lease Agreement dated May 13, 1997 by and between Cone Mills Corporation and the Company (the "Purchase and Lease Agreement").
2. Letter Agreement amending Purchase and Lease Agreement dated May 14, 1997 (not signed).
3. Memorandum of Lease and Purchase Contract recorded with the Register of Deeds in Randolph County.

Section 1.1(f)(i) Personal Property Leases (Company Lessor).

None

Section 1.1(f)(ii) Personal Property Leases (Company Lessee).

None

Section 1.1(f)(iii) Options to Purchase Leased Personal Property.

None

Section 1.1(g) Material Contracts.

1. Employee Confidential Information and Patent Agreement dated February 21, 1996 by Rick Jones.
2. International Distributor Agreement dated May 5, 1997 between the Company and Harrey Milam, Atlantic American Holding Company, Limited, Condor Insurance Limited and Aegis Shipping Limited. (Exclusivity in TX, LA, MS, AL)
3. International Distributor Agreement dated May 4, 1998 between the Company and Jodlyn Pty, Ltd. (Exclusivity in Australia and Tasmania)
4. Oral Royalty Agreement with Superior Kayaks, Inc. (\$50 per Arctic Hawk)
5. Distribution Agreement with Harrie and Agnes Tieken dated August 26, 1997 (Exclusivity in Canada, including Quebec).
6. Set forth in Exhibit A to the Disclosure Schedule is a list of sales representatives of the Company. All of these (except McGarry and Delinger who are employees of the Company) are independent representatives with no contracts. Except for

McGarry, Weil and Kupperstein, compensation is based on commission with the commission rates equaling 7% of the sales price (in the case of plastic boats and accessories) or 5% of the sales price (in the case of composite boats). McGarry is paid an annual salary of approximately \$35,000, Dellinger is paid an annual salary of approximately \$28,000 and Weil and Kupperstein have consulting arrangements where they are paid \$4,800 and \$1,500, respectively, per month.

7. Oral Royalty Agreement with Andy Singer with respect to Piccolo, Epic, Alto, Two-Can, Riot, Paradise, Tchaika, Poquito, Shenai and Echo models with royalty fees ranging from \$10-\$15 per boat for plastic models and \$25-\$65 per boat for composite models.
8. Oral Royalty Agreement with Lee Mayer of Pacific Water Sports with respect to Skookumchuck model (royalty fee equal to \$60 per boat).
9. Letter Agreement dated July 31, 1998 between Asheboro Construction, Inc. and the Company
10. The Company has the following outstanding purchase orders:
 - a. Mold for "Kaos" kayak (approximately \$22,375)
 - b. Mold for "Manteo" kayak (approximately \$29,676)
 - c. New Rotational Molding Oven (approximately \$139,000)
 - d. Sprinkler System for Building Addition (approximately \$32,000)
 - e. Paving for building addition (\$21,603)
11. The Company has the following notes with Ford Motor Credit which will be paid in full with the proceeds of the sale. Amounts below are payoff numbers good through October 8, 1998.

a.	1996 F350 Truck -	\$14,837.26
b.	1996 E 350 Van -	\$13,862.55
c.	1998 Econoline -	\$21,368.21
	TOTAL	\$50,068.02

See contracts listed above under Section 1.1(b) Real Property Leases and below under Section 1.1(j) Licenses

Section 1.1(i) Intangible Personal Property.

1. Wilderness Systems Trademark, Reg. No. 2,158,103, issued the United States Patent and Trademark office on May 19, 1998.
2. Windrider Trademark, Reg. No. 1,221,657 issued by the United States Patent and

Trademark Office on December 28, 1982 and assigned to Wilderness Systems Incorporated January 10, 1997.

3. Windrider Rave (Pending), filed March 10, 1998.
4. Windrider Utility (Boat Hull) Patent, Patent No. 5,517,934, issued May 21, 1996 to James W. Brown; Company has certain rights via Designer Builder Agreement (See Section 1.1(j)-Licenses, No. 1)
5. Windrider Design (Cross Beams) Patent, Patent No. D380,187, issued June 24, 1997 to James W. Brown, Company has certain rights via Designer Builder Agreement (See Section 1.1(j)-Licenses, No. 1)

Section 1.1(j) Business Licenses.

1. Designer Builder Agreement dated January 31, 1995 by and between the Company and James W. Brown.
2. License Agreement dated November 28, 1995 between HydroSail, Inc. and the Company.
3. Letter Agreement dated July 29, 1997 between Brian Witt (d/b/a/ Paddleboy Designs) and the Company.
4. Letter Agreement dated July 18, 1995 between Frieda Harrell and the Company.
5. Exclusive License Agreement dated October 31, 1996 between the Company and Advantage Camouflage, Inc.
6. Agreement dated January 28, 1998 between the Company and Morro Bay Manufacturing, Carmil Surrutt and Andrew Kupperstein.
7. Kayak Design/Manufacturing/Marketing Agreement dated July 30, 1998 between Harrie Tieken and the Company.

Section 1.1(l) Motor Vehicles.

1. The Motor Vehicles identified on Exhibit B to this Disclosure Schedule.

Section 2.1(a) Lines of Business.

1. Brand Names.
 - a. Wilderness Systems (Kayaks and accessories).

- b. Windrider (sailing trimarans).
 - c. Trinity Bay Boat Company.
2. Product Lines.
- a. Polyethylene kayaks.
 - b. Composite kayaks.
 - c. Accessories.
 - d. Polyethylene sailboats.

Section 2.1(b) Jurisdictions where Qualified to do Business.

North Carolina

Section 2.3 Conflicts.

1. The following contracts are silent as to the need for written consent: (a) Designer Builder Agreement dated January 31, 1995 by and between the Company and James W. Brown; (b) Letter Agreement dated July 29, 1997 between Brian Witt (d/b/a/ Paddleboy Designs) and the Company; (c) Letter Agreement dated July 18, 1995 between Frieda Harrell and the Company; and (d) Agreement dated January 28, 1998 between the Company and Morro Bay Manufacturing, Carmil Surratt and Andrew Kupperstein.

Section 2.7 Changes Since July 31, 1998.

1. Construction Contract for addition to plant. See Section 1.1(g)-Material Contracts, No. 10; See also Section 2.8-Liabilities, No. 1.

Section 2.8 Liabilities.

1. The Company entered into a Construction Contract which requires payment by the Company of \$381,000 (\$110,000 of which has already been paid). Oral agreements have been made with the contractor to increase the contract price by \$7,000 to accommodate a faster erector and \$7,500 if construction is substantially completed by October 16, 1998.

Section 2.10 Legal Proceedings.

1. Howard v. Surratt, Kupperstein, Johnson, Zimmerman and Wilderness Systems relating to acquisition of manufacturing and marketing rights of the Alamax kayak mold.
2. Potential Patent infringement from manufacture, use and sale of foot peg apparatus as described in legal opinion of Rhodes, Coats & Bennett, L.L.P. previously provided to purchaser.

Section 2.12 List of Employee Plans.

1. Wilderness Systems Incorporated 401K Plan.
2. Wilderness Systems Employee Life and Medical Plan.

Section 2.13 Potential Default under Real Property Lease.

1. Consents required pursuant to Section 9 of Part B of the Purchase and Lease Agreement between the Company and Cone Mills Corporation have not been obtained in connection with the addition to the premises. Cone knows about addition but has not signed off on specific plans.

Section 2.20 Insurance.

1. See Exhibit C-1 to this Disclosure Schedule for a brief description of insurance policy (No. 1MP30142910600) issued by US Fidelity & Guaranty Insurance Company with respect to property, general liability, automobile, employee benefits liability, boiler and machinery, crime, umbrella and workers' compensation packages.
2. See Exhibit C-2 to this Disclosure Schedule for a brief description of life insurance policies with respect to Andrew J. Zimmerman and John A. Sheppard.

Section 2.21 Officers of the Company.

Andrew J. Zimmerman	President
John A. Sheppard	Vice President/Operations
David Olson	Secretary and Treasurer

Section 2.22 Environmental Matters.

1. Exhibit D-1 to the Disclosure Schedule contains the Phase I Environmental Site Assessment, dated May 20, 1997, with respect to the property underlying the

Company's sole lease prepared by Aquaterra, Inc. and the Addendum thereto dated June 30, 1997. Exhibit D-2 to the Disclosure Schedule contains the opinion of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P. dated August 26, 1997 attaching the Corrective Action Plan for such property

Section 2.24 Investment Assets.

1. **The Company owns a 10% interest in Pro Canoe, a store in Greensboro, in respect of which it receives annual IRS Forms K-1. No documentation with respect to this ownership exists.**

Section 5.2 Indebtedness to be Paid Off at Closing

1. The indebtedness to High Point Bank & Trust Company and First National Bank and Trust Company set forth in the Debt Payment Schedule attached hereto as Exhibit E.
2. Equipment Lease (Wheeler Boyce Kayak Mold Machine) dated June 15, 1995 between Citicorp Leasing, Inc. and the Company.
3. Equipment Lease (Kelch Aluminum Kayak Mold Machines) dated August 15, 1995 between Citicorp Leasing, Inc. and the Company.
4. Equipment Lease (Windrider Aluminum Molds) dated October 26, 1995 between Citicorp Leasing, Inc. and the Company.
5. Equipment Lease (Wheeler Boyce kayak Mold) dated October 8, 1997 between Citicorp Leasing, Inc. and the Company.
6. Equipment Lease (10' Wheeler Boyce Kayak Mold) dated January 1, 1998 between Citicorp Leasing, Inc. and the Company.
7. Equipment Lease (Kelch Kayak Mold #102) dated February 4, 1998 between Citicorp Leasing, Inc. and the Company.