

10-27-1999

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FORM PTC
1-31-92

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office



To the U.S. Patent & Trademark Office
101183251

1. Name of conveying party(ies):

Whitestone Products, Inc.

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

Additional name(s) of conveying parties(ies) attached: Yes No

3. Nature of Conveyance:

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

Execution Date: June 12, 1995

10-12-1999

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #31

ments or copy thereof.

Address of receiving party(ies):

Acquisition Corp.

Internal Address: _____

Street Address: 4265 W. Vernal Pike

City: Bloomington State: IN Zip: 47404

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

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designation must be a separate document from Assignment)

Additional name(s) & address(es) attached? Yes No

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

A. Trademark Application No.(s)

B. Trademark registration No.(s):

1,123,316

Additional numbers attached? Yes No

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

Name: Russell E. Fowler, II

Internal Address: ICE MILLER DONADIO & RYAN

Street Address: One American Square, Box 82001

City: Indianapolis State: Indiana ZIP: 46282

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41): \$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 09-0007

(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.

Russell E. Fowler, II
Name of Person Signing

Russ Fowler
Signature

10-7-99
Date

Total number of pages including cover sheet: 47

OMB No. 0651-0011 (exp 4/94)

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of June 12, 1995 by and between Whitestone Products, Inc., a Delaware corporation, debtor and debtor-in-possession ("Seller"), and Whitestone Acquisition Corp., a Delaware corporation ("Buyer").

WITNESSETH:

WHEREAS, Seller is a debtor and debtor-in-possession in possession of its assets and operating its business pursuant to Sections 1107 and 1108 of the United States Bankruptcy Code, 11 U.S.C. §101 et seq. (the "Bankruptcy Code"), in Chapter 11 Case No. 95-31051 (the "Proceedings") currently pending in the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court");

WHEREAS, Seller desires to sell to Buyer and Buyer desires to purchase from Seller the Assets (as defined herein) for the purchase price and upon and subject to the other terms and conditions hereinafter set forth;

WHEREAS, as a result of the hearing held before the Bankruptcy Court on May 15, 1995 the Bankruptcy Court approved certain provisions of the Asset Purchase Agreement dated as of May 2, 1995 (the "Scott Agreement") between Seller and Scott Health Care, a Delaware general partnership ("Scott Health Care"), scheduled an auction of the assets of Seller for May 31, 1995 and authorized Seller to solicit bids for the purchase of Seller's assets from other prospective purchasers;

WHEREAS, as a result of the auction held on May 31, 1995, the Bankruptcy Court determined that Buyer made the highest and best offer to purchase the Assets;

WHEREAS, Seller has filed a Motion Seeking Approval of the transactions contemplated by this Agreement, including without limitation the sale of the Assets (as hereinafter defined) free and clear of all interests, liens, claims and encumbrances pursuant to Section 363 of the Bankruptcy Code and the assumption and assignment of certain contracts and leases pursuant to Section 365 of the Bankruptcy Code (the "Sale Motion");

WHEREAS, Buyer and Seller contemplate a Closing no later than August 1, 1995 ("Closing") following the entry of an order approving the Sale Motion (the "Sale Order"), which order shall have become final and non-appealable before the Closing unless such finality and/or non-appealability are waived by Buyer all as further described herein.

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

1. Agreement to Sell and Purchase.

1.1 Agreement to Sell.

(a) At the Closing described in Section 2.1, Seller shall grant, sell, assign, transfer and deliver to Buyer and Buyer shall purchase and accept from Seller, upon and subject to the terms and conditions of this Agreement, all of its right, title and interest in and to the following (collectively, the "Assets"):

(i) all of its assets, properties and rights of every kind and description, real and personal, tangible and intangible, absolute or contingent wherever situated, free and clear of all mortgages, liens, pledges, security interests, charges, claims, interests (including without limitation all claims and interests of creditors and equity security holders), restrictions and other encumbrances and defects of title of any nature whatsoever, including without limitation:

(A) accounts receivable, machinery and equipment (including without limitation (x) adult brief machines, baby diaper machines, underpad/ambenze machines and liner machines, (y) subject to Section 6.9, the equipment currently subject to the equipment lease set forth in Exhibit A-1 (the "Olin Lease") and (z) subject to Section 6.10, the equipment currently subject to any of the equipment leases set forth in Exhibit A-2), spare parts, inventory, work-in-process, finished goods, fixtures, leasehold improvements, computers, tools, maintenance and other supplies, stationary, customer lists, business records, post office boxes, trademarks and trade names (including without limitation the name "Whitestone Products") and the goodwill associated therewith, copyrights, patents, trade secrets and other unpatented technology, including without limitation the assets listed on Schedule 1.1;

(B) those assets and properties reflected on the October Balance Sheet (as hereinafter defined), with only such changes therein as shall have occurred in the regular and ordinary course of business consistent with past practice since October 1, 1994;

(C) all rights of Seller under or with respect to the Agreement of Lease, dated April 1, 1995, with respect to Seller's Bloomington, Indiana facility (the "Indiana Lease") and the Assumed Contracts (as defined in Section 1.3);

(D) all of Seller's right, title and interest in, to or related to the action (the "Included Action") captioned Whitestone Products, Inc. v. Avery

(ii) the business of Seller as a going concern and its goodwill.

(b) Notwithstanding the foregoing, the Assets do not include the following (collectively, the "Excluded Assets"):

(i) Seller's corporate seal, certificate of incorporation, minute books, stock books, tax returns or other records having to do with the corporate organization of Seller;

(ii) all contracts, agreements, commitments and leases to which the Seller is a party or by which any of its property is bound ("Contracts") other than the Assumed Contracts and as provided in Section 2.5(b), including:

(A) the leases with respect to Seller's California and New Jersey facilities and any rights of Seller with respect thereto (except that nothing contained in this Section shall affect, hinder or prevent Buyer's rights and ability to access the California and New Jersey facilities for the purposes provided for in and contemplated by this Agreement); and

(B) the Olin Lease or any rights of Seller with respect thereto except that nothing contained in this Section shall limit Seller's obligations at the Closing, subject to Section 6.9, to convey to Buyer (free and clear of all interests, liens, claims and encumbrances) all right, title and interest in and to the equipment currently subject to the Olin Lease (which equipment at such time shall constitute a portion of the Assets); or

(iii) any of the assets, properties and rights listed on Exhibit B, including, without limitation all tax attributes, deposits, insurance refunds and bankruptcy and certain other causes of action (other than the Included Action), all of which are listed thereon, subject to such additions to Exhibit B by Buyer at any time prior to or at the Closing, and which shall include but not be limited to those Contracts that Buyer is not having assumed and assigned to it under this Agreement.

1.2 Agreement to Purchase. At the Closing, Buyer will (a) purchase the Assets from Seller upon and subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of Seller contained herein, and will pay Seller therefor the price determined in accordance with Section 1.4(a), and (b) assume and agree to pay, discharge or perform, as appropriate, the liabilities and obligations of Seller to the extent and as provided in Section 1.3 (in the aggregate, the "Purchase Price"). Except for the liabilities and obligations specifically assumed in Section 1.3, Buyer shall not assume, shall not

take subject to and shall not be liable for, or be responsible for any claims against Seller, or any liabilities or obligations of Seller whether absolute, contingent, accrued, known or unknown.

1.3 Assumption of Liabilities.

(a) At the Closing, and except as otherwise provided in this Section 1.3, Buyer shall assume and agree to pay, discharge or perform, as appropriate, all liabilities and obligations of Seller in respect of the Contracts listed on Schedule 1.3(a) hereto (the "Assumed Contracts") provided that Buyer shall not assume or agree to pay, discharge or perform any liabilities or obligations with respect to the Assumed Contracts regardless of when asserted, arising from, out of, in connection with or as a result of (i) any action, conduct, performance or nonperformance by Seller or any other party prior to the Closing Date (as hereinafter defined) or (ii) any breach by Seller of any provision of any Assumed Contract. Notwithstanding the proviso in the preceding sentence Buyer shall, as set forth in Section 1.3(c), assume the Assumed Payables (as hereinafter defined) to the extent set forth therein.

(b) At the Closing, Buyer shall, to the extent required under the Bankruptcy Code to permit the assumption and assignment provided in this Section 1.3(b) or to terminate such leases as contemplated by Section 6.10, satisfy all claims, obligations and liabilities of Seller arising under or with respect to each of the equipment leases listed on Exhibit A-2 (the "Assumed Equipment Leases") and in connection therewith, Seller shall, subject to Section 6.10, assume and assign each of the Assumed Equipment Leases to Buyer.

(c) At the Closing, Buyer shall assume, subject to Seller's Option and the Post Closing Adjustment (each hereinafter defined), the Buyer Assumed Payables (as hereinafter defined).

(i) For purpose of this Section 1.3, the following terms have the following meanings:

"Buyer Assumed Payables" means (i) all Assumed Payables (as hereinafter defined) as of the Closing *minus* (ii) Assumed Payables equal to the sum of (x) all payments made after May 31, 1995 with respect to Excluded Payables (as hereinafter defined) and (y) Seller Retained Payables (as hereinafter defined).

"Assumed Payables" means all post-petition liabilities specifically reflected on the books of Seller as of Closing (whether represented in accounts payable or constituting accrued liabilities not yet represented in accounts payable) which are unpaid after giving effect to the Closing and which accrued as of or prior to the Closing Date in the ordinary course of the operation and consolidation of Seller's business, other than the Excluded Payables; an Assumed Payable with respect to any period or date of determination shall not be an Assumed Payable with respect to any other period or date of determination because the liability in question is an Assumed Payable as of the first date it accrued, whether or not the obligation to pay the liability existed as of such date or not until a later date; in no event shall a contingent liability

including, without limitation, the continuing liability of Seller for health and other benefit claims of Seller's employees which claims are with respect to periods after the Closing, be deemed Assumed Payables.

"Excluded Payables" means all post-petition liabilities of Seller with respect to the following which accrued in the ordinary course of the operation and consolidation of the Seller's business: (i) equipment leases; (ii) rent (other than rental obligations accruing after May 31, 1995 under the Indiana Lease); (iii) amounts due with respect to employees of Seller that are or were members of Union Local 107; (iv) amounts due RLG Investments Inc.-USA other than with respect to travel and other incidental expenses incurred by William Scogin in the course of conducting the business of Seller and paid for on the credit card of RLG Investments Inc.-USA; and (v) professional fees and expenses (excluding amounts due Dan Raviv Associates, Inc. and its subcontractors).

"Seller Retained Payables" means Assumed Payables in an aggregate amount equal to (i) the total aggregate amount of Assumed Payables at May 31, 1995 as shown on the May 31, 1995 balance sheet of Seller to be delivered to Buyer at or prior to Closing (the "May 31 Balance Sheet") less (ii) \$175,000; the specific Assumed Payables (by payee and amount or categories thereof) to constitute Seller Retained Payables shall be identified on or prior to the Closing Date from the May 31 Balance Sheet but shall not include payroll or payroll tax liabilities.

(ii) By written notice to Buyer on or before two business days prior to Closing, Seller may with the consent of BankAmerica Business Credit, Inc. require Buyer to assume the Seller Retained Payables (the "Seller's Option"), in which event (x) Seller Retained Payables shall be deemed to be included in Buyer Assumed Payables notwithstanding clause (ii) of the definition thereof and (y) the cash portion of the Purchase Price payable pursuant to Section 1.4(a)(i) shall be reduced by an amount equal to the aggregate amount of the Seller Retained Payables being assumed by Buyer.

(iii) Unless waived in writing by Buyer and Seller, within 30 days following the Closing Date, Seller shall prepare and deliver to Buyer (x) an adjusted list of the May 31, 1995 Assumed Payables (the "Adjusted Assumed Payables"), which shall be accompanied by a certificate executed by William Scogin wherein it is represented that to the best of Mr. Scogin's knowledge, in his capacity as Chairman of Seller, that the Adjusted Assumed Payables includes all of the Assumed Payables as of the close of business on May 31, 1995, and (y) a calculation of Seller Retained Payables based upon the Adjusted Assumed Payables (the "Adjusted Seller Retained Payables"). If the Adjusted Seller Retained Payables are greater or lesser than the Seller Retained Payables calculated on the Closing Date, then Seller or Buyer, respectively, shall pay (the "Post Closing Adjustment") the other in cash an amount equal to the difference between (1) the Seller Retained Payables as calculated on the Closing Date and (2) the Adjusted Seller Retained Payables. The amount due hereunder shall be paid 15 days following the delivery of the Adjusted Assumed Payables; provided, however, that if Buyer disputes

the accuracy or correctness of the Adjusted Assumed Payables or the Adjusted Seller Retained Balances (a "Dispute"), then payment shall be due as set forth below.

(A) Within 10 days of receipt of the Adjusted Assumed Payables, Buyer may advise Seller of the existence of a Dispute. Upon notice thereof by Buyer to Seller, Seller shall cause an independent review of the Assumed Payables at May 31, 1995 (the "Review") to be undertaken by KPMG Peat Marwick (the "Reviewer") selected by Buyer to determine the accuracy and correctness of the Assumed Payables included in the Adjusted Assumed Payables and of the Adjusted Seller Retained Payables. In the event of such request, Seller shall cause the Review to be undertaken and completed within 30 days and the report with respect thereto prepared by the Reviewer shall be delivered to Seller and Buyer.

(B) In the event the Review indicates the amount of the Adjusted Seller Retained Payables is understated, then Seller shall promptly pay Buyer in cash an amount equal to the amount of such understatement. The cost of the Review shall be paid by Seller; provided, however, that if the Review indicates that the Adjusted Seller Retained Payables is understated by less than 10% as compared to Seller Retained Payables calculated at Closing, then the cost of the Review shall be paid by Buyer.

(C) If Seller has no cash available to make any payment required under Section 1.3(c)(iii), Buyer shall be paid any amount due thereunder from the Escrow Amount (as defined in Section 1.4(a)(iv)); to the extent the Escrow Amount, after deducting therefrom any other amounts to be paid therefrom, shall be insufficient to pay the amounts due under Section 1.3(c)(iii), such unpaid amounts shall be paid by Seller as an administrative claim under Section 503(b) of the Bankruptcy Code.

(d) In no event shall Buyer assume or incur any liabilities or obligation under Section 1.3 or otherwise in respect of any claim, regardless of when made or asserted, which arises from, out of or is based upon the negligence, strict liability of, or any express or implied representation, warranty, agreement or guarantee made by, Seller, or alleged to have been made by Seller, or which is imposed or asserted to be imposed by operation of law, in connection with any product sold, shipped or manufactured by or on behalf of Seller or for any service performed by or on behalf of Seller, including without limitation any claim relating to the repair or replacement of any such product and any claim seeking recovery for property damage, consequential damage, lost revenue or income or personal injury. In addition to the foregoing, in no event shall Buyer assume or incur any liability or obligation under Section 1.3 hereof or otherwise (i) in respect of any federal, state or local income or other tax payable with respect to the sales, assets or income of Seller for any period, (ii) arising from, out of, in connection with or based upon Seller's employment of persons at any time, (iii) incident to or arising from, out of, in connection with or as a result of the negotiation or consummation by Seller of this

Agreement and the transactions contemplated hereby, or (iv) in respect of any Environmental Claims (as hereinafter defined) arising from, out of, in connection with or as a result of Seller's facilities or operations, including without limitation Seller's actions in arranging for disposal or treatment, or arranging with a transporter for disposal or treatment, of Hazardous Materials (as hereinafter defined) at properties owned by other parties.

1.4 Purchase Price.

(a) Subject to the terms and conditions of this Agreement, on the Closing Date Buyer and, with respect to Section 1.4(a)(ii) only, Seller shall cause the following to occur:

(i) Buyer shall pay Seller by wire transfer of immediately available funds an amount equal to (A) all of Seller's outstanding obligations, as of the Closing Date, under the Loan and Security Agreement dated as of July 20, 1989 between Seller and Continental Bank, N.A., as amended through the date hereof (the "Loan Agreement") plus \$850,000; less (B) the sum of (x) the amount deposited with Pullman & Comley, LLC and all interest accrued thereon through the Closing Date (the "Deposit") pursuant to that certain letter dated as of May 26, 1995 from Buyer to Seller and Pullman & Comley, LLC (the "Deposit Letter") plus (y) the credit, if any to which Buyer is entitled pursuant to Section 6.9;

(ii) Pullman & Comley, LLC to deliver the Deposit to Seller;

(iii) Buyer shall deliver to Seller Buyer's duly executed \$2.5 million principal amount 9% Junior Subordinated Note Due 2002 substantially in the form annexed hereto as Exhibit C (the "Note"); and

(iv) Buyer shall, on behalf of Seller, deposit \$150,000 into an escrow account to be established with an escrow agent (to be selected from the Bankruptcy Court's list of qualified escrow holders) under an escrow agreement substantially in the form of Exhibit D with such changes as may be approved by Buyer, Seller and escrow holder (the "Escrow Agreement"), which agreement shall provide that, in the absence of any Buyer claims under Section 8.1, the escrowed funds shall be paid to Seller on the 91st day following the Closing Date.

(b) On the Closing Date Buyer shall also assume and agree to pay, discharge and perform, as appropriate, the liabilities and obligations of Seller to the extent and as provided in Section 1.3.

(c) After the Closing Date, Buyer shall pay Seller:

(i) the amounts required with respect to Uncleared Checks (as defined in Section 5.9) pursuant to Section 5.9; and

(ii) an amount equal to (i) the amount, if any, paid by Seller after Closing with respect to the post-petition use of the equipment subject to the Olin Lease multiplied by (ii) a fraction, of which the numerator is the number of days between and including June 1, 1995 and the Closing Date and the denominator is the number of days between and including February 17, 1995 and the Closing Date.

2. Closing, Items to be Delivered, Further Assurances, Certain Consents and Name Change.

2.1 Closing. Subject to the termination rights set forth in Section 10.1 hereof, the closing of the sale and purchase of the Assets and assumption of the liabilities as provided in Section 1.3 (the "Closing") shall take place at the offices of O'Melveny & Myers, 153 E. 53rd Street, New York, N.Y., commencing at 10:00 A.M., local time, on the date three business days following the satisfaction or waiver of the conditions set forth in Sections 6.4, 6.6, 6.7, 6.9, 6.10, 6.12, 6.13 and 7.4 or at such other place, time or date as may be agreed upon in writing by the parties hereto. The date of the Closing is sometimes herein referred to as the "Closing Date".

2.2 Items to be Delivered by Seller. At the Closing and subject to the terms and conditions herein contained, Seller shall take all such steps as may be required to transfer to Buyer title to each of the Assets and to put Buyer in actual possession and operating control of the Assets, including without limitation delivery of the following to Buyer:

(a) such documents of conveyance and transfer, in form reasonably satisfactory to Buyer and its counsel, as may be requested by Buyer to evidence the transfer and assignment to, and vesting in, Buyer of all right, title and interest in and to the Assets free and clear of all liens, claims and encumbrances, including without limitation (i) good, valid and enforceable title in and to all of the Assets owned by Seller, (ii) good, valid and enforceable leasehold interests in the Indiana Lease and to all of the Assets leased by Seller as lessee as referenced in Schedule 2.2(a), (iii) all of Seller's rights under the Assumed Contracts, and (iv) subject to Section 6.10 hereof, all of Seller's rights under the Assumed Equipment Leases;

(b) all of the Contracts and other commitments, plans, bids, quotations, proposals, instruments, computer programs and software, data bases whether in the form of computer tapes or otherwise, related object and source codes (to the extent permissible), manuals and guidebooks, price books and price lists, customer lists, supplier lists, sales records, files, correspondence, rulings issued by governmental entities, and other documents, books, records, papers, files, office supplies and data belonging to Seller which are part of the Assets;

(c) all pleadings, documents, correspondence, legal research, analyses, and rights in, to and under the Included Action;

(d) a list of Uncleared Checks as required under Section 5.9;

- (e) a certified copy of the Sale Order; and
- (f) the May 31 Balance Sheet.

2.3 Items to be Delivered by or on Behalf of Buyer. At the Closing and subject to the terms and conditions herein contained, (a) Buyer shall deliver to Seller, the portion of the Purchase Price to be paid at the Closing pursuant to Section 1.4(a)(i) by wire transfer of immediately available funds to Bank of America Illinois, Account No. 7919670 in the name of Seller, (b) Seller shall cause Pullman & Comley, LLC to deliver to Seller on behalf of Buyer the Deposit as partial payment of the Purchase Price pursuant to Section 1.4(a)(ii), (c) Buyer shall deliver to Seller the Note payable to Seller pursuant to Section 1.4(a)(iii), (d) Buyer shall deliver to the escrow agent under the Escrow Agreement, the portion of the Purchase Price to be deposited therewith pursuant to Section 1.4(a)(iv), and (e) Buyer shall deliver to Seller an undertaking whereby Buyer will assume and agree to pay, discharge or perform, as appropriate, Seller's liabilities and obligations to the extent and as provided in Section 1.3 in form reasonably satisfactory to Seller and its counsel.

2.4 Other Closing Documents. At the Closing, Seller shall also deliver to Buyer, and Buyer shall also deliver to Seller, the agreements, certificates and other instruments and documents referred to in Sections 6.3, 6.8 and 6.12, and Sections 7.3, 7.5 and 7.7, respectively.

2.5 Certain Third Party Consents.

(a) To the extent that the rights of Seller under any Assumed Contract or, subject to Section 6.10 hereof, any Assumed Equipment Lease, may not be assigned to Buyer without the consent of another person which has not been obtained by Seller prior to the Closing (with Buyer's consent), this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful. If any such consent has not been obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the instrument in questions so that Buyer would not in effect acquire the benefit of all such rights, Seller, to the maximum extent permitted by law and the instrument, shall act as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by law and the instrument, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer.

(b) After the Closing Date, Seller shall, at Buyer's request, cure all defaults required to be cured and assume and assign under 11 U.S.C. § 365 any Contracts that are material to the business of Seller or are otherwise required to be disclosed in Schedule 3.14 but that were not identified by Seller in Schedule 3.14.

2.6 Change in and Use of Seller's Name. Seller shall take all such actions not later than the Closing Date as may be required to change Seller's name on that date to one distinctly different in sound and appearance from its present name, including without limitation

filing a name change amendment with the Secretary of State of the State of Delaware and filing an appropriate name change notice in the appropriate office in each state where Seller is qualified to do business. After the Closing, Seller shall not use the name "Whitestone", "Whitestone Products" or any similar variant thereof.

3. **Seller's Representations and Warranties.** Seller represents and warrants to Buyer as of the date hereof and as of the Closing Date as follows:

3.1 **Organization and Authority of Seller.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all necessary corporate power and authority to enter into this (a) Agreement and (b) the Deposit Letter and the other agreements, documents and instruments to be executed and delivered by Seller pursuant hereto or thereto (collectively, the "Ancillary Agreements"), to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Seller has the requisite corporate power and authority and any necessary governmental authority to own, operate or lease the properties that it purports to own, operate or lease and to carry on its business as it is currently conducted. The Board of Directors of Seller has approved and authorized, subject to approval of the Bankruptcy Court, this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby, and such Board has determined that the transactions contemplated by this Agreement are in the best interests of Seller as of the date hereof. This Agreement has been, and, as of the Closing Date, each of the Ancillary Agreements will be, duly authorized, executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer and approval of this Agreement by the Bankruptcy Court) this Agreement constitutes, and each Ancillary Agreement will constitute, a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms. Seller has given due and proper notice of the Sale Motion.

3.2 **No Conflict.** Assuming all consents, approvals, authorizations and other actions referred to in Section 3.3 have been obtained or done, the execution, delivery and performance of this Agreement and each of the Ancillary Agreements by Seller do not and will not (a) violate or conflict with the certificate of incorporation or by-laws of Seller (true and complete copies of which Seller has heretofore furnished to Buyer), (b) conflict with or violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award applicable to Seller, or the Assets or the liabilities to be assumed by Buyer pursuant to Section 1.3 hereof, or (c) result in any material breach of, or constitute a material default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment (including without limitation the termination or diminution of any right to extend or renew any term), acceleration or cancellation of, or result in the creation of any lien or other encumbrance on any of the Assets pursuant to, any Contract.

3.3 **Consents and Approvals.** The execution and delivery of this Agreement by Seller do not, and the execution and delivery of the Ancillary Agreements by Seller and the performance of this Agreement and each of the Ancillary Agreements by Seller will not, require

any consent, approval, authorization or other action by, or filing with or notification to, any governmental or regulatory authority, except approvals of the Bankruptcy Court as referred to in Section 5.2.

3.4 Financial Information.

(a) Since October 1994, no audited financial statement of Seller has been issued. Seller has delivered to Buyer the balance sheets of Seller as of October 1, 1994 (such balance sheet, the "**October Balance Sheet**") and January 1, 1994 and the related statements of operations, accumulated deficit and cash flows and notes thereto for the 39-week period ended October 1, 1994 and the 12-month period ended January 1, 1994 (the "**Audited Financials**"), together with the opinion of KPMG Peat Marwick LLP, independent certified public accountants, thereon. The Audited Financials, correct and complete copies of all of which have been provided to Buyer, are in all material respects accurate, complete and in accordance with the books and records of Seller and present fairly in all material respects the financial position and assets and liabilities of Seller as of their respective dates and the results of its operations for the periods then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

(b) The books of account and other financial records of Seller (i) are in all material respects complete and correct, (ii) have been maintained in accordance with good business practices and (iii) do not contain or reflect any material inaccuracies or discrepancies.

3.5 Accounts Receivable. All accounts receivable of Seller have been acquired or have arisen only in the ordinary course of business consistent with past practice and are not subject to material defenses, set-offs or counterclaims. All of such accounts receivable are generally due within 30 days after being accrued on the books of Seller. Schedule 3.5 (which is being separately provided to Buyer) is a correct, complete and current (not more than five days old) list of Seller's accounts receivable.

3.6 Inventory. All inventory of Seller reflected on the October Balance Sheet, and all inventory of Seller as of the date hereof and the Closing Date, was acquired and has been maintained in accordance with the regular business practices of Seller (except that Seller's inventory balance has been negatively affected by periodic limitations on available cash), consists of items of a quality and quantity useable or saleable in the ordinary course of business of Seller consistent with past practice, is valued at reasonable amounts based on the ordinary course of business of Seller within the past six months and, with respect to inventory intended for sale, is saleable at prices at least equal to the value thereof on the books of Seller. Since November 18, 1994, no more than 100,000 pounds of the "baled surplus" included in the inventory as of that date or added to the inventory since that date has been transferred, sold or otherwise disposed of by Seller or any other person. Except as disclosed on Schedule 3.6, none of Seller's inventory is obsolete or slow-moving.

3.7 Existing Condition. Except as disclosed on Schedule 3.7, since October 1, 1994, Seller has not:

(a) sold, assigned or transferred any of its assets or properties except in the ordinary course of its business consistent with past practice;

(b) suffered any damage, destruction or loss, whether or not covered by insurance, (i) materially and adversely affecting its business, operations, assets, properties or prospects or (ii) of any items carried on Seller's books of account at more than \$50,000 in the aggregate;

(c) made any capital expenditure or capital addition or betterment except for (i) such as may involve not more than \$50,000 in the aggregate and (ii) such as may be involved in the ordinary repair, maintenance and replacement of its assets;

(d) entered into any transaction other than in the ordinary course of business consistent with past practice;

(e) made or suffered any amendment to or termination of any material contract or commitment to which it is or was a party or by which it or any of its properties are or were bound; or

(f) suffered any strike or other labor dispute.

3.8 Material Adverse Change.

(a) Between May 2, 1995 and the Closing Date, Seller has not and will not have suffered any Material Adverse Change (as hereinafter defined) in its business, operations, assets, properties, prospects or condition (financial or otherwise).

(b) For purposes of this Agreement, "Material Adverse Change" means, with respect to a circumstance or event subject to a representation, warranty, covenant or other agreement of Seller in this Agreement or an Ancillary Agreement, that includes a reference therein to the possible occurrence of a Material Adverse Change, whether considered individually or together in the aggregate with all other circumstances or events that are the subject of the same representation, warranty, covenant or other agreement, a material adverse change in the business (including, without limitation, any material reduction in the production of Seller's products at Seller's Indiana facility) or the loss of any material customers of Seller, operations, assets, properties, prospects, condition (financial or otherwise) or capitalization of the Seller or the ability of the Seller to perform its obligations under this Agreement or the Ancillary Agreements, to which it is or may become a party.

3.9 Assets and Properties.

(a) Following entry of the Sale Order, Seller will own outright (except as set forth on Schedule 3.9), and will at the Closing convey to Buyer good, valid and marketable title to, all of the Assets, free and clear of all mortgages, liens, pledges, security interests, charges, claims, interests (including without limitation all claims and interests of creditors and equity security holders), restrictions and other encumbrances and defects of title of any nature whatsoever.

(b) Seller has heretofore delivered to Buyer from its corporate records, a true, correct and complete copy of each lease with respect to a leasehold interest comprising a portion of the Assets, together with all amendments, modifications, and alterations thereto. Except as set forth on Schedule 3.9, all leases, licenses, permits and authorizations in any manner related to the Assets, properties or business of Seller and all other instruments, documents and agreements pursuant to which Seller has obtained the right to use any real or personal property are in good standing, valid and effective in accordance with their respective terms, and there is not under any of such leases, licenses, permits, authorizations, instruments, documents or agreements any existing default or event which with the giving of notice or lapse of time, or both, would constitute a default.

(c) Seller does not own any real property.

(d) The Indiana Lease is in full force and effect and Seller has paid all rent and any other sums falling due thereunder. Seller has not modified or amended the Indiana Lease and Seller has not assigned, transferred or conveyed the Indiana Lease, by operation of law or otherwise, other than in accordance with this Agreement.

3.10 Employment Taxes. Seller has timely made all deposits required by law to be made with respect to employees' withholding and other employment taxes.

3.11 Legal Proceedings; Etc. Other than the Proceedings (and the claims of creditors asserted therein and any demands made by any creditors prior to the Proceedings), and except as provided in Schedule 3.11, there are no disputes, claims, actions, suits or proceedings (including without limitation local zoning or building ordinance proceedings), arbitrations or investigations, either administrative or judicial, pending or, to the knowledge of Seller, threatened or contemplated, by or against or affecting Seller with respect to the Assets or its business, before or by any court or governmental or regulatory official, body or authority, or before an arbitrator of any kind. Seller has no knowledge of any condition or state of facts or the occurrence of any event that might reasonably form the basis of any claim, liability or litigation against Buyer with respect to the Assets or with respect to the business conducted therewith after the Closing.

3.12 Compliance with Laws. Seller is not in violation of any law, rule, regulation, order, judgment or decree applicable to it or by which any of the Assets is bound

or affected, except for violations the existence of which would not have a material adverse effect on the business, operations, assets, properties, prospects or condition (financial or otherwise) of Seller. Seller currently holds all environmental, health, safety and other permits, licenses, authorizations and approvals (collectively, "Permits") of governmental authorities and agencies necessary or proper for the current use, occupancy or operation of its business. Seller is in compliance with all such Permits in all material respects. No such Permit requires any consent, notification or other action to remain in full force and effect following the transfer of the Assets contemplated by this Agreement. To Seller's knowledge, there is no existing practice, action or plan of Seller or any of its affiliates and no existing condition of the Assets that will give rise to any civil or criminal liability under, or prevent compliance with, any environmental, health, occupational safety or other statute, regulation, ordinance or decree. Seller has complied in all material respects with the Bankruptcy Code and all other laws, rules, regulations, decrees and orders applicable to or arising out of the Proceedings. Seller has not taken any action, or failed to take any action, which might, to any extent, prevent, impede or result in the revocation of the vesting in Buyer upon entry of the Sale Order of good, valid and marketable title to all of the Assets, free and clear of all mortgages, liens, pledges, security interests, charges, claims, interests (including without limitation all claims and interests of creditors and equity security holders), restrictions and other encumbrances and defects of title of any nature whatsoever.

3.13 Intellectual Property Matters. Except for the McNeil-PPC, Inc. license listed in Schedule 1.1, Seller did not and does not utilize any patent, trademark, trade name, service mark or copyright owned or claimed by any persons other than Seller, and no patent, trademark, tradename, service mark, or copyright owned or used by Seller did or does conflict with or infringe upon any patent, trademark, trade name, service mark, trade secret, copyright or proprietary right owned or claimed by another.

3.14 Contracts and Commitments. Except as listed and described on Schedule 3.14 (which is being separately provided to Buyer) or, in the case of benefit plans and arrangements, Schedule 3.16(a), Seller is not a party to or otherwise bound or affected by any of the following, written or oral:

(a) agreement, contract or commitment for the purchase of, or payment for, supplies or products, or for the performance of services by a third party, involving in any one case \$50,000 or more;

(b) agreement, contract or commitment to sell or supply products or to perform services, involving in any one case \$50,000 or more;

(c) agreement, contract or commitment not otherwise listed on Schedule 3.14 and continuing over a period of more than six months from the date hereof or exceeding \$50,000 in value;

(d) representative or sales agency agreement, contract or commitment;

(e) lease under which it is either lessor or lessee;

(f) agreement, contract or commitment limiting or restraining it from engaging or competing in any line of business with any person, nor is any officer or employee of Seller subject to any such agreement:

(g) license, franchise, distributorship or other similar agreement, contract or commitment, including without limitation those which relate in whole or in part to any patent, trademark, trade name, service mark or copyright or to any ideas, technical assistance or other know-how of or used by Seller; or

(h) material agreement, contract or commitment not made in the ordinary course of business.

Except as may be disclosed on Schedule 3.14, each of the agreements, contracts, commitments, arrangements, leases and other instruments, documents and undertakings listed on Schedule 3.14 is valid and enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court), and Seller and, to the knowledge of Seller, the other parties thereto are in compliance with the provisions thereof, no party is in default in the performance, observance or fulfillment of any material obligation, covenant or condition contained therein, and no event has occurred which with or without the giving of notice or lapse of time, or both, would constitute a default thereunder.

3.15 Additional Information. Schedule 3.15 (which is being separately provided to Buyer) contains, to the extent not described in Schedule 1.1 or any other Schedule, accurate lists and summary descriptions of the following:

(a) each item of personal property owned or leased by Seller that is material to the operation of its business and, with respect to leased property, specifying the identity of the lessor, the rental rate and the unexpired term of the lease, and also specifying serial numbers (where appropriate) and location;

(b) the names and current annual salary or hourly rates of all present officers and employees of Seller, together with a statement of the full amount of any bonuses, profit sharing or other remuneration paid to each such person during the current or the last fiscal year or payable to each such person in the future and the basis therefor; and

(c) a list of all Permits.

3.16 Benefit Plans and Arrangements.

(a) Schedule 3.16(a) lists all employee benefit plans, funds, policies, arrangements and understandings or programs which were or are established, contributed to or maintained by Seller for its employees, including without limitation welfare, fringe benefit, pension, profit sharing, retirement, stock purchase, stock option, stock bonus, disability or wage continuation, sick pay or vacation pay, supplemental unemployment, severance or deferred compensation plans (the "Plans").

(b) With respect to any such Plans subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), except as may be disclosed on Schedule 3.16(b) hereto, Seller has made all contributions thereto which are required to be made. The Plans and provisions thereof, the trusts created thereby, and the operation of the Plans are (and have at all times been) in compliance with and conform (and at all times have conformed) to the applicable provisions of all applicable statutes and governmental rules and regulations.

3.17 Environmental Matters.

(a) In addition to the representations and warranties in Section 3.12 and not in limitation thereof, except as may be disclosed on Schedule 3.17(a), (i) no releases of Hazardous Materials and no other environmental contamination have occurred or existed (or are now occurring or existing) at, from or under any property which is the subject of this transaction or which was otherwise owned or used at any time by Seller or any of its predecessors, (ii) there are no past, pending, or threatened Environmental Claims against Seller, (iii) there are no leaking underground storage tanks owned by Seller, or located at any facility operated by Seller and (iv) there are no facts, circumstances or conditions that could reasonably be expected to restrict, under any Environmental Law or Environmental Permit (each as hereinafter defined) in effect prior to or at the Closing Date, the ownership, occupancy, use or transferability of any property owned, operated or leased by Seller. As used in this Agreement:

(A) "Environmental Claims" means any and all administrative or judicial actions, suits, orders, claims, liens, notices, violations or proceedings related to any applicable Environmental Law or any Environmental Permit brought, issued or asserted by: (1) a governmental authority for compliance, damages, penalties, removal, response, remedial or other action pursuant to any applicable Environmental Law or (2) a third party seeking damages for personal injury or property damage resulting from the release of a Hazardous Material at, to or from any facility of Seller, including without limitation employees seeking damages for exposure to Hazardous Materials;

(B) "Environmental Laws" means all federal, state and local laws, statutes, ordinances, codes, rules and regulations related to protection of the environment or the handling, use, generation, treatment, storage, transportation or disposal of Hazardous Materials;

(C) "Environmental Permit" means all permits, licenses, approvals, authorizations or consents required by any governmental authority under any applicable Environmental Law and includes without limitation any and all orders, consent orders or binding agreements issued or entered into by a governmental authority under any applicable Environmental Law; and

(D) "Hazardous Material" means any hazardous or toxic substance, material or waste which is regulated as of the Closing Date by any state or local governmental authority or the United States of America, including without limitation any material or substance that is: (1) defined as a "hazardous substance" under applicable state law, (2) petroleum, (3) asbestos, (4) designated as a "hazardous substance" pursuant to section 311 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1151 et seq. (33 U.S.C. §1321), (5) defined as a "hazardous waste" pursuant to section 1004 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), (6) defined as a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), (7) defined as a "regulated substance" pursuant to section 9001 of the Resource Conservation and Recovery act, as amended, 42 U.S.C. §6901 et seq. (42 U.S.C. §6991) or (8) otherwise regulated under the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., the Clean Air Act, as amended, 42 U.S.C. §7401, et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq., or the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §136, et seq.

(b) With respect to Seller's New Jersey operations and the use, occupancy or ownership of property in connection therewith, Seller is in compliance with the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., the regulations promulgated thereunder and any successor legislation and regulations and, as applicable, the regulations promulgated under the predecessor statute to the Industrial Site Recovery Act (codified at N.J.A.C. 7:26B-1.1 et seq.) and the Technical Requirements for Site Remediation promulgated by the New Jersey Department of Environmental Protection ("NJDEP") and codified at N.J.A.C. Title 7, Chapter 26E (collectively referred to as "ISRA").

3.18 Labor. With respect to Seller's Bloomington, Indiana operations: (a) Seller is not a party to any collective bargaining agreements; (b) Seller is in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and is not engaged in any unfair labor practices; (c) there is no unfair labor practice complaint that concerns Seller pending or, to Seller's knowledge, threatened against Seller; (d) there is no labor strike, dispute, slowdown or stoppage in effect or, to Seller's knowledge, threatened against Seller; (e) there is no claim asserted or, to Seller's knowledge, threatened against Seller or an employee of Seller, involving allegations of sexual harassment; and (f) no certification petition respecting any of Seller's employees has been filed and, to Seller's knowledge, there is no threat that such a petition will be filed with the National Labor Relations Board.

3.19 All Necessary Assets and Properties. Upon consummation of the transactions contemplated by this Agreement, Buyer shall have acquired from Seller all of the assets, properties and rights necessary for the continuing conduct after the Closing Date of Seller's business in the same manner in which it was conducted prior to the Closing.

3.20 Reserved.

3.21 Schedules; Delivery of Documents. Seller has delivered to Buyer the originals or true and complete copies of all documents, including without limitation all amendments, supplements or modifications thereof or waivers currently in effect thereunder, referred to on the Schedules or otherwise material to the representations and warranties in this Agreement.

3.22 Completeness of Disclosure. No representation or warranty by Seller contained in this Agreement, and no representation, warranty or statement contained in any list, certificate, Schedule, Exhibit, Ancillary Agreement or other instrument, document, agreement or writing furnished or to be furnished to, or made with, Buyer pursuant hereto or in connection with the negotiation, execution or performance hereof, contains or will contain any untrue statement of a material fact or omits or will omit to state any fact necessary to make any statement herein or therein not misleading.

3.23 Chapter 11 Case. Seller is in compliance in all material respects with all orders entered by the Court in the Proceedings.

4. Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows:

4.1 Organization and Authority of Buyer. Buyer is a corporation duly organized and validly existing under the laws of the State of Delaware and has all necessary corporate power and authority to enter into this Agreement, the Ancillary Agreements and the other agreements, documents and instruments, including the Note, to be executed and delivered by Buyer pursuant hereto, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement and each of the Ancillary Agreements has been, and, as of the Closing Date, each of the other agreements, documents and instruments to be executed and delivered by Buyer pursuant hereto, including the Note, will be, duly authorized, executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes, and each of the Ancillary Agreements and such other agreement, document and instrument, including the Note, will constitute, a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms.

4.2 No Conflict. The execution, delivery and performance of this Agreement, each of the Ancillary Agreements and the Note by Buyer do not and will not (a) violate or

conflict with the certificate of incorporation of Buyer, (b) conflict with or violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award applicable to Buyer, or (c) result in any material breach of, or constitute a material default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment (including without limitation the termination or diminution of any right to extend or renew any term), acceleration or cancellation of, or result in the creation of any lien or other encumbrance on any of the assets of Buyer pursuant to, any agreement, contract, commitment, instrument or other document to which it is a party or by which it has rights.

4.3 Consents and Approvals. The execution, delivery and performance of this Agreement, each of the Ancillary Agreements and the Note by Buyer do not and will not require any consent, approval, authorization or other action by, or filing with or notification to, any governmental or regulatory authority.

5. Other Agreements.

5.1 Covenants Pending Closing. Except as Buyer may otherwise consent in writing, between the date of this Agreement and the Closing Date:

(a) Seller shall use its reasonable best efforts to operate its business only in the usual, regular and ordinary course and in accordance with past practices and, to the extent consistent with such operation, use its reasonable best efforts to (i) preserve its current business organization and operations intact, (ii) keep available the services of its employees, (iii) continue normal purchasing, rental, leasing, financing, marketing, advertising, promotional and maintenance expenditures and (iv) preserve any beneficial business relationships with all persons having business dealings with Seller with respect to the Assets or its business;

(b) Seller shall use its reasonable best efforts to maintain (i) its inventory in the usual, regular and ordinary course of business consistent with past practice, (ii) its facilities, buildings, vehicles, equipment, furniture and fixtures, leasehold improvements and other material items of tangible personal property owned or used by Seller in good operating condition and repair, subject to normal wear and maintenance, useable in the regular and ordinary course of business and (iii) all insurance covering Seller, its employees and the Assets in full force and effect until 12:01 A.M. on the first day following the Closing Date with responsible companies, comparable in amount, scope, and coverage to that in effect on the date of this Agreement;

(c) Seller shall (i) use its reasonable best efforts to duly comply with all laws, statutes, ordinances, codes, rules and regulations applicable to the Assets or its business and continue such compliance in the current manner as represented in this Agreement, (ii) perform all of its obligations under this Agreement or any of the Ancillary Agreements without default, (iii) use its reasonable best efforts to perform all of its other obligations and liabilities without default, and (iv) maintain all of its books and records in the usual, regular and ordinary manner on a basis consistent with past practices;

(d) Seller shall give (or cause to be given) to Buyer and its counsel, accountants and other representatives reasonable access (for, among other purposes, conducting environmental due diligence) during normal business hours to its premises, Assets and personnel (including without limitation all real properties leased by Seller), shall furnish to Buyer and such representatives all such additional documents (the identification of which shall be certified by an officer of Seller furnishing the same, if requested), financial information and other information with respect to any of the Assets or its business as Buyer may from time to time request (including without limitation asset files, accounts receivable trial balances and in-process inventory details) and shall use its reasonable best efforts to cause its accountants to permit Buyer to examine the records and working papers pertaining to their audits and other reviews of the financial statements of Seller. Seller agrees that no investigation by Buyer, its representatives or Emry Associates shall affect or limit the scope of Seller's representations and warranties herein or in any Ancillary Agreement or limit Seller's liability for any breach of such representations and warranties, provided that Buyer or Emry Associates currently has no actual knowledge of the inaccuracy of any such representations and warranties; and, provided, further, that notwithstanding the provisions of this Section 5.1(d) to the contrary, Seller shall have no liability under this Agreement for the breach of any representation or warranty if the breach and the disclosure necessary to remedy such breach is disclosed in writing to Buyer within the later of (i) 3 days prior to the Closing or (ii) the earlier of (x) 2 days after Seller has knowledge of the breach or (y) the Closing;

(e) Seller agrees to retain all of its books and records until the earlier of (i) the third anniversary of the Closing Date; or (ii) the date the Proceedings are closed pursuant to Section 350 of the Bankruptcy Code;

(f) Seller shall use its reasonable best efforts to obtain in writing as promptly as possible all approvals, consents or bankruptcy court orders necessary to be obtained by Seller in order to effectuate the transactions contemplated hereby and shall deliver to Buyer copies, satisfactory in form and substance to Buyer, of such approvals and consents;

(g) Seller shall use its reasonable best efforts to comply with all obligations of Seller under any Contract to which it is a party;

(h) Seller shall promptly notify Buyer of the occurrence or failure to occur of any circumstance or event involving, or action by, Seller or otherwise, (i) which, if known at the date of this Agreement, would have been required to be disclosed in or pursuant to this Agreement or (ii) the existence, occurrence, failure to occur or taking of which would result in any of the representations and warranties of Seller contained in this Agreement or in any Ancillary Agreement not being true, complete and accurate (x) immediately thereafter or (y) on the Closing Date, and, with respect to clause (ii), use its reasonable best efforts to remedy the same;

(i) Seller shall enter into the consulting agreement, in substantially the form annexed hereto as Exhibit E, upon entry of the Sale Order, pursuant to which Emry Associates

will provide consulting services to Seller prior to the Closing Date. Emry Associates shall be entitled to compensation for the performance of its services in an amount equal to \$3,000 per week. Such consulting agreement shall be effective upon execution thereof by the parties thereto.

(j) Seller shall not sell, rent, lease or otherwise dispose of any part of the Assets, except for the sale of inventory in the ordinary course of business consistent with past practices;

(k) Seller shall not, except pursuant to existing financing arrangements previously disclosed to Buyer, create or suffer to exist any mortgages, liens, pledges, security interests, charges, claims, interests (including without limitation all claims and interests of creditors and equity security holders), restrictions or other encumbrances or defects of title of any nature whatsoever on any of the Assets;

(l) Seller shall not modify, terminate or renew any Contract (except for the termination of the Olin Lease, subject to Section 5.1(m)) or dispose of any right of value accruing to it with respect to the Assets or its business, except in the ordinary course of business consistent with past practices and, during such period and after the Closing, Seller shall not take any action with respect to the California and New Jersey leases that will hinder, inhibit or prevent Buyer's rights and ability to access the California and New Jersey facilities for purposes provided for in and contemplated by this Agreement;

(m) Seller shall not enter into any arrangement regarding the termination of the Olin Lease if such arrangement provides for the payment of a sum greater than \$60,000.

(n) Absent the written consent of Buyer, Seller shall not incur or agree to incur any obligation or liability (absolute or contingent) that would be required to be assumed by Buyer pursuant to Section 1.3 hereof that individually calls for a payment of more than \$10,000 in any specific case or \$50,000 in the aggregate except for acquisitions of inventory in the ordinary course of business consistent with past practices and Contracts entered into with Seller's customers in the ordinary course of business consistent with past practices;

(o) Seller shall not make any loan, guaranty or other extension of credit, or enter into any commitment to make any loan, guaranty or other extension of credit, to or for the benefit of any director, officer, employee, stockholder of Seller or any of their respective affiliates.

(p) Seller shall not grant any general or uniform increase in the rates of pay or benefits to officers, directors or employees (or a class thereof) or any increase in salary or benefits of any officer, director, employee or agent or pay any special bonus to any person, or enter into any new employment, collective bargaining or severance agreement, in each case with respect to any person employed by Seller;

(q) Seller shall not enter into any transaction or take any action or fail to take any action which would result in any of the representations and warranties contained in this Agreement or in any Ancillary Agreement not being true and correct (i) immediately after such transaction has been entered into or consummated or such action taken or committed to be taken or (ii) on the Closing Date;

(r) Seller shall not take any other action or suffer or permit any other action to occur which would have a material adverse effect on the business, operations, assets, properties, prospects or condition (financial or otherwise) of Seller;

(s) Seller shall not dispose of any excess machinery, excess raw materials or waste;

(t) Seller shall not agree or commit to do any of the acts referred to in Sections 5.1(j) through (r) of the foregoing;

(u) Seller shall fully cooperate with Buyer and shall use its best efforts to assure an orderly transition of the Seller's business to Buyer; and

(v) Seller shall not appeal the Sale Order or otherwise act in any manner inconsistent with the Sale Order.

For purposes of this Section 5.1, the phrase "reasonable best efforts" shall not require Seller to commence litigation or to spend additional material amounts of money in any case. In addition, for purposes of this Section 5.1 and Sections 8 and 9 hereof, the term "liabilities" shall include without limitation any direct or indirect liability, indebtedness, guaranty, endorsement, claim, loss, damage, deficiency, cost, expense, obligation or responsibility, either accrued, absolute, contingent or otherwise and whether known or unknown, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured.

5.2 Bankruptcy Court Approval; Sale Order.

(a) Buyer acknowledges and agrees that Seller does not have the authority to sell the Assets and to close under the terms and provisions of this Agreement without having first obtained the prior approval of the Bankruptcy Court. As promptly as practicable after the auction of the Assets to be held on May 31, 1995, Seller shall use its reasonable best efforts to cause the Bankruptcy court to enter the Sale Order. The Seller agrees to promptly make any filings, to take all actions and to use its reasonable best efforts to obtain any and all other approvals and orders necessary or appropriate for the consummation of the transactions contemplated hereby.

(b) The form of Sale Order shall contain the protections Buyer deems necessary under Section 363 of the Bankruptcy Code, shall be in substantially the form annexed hereto as Exhibit F, with such changes as may be approved by Buyer and Seller, and otherwise

shall be in form and substance reasonably satisfactory to Buyer. The Sale Order shall provide, inter alia, that (i) Buyer is a good faith purchaser pursuant to Section 363(m) of the Bankruptcy Code (11 U.S.C. §363), (ii) the sale of the Assets is free and clear of all liens, claims and encumbrances, (iii) the sale of the Assets is exempt from any documentary, stamp, transfer or other like tax pursuant to Section 1146(c) of the Bankruptcy Code, (iv) Seller's execution, delivery and performance of the Agreement and the transactions contemplated hereunder is approved and (v) Seller is authorized to assume and assign the Assumed Contracts pursuant to Sections 365 (a) and (b) of the Bankruptcy Code, notwithstanding any provisions that restrict the assignability of the Assumed Contracts.

5.3 Time of Essence. Time is of the essence in the performance of this Agreement.

5.4 Transitional Services.

(a) After the Closing Date and prior to the delivery to Buyer of the Assets located at Seller's New Jersey and California facilities, Seller shall provide Buyer with access to such Assets which are located at such facilities.

(b) Commencing on the Closing Date and for so long thereafter as Buyer may reasonably require, but in no event less than 90 days, Seller shall use its reasonable best efforts to provide Buyer with access to its California facility and to its New Jersey facilities, and shall provide or cause to be provided to Buyer by Seller's employees based at its New Jersey administrative facility not otherwise employed by Buyer, such general corporate and administrative services as may reasonably be requested by Buyer. Such services shall be substantially similar to those provided by such employees prior to the Closing Date, including without limitation data processing, customer service and advertising.

(c) Buyer shall reimburse Seller for its actual out-of-pocket cost of the services and facilities provided by Seller under this Section 5.4; provided that should a third party (including without limitation a landlord) request or demand any increase in charges for services provided or rent for real property leased, Seller shall provide Buyer with prompt notice of such request or demand and provide Buyer with no less than three business days' time to decide whether Buyer will agree to pay for such increases or cease its rights hereunder to avail itself of such services or such leased real property.

(d) Seller shall use its reasonable best efforts without the payment of money in excess of \$5,000 to make available to Buyer at no cost to Buyer the equipment subject to the Olin Lease for 90 days following the Closing if such equipment, as permitted under Section 6.9, is not transferred to Buyer on the Closing Date; provided that, if Seller is unable to make such equipment available to Buyer by the later of the Closing Date and June 16, 1995, Seller shall assert any and all objections available in good faith to Seller in connection with the filing of any application to retake possession of such equipment and shall not enter into or agree to any

stipulation regarding the lifting of the automatic stay with respect to the Olin Lease or any equipment subject thereto, absent the prior written consent of Buyer.

(e) Immediately upon execution of this Agreement and entry of the Sale Order, Seller shall provide Buyer and Emry Associates with full and complete access to Seller's business including, without limitation, access to all business records, facilities, equipment, properties, operations and customers of Seller and shall cooperate with Buyer and Emry Associates with respect to the transition of the business operations to Buyer and the closing of the transactions contemplated hereby.

5.5 Employees. Buyer or one of its affiliates shall offer to employ, beginning on the Closing Date, substantially all of Seller's current employees at its Bloomington, Indiana facility, but Seller shall continue to be responsible for all, and neither Buyer nor any of its affiliates shall assume or otherwise be responsible for any, of Seller's liabilities and obligations to any person so hired. Seller shall use its reasonable best efforts to assist Buyer or one of its affiliates with the hiring of Seller's employees at its Bloomington, Indiana facility. Such employees of Seller shall be hired by Buyer or one of its affiliates as employees at will and shall be initially compensated at levels consistent with Buyer's or such affiliate's compensation and benefit levels for comparable responsibilities and experience, which levels shall be substantially equal to the compensation and benefit levels provided to such employees by Seller.

5.6 Additional Insured. For five years after the Closing Date, to the extent possible without additional cost to Buyer, Buyer shall include Seller as an additional named insured on its products liability insurance policies relating to the business conducted with the Assets.

5.7 Access to Business Records. After the Closing, Buyer shall allow Seller's counsel, accountants and other authorized representatives, including representatives of Seller's shareholder, access to the business records included in the Assets, including Seller's past tax returns, upon reasonable request and during normal business hours, but only to the extent such access is reasonably required by Seller in connection with the preparation or examination of tax returns or in connection with the Proceedings or any litigation by or against Seller or any other matter arising out of Seller's ownership or operation of the Assets prior to the Closing; provided that (a) the foregoing shall be done in a manner so as not to interfere with the normal conduct of Buyer's business and (b), except to the extent required by applicable law or necessary in the Proceedings or in litigation, Seller agrees that it and such persons shall preserve the confidentiality of any non-public information contained in such business records and shall execute any other agreements reasonably requested by Buyer in this regard.

5.8 Continuing Compliance with ISRA. With respect to Seller's New Jersey operations or the use, occupancy or ownership of property in connection therewith, Seller shall continue to comply with ISRA; such compliance shall include without limitation: (a) the timely filing of all submissions, plans and information with, and the compliance with all requirements of, NJDEP necessary to perform the ISRA obligations of Seller; (b) the completion of all

investigations, studies and reports, and the cleanup, removal and remediation of Hazardous Materials as required by NJDEP; (c) the demonstration of all financial assurances and remediation funding sources in connection with Seller's ISRA compliance obligations as required by NJDEP; and (d) the procurement of a "no further action letter" by NJDEP determining that any discharged Hazardous Materials have been remediated in accordance with applicable regulations and standards and that Seller has no further obligations under ISRA, including with limitation filing fees, demonstration of financial assurance and remediation funding sources, and the costs of all studies, investigations and reports and cleanup, removal and remediation activities.

5.9 Outstanding Checks. If, as of the Closing Date, Seller has outstanding any checks dated on or before the day prior to the Closing Date and issued in payment of Buyer Assumed Payables which checks have not cleared as of the Closing Date (the "Uncleared Checks"), then Buyer shall pay to Seller from time to time after the Closing Date, upon request from Seller, as additional consideration hereunder, as and when such checks are presented for payment, funds sufficient to pay such checks. Seller agrees to provide to Buyer on the Closing Date a list of all of the Uncleared Checks and the amounts, name of payee and purpose of each such check.

5.10 Deposit Letter. By execution of this Agreement, Seller agrees to the terms of the Deposit Letter and shall be deemed to be a party thereto.

5.11 Senior Subordinated Notes.

(a) On or before the Closing Date, Buyer shall issue and sell:

(i) to Capricorn Investments II, L.P. or an affiliate thereof ("Capricorn"), for an aggregate purchase price of \$2.0 million, an unsecured senior subordinated note of Buyer in the principal amount of \$2.0 million, which shall provide for the repayment of principal on the first business day following the seventh anniversary of the Closing Date and shall be substantially in the form of Exhibit I (the "Unsecured Senior Subordinated Note"); and

(ii) one or more senior subordinated notes of Buyer which may be secured in the aggregate principal amount of \$2.0 million for an aggregate purchase price of \$2.0 million, which shall provide for the repayment of principal in five equal installments beginning on the third anniversary of the Closing Date and ending on the seventh anniversary of the Closing Date and shall bear interest at the rate of 14.0% per annum, payable quarterly in arrears (the "Secured Senior Subordinated Note").

(b) Buyer agrees that it shall not prepay, refinance or refund the Secured Senior Subordinated Note or the Unsecured Senior Subordinated Note (collectively, the "Senior Subordinated Notes") prior to the payment in full of the Note; provided, however, that nothing contained in this Section 5.11(b) shall prohibit Buyer from refinancing any of the Senior

Subordinated Notes if the obligations incurred in such refinancing (i) have an Average Life (as hereinafter defined) as long or longer, and a Stated Maturity (as hereinafter defined) as late or later, than the Note and (ii) bear interest at a rate that cannot exceed the interest rate that is then accruing on the obligations being refinanced. For purposes of this Agreement, the following terms have the following meanings:

"Average Life" means, as of the date of determination, with respect to any debt, obligation, the quotient obtained by dividing (a) the sum of the products of (i) the number of years from the date of determination to the date or dates of each successive scheduled principal payment (including, without limitation, any sinking fund requirements) of such debt obligation multiplied by (ii) the amount of such principal payment by (b) the sum of all such principal payments.

"Stated Maturity" means the final date on which the principal of a debt obligation is due and payable.

(c) The Senior Subordinated Notes shall each be deemed for all purposes to be "Senior Indebtedness" as such term is defined in the Note.

(d) Buyer agrees that for so long as the Note remains outstanding, Buyer shall not, except as permitted by Section 5.11(b), make any prepayment with respect to either of the Senior Subordinated Notes unless at the time of such prepayment, a prepayment is made with respect to the Note in an amount equal to 62.6% of the aggregate amount prepaid with respect to the Senior Subordinated Notes at such time.

(e) Buyer agrees that Buyer shall not make any payment of principal or interest with respect to the Unsecured Senior Subordinated Note unless Buyer also has made concurrently therewith or prior thereto a corresponding payment of principal or interest, respectively, on the Note in the same proportion to the amount then due under the Note as the payment with respect to the Unsecured Senior Subordinated Note bears to the amount then due under the Unsecured Senior Subordinated Note; provided, however, that notwithstanding anything to the contrary contained herein, this Section 5.11(e) shall be without any force or effect and shall be null and void as of and after the occurrence of an event described in Section 5(b) or Section 5(c) of the Note.

5.12 Proceeds of Included Action.

(a) With respect to the Included Action, if Buyer receives any proceeds of, or recoveries from, the Included Action, in any form Buyer shall pay to Seller as additional consideration hereunder, within 30 days of receipt thereof, after deducting therefrom all expenses, professional fees and charges incurred or required to be paid with respect to, in connection with or as a result of, the Included Action (the "Net Proceeds"), the following:

(i) with respect to aggregate Net Proceeds of \$3,000,000 or less, one-third of such Net Proceeds; and

(ii) with respect to aggregate Net Proceeds in excess of \$3,000,000, two-thirds of such excess Net Proceeds.

(b) If the Note shall be outstanding at the time of any payment to Seller pursuant to Section 5.12(a)(i), then concurrently therewith Buyer shall prepay the Note in accordance with Section 2 of the Note in an amount equal to the amount paid to Seller at such time pursuant to Section 5.12(a)(i).

(c) Notwithstanding anything contained in Section 5.12 to the contrary, Buyer shall retain exclusive control over the Included Action, including, without limitation, the sole and exclusive right to make all decisions in good faith with respect thereto and to take any and all actions or refrain from taking any or all actions regarding the prosecution, appeal, abandonment, termination and/or settlement of the Included Action. Seller acknowledges that its only interests in the Included Action are its interest in the proceeds, if any, therefrom as provided in Section 5.12(a) and Section 5.12(b) and its security interest as set forth in the Security Agreement referred to in Section 7.8, and that Seller shall not be consulted, advised or informed regarding the conduct, strategy, developments or actions undertaken with respect to the Included Action. Buyer's only obligation to Seller regarding the Included Action is to promptly advise Seller of the settlement or any final decision to terminate or otherwise abandon the Included Action, of Buyer's receipt of proceeds therefrom, to provide Seller with an accounting of the Net Proceeds and to pay Seller the amounts due Seller under Section 5.12(a) and Section 5.12(b).

(d) Seller shall have no liability with respect to any fees or expenses incurred after the Closing Date with respect to the Included Action.

5.13 Benefit Claims. Seller shall request and, to the extent permissible, require all employees of Seller who intend to make claims under Seller's health and other benefit plans with respect to the period prior to the Closing Date, to make such claims in writing to Seller within 30 days following the Closing Date.

6. Conditions to Buyer's Obligations. All obligations of Buyer under this Agreement (other than those set forth in Section 8) are subject to the fulfillment, satisfaction or written waiver, prior to or at the Closing, of each of the following conditions precedent:

6.1 Accuracy of Representations and Warranties. The representations and warranties of Seller contained in this Agreement or in any Ancillary Agreement shall be true, complete and correct in all material respects on and as of the Closing Date.

6.2 Performance of Agreements. Seller shall have performed all obligations and agreements and complied with all covenants contained in this Agreement or in any Ancillary Agreement to be performed or complied with by it on or prior to the Closing Date.

6.3 Officer's Certificate. Buyer shall have received a certificate executed by the President of Seller, dated the Closing Date, certifying that the conditions specified in Sections 6.1 and 6.2 hereof have been satisfied.

6.4 Sale Order. The Bankruptcy Court shall have entered the Sale Order and, unless waived by Buyer, such order shall have become final and non-appealable.

6.5 Legal Proceedings. No suit, action or other proceeding, or injunction or judgment relating thereto, shall be threatened or be pending before any court or governmental or regulatory official, body or authority in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and no investigation that might result in any such suit, action or proceeding shall be pending or threatened.

6.6 Consents. The consent to or approval of the transactions contemplated by this Agreement from each person whose consent or approval is required in the reasonable opinion of Buyer shall have been obtained in form and substance satisfactory to Buyer. Without limiting the generality of the foregoing, the Bankruptcy Court shall have entered the Sale Order and, unless waived by Buyer, such order shall become final and non-appealable.

6.7 Financing. Buyer shall have received financing on terms acceptable to Buyer to fund a portion of the Purchase Price consistent with the terms set forth in the letter dated May 25, 1995 to Buyer from BankAmerica Business Credit Inc.

6.8 Escrow Agreement. Seller, Buyer and escrow agent thereunder shall have executed and delivered the Escrow Agreement.

6.9 Olin Lease. Seller shall have entered into a definitive arrangement with respect to the Olin Lease pursuant to which at the Closing the Olin Lease will be terminated and the equipment subject thereto will be conveyed to Seller free and clear of all liens, claims and encumbrances; provided, however, that if Seller is unable to reach a definitive agreement with respect to the Olin Lease as required in this Section, Seller shall not be obligated to terminate the Olin Lease and Buyer shall be deemed to have waived satisfaction of, and compliance with, the condition relating thereto; in such case the equipment subject to the Olin Lease shall be deemed to be an Excluded Asset and Buyer shall receive from Seller a \$60,000 credit to be applied to reduce the Purchase Price to be paid by Buyer on the Closing Date pursuant to Section 1 4(a)(iv).

6.10 Assumed Equipment Leases. Buyer shall have entered into definitive arrangements with the lessors of each of the first three Assumed Equipment Leases listed on

Schedule A-2 pursuant to which on the Closing Date, at the direction of Buyer, each of such leases, as amended, will be either (a) assumed by Seller and assigned to Buyer on terms satisfactory to Buyer (with all liabilities and costs of Seller related thereto having been satisfied by Buyer or waived by such lessors) or (b) terminated on terms satisfactory to Buyer (with all liabilities and costs of Seller related thereto having been satisfied by Buyer or waived by such lessors), in which case the equipment subject to any of such Assumed Equipment Leases will be conveyed to Buyer free and clear of all liens, claims and encumbrances (for inclusion in the Assets and subsequent conveyance to Buyer pursuant to this Agreement).

6.11 Approval of Counsel; Corporate Matters. All actions, proceedings, resolutions, instruments and documents required to carry out this Agreement or incidental hereto and all other related legal matters shall have been approved on the Closing Date by O'Melveny & Myers, counsel for Buyer, in the exercise of its reasonable judgment. Seller shall also have delivered to Buyer such other documents, instruments, certifications and further assurances as such counsel for Buyer may reasonably require.

6.12 Opinion of Counsel. Buyer shall have received at the Closing, from Pullman & Comley, LLC, counsel to Seller, an opinion dated as of the Closing Date addressing the matters set forth in Exhibit G, with such changes as may be approved by Buyer and Seller and otherwise in form and substance satisfactory to Buyer.

6.13 Cash Collateral. BankAmerica Business Credit, Inc. shall have continued to extend debtor-in-possession financing to the Seller and permitted Seller to continue to use Cash Collateral (as defined in the Loan Agreement) through the Closing Date.

7. Conditions Precedent to Seller's Obligations. All obligations of Seller under this Agreement (other than those set forth in Section 8 hereof) are subject to the fulfillment, satisfaction or written waiver, prior to or at the Closing, of each of the following conditions precedent:

7.1 Accuracy of Representations and Warranties. The representations and warranties of Buyer contained in this Agreement shall be true, complete and correct in all material respects on and as of the Closing Date with the same effect as if they were made on and as of the Closing Date.

7.2 Performance of Agreements. Buyer shall have performed all obligations and agreements and complied with all covenants contained in this Agreement to be performed or complied with by it on or prior to the Closing Date.

7.3 Officer's Certificate. Seller shall have received a certificate executed by the President of Buyer, dated the Closing Date, certifying that the conditions specified in Sections 7.1 and 7.2 hereof have been satisfied.

7.4 Sale Order. The Bankruptcy Court shall have entered the Sale Order and, unless waived by Seller, such order shall have become final and non-appealable.

7.5 Escrow Agreement. Buyer, Seller and escrow holder thereunder shall have executed and delivered the Escrow Agreement.

7.6 Approval of Counsel Corporate Matters. All actions, proceedings, resolutions, instruments and documents required to carry out this Agreement or incidental hereto and all other related legal matters shall have been approved on the closing Date by Pullman & Comley, LLC, counsel for Seller, in the exercise of its reasonable judgment. Buyer shall also have delivered to Seller such other documents, instruments, certifications and further assurances as such counsel for Seller may reasonably require.

7.7 Opinion of Counsel. Seller shall have received at the Closing from O'Melveny & Myers, counsel to Buyer, an opinion dated as of the Closing Date in substantially the form annexed hereto as Exhibit H, with such changes as may be agreed to by Buyer and Seller.

7.8 Security Agreement Re Included Action. Seller shall have received from Buyer, duly executed and delivered by Buyer, the Security Agreement Re Included Action in a form agreed to by Buyer and Seller to secure, inter alia, Buyer's obligations under Section 5.12 and appropriate, duly executed forms for public filings relating thereto.

8. Indemnification.

8.1 Indemnification by Seller.

(a) From and after the date hereof, Seller shall reimburse, indemnify and hold harmless Buyer and its directors, officers, employees, agents, representatives and affiliates (each such person and its successors and assigns is referred to herein as a "Buyer Indemnified Party") against and in respect of:

(i) any and all damages, losses, settlement payments, deficiencies, liabilities, costs and expenses suffered, sustained, incurred or required to be paid by any Buyer Indemnified Party because of, that result from, relate to or arise out of:

(A) the untruth, inaccuracy or breach of, or the failure to fulfill, any representation, warranty, agreement, covenant or statement of Seller contained in this Agreement, any Ancillary Agreement or in any certificate or other writing furnished to Buyer by or on behalf of Seller in connection herewith;

(B) the assertion against any Buyer Indemnified Party of any liability or obligation relating to or arising from, out of, in connection with,

relating to or resulting from the business, operations or assets of Seller or any action or omission of Seller, Seller's directors, officers, shareholders, employees or agents, including without limitation any liability or obligation relating to, and any claim which arises from, out of or is based upon, (1) negligence, (2) strict liability, (3) any Environmental Claim or which otherwise relates to, or involves a claim, liability or obligation which arises from, out of or is based upon, any Environmental Law to the extent that such liability or obligation relates to or arises from, out of, in whole or in part, any activity occurring, condition existing, omission to act or other matter existing prior to the Closing Date, (4) any other statute, rule or regulation or (5) any express or implied representation, warranty, agreement or guarantee made by or on behalf of Seller, or alleged to have been made by or on behalf of Seller, or any liability or obligation which is imposed or asserted to be imposed on Seller or any successor corporation by operation of law, in connection with any product sold, shipped or manufactured by or on behalf of Seller, or for any service performed by or on behalf of Seller, including without limitation any acts, omissions, workmanship or materials performed, sold or manufactured by Seller; provided that any claim, suit or other cause of action related to any of the foregoing is filed or otherwise instituted against Seller (with all references to Seller in this Section 8.1(a)(i)(B) also deemed to be references to any predecessor in business of Seller) on or before the fourth anniversary of the Closing Date;

(ii) any and all damages, losses, settlement payments, deficiencies, liabilities, costs and expenses suffered, sustained, incurred or required to be paid by any Buyer Indemnified Party to the Internal Revenue Service or any other taxing authority which would not have existed if Seller had given such entity notice of the Proceedings or the Sale Motion; and

(iii) any and all actions, suits, claims, proceedings, investigations, demands, assessments, audits, fines, judgments, costs and other expenses (including without limitation reasonable legal fees and expenses) incident to any of the foregoing or to the enforcement of this Section 8.1

(b) Notwithstanding anything to contrary contained herein, after the Closing, Seller shall have no liability under this Agreement for breach of the representation and warranty set forth in Section 3.8(a) to the extent and only to the extent that such breach would not exist if the representation and warranty contained therein were qualified by the information disclosed in Schedule 8.1(b). Notwithstanding anything to the contrary contained in this Agreement, Schedule 8.1(b) shall be deemed not to be a part of this Agreement for the purpose of determining whether the representation and warranty contained in Section 3.8 are true and correct for purposes of Section 6.1.

8.2 Indemnification by Buyer. From and after the date hereof, Buyer shall reimburse, indemnify and hold harmless Seller and its directors, officers, employees, agents,

representatives and affiliates (each such person and its successors and assigns is referred to herein as a "Seller Indemnified Party") against and in respect of:

(a) any and all damages, losses, settlement payments, deficiencies, liabilities, costs and expenses suffered, sustained, incurred or required to be paid by any Seller Indemnified Party because of or that result from, relate to or arise out of the untruth, inaccuracy or breach of, or the failure to fulfill, any representation, warranty, agreement, covenant or statement of Buyer contained in this Agreement, in any other agreement, document or instrument executed and delivered by Buyer pursuant hereto or in any certificate or other writing furnished to Seller by or on behalf of Buyer in connection herewith; and

(b) any and all actions, suits, claims, proceedings, investigations, demands, assessments, audits, finds, judgments, costs and other expenses (including without limitation reasonable legal fees and expenses) incident to any of the foregoing or to the enforcement of this Section 8.2.

8.3 Survival of Representations and Warranties. The representations and warranties given or made by Seller or Buyer in this Agreement or in any certificate or other writing furnished in connection herewith shall survive the Closing for a period of 90 days after the Closing Date and shall, except with respect to then pending claims, thereafter terminate and be of no further force or effect; provided, however, that the representations and warranties of Buyer solely with respect to the Note shall survive until the Note is paid in full; provided, further, that the indemnification provided in Section 8.1(a)(ii) shall survive the Closing without limitation. Notwithstanding any investigation or audit conducted before or after the Closing Date or the decision of any party to complete the Closing, each party shall be entitled to rely upon the representations and warranties of the other party or parties set forth herein; provided, however, that notwithstanding anything to the contrary contained herein, after the Closing Seller shall have no liability under this Agreement for the breach of any representation or warranty if the breach and the disclosure necessary to remedy any such breach is disclosed in writing to Buyer within the later of (i) 3 days prior to the Closing or (ii) the earlier of (x) 2 days after Seller has knowledge of the breach or (y) the Closing.

8.4 Payment of Indemnification Obligations.

(a) In the event that Seller or Buyer is required to make any payment under this Section 8, such party shall promptly pay the Buyer Indemnified Party or the Seller Indemnified Party (each, an "Indemnified Party"), as the case may be, the amount of such indemnity obligation. If there should be a dispute as to the amount of such indemnity obligation, Seller or Buyer, as the case may be, shall nevertheless pay when due such portion, if any, of the obligation as shall not be subject to dispute. The difference, if any, between the amount of the obligation ultimately determined as properly payable under Section 8 and the portion, if any, theretofore paid shall bear interest for the period from the date the amount was demanded by the Indemnified Party until payment in full, payable on demand, at the fluctuating rate per

annum which at all times shall be two percentage points in excess of the rate which is publicly announced from time to time by Bank of America, N.A. or its successor as its "prime rate".

(b) After the Closing, Seller's indemnification obligations under Section 8.1 shall be satisfied only (i) from the amounts held in escrow under the Escrow Agreement, which shall be disbursed pursuant to the terms of the Escrow Agreement, and (ii) by offset by Buyer and its affiliates against Buyer's obligations under the Note. Any payment to a Buyer Indemnified Party shall be made first from the available funds under the Escrow Agreement and thereafter only by offset by Buyer and its affiliates against Buyer's obligations under the Note.

8.5 Indemnification Procedure.

(a) An Indemnified Party seeking indemnification shall give prompt written notice to the party from whom such indemnification is sought (the "**Indemnifying Party**") of the assertion of any claim, or the commencement of any action or proceeding, in respect of which indemnity may be sought hereunder, although the failure to give notice shall not affect the Indemnified Party's right to indemnification hereunder unless such failure shall materially prejudice the Indemnifying party's ability to defend such claim. The Indemnifying Party shall have the right to assume the defense, in consultation and cooperation with the Indemnified Party and in good faith to the extent appropriate under the circumstances, of any such action or proceeding or fail to make such an election within 20 days after it received notice pursuant to the first sentence of this Section 8.5(a), the Indemnified Party may assume such defense at the expense of the Indemnifying party who nonetheless may also participate in such defense at its own expense provided that the Indemnified Party shall not settle such action without the consent of the Indemnifying Party (which consent shall not be unreasonably withheld). In all cases where Buyer has sought indemnification, Buyer, after complying with Section 8 hereof, may make demand for all amounts claimed and expenses pertaining thereto consistent with the terms of the Escrow Agreement. An Indemnifying party shall not be liable under Section 8.1 or 8.2 hereof for any settlement effected with out its consent, which consent will not unreasonably be withheld, of any claim, action or proceeding in respect of which indemnity may be sought hereunder.

(b) Nothing herein shall be deemed to prevent an Indemnified Party from making a claim hereunder for potential or contingent claims or demands provided the claim notice to the Indemnifying Party sets forth the specific basis for any such potential or contingent claim or demand to the extent then feasible and the Indemnified Party has reasonable grounds to believe that such a claim or demand will be made.

9. No Brokers' or Finders' Fees.

(a) Seller represents and warrants that all discussions, activities and negotiations relative to this Agreement have been carried on by it directly without the intervention of any person who may be entitled to any brokerage or finder's fee or other commission in respect hereof or the consummation of the transactions contemplated hereby, and

Seller agrees to indemnify and hold harmless the Buyer Indemnified Parties against any and all claims, losses, liabilities and expenses (including without limitation reasonable legal fees and expenses) which may be asserted against or incurred or paid by any of them as a result of Seller's dealings, arrangements or agreements with any such person.

(b) Buyer represents and warrants that all discussions, activities and negotiations relative to this Agreement have been carried on by Buyer and its affiliates directly without the intervention of any person who may be entitled to any brokerage or finder's fee or other commission in respect hereof or by the consummation of the transactions contemplated hereby, and Buyer agrees to indemnify and hold harmless the Seller Indemnified parties against any and all claims, losses, liabilities and expenses (including without limitation reasonable legal fees and expenses) which may be asserted against or incurred or paid by any of them as a result of Buyer's dealings, arrangements or agreements with any such person.

10. Termination.

10.1 Termination and Abandonment.

(a) This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time prior to the Closing:

(1) by mutual written consent of Buyer and Seller; or

(2) by Buyer or Seller, if the Closing shall not have occurred on or before August 1, 1995; provided that the right to terminate this Agreement under this Section 10.1(a)(2) shall not be available to either party whose material misrepresentation, breach of warranty or failure to fulfill any obligation under his Agreement or under any Ancillary Agreement to which it may be a party has been the cause of, or resulted in, the failure of the Closing to occur on or before such date; or

(3) by Buyer or Seller, if the Bankruptcy Court or any other court of competent jurisdiction shall have entered an order or taken any other action staying, restraining, enjoining or otherwise prohibiting the transactions contemplated under this Agreement (each party agreeing to use its reasonable best efforts to have any such order or other action lifted or rescinded), and such order or other action shall have become final and nonappealable; or

(4) by Buyer, if there is or has been a material breach or material failure to fulfil on the part of Seller of any of the representations, warranties, covenants or agreements set forth in this Agreement or any Ancillary Agreement, which, in the case of any covenant or agreement is not cured within ten days after Seller has been notified of Buyer's intent to terminate this Agreement pursuant to this Section 10.1(a)(4); or

(5) by Seller, if there is or has been a material breach or material failure to fulfill on the party of Buyer of any of the representations, warranties, covenants or

agreements set forth in this Agreement, which, in the case of any covenant or agreement, is not cured within ten days after Buyer has been notified of Seller's intent to terminate this Agreement pursuant to this Section 10.1(a)(5).

(b) Any termination of the obligations of the parties shall be made by written agreement or by written notice from the terminating party to the other parties.

10.2 Effect of Termination. The termination of the obligations of the parties under Section 10.1 shall not relieve any party of any liability for a breach of any warranty, covenant or agreement, or for any misrepresentation under this Agreement or the Deposit Letter, or be deemed to constitute a waiver of any available remedy (including specific performance if available) for any breach or misrepresentation. Nothing contained in this Section 10.2 shall modify in any manner whatsoever the Deposit Letter.

11. Miscellaneous Provisions.

11.1 Expenses. The parties hereto shall pay their own expenses incidental to the preparation of this Agreement, the carrying out of the provisions of this Agreement and the consummation of the transactions contemplated hereby; provided, that if Buyer terminates this Agreement pursuant to Section 10.1(a)(4) and a transaction with Scott Health Care or another party is consummated with respect to the sale by Seller of a substantial portion of the Assets (other than a sale occurring in connection with the liquidation of Seller), then Seller shall pay Buyer upon written request therefore, an amount not in excess of \$125,000 equal to the costs and expenses incurred by Buyer in connection with the preparation of this Agreement and the contemplated consummation of the transactions contemplated hereby, including but not limited to attorneys' fees and expenses and any commitment fees and expenses paid by Buyer.

11.2 Contents of Agreement; Parties in Interest; Etc. This Agreement and the Deposit Letter sets forth the entire understanding of the parties hereto with respect to the transactions contemplated hereby. It shall not be amended or modified except by a written instrument duly executed by each of the parties hereto. Any and all previous agreements and understandings between or among the parties regarding the subject matter hereof, whether written or oral, other than the Deposit Letter, are superseded by this Agreement.

11.3 Assignment and Binding Effect. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of the parties hereto. Buyer shall not assign any of its obligations under this Agreement until after the Closing.

11.4 Waiver. Any term or provision of this Agreement may be waived at any time by the party entitled to the benefit thereof by a written instrument duly executed by such party.

11.5 Notices. Any notice, request, claim, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given when received personally or by telefax (which confirming telefax receipt), by registered or certified mail, postage prepaid, or by recognized courier service, as follows:

If to Buyer, to:

Whitestone Acquisition Corp.
c/o Capricorn Management, G.P.
72 Cummings Road
Stamford, CT 06902
Attention: James M. Better
Telefax: 203-348-4395

with a required copy to:

O'Melveny & Myers
153 E. 53rd St.
New York, New York
Attention: Ira M. Belsky
Telefax: 212-326-2061

Ravin Sarasohn Cook Baumgarten
Fisch & Baime
103 Eisenhower Parkway
Roseland, NJ 07068
Attention: Ken Rosen
Telefax: 201-228-9250

If to Seller, to:

Whitestone Products, Inc.
40 Turner Place
Piscataway, NJ 08854
Attention: William L. Scogin
Chairman
Telefax: 908-752-9169

With a required copy to:

Pullman & Comley, LLC
P.O. Box 7006
850 Main Street
Bridgeport, CT 06601
Attention: Mark I. Fishman
Telefax: 203-576-8888

Ravin Sarasohn Cook Baumgarten
Fisch & Baime
103 Eisenhower Parkway
Roseland, NJ 07068
Attention: Ken Rosen
Telefax: 201-228-9250

or to such other address as the person to whom notice is to be given may have specified in a notice duly given to the sender as provided herein. Such notice, request, claim, demand, waiver, consent, approval or other communication shall be deemed to have been given only when actually received by the addressees.

11.6 Sales, Transfer, Documentary and Ad Valorem Taxes, etc. Seller shall pay all sales, transfer and documentary taxes, if any, due as a result of the transfer of the Assets to Buyer, all affidavit and acknowledgment fees and all other fees directly relating to the transfer of the Assets. All ad valorem and similar taxes relating to the Assets which are assessed on the basis of a time period which includes a period prior to the Closing and a period following the Closing shall be prorated.

11.7 Governing Law. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the Bankruptcy Code (11 U.S.C. §§ 101 et seq.) and the internal laws of the State of New York, without giving effect to principles of conflict of laws.

11.8 Exclusive Jurisdiction. The Parties hereby agree that, without limitation of any party's right to appeal any order of the Bankruptcy Court, (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (b) any and all claims, actions, causes of action, suits, or proceedings relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent and submit to the jurisdiction of the Bankruptcy Court.

11.9 No Benefit to Others. The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto, and in the

case of Sections 8 and 9 hereof the other Buyer Indemnified Parties and Seller Indemnified Parties, and in the case of Section 1.5 hereof the Escrow Holder, and each of their permitted successors and assigns, and they shall not be construed as conferring any rights on any other persons.

11.10 Exhibits; Schedules. The Exhibits hereto and the Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

11.11 Severability. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable in any jurisdiction, the remainder hereof, and the application of such provision to such person or circumstance in any other jurisdiction or to other persons or circumstances in any jurisdiction, shall not be affected thereby, and to this and the provisions of this Agreement shall be severable.

11.12 Counterparts. This Agreement may be executed in any number of counterparts and any party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become binding when one or more counterparts taken together shall have been executed and delivered by the parties. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

11.13 Further Assurances.

(a) At Buyer's request, Seller from time to time after the Closing shall execute, acknowledge and deliver to Buyer such other instruments of conveyance and transfer and shall take such other actions and execute and deliver such other documents, certifications and further assurances as Buyer may request in order to vest more effectively in Buyer, or to put Buyer more fully in possession of, any of the Assets, or to better enable Buyer to pay, discharge or perform any of the liabilities or obligations to be assumed by Buyer pursuant to Section 1.3 hereof.

(b) Each party will use its best efforts to cause all conditions to its and other parties' obligations hereunder to be timely satisfied and to perform and fulfill all obligations on its part to be performed and fulfilled under this Agreement, to the end that the transactions contemplated by this Agreement shall be effected substantially in accordance with its terms. Seller and Buyer will make any and all filings required in the Proceedings. Seller and Buyer shall furnish each other such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of necessary filings under the provisions of such laws.

11.14 No Personal Liability. No personal liability shall attach to any officer, director or affiliate of Seller or Buyer, with respect to any representation or warranty provided

herein, other than a fraudulent or knowing misrepresentation made by such officer, director or affiliate.

IN WITNESS WHEREOF, the parties hereto have duly executed this Asset Purchase Agreement on the date first written.

WHITESTONE PRODUCTS, INC.

By: *William L. Scogin*
William L. Scogin
Chairman

WHITESTONE ACQUISITION CORP.

By: *James M. Better*
James M. Better
Vice President

EXHIBITS

- A-1 - Terminated Equipment Leases
- A-2 - Assumed Equipment Leases
- B - Additional Excluded Assets
- C - Form of Junior Subordinated Note
- D - Form of Escrow Agreement
- E - Form of Consulting Agreement
- F - Form of Sale Order
- G - Form of Opinion of Seller's Counsel
- H - Form of Opinion of Buyer's Counsel
- I - Form of Unsecured Senior Subordinated Note

SCHEDULES

- 1.1 - Assets
- 1.3(a) - Assumed Liabilities
- 2.2(a) - Items to be Delivered by Seller
- 3.5 - Accounts Receivable
- 3.6 - Obsolete Inventory or Slow Moving Inventory
- 3.7 - Existing Condition
- 3.9 - Assets and Properties
- 3.11 - Litigation
- 3.14 - Material Contracts
- 3.15 - Additional Information
- 3.16(a) - Benefit Plans
- 3.16(b) - Benefit Plans and Arrangements
- 3.17(a) - Environmental Matters
- 8.1(b) - Material Adverse Change

SCHEDULE 1.1 - CERTAIN ASSETS

55149.9/SXD/51393.1

Patents, copyrights, and other intellectual property.

TRADEMARKS

<u>Trademark</u>	<u>Reg. No.</u>	<u>Date</u>
DABS .	661,376	05/06/58
DISPOSEZE	787,586	03/30/65
AMBEZE	1,143,082	12/16/80
PRETTY BABY*	1,660,815	10/15/91
ULTRA SHIELD**	1,294,094	09/11/84
MAXISHIELD	1,344,153	06/25/85
WONCE***	1,393,992	05/20/86
WORDPERFECT	1,504,533	09/20/88
WHITESTONE PRODUCTS***	1,491,892	06/14/88
ROMPERS	1,691,437	06/09/92
EXCELGUARD***	1,299,398	10/09/84
EXCELSORS	UNREGISTERED	

* PRETTY BABY also subject to foreign trademark application Reg. No. 315,570 in Taiwan.

** ULTRA SHIELD is also subject to U.S. trademark application No. 73/754,609 and Canadian trademark application No. 627,993.

*** Trademark registration may have been cancelled pursuant to Section 8.

PATENTS**U.S. Patent No. 4,778,458**

Inventor - David E. Gronostajski
Date - 10/18/88
Invention - Disposable sanitary absorbent incontinent pad having a covered layer fastened with impervious adhesive at waist and leg areas.

U.S. Patent No. 4,547,243

Inventor - David L. Brody
Date - 10/15/85
Invention - Method and apparatus for continuously attaching elastic strands to disposable absorbent products.

U.S. Patent No. 3,885,566

Inventor - E.J. Jacobs
Date - 05/27/75
Invention - Disposable diaper with integral adhesive reinforcing areas.

LICENSES

Licensor - McNeil - PPC, Inc.
Licensee - Whitestone Paper Products Company
Date - July 4, 1991
Subject - U.S. Patent Nos. 4,938,754 and 4,388,075
Status - Whitestone Products exercised its right to buy out all of its subsequent royalty and reporting obligations under the license agreement on or about July 1992.

55149.9/SXD/55532.1

EXHIBIT B - ADDITIONAL EXCLUDED ASSETS

1. Any and all rights to tax refunds.
2. Any and all other tax attributes of any nature whatsoever.
3. All cash and cash equivalents, including funds held in bank accounts and/or money market accounts.
4. Any and all marketable securities.
5. Any and all prepayments, deposits (including utility deposits) and rights to refunds (including rights to refunds of insurance premiums).
6. Any and all causes of action granted to Seller or its bankruptcy estate under the Bankruptcy Code or available to Seller or its bankruptcy estate under, *inter alia*, Section 544 of the Bankruptcy Code.
7. Any and all claims and/or causes of action available to Seller against Arquest, Inc., its affiliates and/or other persons or entities or otherwise resulting from, connected with, or arising out of, dealings between Seller and Arquest, Inc. and/or its affiliates.
8. Any and all claims or causes of action available to Seller against previous officers or directors of Seller.
9. All rights of Seller under the Agreement, the Escrow Agreement or any other agreement or document executed pursuant to the Agreement.
10. Any and all rights of Seller under any of the Contracts which are not being assigned to Buyer at the Closing.
11. Any and all interests in real estate or in leasehold improvements which revert to the landlord under the terms of the lease under which the Seller took possession of the subject real property.
12. Any and all rights of Seller in the employee benefit plans identified in Schedule 3.16(a).
13. Authorization to Discharge Stormwater to Surface Water issued by New Jersey Department of Environmental Protection and Energy, Bureau of Stormwater Permitting for 40 Turner Place, Piscataway, New Jersey facility.

14. Uniform Hazardous Waste Manifest issued by State of New Jersey Department of Environmental Protection and Energy, Hazardous Waste Regulation Program for 40 Turner Place, Piscataway, New Jersey facility.
15. Equipment lease agreement with Holmes Leasing for security system of New Jersey facility.
16. Equipment lease agreement with Manifest Group/Security System of California facility.
17. Equipment lease agreement with United Telephone for Meridian telephone system in New Jersey.
18. Equipment lease with Xerox Corporation for photocopier machines in New Jersey.
19. Equipment lease with AT&T Credit Corp. for California facility telephone system.