

02-18-2000

FORM PTO-1594
1-31-92

MPD
1.24.00



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

101271079

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

1. Name of conveying party(ies):
Roald Marth Learning Systems, Inc.

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

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

2. Name and address of receiving party(ies):
Name: Merrill Training & Technology, Inc.
Internal Address: _____
Street Address: One Merrill Circle
City: St. Paul State: MN ZIP: 55108

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

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

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other Asset Purchase Agreement
 Execution Date: February 21, 1997

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 1886363, 1801536

Additional numbers attached? Yes No

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

Name: Janal M. Kalis
Internal Address: _____
Street Address: 121 South 8th Street, Suite 1600
City: Minneapolis State: MN ZIP: 55402

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41): \$65

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
19-0743
(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.

Gillian B. Uecker *GBUecker* January 17, 2000
Name of Person Signing Signature Date

Total number of pages comprising cover sheet: 1

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

Do not detach this portion

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01 FC:481
02 FC:482

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25.00 OFF

TRADEMARK
REEL: 002023 FRAME: 0001

AN-778

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#23



MINNESOTA SECRETARY OF STATE AMENDMENT OF ARTICLES OF INCORPORATION

BEFORE COMPLETING THIS FORM, PLEASE READ INSTRUCTIONS LISTED BELOW.

CORPORATE NAME: (List the name of the company prior to any desired name change)

Merrill/Superstar Computing Co.

This amendment is effective on the day it is filed with the Secretary of State, unless you indicate another date, no later than 30 days after filing with the Secretary of State.

The following amendment(s) of articles regarding the above corporation were adopted (insert full text of newly amended article(s) indicating which article(s) is (are) being amended or added.) If the full text of the amendment will not fit in the space provided, attach additional numbered pages. (Total number of pages including this form 1)

ARTICLE 1

The name of the corporation is Merrill Training & Technology, Inc. (the "Corporation").

M

This amendment has been approved pursuant to Minnesota Statutes chapter 302A or 317A. I certify that I am authorized to execute this amendment and I further certify that I understand that by signing this amendment, I am subject to the penalties of perjury as set forth in section 609.48 as if I had signed this amendment under oath.

Steven J. Machor, Secretary
(Signature of Authorized Person)

INSTRUCTIONS

1. Type or print with black ink.
2. A Filing Fee of \$35.00, made payable to the Secretary of State.
3. Return completed forms to:

Secretary of State
180 State Office Building
St. Paul, MN 55155-1299
(612)296-2803

08021340 Rev. 8/92

FOR OFFICE USE ONLY

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

APR 29 1998

Jan Anderson Shove
Secretary of State

M

075380

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Roald March Learning Systems, Inc.

Mark: SUPERSTAR Registration No. 1886363

Filed November 12, 1993

Mark: TAX BREAKER Registration No. 1801536

Filed February 18, 1992

Docket No.: 1032.00000D

Attn: Box Assignment
Hon. Commissioner for Patents and Trademarks
Washington, D.C. 20231


We are transmitting herewith the attached:

- X Documents affecting title to two trademark registrations (32 pgs.) and Recordation Form Cover Sheet (1 pg.).
- X A check in the amount of \$65.00 to cover the Assignment Recording Fees.
- X A return postcard.
- Other: ____.

Please charge any additional required fees or credit overpayment to Deposit Account No. 19-0743.

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described above, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Attn: Box Assignment, Hon. Commissioner for Patents and Trademarks, Washington, D.C. 20231, on this ____ day of January, 2000.

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938, Minneapolis, MN 55402 (612-373-6900)

By: 
Name: Gillian B. Uecker

ASSET PURCHASE AGREEMENT

Dated as of February 21, 1997

By and Among

Merrill/Superstar Computing Company

Roald Marth Learning Systems, Inc.

And

Roald Marth

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LIST OF EXHIBITS

Name of Exhibit

Number of Exhibit

Trade and Other Names to be Purchased
Excluded Assets
List of Assumed Liabilities
Disclosure Schedule
Form of Employment Agreement

Exhibit 1.1(a)
Exhibit 1.1(b)
Exhibit 1.2
Exhibit 2
Exhibit 1.4(e)

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of February 21, 1997 is by and among Merrill/Superstar Computing Company, a Minnesota corporation ("Purchaser"), Roald Marth Learning Systems, Inc., a Minnesota corporation ("Company"), and Roald Marth, an individual ("Shareholder").

A. The Company is engaged in the business of training for the real estate industry and related sales of products and services (the "Business").

B. The parties hereto wish to provide for the terms and condition upon which the Purchaser will acquire substantially all of the business and assets of the Company.

C. The parties hereto wish to make certain representations, warranties, covenants and agreements in connection with the purchase of the business and the assets of the Company and also to prescribe various conditions to such transaction.

Accordingly, and in consideration of the representations, warranties, covenants, agreements and conditions herein contained, the parties hereto agree as follows:

1. PURCHASE OF ASSETS

1.1. *Assets to be Purchased*

- (a) The Company hereby sells, transfers, conveys, assigns and delivers to the Purchaser and the Purchaser hereby purchases from the Company all of the business, assets, properties and rights used in or arising out of the operation of the business of the Company, as a going concern, of every nature, kind and description, tangible and intangible, real, personal or mixed, wheresoever located and whether or not carried or reflected on the books and records of Company or any subsidiary or affiliate of the Company including, without limitation, real property that is leased by the Company or in which it has any right or interest; personal property that is owned or leased by the Company or in which it has any right or interest; franchises; all right, title and interest in and to the use of the Company's corporate names, trade names and other names under which it conducts business or which have been reserved for use by the Company, including, without limitation, any names reserved in connection with the internet, and any derivatives or combinations thereof, including, without limitation, those listed in Exhibit 1.1(a) hereto; logos, trademarks, trademark registrations and trademark applications or registrations thereof, including the goodwill associated therewith; the goodwill of the Company; copyrights, copyright applications and copyright registrations; patents and patent applications; rights under or pursuant to licenses by or to the Company; development and prototype hardware, software, processes, formula, trade secrets, inventories and royalties, including all rights to

sue for past infringements; leaseholds and other interests in land, inventory (materials, work in process, finished goods), equipment, machinery, furniture, fixtures, motor vehicles and supplies; accounts receivables; prepaid expenses of the Company, including, without limitation, residual payments due the Company under equipment leases; insurance policies, contracts, purchase orders, customers, lists of customers and suppliers, sales representative agreements, and all favorable business relationships, causes of action, judgments, claims and demands of whatever nature; all credit balances of or inuring to the Company, under any state unemployment compensation plan or fund; employment contracts; obligations of the present and former officers and employees and of individuals and corporations; rights under joint venture agreements or arrangements; files, papers and records; and all the assets as reflected on the Latest Unaudited Balance Sheet (as hereinafter defined), with only such dispositions of such assets reflected on the Latest Unaudited Balance Sheet as will have occurred in the ordinary course of business between the date thereof and the Closing and which are permitted by the terms hereof (the foregoing are sometimes collectively called the "Assets").

- (b) Notwithstanding the foregoing, the Company will not sell, transfer, convey, assign or deliver to the Purchaser, and the Purchaser will not purchase from the Company, the following assets:
- (i) the consideration delivered to Company pursuant to this Agreement for the Assets;
 - (ii) the minute books, corporate seal and stock records of the Company;
 - (iii) shares of the capital stock of Company, including shares held by Company as treasury shares; and
 - (iv) the assets specifically described on Exhibit 1.1(b) hereto.

1.2. *Liabilities Assumed.*

The Purchaser hereby assumes the liabilities of the Company as set forth on Exhibit 1.2 (the "Assumed Liabilities"). Except for the Assumed Liabilities, the Purchaser has not agreed to pay, will not be required to assume and will have no liability or obligation, direct or indirect, absolute or contingent, of the Company or any affiliates or associates or of any other person (the "Retained Liabilities"), including without limitation:

- (a) any debt, liability or obligation of the Company, or any of its affiliates or associates, direct or indirect, known or unknown, fixed, contingent or otherwise, that (i) is unrelated to the Assets; or (ii) relates to the Assets and is based upon or arises from any act, omission, transaction, circumstance, sale of goods or services, state of facts or other condition occurring or existing on or before the date hereof, whether or not then known, due or payable, except to the extent that the same was expressly assumed by the Purchaser as an Assumed Liability;

- (b) any obligation for Taxes (as hereinafter defined) related to any of the Assets for any Tax period or portion thereof ending on or before the Closing Date and any obligation for other Taxes of the Company;
- (c) the events, circumstances or conditions described in Section 2.22 to the Disclosure Schedule; any pollution or threat to human health or the environment or violation of any Environmental and Occupational Safety and Health Law (as hereinafter defined) that is related in any way to the Company's or any previous owner's or operator's management, use, control, ownership or operation of the Assets, any real property or the business of Company including, without limitation, all on-site and off-site activities involving Environmentally Regulated Materials (as hereinafter defined), and that occurred, existed, arises out of conditions or circumstances that occurred or existed, or was caused, in whole or in part, on or before the date hereof, whether or not the pollution or threat to human health or the environment or violation of any Environmental and Occupational Safety and Health Law is described in the Disclosure Schedule; and any Environmental Claim (as hereinafter defined) against any person or entity whose liability for such environmental claim the Company has or may have assumed or retained either contractually or by operation of law; and
- (d) any liability of Company to any of the Company's employees or independent contractors, whether pursuant to the employment agreements between such employees or independent contractors and the Company or otherwise.

The Company hereby conveys, transfers and assigns, and the Purchaser hereby accepts and assumes, those contracts, agreements and commitments listed on Exhibit 1.2 to be assumed by the Purchaser (the "Assumed Contracts").

1.3. *Purchase Price.*

- (a) The total consideration to be paid by the Purchaser to the Company for the Assets will be an amount equal to the Assumed Liabilities as of the date hereof, which the parties agree is Two Million Seven Hundred Forty-Five Thousand Two Hundred Eighty-Five Dollars (\$2,745,285) (the "Initial Purchase Price"), plus any Contingent Purchase Price, as defined in Section 1.3(c) (together, the "Purchase Price").
- (b) Contemporaneous with the execution of the Agreement, payment of the Initial Purchase Price shall be made by either (i) to the extent permissible, the assumption of the Assumed Liabilities by the Purchaser, or (ii) the payment by Purchaser of the Assumed Liabilities. The parties hereto acknowledge and agree that no portion of the Initial Purchase Price will be paid to the Company.
- (c) In addition to the Initial Purchase Price, the Purchaser will pay to the Company, for each of the three performance periods described below (the "Performance Periods"), the amounts described below to the extent that the Purchaser exceeds

the minimum Operating Income (as defined below) with respect to each such period, payable at the time and pursuant to the procedures set forth in this Section 1.3 (the aggregate of such amounts is herein referred to as the "Contingent Purchase Price')

<u>Performance Period</u>	<u>Minimum Operating Income</u>	<u>Contingent Purchase Price Payment</u>
March 1, 1997 - June 30, 1998	\$1,500,000	\$1,000,000
July 1, 1998 - June 30, 1999	\$3,000,000	\$1,500,000
July 1, 1999 - June 30, 2000	\$5,000,000	\$2,500,000

Any such Contingent Purchase Price shall be paid in same day funds and shall be deemed to consist of interest compounded semi-annually at the applicable federal mid-term interest rate, as determined in accordance with the provisions of Section 1274(d) of the Internal Revenue Code of 1986, as amended (the "Code").

- (d) For purposes of this Section 1.3, "Operating Income" means Net Sales (as defined below) less, (i) Cost of Sales (as defined below), and (ii) all selling, marketing, general and administrative, and bad debt expenses incurred by the Purchaser in connection with the Business. "Net Sales" means the gross invoice price with respect to sales made by the Purchaser (excluding sales relating to product lines of the Purchaser, or any affiliate of the Purchaser, that existed on the date hereof) less the sum of the following deductions where applicable: cash, trade or quantity discounts, sales, use, or other excise or similar taxes imposed upon particular sales, and allowances or credits to customers because of rejections or returns, as calculated in accordance with generally accepted accounting principles consistently applied. "Cost of Sales" means, with respect to Net Sales of the Purchaser, all costs of sales as determined under generally accepted accounting principles. Operating Income shall be calculated taking into account the effect of federal and state income taxes.
- (e) Within (120) one hundred twenty days after the close of each of the Performance Periods, the Purchaser shall deliver to the Company a statement, prepared by Purchaser, setting forth in reasonable detail the Purchaser's calculation of Operating Income for the previous Performance Period and the amount of the Contingent Purchase Price, if any, to be paid to the Company pursuant to this Section 1.3 (the "Contingent Purchase Price Statement").

- (f) Within thirty (30) days after receipt of the Contingent Purchase Price Statement, the Company shall notify Purchaser if it disagrees with the calculation of the Contingent Purchase Price. If such notice is not given within thirty (30) days (or at such time as the Company provides written notice to Purchaser that it has no objection to such calculation), the Contingent Purchase price Statement provided by Purchaser will be final and conclusive for all purposes and Purchaser shall thereafter have no further liability to the Company pursuant to this Section 1.3 related to the Contingent Purchase Price, if any, for such Performance Period. If the parties are not able to resolve their differences within sixty (60) days of the receipt of the Contingent Purchase Price Statement, the Purchaser and the Company agree to retain the Minneapolis office of the accounting firm of Price Waterhouse to arbitrate the dispute and render a decision within thirty (30) days of such retention, which decision shall be final and binding for all purposes. Any award pursuant to this Section 1.3(f) may be entered and enforced by any court having jurisdiction over the matter and the parties hereby consent and commit themselves to the jurisdiction of the courts of Minnesota for the purposes of the enforcement of any such award. Purchaser, on the one hand, and Company, on the other hand, shall each pay one-half of the costs of services rendered by said accounting firm.
- (g) Within five (5) days after the earlier of (i) the receipt by Purchaser of written notice from the Company that it has no objection to the calculation of the Contingent Purchase Price for a Performance Period pursuant to Section 1.3 hereof, (ii) the expiration of the 30-day period for giving notice of disagreement with such calculation, if no such notice is given, or (iii) the resolution of any dispute pursuant to Section 1.3, Purchaser will by wire transfer of immediately available funds make payment to the Company of the Contingent Purchase Price, if any, for such Performance Period.
- (h) The Purchase Price will be allocated among the Assets in the manner required by Section 1060 of the Code. In allocating the Purchase Price, the Purchaser and the Company will negotiate in good faith the values of the Assets and the resulting allocation of the Purchase Price among the various assets; it being understood that such determination will be binding on the Purchaser and the Company only for the purposes of U.S. Federal, state and local taxation. The Company and the Purchaser will file all Tax Returns and tax reports (including IRS Form 8594) in accordance with and based upon such allocation and will take no position in any Tax Return, tax proceeding or tax audit which is inconsistent with such allocation.

1.4. ***Instruments of Transfer to Purchaser.***

The Company and the Shareholder agree to deliver to the Purchaser:

- (a) Such bills of sale, endorsements, assignments, deeds and other good and sufficient instruments of conveyance and transfer, in form and substance reasonably

satisfactory to the Purchaser and its counsel, as will be required to vest in the Purchaser title to the Assets, including without limitation:

- (i) General bills of sale vesting in the Purchaser good and marketable title to all of the Assets;
 - (ii) Appropriate endorsements and assignments of the contracts, licenses, agreements, permits, plans, commitments and other binding arrangements included in the Assets;
 - (iii) Specific bills of sale, endorsements and assignments transferring to the Purchaser the Intellectual Property Rights; and
 - (iv) Such written consents, agreements and other instruments as the Purchaser will reasonably request to enable it to use the name "Roald Marth Learning Systems", "Superstar Computing" and all other trade names of, or used by, the Company, and all other variations or combinations thereof except as excluded in Exhibit 1.1(b) herein; and
- (b) All data relating to the Assets. Simultaneously with such delivery, the Company agrees to take all actions necessary to put the Purchaser in actual possession and operating control of the Assets.
 - (c) All Consents required to be obtained and delivered by the Company as set forth in Section 2.5 of the Disclosure Schedule.
 - (d) An executed original of an employment agreement between Roald Marth and Purchaser, substantially in the form as Exhibit 1.4(d) hereto.
 - (e) An assignment of the Promissory Note in the amount of \$250,000 dated January 29, 1997 in favor of Merrill Corporation from the Shareholder to the Company in a form satisfactory to Purchaser.
 - (f) An assignment of all assets owned by Elizabeth Chessen and used by the Company or related to the Business.

2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE SHAREHOLDER

The Company and the Shareholder, jointly and severally, hereby represent and warrant to the Purchaser as of the date hereof as follows:

2.1. ***Disclosure Schedule.***

The disclosure schedule attached as Exhibit 2 hereto (the "Disclosure Schedule") is divided into sections which correspond to the subsections of this Section 2. The Disclosure Schedule is accurate and complete. Nothing in the Disclosure Schedule will be deemed adequate to disclose an exception to a representation or warranty made herein, unless the Disclosure Schedule identifies the exception with reasonable particularity and describes the relevant facts in reasonable detail. Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item will not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself). Disclosures in any subsection thereof will not constitute disclosure for purposes of any other subsection and any other section or subsection of this Agreement or any exhibit to or other writing which is designated herein as being part of this Agreement unless specifically referenced or cross referenced in any subsection hereof.

2.2. ***Corporate Organization.***

The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Minnesota, has full corporate power and authority to carry on its businesses as they are now being conducted and to own, lease and operate the properties and assets used in the conduct of its businesses, and has heretofore delivered to the Purchaser complete and correct copies of its articles of incorporation, as presently in effect.

2.3. ***Authorization.***

The Company has full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated herein. The Company, its board of directors and shareholders have taken all action required by law, the Company's articles of incorporation and otherwise to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein. This Agreement has been duly and validly executed and delivered by the Company and the Shareholder and no other corporate action is necessary. This Agreement is the valid and binding legal obligation of the Company and the Shareholder, enforceable against each in accordance with its terms.

2.4. ***Non-Contravention.***

Except as set forth in the Disclosure Schedule, neither the execution, delivery and performance of this Agreement, nor the consummation of the transactions contemplated herein or therein will: (i) violate or be in conflict with any provision of the articles of incorporation of the Company; or (ii)(A) be in conflict with, or constitute a default, however defined (or an event which, with the giving of due notice or lapse of time, or both, would constitute such a default), under, or cause or permit the acceleration of the

maturity of, or give rise to any right of termination, cancellation, imposition of fees or penalties under, any debt, note, bond, lease, mortgage, indenture, license, obligation, contract, commitment, franchise, permit, instrument or other agreement or obligation to which the Company is a party or by which the Company or any of the Assets is or may be bound (unless with respect to which defaults or other rights, requisite waivers or consents will have been obtained at or prior to the Closing) or (B) result in the creation or imposition of any mortgage, pledge, lien, security interest, encumbrance, restriction, adverse claim or charge of any kind, upon the Assets under any debt, obligation, contract, agreement or commitment to which the Company is a party or by which the Company or any of the Assets is or may be bound; or (iii) violate any statute, treaty, law, judgment, writ, injunction, decision, decree, order, regulation, ordinance or other similar authoritative matters (sometimes hereinafter separately referred to as a "Law" and sometimes collectively as "Laws") of any foreign, federal, state or local governmental or quasi-governmental, administrative, regulatory or judicial court, department, commission, agency, board, bureau, instrumentality or other authority (hereinafter sometimes separately referred to as an "Authority" and sometimes collectively as "Authorities").

2.5. *Consents and Approvals.*

Except as set forth in the Disclosure Schedule, with respect to the Company, no consent, approval, order or authorization of or from, or registration, notification, declaration or filing with (hereinafter sometimes separately referred to as a "Consent" and sometimes collectively as "Consents") any individual or entity, including without limitation any Authority, is required in connection with the execution, delivery or performance of this Agreement by the Company, the transfer of the Assets to the Purchaser, or the consummation by the Company of the transactions contemplated herein or therein

2.6. *Absence of Undisclosed Liabilities.*

The Company does not have any liabilities, obligations or claims of any kind whatsoever whether secured or unsecured, accrued or unaccrued, fixed or contingent, matured or unmatured, direct or indirect, contingent or otherwise and whether due or to become due (referred to herein individually as a "Liability" and collectively as "Liabilities"), that could subject the Purchaser to any Liability other than: (a) Assumed Liabilities; (b) Liabilities that are reserved for or disclosed in the Latest Unaudited Balance Sheet; (c) Liabilities incurred by the Company in the ordinary course of business after the date of the Latest Unaudited Balance Sheet (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement or violation of Law) and which have been disclosed to Purchases in writing; or (d) Liabilities for Assumed Contracts (other than any express executory obligations that might arise due to any default or other failure of performance by the Company prior to the Closing Date).

2.7. *Real Properties.*

- (a) The Company does not own any real property. The Company has a valid leasehold interest in and to the real property listed in the Disclosure Schedule (the "Real Property"). The Company is not, and to the best of the Company's knowledge the landlords are not, in default under any of the terms of such leases. To the best of the Company's knowledge, the Real Property is free from structural defects, in good operating condition and repair, with no material maintenance, repair or replacement having been deferred or neglected, is suitable for the intended use and free from all other material defects, normal wear and tear accepted. To the best of the Company's knowledge, the Real Property and its present use conforms in all material respects to all occupational, safety or health, environmental, zoning, planning, subdivision, platting and similar laws, and there is, to the knowledge of the Company, no such law contemplated that would affect adversely the right of Company to operate and use the Real Property. All public utilities necessary for the use and operation of any facilities on the Real Property are available for use or access at such property and there is no legal or physical impairment to free ingress or egress from any of the Real Property.
- (b) To the best of the knowledge of the Company and shareholder, all certificates of occupancy, permits and licenses of all governmental authorities having jurisdiction over the Real Property required to have been issued to enable the Real Property to be lawfully occupied and used for all of the principal purposes for which it is currently occupied and used have been lawfully issued and are, as of the date hereof, in effect.
- (c) The Company has not received any written notice of any pending, threatened or contemplated condemnation proceeding affecting the Real Property or any part thereof, or of any sale or other disposition of the Real Property or any part thereof in lieu of condemnation.

2.8. *Machinery, Equipment, Vehicles and Personal Property.*

Except as set forth in the Disclosure Schedule, the Company has good and marketable right, title and interest in and to, or a leasehold interest in and to, the machinery, equipment, vehicles and other personal property constituting the Assets. Except as set forth in the Disclosure Schedule, all of such leasehold interests relating to machinery, equipment, vehicles and other personal property are valid and in full force and effect and enforceable in accordance with their terms and there does not exist any material violation, breach or default thereof or thereunder. Except as set forth in the Disclosure Schedule, none of such machinery, equipment, vehicles or other personal property is subject to any mortgage, pledge, lien or security interest of any kind or nature (whether or not of record). Except as set forth in the Disclosure Schedule, the machinery, equipment, vehicles and other personal property of the Company which are necessary to the conduct of the business of the Company, are purchased "AS IS" with all faults and defects.

2.9. *Inventories.*

All inventory of the Company (the "Inventory"): (i) are of a quality and quantity usable in the ordinary course of business; and (ii) meet in the aggregate the stricter of industry or Company specifications applicable to such Inventory.

2.10. *Receivables and Payables.*

- (a) Except as set forth on the Disclosure Schedule, (i) the Company has good right, title and interest in and to all its accounts and notes receivable and trade notes and trade accounts constituting the Assets (the "Accounts Receivable"); (ii) none of such Accounts Receivable is subject to any lien; (iii) except to the extent of applicable reserves shown in the Latest Unaudited Balance Sheet, all of the Accounts Receivable owing to the Company constitute valid and enforceable claims arising from bona fide transactions in the ordinary course of business, and there are no claims, refusals to pay or other rights of set-off against any thereof; and (iv) the aging schedule of the Accounts Receivable previously furnished to the Purchaser is complete and accurate.
- (b) All accounts payable and notes payable by the Company to be assumed by the Purchaser pursuant to Section 1.2 arose in bona fide transactions in the ordinary course of business.

2.11. *Intellectual Property Rights.*

The Company owns or has the unrestricted right to use all intellectual property rights relating to the Business, including without limitation the patents, patent applications, patent rights, registered and unregistered trademarks, trademark applications, trade names, other names under which it conducts business or which have been reserved for its use, including, without limitation, any names reserved in connection with the internet, service marks, service mark applications, copyrights, computer programs and other computer software, inventions, know-how, trade secrets, technology, proprietary processes and formulae (collectively, "Intellectual Property Rights") previously used in, or necessary or required for use in connection with the Assets and for the conduct of the businesses of the Company as presently conducted, free and clear of all liens. All Intellectual Property Rights are listed or described on the Disclosure Schedule. Except as set forth on the Disclosure Schedule, the use of all Intellectual Property Rights necessary or required for the conduct of the businesses of the Company as presently conducted and as proposed to be conducted does not and will not infringe or violate or allegedly infringe or violate the intellectual property rights of any person or entity. Except as described on the Disclosure Schedule, the Company (i) does not own or use any Intellectual Property Rights pursuant to any written license agreement; and (ii) has not granted any person or entity any rights, pursuant to written license agreement or otherwise, to use the Intellectual Property Rights.

2.12. *Litigation.*

Except as set forth on the Disclosure Schedule, there is no action, suit, proceeding at law or in equity by any person or entity, or any arbitration or any administrative or other proceeding by or before (or any investigation by) any Authority, pending or, to the best of the knowledge of the Company and Shareholder, threatened, against the Company or any of the Assets, or which questions or challenges the validity of this Agreement or any action taken or to be taken by the parties hereto pursuant to this Agreement or in connection with the transactions contemplated herein, and there does not exist any valid basis for any such action, proceeding or investigation. The Company is not subject to any judgment, order or decree entered in any lawsuit or proceeding to which it is a party which may have a Material Adverse Effect.

2.13. *Tax Matters.*

There are no facts or circumstances which could, directly or indirectly, subject the Purchaser or any of its affiliates to any Liability of any nature for Taxes relating to or arising out of the operation or the businesses of the Company, or the failure on the part of the Company to file a correct Tax Return, or subject the Assets to any lien resulting from the failure to pay, withhold or otherwise satisfy outstanding Taxes of the Company. For all purposes of this Agreement, the term "Taxes" means all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, real or personal property, windfall profits, customs, duties or other taxes, together with any interest and any penalties, additions to tax or additional amounts with respect thereto, and the term "Tax" means any one of the foregoing Taxes. In addition, the term "Tax Returns" means all returns, declarations, reports, statements and other documents required to be filed with any Authority in respect of Taxes, and the term "Tax Return" means any one of the foregoing Tax Returns.

2.14. *Benefit Plans.*

There are no facts or circumstances which could, directly or indirectly, subject the Purchaser or any of its affiliates to any Liability of any nature with respect to any pension, welfare, incentive, perquisite, paid time off, severance or other benefit plan, policy, practice or agreement sponsored, maintained or contributed to by the Company or any affiliate, to which the Company or any affiliate is a party or with respect to which the Company or any affiliate could have any liability.

2.15. *Contracts and Commitments; No Default.*

- (a) Except as set forth in the Disclosure Schedule, the Company:
 - (i) has no written contract, commitment, agreement or arrangement with any person or, to the Company's knowledge, any oral contract, commitment, agreement or arrangement which (A) requires payments individually in excess of \$5,000 annually or in excess of \$25,000 over its term (including

without limitation periods covered by any option to extend or renew by either party) and (B) is not terminable on thirty (30) days' or less notice without cost or other Liability;

- (ii) does not pay any person or entity cash remuneration at the annual rate (including without limitation guaranteed bonuses) of more than \$25,000 for services rendered;
 - (iii) is not restricted by agreement from carrying on its businesses or any part thereof anywhere in the world or from competing in any line of business with any person or entity;
 - (iv) is not subject to any obligation or requirement to provide funds to or make any investment (in the form of a loan, capital contribution or otherwise) in any person or entity;
 - (v) is not party to any agreement, contract, commitment or loan to which any of its directors, officers or shareholders or any "affiliate" or "associate" (as defined in Rule 405 as promulgated under the Securities Act of 1933) (or former affiliate or associate) thereof is a party;
 - (vi) is not subject to any outstanding sales or purchase contracts, commitments or proposals which is anticipated to result in any loss upon completion or performance thereof;
 - (vii) is not party to any purchase or sale contract or agreement that calls for aggregate purchases or sales in excess over the course of such contract or agreement of \$5,000 or which continues for a period of more than twelve months (including without limitation periods covered by any option to renew or extend by either party) which is not terminable on sixty (60) days' or less notice without cost or other Liability at or any time after the Closing;
 - (viii) is not subject to any contract, commitment, agreement or arrangement with any "disqualified individual" (as defined in Section 280G(c) of the Code) which contains any severance or termination pay liabilities which would result in a disallowance of the deduction for any "excess parachute payment" (as defined in Section 280G(b)(1) of the Code) under Section 280G of the Code; and
 - (ix) has no distributorship, dealer, manufacturer's representative, franchise or similar sales contract relating to the payment of a commission.
- (b) True and complete copies (or summaries, in the case of oral items) of all items disclosed pursuant to Section 2.15 have been made available to the Purchaser for review. Except as set forth in the Disclosure Schedule, all such items are valid

and enforceable by and against the Company in accordance with their respective terms; the Company is not in breach, violation or default, however defined, in the performance of any of its obligations thereunder, and no facts and circumstances exist which, whether with the giving of due notice, lapse of time, or both, would constitute such a breach, violation or default thereunder or thereof; and, to the best of the knowledge of the Company and Shareholder, no other parties thereto are in breach, violation or default, however defined, thereunder or thereof, and no facts or circumstances exist which, whether with the giving of due notice, lapse of time, or both, would constitute such a breach, violation or default thereunder or thereof.

2.16. *Orders, Commitments and Returns.*

Except as set forth in the Disclosure Schedule, all accepted and unfulfilled orders for the sale of products and the performance of services entered into by the Company and all outstanding contracts or commitments for the purchase of supplies, materials and services were made in bona fide transactions in the ordinary course of business. Except as set forth in the Disclosure Schedule, there are no claims against the Company to return products of the Company by reason of alleged over-shipments, defective products or otherwise, or of products in the hands of customers, retailers or distributors under an understanding that such products would be returnable.

2.17. *Labor Matters.*

The Disclosure Schedule contains a complete list of all employees and independent contractors of the Company as of the date hereof, including such employees' job title and current rate of pay. The Company is and has been in material 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 practice. No collective bargaining agreement is binding and enforceable against the Company or currently being negotiated by the Company. There are no facts or circumstances which could, directly or indirectly, subject the Purchaser or any of its affiliates to any Liability of any nature with respect to any current or former employee of the Company or with respect to any employment practice, policy or agreement maintained by the Company. Upon termination of the employment of any person, neither Purchaser nor any affiliate of Purchaser will, by reason of anything done at or prior to or as of the date hereof, be liable to any of such person for so-called "severance pay" or any other payments.

2.18. *Dealers and Suppliers.*

Except as set forth in the Disclosure Schedule, there has not been in the twelve month period prior to the date hereof any material adverse change in the business relationship of the Company with any dealer or supplier to the Company.

2.19. *Permits and Other Operating Rights.*

To the best of the knowledge of the Company and Shareholder, the Company does not require the Consent of any Authority to permit it to operate in the manner in which it presently is being operated, and possesses all permits and other authorizations from all Authorities presently required necessary to permit it to operate in the manner in which it presently is conducted.

2.20. *Compliance with Law.*

Without limiting the scope of any other representations or warranties contained in this Agreement, but without intending to duplicate the scope of such other representations and warranties, to the best of the knowledge of the Company and Shareholder, the Assets, properties, businesses and operations of the Company are and have been in compliance with all Laws applicable to the ownership and conduct of its assets, properties, businesses and operations. There are no outstanding and unsatisfied deficiency reports, plans of correction, notices of noncompliance or work orders relating to any such Authorities, and no such discussions with any such Authorities are scheduled or pending.

2.21. *Assets of Business.*

The Assets constitute all of the assets held for use or used primarily in connection with the business of the Company and are used to conduct such businesses as presently conducted.

2.22. *Environmental and Safety Matters.*

- (a) There are no facts or circumstances which could, directly or indirectly, subject the Purchaser, or any of its affiliates to any liability of any nature whatsoever arising out of or related to any pollution or threat to human health or the environment or violation of any Environmental and Occupational Safety and Health Law (as hereinafter defined) that is related in any way to the Company or any affiliate or any previous owner's or operator's management, use, control, ownership, or operation of the Assets, any property, or the business of the Company or any affiliate, including without limitation any on-site or off-site activities involving Environmentally-Regulated Materials (as hereinafter defined), and that occurred, existed, arose out of conditions or circumstances that occurred or existed, or was caused, in whole or in part, on or before the date hereof.
- (b) The term "Environmental and Occupational Safety and Health Law," as used in this Agreement, means any common law or duty, case law or ruling, statute, rule, regulation, law, ordinance, or code, whether local, state, federal, or international, as is now or any time hereafter may be in effect, that (i) regulates, creates standards for, imposes liability or standards for conduct concerning any element, compound, pollutant, contaminant, or toxic or hazardous substance, material, or waste, or any mixture thereof, or relates in any way to emissions or releases into

the environment or ambient environmental conditions, or conduct affecting such matters, or (ii) is designed to provide safe and healthful working conditions or reduce occupational safety and health hazards.

- (c) The term "Environmentally-Regulated Materials," as used in this Agreement, means any element, compound, pollutant, contaminant, substance, material, or waste, or any mixture thereof, designated, listed, referenced, regulated, or identified pursuant to any Environmental and Occupational Safety and Health Law.

2.23. *Brokers.*

Neither the Company nor any of its directors, officers or employees has employed any broker, finder, or financial advisor or incurred any liability for any brokerage fee or commission, finder's fee or financial advisory fee, in connection with the transactions contemplated hereby, nor is there any basis known to the Company for any such fee or commission to be claimed by any person or entity.

2.24. *Customers.*

Except as set forth on the Disclosure Schedule, there has not been in the 12-month period prior to the date hereof any dispute with any customer or customers of the Company nor any set of circumstances which is reasonably anticipated to have a Material Adverse Effect.

2.25. *Disclosure.*

To the best of the knowledge of the Company and Shareholder, there is no material fact as of the date hereof which has not been disclosed in writing to the Purchaser related to the Company, the Assets or the operations, properties, financial condition or prospects of the Company which has a Material Adverse Effect or, in the future may have a Material Adverse Effect on the Company or the Assets in the context of this transaction taken as a whole. The representations and warranties contained in this Section 2 or elsewhere in this Agreement or any document delivered pursuant hereto will not be affected or deemed waived by reason of the fact that the Purchaser or its respective representatives knew (other than as a result of the Disclosure Schedule) or should have known that any such representation or warranty is or might be inaccurate in any respect.

3. **REPRESENTATIONS AND WARRANTIES OF MERRILL AND THE PURCHASER**

The Purchaser represents and warrants to the Company as of the date hereof as follows:

3.1. ***Corporate Organization.***

The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Minnesota.

3.2. ***Authorization.***

The Purchaser has full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated herein. The board of directors of the Purchaser have taken all action required by law, its articles of incorporation and bylaws or otherwise to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein. This Agreement is the valid and binding legal obligation of the Purchaser enforceable against it in accordance with its terms.

3.3. ***Non-Contravention.***

Neither the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated herein will: (i) violate any provision of the articles of incorporation or bylaws of the Purchaser; or (ii) except for such violations, conflicts, defaults, accelerations, terminations, cancellations, impositions of fees or penalties, mortgages, pledges, liens, security interests, encumbrances, restrictions and charges which would not, individually or in the aggregate, have a Material Adverse Effect on the Purchaser, (A) violate, be in conflict with, or constitute a default, however defined (or an event which, with the giving of due notice or lapse of time, or both, would constitute such a default), under, or cause or permit the acceleration of the maturity of, or give rise to, any right of termination, cancellation, imposition of fees or penalties under, any debt, note, bond, lease, mortgage, indenture, license, obligation, contract, commitment, franchise, permit, instrument or other agreement or obligation to which the Purchaser is a party or by which it or any of its properties or assets is or may be bound or (B) result in the creation or imposition of any mortgage, pledge, lien, security interest, encumbrance, restriction, adverse claim or charge of any kind, upon any property or assets of the Purchaser under any debt, obligation, contract, agreement or commitment to which the Purchaser is a party or by which the Purchaser or any of its assets or properties is or may be bound; or (iii) violate any Law.

3.4. ***Consents and Approvals.***

No Consent is required by any person or entity, including without limitation any Authority, in connection with the execution, delivery and performance by the Purchaser of this Agreement, or the consummation of the transactions contemplated herein, other

than any Consent which, if not made or obtained, will not, individually or in the aggregate, have a Material Adverse Effect on the business of the Purchaser.

3.5. ***Brokers.***

Neither the Purchaser nor any of its directors, officers or key employees have employed any broker, finder or financial advisor, or incurred any liability for any brokerage fee or commission, finder's fee or financial advisory fee, in connection with the transactions contemplated hereby, nor is there any basis known to the Purchaser for any such fee or commission to be claimed by any person or entity.

4. **COVENANTS**

4.1. ***Confidentiality.***

Each of the parties hereto, their employees, agents, parent company, subsidiaries and/or affiliates agrees that it will not use, or permit the use of, any of the information relating to any other party hereto furnished to it in connection with the transactions contemplated herein ("**Information**") in a manner or for a purpose detrimental to such other party or otherwise than in connection with the transaction, and that they will not disclose, divulge, provide or make accessible (collectively, "**Disclose**"), or permit the Disclosure of, any of the Information to any person or entity, other than their respective directors, officers, employees, investment advisors, accountants, counsel and other authorized representatives and agents, except as may be required by judicial or administrative process or, in the opinion of such party's counsel, by other requirements of Law; provided, however, that prior to any Disclosure of any Information permitted hereunder, the disclosing party will first obtain the recipients' undertaking to comply with the provisions of this subsection with respect to such information. The term "Information" as used herein will not include any information relating to a party which the party disclosing such information can show: (i) to have been in its possession prior to its receipt from another party hereto; (ii) to be now or to later become generally available to the public through no fault of the disclosing party; (iii) to have been available to the public at the time of its receipt by the disclosing party; (iv) to have been received separately by the disclosing party in an unrestricted manner from a person entitled to disclose such information; or (v) to have been developed independently by the disclosing party without regard to any information received in connection with this transaction. A party hereto will be deemed to have satisfied its obligations to hold the Information confidential if it exercises the same care as it takes with respect to its own similar information.

4.2. ***Further Assurances; Cooperation; Notification.***

Each party hereto will, after the date hereof, execute and deliver such instruments and take such other actions as the other party or parties, as the case may be, may reasonably require in order to carry out the intent of this Agreement. Without limiting the generality of the foregoing, at any time after the date hereof, at the request of the Purchaser and without further consideration, the Company will execute and deliver such instruments of

sale, transfer, conveyance, assignment and confirmation and take such action as the Purchaser may reasonably deem necessary or desirable in order to more effectively transfer, convey and assign to the Purchaser, and to confirm the Purchaser's title to, all of the Assets, to put the Purchaser in actual possession and operating control thereof and to assist the Purchaser in exercising all rights with respect thereto.

4.3. *Public Announcements.*

None of the parties hereto will make any public announcement with respect to the transactions contemplated herein without the prior written consent of the other parties, which consent will not be unreasonably withheld or delayed; provided, however, that any of the parties hereto may at any time make any announcements which are required by applicable Law so long as the party so required to make an announcement promptly upon learning of such requirement notifies the other parties of such requirement and discusses with the other parties in good faith the exact proposed wording of any such announcement.

4.4. *Tax Matters.*

- (a) *Transactional Taxes.* In addition to and without limiting those representations and warranties set forth in Section 2.15 of this Agreement, in the event that any sales or use Tax, or any Tax in the nature of a sales or use tax, or any transactional Tax is payable or assessed relative to the transactions contemplated herein, the Company will pay all such Taxes and will not collect any part thereof from the Purchaser. The parties hereto will cooperate to make any necessary filings with state and local taxing Authorities and to furnish any required supplemental information with respect to any state and local Tax liabilities resulting from the consummation of the transactions contemplated herein.
- (b) *Tax Liability; Post-Closing Tax Return Filings; No Distributions.* In addition to and without limiting those representations and warranties set forth in Section 2.15 of this Agreement, the Company will pay all Taxes attributable to the Company arising from or relating to the transactions contemplated by this Agreement, including without limitation Tax on any income or gains arising from the sale of the Assets.
- (c) *Cooperation and Records Retention.* The Company and the Purchaser will (i) each provide the other with such assistance as may reasonably be requested by any of them in connection with the preparation of any Tax Return, audit or other examination by any taxing Authority or judicial or administrative proceedings relating to liability for Taxes, (ii) each retain and provide the other with any records or other information which may be relevant to such Tax Return, audit or examination, proceeding or determination, and (iii) each provide the other with any final determination of such audit or examination, proceeding or determination that affects any amount required to be shown on any Tax Return of the other for any period. Without limiting the generality of the foregoing, the Company and

the Purchaser will retain, until the applicable statutes of limitations (including all extensions) have expired, copies of all Tax Returns, supporting work schedules and other records or information which may be relevant to such Tax Returns for all Tax periods or portions thereof ending on or before the date hereof and will not destroy or otherwise dispose of any such records without first providing the other party with a reasonable opportunity to review and copy the same.

4.5. ***Employee Benefits.***

- (a) The Company will be responsible for making any required payment of severance compensation including any notice pay and severance pay in order to comply with the requirements of the Worker Adjustment and Retraining Act ("WARN") to any employee of the Company.
- (b) The Purchaser hereby specifically disclaims any assumption of, or liability with respect to, any collective bargaining agreement or employee benefit plan, policy, practice or agreement to which the Company is a party or under which any of the Company's employees or former employees are covered. Without limiting the generality of the foregoing, (i) the Purchaser is not assuming any obligation to contribute to, or has any obligation or liability for any withdrawal liability arising in connection with, any Multiemployer Plan attributable to participation therein by current or former employees of the Company as a result of this Agreement and the transactions contemplated hereby or otherwise, and (ii) with respect to each current or former employee of the Company, and each other individual who is a "qualified beneficiary" with respect to such current or former employee in connection with any "group health plan" (as such terms are defined in Section 4980B of the Code) maintained by the Company or any of its affiliates, as between the Purchaser and the Company, the Company is responsible for providing group health plan continuation coverage in accordance with Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA (without regard to whether the Purchaser is ultimately determined to be responsible to provide such coverage to any such current or former employee) and will indemnify, defend and hold harmless the Purchaser and its affiliates from and against any liability, expense, cost, tax or obligation of any nature with respect to such current or former employee or other individual arising in connection with group health plan coverage required under Section 4980B of the Code or Part 6 of Subtitle B of Title I of ERISA.

5. **SURVIVAL AND INDEMNIFICATION.**

5.1. ***Survival.***

The representations, warranties and covenants of each of the parties hereto shall survive the consummation of the transactions contemplated hereby for a period of five (5) years from the date hereof except: (i) the representations and warranties of the Company and

Shareholder contained in Section 2.13 with respect to tax matters shall survive until the expiration of all applicable statutory limitation periods (including extensions thereof); (ii) the representations and warranties of the Company and the Shareholder contained in Section 2.14 (relating to benefit plans) shall survive until the expiration of all applicable statutory limitation periods; (iii) the representations and warranties of the Company and the Shareholder contained in Section 2.22 (relating to environmental matters) shall survive until the expiration of all applicable statutory limitation periods; and (iv) the representations and warranties of the Company and the Shareholder with respect to the Company's power and authority to transfer the Assets and the Company's title to the Assets shall survive forever. The right to indemnification or any other remedy based on representations, warranties, covenants and obligations in this Agreement will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being required) anytime, whether before or after the execution and delivery of this Agreement, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or obligation.

5.2. *Indemnification by the Purchaser.*

The Purchaser agrees to indemnify the Company and each of its shareholders, officers, directors, employees and subsidiaries from and against any and all loss, liability or damage suffered or incurred by it by reason of (i) any untrue representation of, or breach of warranty by the Purchaser in any part of this Agreement; (ii) any nonfulfillment of any covenant, agreement or undertaking of the Purchaser in any part of this Agreement which by its terms is to remain in effect after the date hereof and has not been specifically waived in writing by the party or parties hereof entitled to the benefits thereof; and (iii) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, legal fees and expenses, incident to any of the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing the indemnification rights of the Company pursuant to this Section 5.2.

5.3. *Indemnification by Company.*

The Company and the Shareholder, jointly and severally, agree to indemnify the Purchaser and each of its shareholders, officers, directors, employees and subsidiaries from and against:

- (a) any and all loss, liability or damage suffered or incurred by the Purchaser by reason of any untrue representation of, or breach of warranty by the Company or the Shareholder in this Agreement;
- (b) any and all loss, liability or damage suffered or incurred by it by reason of any nonfulfillment of any covenant, agreement or undertaking of the Company or the Shareholder in this Agreement which by its terms is to remain in effect after the date hereof and has not been specifically waived in writing by the party or parties hereto entitled to the benefits thereof;

- (c) any Retained Liabilities;
- (d) any Liability of the Company that is not an Assumed Liability that the Purchaser in good faith determines it must pay after the date hereof in order to maintain or preserve the business, customers, prospects or goodwill relating to or with respect to the Assets.
- (e) any Liability relating to or arising out of the litigation disclosed in Section 2.12 of the Disclosure Schedule.
- (f) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, legal fees and expenses, incident to any of the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing the indemnification rights of the Purchaser pursuant to this Section 5.3.

5.4. *Claims for Indemnification.*

- (a) General. The parties intend that all indemnification claims be made as promptly as practicable by the party seeking indemnification (the "Indemnified Party"). Whenever any claim shall rise for indemnification hereunder the Indemnified Party shall promptly notify the party from whom indemnification is sought (the "Indemnifying Party") of the claim and, when known, the facts constituting the basis for such claim. The failure so to notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that it may have to the Indemnified Party except to the extent the Indemnifying Party demonstrates that the defense of such action is prejudiced thereby.
- (b) Claims by Third Parties. With respect to claims made by third parties, if the Indemnifying Party admits to the Indemnified Party and agrees in writing that it will be liable for the full amount of the claim, the Indemnifying Party shall be entitled to assume control of the defense of such action or claim, at its sole expense, with counsel reasonably satisfactory to the Indemnified Party; provided, however, that:
 - (i) the Indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim;
 - (ii) no Indemnifying Party shall consent to (A) the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a release from all liability in respect of such claim or (B) if, pursuant to or as a result of such consent or settlement, injunctive or other equitable relief would be imposed against the Indemnified Party or such judgment or

settlement could materially interfere with the business, operations or assets of the Indemnified Party; and

- (iii) if the Indemnifying Party does not assume control of the defense of such claim in accordance with the foregoing provisions within three days (3) after receipt of notice of the claim, the Indemnified Party shall have the right to defend such claim in such manner as it may deem appropriate at the cost and expense of the Indemnifying Party, and the Indemnifying Party will promptly reimburse the Indemnified Party therefore in accordance with this Article 5, provided that the Indemnified Party shall not be entitled to consent to the entry of any judgment or enter into any settlement of such claim that does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnifying Party of a release from all liability in respect of such claim without the prior written consent of the Indemnifying Party if, pursuant to or as a result of such consent or settlement, injunctive or other equitable relief would be imposed against the Indemnifying Party or such judgment or settlement could materially interfere with the business, operations or assets of the Indemnifying Party.

- (c) Remedies Cumulative. The remedies provided herein shall be cumulative and shall not preclude assertion by any party of any rights or the seeking of any other remedies against any other party.

5.5. *Right of Set-Off.*

Upon notice to the Company or the Shareholder, as the case may be, specifying in reasonable detail the basis therefor, the Purchaser may set off any amount to which it may be entitled under this Section 5 against amounts otherwise payable to the Company or the Shareholder under this Agreement or otherwise. Neither the exercise of, nor the failure to exercise, such right of set-off will constitute an election of remedies nor limit Purchaser in any manner in the enforcement of any other remedies that may be available to it.

6. MISCELLANEOUS PROVISIONS.

6.1. *Expenses.*

Except as otherwise provided herein, the Purchaser and the Company will each bear their own costs and expenses relating to the transactions contemplated hereby, including without limitation, fees and expenses of legal counsel, accountants, investment bankers, brokers or finders, printers, copiers, consultants or other representatives for the services used, hired or connected with the transactions contemplated hereby. To the extent that such expenses are incurred by the Company and are reasonable, the Purchaser agrees to assume all or a part of such expenses as an Assumed Liability. The Purchaser and the Company will each pay any commission or finder's fee or similar amount incurred by

them by agreement or otherwise for retaining or consulting any broker, finder or investment banker in connection with the transactions contemplated by this Agreement.

6.2. ***Amendment and Modification.***

Subject to applicable Law, this Agreement may be amended or modified by the parties hereto with respect to any of the terms contained herein; provided, however, that all such amendments and modifications must be in writing duly executed by all of the parties hereto.

6.3. ***Waiver of Compliance; Consents.***

Any failure of a party to comply with any obligation, covenant, agreement or condition herein may be expressly waived in writing by the party entitled hereby to such compliance, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. No single or partial exercise of a right or remedy will preclude any other or further exercise thereof or of any other right or remedy hereunder. Whenever this Agreement requires or permits the consent by or on behalf of a party, such consent will be given in writing in the same manner as for waivers of compliance.

6.4. ***No Third Party Beneficiaries.***

Nothing in this Agreement will entitle any person or entity (other than a party hereto and his, her or its respective successors and assigns permitted hereby) to any claim, cause of action, remedy or right of any kind.

6.5. ***Notices.***

All notices, requests, demands and other communications required or permitted hereunder will be made in writing and will be deemed to have been duly given and effective: (i) on the date of delivery, if delivered personally; (ii) on the earlier of the fourth (4th) day after mailing or the date of the return receipt acknowledgment, if mailed, postage prepaid, by certified or registered mail, return receipt requested; or (iii) on the date of transmission, if sent by facsimile, telecopy, telegraph, telex or other similar telegraphic communications equipment and such transmission is confirmed:

If to Company or the Shareholder:

To: Roald Marth Learning Systems, Inc.
9819 Valleyview Road
Eden Prairie, Minnesota 55344
Fax: (612) 942-3356

With a copy to:

Coleman, Hull and vanVliet
8500 Normandale Center Blvd., Ste. 2110
Minneapolis, Minnesota 55437
Attn: Timothy R. Duncan, Esq.
Fax: (612) 921-8555

or to such other person or address as the Company will furnish to the other parties hereto in writing in accordance with this subsection.

If to the Purchaser:

To: Merrill/Superstar Computing Company
One Merrill Circle
St. Paul, MN 55108
Attn.: Steven J. Machov, Esq.
Fax: (612) 649-1348

With a copy to:

Oppenheimer Wolff & Donnelly
45 South Seventh Street
Suite 3400
Minneapolis, MN 55402
Attn.: Kevin M. Klemz, Esq.
Fax: (612) 344-9376

or to such other person or address as the Purchaser will furnish to the other parties hereto in writing in accordance with this subsection.

6.6. *Assignment.*

This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder will be assigned (whether voluntarily, involuntarily, by operation of law or otherwise) by any of the parties hereto without the prior written consent of the other parties, provided, however, that the parties hereto may assign their rights (but not its obligations) under this Agreement, in whole or in any part, and from time to time, to a wholly-owned, direct or indirect, subsidiary.

6.7. *Governing Law.*

This Agreement and the legal relations among the parties hereto will be governed by and construed in accordance with the internal substantive laws of the State of Minnesota (without regard to the laws of conflict that might otherwise apply) as to all matters, including without limitation matters of validity, construction, effect, performance and remedies, except to the extent that the provisions of the Minnesota Corporation Code may apply to the internal affairs of Company.

6.8. *Counterparts.*

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

6.9. *Headings.*

The table of contents and the headings of the sections and subsections of this Agreement are inserted for convenience only and will not constitute a part hereof.

6.10. *Entire Agreement.*

This Agreement, the Disclosure Schedule and the exhibits and other writings referred to in this Agreement or in the Disclosure Schedule or any such exhibit or other writing are part of this Agreement, together they embody the entire agreement and understanding of the parties hereto in respect of the transactions contemplated by this Agreement and together they are referred to as this "Agreement" or the "Agreement". There are no restrictions, promises, warranties, agreements, covenants or undertakings, other than those expressly set forth or referred to in this Agreement. This Agreement supersedes all prior agreements and understandings between the parties with respect to the transaction or transactions contemplated by this Agreement, including, but not limited to, the draft of the letter of intent dated February 11, 1997. Provisions of this Agreement will be interpreted to be valid and enforceable under applicable Law to the extent that such interpretation does not materially alter this Agreement; provided, however, that if any such provision will become invalid or unenforceable under applicable Law such provision will be stricken to the extent necessary and the remainder of such provisions and the remainder of this Agreement will continue in full force and effect.

6.11. *Certain Definitions.*

For purposes of this Agreement, the term "Material Adverse Effect" means an event, change or occurrence which has a material negative impact on the condition (financial or otherwise), businesses, results of operations or prospects of the Company or the Purchaser, taken as a whole, as the case may be (and going concern value, in the case of the Assets) other than any such event, change or occurrence resulting or arising from (i)

general economic conditions or (ii) the loss of any customer as a result of the announcement or consummation of the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

MERRILL/SUPERSTAR COMPUTING
COMPANY

By: Steven J. Machon
Its: Secretary

ROALD MARTH LEARNING SYSTEMS,
INC..

By: Roald Marth
Its: CEO

Roald Marth
Roald Marth



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Word Mark REALSTAR

Pseudo Mark REAL STAR

Int'l Class 035-Advertising and Business
Goods & Svcs : computer services, namely information storage and retrieval in the field of real estate
US Class : 101 - Advertising and Business

Owner Roald Marth Learning Systems, Inc.
9819 Valley View Road
Eden Prairie, MN 55344

Attorney Roy B. Stromme

Serial Number 74-532054

Date Filed 19940601

Pub for Opp 19950328

Status Pending, Published

Status Date 961206

Sec 1B ITU Yes

Register Principal

Mark Drg Code 1: Word Only

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Int'l Class 041-Education and Entertainment
 Goods & Svcs : educational services; namely, instruction in reside
 real estate sales
 US Class : 107 - Education and Entertainment

Owner Roald Marth Learning Systems, Inc.
 9819 Valley View Road
 Eden Prairie, MN 55344

Attorney Roy B. Stromme

Serial Number 74-489284
 Date Filed 19940214
 Pub for Opp 19941213
 Status Pending, Published
 Status Date 950925

Sec 1B ITU Yes
 Register Principal
 Mark Drg Code 1: Word Only

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Word Mark SUPERSTAR

Int'l Class 041-Education and Entertainment
 Goods & Svcs : educational services, namely computer training; semi
 and software usage siminars for real estate professionals
 US Class : 107 - Education and Entertainment
 1st Use Date : 19921228
 1st Comm Date : 19921228

Owner Roald Marth Learning Systems, Inc.
 9819 Valley View Road
 Eden Prairie, MN 55344

Attorney Roy B. Stromme

Serial Number 74-445725
 Date Filed 19931012

Pub for Opp 19950103
 Regis. No. 1886363
 Regis. Date 19950328

Status Registered
 Status Date 950328

Register Principal
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Word Mark TAX BREAKER

Int'l Class 016-Paper Goods and Printed Matter
 Goods & Svcs : booklets, pamphlets, and printed forms relating to effects of home ownership
 US Class : 038 - Prints and Publications
 1st Use Date : 19920213
 1st Comm Date : 19920213

Owner Roald Marth Learning Systems, Inc.
 13670 Valley View Road Suite 225
 Eden Prairie, MN 55344

Attorney Roy B. Stromme

Serial Number 74-248654
 Date Filed 19920218

Pub for Opp 19920825
 Regis. No. 1801536
 Regis. Date 19931026

Status Registered
 Status Date 931026

Sec 1B ITU Yes
 Register Principal
 Mark Drg Code 1: Word Only

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