

07-27-2000



SHEET

Docket No.:

NLY

19429/34

Tab settings: → → → ▼

101414850

6.30.00

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

1. Name of conveying party(ies):

KHPC Holding

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

Additional names(s) of conveying party(ies) Yes No

2. Name and address of receiving party(ies):

Name: **The Kendall Company LP**

Internal Address:

Street Address: **15 Hampshire Street**

City: **Mansfield** State: **MA** ZIP: **02048**

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

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from Additional name(s) & address(es) Yes N

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other **Contribution Agreement**
- Merger
- Change of Name

Execution Date: **October 1, 1998**

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

A. Trademark Application No.(s)

See Schedule A (attached)

B. Trademark Registration No.(s)

See Schedule B (attached)

75481851

Additional numbers Yes No

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

Name: **Mark S. Leonardo, Esq.**

Internal Address: **Box IP, 18th Floor**

Brown, Rudnick, Freed & Gesmer, PC

Street Address: **One Financial Center**

City: **Boston** State: **MA** ZIP: **02111**

6. Total number of applications and registrations involved:.....

235

7. Total fee (37 CFR 3.41):.....\$ **\$5,890.00**

- Enclosed
- Overpayment or underpayment is Authorized to be charged to deposit account

8. Deposit account number:

50-0369

DO NOT USE THIS SPACE

07/26/2000 NTHAI1 00000156 75481851
01 FC:481 40.00 UP
02 FC:482 5850.00 DP

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.

Mark S. Leonardo, (41,433)

Name of Person Signing

Signature

June 26, 2000

Date

Total number of pages including cover sheet, attachments, and

33

TRADEMARK

REEL: 002104 FRAME: 0252

Schedule A - Trademark Application Nos.

	Trademark	Application Number	Filing Date
1.	EZ-ENDO	75/481851	05/08/1998
2.	HAZALERT	75/462528	04/06/1998
3.	NITELIFE	75/779083	08/19/1999
4.	SADDLEMOUNT	75/768709	08/05/1999
5.	SLIP ON	74/650555	03/23/1995
6.	SUREGRIP	75/340707	08/13/1997
7.	TENDERFIX	75/242111	02/10/1997
8.	WINGS MAXIMA	75/649192	03/03/1999

Schedule B - Trademark Registration Nos.

	Trademark	Application Number
1.	1ST AND TEN and DESIGN	1586618
2.	ABLES	1441744
3.	ADVANCED CURAD	2265691
4.	ANES-T-TRACH	1573137
5.	AQUASLIP	1379037
6.	ASEPTOSORB	1171943
7.	ASR and DESIGN	862067
8.	ASSIST	1686233
9.	ASSURANCE	2055647
10.	AUDIO-CUFF	1586610
11.	AUTO-FLATE	756153
12.	BLUE JAY & DESIGN	695406
13.	BLUE-JAY	140748
14.	CLASSIC	2192490
15.	CLEANCARE	1181163
16.	COMBITRAINER	2228047
17.	COMBITUBE	1625843
18.	CONFORM	1128143
19.	CONFORM	957907
20.	CURAD	538723
21.	CURAD	598634
22.	CURAD	596032
23.	CURAD & DESIGN (B & W)	2265690
24.	CURAD & DESIGN (GREEN)	2265692
25.	CURAD FOR KIDS	2008190
26.	CURAD KID SIZE AND DESIGN	1709129
27.	CURAD NEON STRIPS	1773371
28.	CURAD NEON STRIPS and Design	1874495
29.	CURAD SENSITIVE SKIN	1910694
30.	CURADERM	1933565
31.	CURAFIL	1906275
32.	CURAFOAM	1985953
33.	CURAGEL	1906274
34.	CURAKLENSE	1965949
35.	CURASALT	1909126

36.	CURASILK	1320332
37.	CURASORB	1851867
38.	CUREX	1850185
39.	CURISEP	1522361
40.	CURI-STRIP	1902361
41.	CURITAS	1978438
42.	CURITEX	1303775
43.	CURITY	804726
44.	CURITY	1451998
45.	CURITY	1155556
46.	CURITY	1153798
47.	CURITY	848230
48.	CURITY	1134537
49.	CURITY	648533
50.	CURITY	1098882
51.	CURITY	1082388
52.	CURITY	409714
53.	CURITY	797303
54.	CURITY	133720
55.	CURITY	2001071
56.	CURITY	591265
57.	CURITY	103242
58.	CURITY	1090893
59.	CURITY	1260864
60.	CURITY	509864
61.	CURITY	1981146
62.	CURITY KIDS	1753182
63.	CURITY KIDS and Design	1779594
64.	DESIGN - ARROW	1930516
65.	DESIGN - LEG	1139430
66.	DIGI-TROL Stylized Letters	1157156
67.	DIMENSION	1740818
68.	DIMENSION and Design	1714975
69.	DINOSAURS	1923075
70.	DURASORB	860191
71.	DURASORB	819601
72.	DUSTCARE	1180238
73.	EASY-CATCH	1866878
74.	EVERDRI	1627936
75.	EXCILON	1336485
76.	FAIRFIELD	749853
77.	FAST-CATH	1901190
78.	FLEX-C-PAP	2118368
79.	FLEXIBEND	1559682

80.	FLEX-WRAP	2184611
81.	FLIP TOP and Design	811153
82.	FORTIFOR	876125
83.	FRESH 'N DRY	1734304
84.	HANDICARE	1440418
85.	HOMERX	1694203
86.	HOMERX	776324
87.	HOMERX and Design	1694204
88.	INBRAND	1912082
89.	INBRAND and Design	1936443
90.	ISAACS	1133410
91.	KENDALL	508593
92.	KENDALL	387797
93.	KENDALL	848114
94.	KENDALL	618215
95.	KENDALL	825199
96.	KENDALL	1145959
97.	KENDALL	616002
98.	KENDALL	699079
99.	KENGUARD	1439076
100.	KENGUARD	1997111
101.	KERLIX	1074850
102.	KERLIX	426743
103.	KERLIX LITE	1565409
104.	LAKESIDE	176550
105.	LAR-A-JECT	1573138
106.	LASER-TRACH	1821160
107.	LISCO	413420
108.	LULLABY	863186
109.	MAXI CARE	1363157
110.	MAXI CARE	1653587
111.	MAXIFLO	1994003
112.	MEDICAL DISPOSABLES	982377
113.	MEDICAL DISPOSABLES and Design	1857595
114.	MEDI-LOFT	1302474
115.	MEDI-WIPES and Design	1323142
116.	MONO-FLO	1344168
117.	NATURALON	1944609
118.	O-B	845534
119.	O-B	224096
120.	ORTHALETIC	306965
121.	PARA-BLOC	887565

122.	PARKEDALE	738737
123.	PARTEX	850294
124.	PATIENT FOLD	1285148
125.	PEAKOMETER	1179964
126.	PHARMACOIL	804345
127.	PMP	1819350
128.	PMP	1702812
129.	PMP	1853945
130.	POLYCARE	1360378
131.	POLY-FRESH	1295935
132.	POLYGARD	1124455
133.	POLYGARD II	1624657
134.	POLYPUFF	1730198
135.	POLYSKIN	1365186
136.	POLYVENT	790792
137.	PRECISION	1929652
138.	PRESENCE	1880223
139.	PRIMETIME	1555639
140.	PROF. MED. PRODUCTS	1928803
141.	PROF. MEDICAL PRODUCTS	1928803
142.	QUALCON	1467177
143.	READI-BANDAGE and Design	587600
144.	READIFLEX	806037
145.	REGU-VAC	791485
146.	RING-FLO	2141275
147.	RONDIC	525059
148.	SAFEGUARD	2182596
149.	SAFETAP	2177043
150.	SAFETRAK	1608964
151.	SAFE-T-VAC	1961332
152.	SANABAN	902283
153.	SANABAN	776694
154.	SANABAN	795635
155.	SANTA STRIPS	1837540
156.	SCD SEQUEL	1974539
157.	SCD SEQUEL	2007742
158.	SEAMLESS	1630566
159.	SHER-I-BRONCH	1559688
160.	SHERIDAN	1581320
161.	SHERIDAN and DESIGN	1654827
162.	SHERIDAN/CF	1582418
163.	SHERIDAN/HVT	1560698
164.	SHER-I-FLEX	1565738
165.	SHER-I-SLIP	1565739

166.	SHER-I-SWIV	1558905
167.	SIGNATURE	1800617
168.	SIMPLICITY	1808321
169.	SKIN SAVER	1660700
170.	SLIP-SHEEN and DESIGN	930920
171.	SOFT-WRAP	630202
172.	SOLUTION-PLUS	1621049
173.	SONASCOPE	1576250
174.	SONATEMP	1555649
175.	SORBANT	1598127
176.	SORB-IT & DESIGN	1208081
177.	SORB-IT II	1417350
178.	SPECIPAN	986051
179.	SPIRAL-FLEX	1559680
180.	SPLASHGUARD II	2283253
181.	STA-PUT	1738984
182.	STERISHARPS and Design	572988
183.	SUPERIOR	1947950
184.	SURE & THIN	1831052
185.	SURE CARE and Design	1411197
186.	T.E.D.	572986
187.	T.E.D.	1285917
188.	TELFA	607346
189.	TELFA CLEAR	1938998
190.	TELFA MAX	2091657
191.	TELFA XTRA	1964716
192.	TENDEROL	1984227
193.	TENDERSKIN	866478
194.	TENDERSORB	1241954
195.	TENDERWRAP	2012752
196.	SENSOR	300471
197.	THE MARK OF QUALITY AND VALUE	1628821
198.	TRANS-BLOC	998774
199.	TRIPAQUE	1009097
200.	TRIPAQUE	1173046
201.	ULTIGARD	1487381
202.	ULTRAMER	1939562
203.	UNIGARD	1048404
204.	UNIGARD II	1615415
205.	UNISORB	791483
206.	UNISORB	805667
207.	UNISORB	953732
208.	VAL-U-GARD	1345918

209.	VAL-U-SORB	1056408
210.	VENTEX	1852849
211.	VERSALON	1371153
212.	VERSALON	1470391
213.	VISTEC	1361648
214.	WAYNE	763590
215.	WEBCOL	747513
216.	WET PRUF	1183428
217.	WET-PRUF	500761
218.	WILLPOWER	1617128
219.	WINGS	1381208
220.	WINGS	1662163
221.	WINGS	1907037
222.	WINGS and DESIGN	1805744
223.	WINGS AIRFLOW	1979779
224.	WINGS MAXIMA and DESIGN	1733981
225.	WINGS PM	1471342
226.	YIELD	1308591
227.	YOUR HEALTH CARE SOURCE	1346080

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KHPC CONTRIBUTION AGREEMENT

by and among

KHPC HOLDING

and

THE KENDALL COMPANY LP

Dated as of October 1, 1998

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KHPC CONTRIBUTION AGREEMENT

THIS KHPC CONTRIBUTION AGREEMENT (this "Agreement") is entered into by and between KHPC Holding, a Delaware general partnership ("KHPC"), and The Kendall Company LP, a Delaware limited partnership (the "Partnership") as of this 1st day of October, 1998 (the "Contribution Date").

RECITALS

1. KHPC conducts a business which involves the manufacture, sale and distribution of medical and surgical supplies within the United States (the "Business").
2. KHPC has acquired such Business from Tyco International (US) Inc. ("Tyco") and TKC Holding Corp ("Holding") pursuant to the terms of that Tyco Contribution Agreement by and among Tyco, Holding and KHPC dated as of the date hereof (the "Tyco Contribution Agreement").
3. KHPC wishes to contribute the Business (except the "Excluded Assets," as defined in Section 1.2 of this Agreement) as a capital contribution to the Partnership in exchange for a five percent (5%) limited partner interest in the Partnership as described in the Agreement of Limited Partnership of the Partnership dated as of September 22, 1998 (the "Partnership Agreement").
4. In order to minimize any transfer taxes and the administrative burden of preparing multiple sets of conveyancing documents, KHPC has directed Tyco to transfer its interests in the Assets of the Business directly to the Partnership.

In consideration of the foregoing and the mutual representations, warranties, covenants, and agreements herein contained, the parties agree as follows:

ARTICLE 1

CONTRIBUTION OF ASSETS BY KHPC TO THE PARTNERSHIP

1.1 Contribution of the Assets.

(a) Subject to the terms and conditions of this Agreement, KHPC hereby assigns, transfers, and delivers to the Partnership, free and clear of all title defects, objections, liens, pledges, claims, rights of first refusal, options, charges, security interests, mortgages, or other encumbrances of any nature whatsoever (collectively, "Encumbrances") other than "Permitted Encumbrances" (as defined in Section 1.1(b) of this Agreement), all of the assets, properties, and business (excepting only the "Excluded Assets," as defined in Section 1.2 of this Agreement) of every kind and description; wherever located; real, personal, or mixed; tangible or intangible; owned or held; or used primarily in the conduct of the Business by KHPC as the same shall exist on the Contribution Date (collectively, the "Assets"), and including, without limitation, all right, title, and interest of KHPC in, to, and under:

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(i) All parcels of land owned by KHPC (collectively, the "Fee Property") and all buildings, fixtures and improvements erected on the Fee Property (collectively, "Improvements") (the Fee Property and Improvements hereinafter collectively referred to as the "Subject Property");

(ii) All machinery, equipment, furniture, vehicles and other tangible property (including, without limitation, maintenance and operating supplies, fuel, and spare parts for such machinery and equipment) of KHPC (collectively, the "Equipment");

(iii) All raw materials, finished goods, work-in-process, supplies and inventories of KHPC (collectively, the "Inventory");

(iv) Those patents, copyrights, trademarks, trade names, technology, know-how, processes, trade secrets, inventions, proprietary data, formulae, research and development data, computer software programs and other intangible property and any applications for the same, used primarily in the Business, and all goodwill associated with such intangible property (collectively, the "Intangible Property");

(v) All the leases of certain property of KHPC, together with all fixtures, office equipment, furnishings, furniture, and other tangible property located thereon (collectively, the "Leased Property");

(vi) All of KHPC's rights, claims, credits, causes of action or right of setoff against third parties relating to the Assets, including, without limitation, unliquidated rights under manufacturers' and vendors' warranties but excluding all amounts representing reimbursements for items paid by KHPC (collectively, "Claims");

(vii) Those contracts, agreements, leases, licenses and other instruments, arrangements and commitments being assumed by the Partnership with respect to the Assets pursuant to Section 1.4 of this Agreement (collectively, "Rights");

(viii) All certificates of occupancy and other transferable licenses, permits, registrations, authorizations, use agreements, orders or approvals of governmental or quasi-governmental agencies and authorities (whether federal, state, local, municipal or foreign) or private parties relating to the construction, use, operation or enjoyment of the Assets (collectively, "Permits");

(ix) All accounts receivable arising out of sales of inventory or otherwise in the ordinary and usual course of the operation of the Business prior to the close of business on the Contribution Date (collectively, "Receivables");

(x) All transferable bonds or deposits made by KHPC or its predecessors in title (or its agents) with any governmental agency or authority or with any utility company or third party relating to the construction, use, operation or enjoyment of the Assets;

(xi) All prepaid rentals and other prepaid expenses arising from payments made by KHPC in the ordinary and usual course of the operation of the Business related to the Assets prior to the close of business on the Contribution Date for goods or services;

(xii) Originals or copies of all books, records, files and papers, whether in hard copy or computer format, used in the Business, including without limitation, engineering information, manuals and data, sales and advertising materials, sales and purchase correspondence, lists of present and former suppliers and personnel and employment records and, with respect to information relating to "Tax" (as defined in Section 5.4(e) of this Agreement), any information that is necessary for the preparation of any Tax returns to be filed after the Contribution Date or the determination of the Tax basis of the Assets (collectively, "Files and Records"); and

(xiii) All lists of present, and, to the extent available, future customers and goodwill associated with the Assets.

(b) For purposes of this Agreement, "Permitted Encumbrances" shall mean (i) the "Assumed Liabilities," as defined in Section 1.4 of this Agreement; (ii) Encumbrances reflected on the Contribution Date Balance Sheet as defined in Section 4.5 of this Agreement; (iii) liens for current "Taxes" (as defined in Section 5.4 of this Agreement) not yet due or payable without penalty; (iv) Encumbrances which, individually or in the aggregate, do not or would not have a material adverse effect on the business or financial condition of the Business taken as a whole or materially interfere with the present use of any Assets subject thereto; and (v) easements, rights-of-way, building or use restrictions, exceptions, variances, reservations, or similar Encumbrances of record affecting, but not materially interfering with the present use of, any Subject Property.

1.2 Excluded Assets.

(a) The Partnership expressly understands and agrees that there shall be excluded from the Assets the following assets and properties of KHPC which are used in connection with the Business:

(i) Those certain parcels of land described in Schedule 1.2 hereto (the "Excluded Fee Property") and the buildings, fixtures, and improvements erected on the Excluded Fee Property (collectively, "Excluded Improvements") (the Excluded Fee Property and Excluded Improvements hereinafter sometimes collectively referred to as the "Excluded Facilities");

(ii) All of KHPC's claims against third parties relating to the "Excluded Assets," and the related unliquidated rights under manufacturers' and vendors' warranties, including all amounts representing reimbursements for items paid by it;

(iii) All of KHPC's right, title, and interest in and to all Permits relating to the construction, use, operation, or enjoyment of the Excluded Assets;

(iv) All of KHPC's right, title, and interest in and to all transferable bonds or deposits made by it or its predecessors in title (or its agents) with any governmental agency or authority or with any utility company or third party relating to the construction, use, operation, or enjoyment of the Excluded Assets;

(v) All of KHPC's right, title, and interest in and to all prepaid rentals and other prepaid expenses arising from payments made by KHPC in the ordinary and usual course of the operation of the Business in connection with the Excluded Assets;

(vi) Any Assets sold or otherwise disposed of in the ordinary course of the operation of the Business and not in violation of any provisions of this Agreement during the period from June 30, 1998 until the Contribution Date.

(vii) Stock in any affiliate.

(b) The Excluded Facilities, Excluded Equipment, Excluded Intangible Property, and all of the rights, properties, and other assets with respect to the Business not being contributed to the Partnership by KHPC pursuant to this Agreement are herein collectively referred to as the "Excluded Assets."

1.3 Acceptance of Assets; Conveyance Instruments. The Partnership hereby accepts the contribution of Assets from KHPC and agrees to accept the transfer of such Assets from Tyco pursuant to the Tyco Contribution Agreement. In order to effectuate the contribution of the Assets as contemplated by this Section 1, KHPC has, or will hereafter, execute and deliver, or cause to be executed and delivered, all such additional documents or instruments of assignment, transfer, or conveyance in addition to this Agreement, in each case dated as of the Contribution Date (collectively, the "Conveyance Instruments"), as the parties and their respective counsel shall reasonably deem necessary or appropriate to vest in or confirm title to the Assets to the Partnership.

1.4 Assumed Liabilities. Subject to the terms and conditions of this Agreement, in reliance on the representations, warranties, covenants, and agreements of the parties contained herein, the Partnership hereby assumes and agrees to pay, discharge, or fulfill all liabilities and obligations relating to the Business including all of the liabilities and obligations in respect of the contracts, agreements, licenses, and other instruments, arrangements, and commitments of KHPC and the leasehold obligations, including by assignment or sublease, in respect of the Leased Office Property of KHPC, to the extent that the Partnership may assume such liabilities and obligations without causing any recognition of gain to any person under the principles of Code Sections 357, 731 or 752 (collectively, the "Assumed Liabilities").

1.5 Excluded Liabilities. Notwithstanding any provision of this Agreement or any Conveyance Instrument to the contrary, the Partnership does not agree to assume any liability or obligations of KHPC set forth below and such liabilities and obligations shall be retained by and remain liabilities of KHPC and shall not be Assumed Liabilities (all of such liabilities and obligations not being assumed hereinafter referred to as the "Excluded Liabilities"):

(a) Any liability for "Tax" (as defined in Section 5.4 of this Agreement) arising from or with respect to the Assets or the operations of the Business, other than described in Section 1.5(b) hereof, which is incurred in or attributable to the "Tax Indemnification Period" (as defined in Section 5.5 of this Agreement) (the "Excluded Tax Liabilities"); or

(b) Any liability for Tax imposed on or payable by KHPC which is incurred in or attributable to the Tax Indemnification Period except to the extent reflected in the "Contribution Date Balance Sheet" of KHPC dated as of June 30, 1998 (as defined in Section 3.5 of this Agreement), provided that, in the event that any "Indemnitee" (as defined in Section 5.4 of this Agreement) incurs a "Tax Loss" (as defined in Section 5.3(a) of this Agreement) in respect of any item which gave rise to any amount included in the provision or reserve for deferred income taxes set forth on the Contribution Date Balance Sheet, such Indemnitee shall be entitled to an indemnification from KHPC as described in Section 7.3(a) of this Agreement;

(c) Any liabilities relating to the Excluded Assets (it being understood that any Tax Liability relating to the Excluded Assets shall be an Excluded Tax Liability for purposes of this Agreement); or

(d) Liabilities to Affiliates.

ARTICLE 2

DELIVERIES

2.1 Deliveries by KHPC to the Partnership. KHPC will deliver, with effect from the Contribution Date, the following:

(a) The Conveyance Instruments to effect the contribution of the Assets to, and the assumption of the Assumed Liabilities by, the Partnership;

(b) All other previously undelivered items required to be delivered by KHPC at or prior to the Contribution Date pursuant to the terms of this Agreement.

2.2 Governing KHPC Documents. KHPC will deliver, or make available for review by the Partnership, the partnership agreement of KHPC.

2.3 Acceptance of Contribution by the Partnership. In exchange for its Contribution of the Assets as described in Section 1.1, the Partnership has issued KHPC the Partnership Interest described in the Partnership Agreement.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF KHPC TO THE PARTNERSHIP

KHPC hereby represents and warrants to the Partnership as follows:

3.1 Organization. KHPC is a general Partnership which is duly organized, validly existing, and in good standing under the laws of the state of Delaware, with the corporate power and authority to own, lease, and operate its properties and to carry on its business as now being conducted.

3.2 Qualification. KHPC (with respect to the Business only) is licensed or qualified to do business and is in good standing to the extent required by law in the jurisdictions in which it conducts its business (except where the failure to so qualify would not have a material adverse effect on the business or financial condition of the Business taken as a whole) (the "Material Jurisdictions").

3.3 Authority. KHPC has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery by KHPC of this Agreement and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by the partners of KHPC; no other partnership proceedings on the part of KHPC or any other person or entity, whether pursuant to the partnership agreement of KHPC or by law or otherwise, are necessary to authorize KHPC to enter into this Agreement or to consummate the transactions contemplated hereby and thereby; and this Agreement is the legal, valid, and binding obligation of KHPC.

3.4 No Violations. The execution or delivery of this Agreement, and the consummation of the transactions contemplated hereby or thereby will not:

(a) Require any material filing or registration with, or consent, authorization, approval, or Permit of, any governmental or regulatory authority on the part of KHPC;

(b) Violate (i) any material order, writ, injunction, judgment, decree, or award of any court or governmental or regulatory authority or (ii) to the knowledge of KHPC, violate or will violate any "Law," as defined in Section 3.22 of this Agreement, of any governmental or regulatory authority to which KHPC or any of their respective properties or assets are subject;

(c) Violate or conflict with any provision of, or constitute a default under, the partnership agreement of KHPC; or

(d) (i) violate or breach or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or give rise to a right to terminate, any material mortgage, contract, agreement, deed of trust, license, lease, or other instrument, arrangement, commitment, obligation, understanding, or restriction of any kind to which KHPC (with respect to the Business only) is a party or by which its properties may be bound, or (ii) will cause, or give any person grounds to cause, to be accelerated (with notice or lapse of time or

both) the maturity of, or will increase, any liability or obligation of KHPC which violation, breach, default, liability, or obligation, individually or in the aggregate, is or would be material to the business or financial condition of KHPC or the Business taken as a whole.

3.5 Financial Statements. KHPC has heretofore delivered or will deliver to the Partnership a pro forma balance sheet for the Business (excluding certain assets that are not included in the transactions contemplated by this Agreement) as of June 30, 1998 (the "Contribution Date Balance Sheet"), prepared in conformity with accounting principles consistently applied and fairly presenting the financial condition and results of operations of the Business for the periods and as of the dates stated therein.

3.6 Absence of Certain Changes or Events. Since June 30, 1998 (the "Balance Sheet Date"), KHPC has operated the Business in the ordinary course consistent with past practice, and neither KHPC nor the Business taken as a whole has:

(a) Suffered any material adverse change in its business or any event or condition of any character, which, individually or in the aggregate, has had or might reasonably be expected to have a material adverse effect on the business or financial condition of the Business taken as a whole;

(b) Incurred any obligations or liabilities (absolute, accrued, contingent, or otherwise) or entered into any transactions, other than in the ordinary course of business;

(c) Paid, discharged, or satisfied any claims, obligations, or liabilities (absolute, accrued, contingent, or otherwise), except the payment, discharge, or satisfaction in the ordinary course of business and consistent with past practice of any claims, obligations, and liabilities (i) which are reflected or reserved against in the Contribution Date Balance Sheet or (ii) which were incurred in the ordinary course of business and consistent with past practice since the Balance Sheet Date;

(d) Permitted or allowed any of its properties or assets to be subjected to any Encumbrances or other liabilities and obligations, except (i) in the ordinary course of business and (ii) Permitted Encumbrances;

(e) Sold, conveyed, or otherwise disposed of any properties or assets, except for fair consideration in the ordinary course of business and consistent with past practice;

(f) Disposed of or permitted to lapse any item of Intangible Property, or any license, Permit, or other form of authorization to use any Intangible Property;

(g) Except for normal increases consistent with past practice, institute any new benefit programs for its Employees;

(h) Made any capital expenditure, or commitment for a capital expenditure, for additions to property, plant, equipment, or Intangible Property, other than in the ordinary course of business;

(i) Made any change in any method of accounting or accounting practice or in any Tax procedures or elections; or

(j) Agreed, whether in writing or otherwise, or made any arrangement, whether or not legally binding, to take any action which, if taken prior to the date hereof, would have been required to be disclosed on a Schedule to clauses (a)-(i) of this Section 3.6.

3.7 Certain Tax Matters.

(a) KHPC:

(i) Has filed or will file or furnish when due in accordance with all applicable laws all Tax returns, statements, reports, and forms (including information returns and reports) required to be filed or furnished with respect to the Business or the Assets with respect to any Pre-Contribution Tax Period as defined in Section 5.4 (collectively, the "Returns");

(ii) Is not subject to any material liens for Taxes on its assets other than liens for taxes which are not yet due or which are payable without penalty;

(iii) Is not subject to any (A) claims, audits, actions, suits, proceedings, or investigations with respect to any Tax or assessment for which KHPC could be liable, which would be material to the Business, to the knowledge of the directors or officers of KHPC, and (B) requests for rulings in respect of any Tax on the Business or any proposed transaction pending before any Taxing Authority.

(b) None of the directors or officers of KHPC is aware of any state of facts which could give rise to any claim, audit, action, suit, proceeding, or investigation with respect to any Tax or assessment for which KHPC could be liable and which would be material to the Business or the Assets.

3.8 Condition of Facilities. The manufacturing and other facilities included in the Assets or owned by KHPC are in adequate working order for the continued conduct of the Business as it is presently conducted.

3.9 Utilities; Access. The manufacturing and other facilities included in the Assets have water supply, storm and sanitary sewer facilities, access to telephone, gas, and electrical connections, fire protection, drainage, means of ingress and egress to and from public highways and, without limitation, other public utilities, all of which are adequate for the continued conduct of the Business as it is presently conducted.

3.10 Certain Conditions Not Present.

(a) To the knowledge of KHPC, there are no liabilities of the Business of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable, or otherwise, and there is no existing condition, situation, or set of circumstances which could reasonably be

expected to result in such liabilities which in the aggregate are material to the Business taken as a whole, other than:

(i) Liabilities disclosed or provided for in the Contribution Date Balance Sheet; and

(ii) Liabilities incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date.

(b) KHPC has not received notice of any pending, and has no knowledge of any threatened or proposed, proceedings or governmental actions to modify the zoning classification of, or to condemn, expropriate, or otherwise take, or to purchase in lieu thereof, all or any material part of any Subject Property.

(c) KHPC has not received notice of any pending, and has no knowledge of any threatened or proposed, reassessments or special assessments or penalties or interest with respect to real estate taxes applicable to any Subject Property which could, in the reasonable judgment of KHPC, have any material adverse effect on the business or financial condition of the Business taken as a whole.

3.11 Condition of Equipment. The machinery, equipment, furniture, vehicles, and other tangible personal property of KHPC which are included in the Assets are in adequate operating condition for the continued conduct of the Business as it is presently conducted.

3.12 Inventory; Receivables. Substantially all items of Inventory of KHPC are of a good and merchantable quality, usable and saleable in the ordinary course of business. The inventory set forth on the Contribution Date Balance Sheet is stated properly therein at the lower of cost or realizable market value, determined in accordance with accounting principles consistently applied. The quantities of all items of Inventory are reasonable and warranted in the present circumstances of the Business.

3.13 Title to Properties; Encumbrances. Except as set forth in the Financial Statements or in the other Schedules hereto KHPC has good and marketable title to each piece of Fee Property and to the Improvements thereon, in each case free and clear of all Encumbrances, except for Permitted Encumbrances, and has title to all of the other tangible Properties, free and clear of all Encumbrances, except for Permitted Encumbrances. As a result of the delivery to the Partnership of the Conveyance Instruments, all of the Assets are owned free and clear of all Encumbrances, except Permitted Encumbrances and encumbrances created by the Partnership (whether or not arising from the transactions contemplated hereby).

3.14 Leases. Each lease pursuant to which KHPC leases real or personal property is in full force and effect in accordance with its terms, no Lease has been modified or amended in writing, and KHPC has not received any written notice of any breach or default with respect to a Lease the consequences of which would result in such Lease being terminated by the Lessor or which, individually or in the aggregate, would have a material adverse effect on the business or financial condition of the Business taken as a whole.

3.15 Patents, Trademarks, and Similar Rights.

(a) KHPC has the right to use the Intangible Property which is used in the Business and the consummation of the transactions contemplated by this Agreement will not alter or impair any such rights and will result in the Partnership having the right to use all such Intangible Property to the same extent it is currently used in the Business;

(b) No claims have been asserted by any person or entity for the use of any such Intangible Property or challenging or questioning the validity or effectiveness of any such license or agreement, and KHPC has no knowledge of any valid basis for any such claim; and

(c) To the knowledge of KHPC, the use of such Intangible Property by KHPC does not infringe on the rights of any person or entity.

3.16 Insurance. KHPC has heretofore made available for inspection by the Partnership a true and complete copy of all material policies of fire, liability, workers' compensation, and other forms of insurance owned or held by KHPC. All such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the Contribution Date have been paid, and no written notice of cancellation or termination has been received with respect to any such policy. Such policies are in such amounts and insure against such losses and risks and provide such coverage as, in the opinion of KHPC, are adequate to protect the Business as it is presently conducted.

3.17 Documents. KHPC has heretofore delivered or made available to the Partnership, to the extent requested by the Partnership, the following documents, each of which is true and complete:

(a) Copies of all material contracts, agreements, or other commitments, written or oral, to which KHPC (with respect to the Business only) is a party or has succeeded to a party by assumption or assignment or in which it has a beneficial interest (any contract or agreement shall, for the purposes of this Agreement, be deemed material (A) if the Business taken as a whole is substantially dependent upon it, (B) if it involves a financial obligation of or benefit to the Business in excess of \$250,000, (C) if the contract is not made in the ordinary course of business, or (D) if it constitutes a management contract or employment contract (excluding oral agreements that arise by operation of law)); and

(b) Copies of all product bulletins, technical bulletins, or other advertising or sales materials currently used in connection with the Business.

3.18 Labor Matters.

(a) To the knowledge of KHPC, KHPC (with respect to Business Employees) is operating in material compliance with all applicable law respecting employment and employment practices, terms and conditions of employment and wages and hours, and is not engaged in any unfair labor practices.

(b) To the knowledge of KHPC, there are no unfair labor practice complaints, labor disputes, work stoppages, or union organization efforts, or threats of the foregoing, directed against any of the operations of the Business.

3.19 No Breach.

(a) Each material Permit, contract, agreement, deed of trust, lease, policy, license, plan, commitment, arrangement, and understanding (whether evidenced by a written document or otherwise) referred to in this Agreement or in any Schedule hereto, under which KHPC has any right, interest, or obligation is in full force and effect

(b) KHPC is not in breach of any material agreement of KHPC (with respect to the Business) and there does not exist any default or event (including the execution and delivery of this Agreement and no consummation of the transactions contemplated hereby or thereby) which, with the giving of notice or the lapse of time or both, would become a breach or default, and there is no basis for any valid claim of a default in any respect, under any thereof, and KHPC has used its best efforts to secure the consents (where such consents are necessary) of the other parties thereto to the consummation of the transactions contemplated by this Agreement.

3.20 Consents, Permits, Etc. No material consent, approval, governmental filing, authorization, or Permit from any person or entity is necessary to the consummation of the transactions contemplated by this Agreement.

3.21 Litigation. There are no Actions pending or threatened by or against, or involving KHPC (with respect to the Business only) or any directors, officers, or employees thereof in their capacity as such or which question or challenge the validity of this Agreement, or any action taken or to be taken by KHPC pursuant to this Agreement in connection with the transactions contemplated hereby or thereby, and to the knowledge of KHPC, there is no valid basis for any such Action.

3.22 Compliance With Applicable Law; Adverse Restrictions. The operations of KHPC (with respect to the Business only) are being conducted in material compliance with (a) all applicable Permits, orders, writs, injunctions, judgments, decrees, or awards of all courts and governmental and regulatory authorities, and (b) to the knowledge of KHPC, all material laws (statutory or otherwise), ordinances, rules, regulations, bylaws, and codes of all governmental and regulatory authorities, whether federal, state, or local (individually, a "Law" and collectively, "Laws"), which are applicable to the Assets of the Business (including, without limitation, those related to public or occupational safety, pollution and protection of the environment, and hazardous or other waste disposal). KHPC (with respect to the Business) has not received any written notification of any asserted present failure to comply with any Law, except for failures which in the aggregate are not and were not material to the conduct of the Business as a whole or which KHPC has taken steps to correct or contest in good faith.

3.23 Environmental Protection. To the knowledge of KHPC, KHPC (with respect to the Business) has obtained all material Permits relating to pollution or protection of health,

safety, or the environment which are required by Law ("Environmental Permits"), including, without limitation, those regulating emissions, discharges, or releases of Hazardous Substances (as defined in CERCLA, as amended by SARA "Hazardous Waste," and "Regulated Substances" as defined by CERCLA) into ambient air, surface water, groundwater, or land, or resulting treatment, storage, or disposal of Hazardous Substances. KHPC is materially in compliance with such required Environmental Permits and is also in compliance with all other material limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables contained in any Laws or contained in any code, order, decree, or judgment issued, entered, promulgated, or approved thereunder.

3.24 Assets Necessary to Business. As a result of the transactions effected hereby, the Partnership (with respect to Assets owned prior to the Contribution Date by KHPC) (a) will have title to, or a valid leasehold interest in, all material tangible and intangible assets and properties relating to the Business; (b) will possess all material consents, authorizations, approvals, and Permits relating to the Business; and (c) will be party to all material agreements necessary to continue to carry on the Business substantially as presently conducted.

3.25 Customers, Distributors and Suppliers. Since January 1, 1998 KHPC has not received written notice of any adverse change in the business relationship of KHPC with any customer, distributor or supplier which would be material to the business or financial condition of the Business taken as a whole.

3.26 Brokers. KHPC has neither incurred nor will incur any broker's, finder's, investment banking, or similar fee in connection with the transactions contemplated by this Agreement and KHPC has not made any statement or representation that could form the basis for any claim for any such fee.

3.27 Governmental Approvals and Consents. Except as referred to in Section 5.8, no approval, authorization, consent, or other order or action of KHPC with any court, administrative agency, or other governmental authority is required for the execution and delivery by KHPC of this Agreement or the consummation by KHPC of the transactions contemplated hereby.

ARTICLE 4

COVENANTS OF THE PARTIES

4.1 Consents, Permits, Etc.

(a) KHPC has obtained or will obtain at the earliest practicable date hereafter all consents, approvals, governmental filings, authorizations, and Permits necessary to (A) the consummation of the transactions contemplated by this Agreement, and (B) the continued conduct of the Business by the Partnership after the Contribution Date as it is presently conducted and delivers herewith or will deliver when obtained hereafter to the Partnership, as applicable, copies of each such consent, approval, governmental filing, authorization, and Permit.

(b) To the extent that any of the contracts, leases, agreements, Permits, plans, commitments, purchase orders, or other binding arrangements relating to the Assets (in this Section 4.1(b) called "Agreements") cannot be assumed by or assigned to the Partnership without the consent of another party, and such consent has not been obtained as of the Contribution Date, KHPC and the Partnership agree to cooperate in any reasonable arrangement designed to enable KHPC to perform its obligations under, and to provide for the Partnership the benefits of, any such agreements, including enforcement at any cost, and for the account of the Partnership, of any and all rights of KHPC against the other party thereto arising out of the breach or cancellation thereof by such other party or otherwise. KHPC will promptly pay to the Partnership when received all monies received under any such agreements.

ARTICLE 5

SURVIVAL OF REPRESENTATIONS; INDEMNIFICATION

5.1 Survival; Indemnification.

(a) The covenants, agreements, representations, and warranties of the parties hereto contained herein or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Contribution Date until October 1, 1999 except that such covenants, agreements, representations, or warranties relating to the Tax matters shall extend until the expiration of the applicable statutory period of limitations (giving effect to any waiver or extension thereof). Notwithstanding the preceding sentence, any covenant, agreement, representation, or warranty in respect of which indemnity may be sought under this Article 5 shall survive the time at which it would otherwise terminate pursuant to such sentence, if notice of the inaccuracy or breach thereof giving rise to such indemnity shall have been given to the party against whom such indemnity may be sought, prior to such time.

(b) Each of the Indemnitors hereby agrees to indemnify each Indemnitee (as each is defined in Section 5.4 of this Agreement) against and agree to hold it harmless from any and all damage, loss, liability, and expense (including, without limitation, reasonable expenses of investigation and attorney's fees and expenses in connection with any action, suit, proceeding, claim, investigation, or other loss) (a "Loss") incurred or suffered by such Indemnitee arising out of any material breach of any representation or warranty hereunder made by such Indemnitor and from any other breach by such Indemnitor of the provisions of this Agreement.

5.2 **Limitations of Indemnification.** Notwithstanding anything contained in this Section 5 to the contrary, any Indemnitor shall be required to indemnify the Indemnitee against and hold the Indemnitee harmless from all Loss (other than relating to Taxes) with respect to Section 5.1 only to the extent that the aggregate amount of all such Losses exceeds Two Million Dollars (\$2,000,000) (the "Liability Threshold"). In the event that the aggregate amount of all Loss (other than relating to Taxes) with respect to Section 5.1 of this Agreement sustained by the Indemnitee exceeds the Liability Threshold, and the Indemnitor is required to indemnify such Indemnitees, the Indemnitor shall be responsible for payment for all Loss with respect to Section 5.1 of this Agreement in excess of the Liability Threshold: provided, however that in no event shall the amount of Loss (other than relating to Taxes) with respect to Section 5.1 of this

Agreement payable by an Indemnitor exceed in the aggregate Fifty Million Dollars (\$50,000,000).

5.3 Tax Indemnification With Respect to Tax Liability of KHPC and Other Tax Matters.

(a) Except to the extent such Taxes are set forth in the Balance Sheet of KHPC dated as of June 30, 1998, KHPC shall indemnify and hold harmless the Partnership from:

(i) Any liability for Tax of KHPC which is incurred in or attributable to the Tax Indemnification Period; and

(ii) Any liability, cost, expense (including, without limitation, reasonable expenses of investigation and reasonable attorneys' fees and expenses), loss, damages, assessment, settlement, or judgment arising out of or incident to the imposition, assessment, or assertion of any liability described in subclauses (i) and (ii) hereof, including those incurred in the contest in good faith of appropriate proceedings for the imposition, assessment, or assertion of any tax (subject to the provisions of Section 5.3(e) hereof), and any liability of an Indemnitee by reason of being a transferee of the assets of KHPC with respect to any liability for Tax of KHPC which is incurred or attributable to the Tax Indemnification Period.

The sum of (i) and (ii) above is referred to herein as a "Tax Loss."

(b) In the case of any Taxes that are imposed, assessed, or asserted on a periodic basis and are payable for a Taxable period that includes (but does not end on) the Contribution Date, the portion of such Taxes related to the portion of such Taxable period ending on the Contribution Date and the portion of such Taxes that is incurred in or attributable to the Pre-Contribution Tax Period shall (i) in the case of any Tax other than a Tax imposed on, measured by, or related to revenues, gross or net income, receipts, gains, or compensation, be deemed to be the amount of such Tax for the entire Taxable period multiplied by a fraction, the numerator of which is the number of days in the Pre-Contribution Tax Period and the denominator of which is the number of days in the entire Taxable period, and (ii) in the case of any Tax imposed on, measured by, or related to revenues, gross or net income, receipts, gains, or compensation, be deemed equal to the amount of such Tax for the entire Taxable period multiplied by a fraction, the numerator of which is the revenues, gross or net income, receipts, gains, or compensation, as the case may be, attributable to the Tax Indemnification Period and the denominator of which is the total amount of revenues, gross or net income, receipts, gains, or compensation for the entire Taxable period.

(c) Upon the incurrence of an Indemnitee of any Tax Loss or any Loss relating to an Excluded Tax Liability (as defined in Section 1.5(a) hereof), the Indemnitor shall discharge its obligations to indemnify the Indemnitee against such Tax Loss or Loss by paying to the Indemnitee in U.S. dollars an amount equal to the amount of such Tax Loss or Loss.

(d) If an Indemnitee receives a refund or reduces its Tax liability by using a credit of any Tax in respect of the Tax Indemnification Period or any Excluded Tax Liability, the Indemnitee shall pay to the Indemnitor the amount of such refund or credit within thirty (30) days of the date on which such refund or credit is received or used by such Indemnitee.

(e) The Indemnitee agrees to give prompt notice to the Indemnitor of the assertion of any claim, or the commencement of any suit, action, proceeding, audit, or assessment in respect of which indemnity may be sought hereunder or under Section 5.1 of this Agreement relating to an Excluded Tax Liability, and of any Loss (specifying with reasonable particularity the basis therefor) and will give the Indemnitor such information with respect thereto as the Indemnitor may reasonably request.

(f) The provisions of Section 5.3 hereof shall govern any Loss with respect to a breach of any representation, covenant, or agreement set forth in Section 3.7 of this Agreement.

5.4 Definitions. For the purpose of this Agreement, the following terms have the following meanings:

(a) "Affiliate" means, with respect to any person, any person directly or indirectly controlling, controlled by, or under common control with such other person.

(b) "Code" means the Internal Revenue Code of 1986, as amended.

(c) "Indemnitee" means the Partnership.

(d) "Indemnitor" means KHPC.

(e) "Pre-Contribution Tax Period" means any Tax Period ending on or before the close of business on the Contribution Date, or, in the case of any Tax Period which includes, but does not end on, the Contribution Date, the portion of such period up to and including the Contribution Date.

(f) "Tax" means (i) any net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, franchise, capital, paid-up capital, profits, greenmail, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty, or other tax, governmental fee, or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax, or additional amount imposed by any governmental authority (a "Taxing Authority") responsible for the imposition of any such tax (domestic or foreign), and (ii) liability for the payment of any amounts of the type described in (i) as a result of any express obligations to indemnify any other Person.

(g) "Tax Asset" means any net operating loss or other Tax loss, net capital loss, investment Tax credit, foreign Tax credit, charitable deduction, or any other credit or Tax attribute of KHPC which could reduce Taxes (including, without limitation, deductions and credits related to alternative minimum Taxes).

(b) "Tax Indemnification Period" means (i) any Pre-Contribution Tax Period, (ii) with respect to any Tax described in clause (ii) of Section 5.4(f), the survival period of the indemnification obligation under the applicable contract.

5.5 Control of Litigation.

(a) The Indemnitee agrees to give prompt notice to the Indemnitor of the assertion of any claim, or the commencement of any suit, action, or proceeding in respect of which indemnity may be sought under Section 5.1(b) of this Agreement and of any Loss which any such Indemnitee deems to be within the ambit of Section 5.1(b) of this Agreement other than relating to Taxes (specifying with reasonable particularity the basis therefor) and will give the Indemnitor such information with respect thereto as the Indemnitor may reasonably request. The Indemnitor may, at its own expense, participate in and, upon notice to such Indemnitee, assume the defense of any such suit, action, or proceeding; provided that the Indemnitor's counsel is reasonably satisfactory to Indemnitee, the Indemnitor shall thereafter consult with Indemnitee upon Indemnitee's reasonable request for such consultation from time to time with respect to such suit, action, or proceeding, and the Indemnitor shall not, without Indemnitee's consent, which consent shall not be unreasonably withheld, settle or compromise any such suit, action, or claim. If the Indemnitor assumes such defense, such Indemnitee shall have the right (but not the duty) to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnitor. For any period during which the Indemnitor has not assumed the defense thereof, the Indemnitor shall be liable for the fees and expenses of counsel employed by the Indemnitee; provided, however, that the Indemnitor shall not be liable for the fees or expenses of more than one counsel employed by the Indemnitee in any jurisdiction. If the Indemnitee assumes the defense thereof, the Indemnitee shall thereafter consult with the Indemnitor upon the Indemnitor's reasonable request for such consultation from time to time with respect to such suit, action, or proceeding and the Indemnitee shall not, without the Indemnitor's consent, which consent shall not be unreasonably withheld, settle or compromise any such suit, action, or claim. Whether or not the Indemnitor chooses to defend or prosecute any claim, all of the parties hereto shall cooperate in the defense or prosecution thereof.

(b) The Indemnitor shall not be liable under Section 5.1(b) hereof with respect to any Loss resulting from a claim or demand the defense of which the Indemnitor was not offered the opportunity to assume as provided under Section 5.5(a) hereof to the extent the Indemnitors' liability under Section 5.1(b) hereof is prejudiced as a result thereof. No investigation by Indemnitee prior to the Contribution Date shall relieve any Indemnitor of any liability hereunder.

5.6 Transfer Taxes. KHPC shall pay all Taxes or recording fees imposed on its transfers hereunder of real property and tangible and intangible personal property hereunder, including without limitation Intellectual Property, applicable to the transfers of the Assets contemplated by this Agreement and all sales and use Taxes applicable to transfers by KHPC of the Assets contemplated by this Agreement.

5.7 Cooperation on Tax Matters. KHPC and the Partnership shall cooperate fully, as and to the extent reasonably requested by any of such parties, in connection with any audit, litigation, or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation, or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. KHPC and the Partnership agree (a) to retain all books and records which are relevant to the determination of the Tax liabilities pertinent to the Assets relating to any Pre-Contribution Tax Period until the expiration of the applicable statute of limitations and to abide by all record retention agreements entered into with any Taxing Authority, and (b) to give the other parties reasonable written notice prior to destroying or discarding any such books and records and, if another party so requests, allow such party to take possession of such books and records.

5.8 Tax Clearance Certificate. KHPC has provided or will make available to the Partnership any tax clearance certificate required by any applicable law as a result of the transactions effected thereby or an indemnity for any loss incurred by reason of the failure to provide such certificates.

ARTICLE 6

MISCELLANEOUS PROVISIONS

6.1 Knowledge. References to the knowledge of KHPC means solely the actual conscious knowledge of the chief executive officers of the general partners of KHPC.

6.2 Amendment and Modification. This Agreement may be amended, modified, or supplemented only by written agreement 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 waived by the other party who is the beneficiary of such provision; provided, however, that any such waiver may be made only by a written Instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 6.3, with appropriate notice in accordance with Section 6.10 of this Agreement.

6.4 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Any party may assign any of its rights hereunder, but no such assignment shall relieve it of its obligations hereunder. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person other than the parties, any successors and permitted

assigns, any rights, remedy, or claim under or by reason of this Agreement or any provisions herein contained.

6.5 Expenses, Transfer Taxes, Etc. Except as otherwise contemplated by Section 5.1 hereof, whether or not the transactions contemplated by this Agreement shall be consummated, all fees and expenses (including all fees of counsel, actuaries, and accountants) incurred by any party in connection with the negotiation and execution of this Agreement, shall be borne by such party.

6.6 Further Assurances. At the request of another party hereto, and without further consideration, each of the parties, at its own expense, will execute and deliver such other documents, and take such other action, as may be reasonably requested in order to consummate more effectively the transactions contemplated hereby.

6.7 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware (without regard to its conflicts of law doctrines).

6.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall become a binding Agreement when one or more of the counterparts have been signed by each of the parties and delivered to the other party.

6.9 Publicity. Neither of the parties will make any disclosure of the transactions contemplated by this Agreement or any discussions in connection therewith, without the prior written consent of each of the other parties. The preceding sentence shall not apply to any disclosure required to be made by Law or the regulations of any stock exchange(s) as reasonably determined by counsel to the party determining that such disclosure is required, except that such party, whenever practicable, shall be required to consult with the other party concerning the timing and content of such disclosure before making it.

6.10 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to KHPC:

Attn: Treasurer
15 Hampshire Street
Mansfield, MA 02048

If to the Partnership:

Attn: Treasurer
One Tyco Park
Exeter NH 03833

6.11 Specific Performance. Each of the parties acknowledge that money damages would not be a sufficient remedy for any breach of this Agreement and that irreparable harm would result if this Agreement were not specifically enforced. Therefore, the rights and obligations of the parties under this Agreement shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith. A party's right to specific performance shall be in addition to all other legal or equitable remedies available to such party.

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

6.13 Entire Agreement. This Agreement, including the schedules, exhibits, and other documents and instruments referred to herein, together with the Partnership Agreement embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

6.14 Severability. If any one or more provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

6.15 Schedules. All Schedules attached hereto are hereby incorporated in and made a part as if set forth in full herein.

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

KHPC HOLDING

By: Tyco International (US) Inc.
Its: General Partner

By: _____
Name: Edward Federman
Title: Vice President – Corporate Controller

THE KENDALL COMPANY LP

By: SWD Holding, Inc. I
Its: General Partner

By:  _____
Name: Kevin Gould
Title: Vice President

Schedule 1.2

Kendall Excluded Real Property

1522 S. Broadway
P.O. Box 19022
Green Bay, WI 54307

1909 NE 25th Avenue
Ocala, FL 34470

09/29/98
CHIDOC02:106172.2
09/29/98

RECORDED: 06/30/2000

TRADEMARK
REEL: 002104 FRAME: 0284