

08-16-2000

Docket No.:

18623.2.0



101433985

Tab settings

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

1. Name of conveying party(ies): 11:59

Clean Green Packing Company

- Individual(s)
- General Partnership
- Corporation-State **Minnesota**
- Other

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

3. Nature of conveyance:

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

Execution Date: March 2, 1993

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

Name: **Clean Green Packing Company of Minnesota, Inc.**

Internal Address:

Street Address: **720 Florida Avenue**

City: **Golden Valley** State: **MN** ZIP: **55426**

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership

Corporation-State **Minnesota**

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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,793,289

Additional numbers Yes No

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

Name: **James R. Haller**

Internal Address: **Fredrikson & Byron, P.A.**

Street Address: **900 Second Avenue South**

1100 International Centre

City: **Minneapolis** State: **MN** ZIP: **55402**

6. Total number of applications and registrations involved: **1**

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

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

08/15/2000 DNGUYEN 00000196 1793289

D1 FC:481 40.00

DO NOT USE THIS SPACE

9. Statement and signature.

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

James R. Haller, Esq.

Name of Person Signing

James R. Haller
Signature

14 July 2000
Date

Total number of pages including cover sheet, attachments, and

17

TRADEMARK

REEL: 002120 FRAME: 0337

7L-195

State of Minnesota

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SECRETARY OF STATE

CERTIFICATE OF MERGER

I, Joan Anderson Growe, Secretary of State of Minnesota, certify that: the documents required to effectuate a merger between the entities listed below and designating the surviving entity have been filed in this office on the date noted on this certificate; and the qualification of the individual merging entities to do business in Minnesota is terminated on the effective date of this merger.

Merger Filed Pursuant to Minnesota Statutes, Chapter: 302A

State of Formation and Names of Merging Entities:

MN: CLEAN GREEN PACKING COMPANY

MN: EVERGREEN SOLUTIONS, INC.

State of Formation and Name of Surviving Entity:

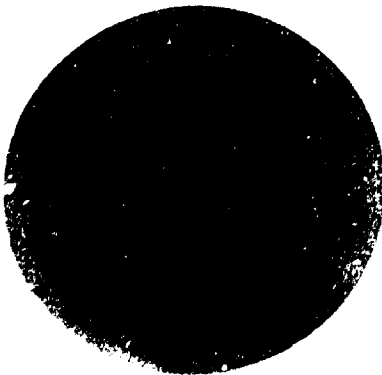
MN: CLEAN GREEN PACKING COMPANY

Effective Date of Merger: March 2, 1993

Name of Surviving Entity After Effective Date of Merger:

CLEAN GREEN PACKING COMPANY OF MINNESOTA, INC.

This certificate has been issued on: March 2, 1993.



Joan Anderson Growe
Secretary of State

3-2-93

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**ARTICLES OF MERGER
OF EVERGREEN SOLUTIONS, INC. INTO
CLEAN GREEN PACKING COMPANY**

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THESE ARTICLES OF MERGER relate to the merger of EVERGREEN SOLUTIONS, INC., a Minnesota corporation ("ESI"), with and into CLEAN GREEN PACKING COMPANY, a Minnesota corporation ("CGP"). The name of the surviving corporation of the merger will be "Clean Green Packing Company of Minnesota, Inc."

ARTICLE I.

The Agreement and Plan of Merger dated as of January 19, 1993 (the "Merger Agreement"), in fully executed form, is attached hereto as Exhibit A.

ARTICLE II.

The Merger Agreement has been approved by both ESI and CGP pursuant to Chapter 302A of the Minnesota Statutes.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 2nd day of March, 1993.

CLEAN GREEN PACKING COMPANY

By: *Robert Jancy*
Its: CEO

EVERGREEN SOLUTIONS, INC.

By: *[Signature]*
Its: PRESIDENT & CEO

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EXHIBIT A

AGREEMENT AND
PLAN OF MERGER

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THIS AGREEMENT AND PLAN OF MERGER, made this 19th day of January, 1993, by and among **CLEAN GREEN PACKING COMPANY**, a Minnesota corporation ("Subsidiary" or the "Surviving Corporation"), **ENVIRONMENTAL TECHNOLOGIES USA, INC.**, a Minnesota corporation and sole shareholder of Subsidiary ("ETI"), and **EVERGREEN SOLUTIONS, INC.**, a Minnesota corporation ("ESI").

WHEREAS, Subsidiary and ESI desire to adopt a plan of reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, Subsidiary and ESI deem it advisable that ESI be merged into Subsidiary pursuant to this Agreement and in accordance with applicable laws of the State of Minnesota; and

WHEREAS, at or prior to the Effective Date as hereinafter defined, Subsidiary will acquire from ETI the number of shares of ETI Common Stock necessary to complete the merger provided for herein.

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained, the parties hereby agree that ESI shall be merged with and into Subsidiary, with Subsidiary being the Surviving Corporation, in accordance with the applicable laws of the State of Minnesota, and that the terms and conditions of the merger (the "Merger") and the mode of carrying it into effect shall be as follows:

SECTION 1. THE MERGER

1.1. **Transfer of Property and Liabilities.** Upon the Effective Date (as defined in Section 11 hereof) of the Merger, the separate existence of ESI shall cease; all of the outstanding shares of stock of ESI shall be exchanged for and converted into cash or securities of ETI, as hereinafter provided; and upon the filing of Articles of Merger with the Secretary of State of Minnesota in accordance with Section 302A.615 of the Minnesota Business Corporation Act, Subsidiary, as the Surviving Corporation, shall possess all the rights, privileges, immunities, powers, and purposes, and all the property, real and personal, causes of action, and every other asset of ESI, and shall assume and be liable for all liabilities, obligations, and penalties of ESI.

1.2. **Surviving Corporation.** Following the Merger, the existence of the Surviving Corporation shall continue unaffected and unimpaired by the Merger, with all the rights, privileges, immunities, and powers, and subject to all the duties and liabilities, of a corporation organized under the laws of the State of Minnesota. The Articles of Incorporation and Bylaws of Subsidiary, as in effect immediately prior to the Effective Date, shall continue in full force and effect, and except as provided in Section 1.3, shall not be changed in any manner by the Merger. The directors of Subsidiary immediately prior to the Effective Date shall continue as the directors of the Surviving Corporation, and Daniel L. Hanlon, the President of ESI immediately prior to the Effective Date, shall become the President of the Surviving

Corporation, to serve until his successor is duly elected and qualified or until his earlier resignation, removal, or death.

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1.3. **Name.** The name of the Surviving Corporation as of the Effective Date shall become "Clean Green Packing Company of Minnesota, Inc."

SECTION 2. CONVERSION OF SECURITIES

2.1. **Conversion Ratio.** The outstanding securities of ESI shall be converted as follows:

ESI Shareholder	No. of ESI Shares	Cash	ETI Shares (1)	ETI Warrant A (2)	ETI Warrant B (3)
Daniel L. and Carol A. Hanlon	1,007,752 (4)		371,875		
Food Fund LP	321,248		118,545	30,675	
Donald N. Sulentic	268,057 (5)	\$ 74,800	48,731	12,610	20,000
Wesley J. Laseski	160,624		59,273	15,338	
Glenn W. Hasse, Jr.	80,312		29,636	7,669	
William C. Dietrich	112,429	\$ 61,836			
William H. Upjohn Tr.	79,309		29,266	7,573	
Edward W. Boehmer	64,253		23,710	6,135	
Gerald D. Thill	69,253		25,555	6,613	
Ronald J. Kettwig	48,196		17,785	4,602	
Robert C. Dye	45,000		16,606	4,297	
Edward A. Boehmer	21,667		7,995	2,069	

Kay S. and Owen W. Gregg	8.333		3.075	796	
William H. Upjohn	17.000		6.273	1.623	
TOTALS	2,303,433	\$136,636	758,325	100,000	20,000

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- (1) Represents shares of ETI Common Stock, par value \$0.01 per share, which will have the registration rights described on Exhibit 2.1(a) hereto.
- (2) Such warrants shall be in the form attached hereto as Exhibit 2.1(b) hereto.
- (3) Such warrants shall be in the form attached hereto as Exhibit 2.1(c) hereto.
- (4) Represents the ESI shares owned by the Hanlons after surrender of shares as described in Section 9.1 below.
- (5) Sulentic also holds an ESI warrant to purchase up to 1,191 ESI shares and an option from the Hanlons to purchase up to 53,191 of their ESI shares. Such warrant and option are also being cancelled in exchange for the cash and ETI securities described above.

2.2. **Shares of Subsidiary.** None of the issued shares of Subsidiary shall be converted as a result of the Merger, but all of such shares shall remain issued shares of capital stock of the Surviving Corporation.

2.3. **Exchange of Securities.** As promptly as practicable after the Effective Date, each ESI shareholder shall surrender to ETI (in care of its counsel described in Section 12.4 below) the certificates representing the ESI securities to be converted in the Merger pursuant to Section 2.1 above. Such holders shall be entitled upon such surrender to receive in exchange therefor the cash payment and/or ETI securities described in Section 2.1 above.

2.4. **Restrictions on ETI Securities.** The securities of ETI issuable in the Merger will be "restricted securities" within the meaning of Rule 144 under the Securities Act of 1933, as amended (the "Act"), and will contain a legend restricting transfer thereof without registration under the Act and applicable state securities laws or an exemption therefrom. ETI may also place a "stop transfer" order with its transfer agent to such effect.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF ESI

ESI represents and warrants that:

3.1. **Corporate Organization and Good Standing.** It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Minnesota. It also is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned, leased, or operated, or the nature of its

activities, makes such qualification necessary, except such jurisdictions where failure to be so qualified would not have a material adverse effect upon the business, operations, properties, assets, or the condition, financial or otherwise, of ESI.

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3.2. **Corporate Powers.** It has the corporate power to own, lease, or operate all properties and assets owned, leased, or operated by it, to carry on its business as now conducted, to execute and deliver this Agreement, and, subject to the approval of its shareholders, to consummate the transactions contemplated by this Agreement.

3.3. **Articles of Incorporation.** Its Articles of Incorporation, and any amendments or restatements thereof through the date hereof, as certified by the Minnesota Secretary of State, are as set forth in Exhibit 3.3.

3.4. **Bylaws.** Its Bylaws as duly adopted and amended through the date hereof, and as certified to by its Secretary, are as set forth in Exhibit 3.4.

3.5. **Capitalization.** As of the date hereof, it has authorized 10,000,000 shares of Common Stock, par value \$.01 per share, of which 2,546,681 shares are issued and outstanding, and 2,000,000 shares of undesignated capital stock, par value \$.01 per share, none of which are outstanding; and it has no other authorized, issued, or outstanding shares of capital stock.

3.6. **Shareholders of ESI.** The identities of all shareholders of ESI and the number of shares held by each are set forth on Exhibit 3.6 hereto. All shareholders of ESI are residents of or domiciled in the State of Minnesota.

3.7. **Stock Paid and Nonassessable.** The outstanding ESI Common Stock has been duly and validly authorized and issued, and is fully paid and nonassessable and free from preemptive rights.

3.8. **Authorization.** This Agreement has been duly authorized, executed, and delivered by ESI, and when approved by ESI's shareholders, will constitute a valid and binding agreement of ESI enforceable in accordance with its terms.

3.9. **Board of Directors.** The directors of ESI as of the date hereof are as set forth on Exhibit 3.9 hereto.

3.10. **Officers.** The officers of ESI as of the date hereof are as set forth on Exhibit 3.10 hereto.

3.11. **Other Options, Warrants, etc.** Other than the ESI securities being cancelled as provided in Section 2.1 above, ESI has outstanding no subscriptions, options, warrants, calls, or other agreements or commitments entitling any person to purchase or otherwise acquire any shares of ESI Common Stock or other capital stock or securities of ESI.

3.12. **Subsidiaries.** ESI has one inactive subsidiary, Global Growth, Inc., a Minnesota corporation, all the outstanding capital stock of which is held by ESI.

3.13. **Financial Statements.** Exhibit 3.13 hereto contains ESI's unaudited financial statements as of and for the fiscal year ended December 31, 1992. Such financial statements

have been prepared on a basis consistent with prior periods and fairly present the financial position of ESI as of December 31, 1992, and the results of operations for the fiscal year then ended; and reflect all adjustments, consisting only of normal recurring adjustments, which, to the best knowledge of ESI, are necessary for a fair presentation of the results reported.

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3.14. **Compliance.** ESI is not in breach of, or in conflict with, any of the terms, conditions, or provisions of its Articles of Incorporation or Bylaws.

3.15. **Real Property.** ESI owns no real property.

3.16. **Personal Property.** ESI owns all its personal property as indicated on the balance sheet identified on Exhibit 3.13 hereto free and clear of all claims, liens, or encumbrances of any kind except as set forth on such balance sheet or on Exhibit 3.16; and ESI has no liabilities except as set forth on such balance sheet, except for liabilities incurred in the ordinary course of business since the date of such balance sheet.

3.17. **No Regulatory Violation.** To the best of ESI's knowledge, ESI is not in violation of any law, order, rule, regulation, writ, injunction, or decree of any governmental authority or court, domestic or foreign, nor will execution of this Agreement or consummation of any of the transactions contemplated by this Agreement result in any such violation.

3.18. **No Contractual Violation.** Except as described on Exhibit 3.18, neither the execution of this Agreement, nor the performance of ESI's obligations pursuant to this Agreement or the consummation of the transactions contemplated hereby, will conflict with, or result in a breach or violation of any of the terms or provisions of, or constitute, or with the passage of time or the giving of notice constitute, a default under any indenture, mortgage, deed of trust, voting trust agreement, loan agreement, bond debenture, note agreement, or other evidence of indebtedness, lease, contract or other agreement or instrument to which ESI is a party, or by which ESI or any of its properties is bound, or ESI's Articles of Incorporation or Bylaws; and no consent, approval, authorization, or order of any court or governmental agency or body is required for the consummation by ESI of the transactions contemplated hereby.

3.19. **Material Contracts.** Exhibit 3.19 consists of all material contracts, leases, employment and other compensation arrangements, and all other material agreements related to ESI, its properties, or business (the "Material Agreements"), and there are no Material Agreements, written or oral, except as described on such Exhibit.

3.20. **Litigation.** Except as disclosed on Exhibit 3.20, there is no action, suit, or proceeding to which ESI is a party, or of which any of its property is the subject, pending before or brought by any court or governmental agency or body, nor, to the knowledge of ESI, is any such action, suit, or proceeding threatened, which would, singly, or in the aggregate, result in any material adverse change in the condition (financial or otherwise), business, key personnel, properties, assets, results of operations (present or prospective), or net worth of ESI.

3.21. **Patents, Trademarks, etc.** Except as described on Exhibit 3.21, ESI has received no notice of infringement of, or conflict with, asserted rights of others with respect to any patents, trademarks, servicemarks, trade names, or copyrights, nor is ESI aware of any infringement by others upon its name. To the best of ESI's knowledge, there are no patents, trademarks, servicemarks, trade names, or copyrights necessary to the conduct of its business.

as currently conducted or as contemplated by ESI which ESI does not own or possess adequate rights to use.

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3.22. **Profit Sharing Plans, etc.** Except as set forth in Exhibit 3.22, ESI is not a party to and has no obligation, contingent or otherwise, under any material, oral or written, expressed or implied: (i) commitment or agreement with officers, directors, employees, or any other persons providing similar services; (ii) agreement or arrangement providing for the payment of any incentive, bonus, commission, or deferred compensation or severance or termination pay; (iii) pension, profit sharing, stock purchase, stock option, group life insurance, hospitalization insurance, disability, retirement, or any other employee benefit plan, fringe benefit plan, agreement, or arrangement, whether formal or informal and whether legally binding or not; or (iv) collective bargaining or union contract or agreement.

3.23. **Tax Returns.** Except as described on Exhibit 3.23, ESI has timely filed all tax returns and reports required to be filed by it, and has paid in a timely manner all taxes that are shown on such returns as being due and payable other than such taxes as are being contested in good faith and for which adequate reserves have been established.

3.24. **No Brokers.** No finders' fees or brokerage commissions of any kind will be payable by ESI in connection with the transactions described in this Agreement.

3.25. **Disclosure of Material Facts.** ESI has not knowingly failed to disclose to ETI any facts material to the assets, liabilities, earnings, prospects, and business of ESI. No representation or warranty by ESI contained in this Agreement, and, to the best of its knowledge, no statement contained in any document (including, without limitation, the financial statements and Exhibits hereto), list, certificate, or other writing furnished or to be furnished by or on behalf of ESI or any of its representations in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements contained herein or there not misleading or necessary in order to provide fully and fairly the information required to be provided in any such document, list, certificate, or other writing.

3.26. **Interpretation.** As used in this Agreement, the term "best knowledge" of ESI or "ESI's best knowledge" refers to the best knowledge of the officers and directors of ESI.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF ETI AND SUBSIDIARY

ETI and Subsidiary represent and warrant that:

4.1. **Corporate Organization and Good Standing.** Subsidiary and ETI are corporations duly organized, validly existing, and in good standing under the laws of the State of Minnesota. They also are duly qualified as foreign corporations to do business, and are in good standing, in each jurisdiction where the character of the properties owned, leased, or operated by them, or the nature of their activities, makes such qualification necessary, except such jurisdictions where failure to be so qualified would not have a material adverse effect upon the business, operations, properties, assets, or the condition, financial or otherwise, of Subsidiary or ETI.

4.2. **Corporate Powers.** Subsidiary and ETI have the corporate power to own, lease, or operate all properties and assets owned, leased, or operated by them, to carry on their business as now conducted, to execute and deliver this Agreement, and, subject to the approval of their respective shareholders, to consummate the transactions contemplated by this Agreement.

4.3. **Articles of Incorporation.** The Articles of Incorporation of ETI and Subsidiary, and any amendments or restatements thereof through the date hereof, as certified by the Minnesota Secretary of State, are as set forth in Exhibit 4.3.

4.4. **Bylaws.** The Bylaws of Subsidiary and ETI as duly adopted and amended through the date hereof, and as certified to by their respective Secretaries, are as set forth in Exhibit 4.4.

4.5. **Capitalization.** As of the date hereof, ETI has authorized 15,000,000 undesignated shares of capital stock, par value \$.01 per share (the "ETI Common Stock"), of which 4,097,021 shares of Common Stock are issued and outstanding, and it has no other authorized shares.

4.6. **Shareholder of Subsidiary.** ETI owns all of the outstanding capital stock of Subsidiary.

4.7. **Stock Paid and Nonassessable.** The outstanding ETI Common Stock and Common Stock of Subsidiary have been duly and validly authorized and issued, and is fully paid and nonassessable and is free from preemptive and cumulative voting rights.

4.8. **Authorization.** This Agreement has been duly authorized, executed, and delivered by ETI and Subsidiary, and when approved by ETI's Board of Directors for ETI and as the sole shareholder of Subsidiary, will constitute a valid and binding agreement of ETI and Subsidiary, respectively, enforceable in accordance with its terms.

4.9. **Board of Directors.** The directors of ETI and Subsidiary as of the date hereof are as set forth on Exhibit 4.9 hereto.

4.10. **Officers.** The officers of ETI and Subsidiary as of the date hereof are as set forth on Exhibit 4.10.

4.11. **Other Options, Warrants, etc.** Other than as set forth in ETI's Prospectus dated October 23, 1992 (the "Prospectus"), or on Exhibit 4.11 hereto, ETI has no outstanding subscriptions, options, warrants, calls, or other agreements or commitments entitling any person to purchase or otherwise acquire any shares of ETI Common Stock or other capital stock or securities.

4.12. **Subsidiaries.** ETI has one subsidiary other than Subsidiary, namely United Recycling, Inc., a Minnesota corporation. Subsidiary has no subsidiaries.

4.13. **Financial Statements.** Subsidiary and ETI have furnished to ESI, prior to execution hereof, copies of ETI's Prospectus and Report on Form 10-Q for the quarter ended October 31, 1992. The financial statements included therein were prepared on a basis consistent

with prior periods, and all such financial statements fairly present the respective financial positions of ETI and Subsidiary, and the results of operations for the periods indicated. All such financial statements reflect all adjustments, consisting of only normal recurring adjustments, which, to the best knowledge of ETI and Subsidiary, are necessary for a fair presentation of the results reported.

4.14. **Compliance**. Neither ETI nor Subsidiary is in breach of, or in conflict with, any of the terms, conditions, or provisions of its respective Articles of Incorporation or Bylaws.

4.15. **Real Property**. Neither ETI nor Subsidiary owns any real property.

4.16. **Personal Property**. Each of ETI and Subsidiary owns all its personal property as indicated in the most recent balance sheet identified in Paragraph 4.13 hereto free and clear of all claims, liens, or encumbrances of any kind except as set forth on such balance sheet or on Exhibit 4.16; and neither ETI nor Subsidiary has any liabilities except as set forth on such respective balance sheets except for liabilities incurred in the ordinary course of business since the date of such balance sheets.

4.17. **No Regulatory Violation**. Neither ETI nor Subsidiary is in violation of any law, order, rule, regulation, writ, injunction, or decree of any governmental authority or court, domestic or foreign, nor will execution of this Agreement or consummation of any of the transactions contemplated by this Agreement result in any such violation.

4.18. **No Contractual Violation**. To the best of ETI's and Subsidiary's knowledge, neither the execution of this Agreement, nor the performance of the respective obligations of ETI and Subsidiary pursuant to this Agreement or the consummation of the transactions contemplated hereby, will conflict with, or result in a breach or violation of any of the terms or provisions of, or constitute, or with the passage of time or the giving of notice constitute, a default under any indenture, mortgage, deed of trust, voting trust agreement, loan agreement, bond, debenture, note agreement, or other evidence of indebtedness, lease, contract, or other agreement or instrument to which either ETI or Subsidiary is a party, or by which ETI, Subsidiary, or any of their properties is bound, or Articles of Incorporation or Bylaws of ETI or Subsidiary; and no consent, approval, authorization, or order of any court or governmental agency or body is required for the consummation by either ETI or Subsidiary of the transactions contemplated hereby, other than a notice filing with the Minnesota Department of Commerce, Securities Division, pursuant to Minn. Stat. § 80A.15, Subd. (2)(1).

4.19. **Material Contracts**. Other than as filed with the Securities and Exchange Commission as an exhibit to the Registration Statement of which the Prospectus is a part or as contained in Exhibit 4.19, there are no contracts, leases, employment and other compensation arrangements, or other material agreements relating to either ETI or Subsidiary, or their respective properties or business.

4.20. **Litigation**. Except with respect to the Warner-Lambert Company patent litigation and other litigation as disclosed in the Prospectus or on Exhibit 4.20, there is no action, suit, or proceeding to which either ETI or Subsidiary is a party, or of which any of their respective property are the subject pending before or brought by any court or governmental agency or body, nor, to the knowledge of either ETI or Subsidiary, is any other such action, suit, or proceeding threatened, which would, singly, or in the aggregate, result in any material

adverse change in the condition (financial or otherwise), business, key personnel, properties, assets, results of operations (present or prospective), or net worth of either ETI or Subsidiary.

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4.21. **Patents, Trademarks, etc.** Except as described in the Prospectus, neither ETI nor Subsidiary has received any notice of infringement of, or conflict with, asserted rights of others with respect to any patents, trademarks, servicemarks, trade names, or copyrights, nor are ETI or Subsidiary aware of any infringement by others upon their respective names. Except as may be determined in Warner-Lambert Company patent litigation, to the best of ETI's and Subsidiary's knowledge, there are no patents, trademarks, servicemarks, trade names, or copyrights necessary to the conduct of their respective businesses as currently conducted which ETI and Subsidiary do not own or possess adequate rights to use.

4.22. **Profit Sharing Plans, etc.** Except as described in the Prospectus or as set forth in Exhibit 4.22, neither ETI nor Subsidiary is a party to nor does either have an obligation, contingent or otherwise, under any material oral or written, expressed or implied: (i) commitment or agreement with officers, directors, employees, or any other persons providing similar services; (ii) agreement or arrangement providing for the payment of any incentive, bonus, commission, or deferred compensation or severance or termination pay; (iii) pension, profit sharing, stock purchase, stock option, group life insurance, hospitalization insurance, disability, retirement, or any other employee benefit plan, fringe benefit plan, agreement, or arrangement, whether formal or informal and whether legally binding or not; or (iv) collective bargaining or union contract or agreement.

4.23. **Tax Returns.** ETI and Subsidiary have timely filed all tax returns and reports required to be filed by them, and have paid in a timely manner all taxes that are shown on such returns as being due and payable other than such taxes as are being contested in good faith and for which adequate reserves have been established.

4.24. **No Material Changes.** There have been no material adverse changes in the respective condition (financial or otherwise), results of operations, or shareholders' equity of ETI and Subsidiary since the date of their latest balance sheets contained in Exhibit 4.13; except for changes (material or otherwise) resulting from their operations conducted in the ordinary course of business.

4.25. **No Brokers.** No finders' fees or brokerage commissions of any kind will be payable by ETI or Subsidiary in connection with the transactions described in this Agreement.

4.26. **Disclosure of Material Facts.** Neither ETI nor Subsidiary has knowingly failed to disclose to ESI any facts material to the respective assets, liabilities, earnings, prospects, and business of ETI and Subsidiary. No representation or warranty by ETI or Subsidiary contained in this Agreement, and, to the best of their knowledge, no statement contained in any document (including, without limitation, the Exhibits hereto), list, certificate, or other writing furnished or to be furnished by or on behalf of ETI or Subsidiary or any of their representations in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements contained herein or there not misleading or necessary in order to provide fully and fairly the information required to be provided in any such document, list, certificate, or other writing.

4.27. **Interpretation.** As used in this Agreement, the term "best knowledge" of ETI or Subsidiary refers to the best respective knowledge of the officers and directors of ETI and Subsidiary.

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SECTION 5. COVENANTS OF ESI

ESI hereby covenants and agrees that:

5.1. **Capitalization, etc.** Between the date of this Agreement and the Effective Date, it will not, without the prior written consent of ETI: (i) issue or commit to issue any capital stock or other ownership interests; (ii) grant or commit to grant any options, warrants, or other rights to subscribe for, purchase, or otherwise acquire any shares of its capital stock or other ownership interest, or issue or commit to issue any securities convertible into or exchangeable for shares of its capital stock or other ownership interest; (iii) declare, set aside, or pay any dividends or distributions; (iv) directly or indirectly redeem, purchase, or otherwise acquire or commit to acquire any of its capital stock or other ownership interest, or directly or indirectly terminate or reduce or commit to terminate or reduce or commit to acquire any of its capital stock or other ownership interest, or directly or indirectly terminate or reduce or commit to terminate or reduce any bank line of credit or the availability of any funds under any other loan or financing agreement; (v) effect a stock split, reclassification, or recapitalization; (vi) change its Articles of Incorporation, Bylaws, or other governing instruments; (vii) borrow or agree to borrow any funds (except from ETI), guarantee, agree to guarantee the obligations of others, or indemnify or agree to indemnify others; (viii) waive or commit to waive any rights of substantial value; or (ix) other than in the ordinary course of business, enter into any agreement, contract, or commitment; except, in each case, contemplated by this Agreement.

5.2. **Prompt Action.** It will promptly take all action contemplated by this Agreement or necessary to complete the transactions contemplated by this Agreement.

5.3. **Confidentiality.** It will treat this Agreement, and the transactions contemplated by this Agreement as confidential, and will not issue any press release or otherwise provide any information regarding such transactions without the prior consent of ETI.

5.4. **Shareholders' Consent.** It shall submit to its shareholders for their approval this Agreement and Plan of Merger as soon as possible.

SECTION 6. COVENANTS OF ETI AND SUBSIDIARY

ETI and Subsidiary covenant and agree that ETI will promptly take all action contemplated by this Agreement or necessary to complete the transactions contemplated by this Agreement, including the filing with the Minnesota Department of Commerce, Securities Division, contemplated by Section 4.18 above.

SECTION 7. ACCESS

From the date hereof to the Effective Date, ESI and ETI shall provide each other full access to its premises and books and records, and shall cause its officers to furnish the other such financial and operating data and other information with respect to its business and properties as the other shall, from time to time, request; provided, however, that any such

investigation shall not affect any of the representations and warranties hereunder. In the event of termination of this Agreement, each party will return to the other all documents and other materials obtained in connection with the transactions contemplated hereby, and not disclose or utilize any information obtained from the other. 1537

SECTION 8. CONDITIONS PRECEDENT TO ESI'S OBLIGATIONS

The obligations of ESI under this Agreement, are subject to the fulfillment, before or on the Effective Date, of each of the following conditions, any of which may be waived in writing at the discretion of ESI:

8.1. **Representations and Warranties of ETI and Subsidiary**. The representations and warranties of ETI and Subsidiary contained herein shall be true and correct, in all material respects, as of the date hereof, and shall continue to be true and correct, in all material respects, as of the Effective Date.

8.2. **Covenants and Agreements of ETI and Subsidiary**. ETI and Subsidiary shall have performed all obligations and complied with all covenants and conditions required by this Agreement to be performed or complied with by them at or prior to the Effective Date.

8.3. **No Adverse Changes**. No information shall have come to the attention of ESI pursuant to its investigation of ETI and Subsidiary which is not consistent, in all material respects, with information previously furnished by ETI and Subsidiary to ESI.

SECTION 9. CONDITIONS PRECEDENT TO OBLIGATIONS OF ETI AND SUBSIDIARY

The obligations of ETI and Subsidiary under this Agreement are subject to the fulfillment, before or on the Effective Date, of each of the following conditions, any of which may be waived in writing at the discretion of ETI and Subsidiary:

9.1. **Hanlons' Cancellation**. The Hanlons shall have surrendered 243,248 shares of ESI Common Stock owned by them for cancellation.

9.2. **ESI's Shareholder Approval**. The shareholders of ESI shall have approved this Agreement, and shareholders of ESI holding no more than 2,743 of the outstanding shares, in the aggregate, shall have exercised any dissenters' rights under Minnesota law with respect to the transactions contemplated hereby.

9.3. **ESI's Representations and Warranties**. The representations and warranties of ESI contained herein shall be true and correct, in all material respects, as of the date hereof, and shall continue to be true and correct, in all material respects, as of the Effective Date; ESI shall have performed all obligations and complied with all covenants and conditions required by this Agreement to be performed or complied with by it at or prior to the Effective Date; and no information shall have come to the attention of Subsidiary or ETI pursuant to its investigation of ESI which is not consistent, in all material respects, with information previously furnished by ESI and its shareholders, accountants, and attorneys to Subsidiary or ETI.

9.4. **Securities Division Filing.** The Minnesota Department of Commerce, Securities Division shall not have objected to ETI's filing contemplated by Section 4.18 above. 1535

9.5. **Employment Agreements.** Subsidiary shall have entered into employment agreements, commencing on the Effective Date, with each of Daniel L. Hanlon and Edward W. Boehmer. The terms and conditions of employment of Mr. Hanlon with Subsidiary, including the possible reimbursement by Mr. Hanlon of certain loans and/or advances made by ESI, shall be resolved to the satisfaction of ETI and Subsidiary, in their sole discretion.

9.6. **Consent of Connecticut Mutual Life Insurance Company.** ESI shall have obtained the written consent of Connecticut Mutual Life Insurance Company to the Merger in such form as shall be acceptable to ETI and Subsidiary.

9.7. **Waiver of Uni-Star Industries, Ltd.** ESI shall have obtained the written waiver of Uni-Star Industries, Ltd. ("USI") of any and all rights USI may have pursuant to that certain Letter of Intent dated April 3, 1992 and Memorandum of Understanding Concerning Star-Kore Production dated November 13, 1992 by and between ESI and USI. Such waiver shall contain such additional provisions as ETI and Subsidiary shall approve, in their sole discretion.

SECTION 10. TERMINATION

10.1. **Circumstances of Termination.** This Agreement may be terminated (notwithstanding approval by the shareholders of ESI):

- (a) By the mutual consent in writing of the Boards of Directors of ESI and ETI.
- (b) By the Board of Directors of ESI, if any condition provided in Section 8 hereof has not been satisfied or waived on or before the Effective Date.
- (c) By the Board of Directors of ETI, if any conditions provided in Section 9 hereof has not been satisfied or waived on or before the Effective Date.
- (d) By the Board of Directors of either ESI or ETI, if the Effective Date has not occurred by March 1, 1993.

10.2. **Effect of Termination.** In the event of a termination of this Agreement pursuant to Section 10.1 hereof, each party shall pay the costs and expenses incurred by it in connection with this Agreement and no party (or any of its officers, directors, and shareholders) shall be liable to any other party for any costs, expenses, damage or loss of anticipated profits hereunder.

SECTION 11. EFFECTIVE DATE OF MERGER

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After adoption and approval of this Agreement by the shareholders of ESI in accordance with requirements of applicable law, and upon satisfaction of each of the conditions set forth in Sections 8 and 9 (unless waived in accordance with this Agreement) and in the absence of facts that would give any party hereto a right to terminate this Agreement (which right has been waived), and at such time as shall be agreed upon in writing by ETI, Subsidiary and (or if no such agreement has been reached, then as soon as possible after the shareholders have approved this Agreement), Articles of Merger under the Minnesota Business Corporation Act, certified as to the requisite shareholder approval, shall be submitted for filing with the Secretary of State of the State of Minnesota. The date of such filing, or such later date as the parties may provide for in the Articles of Merger pursuant to applicable law, is referred to in this Agreement as the "Effective Date."

SECTION 12. MISCELLANEOUS

12.1. **Waivers.** No action pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party shall be deemed to constitute a waiver by any party taking such action of any representation, warranty, covenant, or agreement contained herein, except that a breach of any representation or warranty set forth herein that is known to a party hereto at the time the transactions contemplated hereby are consummated shall not be subsequently enforceable or actionable by such party. A waiver by any party, or representation or waiver by any party hereto, of a breach or repeated series of breaches of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

12.2. **Governing Law.** This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Minnesota applicable to agreements executed in Minnesota.

12.3. **Continuation of Representations and Warranties.** The representation and warranties of Articles 3 and 4 of this Agreement shall survive the closing of the transactions contemplated by this Agreement.

12.4. **Notices.** Any notices or other communications required or permitted hereunder shall be sufficiently given, if sent by registered mail or certified mail, postage prepaid, and addressed to the address set forth below with the name of each party hereto

If to Subsidiary or ETI: 1808 Riverside Avenue
Minneapolis, Minnesota 55454

With a copy to: Jeffrey C. Robbins, Esq.
Parsinen Bowman & Levy P.A.
100 South Fifth Street, Suite 1100
Minneapolis, Minnesota 55402

If to ESI: 314 West 86th Street
Bloomington, Minnesota 55420

With a copy to:

Randy J. Sparling, Esq.
Frommelt & Eide, Ltd.
900 Second Avenue South, Suite 580
Minneapolis, Minnesota 55402

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12.5. **Assignment.** This Agreement may not be assigned by operation of law or otherwise.

12.6. **Headings.** Headings in this Agreement are descriptive only, are inserted for convenience, and do not constitute part of this Agreement.

12.7. **Counterparts.** This Agreement may be signed in any number of counterparts, and all such counterparts taken together shall constitute a single agreement of the parties.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement and Plan of Merger to be executed in the manner appropriate to each, all as of the day and year first above written.

CLEAN GREEN PACKING COMPANY

By *Robin R. Young*
Robin R. Young, Acting President

**ENVIRONMENTAL TECHNOLOGIES
USA, INC.**

By *Robin R. Young*
Robin R. Young, Chief Executive Officer

EVERGREEN SOLUTIONS, INC.

By *Daniel L. Hanlon*
Daniel L. Hanlon, President

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAR 2 1993

Jean Anderson Howe
Secretary of State