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11-14-2000

U.S. Patent & TMO/TM Mail Rpt Dt. #16

11-14-00

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

1. Name of conveying party(ies):  
Fountain Industries, Inc.

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

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

Internal Address:  
Street Address: 922 East 14<sup>th</sup> Street  
City: Albert Lea State: MN ZIP: 56007

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

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

3. Nature of conveyance:  
 Assignment  Merger  
 Security Agreement  Change of Name  
 Other Purchase and Sale Agreement

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

Execution Date: May 22, 1985  Yes  No

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,188,842  
1,018,142  
2,097,683  
1,017,365  
1,189,905

Additional numbers attached?  Yes  No

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

Name: T. Michael Davis  
Internal Address: 4800 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402-2100  
Street Address: 4800 IDS Center  
80 South Eighth Street  
City: Minneapolis State: MN 55402-2100

6. Total number of applications and registrations involved: 5

7. Total fee (37 CFR 3.41): \$ 140.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit Account Number: 16-0631  
(Attached duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

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

Name of Person Signing:

*T. Michael Davis*  
T. Michael Davis

November 8, 2000

Date

Total number of pages comprising cover sheet: 02

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

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**Do not detach this portion**

Mail documents to be recorded with required cover sheet information to:

**Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513**

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project, (0651-0011), Washington, D.C. 20503

PURCHASE AND SALE AGREEMENT

This Agreement, made and entered into as of the 22 day of May, 1985, by and between FOUNTAIN INDUSTRIES, INC., an Iowa corporation ("Seller"), XEBEC CORPORATION, a Minnesota corporation ("Xebec"), FOUNTAIN INDUSTRIES BUILDING CORPORATION, a Minnesota corporation ("FIBC"), M. J. SYVERSON TRUST U/W of MARTELLE J. SYVERSON, JON R. SYVERSON, an individual resident of the State of Minnesota (hereinafter collectively referred to as the "Fountain Affiliates"); L.N. SUNDET CORPORATION, a Minnesota corporation (hereinafter referred to as the "Purchaser"); and LELAND N. SUNDET, an individual resident of the State of Minnesota (hereinafter referred to as the "Purchaser's Shareholder").

WITNESSETH THAT:

WHEREAS, Seller, on its own behalf and through its wholly-owned subsidiaries, Xebec and FIBC, is engaged in the businesses of the manufacture of dispensing and coffee-making equipment and beverage ingredients and supplies, parts cleaners, flushers, and car starter equipment in the State of Minnesota and the sale of such products and related products throughout the United States and abroad; and

WHEREAS, the parties hereto have reached an understanding with regard to the sale by the Seller, Xebec and FIBC and the purchase by the Purchaser and Sundet Building Partners of the assets and businesses of the Seller, Xebec and FIBC and the assumption of certain disclosed liabilities of the Seller, Xebec and FIBC as provided herein and in that certain Purchase and Sale Agreement of even date herewith between the Purchaser and Xebec (the "Xebec Agreement") and in that certain Purchase

and Sale Agreement of even date herewith between Sundet Building Partners and FIBC (the "Real Estate Agreement"), and with respect to certain other related transactions, all as set forth hereinafter and in the Xebec Agreement and the Real Estate Agreement.

NOW, THEREFORE, In consideration of the mutual covenants, representations, warranties and agreements and the conditions herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

I.

Purchase and Sale of Assets of Seller

1.1 Sale of Assets. The Seller hereby agrees to sell, convey, assign, transfer and deliver to the Purchaser, and the Purchaser hereby agrees to purchase, accept and take delivery of, upon and subject to the terms, covenants, conditions and provisions hereinafter set forth, as of the Closing Date, all of the Seller's right, title and interest in and to the following described assets, properties, rights, interests, and businesses, tangible and intangible, used in the Seller's business, as hereinafter specifically described:

(a) Inventories. All inventories of merchandise, materials and products of the Seller, including parts and components, raw materials, work in process, finished and semi-finished products, and all other merchandise on hand at Seller's business premises or at other locations, or purchased by the Seller pursuant to binding purchase orders, as of the close of business on the Closing Date, but excluding certain foreign parts which have been previously written off by the Seller and have been identified to the Purchaser;

(b) Machinery and Equipment. All machinery and equipment of every kind used by the Seller in its business, including all machinery, equipment and other personal property owned by FIBC which shall be distributed by FIBC to the Seller and sold under this Agreement, office equipment, shop equipment, automobiles, aircraft, transportation equipment, tools, fixtures and dies, specifically including but not limited to those items of machinery and equipment described on Schedule 1.1(b);

(c) Cash and Cash Equivalents. All cash and cash equivalents of the Seller as of the Closing Date, including cash on hand, in checking accounts, savings accounts, savings certificates, etc., and commercial paper and other cash equivalent investments, in excess of the sum of \$100,239 (it being understood and agreed that the Seller shall retain certificates of deposit in the approximate amount of \$88,000 and cash in the approximate amount of \$12,000, in order to pay certain deferred compensation to its employees);

(d) Accounts Receivable. All accounts receivable and other trade receivables of the Seller as of the Closing Date, including all such receivables which have been written off by the Seller as uncollectible, but excluding amounts receivable from the Fountain Affiliates; and

(e) Miscellaneous Assets. Any and all other assets, properties, rights or interests of the Seller used in or incidental to the Seller's business, except as specifically excluded by other terms of this Agreement, including without limitation all land

improvements and building improvements, advertising materials, catalogs, purchase and sale records, mailing lists and current inquiries, order forms, billing forms, stationery and other forms used in the Seller's business and other similar materials used in the businesses of the Seller; all prepaid expenses; all shares of capital stock of Fountain Brands International, Ltd.; any and all drawings, parts lists, bills of material and other records or data of the Seller pertaining to the design or manufacture of its products; any and all patents, patent applications, patent licenses and other agreements to use any patents; the names "Fountain" and "Xebec" and any derivations thereof, and all trade names, trademarks or other such rights; and the goodwill and going concern value of the Seller.

Excluding, however, the stock of Xebec and FIBC, the assets of Xebec which are the subject of the Xebec Agreement and the real estate occupied by the Seller, which is owned by FIBC and is the subject of the Real Estate Agreement. It is understood and agreed that (i) the Purchaser is acquiring all of the business, assets and properties of the Seller and Xebec under this Agreement and the Xebec Agreement, other than as expressly provided herein and in the Xebec Agreement, and (ii) Sundet Building Partners is acquiring all of the business, assets and properties of FIBC under the Real Estate Agreement, other than as expressly provided herein.

1.2 No Liens and Encumbrances. The sale of assets and properties under Section 1.1 shall be made free and clear of all liens, charges or encumbrances whatsoever, except only those liens, charges and

encumbrances disclosed in this Agreement and expressly assumed or taken subject to by the Purchaser under the terms of this Agreement, provided, however, that Purchaser acknowledges its responsibility for obtaining the releases of the liens of Vonda Rocklin and James Persons.

1.3 Contracts and Commitments. The Seller agrees to assign and deliver to the Purchaser at the Closing all unfilled sales orders of products of the Seller as of the close of business on the Closing Date, and the Purchaser agrees to accept all such sales orders at the Seller's customary sales prices and to assume and to agree to perform, discharge and fulfill all obligations of the Seller thereunder and to indemnify and hold harmless the Seller from any and all claims, losses, expenses and liabilities arising thereunder or under any product warranties, express or implied, undertaken in connection therewith. The Seller agrees to assign and deliver to the Purchaser at the Closing all unfilled purchase orders for raw materials, parts and components for products of the Seller and for merchandise inventory, and those other contracts and commitments of the Seller described in Schedule 1.3 attached hereto and product warranty commitments, and the Purchaser agrees to accept such purchase orders, contracts and commitments and to assume and agree to perform, discharge and fulfill all obligations of the Seller thereunder, subject to the limitation on product warranty commitments in the year after Closing set forth at Section 10.6.

## II.

### Purchase Price and Terms of Payment

2.1 Purchase Price. Subject to possible adjustment as set forth in Section 2.2, the Purchaser shall pay to the Seller, as the

purchase price for the assets and properties sold under this Agreement,  
the total sum of:

(a) \$2,369,312; minus

(b) the difference between (x) \$1,100,000, the sale price for  
the Real Estate sold under the Real Estate Agreement, minus (y) the  
unpaid balance of the First Mortgage on the Real Estate as of the  
Closing Date; minus

(c) the sale price for the assets sold under the Xebec  
Agreement; plus

(d) the total amount of the liabilities of the Seller as of the  
close of business on the Closing Date, specifically assumed by the  
Purchaser as provided in Section 2.4.

The purchase price shall be payable as follows:

(e) The sum of 40% of the difference between paragraphs (a) and  
(b) above, less the amount paid in cash or certified funds to Xebec  
on the Closing Date pursuant to the Xebec Agreement shall be paid to  
the Seller in cash or certified funds on the Closing Date;

(f) The sum of 60% of the difference between paragraphs (a) and  
(b) above by the Purchaser executing and delivering to the Seller an  
installment promissory note of the Purchaser, as maker, dated the  
Closing Date, in the identical form of Exhibit 2.1(f)(i), such note  
to be payable to the order of the Seller and to provide that the  
principal sum together with interest on the unpaid balance from time  
to time at the rate of nine percent (9%) per annum, simple interest,  
shall be payable in forty (40) equal quarter-annual installments



commencing three (3) months from and after the Closing Date and on the same day of each third month thereafter until the tenth (10th) anniversary date of the Closing Date, at which time any remaining balance, principal and interest, of such note shall be due and payable; said note to be unsecured; said note to be personally guaranteed by the Purchaser's Shareholder in accordance with a Guaranty in the identical form of Exhibit 2.1(f)(ii), and by Sundet Building Partners in accordance with a Guaranty in the identical form of Exhibit 2.1(f)(iii), which Guaranty shall be secured by a Combination Mortgage, Security Agreement and Fixture Financing Statement in the identical form of Exhibit 2.1(f)(iv) and by an Assignment of Rents and Leases in the identical form of Exhibit 2.1(f)(v); and

(g) An amount equal to the total amount of all of the liabilities of the Seller as of the close of business on the Closing Date, as shown on the Closing Date Balance Sheet prepared pursuant to Section 10.1, and as agreed to be assumed and paid by the Purchaser as provided in Section 2.4, by the Purchaser agreeing to assume and pay such liabilities as provided in Section 10.7.

2.2 Adjustment to Purchase Price. If the consolidated net worth of the Seller, FIBC and Xebec and as reflected on the Closing Date Balance Sheet prepared pursuant to Section 10.1 is more or less than \$1,948,287, then the purchase price for the assets and properties sold under Section 1.1 shall be increased or reduced, as the case may be, by the dollar amount that the total of the consolidated net worth of the

Seller and Xebec and FIBC is more or less than said amount. Any such increase or reduction in purchase price pursuant to this Section 2.2 shall be made forty percent (40%) in cash payable immediately, and sixty percent (60%) by increasing or reducing, as the case may be, the principal sum of the note described in Section 2.1(f).

2.3 Allocation of Purchase Price. It is specifically agreed by the parties hereto that the purchase price payable under this Article II for the assets and properties sold under Article I shall be allocated to and among the assets and properties of the Seller sold under this Agreement as follows:

(a) An amount equal to the dollar amount of the cash and cash equivalents purchased under Section 1.1(c) shall be allocated to such cash and cash equivalents;

(b) An amount equal to the net amount of all of the accounts receivable of the Seller as of the close of business on the Closing Date purchased under Section 1.1(d), as reflected on the Closing Date Balance Sheet of the Seller prepared pursuant to Section 10.1, shall be allocated to such accounts receivable;

(c) An amount equal to the book value as reflected on the Closing Date Balance Sheet of the Seller prepared pursuant to Section 10.1 of the machinery and equipment purchased under Section 1.1(b) shall be allocated to such machinery and equipment;

(d) An amount equal to the book value of the inventories of the Seller determined pursuant to the physical inventory taken pursuant to Section 6.5 as adjusted to the Closing Date shall be allocated to the inventories of the Seller purchased under Section 1.1(a);

(e) An amount equal to the book value of the prepaid expenses of the Seller as of the close of business on the Closing Date shall be allocated to the prepaid expenses of the Seller purchased under Section 1.1(e);

(f) The balance of the purchase price, if any, shall be allocated to the patents and trademarks, and the land improvements and building improvements of the Seller purchased under Section 1.1(e).

No portion of the purchase price payable under this Article II shall be allocated to any other property, right or interest acquired by the Purchaser under this Agreement.

2.4 Assumption of Liabilities. In partial payment of the total purchase price, the Purchaser agrees to pay, in accordance with their respective terms before the same become delinquent, as provided in Section 10.7, the following liabilities of the Seller as of the Closing Date (including such liabilities of FIBC and Xebec assumed by the Seller as of the Closing Date), in the dollar amounts that are disclosed on the books of Seller (except in the case of accrued income taxes and other adjustments as set forth in Section 10.1) and reflected on the Closing Date Balance Sheet prepared in accordance with the provisions of Section 10.1:

- (a) All accounts payable incurred in the ordinary course of business;
- (b) All salaries and expenses (including obligations for vacation pay for all employees of the Seller hired by the Purchaser) incurred in the ordinary course of business;
- (c) Accrued pension and profit sharing plan contributions;

- (d) Accrued payroll taxes;
- (e) Accrued property taxes;
- (f) Accrued income taxes;
- (g) Accrued interest expense; and
- (h) Notes payable as set forth on Schedule 2.4.

Notwithstanding the foregoing, the Purchaser does not assume and shall not be required to pay any of the following liabilities of the Sellers:

(i) Liabilities for or on account of dividends declared to and accrued for the Seller's shareholders or any other payments to the Seller's shareholders or obligations to the Seller's shareholders, including any dissenting shareholders, respecting the Seller's stock provided, however, that Purchaser acknowledges that it will assume a liability of approximately \$357,000 which arose by reason of certain redemptions of stock of former shareholders of the Seller;

(j) Liabilities with respect to the Seller's obligation to make contributions to its pension or profit sharing plans for prior years and for the current year in excess of the amount accrued by the Seller as of the Closing Date, subject to the provisions of Section 10.5;

(k) Liabilities for federal and state income taxes for the current year up to and including the Closing Date in excess of the lower of (i) the amount of such taxes shown as payable on the Closing Date Balance Sheet prepared as provided in Section 10.1, or (ii) the amount of such taxes actually paid by the Seller;

(l) Any accrued vacation pay of the Seller as of the Closing Date, or any other liability of the Seller to its employees arising out of the employment relationship or the termination thereof, other than as provided in this Agreement;

(m) Fees, costs and expenses incurred or to be incurred by the Seller for legal, accounting or other services in connection with the transactions contemplated by this Agreement;

(n) Any and all sales taxes incurred in connection with the consummation of the transactions contemplated by this Agreement;

(o) Any liability arising from an agreement not specifically disclosed and assumed by the Purchaser in this Agreement; and

(p) Any product liability claims which have arisen or may arise with respect to products which have been sold and delivered by the Seller prior to the Closing Date.

Subject to the foregoing, the Seller shall continue to be and shall become liable and shall pay all liabilities of any nature indicated in clauses (i) through (p) above before the same shall become delinquent.

### III.

#### Representations and Warranties Regarding Purchaser

The Purchaser and the Purchaser's Shareholder make all of the following representations and warranties to the Seller and the Fountain Affiliates:

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

3.2 Authority. The execution, delivery and performance of this Agreement, and the acquisition and other transactions herein provided for, have been duly authorized by the Purchaser's board of directors, and no other corporate action is required for the consummation of the transactions contemplated by this Agreement.

3.3 Default. The consummation of the transactions contemplated by this Agreement will not result in the breach or violation of, or default under, any judgment, decree, mortgage, agreement, indenture or other instrument applicable to the Purchaser or the Purchaser's Shareholder.

3.4 Litigation. There is no litigation, proceeding or governmental investigation pending or, so far as known to the Purchaser, in prospect or threatened against the Purchaser or the Purchaser's Shareholder adversely affecting the transactions contemplated by this Agreement.

3.5 Financial Condition of Purchaser's Shareholder. The personal balance sheet of the Purchaser's Shareholder as of December 31, 1984, furnished to the Seller presents fairly and accurately the financial condition, and, in particular, the net worth, of the Purchaser's Shareholder as of the date thereof; the Purchaser's Shareholder has not disposed of substantial assets or incurred substantial liabilities thereafter; and nothing has occurred thereafter which would have a material adverse effect on the financial condition of Purchaser's Shareholder.

3.6 Financial Condition of Purchaser. The Purchaser is a newly formed corporation and shall have no liabilities whatsoever immediately following the Closing except for the promissory note issued to the Seller, professional fees relating to the formation of the Purchaser and the consummation of this Agreement and related transactions, certain indebtedness to its shareholders incurred in connection with its formation, and other nominal expenses relating to the formation and organization of the Purchaser.

IV.

Representations and Warranties Regarding Sellers

The Seller and the Fountain Affiliates hereby jointly and severally make all of the following representations and warranties to and covenants with the Purchaser and the Purchaser's Shareholder:

4.1 Organization and Qualification. The Seller is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, has all corporate power necessary to carry on its business as it is now being conducted, and has obtained and now holds all licenses and permits reasonably necessary to the operation of its business, and to Seller's knowledge there are no other jurisdictions wherein the character of the properties owned or the nature of the activities conducted by the Seller makes necessary the qualification, license or domestication of the Seller as a foreign corporation, except for Minnesota, in which the Seller is qualified to do business.

4.2 Authority. The execution, delivery and performance of this Agreement, and the conveyance, transfer and delivery of the assets and

properties of the Seller provided for herein, and the other transactions provided for herein, have been duly authorized by the Seller's board of directors and have been duly authorized, approved and consented to by the Seller's shareholders, and no other corporate action is required for the consummation of the transactions contemplated by this Agreement.

4.3 Financial Statements. All financial statements of the Seller, including its audited consolidated financial statements as of the close of business of the fiscal years, September 30, 1982, 1983 and 1984 (the "Audited Statements"), and its unaudited financial statements for the short period ending January 31, 1985, and all financial reports of the Seller furnished on behalf of the Seller to the Purchaser (the "Unaudited Statements"), together with the notes thereto are in accordance with the books and records of the Seller. The Audited Statements: (i) present fairly and accurately the financial condition of the Seller as of the dates of said balance sheets, and, in particular, accurately present the net worth of the Seller; (ii) present fairly and accurately the results of operations for the periods covered by said statements; and (iii) have been prepared in accordance with generally accepted accounting principles applied on a consistent basis. The Unaudited Statements: (i) present fairly and with reasonable accuracy the financial condition of the Seller as of the dates of said balance sheets, and, in particular, present with reasonable accuracy the net worth of the Seller; (ii) present fairly and with reasonable accuracy the results of operations for the periods covered by said statements; and (iii) have been prepared in accordance with the Seller's historical accounting principles applied on a consistent basis.



4.4 Absence of Undisclosed Liabilities. There are no material liabilities and obligations of Seller, Xebec or FIBC of any nature, whether accrued, absolute, contingent or otherwise, adversely affecting the assets or properties of the Seller or Seller's Affiliates, or the value of the Seller's business, except as specifically disclosed in this Agreement.

4.5 Title to Properties. The Seller has good and marketable title to all the assets and properties sold under this Agreement free and clear of all mortgages, liens, charges and encumbrances, except as specifically disclosed in this Agreement.

4.6 Condition of Properties. THE MACHINERY, EQUIPMENT AND INVENTORIES OF THE SELLER SOLD UNDER THIS AGREEMENT ARE SOLD AS IS, WHERE IS, WITH ALL FAULTS. THE SELLER HEREBY DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO SUCH PROPERTIES, INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4.7 Inventories. All inventories as reflected in the financial statements of the Seller are stated at the lower of cost or market using the first-in, first-out (FIFO) method, which method is in accordance with generally accepted accounting principles consistently applied.

4.8 Accounts Receivable. The aged trial balance of Seller's accounts receivable furnished to the Purchaser reasonably reflects the aging of the Seller's accounts receivable.

4.9 Trademarks; Trade Names. All trademarks and trade names used by the Seller in its business are listed on Schedule 4.9 and there are no other registered or unregistered trademarks, trade names or

copyrights presently owned or held by the Seller which relate directly to the assets and properties of the Seller. To the best of Seller's knowledge, information and belief, the Seller has not received any claims of infringement with respect to any of said trademarks.

4.10 Patents. All patents presently owned, or held by, or licensed to, the Seller are listed on Schedule 4.10. To the best of Seller's knowledge, information and belief, the Seller has not received any charge of patent infringement from any third party relating to the manufacture, use and/or sale of the Seller's product line.

4.11 Default. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will result in any breach or violation of, or default under, any judgment, decree, order, mortgage, lease, agreement, indenture, or other instrument to which the Seller is a party or by which any of the assets and properties of the Seller are bound, provided that the consents referred to in Article VII are obtained and that proper notice of the pending transaction is given to Seller's employees' union, United Food and Commercial Workers, AFL-CIO Local 6.

4.12 Litigation. There is no litigation, proceeding or governmental investigation pending or, so far as known to the Seller or the Fountain Affiliates, in prospect or threatened against or relating to the Seller in respect of or adversely affecting the properties of the Seller or the Seller's business.

4.13 Schedules. Schedules setting forth the following are true and accurate lists and descriptions, as of the date hereof, of the following:

(a) There are no loan or credit agreements or other security agreements with respect to the borrowing of money to which the Seller is bound or by which any of the properties of the Seller are encumbered, except as described on Schedule 4.13(a);

(b) All distributor agreements to which the Seller is a party and any and all agreements with sales representatives or other sales personnel to which the Seller is a party are fully described on Schedule 4.13(b);

(c) Any and all leases as to which the Seller is a party as the lessee are described on Schedule 4.13(c);

(d) Any and all leases as to which the Seller is a party as the lessor are described on Schedule 4.13(d);

(e) All policies of insurance covering assets or properties of the Seller or pertaining to the business of the Seller are described on Schedule 4.13(e);

(f) There are no bonus, pension, profit sharing, retirement plans or hospitalization or insurance plans or other employee benefit plans (or similar arrangements for individuals) pertaining to the employees of the Seller, except as described on Schedule 4.13(f);

(g) There are no contracts with labor unions to which the Seller is a party and no information concerning labor trouble, except as described on Schedule 4.13(g);

(h) There are no employment agreements or other contracts or commitments to the employees of the Seller, except as described on Schedule 4.13(h);

(i) There are no contracts or commitments by the Seller for the purchase of materials, supplies or equipment involving a purchase price in excess of \$10,000 or for the purchase of merchandise inventory items involving a purchase price in excess of \$10,000, except as described on Schedule 4.13(i);

(j) Any and all agreements, other than outstanding purchase orders for items of merchandise inventory, with suppliers to which the Seller is a party are described on Schedule 4.13(j);

(k) There are no advertising contracts or commitments by the Seller, except as described on Schedule 4.13(k).

Complete and correct copies of all agreements, contracts, commitments, leases, policies of insurance, plans, etc. referred to in the foregoing section have been delivered to the Purchaser by the Sellers. If any of the agreements, contracts, commitments, leases, etc. referred to in the foregoing section is oral, a complete description of the terms and conditions thereof is included on said Schedule.

4.14 Supplier Agreements. To the best of Seller's knowledge, information and belief, the Seller is not in violation of any agreements or understanding with any of its suppliers, and any and all requirements of such suppliers have been and are now fully satisfied. The Seller has not received any notification of any change in its arrangements with suppliers which would adversely affect its properties or its business, nor is the Seller aware of any indication that any of its suppliers will not continue to carry the lines of products presently carried by such supplier and sold to the Seller, nor any other fact regarding or

pertaining to its suppliers which would adversely affect the Seller's properties or its business.

4.15 Taxes. All real property taxes and all local, state, federal and foreign income taxes for the period from October 1, 1984, to the Closing Date will be properly and accurately accrued to said date. The income taxes for said period shall be determined as if such period is a full taxable year and shall not include any tax liability that might be incurred by the Seller as a result of the transactions contemplated by this Agreement.

4.16 Employee Benefit Plans. The Profit Sharing Plan and Pension Plan described on Schedule 4.13(f) and in Section 10.4 are and have been since their inception qualified under section 401(a) of the Internal Revenue Code of 1954, as amended (the "Code") and in compliance in all respects with the applicable provisions of the Code and the Employee Retirement Income Security Act of 1974, as amended, except that the Pension Plan and the Profit Sharing Plan have not yet been amended to comply with recent federal legislation ("DEFRA", "TEFRA," and "REA") and must be amended during the current plan year in order to maintain qualified status. With respect to the Pension Plan, the funding method used in connection with such Pension Plan is acceptable under ERISA and the actuarial assumptions used in connection with funding such Pension Plan, in the aggregate, are reasonable (taking into account the experience of such Pension Plan and reasonable expectations). The Seller does not contribute to or maintain at the date of this Agreement (or during the preceding five years) any "multiemployer plan," as defined in section (3)(37) of ERISA.

4.17 Disclosure. No representation or warranty by the Seller in this Agreement nor any written statement furnished or to be furnished to the Purchaser pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain an untrue statement of a material fact, or omits or will omit a material fact necessary to make the statements contained therein not misleading.

4.18 Transferability. The assets and properties of the Seller sold under this Agreement are freely transferable by the Seller.

4.19 Post Balance Sheet Changes. From September 30, 1984, until the date hereof, the Seller has not: (i) other than in the ordinary course of business, paid or incurred any obligation or liability (absolute or contingent), discharged or satisfied any lien or encumbrance, sold, assigned or transferred any of its assets or cancelled any debts or claims or mortgaged, pledged or subjected to lien, charge or other encumbrance any asset, tangible or intangible; provided, however, that the Seller did redeem 118,100 shares of its stock for a total of \$1,275,480 in December, 1984, of which \$918,345.60 was paid in cash (substantially all of which was borrowed by the Seller from First Bank (N.A.)-Albert Lea) and \$357,134.40 by the issuance of notes by Seller (the "1984 Stock Redemption"), and that the Seller made a payment to terminate a lease of property in Buffalo, Minnesota; (ii) waived any rights of substantial value, whether or not in the ordinary course of business; provided, however, that the Seller did terminate a lease of property in Buffalo, Minnesota; (iii) suffered any damage, destruction or loss, whether or not covered by insurance, materially adversely affecting

its property or business; provided, however, that the Seller did write off approximately \$32,526 in net book value of leasehold improvements in connection with the termination of its lease in Buffalo, Minnesota, and that there was a fire at those Buffalo premises prior to termination of the lease thereof, the Seller's loss on which was covered by insurance; (iv) made or suffered any amendment or termination of any contract or any agreement which materially adversely affects its business; (v) received notice or had knowledge of any threat to strike or active grievances by its employees, provided, however, that the Seller has laid off some employees; (vi) declared or made any payment or distribution to shareholders or purchased or redeemed any shares of its capital stock; provided, however, that the Seller redeemed stock pursuant to the 1984 Stock Redemption and paid as dividends the amounts of \$26,618.20 on October 25, 1984, and \$14,808.20 on January 25, 1985; (vii) increased the salaries or other compensation of any of its directors, officers or employees earning more than \$20,000 per year or made any increase in other benefits to which such employees may be entitled, except as disclosed on Schedule 4.19(vii); or (viii) entered into any transactions other than in the ordinary course of business, except as disclosed above, and provided further that R.J. Lichteig, who was Chairman and CEO on September 30, 1984, has returned, the Board of Directors has been reduced from seven to four, deferred compensation was paid to former employees R.J. Lichteig and Marwood Isackson, and a new packaging line for the packaging of roast and ground brew pouches was purchased and installed.

V.  
Access to Information Concerning Properties  
and Business of Seller

The Seller will give the Purchaser and the Purchaser's counsel, accountants and other representatives full access during normal business hours from the date hereof until the Closing to the Seller's properties, books and records as they relate to its business and shall furnish the Purchaser during such period with information concerning the affairs of its business as the Purchaser may reasonably request. Until the Closing, the Purchaser will hold in strict confidence all the data and information obtained in confidence from the Seller; and if the transactions provided for herein are not consummated herein for any reason, the Purchaser will return all such data as the Seller may reasonably request and will continue to hold in strict confidence all data and information obtained in confidence from the Seller, and the Purchaser will not use any information obtained in confidence from the Seller in any business competitive with the present business of the Seller. After the Closing, the Purchaser shall make available to the Seller at any reasonable time during business hours for any proper purpose, any books, records and data delivered to the Purchaser under this Agreement and the Seller shall make available to the Purchaser at any reasonable time during business hours, for any proper purpose, any books, records and other data of the Seller pertinent to its business heretofore conducted which are not delivered to the Purchaser under this Agreement.



VI.  
Conduct of Business;  
Action to be Taken Pending the Closing

6.1 Conduct of Business. The Seller covenants with the Purchaser that from the date hereof until the Closing:

(a) The Seller's business will be conducted only in the ordinary course.

(b) No contract or commitment will be entered into on behalf of the Seller extending beyond the Closing Date without the express consent of the Purchaser, and no contract or commitment for the purchase of inventories by the Seller having a purchase price in the aggregate in excess of \$10,000, or any contract or commitment for the purchase of materials, supplies or equipment by the Seller having a purchase price in the aggregate in excess of \$10,000, will be entered into by the Seller without the express consent of the Purchaser.

(c) The Seller will use its best efforts to preserve for the Purchaser the going concern value of the Seller's business and the goodwill of its suppliers, distributors, sales representatives, customers and others having business relations with the Seller.

(d) The risk of loss or damage to the property sold under this Agreement shall, prior to the Closing, be borne by the Seller. The Seller will continue in force all insurance policies covering such properties as the same are in existence as of the date hereof, and will, if requested by the Purchaser, and at the Purchaser's expense, use its best efforts to arrange for the continuation of such policies after the Closing Date.

(e) The Seller will not: (i) issue, sell, buy or redeem or issue rights to subscribe to or options or warrants to purchase or enter into agreements, commitments or obligations to issue, sell, buy or redeem any shares of its capital stock; (ii) other than in the ordinary course of business or in preparation for the Closing as set forth in Section 6.6, incur any obligations or liabilities (absolute or contingent), mortgage, pledge or voluntarily subject to lien, charge or other encumbrance any assets, tangible or intangible, or sell, assign, or transfer any of its assets or ~~cancel any debts or~~ claims; (iii) waive any right of a substantial value; (iv) declare or make any payment or distribution to shareholders in respect of their capital stock; (v) grant any increase in the salary or other compensation of any of their directors, officers or employees or make any increase in any benefits to which such employees might be entitled (but payments of deferred compensation and a pro rata portion of bonuses for the fiscal year to date will be made); or (vi) institute any bonus, profit sharing, stock option, pension, retirement plan, hospitalization or insurance plans, or other employee benefit plans. or make any changes in any such plans or arrangements presently existing, other than the deferred compensation and bonus payments referred to above which will be made at or just prior to Closing rather than at the end of the Seller's fiscal year; or (vii) materially change the physical volume, character or product mix of the inventories, or materially and adversely change the total dollar valuation of such inventories at the Closing Date; provided,

however, that the Purchaser acknowledges that the Seller is engaged in a program of gradual reduction of inventory levels.

6.2 Bulk Transfer Provisions. The parties agree to waive compliance with the provisions of the Uniform Commercial Code-Bulk Transfers, as codified by the State of Minnesota, and in so doing the Seller and the Fountain Affiliates agree jointly and severally to indemnify and hold the Purchaser harmless from and against any and all liabilities or claims or demands of any creditor arising from the failure to comply with such provisions.

6.3 Consents. Prior to the Closing, the Seller shall have obtained the consents of all persons whose consent is required to the transactions contemplated hereby except that the Purchaser shall be responsible for obtaining the consents of Richard Rocklin, Vonda Rocklin, and James Persons which are conditions precedent to Seller's obligations as provided in Article VII and the Seller shall not be liable to Purchaser in the event that the Closing does not take place due to a failure to fulfill any of the conditions precedent there provided.

6.4 No Publicity. Prior to the Closing, the parties hereto agree not to disclose any aspect of the transactions contemplated hereby to any persons, without the consent of the other parties hereto, except to their respective counsel, accountants and advisors, who shall agree to hold any such disclosures in confidence.

6.5 Inventory Valuation. The Seller shall take an actual physical inventory of all materials and products included as inventories of the Seller's business on or about May 21, 1985. The Seller shall

update the inventory taking into account the additions and deletions during any interval between the actual physical count and the Closing Date. The Purchaser and its accountants shall be entitled to observe the actual physical inventory and shall be entitled to review the procedures employed in updating the inventory to the Closing Date. Each party shall bear its own costs in connection with said inventory valuation.

6.6 Actions to be Taken. Prior to or at the Closing, the following actions will be taken by the Seller:

(a) All deferred compensation, accrued through the Closing Date, under the deferred compensation plans in effect from time to time for the benefit of Jon Syverson and Richard Rocklin will be paid out to them.

(b) Bonuses under the Seller's existing bonus plan (adjusted to reflect the fact that the Closing will occur in the middle of Seller's fiscal year) will be paid in accordance with the estimated results through the Closing Date. Such bonuses will not be subject to later adjustment.

(c) The Seller will sell for its own account certain foreign parts.

(d) The Seller will endeavor to borrow approximately \$357,000 and to use the borrowed funds to pay off its notes issued in connection with the December 1984 redemption of a substantial portion of its stock.

(e) Fees for professional services in connection with the consummation of this Agreement and related transactions will be paid.

(f) All of the assets of Xebec not being sold to the Purchaser under the Xebec Agreement and the consideration received from the Purchaser thereunder will be distributed to the Seller and the Seller will assume all of the liabilities of Xebec, up to the value of the assets distributed, in complete liquidation of Xebec.

(g) All of the assets of FIBC not being sold to Sundet Building Partners under the Real Estate Agreement and the consideration received from Sundet Building Partners thereunder will be distributed to the Seller and the Seller will assume all of the liabilities of FIBC not assumed by Sundet Building Partners, up to the value of the assets distributed, in complete liquidation of FIBC.

#### VII.

##### Conditions Precedent to the Seller's Obligations

All obligations of the Seller under Articles I and II are subject to fulfillment (or waiver in writing by the Seller) before or at the Closing of each of the following conditions:

7.1 Performance. The Purchaser shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it before or at the Closing.

7.2 Real Estate Agreement. The transactions contemplated by the Real Estate Agreement, dated the date hereof, by and between FIBC and Sundet Building Partners shall have been simultaneously consummated and closed.

7.3 Payment of Redemption Obligation. The Seller shall have borrowed approximately \$357,000 to enable it to prepay certain notes payable issued by it in 1984 in connection with the redemption of stock in the Seller from certain former shareholders and shall pay such notes in full at the Closing.

7.4 Release of Seller. The Seller shall be released from liability on the following liabilities to be assumed by the Purchaser pursuant hereto or by Sundet Building Partners pursuant to the Real Estate Agreement:

- (a) The loan to be incurred in connection with payment of the Seller's redemption obligation as provided in Section 7.3;
- (b) The loan incurred from First Bank (N.A.)-Albert Lea in December 1984 in connection with the downpayment on the stock then redeemed;
- (c) The loan from First Bank (N.A.)-Albert Lea to FIBC secured by the Mortgage on the real estate being purchased under the Real Estate Agreement;
- (d) The deferred payment obligations to Vonda Rocklin and James Persons heretofore incurred by the Seller.

7.5 Release of Guaranty. Jon Syverson shall have been released from his guaranty of the Sellers' indebtedness to First Bank (N.A.)-Albert Lea before or at the closing.

7.6 No Actions Threatened. No action of any interested party or any governmental agency shall have been taken or threatened that asserts that the transactions contemplated by this Agreement or any material part thereof are illegal or not in compliance with any relevant contract, law or regulation.

7.7 Employment Agreements. The Purchaser shall have entered into written employment agreements with Richard Rocklin and Jon Syverson, effective as of the Closing Date, whereby Messrs. Rocklin and Syverson shall have agreed to accept full time employment with the Purchaser for such period of time and upon such other terms and conditions as are acceptable to Messrs. Rocklin and Syverson.

7.8 Release of Other Agreements. Vonda Rocklin and James Persons shall have consented to the transactions contemplated by this Agreement and shall have agreed to a restructuring of the indebtedness owed to them by the Seller and to the release of their liens on certain properties of the Seller all on terms and conditions acceptable to the Seller. Richard Rocklin shall have released the Seller from the two stock option agreements currently in effect between them.

#### VIII.

##### Conditions Precedent to the Purchaser's Obligations

All obligations of the Purchaser under Articles I and II are subject to fulfillment (or waiver in writing by the Purchaser) before or at the Closing of each of the following conditions:

8.1 Performance. The Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it before or at the Closing.

8.2 Consents Obtained. The consents of all persons whose consent is required to the transactions contemplated hereby shall have been obtained.

8.3 No Damage to Properties. The assets and properties of the Seller sold pursuant to Section 1.1 shall not have been materially damaged by casualty or otherwise, whether or not covered by insurance.

8.4 No Actions Threatened. No action of any interested party or any governmental agency shall have been taken or threatened that asserts that the transactions contemplated by this Agreement or any material part thereof are illegal or not in compliance with any relevant law or regulation.

8.5 Employment Agreements. ~~The Purchaser~~ shall have entered into written employment agreements with Richard Rocklin and Jon Syverson, effective as of the Closing Date, whereby Messrs. Rocklin and Syverson shall have agreed to accept full-time employment with the Purchaser for such period of time and upon such other terms and conditions as are acceptable to the Purchaser.

8.6 Real Estate Agreement. The transactions contemplated by the Real Estate Agreement, dated the date hereof, by and between FIBC and Sundet Building Partners shall have been simultaneously consummated and closed.

8.7 Release of Other Agreements. Vonda Rocklin and James Persons shall have consented to the transactions contemplated by this Agreement and shall have agreed to a restructuring of the indebtedness owed to them by the Seller and to the release of their liens on certain properties of the Seller all on terms and conditions acceptable to the Purchaser.



8.8 Inspection by Purchaser. The Purchaser shall be satisfied in its sole and absolute discretion with the condition of the property, plant, equipment and inventories of the Seller as of the Closing Date.

IX.  
The Closing

9.1 Time and Place. The Closing of the transactions herein provided for shall take place at 2200 First Bank Place East, Minneapolis, Minnesota, at 2:00 P.M. on the Closing Date. The Closing Date shall be May 22, 1985, or such other date as the parties shall mutually agree upon.

9.2 Action to be Taken at the Closing. The following action shall be taken at the Closing:

(a) The sale, conveyance, assignment and delivery of the assets, properties and the business of the Seller pursuant to Article I and the payment of the consideration pursuant to Article II shall take place.

9.3 Closing Documents.

(a) The Seller will deliver to the Purchaser at the Closing:

(i) A General Bill of Sale and Assignment, satisfactory in form to the Purchaser's counsel, dated the Closing Date, selling and assigning from the Seller to the Purchaser, its successors and assigns, good and marketable title to the assets and properties of the Seller described in Sections 1.1(a) through 1.1(e), inclusive, free and clear of all mortgages, liens, charges and encumbrances, such instrument to be duly executed in recordable form; such General Bill of Sale and Assignment to

provide that the Seller will from time to time, at the Purchaser's request and without additional consideration, execute and deliver to the Purchaser such further instruments of conveyance and transfer and take such other action as the Purchaser may reasonably require to convey and transfer any and all of the assets and properties of the Seller sold hereunder;

(ii) An Assignment and Assumption, satisfactory in form to the Purchaser's counsel, dated the Closing Date, assigning from the Seller to the Purchaser, its successors and assigns, all right, title and interest of the Seller in and to the contracts and commitments described on Schedule 1.3;

(iii) A separate Assignment, satisfactory in form to the Purchaser's counsel, dated the Closing Date, selling and assigning from the Seller to the Purchaser, its successors and assigns, good and marketable title to the patents of the Seller described on Schedule 4.10, such instrument to be duly executed in recordable form;

(iv) A separate Assignment, satisfactory in form to the Purchaser's counsel, dated the Closing Date, selling and assigning from the Seller to the Purchaser, its successors and assigns, good and marketable title to the trademarks and trade names of the Seller described on Schedule 4.9, such instrument to be duly executed in recordable form;

(v) Certificates of Title for all vehicles described on Schedule 1.1(b), certifying that such vehicles are free from all

security interests, warranting title and assigning such vehicles to the Purchaser;

(vi) A certificate of an enrolled actuary, satisfactory in form to the Purchaser's counsel, dated the Closing Date, that there is no deficiency in the minimum funding standard account for the Pension Plan.

(vii) Such other Closing documents as the Purchaser or its counsel may reasonably request.

(b) The Purchaser ~~will deliver to the~~ Seller at the Closing:

(i) The cash consideration as provided in Section 2.1(d);

(ii) Installment Promissory Note of the Purchaser in the identical form of Exhibit 2.1(f)(i), in the principal sum as provided in Section 2.1(f), dated as of the Closing Date, and duly executed by the Purchaser;

(iii) Such other Closing documents as the Seller or its counsel may reasonably request.

(c) The Purchaser's Shareholder will deliver to the Seller at the Closing:

(i) Personal Guaranty of the Purchaser's Shareholder to guarantee the payment of the Installment Promissory Note of the Purchaser and the similar note of Sundet Building Partners issued pursuant to the Real Estate Agreement, dated as of the Closing Date and duly executed by the Purchaser's Shareholder.

(d) Sundet Building Partners will deliver to the Seller at the closing:

(i) Guaranty by Sundet Building Partners in the identical form of Exhibit 2.1(f)(iii);

(ii) Combination Mortgage, Security Agreement and Fixture Financing Statement in the identical form of Exhibit 2.1(f)(iv);

(iii) Assignment of Rents and Leases in the identical form of Exhibit 2.1(f)(v); and

(iv) Such other closing documents as Seller or its counsel may reasonably request.

X.

Action to be Taken After the Closing

10.1 Preparation of Closing Date Balance Sheet. As soon as reasonably practicable after the Closing, the Seller shall perform a normal month end closing as of the Closing Date and prepare and deliver to the Purchaser a consolidated balance sheet for the Seller, Xebec and FIBC (the "Closing Date Balance Sheet"). The Closing Date Balance Sheet shall be the basis upon which is determined any adjustment to the purchase price pursuant to Section 2.2 and the amount of payment by Purchaser to Seller with respect to Seller's income tax liability to be made pursuant to Section 10.7.

The Closing Date Balance Sheet shall be prepared in accordance with generally accepted accounting principles applied on a basis consistent with prior years' statements, subject to the following adjustments:

- (a) Sales literature purchased at an original cost of \$19,627 by the Seller shall be shown on the Closing Date Balance Sheet less accrued amortization computed ratably over the period between the date of purchase of such sales literature and the Seller's fiscal year end September 30, 1985;

- (b) Leasehold improvements at the Buffalo, Minnesota, leasehold shall be shown at the actual net book value of approximately \$32,000, as of the date of termination of said leasehold less accrued amortization computed ratably over the period from said date to the Seller's fiscal year end September 30, 1985; and
- (c) Accrued income taxes shall be based upon proforma income tax returns prepared as if the Closing Date were the end of the taxable years of the Seller, Xebec and FIBC, and excluding the effects of the transactions set forth in Section 6.6 and the sales pursuant to this Agreement, the Xebec Agreement and the Real Estate Agreement.

Notwithstanding anything apparently to the contrary herein, the Closing Date Balance Sheet shall include only liabilities of the Seller which have arisen in the ordinary course of the business of the Seller, Xebec and FIBC and shall not include any liabilities which the Purchaser has not agreed to assume pursuant to Section 2.4 or in excess of the amounts which the Seller has agreed to assume pursuant to Section 2.4 or as provided elsewhere in this Agreement. The Closing Date Balance Sheet shall be prepared as promptly as possible but in no event later than thirty (30) days from and after the Closing Date. The Seller and the Fountain Affiliates hereby represent and warrant to the Purchaser that the Closing Date Balance Sheet prepared in accordance with this Section 10.2 shall accurately and fairly present the consolidated financial condition of the Seller, Xebec and FIBC as of the Closing Date. The Closing Date Balance Sheet shall be subject to review by the Purchaser and its accountants. The Purchaser shall be deemed to have accepted the Closing Date Balance Sheet prepared by the Seller unless within fifteen (15) days after delivery thereof to the Purchaser, it gives written notice to the Seller of the Purchaser's objection to any item therein.

In the event the Purchaser gives such written notice of objection and the Seller and the Purchaser have been unable to resolve such dispute by the date thirty (30) days after delivery of Closing Date Balance Sheet to the Purchaser, either party may require that such dispute be resolved by arbitration under the rules of the American Arbitration Association. Each party shall bear its own expenses in preparing and reviewing the Closing Date Balance Sheet.

10.2 Change of Corporate Name. Promptly after the Closing, each of the Seller, Xebec and FIBC agrees to change its corporate name to a name not similar to its present name and to consent to the use by the Purchaser of the name "Fountain Industries Corporation" or a similar name. The Seller, Xebec and FIBC shall execute from time to time such written consents as the Purchaser may reasonably request in order to effectuate this provision.

10.3 Employees of Seller. Effective as of the Closing Date, the Seller shall terminate all of the employees of the Seller who have not already indicated their intention to terminate their employment. If the Purchaser shall offer employment to any such employees and any such offer is accepted, such offer and acceptance shall not be construed as granting tenure to any such employee or as guaranteeing employment for any specific term. The Purchaser agrees to give such employees who accept Purchaser's offer of employment, if such an offer is made, credit for any unused vacation time during the balance of the current pay year.

10.4 Adoption of the Seller's Pension and Profit Sharing Plans.

(a) The Seller currently maintains a defined benefit pension plan known as the "Fountain Industries, Inc. Pension Plan for Collective

Bargaining Employees" and funded through a group annuity contract (said plan and contract being hereinafter referred to as the "Pension Plan"). The Purchaser agrees that it will adopt the Pension Plan, provided that (i) prior to the Closing Date, the Seller has contributed to the Pension Plan all contributions attributable to all years ending prior to October 1, 1984; (ii) the Seller shall have accrued on the Closing Date Balance Sheet prepared pursuant to Section 10.1 the portion of the Seller's annual contribution to the Pension Plan attributable to the period from October 1, 1984, to the Closing Date, which portion shall be determined on the same basis as in the prior year; and (iii) the Seller agrees to assume and hold the Purchaser harmless from any liabilities, other than unfunded past service liability, relating to or arising under the Pension Plan for years ending through September 30, 1984, and for the period from October 1, 1984, to the Closing Date to the extent such liability exceeds the amount accrued pursuant to clause (ii).

(b) The Seller currently maintains a profit sharing plan known as the "Fountain Industries, Inc. Profit Sharing Plan" and funded through a trust (said plan and trust being hereinafter referred to as the "Profit Sharing Plan"). The Purchaser agrees that it will adopt the Profit Sharing Plan, provided that (i) prior to the Closing Date, the Seller has contributed to the plan all contributions declared for all years ending prior to October 1, 1984; (ii) the Seller shall have accrued on the Closing Date Balance Sheet prepared pursuant to Section 10.1 the portion of the Seller's annual contribution to the Profit Sharing Plan attributable to the period from October 1, 1984, to the Closing Date at

the rate of ten percent (10%) of eligible compensation; and (iii) the Seller agrees to assume and hold the Purchaser harmless from any liabilities relating to or arising under the profit sharing plan for years ending through September 30, 1984, and for the period from October 1, 1984, to the Closing Date to the extent such liability exceeds the amount accrued pursuant to clause (ii). The Purchaser agrees that it will to the extent of profits make a contribution to the Profit Sharing Plan attributable to the period from the Closing Date to September 30, 1985, at the rate of ten percent (10%) of eligible compensation.

(c) Prior to the Closing Date, the Seller agrees to take such reasonable steps as may be necessary for the continuation of the Pension Plan and the Profit Sharing Plan by the Purchaser.

#### 10.5 Collection of Accounts Receivable.

(a) Collection. The Purchaser shall use its best efforts to collect the full amount of all receivables purchased by the Purchaser under Section 1.1(d). Unless otherwise directed by the customer, it is agreed that all payments received from a particular customer after the Closing Date shall be credited first against any receivables of said customer purchased by the Purchaser under Section 1.1(d) and only after such receivable has been paid in full shall payments from such customer be credited to receivables arising subsequent to the Closing Date.

(b) Returns. If any particular customer returns merchandise sold to such customer by the Seller and for which an account receivable has been purchased by the Purchaser under Section 1.1(d), the Purchaser shall credit such receivable as paid to the extent of the purchase price of



said returned merchandise, minus fifteen percent (15%) thereof as a restock charge (net of any amounts paid by the customer for restocking such merchandise).

(c) Reports. After the Closing, the Purchaser shall furnish the Seller with monthly reports, showing for such month (i) the amounts collected on each account purchased by the Purchaser pursuant to Section 1.1(d), and (ii) the total amounts remaining unpaid on such account. The Purchaser shall provide such monthly reports until the net amount allocated to ~~all receivables~~ acquired by the Purchaser under Section 1.1(d) has been collected or until all such unpaid accounts shall have been assigned to the Seller pursuant hereto. The Seller shall have the right to inspect the books and records of the Purchaser at any reasonable time during regular business hours to verify such reports.

(d) Assignment to Seller. If and to the extent that the net amount allocated to the accounts receivable and other trade receivables purchased by the Purchaser under Section 1.1(d) (other than the amount allocated to the interest bearing time payment contracts (the "Deferred Receivables")) (the "Initial Net Amount") has not been fully collected on or before December 31, 1985, all such unpaid receivables acquired from the Seller by the Purchaser, less the amount of the Receivables Credit, if any, then available, shall be assigned to the Seller by the Purchaser, without recourse, and the Seller shall promptly pay to the Purchaser the excess of the Initial Net Amount over actual collections of such receivables through December 31, 1985. If and to the extent that the net amount allocated to all the accounts receivable and other trade

receivables purchased by the Purchaser under Section 1.1(d) (including the Deferred Receivables) has not been fully collected on or before September 30, 1986, all unpaid receivables (including Deferred Receivables) acquired from the Seller by the Purchaser, less the amount of the Receivables Credit, if any, then available, shall be assigned to the Seller by the Purchaser, without recourse, and the Seller shall promptly pay to the Purchaser the excess of (i) the excess of the Initial Net Amount plus the face amount of Deferred Receivables transferred to the Purchaser at the closing over actual collections of such receivables by the Purchaser through September 30, 1986, over (ii) the amount, if any, paid by the Seller to the Purchaser pursuant to the preceding sentence. For purposes of this Section 10.5, the Receivables Credit shall be equal to the positive difference, if any, between (i) the amount of the unpaid liabilities of the Seller owed to Nels Yde and Nemco Trading (the "Liability") in the approximate aggregate amount of \$92,000 which is to be assumed by the Purchaser pursuant to Section 10.7, minus (ii) the amount of payments actually made by the Purchaser against the Liability. In the event that a Receivables Credit is available to reduce the amount of unpaid receivables to be assigned to the Seller on December 31, 1985, and/or September 30, 1986, as provided above, and the Purchaser later makes payment against the Liability, the Seller and the Fountain Affiliates shall jointly and severally reimburse the Purchaser for the amount of any such payment, but not in excess of the amount of the unpaid receivables against which the Receivables Credit was applied.

10.6 Product Warranty Commitments. The Seller generally provides for a one year warranty on its products. The Purchaser agrees to absorb the first \$80,000 in cost of honoring product warranties which arise in the year after the Closing on products sold by the Seller prior to the Closing. If the cost of such warranties exceeds \$80,000 within one year after the Closing, the Seller shall promptly pay the excess of such costs over \$80,000 to the Purchaser upon receipt of a detailed report setting forth the individual warranty claims honored.

~~10.7~~ Payment of Disclosed Liabilities Assumed By Purchaser. The Purchaser agrees to pay, before the same become delinquent, or to reimburse the Seller therefor, only those liabilities of the Seller as of the Closing Date as provided in Section 2.4. With respect to the liability to contribute a portion of the Seller's annual contributions to its qualified pension and profit sharing plans, the Purchaser agrees to adopt said pension and profit sharing plans as provided in and subject to the conditions of Section 10.4, and the Purchaser agrees to make such contributions on behalf of the Seller at the same time as the Purchaser makes its contributions to such plan for its first fiscal year. With respect to the Seller's liability for income taxes as determined pursuant to the Closing Date Balance Sheet prepared in accordance with Section 10.1, the Purchaser agrees to pay the Seller the amount thereof, but not in excess of the amount actually paid by the Seller, in cash on December 15, 1985.

10.8 Payment following Liquidation. The Seller has adopted a plan of complete liquidation pursuant to Internal Revenue Code Section

337 prior to the execution hereof and the Seller is expected to complete distribution of its assets to its shareholders within 12 months following the date of adoption of its plan of liquidation. The Purchaser agrees to cooperate with the Seller by making payments under the Installment Promissory Note to the shareholders of the Seller or to such trustee, escrow agent or partnership as is requested by the Seller or its successors from time to time.

XI.

Provisions Respecting Representations  
and Warranties and Indemnification

11.1 As of Closing Date. All representations and warranties shall be deemed to have been made, and shall be true, both as of the date hereof and as of the Closing Date, except to the extent that the actions to be taken pursuant to Section 6.6 require modification of the representations and warranties made in Section 4.19.

11.2 Reliance. All representations and warranties contained herein, or in any certificate or other instrument delivered hereto, shall be deemed to have been relied upon by the parties hereto, notwithstanding any investigation made by or on behalf thereof.

11.3 Survive the Closing. All representations and warranties contained herein shall survive the Closing and delivery of bills of sale, assignments and other instruments of conveyance.

11.4 Indemnification by Seller and Fountain Affiliates. The Seller and the Fountain Affiliates shall jointly and severally indemnify and hold harmless the Purchaser against and in respect of:

(a) All liabilities and obligations of, or claims against, the Seller which either relate to the Seller's business prior to the Closing and were not expressly assumed by the Purchaser pursuant to this Agreement or relate to Seller's conduct after the Closing (including without limitation any claim by Robert V. Albertson for unpaid royalties);

(b) Any damage or deficiency, including costs and expenses incident or related thereto, resulting from any misrepresentations, breach of warranty, or nonfulfillment of any agreement on the part of the Seller under this Agreement or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to the Purchaser under this Agreement.

Provided, however, that any claim for indemnification hereunder asserted against the Seller or the Fountain Affiliates by the Purchaser must be made within six (6) years from and after the Closing.

11.5 Purchaser's Right of Set-Off. If the Purchaser shall suffer or become subject to any loss, damage, cost, expense, liability, obligation or claim for which indemnification may be sought from the Seller or the Fountain Affiliates under Section 11.4 of this Agreement or if Sundet Building Partners shall suffer or become subject to any loss, damage, cost, expense, liability, obligation or claim for which indemnification may be sought from Seller or the Fountain Affiliates under the Real Estate Agreement, then the Purchaser shall have the right, to the extent not exercised by Sundet Building Partners, in addition to any other actions permitted by law, to set-off the amount of any such

loss, damage, cost, expense, liability, obligation or claim against the then outstanding principal balance due to the Seller under the promissory note delivered pursuant to Section 2.1(f). The Purchaser's right of set-off against the outstanding principal balance of said note shall not be deemed to be the Purchaser's exclusive remedy for the breach by the Seller or the Fountain Affiliates of any representations, warranties or agreements set forth herein, all of which shall survive the closing and any set-off made by the Purchaser.

11.6 Indemnification by the Purchaser and Purchaser's

Shareholder. The Purchaser and the Purchaser's Shareholder shall jointly and severally indemnify and hold harmless the Seller against and in respect of

(a) all liabilities and obligations of, or claims against, the Seller expressly assumed by the Purchaser pursuant to this Agreement or in connection with Purchaser's operation after the Closing of the business acquired from the Seller including, without limitation, claims relating to terminations of distributors, licensees or employees by the Purchaser after the Closing;

(b) any damage or deficiency, including costs and expenses incident or related thereto, resulting from any misrepresentations, breach of warranty, or nonfulfillment of any agreement on the part of the Purchaser under this Agreement or from any misrepresentation in or admission from any certificate or other instrument furnished or to be furnished to the Sellers under this Agreement.

Provided, however, that any claim for indemnification hereunder asserted against the Purchaser or the Purchaser's Shareholder by the Seller must be made within six (6) years from and after the Closing.

11.7 Claims Procedures. The party claiming indemnification hereunder (the "Indemnitee") shall provide prompt written notice in writing of the commencement of any action or the assertion of any claim of liability or obligation by itself or a third party (whether by legal process or otherwise) to the party to this Agreement (the "Indemnitor") ~~who may be required~~ under this Agreement to indemnify such Indemnitee and will give the Indemnitor a copy of such claim, process and all legal pleadings. In the case of third party claims, the Indemnitor shall have the right to participate in and assume the defense of such action. If the Indemnitee shall be required by judgment or a settlement agreement to pay any amount in respect of any obligation or liability against which an Indemnitor has agreed to indemnify the Indemnitee under this Agreement, the Indemnitor will promptly reimburse the Indemnitee in an amount equal to the amount of such payment. Prior to paying or settling any third party claim against which an Indemnitor is, or may be, obligated under this Agreement to indemnify the Indemnitee, the Indemnitee must first supply each Indemnitor with a copy of a final court judgment or decree holding the Indemnitee liable on such claim, or in the absence of such a judgment or decree, must first receive the written approval of the terms and conditions of such settlement from the Indemnitor. The Indemnitee shall have the right to settle any claim against it, subject to the prior written approval of the Indemnitor, which approval shall not be unreasonably withheld.

11.8 Limitation on Liability of Certain Fountain Affiliates.

The liability of each of Jon R. Syverson and the M. J. Syverson Trust under this Agreement, the Xebec Agreement and the Real Estate Agreement, in total shall be limited to such person's pro rata share of the consideration paid by the Purchaser and Sundet Building Partners under such Agreements.

XII.  
General Matters

12.1 Interpretation. The article and section headings

contained in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement. All references to section numbers and article numbers refer to sections and articles of this Agreement. All references to Schedules and Exhibits refer to schedules and exhibits which are attached to this Agreement and are hereby made a part of this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

12.2 Counterparts. This Agreement may be executed

simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same agreement.

12.3 Benefit. This Agreement shall inure to the benefit of and

shall be binding upon the parties hereto, their successors and assigns, heirs and representatives.

12.4 Notices. All notices, requests, demands and other

communications under this Agreement to the parties shall be in writing and shall be sent by certified or registered mail:



(a) If to the Seller, to the following:

Jon R. Syverson  
201 South Lane  
Albert Lea, Minnesota 56007

(b) If to the Purchaser, to the following:

Leland N. Sundet  
L.N. Sundet Corporation  
2791 Pheasant Road  
Excelsior, Minnesota 55331

12.5 Brokerage. Each of the parties hereto represents and warrants that all negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the parties hereto directly without the intervention of any agent or broker, and each party hereto agrees to indemnify and hold harmless the other party hereto from any claim that may be asserted against such other party by any broker or agent claiming to have dealt with such party in connection with the transactions contemplated by this Agreement.

12.6 Entire Agreement. This Agreement contains the entire agreement between the parties hereto and may not be modified or amended except by a writing or writings signed by the party against whom any modification or amendment is asserted or sought to be enforced.

### XIII.

#### Covenant Not to Compete of Seller and Fountain Affiliates

Upon the Closing of the purchase and sale of the assets and properties and business of the Sellers pursuant to Article I, the Seller and the Fountain Affiliates hereby covenant and agree that from and after the Closing Date and for a period of five (5) years thereafter, the Seller and each of the Fountain Affiliates will not, directly or

indirectly, through the Seller or otherwise, engage in the business of manufacturing or selling dispensing and coffee-making equipment, beverage ingredients and supplies, parts cleaners, flushers and car starter equipment or related products or any other product now sold by the Seller, or otherwise compete with the business of the Purchaser, or own, manage, operate, join, control or participate in or be connected in any manner, directly or indirectly, including as substantial common shareholders, with any business engaging in the manufacture or sale of dispensing and coffee-making equipment, beverage ingredients and supplies, parts cleaners, flushers and car starter equipment or related products or otherwise competing with the existing businesses of the Seller within the continental United States. The Seller and the Fountain Affiliates acknowledge that the remedy at law for any breach of the foregoing covenant not to compete will be inadequate and that the Purchaser shall be entitled, in addition to any remedy at law, to injunctive relief. The consideration for the foregoing covenant not to compete is the Purchaser's agreement to purchase the properties of the Seller under this Agreement, and the Seller and the Fountain Affiliates hereby acknowledge the adequacy of such consideration, and it is expressly agreed that no portion of the purchase price payable under Article II for the purchase of the assets of the Seller under Article I is allocable to said covenant not to compete. If any court of competent jurisdiction should determine that the foregoing covenant not to compete is invalid because either of its length of time or its breadth of area, then the parties hereto agree that such covenant shall be reduced either

or both in time or in area so that such covenant shall be enforceable against the Seller and the Fountain Affiliates.

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

Seller:

FOUNTAIN INDUSTRIES, INC.

By Pa Rocke  
Its PRESIDENT

Fountain Affiliates:

FOUNTAIN INDUSTRIES BUILDING CORPORATION

By Jon B Syverson  
Its Trustee

M. J., SYVERSON TRUST

By Jon B Syverson  
Trustee

And Jon B Syverson  
Trustee

Jon B Syverson  
JON R. SYVERSON



EXHIBITS AND SCHEDULES

- Schedule 1.1(b) - Machinery and Equipment  
1.3 - Contracts and Commitments  
2.4 - Notes Payable  
4.9 - Trademarks and Trade Names  
4.10 - Patents  
4.13(a) - Loan Agreements  
4.13(b) - Distributor Agreement  
4.13(c) - Lessee's Interest in Leases  
4.13(d) - Lessor's Interest in Leases  
4.13(e) - Insurance  
4.13(f) - Employee Benefit Plans  
4.13(g) - Labor Union Contracts  
4.13(h) - Employment Agreements  
4.13(i) - Purchase Commitments  
4.13(j) - Supplier Agreements  
4.13(k) - Advertising Contracts  
4.19(vii) - Changes in Compensation Since September 30, 1984

- Exhibit 2.1(f)(i) - Installment Promissory Note  
2.1(f)(ii) - Guaranty by Leland N. Sundet  
2.1(f)(iii) - Guaranty by Sundet Building Partners  
2.1(f)(iv) - Combination Mortgage, Security Agreement and  
Fixtute Financing Statement  
2.1(f)(v) - Assignment of Rents and Leases

