

RECORDATION
TRADEMARK



101521536

Office of Patents and Trademarks: Please record

Conveying party(ies): 7-19-00

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

Name: PM Company

Internal Address: _____

Street Address: 1500 Kemper Meadow Drive

City: Cincinnati State: Ohio Zip: 45240

Individual(s) citizenship _____

Association _____

General Partnership _____

Limited Partnership _____

Corporation-State Ohio

Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: yes no

(Designation must be a separate document from Assignment)

Additional name(s) & address(es) attached? yes no

- Individual
- General Partnership
- Corporation-State
- Other _____

Additional name(s) of conveying party(ies) attached? yes no

3. Nature of conveyance:

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

Execution Date: March 27, 2000

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,289,912

Additional numbers attached? yes no

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

Name: Nicolette R. Simms, Esq.

Internal Address: 1900 Chemed Center

Street Address: 255 E. Fifth Street

City: Cincinnati State: Ohio Zip: 45202

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
- Please charge any deficiencies or credit any overpayment to deposit account

8. Deposit account number: 04-1133

(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.

Nicolette R. Simms
Name of Person Signing

Nicolette R. Simms
Signature

7/19/00
Date

Total number of pages including cover sheet: 46

582734.01

CERTIFICATE OF EXPRESS MAIL

"Express Mail" mailing label number: EL34 3337442US

Date of Deposit: 7/19/00

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Catherine L. Vigil

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ASSET PURCHASE AGREEMENT

By and Among

PMCo L.L.C.,

and

MAGELLAN MATERIALS & SUPPLIES, INC.

Dated as of
March 27th, 2000

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ASSET PURCHASE AGREEMENT

March 27th ASSET PURCHASE AGREEMENT (the "Agreement") dated as of _____, 2000 by and among PMCO L.L.C., a Delaware limited liability company ("Buyer"), MAGELLAN MATERIALS & SUPPLIES, INC., a Washington corporation, (the "Seller") and TIM GOHRKE AND DEBORAH GOHRKE, (individually "Stockholder" and collectively, the "Stockholders").

Background

Seller is engaged in the business of distributing wide format ink jet products (the "Business"). Seller desires to sell and transfer to Buyer and Buyer desires to purchase from Seller substantially all of the assets of Seller comprising, used or associated with the Business, upon the terms and subject to the conditions set forth in this Agreement. The Business is conducted at facilities located at 10125 Main Place, Bothell, Washington (the "Facilities").

Terms

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Certain Definitions. As used in this Agreement, the following terms shall have the following meanings:

- (a) "Accounts Payable" means all accounts payable or accrued expenses of Seller determined in accordance with GAAP and reflected in the books and records of Seller.
- (b) "Accounts Receivable" means all accounts receivable of Seller determined in accordance with GAAP and reflected in the books and records of Seller.
- (c) "Affiliate" of any Person means any Person, directly or indirectly controlling, controlled by or under common control with such Person, and includes any Person who is an officer, director or employee of such Person and any Person that would be deemed to be an "affiliate" or an "associate" of such Person, as those terms are defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. As used in this definition, "controlling" (including, with its correlative meanings, "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities, partnership or other ownership interests, by contract or otherwise).
- (d) "Authority" means any Federal, state, local or foreign government department, regulatory agency, authority, commission, board or court or other law, rule or regulation-making entity having jurisdiction over the Buyer or Seller.

(e) "Business Day" means any day other than a Saturday, Sunday, or a day on which banking institutions in New York are authorized or obligated by law or executive order to close.

(f) "Buyer's Accountants" means KPMG Peat Marwick, LLP or such other independent certified public accounting firm of recognized national standard as Buyer may designate.

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

(h) "Collective Bargaining Agreements" means the collective agreements by which Seller is bound, and all related documents including all benefit agreements, letters of understanding, letters of intent and other written communications with bargaining agents for any employees of Seller which impose any obligations upon Seller or set out the understanding of the parties with respect to the meaning of any provisions of such collective agreements.

(i) "Damages" means the aggregate amount of all damages, claims, losses, obligations, liabilities (including any governmental penalty, fines or punitive damages), deficiencies, interest, costs and expenses arising out of or relating to a matter and any actions, judgments, costs and expenses (including reasonable attorneys' fees and all other expenses incurred in investigating, preparing or defending any litigation or proceeding, commenced or threatened) incident to such matter or to the enforcement of this Agreement.

(j) "Employee" means all individuals with whom the Seller maintains on the Closing Date (or other specified date), an employer-employee relationship whose primary responsibilities relate to the Business.

(k) "Environmental Laws" means any Federal, state or local statutory or common law, regulation, rule order, ordinance, guideline, direction, policy or notice relating to the environment, public health and safety, and employee health and safety.

(l) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(m) "ERISA Affiliate" means (i) any corporation included with Seller or any Affiliate of the Seller in a controlled group of corporations within the meaning of Section 414(b) of the Code; (ii) any trade or business (whether or not incorporated) which is under common control with Seller or any Affiliate of the Seller within the meaning of Section 414(c) of the Code; (iii) any member of an affiliated service group of which Seller or any Affiliate of the Seller is a member within the meaning of Section 414(m) of the Code; or (iv) any other person or entity treated as an affiliate of Seller or any Affiliate of the Seller under Section 414(o) of the Code.

(n) "Federal" means any United States federal jurisdiction.

(o) "Former Employee" means all individuals as to whom an employer-employee relationship with the Seller existed prior to the Closing Date, but does not exist on the Closing Date.

(p) "GAAP" means generally accepted United States accounting principles applied on a consistent basis throughout the periods in question.

(q) "Lien" means (i) in respect of any asset other than a security, any lien, charge, claim, security interest, conditional sale agreement, mortgage, security agreement, option or other encumbrance and (ii) in respect of any security, any of the foregoing (to the extent not imposed by any applicable securities laws) and, in addition, any adverse claim or restriction on voting.

(r) "Material Adverse Effect" means any change or circumstances (or series of related changes or circumstances) which cause or is reasonably likely to cause a material adverse change in or effect upon the business, assets, liabilities (contingent or otherwise), condition (financial or otherwise), prospects, sales, earnings or results of operation of the Business.

(s) "Person" means an individual, a corporation, a partnership, an association, a trust or other entity or organization, including an Authority.

(t) "Permitted Encumbrances" means (i) liens for current taxes not yet due, subject to final apportionment pursuant to Section 2.7 hereto, (ii) easements and zoning restrictions, if any, which do not affect the uses and purposes to which the Facilities are currently employed or materially impair the continuation of the current operations of the Business.

(u) "Seller's Accountant" means Davenny & Associates, or such other independent certified public accounting firm of recognized national standard as Seller may designate.

(v) "Tax Authority" means the United States Internal Revenue Service and any other Federal, state, local or foreign agency, department or organization responsible for the administration of Taxes.

(w) "Tax Returns" mean returns, report or other documents related to Taxes, including all accompanying schedules.

(x) "Taxes" means any Federal, state, local and foreign income, payroll, withholding, excise, sales, use, license, lease, personal and other property, use and occupancy, business and occupation, mercantile, real estate, gross receipts, employment, severance, stamp, premium, windfall profits, social security (or similar unemployment), disability, transfer, registration, value-added, alternative or add-on minimum, estimated, capital stock and franchise, goods and services, all customs, import and export taxes or duties; and all unemployment insurance and health insurance premiums, and other tax of any kind whatsoever, including interest, penalties and fines on any of the foregoing, whether or not disputed.

1.2 Index of Other Definitions The following terms are defined in this Agreement in the Sections indicated below:

..... Section
..... 8.13
AAA

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ARTICLE II

THE TRANSACTION

2.1 **The Purchase Transaction** Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell and transfer to Buyer on the Closing Date, free and clear of all Liens of every kind, nature and description except those specifically assumed by Buyer pursuant to Section 2.3, and Buyer hereby agrees to purchase from Seller on the Closing Date,

for the purchase price specified in Section 2.6(b) the assets, properties and rights of Seller constituting, or primarily used in or otherwise material to the conduct of the Business, except as specifically set forth in Section 2.2, wherever such assets and rights are located and whether such assets are real, personal or mixed (which assets and rights shall include, without limitation, all assets, goodwill, going concern value, rights, claims, contracts, causes of action and properties, whether tangible or intangible, matured or unmatured, known or unknown, contingent or fixed, whether or not any of such assets have any value for accounting purposes or are carried or reflected on or specifically referred to in Seller's books or financial statements with respect to the Business) including, but not limited to, all of the assets, properties and rights of the Business set forth below (the "Purchased Assets"):

(a) All equipment, fixtures, tools, furniture, construction in progress, and production fixtures, vehicles, business machines and other tangible personal property, including but not limited to, that listed in Schedule 2.1(a) (collectively, the "Fixed Assets");

(b) Except for the inventory listed in Schedule 2.1(b), all inventory existing on the Closing Date, wherever located, including, but not limited to, finished goods, work-in-process, supplies, parts, consigned inventory, central, shared or common inventory, parts, warehoused inventories and inventories covered by purchase orders (collectively, the "Inventory");

(c) (i) All patents, patent applications, industrial design rights, copyrights, copyright registrations and copyright registration applications and all rights thereto, (ii) all registered and unregistered trademarks, trade names, service marks, domain names, designs, logotypes and trade dress; trademark, service mark and domain name registrations, including specifically but without limitation the name "Magellan" and applications for trademark and service mark registrations, together with all rights related thereto, including associated goodwill, (iii) subject to the provisions of Section 2.3 and Section 2.4, all patent, trademark, service mark, trade name, copyright, and know-how rights granted to Seller by third parties under licensing or other agreements (the "Intellectual Property Agreements"), (iv) all copyrightable works, all copyrights, and all applications, registrations and renewals in connection therewith; (v) all mask works and all applications, registrations and renewals therewith; (vi) know-how, formulas, compositions, proprietary information, inventions, technologies, designs, technical data, production methods, trade and business secrets, engineering data, models, prototypes, drawings, diagrams, bills of material, manuals and other information primarily related to, used in or otherwise material to the operation of, the Business existing on the Closing Date, (vii) all inventions and technology (whether patentable or unpatentable and whether or not reduced to practice) and all improvements thereto, (viii) all software, databases and other collections and compilations of data, (ix) rights of publicity/privacy and all other proprietary rights, (x) all copies and tangible embodiments thereof (in whatever form or medium), and (xii) all rights of action arising from the items listed in clauses (i) through (xi) above, including but not limited to, all claims by reason of, and the right to collect

damages for, the past, present or future infringement, dilution or misappropriation thereof (collectively, the "Intellectual Property"), including but not limited to, the Intellectual Property set forth on Schedule 2.1(c).

(d) All Accounts Receivable;

(e) Subject to the provisions of Section 2.3 and Section 2.4, all leases, subleases and assignments (whether Seller is lessee, sublessee or assignee) by Seller of machinery, equipment and other personal property set forth in Schedule 2.1(e) (collectively, the "Specified Leases") and all rights thereunder;

(f) Subject to the provisions of Section 2.3 and Section 2.4, all (i) contracts, agreements and instruments relating to the sale of any assets, services, properties, parts or products, including all customer contracts ("Customer Contracts"), operating contracts, distribution and sales representative contracts to the extent primarily relating to, or otherwise material to the conduct of, the Business, (ii) orders, contracts, supply agreements and other agreements relating to the purchase of any assets, services, properties, materials or products; and (iii) all other contracts, agreements and instruments primarily relating to, or otherwise material to the conduct of, the Business, including but not limited to, shop rights, confidentiality and trade secret agreements with employees and former employees of the Business or arrangements and including but not limited to, in each case, all such contracts, agreements and instruments more specifically listed or described in Schedule 2.1(f) (collectively, the "Contracts");

(g) All customer and supplier lists primarily relating to, or otherwise material to the conduct of, the Business;

(h) Except for the books and records identified in Section 2.2(a) and (b), all books, records, ledgers and other documents of Seller pertaining to the Purchased Assets and/or the conduct of the Business, including, without limitation, fixed asset records, appraisals, all historical data in Seller's systems relating to the Business, sales and advertising materials, sales and purchase correspondence, books of account and records relating to the Employees (to the extent such transfer is not prohibited by law), catalogues, price lists, rebate programs, mailing lists, photographs, production data, manufacturing and quality control records and procedures, research and development files, data books, labor routings, inspection processes and equipment lists, picture process sheets, process procedures, equipment prints and specifications and service blue-prints;

(i) All assignable third party warranties and guarantees with respect to any and all of the Purchased Assets;

(j) All rights to insurance proceeds relating to the damage, destruction or impairment of assets or other rights described in this Section 2.1, which damage, destruction or impairment occurred on or prior to the Closing Date;

(k) To the extent transferable, all franchises, approvals, permits, licenses, orders, registrations, certificates, variances, tax abatements and other similar permits or rights (including environmental permits, certificates, licenses, approvals, registrations and authorizations obtained from any Authority, and all pending applications therefor), including all such permits and rights more specifically listed or described in Schedule 2.1(k) (collectively, the "Permits");

(l) All rights and interests of Seller in and to the Facilities, including all rights under property leases, together with all fixtures, fittings, buildings, structures and other improvements erected thereon, and easements, rights, privileges and other appurtenances thereto (such as appurtenant rights in and to public streets), comprising the Facilities and all other property more particularly described in Schedule 2.1(l) (the "Real Estate Leases"); and

(m) all security and other deposits relating to the Business held in Seller's accounts listed in Schedule 2.1(m).

2.2 Excluded Assets. The following assets of Seller shall be excluded from the Purchased Assets (the "Excluded Assets"):

(a) Books and records that Seller is required to retain pursuant to any statute, rule, regulation or ordinance, provided that Seller permits Buyer access to such books and records as provided in Section 7.4;

(b) General books of account and books of original entry that comprise Seller's permanent accounting or Tax records, provided that Seller permits Buyer access to such books as provided in Section 7.4, and Seller's stock records and minute books;

(c) All accounts owing by and among the Seller and its Affiliates;

(d) All assets located at the Facilities that are owned by third parties and listed in Schedule 2.2(d);

(e) All cash, cash equivalents and marketable securities of the Business existing at Closing; and

(f) Any refund of Taxes or claim for refund of Taxes, of any kind relating to any period prior to the Closing Date and any deferred Tax assets of Seller.

2.3 Obligations Under Assigned Contracts; Assumed Liabilities Subject to the terms and conditions of this Agreement, at the Closing Seller will assign and transfer to Buyer the Specified Leases, the Intellectual Property Agreements, the Real Estate Leases and the Contracts (collectively, the "Assigned Contracts"), and Buyer will assume and in a timely fashion will perform: (a) all of Seller's obligations and liabilities under the Assigned Contracts in accordance with the respective terms thereof (other than any such obligations and liabilities

which arise prior to the Closing Date or result from actions taken or omitted prior to the Closing Date); (b) the Accounts Payable; and (c) all other liabilities or obligations of the Seller, except Retained Liabilities as set forth in Section 2.5 (collectively, the liabilities and obligations described in clauses (a) through (c) are referred to as the "Assumed Liabilities").

2.4 Consent of Third Parties. Nothing in this Agreement shall be construed as an attempt to assign any Contract, agreement, Permit, franchise, or claim included in the Purchased Assets which is by its terms or by law nonassignable without the consent of the other party or parties thereto, unless such consent shall have been given, or as to which all the remedies for the enforcement thereof enjoyed by Seller would, as a matter of law, pass to Buyer as an incident of the assignments provided for by this Agreement. In order, however, to provide Buyer the full realization and value of every Contract, agreement, Permit, franchise and claim of the character described in the immediately preceding sentence, Seller agrees that on and after the Closing, it will, at the request and under the direction of Buyer (and at Seller's expense, provided that Seller shall be required to incur only those expenses reasonably necessary to comply with this Section 2.4), in the name of Seller or otherwise as Buyer shall specify, take all reasonable actions and do or cause to be done all such things as shall in the reasonable opinion of Buyer or its counsel be necessary or proper (a) to assure that the rights of Seller under such Contracts, agreements, Permits, franchises and claims shall be preserved for the benefit of Buyer and (b) to facilitate receipt of the consideration to be received by Seller in and under every such Contract, agreement, Permit, franchise or claim, which consideration shall be held for the benefit of, and shall be delivered to, Buyer. Nothing in this Section 2.4 shall in any way diminish Seller's obligations hereunder to obtain all consents and approvals and to take all such other actions prior to or at Closing as are necessary to enable Seller to convey or assign good and marketable title to all the Purchased Assets to Buyer. In the event Seller shall not have obtained all such consents and approvals prior to or at Closing, Buyer may postpone the Closing for a period of up to thirty (30) days from the Closing Date in order to obtain such consents and approvals necessary to convey or assign good and marketable title to all Purchased Assets to Buyer, which postponement, together with the opportunity to cure pursuant to Section 5.2(b), shall not exceed one thirty-day period.

2.5 Retained Liabilities Buyer shall not assume any liabilities or obligations of Seller of any kind, whether such liabilities or obligations relate to payment, performance or otherwise, whether matured or unmatured, known or unknown, whether contingent or otherwise, fixed or absolute, present, future or otherwise of the types that are described in paragraphs (a)-(e) below (the "Retained Liabilities"), it being understood that all of such Retained Liabilities shall be retained, and paid, performed and/or discharged by Seller in accordance with their respective terms. Notwithstanding anything to the contrary contained herein, and without limiting the foregoing, the following shall be considered "Retained Liabilities" for the purposes of this Agreement:

(a) Any liability or obligation of Seller existing as a result of any act, failure to act or other state of facts or occurrence which constitutes a breach or violation of any of

Seller's or Stockholders' representations, warranties, covenants or agreements contained in this Agreement;

(b) all of Seller's liabilities for Taxes, whether fixed or contingent, including, without limitation, (i) any of such Taxes arising as a result of Seller's operation of the Business or ownership of the Purchased Assets before the Closing Date or that will arise as a result of the sale of the Purchased Assets pursuant to this Agreement and (ii) any liability for deferred Taxes of any nature;

(c) any obligation or liability arising under any Contract, instrument or agreement that (i) is not transferred to Buyer as part of the Purchased Assets, or (ii) is not transferred to Buyer because of Seller's failure or inability to obtain any third party consent required for the transfer or assignment of such Contract or agreement to Buyer or (iii) relates to any breach or default (or an event which might, with the passing of time or the giving of notice, or both, constitute a default) under any Contract, instrument or agreement or to be provided by Seller under any such Contract, instrument or agreement arising out of or relating to periods prior to the Closing Date;

(d) any liabilities or obligations of Seller to indemnify its officers, directors, employees or agents;

(e) except as specifically set forth in Schedule 2.5(e) any liability or obligation with respect to employment, termination of employment, compensation or employee benefits of any nature (including, but not limited to, the benefits provided under the Benefit Plans) owed to any Employee or Former Employee (or the Beneficiary of any Employee or Former Employee) by Seller or its Affiliates whether or not the affected Employee or Former Employee becomes a Transferred Employee, that arise out of or relates to employment or the employment relationship between Seller and such Employee or Former Employee or the termination of such relationship;

(f) any obligation or liability under any Contract, instrument or agreement that is transferred to Buyer as part of the Purchased Assets which arises after the Closing Date but which is attributable to or associated with any breach of or default under any Contract, instrument or agreement or to any services to be provided by Seller under any such transferred Contract, instrument or agreement prior to the Closing Date; and

(g) any other liability of Seller including any liability directly or indirectly arising out of or relating to the operation of the Business or ownership of the Purchased Assets prior to the Closing Date whether contingent or otherwise, fixed or absolute, known or unknown, matured or unmatured, present, future or otherwise, except for the Assumed Liabilities.

2.6 Closing

(a) **Time and Place**. The closing of the sale and purchase (the "Closing") shall take place at the offices of Magellan Materials & Supplies Inc. 10125 Main Place, Bothell Wa. 98011 at 10:00 a.m.local time, on March 27th, 2000 or on such other date or at such other time and place as the parties shall mutually agree (the "Closing Date").

(b) **Purchase Price**. The aggregate price to be paid by Buyer for the purchase of the Purchased Assets (the "Purchase Price") shall be the sum of (i) \$500,000 (the "Initial Purchase Price") plus (ii) the amounts calculated pursuant to Schedule 2.6(b).

(c) **Payment of Initial Purchase Price**. The Initial Purchase Price shall be paid on the Closing Date in cash by wire transfer (of immediately available funds) to the account designated by Seller in writing prior to the Closing Date).

2.7 Post Closing Adjustment

(a) At the Closing, Seller shall deliver to Buyer a schedule listing all Accounts Receivable less Accounts Payable, which schedule is attached in form as Schedule 2.7(a). If Buyer is in agreement with Schedule 2.7(a), the Purchase Price shall be adjusted downward in the amount by which the Accounts Payable exceed the Accounts Receivable. If Buyer is in disagreement and the dispute cannot be resolved through discussion with Seller, Seller and Buyer agree to settle such dispute by engaging an independent public accountant, mutually selected by Buyer and Seller. The independent public accountant shall settle the dispute based on GAAP in relation to properly established Accounts Receivable or Accounts Payable. The cost of such engagement shall be borne equally by Seller and Buyer.

(b) At the Closing Seller shall deliver to Buyer a list of all outstanding bills and invoices and the amount of payment of Taxes and electric, fuel, gas, telephone and other utility charges due within thirty (30) days following the Closing Date, where the failure to pay such amounts within such 30-day period will result in interest, penalties and/or late charges in excess of \$1,000, either individually or in the aggregate.

(c) **Further Assurance**. To the extent Seller receives any bills or invoices for any Accounts Payable relating to both pre-closing and post-closing periods, Seller shall promptly, and in any event within five (5) days, send such bill or invoice to Buyer. If such bill or invoice is not on Schedule 2.7(a) and relates to pre-closing activity of Seller, Seller shall also pay to Buyer via check the amount of such invoice or bill. To the extent Buyer receives revenue related to pre-closing activity of Seller and it is not on Schedule 2.7(a), Buyer shall pay to Seller via check the amount of such pre-closing revenue.

(d) **Payments**. Any payments due under this Section 2.7 shall be made within five (5) days of the final determination thereof.

(e) Disputed Items. Any Person liable for more than fifty (50%) percent of the amount apportioned or to be borne under this Agreement with respect to any item referred to in this Section 2.7 may, at its option, prosecute by litigation or administrative proceeding, at its sole expense and risk, including the obligation to pay such amount in full and penalties thereon, if any, in the name of the other Person and receive any and all claims for refund, abatement or recovery without any subsequent obligation to remit or prorate any portion thereof to the other party. The other party shall cooperate with any such prosecution of claims at the expense of the party prosecuting such claim, but shall not be required to incur any risk or expense.

2.8 Deliveries and Proceedings at Closing Subject to the terms and conditions of this Agreement, at the Closing:

(a) Deliveries to Buyer. Seller will deliver or cause to be delivered to Buyer:

(i) a bill of sale and instrument of assignment to the Purchased Assets, duly executed by Seller, substantially in the form of Exhibit A hereto;

(ii) assignments of all transferable or assignable Contracts, Real Estate Leases, Intellectual Property, Intellectual Property Agreements, licenses, Permits and warranties relating to the Purchased Assets, each duly executed and, where necessary or desirable, in recordable form, substantially in the form of Exhibit B hereto;

(iii) the certificates, opinions and other documents required to be delivered by Seller pursuant to this Agreement;

(iv) a receipt for the payment of the Purchase Price duly executed by Seller;

(v) consents to assignment and estoppel certificates of landlords of the Real Estate Leases, substantially in the form of Exhibits C and D hereof; and

(vi) all such other instruments of conveyance as shall, in the reasonable opinion of Buyer and its counsel, be necessary to vest in Buyer good, valid and marketable title to the Purchased Assets in accordance with Article II hereof.

(b) Deliveries to Seller. Buyer will deliver or cause to be delivered to Seller:

(i) a wire transfer of immediately available funds in an amount equal to the Initial Purchase Price;

(ii) assumption of liability under all Contracts, Real Estate Leases, Intellectual Property Agreement, licenses, Permits and warranties relating to the Purchased Assets assigned to Buyer under this Agreement; and

(iii) the certificates, opinions and other documents required to be delivered by Buyer pursuant to this Agreement.

2.9 **Allocation of Consideration** The parties agree that the consideration given for the Purchased Assets shall be allocated among the Purchased Assets in the manner set forth in Schedule 2.9, and that neither Seller nor Buyer shall take any position contrary to such allocation for tax purposes in connection with any Tax Return (including amended Tax Returns) that are filed following the Closing.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER AND STOCKHOLDERS

Each of Seller and Stockholders, jointly and severally, hereby represents and warrants to Buyer on and as of the date hereof and on the Closing Date as follows:

3.1 **Organization and Good Standing** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington. Seller has all requisite power and all governmental licenses, authorizations, consents and approvals required for it to own, lease and operate its properties and assets as now owned, leased and operated and to carry on its business as now being conducted. Schedule 3.1 hereto lists all the jurisdictions in which Seller is qualified to do business and is in good standing as a foreign corporation, which constitute all of the jurisdictions in which such qualification is necessary.

3.2 **Authorization and Enforceability**. Each of Seller and Stockholders has full power and authority to make, execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by Seller have been duly authorized by all necessary corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and Stockholders and constitutes the legal, valid and binding obligation of each of Seller and Stockholders enforceable in accordance with its terms.

3.3 **No Violation of Laws or Agreements**. The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated by this Agreement and the compliance with the terms, conditions and provisions of this Agreement by Seller and Stockholders, will not (a) contravene any provision of the certificate or articles of incorporation or bylaws of Seller; or (b) except as set forth on Schedule 3.3 hereto, conflict with or result in a breach of or constitute a default (or an event which might, with the passage of time or the giving of notice, or both, constitute a default) under, or result in or permit the modification or termination of any provision of, or result in or permit the acceleration of the maturity or the cancellation of the performance of any obligation under, or result in the creation or imposition of any Lien of any nature whatsoever upon Seller's assets or give to others any interests or rights therein under, any indenture, mortgage, loan or credit agreement, license, contract, or other agreement or commitment to which Seller or Stockholders is a party or by which the Business or any of the Purchased Assets may be bound or affected, or any judgment or order of any court or Authority, domestic or foreign, or any applicable law, rule or regulation.

3.4 **Financial Statements.** The books of account and related records of Seller fairly reflect in reasonable detail its assets, liabilities, and transactions. Included in Schedule 3.4 hereto are copies of the following financial statements (the "Financial Statements"): (a) balance sheets at December 31, 1998 and 1999 and statements of operations, stockholders' equity, and cash flows for the years ended December 31, 1998 and 1999, with the notes thereto certified by Seller's Accountant, and (b) unaudited consolidated balance sheet at March 10, 2000 and statement of operations for the two-month period ended February 29, 2000. The Financial Statements: (i) are correct and complete and in accordance with the books and records of Seller; (ii) fairly present the financial condition, assets and liabilities of Seller as of their respective dates and the results of Seller's operations for the periods covered thereby, and (iii) except as set forth in Schedule 3.4, have been prepared in accordance with GAAP.

3.5 **No Changes.** Since December 31, 1999, Seller has conducted its business only in the ordinary course. Without limiting the generality of the foregoing sentence, since December 31, 1999, except as set forth on Schedule 3.5 hereto, there has not been:

(a) Any change in the financial condition, results of operations, business, assets, liabilities, net worth, earning power or customer prospects of Seller except for changes which, individually or in the aggregate, have not been or could not reasonably be expected to have a Material Adverse Effect;

(b) Any increase in the salaries or other compensation payable or to become payable to, or any advance (excluding advances for ordinary business expenses) or loan to, any officer, director, employee or shareholder of Seller (except normal increases made in the ordinary course of business and consistent with past practice), or any loan to any Person who is a relative of any officer, director, employee or shareholder of Seller or any increase in, or any addition to, other benefits (including any bonus, profit-sharing, pension or other plan) to which any of the officers, directors, employees or shareholders of Seller may be entitled, or any payments to any pension, retirement, profit-sharing, bonus or similar plan except payments in the ordinary course of business and consistent with past practice made pursuant to the employee benefit plans described on Schedule 3.18 hereto, or any other payment of any kind to or on behalf of any such officer, director or employee other than payment of normal compensation, benefits and reimbursement for reasonable expenses in the ordinary course of business and consistent with past practice;

(c) Any making or authorization of any capital expenditures by Seller in excess of \$10,000;

(d) Any cancellation or waiver of any right material to the operation of the Business or any cancellation or waiver of any debts of or claims against any Affiliate;

(e) Any adverse change or any threat of any adverse change in the relations of Seller with, or any loss or threat of loss of, the important suppliers, clients, customers or employees of Seller;

(f) Any change by Seller in any method of accounting or keeping its books of account or accounting practices;

(g) Any disposition by Seller of or failure to keep in effect any rights in, to or for the use of the Intellectual Property, or any disclosure to any Person not an employee or other disposal of any trade secret;

(h) Any sale, transfer or other disposition of any assets of Seller, except sales of Inventory to customers in the ordinary course of business consistent with past practice;

(i) Any mortgage, pledge or subjection to Lien of any kind of any assets, tangible or intangible, of Seller;

(j) Any creation, incurrence, assumption or guarantee by Seller of any obligations or liabilities (whether absolute, accrued, contingent or otherwise and whether due or to become due), except in the ordinary course of business and consistent with past practice, or any creation, incurrence, assumption or guarantee by Seller of any indebtedness for borrowed money except in the ordinary course of business and consistent with past practice, but in any case not in excess of \$10,000 individually or \$25,000 in the aggregate;

(k) Any payment, loan or advance of any amount to or in respect of, or the sale, transfer or lease of any properties or assets (whether real, personal or mixed, tangible or intangible) to or entering into of any agreement, arrangement or transaction with, any Affiliate;

(l) Any damage, destruction or loss, whether or not covered by insurance, adversely affecting the properties, business or prospects of the Business, or any material deterioration in the operating condition of the Purchased Assets;

(m) Any strike, walkout, labor trouble or any other new or continued event, development or condition of any character which has had or could reasonably be expected to have a Material Adverse Effect; or

(n) Any transaction, agreement or event outside the ordinary course of Seller's business or inconsistent with past practices.

3.6 Taxes.

(a) Except as disclosed on Schedule 3.6 hereto, Seller has (i) timely filed all Tax Returns required to be filed in connection with, relating to, or arising out of, the Business; (ii) timely paid in full all Taxes due and payable with respect to such Tax Returns (whether or not reflected on such Tax Returns); and (iii) paid all other Taxes for which a notice of assessment or demand for payment has been received. Except as disclosed on Schedule 3.6 hereto, (A) all Tax Returns have been prepared in accordance with all applicable laws and requirements and accurately reflect the taxable income (or other measure of Tax base) of Seller; and (B) all Taxes that Seller is required by law to withhold or collect have been duly withheld or

collected and have been timely paid over to the appropriate Tax Authority. None of the Purchased Assets is subject to a Lien for Taxes and there are no proposed assessments or adjustments to Taxes that could result in any of the Purchased Assets being subject to a Lien.

(b) None of the Purchased Assets (i) is property that is required to be treated as owned by another person pursuant to the "Safe Harbor Lease" provisions of former Section 168(f)(8) of the Code; (ii) is "tax exempt use property" within the meaning of Section 168(h) of the Code or (iii) directly or indirectly secures any debt the interest on which is tax-exempt under Section 103(a) of the Code.

(c) Schedule 3.6 lists each jurisdiction in which the Seller has filed income, sales and use of employment and property Tax Returns with respect to the Business or the Purchased Assets during the last year.

3.7 **Inventory.** All of the Inventory of Seller consists of items of a quality and quantity usable and/or salable in the ordinary course of business.

3.8 **No Pending Litigation or Proceedings.** Except as disclosed on Schedule 3.8 hereto, there are no actions, suits, investigations or proceedings pending against or, to the best knowledge of Seller or Stockholders, threatened against or affecting, the Business or the Purchased Assets before any court, arbitrator or Authority. Except as disclosed on Schedule 3.8 hereto, there are currently no outstanding judgments, decrees or orders of any court or Authority against Seller which, individually or in the aggregate could (a) be expected to have a Material Adverse Effect or an adverse effect upon the value to Buyer, or the possession, use, occupancy or operation by Buyer, of any material portion of the Business or the Purchased Assets or (b) affect the validity of this Agreement or its enforceability against Seller or Stockholders, consummation by Seller or Stockholders of the transactions contemplated hereby or compliance with the terms hereof by Seller or Stockholders.

3.9 **Contracts; Compliance.** True and complete copies of the Assigned Contracts have been delivered to Buyer. Each of the Assigned Contracts is valid, binding and enforceable against the Seller to the extent set forth therein, and to the best knowledge of Seller and Stockholders, each of the other parties thereto, in accordance with its terms and is in full force and effect on the date hereof. Except as set forth in Schedule 3.9, the Seller, and to the best knowledge of Seller and Stockholders, each of the other parties thereto, has performed all obligations required to be performed by it to date under, and is not in default in respect of, any of the Assigned Contracts and no event has occurred which, with notice or lapse of time, or both, would constitute such a default, other than where the failure to perform such obligations or such default could not, individually or in the aggregate, be expected to have a Material Adverse Effect. The Seller has received no written claim from any other party to any Assigned Contract that the Seller has breached any obligations to be performed by it thereunder to date, or is otherwise in default or delinquent in performance thereunder, where the consequence of such breach or default could be expected to have a Material Adverse Effect.

3.10 **Compliance With Laws.** Except as disclosed on Schedule 3.10 hereto,

(a) Seller possesses and is in compliance with all Permits required under all applicable laws, rules and regulations in connection with the Business;

(b) Each such Permit is in full force and effect and Seller is in compliance with the terms and conditions thereof;

(c) Seller has conducted and is now conducting the Business in compliance with all applicable domestic and foreign laws, rules, regulations, judgments and orders;

(d) All such Permits are listed in Schedule 2.1(k) and any that are not transferable are so designated;

(e) Seller has no reasonable basis for believing that any Permit not presently possessed by Seller is required under applicable law to conduct the Business;

(f) No notice, citation, summons or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending or, to the best knowledge of Seller, threatened by any Authority (i) with respect to any alleged violation of any law, ordinance, rule, regulation or order of any Authority; or (ii) with respect to any alleged failure by Seller to have any Permit required in connection with the conduct of the Business; and

(g) None of the transactions contemplated by this Agreement (including but not limited to the sale and transfer of the Purchased Assets at Closing) will constitute a "bulk sale" by Seller pursuant to Article 6 or any other provision of any applicable state's Uniform Commercial Code, as amended.

3.11 **Environmental Matters**. Except as disclosed on Schedule 3.11 hereto, (a) Seller has complied with and is not in violation of any Environmental Laws; (b) no notice, citation, summons or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending or threatened by any governmental or other entity: (i) with respect to any alleged violation by Seller of any Environmental Law applicable to the Business; the Purchased Assets or with respect to the Facilities, or (ii) with respect to any alleged failure by Seller to have any Environmental Permit required in connection with or applicable to the Business, the Purchased Assets or with respect to the Facilities; (c) neither Seller nor Stockholders know of any facts or circumstances related to environmental matters concerning the Business, the Purchased Assets or with respect to the Facilities that could reasonably be expected to lead to any future environmental claims against Seller or Buyer under current law; and (d) there have been no environmental inspections, investigations, studies, audits, tests, reviews or other analyses conducted in relation to any Facility.

3.12 **Consents**. Except as set forth in Schedule 3.12, no consent, approval or authorization of, or registration or filing with, any Person, including any Authority, is required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

3.13 Real Estate.

(a) The Seller owns no real property. Schedule 2.1(1) lists, as of the date hereof, all leases, subleases and other agreements, written or oral, pursuant to which Seller occupies or uses any of the Real Estate in connection with the Business, including the identification of each of the lessors and any sublessee, thereof, the street addresses of all of the real estate demised under any of the Real Estate Leases, the termination or expiration date thereof, and the current base rent and other charges payable thereunder. True and complete copies of the Real Estate Leases and all guaranties thereof and all amendments, assignments, extensions and agreements relating thereto have been delivered to Buyer together with all subordination, non-disturbance and/or attornment agreements related thereto, and no changes have been made thereto since the date the same were made available.

(b) Except as set forth in Schedule 2.1(1), the Seller is the holder of a valid, subsisting leasehold estate under all Real Estate Leases, and no party other than Seller has any right to possession, occupancy or use of any of the real estate demised under any of the Real Estate Leases, and the leasehold interest of the Seller is subject to no matters affecting title other than Permitted Encumbrances. Each Real Estate Lease is in full force and effect. All of the Real Estate Leases are valid, binding and enforceable in accordance with their respective terms, and neither Seller nor, to the knowledge of Seller or Stockholders, the other party to any Real Estate Lease is in default under such Real Estate Lease and no event has occurred which (with or without notice, lapse of time or both) would render Seller or any lessor or sublessee in default under any of the Real Estate Leases. Except as set forth in Schedule 2.1(1), the Seller is in exclusive possession of the real estate demised under the Real Estate Leases.

(c) Except as set forth in Schedule 2.1(1): (i) the basic rent, all additional rent and all other charges and amounts payable under the Real Estate Leases have been paid to date and not more than one month in advance; (ii) all work required to be performed under the Real Estate Leases by the lessors thereunder or by the Seller has been performed, and, to the extent that Seller is responsible for payment of such work, has been fully paid for; (iii) there are no brokerage commissions or finder's fees due from Seller which are unpaid with regard to any of the Real Estate Leases (or the assignment thereof pursuant to this Agreement), or which will become due at any time in the future with regard to the Real Estate Leases; (iv) there have been no casualties which could result in the termination of any of the Real Estate Leases or the application of any buy-out provisions contained in any of the Real Estate Leases relative to damage by casualty; (v) no consent of any lessor under any of the Real Estate Leases is required by reason of any of the transactions contemplated by this Agreement; (vi) none of the rights of Seller under any of the Real Estate Leases will be terminated or impaired by the consummation of the transactions contemplated by this Agreement and all of such rights will be enforceable by the Buyer after the Closing without the consent or agreement of any other party, including all rights to purchase any of the real estate demised under any of the Real Estate Leases or to renew any of the Real Estate Leases pursuant to options to purchase or renew contained in any of the Real Estate Leases; (vii) none of the real estate demised under any of the Real Estate Leases is subject to any sublease continuing after the Closing except as disclosed in Schedule 2.1(1). Any

lessor under any of the Real Estate Leases whose consent or agreement to the transactions contemplated by this Agreement is required has been identified as such in Schedule 2.1(I).

3.14 **Transactions with Seller or Affiliates** Except as disclosed on Schedule 3.14 hereto, no Affiliate of Seller or Stockholders has:

- (a) borrowed money from or loaned money to Seller for the benefit of the Business which remains outstanding; or
- (b) any contractual or other claim, express or implied, of any kind whatsoever against Seller relating to the Business or in connection with the Purchased Assets; or
- (c) any direct or indirect interest of any nature in any of the Purchased Assets or any property or assets used by Seller in the Business; or
- (d) engaged in any other transaction with Seller relating to the Business or the Purchased Assets (other than employment relationships).

3.15 **Title; Condition of Purchased Assets**

(a) Seller has good, valid and marketable title to, or valid and subsisting leasehold interests in, all of the Purchased Assets, none of the Purchased Assets is owned jointly with any other Person, including Affiliates of Seller, and none of the Purchased Assets is subject to any Lien, except as disclosed in Schedule 3.15, all of which scheduled items (except as specifically noted in Schedule 3.15) shall be removed on or prior to Closing.

(b) The equipment, tools, office furniture, fixtures, improvements, vehicles and other tangible assets of the Business included in the Purchased Assets are in good operating condition and repair. The tangible Purchased Assets are suitable for the purposes for which they are presently used and presently proposed to be used, are structurally sound and free from patent defects, and have the capacity on the Closing Date to permit the Seller to conduct the Business in accordance with (i) the total overall annual operating levels of the Business for 2000 and (ii) the current specifications as of the Closing Date required by current customers of the Business, and to the best knowledge of Seller and Stockholders, there is no material expenditure presently required in order to maintain such condition and state of repair or replace any such tangible Purchased Assets. Neither Seller nor Stockholders have any knowledge or reason to believe that the present use of property or equipment included in the Purchased Assets is dependent on any nonconforming use or other Permit.

3.16 **Labor Relations**. Except as disclosed on Schedule 3.16 hereto: (a) no employee of the Business is represented by any union or other labor organization nor are there any Collective Bargaining Agreements in respect of any employee of the Business; (b) there is no unfair labor practice charge pending or, to the best knowledge of Seller or Stockholders, threatened against Seller; (c) there is no labor strike, dispute, slow down or stoppage actually pending or, to the best knowledge of Seller or Stockholders, threatened against or involving

Seller; (d) no labor grievance is pending; (e) in the past three years Seller has not experienced any work stoppage, dispute or controversy with any group of employees or any organizational activity; (f) there are no outstanding labor tribunal proceedings of any kind, including any proceedings which could result in certification of a trade union as bargaining agent for any employees of the Business, not already covered by a Collective Bargaining Agreement, and there have not been any such proceedings within the last three years; and (g) Seller is not in default under any Collective Bargaining Agreement.

3.17 **Insurance.** Attached hereto as Schedule 3.17 is a complete and correct list of all currently active policies of insurance covering any of the Purchased Assets, the Business and the Stockholders, indicating for each policy the carrier, risks insured, the amounts of coverage, deductible, premium rate, and expiration date. All such policies are outstanding and in full force and effect. Except as disclosed on Schedule 3.17 hereto, the coverage provided by such policies are reasonable, in both scope and amount, in light of the risk attendant to the Business, the Purchased Assets and the Stockholders and are comparable to coverages customarily maintained by companies in similar lines of business and such insurance is sufficient in the aggregate to cover all reasonably foreseeable damage to and liabilities or contingencies relating to the Business, the Purchased Assets and as required by the Real Estate Leases. There is no default with respect to any provision contained in any such policy, nor has there been any failure to give any notice or present any claim under any such policy in a timely fashion or in the manner or detail required by the policy. Except as set forth on Schedule 3.17 hereto, there are no outstanding unpaid and overdue premiums under such policies. Schedule 3.17 hereto contains an accurate and complete description of any provisions contained in such policies which provide for retrospective or retroactive premium adjustments. No notice of cancellation or non-renewal with respect to, or disallowance of any claim under, any such policy has been received by Seller. Except as disclosed on Schedule 3.17 hereto, all products liability and general liability policies maintained by or for the benefit of Seller relating to the Business and the Purchased Assets have been "occurrence" policies and not "claims made" policies.

(a) **Intellectual Property.** Schedule 2.1(c) contains a complete and accurate list of all patents and patent applications, trademarks, service marks, trade names, and registrations and applications for registration of industrial designs, copyrights, mask works, trademarks, service marks, trade names, trade dress and domain names which are used in, planned for use in, or otherwise material to, the conduct of the Business or which otherwise constitute any portion of the Purchased Assets. For each item listed, Schedule 2.1(c) specifies, as applicable: (i) the owner of the item, (ii) the jurisdictions in which the item is issued or registered or in which any application for issuance or registration has been filed, (iii) the respective issuance, registration, or application number of the item, and (iv) the date of application and issuance or registration of the item. Schedule 2.1(c) also contains a complete and accurate list of all material licenses, sublicenses, consents and other agreements (whether written or otherwise) (i) pertaining to any Intellectual Property used in, planned for use in, or otherwise material to or necessary for the conduct of the Business, or (ii) by which Seller licenses or otherwise authorizes a third party to use any intellectual property which is primarily related to, or otherwise material to, the conduct of the Business or otherwise constitutes any

portion of the Purchased Assets. Neither the Seller nor, to the best of the Seller's or Stockholders' knowledge, any other party is in breach of or default under any such license or other agreement. Each such license or other agreement is now and immediately following the Closing Date shall be valid and in full force and effect, and is freely transferable to Buyer. Except as explicitly indicated in Schedule 2.1(c), Seller owns or is licensed or otherwise has the exclusive right to use, and will transfer to Buyer on the Closing Date, all Intellectual Property used in, planned for use in, or material to or necessary for the operation of the Business. Seller's operation of the business does not infringe, dilute or otherwise violate the patents, industrial design rights, trademarks, service marks, trade names, trade dress, copyrights, mask works, trade secrets or other intellectual property rights of any third party, and no claim has been made, notice given, or dispute arisen to that effect. Seller does not have any pending claims that a third party has violated or infringed any of Seller's Intellectual Property. Seller has not given any indemnification to any third party against infringement of any intellectual property. Except as explicitly indicated in Schedule 2.1(c), all of the patents, industrial design registrations, trademark and service mark registrations, copyright registrations, mask work registrations and domain name registrations indicated in such schedule are valid and in full force, are held of record in Seller's name free and clear of all liens, encumbrances and other claims, and are not the subject of any cancellation or reexamination proceeding or any other proceeding challenging their extent or validity. To the best knowledge of Seller and Stockholders, none of the material trade secrets, know-how or other confidential or proprietary information of Seller has been disclosed to any person unless such disclosure was necessary, and was made pursuant to an appropriate confidentiality agreement.

3.18 Employee Benefit Plans

(a) Set forth on Schedule 3.18 is a true and complete list of each (i) "employee benefit plan," as defined in Section 3(3) of ERISA, (ii) all other pension, retirement, supplemental retirement, deferred compensation, excess benefit, profit sharing, bonus, incentive, stock purchase, stock ownership, stock option, stock appreciation right, severance, salary continuation, termination, change-of-control, health, life, disability, group insurance, vacation, holiday and fringe benefit plan, program, contract, or arrangement (whether written or unwritten, qualified or nonqualified, funded or unfunded and including any that have been frozen) maintained, contributed to, or required to be contributed to, by Seller or any ERISA Affiliate for the benefit of any Employee, Former Employee or director of Seller or under which Seller or any ERISA Affiliate has any liability with respect to any Employee, Former Employee or director (the "Benefit Plans").

(b) As applicable with respect to each Benefit Plan, Seller has delivered to Buyer, true and complete copies of (i) each Benefit Plan, including all amendments thereto, and in the case of an unwritten Benefit Plan, a written description thereof, (ii) the current summary plan description and each summary of material modifications thereto, (iii) the most recent annual report (Form 5500 and all schedules thereto) filed with the Internal Revenue Service ("IRS"), (iv) the most recent IRS determination letter and each currently pending application to the IRS for a determination letter, and (v) all records, notices and filings concerning IRS or Department

of Labor audits or investigations, "prohibited transactions" within the meaning of Section 406 of ERISA or Section 4975 of the Code and "reportable events" within the meaning of Section 4043 of ERISA.

(c) The Seller, each Affiliate of Seller and each ERISA Affiliate are in material compliance in all respects with the provisions of all laws applicable to the Benefit Plans including ERISA and the Code. Each Benefit Plan has been maintained, operated and administered in material compliance in all respects with its terms and any related documents or agreements and the applicable provisions of all laws including ERISA and the Code.

(d) The Benefit Plans which are "employee pension benefit plans" within the meaning of Section 3(2) of ERISA and which are intended to meet the qualification requirements of Section 401(a) of the Code (each a "Pension Plan") now meet, and at all times since their inception have met the requirements for such qualification, and the related trusts are now, and at all times since their inception have been, exempt from taxation under Section 501(a) of the Code.

(e) No Benefit Plan is now or at any time has been subject to Part 3, Subtitle B of Title I of ERISA or Title IV of ERISA. No Benefit Plan is now or at any time has been a "multiemployer plan" (within the meaning of Section 3(37) of ERISA).

3.19 **Products Liability.** Except as disclosed on Schedule 3.19 hereto, there are no:

(a) Outstanding liabilities of Seller, fixed or contingent, asserted or unasserted, with respect to any products liability or any similar claim that relates to any product produced or sold by the Business to others, or

(b) Outstanding liabilities of Seller, fixed or contingent, asserted or unasserted, with respect to any claim for the breach of any express or implied product warranty or any other similar claim with respect to any product sold by Seller to others other than standard warranty obligations (to replace or repair) made by the Business. Seller's warranties are described on Schedule 3.19 hereto.

(c) Set forth on Schedule 3.19 hereto is a description of each claim that has been asserted against the Seller since December 31, 1997 based upon any product liability or similar claim, or on the breach or alleged breach of any express or implied product warranty or any other similar claim with respect to any product sold by the Business to others, including information regarding (i) the amount of the claim, (ii) the basis of the claim, (iii) whether the claim was covered by insurance, (iv) how the claim was resolved, and (v) the amount paid by Seller in relation to the claim.

3.20 **Disclosure; Schedules** No representation or warranty by Seller in this Agreement, and no exhibit, document, statement, certificate or schedule furnished or to be furnished to Buyer pursuant hereto, or 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 a

material fact necessary in order to make the statements or facts contained herein or therein not misleading.

3.21 **All Assets.** Except for the Excluded Assets, the Purchased Assets include all assets and properties of Seller and its Affiliates and all contracts to which Seller or any of its Affiliates is a party which are primarily related to, or otherwise material to the conduct of the Business as presently operated and as presently proposed to be operated. None of the assets and properties primarily related to, or otherwise material to or used in the conduct of the Business is owned by any Person other than Seller and, except as set forth in Schedule 3.21, all of such assets that are tangible assets are located at the Facilities. None of the Purchased Assets is shared between or among the Business and Seller and/or any of its Affiliates, nor does any Stockholders nor any Affiliate of Seller or Stockholders own any Intellectual Property that is used in the Business.

3.22 **Brokerage.** Except as set forth in Schedule 3.22, Seller has not made any agreement or taken any other action which might cause anyone to become entitled to a broker's fee or commission as a result of the transactions contemplated hereunder.

3.23 **No Undisclosed Liabilities** Seller has no liabilities or obligations, known or unknown (whether absolute, accrued, contingent or otherwise), of or relating to the Business or the Purchased Assets as to which Buyer, the Business or the Purchased Assets shall have any obligation or become subject after the Closing, except for the Assumed Liabilities.

3.24 **Schedules.** All Schedules attached hereto pursuant to Articles II, III and V were prepared by Seller and shall be deemed to have been prepared as of the date hereof. Any supplementary schedules to the schedules attached hereto shall be signed for identification and delivered by Seller to Buyer at Closing. Such supplementary schedules will reflect changes, if any, in the schedules attached hereto through the close of business on the Closing Date. Upon execution and delivery of the schedules and supplementary schedules to be delivered pursuant hereto each schedule and supplementary schedule shall be considered to be incorporated herein in full and thereafter reference herein to all of the schedules hereto shall be deemed to include and refer to such schedules and supplementary schedules delivered in accordance herewith and reference to any particular schedule attached hereto shall be deemed to include and refer to such attached schedule and any supplementary schedule thereto delivered in accordance herewith.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller and Stockholders on and as of the date hereof and on the Closing Date as follows:

4.1 **Organization and Good Standing.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has all requisite power and all governmental licenses, authorizations, consents and approvals

required for it to own, lease and operate its properties and assets as now owned, leased and operated and to carry on its business as now being conducted.

4.2 **Authorization and Enforceability.** Buyer has full power and authority to make, execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by Buyer have been duly authorized by all necessary action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms.

4.3 **No Violation of Laws or Agreements** The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated by this Agreement and the compliance with the terms, conditions and provisions of this Agreement by Buyer will not, (a) contravene any provision of the Certificate of Formation or Operating Agreement of Buyer; or (b) violate or result in a breach of or constitute a default (or an event which might, with the passage of time or the giving of notice, or both, constitute a default) under, or result in or permit the termination of any provision of, or result in or permit the acceleration of the maturity or cancellation of performance of any obligation under, or result in the creation or imposition of any Lien of any nature whatsoever upon Buyer's assets or give to others any interests or rights therein under any indenture, mortgage, loan or credit agreement, license, contract, or other agreement or commitment to which Buyer is a party or by which its assets may be bound or affected, or any judgment or order of any court or Authority, domestic or foreign, or any applicable law, rule or regulation.

4.4 **Consents.** No consent, approval or authorization of, or registration or filing with, any Person is required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby by Buyer, the failure to obtain or make which, individually or in the aggregate, could be expected to prevent Buyer from consummating the transactions contemplated hereby.

4.5 **Brokerage.** Except as set forth in Schedule 4.5, Buyer has not made any agreement or taken any other action which might cause anyone to become entitled to a broker's fee or commission as a result of the transactions contemplated hereunder.

ARTICLE V

CERTAIN OBLIGATIONS OF THE PARTIES

5.1 **Conduct of Business Pending the Closing** From and after the date hereof and pending the Closing, and unless Buyer shall otherwise consent or agree in writing, Seller covenants and agrees that:

(a) **Ordinary Course.** The Business shall be conducted only in the ordinary course and consistent with past practice, including billing, shipping and collection practices, keeping of books and records, inventory transactions and payment of accounts payable.

(b) **Preservation of Business** Seller shall use all reasonable efforts to preserve its business organization intact, to keep available the services of its present officers and Employees, and to preserve for Buyer the goodwill of the suppliers, customers and others having business relations with the Business.

(c) **Material Transactions** Seller shall not:

(i) Enter into any contract or commitment the performance of which may extend beyond the Closing, except those made in the ordinary course of business the terms of which are consistent with past practice and reasonable in light of current conditions;

(ii) Sell, transfer, lease or otherwise dispose of any of its assets necessary, or otherwise material to the conduct of the Business other than sales of Inventory to customers in the ordinary course of business and consistent with past practice;

(iii) Incur, create, assume or suffer to exist any Lien on any of the assets or other property of the Business;

(iv) Increase or otherwise change the compensation payable or to become payable to any officer, employee or agent;

(v) Make or authorize the making of any capital expenditure in excess of \$10,000;

(vi) Waive or permit the loss of any substantial right;

(vii) Change or modify in any manner its existing credit, collection and payment policies, procedures and practices with respect to Accounts Receivable and Accounts Payable, respectively, including without limitation, accelerating collections of receivables, failing to make or delaying making collections of receivables (whether or not past due), accelerating payment of payables or failing to pay or delaying payment of payables;

(viii) Amend, terminate, modify, extend, assign or subordinate any of the Real Estate Leases;

(ix) Take any action or omit to take any action which would result in a violation of any applicable law or cause a breach of any agreements, contracts or commitments;

(x) Take any action or omit to take any action that would constitute or otherwise result in any of the representations and warranties in Article III becoming untrue or incorrect; or

(xi) Enter into any agreement to do any of the foregoing.

(d) **Insurance Coverage** Seller shall maintain in full force and effect the insurance policies listed on Schedule 3.18 hereto, subject only to variations required by the

ordinary operations of the Business, or else will obtain, prior to the lapse of any such policy, substantially similar coverage with insurers of recognized standing and approved in advance in writing by Buyer. Seller shall promptly advise Buyer in advance in writing of any change of insurer or type of coverage in respect of the policies listed on Schedule 3.18 hereto.

(e) **Change in Business.** Seller shall promptly inform Buyer in writing of any specific event or circumstance of which it is aware or of which it receives notice that has or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.2 **Fulfillment of Agreements**

(a) Seller shall use its best efforts to cause all the conditions to the obligations of Buyer under Section 6.1 of this Agreement to be satisfied on or prior to the Closing. Seller shall conduct the Business in such a manner that at the Closing Date the representations and warranties set forth in Article III of this Agreement shall be true and correct as though such representations and warranties were made on, as of, and with reference to such date. Seller shall promptly notify Buyer in writing of any event or fact that represents or is likely to cause a breach of any of the representations and warranties or covenants and agreements set forth in Article III or Article V, respectively, of this Agreement. Commencing with delivery of such notice by Seller to Buyer, Seller shall have ten (10) Business Days to cure the event or fact which is the subject matter of such notice before any action shall be taken by Buyer with respect thereto.

(b) Buyer shall use its best efforts to cause all the conditions to the obligations of Seller under Section 6.2 of this Agreement to be satisfied on or prior to the Closing. Buyer shall promptly notify Seller in writing of any event or fact that represents or is likely to cause a breach of any representation or warranty or covenant or agreement set forth in Article IV or Article V, respectively, of this Agreement. Commencing with the delivery of such notice by Buyer to Seller, Buyer shall have ten (10) Business Days to cure the event or fact that is the subject matter of such notice before any action shall be taken by Seller with respect thereto.

5.3 **Access, Information and Documents** Seller shall provide to Buyer and to Buyer's counsel, accountants and other representatives full access during normal business hours to all the properties, books, Tax Returns, contracts, commitments, records, officers, personnel and accountants of Seller and will furnish to Buyer all such documents and copies of documents (certified to be true copies if requested) and all information with respect to the Business as Buyer may reasonably request. Pending the Closing, Buyer shall keep confidential all non-public information concerning Seller furnished by Seller to Buyer in connection with the transactions contemplated hereby, unless compelled to disclose such information by judicial or administrative process or by other requirements of law. Whether or not the Closing is held hereunder, Buyer shall continue to maintain such confidence. Seller shall keep confidential all non-public information concerning Buyer or its Affiliates furnished by Buyer to Seller in connection with the transactions contemplated hereby, unless compelled to disclose such information by judicial or administrative process or by other requirements of law. Whether or not the Closing is held hereunder, Seller shall continue to maintain such confidence.

5.4 **Negotiations.** Between the date of this Agreement and the Closing Date, neither Seller, nor any of its Affiliates, officers, directors, Employees, shareholders, agents or advisors, shall solicit, initiate, furnish information relating to or participate in any discussions or negotiations with any Person concerning the sale or other disposition of any of the Business or the Purchased Assets. Seller shall promptly notify Buyer if any such discussion or negotiations are sought to be initiated with, any such information is requested from, or any proposal is received by, Seller.

5.5 **Public Announcements.** No party hereto shall make or issue, or cause to be made or issued, any public announcement or written statement concerning this Agreement or the transactions contemplated hereby for dissemination to the general public (except to the respective directors, officers or Employees or as may be specifically required by applicable law or administrative or legal process) without the prior written consent of the other party (which will not be unreasonably withheld or delayed).

5.6 **Mutual Covenants.** The parties mutually covenant and agree, from the date of this Agreement to the Closing Date:

(a) To cooperate with each other in determining whether filings are required to be made or consents required to be obtained in any jurisdiction in connection with the consummation of the transactions contemplated by this Agreement and in making or causing to be made any such filings properly and in seeking to obtain timely any such consents;

(b) To use all reasonable efforts to obtain promptly the satisfaction (but not waiver) of the conditions to the Closing of the transactions contemplated herein. Each party hereto shall furnish to the other and to the other's counsel all such information as may be reasonably required in order to effectuate the foregoing actions; and

(c) To advise the other party promptly if such party determines that any condition precedent to its obligations hereunder will not be satisfied in a timely manner.

5.7 **Monthly Financial Statements** Seller shall deliver to Buyer, as soon as available but in no case later than 15 business days after the end of each month hereafter until the Closing Date, statements of operation of the Business for such month and for that part of the fiscal year ending with such month, and the related balance sheet as of the end of such month, certified by the chief financial officer of Seller that such financial statements: (i) fairly present the financial position of the Business as of the end of such month and the results of its operations for the periods then ended, and (ii) fairly present the financial position of the Business as of the end of such month and the results of its operations for the periods then ended.

5.8 **Employees.**

(a) Schedule 5.8(a) identifies all Employees of Seller who are actively employed as of the date of this Agreement by name, location, title or function, current base salary or hourly wage, date of hire, social security number, current vacation pay and sick pay

entitlement and work permit, if applicable. Seller shall update Schedule 5.8(a) as of the day prior to Closing. Effective as of the Closing Date, Buyer or one of its Affiliates may extend offers of employment to certain Employees of Seller. Seller agrees to use all reasonable efforts to persuade such Employees to become employees of Buyer or one of its Affiliates after the Closing Date. Such offers of employment shall be at substantially the same base salary as Employees currently enjoy and on such other terms and conditions as determined in the sole discretion of Buyer consistent with Buyer's current employment practices. All Employees who accept such offer of employment are hereinafter referred to as the "Transferred Employees." The employment of all Transferred Employees with Seller shall terminate at Closing, and such Transferred Employees shall cease to be covered by the Benefit Plans, except as required by law.

(b) Seller shall be solely responsible for any liability, claim or expense with respect to employment, termination of employment, compensation or employee benefits of any nature (including, but not limited to the benefits provided under the Benefit Plans) owed to any Employee or Former Employee by Seller or its Affiliates (or the Beneficiary of any Employee or Former Employee) whether or not such Employee or Former Employee becomes a Transferred Employee, that arises out of or relates to the employment relationship between Seller or its Affiliates and any such Employee or Former Employee or the termination of such relationship. Without limiting the foregoing, Seller shall be responsible for the payment of any severance payment or benefits that become due to any Employee or Former Employee as a result of the termination of such Employee or Former Employee by Seller or its Affiliates. Buyer and its Affiliates shall not be obligated to continue or assume any employee benefit plan or program of the Seller or its Affiliates (including, but not limited to the Benefit Plans) or responsible for any obligation or liability thereunder.

(c) Nothing contained in this Agreement shall confer upon any Transferred Employee any right with respect to employment by Buyer or its Affiliates, nor shall anything herein interfere with the right of Buyer or its Affiliates, following any employment of any Transferred Employee, to terminate the employment of any such Transferred Employee at any time, with or without cause, or restrict Buyer or its Affiliates in the exercise of their independent business judgment in modifying any of the terms and conditions of the employment of any such Transferred Employee.

(d) No provision of this Agreement shall create any third party beneficiary rights in any Transferred Employee, any Beneficiary or dependents thereof with respect to the compensation, terms and conditions of employment and benefits that may be provided to any Transferred Employee by Buyer or under any benefit plan which Buyer may maintain.

5.9 **Change of Name, Use of Name** Upon the Closing, Seller shall file with the Secretary of State of Washington an amendment of its Articles of Incorporation changing its name to a name wholly dissimilar to its present name. Seller agrees that, following the Closing, it shall not use, directly or through any Affiliate, Seller's present corporate name or any variation thereof.

5.10 **Duties of Stockholders.** As more fully described in the Employment Agreements of Stockholders (attached hereto as Exhibits E and F), Stockholders shall (a) provide, as soon as practicable but in no case later than ten (10) Business Days after the Closing Date, the technical and marketing training associated with the Business to employees and other personnel as Buyer may designate; and (b) participate in the preparation, together with the executives designated by Buyer, (i) an annual business plan for the wide format digital imaging product line of Buyer (the "Product Line") and (ii) a long-term strategic plan for the Product Line for the years 2001, 2002, 2003 and 2004.

5.11 **Communications to Customers.** Upon Closing, Stockholders and Buyer shall make an announcement to their customers in the form of Exhibit I hereto, describing the benefits to be derived from the integration of Seller's technical and marketing knowledge of the digital imaging business to the distribution network of Buyer.

ARTICLE VI

CONDITIONS TO CLOSING; TERMINATION

6.1 **Conditions Precedent to Obligations of Buyer with respect to the Closing** The obligations of Buyer to purchase the Purchased Assets, assume the Assumed Liabilities as set forth herein and consummate the transactions contemplated herein, are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any one or more of which may be waived in whole or in part by Buyer at Buyer's option):

(a) **Performance of Agreements** Seller shall have performed all of the covenants and complied with all of the provisions required by this Agreement to be performed or complied with by it on or before the Closing Date, and Buyer shall have received a certificate to such effect signed by the President of Seller.

(b) **Representations and Warranties** The representations and warranties of Seller set forth in Article III shall have been true and correct on the date when made and shall be true and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on, as of and with reference to the Closing Date, and Buyer shall have received a certificate to such effect signed by the President of Seller.

(c) **Opinion of Counsel** Buyer shall have received from Gary W. East, counsel for Seller, an opinion dated the Closing Date, in substantially the form of Exhibit G hereto.

(d) **Injunction; Litigation; etc.** No statute, rule or regulation or order of any court or Authority shall be in effect which restrains or prohibits the transactions contemplated by this Agreement or which would limit or adversely affect Buyer's direct or indirect ownership of the Purchased Assets or the conduct of the Business following the Closing, nor shall there be pending or threatened any litigation, suit, action or proceeding by any party which (i) seeks to restrain or prohibit the transactions contemplated by this Agreement; (ii) challenges the legality

or validity of the transactions contemplated by this Agreement; or (iii) seeks damages from Buyer as a result of the transactions contemplated by this Agreement.

(e) **Required Consents.** All statutory and regulatory consents and approvals which are required under the laws or regulations of the United States and any other Authority shall have been obtained; and all other necessary consents and approvals of third parties to the transactions contemplated hereby shall have been obtained.

(f) **Real Estate Documents.** Seller shall have delivered to Buyer, in a form satisfactory to Buyer and its Lender, (i) a valid recordable assignment of each Real Estate Lease, together with the consent by the lessor to such assignment, if required under the terms of the Real Estate Leases, (ii) a recordable memorandum of lease for each Real Estate Lease, executed by the Lessor thereunder, (iii) a landlord's waiver executed by each lessor under each Real Estate Lease; and (iv) an estoppel certificate executed by each lessor under each Real Estate Lease, dated not more than ten (10) days before the Closing. None of the foregoing shall be conditioned upon any payment by Buyer or upon any modification of any Real Estate Lease.

(g) **Intellectual Property.** Seller shall obtain and deliver to Buyer a valid and enforceable assignment sufficient to irrevocably transfer to Seller all rights in or to any Intellectual Property owned by Shareholders that is used in the Business (including, without limitation, any such Intellectual Property covered by agreements between Shareholder and any Employees, Former Employees or other parties).

(h) **Material Adverse Effect.** There shall not have occurred any event or circumstance between December 30, 1999 and Closing which has resulted or could reasonably be expected to result in a Material Adverse Effect.

(i) **Employment Agreements.** Each of Stockholders shall have terminated its employment agreements with the Seller, and each of the Stockholders at Closing, executes and delivers the Employment Agreements and in the form of Exhibits E and F.

(j) **Permits.** (i) Buyer shall have obtained all Permits, if any, necessary to replace all permits held by Seller and necessary for the continued operation of the Business that were not transferable to Buyer and all Permits necessary for the continued operation of the Business not currently held by Seller; (ii) Seller shall have delivered to Buyer evidence that all transferable Permits have been so transferred; and (iii) Seller shall have delivered to Buyer originals of all certificates of occupancy and other permits applicable to the Business or the Real Estate.

6.2 **Conditions Precedent to the Obligations of Seller with respect to the Closing**
The obligations of Seller to sell the Purchased Assets and consummate the other transactions contemplated hereunder are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any one or more of which may be waived in whole or in part by the Stockholders (on their behalf and on behalf of Seller):

(a) **Performance of Agreements** Buyer shall have performed all of the covenants and complied with all of the provisions required by this Agreement to be performed or complied with by it on or before the Closing Date, and Seller and Stockholders shall have received a certificate to such effect signed by an executive officer of Buyer;

(b) **Representations and Warranties** The representations and warranties of Buyer contained in this Agreement shall have been true and correct on the date when made and shall be true and correct on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made on, as of and with reference to the Closing Date, and Seller and Stockholders shall have received a certificate to such effect signed by an executive officer of Buyer;

(c) **Opinion of Counsel** Seller and Stockholders shall have received from Dechert Price & Rhoads, counsel for Buyer, an opinion dated the Closing Date, in substantially the form of Exhibit H hereto;

(d) **Injunction; Litigation; etc** No statute, rule or regulation or order of any court or Authority shall be in effect which restrains or prohibits the transactions contemplated by this Agreement; nor shall there be pending or threatened any litigation, suit, action or proceeding by any party which (i) seeks to restrain or prohibit the transactions contemplated by this Agreement; (ii) challenges the legality or validity of the transactions contemplated by this Agreement; or (iii) seeks damages from Seller or Stockholders as a result of the transactions contemplated by this Agreement; and

(e) **Required Consents** All statutory and regulatory consents and approvals which are required under the laws or regulations of the United States and any other Authority shall have been obtained.

6.3 **Termination**

(a) **When Agreement May Be Terminated** This Agreement may be terminated at any time prior to the Closing:

(i) By mutual written consent of Buyer and Stockholders (on their behalf and on behalf of Seller);

(ii) By Buyer or Stockholders (on their behalf and on behalf of Seller) if the Closing shall not have occurred by March 31, 2000; provided, however, that this right to terminate shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of or resulted in the failure of the Closing to occur on or before such date; or

(iii) By Buyer or Stockholders (on their behalf and on behalf of Seller) upon a material breach of any representation, warranty or covenant of the other party hereto.

(b) **Effect of Termination.** In the event of termination of this Agreement by either Buyer or Stockholders (on their behalf and on behalf of Seller) as provided above, this Agreement shall forthwith terminate, except for the obligations set forth in Section 5.3, and there shall be no liability on the part of Buyer, Seller or Stockholders, except for breaches of such obligations or for liabilities arising from a breach of this Agreement prior to such termination.

ARTICLE VII

CERTAIN ADDITIONAL COVENANTS

7.1 **Costs, Expenses and Taxes.** Seller shall pay all costs and expenses, including legal fees, in connection with its execution, delivery and performance of and compliance with this Agreement, and all transfer including, but not limited to, any tax related to the transfer of the Real Estate Leases, documentary and similar taxes in connection with the delivery of the Purchased Assets to be made hereunder. Buyer shall pay all costs and expenses, including legal fees, of Buyer's execution, delivery and performance of and compliance with this Agreement.

7.2 **Confidentiality; Covenant Not to Compete**

(a) From and after the Closing, Seller and Stockholders shall, and shall cause their Affiliates and representatives to, keep confidential and not disclose to any other Person or use for his or its own benefit or the benefit of any other Person any trade secrets or other confidential proprietary information in his, its or their possession or control regarding the Business. The obligation of Seller and Stockholders under this Section 7.2(a) shall not apply to information which (i) is or becomes generally available to the public without breach of the commitment provided for in this Section; (ii) becomes available to Seller and Stockholders or any of their Affiliates on a nonconfidential basis from a third party not bound by a confidentiality agreement with Buyer; or (iii) is required to be disclosed by law, order or regulation of a court or tribunal or governmental authority; provided, however, that, in any such case, Seller or Stockholders shall notify Buyer as early as reasonably practicable prior to disclosure to allow Buyer to take appropriate measures to preserve the confidentiality of such information.

(b) For a period of four (4) years from and after the Closing Date (the "Four-Year Term") neither Seller, Stockholders nor any of their Affiliates shall directly or indirectly (i) own, manage, operate, join, control or participate in the ownership, management, operation or control of, or be connected with any business which at any relevant time during the such period directly or indirectly competes with the Business; or (ii) solicit for employment, employ, retain as a consultant, interfere with or attempt to entice away from the Business any Transferred Employee or (iii) interfere with business relationships or contractual relationships of the Business existing as of the Closing, including relationships with any customers, suppliers, associates, or independent contractors of the Business or any successor thereto, and including but not limited to, the solicitation of customers, suppliers, associates, or independent contractors of the Business or any successor thereto to cease doing business, or to sever or alter their association or employment, with the Business or any successor thereto, as applicable. Ownership of not more than 5% of the outstanding stock of any publicly traded company shall

not, in and of itself, be a violation of this Section 7.2(b). The restrictive covenant contained in this Section 7.2(b) is a covenant independent of any other provision of this Agreement, and the existence of any claim which Seller or Stockholders may allege against any other party to this Agreement, whether based on this Agreement or otherwise, shall not prevent the enforcement of this covenant. Seller and Stockholders agree that a breach by Seller or Stockholders of this Section 7.2(b) shall cause irreparable harm to the Business, that the Buyer's remedies at law for any breach or threat of breach by Seller or Stockholders of the provisions of this Section 7.2(b) shall be inadequate, and that Buyer shall be entitled to an injunction or injunctions to prevent breaches of this Section 7.2(b) and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which Buyer may be entitled at law or in equity. The Four-Year Term shall be tolled with respect to Seller or Stockholders during any period of violation of this covenant not to compete by Seller or Stockholders and during any other period required for litigation during which Buyer seeks to enforce this covenant against Seller or Stockholders. In the event that this covenant not to compete shall be determined by any court of competent jurisdiction to be unenforceable by reason of its extending for too long a period of time or over too large a geographical area or by reason of its being too extensive in any other respect, it shall be interpreted to extend only over the longest period of time for which it may be enforceable, and/or over the largest geographical area as to which it may be enforceable and/or to the maximum extent in all other aspects as to which it may be enforceable, all as determined by such court in such action.

(c) In the event that the employment of one or both Stockholders shall terminate prior to the expiration of the Four-Year Term, all payments and benefits under such Stockholder's Employment Agreement shall cease upon such termination (including any payments based on the gross profit of the gross profit of the wide format digital imaging products), provided however, that (i) if Buyer terminates such Stockholder's employment for any reason (other than for cause), such Stockholder shall continue to receive the applicable Purchase Price installments, if any, as set forth in Schedule 2.6(b); or (ii) if, upon Buyer's consent, one or both Stockholders terminate(s) his/her employment with Buyer, in consideration for such Stockholder's agreement under this Section 7.2, Buyer shall pay such Stockholder an aggregate amount of (x) \$12,500 multiplied by (y) the number of months remaining in the Four-Year Term as of the date of termination, provided, however, that the total payment received by such Stockholder under this Section 7.2(c)(ii) shall in no event exceed \$300,000. Payment pursuant to Section 7.2(c)(ii) shall be payable in arrears in monthly installments of \$12,500 each, with the first such payment being made on the first day of the month immediately following the first full month after the effective date of termination of such Stockholder's employment and each remaining payment being made on the first day of the month thereafter.

7.3 **Indemnification** Seller, Stockholders and Buyer agree as follows:

(a) **General Indemnification Obligations**

(i) Seller and Stockholders jointly and severally, hereby agree to indemnify, defend and hold Buyer and its respective officers, directors and other Affiliates

harmless from and against and to reimburse such Persons with respect to any one or more of the following:

(A) any and all Damages arising out of or resulting from any misrepresentation or breach of warranty of Seller or Stockholders contained in this Agreement or in any exhibit or schedule hereto; or in any other statement, certificate or document furnished or to be furnished to Buyer pursuant hereto or in connection with the transactions contemplated hereby;

(B) any and all Damages arising out of or resulting from any breach of any covenant or obligation of Seller or Stockholders contained in this Agreement, whether requiring performance before or after the Closing Date;

(C) any and all Damages arising out of or resulting from the Retained Liabilities, whether arising prior to or after the Closing Date, or otherwise arising out of or relating to the ownership or use of the Purchased Assets by Seller or the operation of the Business prior to the Closing Date; and

(D) any and all Damages and liabilities of any nature arising out of or resulting from any applicable bulk sales or similar laws relating to the transactions contemplated hereunder.

(ii) Buyer hereby agrees to indemnify, defend and hold Seller and Stockholders harmless from and against and to reimburse Seller or Stockholders with respect to any one or more of the following:

(A) any and all Damages arising out of or resulting from any misrepresentation or breach of warranty of Buyer contained in this Agreement or in any exhibit or schedule hereto, or in any other statement, certificate or document furnished or to be furnished to Seller or Stockholders pursuant hereto or in connection with the transactions contemplated hereby;

(B) any and all Damages arising out of or resulting from any breach of any covenant or obligation of Buyer contained in this Agreement, whether requiring performance before or after the Closing Date; and

(C) any and all Damages arising out of or resulting from the Assumed Liabilities, whether arising prior to or after the Closing Date, or otherwise arising out of or relating to the ownership or use of the

Purchased Assets by Buyer or the operation of the Business on or subsequent to the Closing Date.

(b) **General Indemnification Procedures**

(i) A party seeking indemnification pursuant to this Section 7.3 (an "Indemnified Party") on the basis of a claim asserted by a third party shall give prompt notice to the party from whom such indemnification is sought (the "Indemnifying Party") of the assertion of such claim, or the commencement of any action, suit or proceeding brought by a third party, in respect of which indemnity may be sought hereunder and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (except to the extent that the Indemnifying Party has suffered actual prejudice thereby). The Indemnifying Party shall have the right (but not the obligation), exercisable by written notice to the Indemnified Party within fifteen (15) days of receipt of notice from the Indemnified Party of the commencement of or assertion of any claim or action, suit or proceeding by a third party (other than a party or an Affiliate of any party hereto) in respect of which indemnity may be sought hereunder (a "Third Party Claim"), to assume the defense and control the settlement of such Third Party Claim which involves (and continues to involve) solely monetary damages; provided that (a) the Indemnifying Party expressly agrees in such notice that, as between the Indemnifying Party and the Indemnified Party, the Indemnifying Party shall be solely obligated to satisfy in full and discharge the Third Party Claim; (b) the defense of such Third Party Claim by the Indemnifying Party will not, in the reasonable judgment of the Indemnified Party, have any continuing material adverse effect on the Indemnified Party's business; and (c) the Indemnifying Party makes adequate provision to provide reasonable assurances to the Indemnified Party of the ability of the Indemnifying Party to satisfy the full amount of any adverse monetary judgment that may result (the conditions set forth in clauses (a), (b) and (c) are collectively referred to as the "Litigation Conditions").

(ii) Within fifteen (15) days after the Indemnifying Party has given written notice to the Indemnified Party of its intended exercise of its right to defend and control the right to settle a Third Party Claim, the Indemnified Party shall give written notice to the Indemnifying Party of any objection thereto based upon the Litigation Conditions. If the Indemnified Party so objects, the Indemnified Party shall continue to defend the Third Party Claim until such time as such objection is withdrawn. If no such notice of objection is given, or if any such objection is withdrawn, the Indemnifying Party shall be entitled to assume and conduct such defense, with counsel selected by the Indemnifying Party and reasonably acceptable to the Indemnified Party, until such time as the Indemnified Party shall give notice that any of the Litigation Conditions, in its reasonable judgment, are no longer satisfied. If the Indemnified Party is defending the claim after it has made an objection based upon the Litigation Conditions, the Indemnifying Party shall thereafter remain obligated to pay the amount found to be owing to or agreed to in a settlement made pursuant to Section 7.3(b)(iv) with the third party with respect to such Third Party Claim, and to pay the costs (including attorneys' fees and expenses) incurred by the Indemnified Party defending such Third Party Claim. The

Indemnified Party shall defend any Third Party Claim with counsel selected by it and reasonably acceptable to the Indemnifying Party.

(iii) The Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third Party Claim which the other is defending as provided in this Agreement.

(iv) The Indemnifying Party, if it shall have assumed the defense of any Third Party Claim as provided in this Agreement, shall not consent to a settlement of, or the entry of any judgment arising from, any such Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed). The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, enter into any compromise or settlement which commits the Indemnified Party to take, or to forbear to take, any action or which does not provide for a complete release by such third party of the Indemnified Party. The Indemnified Party shall have the sole and exclusive right to settle any Third Party Claim, on such terms and conditions as it deems reasonably appropriate, to the extent such Third Party Claim involves equitable or other non-monetary relief, and shall have the right to settle any Third Party Claim involving monetary damages with the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

(v) Whether or not the Indemnifying Party chooses to defend or prosecute any Third Party Claim, all the parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

(vi) No action or claim for Damages under Section 7.3(a)(i)(A) or 7.3(a)(ii)(A) arising out of or resulting from a breach of representations and warranties contained herein shall be brought or made after the expiration of the second anniversary of the Closing Date (the "General Survival Period"); provided, however, that the foregoing time limitations shall not apply to: (1) any of the representations and warranties contained in Sections 3.1, 3.2, 3.12, 3.14, 3.15(a), 3.21, 4.1, 4.2 and 4.4, each of which shall survive indefinitely; (2) any such claims that have been the subject of a good faith written notice from Buyer to Seller or from Seller to Buyer, as the case may be, prior to such period, which notice specifies in reasonable detail the nature and basis for such claim (which shall survive until the final resolution of such claims); or (3) the representations and warranties contained in Sections 3.6, 3.10, 3.11 and 3.19, each of which shall survive until the day immediately following expiration of the applicable statute of limitations so long as such period is longer than the General Survival Period.

(vii) Notwithstanding anything to the contrary in this Section 7.3, no limitation or condition of liability provided in this Section 7.3 or Section 8.1 shall apply to the breach of any of the representations and warranties contained herein if such representation or warranty was made willfully or with the intent to deceive.

(c) **Limitations on Indemnification** Neither Seller nor Stockholders shall be obligated to indemnify Buyer for Damages resulting from any breaches of representations and warranties of Seller or Stockholders in this Agreement (which breaches and resulting Damages shall be determined, solely for purposes of this Section 7.3 as though no materiality or knowledge limitations in such representations and warranties did not exist), unless the aggregate of all such Damages incurred by Buyer exceeds \$10,000 (the "Threshold") , in which event Seller or Stockholders shall be liable for all such Damages in excess of the Threshold incurred by Buyer; provided, however, that Damages recoverable by Buyer for breaches of the representations and warranties contained in Sections 3.1, 3.2, and 3.3 shall not be subject to the Threshold and shall be paid by Seller or Stockholders in their entirety.

(d) **Set-off**. In addition to any other claim for indemnification pursuant to this Section 7.3, Buyer shall be entitled (at its option in its sole and complete discretion) to set-off any amounts owed by Seller or Stockholders to Buyer against any obligation owed by Buyer to Seller or Stockholders.

7.4 **Access to Information**. Seller and Buyer shall reasonably cooperate with each other after the Closing so that (subject to any limitations that are reasonably required to preserve any applicable attorney-client privilege) each party has access to the business records, contracts and other information existing at the Closing Date and relating to Seller (whether in the possession of Seller or Buyer) (including copies thereof) as is reasonably necessary for the (a) preparation for or the prosecution or defense of any suit, action, litigation or administrative, arbitration or other proceeding or investigation (other than one by or on behalf of a party to this Agreement) by or against Seller or Buyer, (b) preparation and filing of any Tax Return or election relating to Seller and any audit by any taxing authority of any returns of Buyer or Seller relating thereto, (c) preparation and filing of any other documents required by governmental or regulatory bodies, and (d) transfer of data to Buyer relating to Seller. The party requesting such information and assistance shall reimburse the other party for all out-of-pocket costs and expenses incurred by such party in providing such information and in rendering such assistance. The access to files, books and records contemplated by this Section 7.4 shall be during normal business hours and upon not less than two (2) Business Days prior written request, shall be subject to such reasonable limitations as the party having custody or control thereof may impose to preserve the confidentiality of information contained therein, and shall not extend to material subject to a claim of privilege unless expressly waived by the party entitled to claim the same.

7.5 **Effect of Payments**. Buyer and Seller agree that any indemnification payments made pursuant to this Article VII shall be treated for tax purposes as an adjustment to the Purchase Price unless otherwise required by applicable law.

ARTICLE VIII

MISCELLANEOUS

8.1 **Survival**. All representations, warranties, covenants and agreements of Buyer, Seller and Stockholders contained in this Agreement or any exhibit or schedule hereto or any

certificate or other document delivered pursuant to this Agreement shall survive the Closing and shall remain in full force and effect, regardless of any investigation made or information or knowledge obtained by or on behalf of either Buyer or Seller, as applicable, at any time; provided that, except as set forth in Section 7.3(b)(vi) and (vii), the representations and warranties of Buyer and Seller contained in this Agreement shall survive only for the General Survival Period and thereafter neither Seller nor Buyer shall have any liability whatsoever with respect to any such representations or warranties, except for claims then pending or theretofore asserted in writing by any party in accordance with the terms and conditions of this Agreement.

8.2 **Notices.** Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted to be given to any party hereunder shall be in writing and shall be deemed given if delivered to the party personally, at the time of delivery, if sent to the party by telecopy, upon receipt of confirmation of "good" transmission, or if by registered or certified mail (return receipt requested) with postage and registration or certification fees thereon prepaid, addressed to the party at its address set forth below:

If to Buyer:

PMCo L.L.C.
1500 Kemper Meadow Drive
Cincinnati, Ohio 45240-1638
Fax: (800) 554-8054
Attention: Deirdre A. O'Neill, President/CEO

with a copy to:

Dechert Price & Rhoads
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103
Fax: (215) 994-2222
Attention: Thomas B. Morris, Jr., Esquire

If to Seller or Stockholders:

Magellan Materials & Supplies, Inc.
10125 Main Place
Bothell, Washington 98011
Fax: (800) 523-4588
Attention: Tim Gohrke and Deborah Gohrke

with a copy to:

Gary W. East, Attorney at Law
Suite 304
Northgate Executive Center 1
155 NE 100th Street
Seattle, Washington 98125
Fax: (206) 528-1016
Attention: Gary W. East, Esq.

8.3 **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other parties hereto, except that Buyer may assign its rights hereunder (a) to any Affiliate of Buyer, (b) as collateral security to any Person providing financing to Buyer or any Affiliate of Buyer or (c) as collateral security to any Person providing financing to Buyer or any Affiliate of Buyer in the event Buyer or any Affiliate of Buyer re-finances any debt obligations.

8.4 **Governing Law.** This Agreement shall be governed by and construed in accordance with, the laws of the State of Delaware.

8.5 **Entire Agreement** This Agreement, together with the exhibits and schedules attached hereto, constitutes the entire understanding of the parties, supersedes any prior agreements or understandings, written or oral, between the parties with respect to the subject matter hereof, and is not intended to confer upon any Person other than the parties hereto any benefit, right or remedy.

8.6 **Further Assurances.** Each party shall cooperate and take such action as may be reasonably requested by another party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby.

8.7 **No Third Party Beneficiaries** Nothing herein expressed or implied is intended or should be construed to confer upon or give to any Person other than the parties hereto and their successors and assigns any rights or remedies under or by reason of this Agreement.

8.8 **Amendment and Waiver.** The parties may, by mutual agreement, amend this Agreement in any respect, and any party, as to such party, may (a) extend the time for the performance of any of the obligations of any other party; (b) waive any inaccuracies in representations and warranties by any other party; (c) waive compliance by any other party with any of the agreements contained herein and performance of any obligations by any other party; and (d) waive the fulfillment of any condition that is precedent to the performance by such party of any of its obligations under this Agreement. To be effective, any such amendment or waiver must be in writing and be signed by the party against whom enforcement of the same is sought.

8.9 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

8.10 **Enforcement.** Buyer and Seller agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each of the parties hereto shall not oppose the granting of injunctive relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, on the grounds that damages would provide an adequate remedy. Any action by a party hereunder seeking injunctive relief to enforce the terms of this Agreement would be in addition to any other remedy to which it is entitled at law or in equity.

8.11 **Headings.** The headings preceding the text of the sections and subsections hereof are inserted solely for convenience of reference, and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

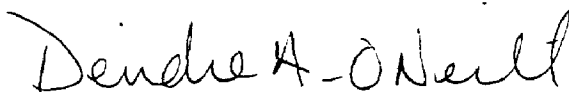
8.12 **Construction.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, schedules or exhibits hereto.

8.13 **Arbitration.** Upon the request of any party, whether made before or after the institution of any legal proceeding, any action, dispute, claim, or controversy of any kind between the parties hereto arising out of or pertaining to this Agreement or the transactions contemplated hereby (a "Dispute") shall be submitted to arbitration administered by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules. With respect to a Dispute in which the claim or amount in controversy does not exceed \$10,000, a single arbitrator (who shall have authority to render a maximum award of \$10,000 including all damages of any kind, costs, and fees) shall be chosen and shall decide the Dispute. With respect to a Dispute in which the claim or amount in controversy exceeds \$10,000, the arbitration panel shall consist of three arbitrators; each party may appoint one arbitrator and a third arbitrator shall be appointed by agreement of the two party-appointed arbitrators. In the event that the party-appointed arbitrators cannot select the third arbitrator, then the AAA shall appoint a third arbitrator. The Dispute shall be decided by a majority vote of three arbitrators. To the extent practicable, an arbitration proceeding hereunder shall be conducted within 180 days of the filing of the Dispute with the AAA. Arbitration proceedings hereunder shall be conducted in Cincinnati, Ohio. The arbitrators shall have substantial experience and recognized expertise in the field or fields of the subject matter(s) of the Dispute and shall resolve all Disputes in accordance with the applicable substantive law. The parties agree that they will faithfully observe the Commercial Arbitration Rules of the AAA, that they will abide by and perform any award rendered by the arbitrator(s), and that judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Each party shall bear its own expenses arising from the arbitration proceeding, including all filing and other fees; provided, that the

prevailing party in any arbitration proceeding shall be entitled to reimbursement of expenses incurred including reasonable attorneys' fees and if no party shall be considered the prevailing party, the arbitrator(s) shall have authority to apportion such fees among the parties as they shall see fit in any arbitration award issued.

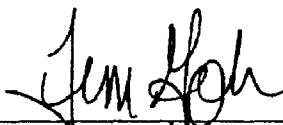
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

PMCo L.L.C.



By: Deirdre A. O'Neill
Title: President/CEO

MAGELLAN MATERIALS & SUPPLIES, INC.



By: TIM GOHRKE
Title: PRESIDENT

STOCKHOLDERS:



TIM GOHRKE



DEBORAH GOHRKE