

05-28-2002

Form PTO-1594  
(Rev. 03/01)  
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U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

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

1. Name of conveying party(ies):  
San Jose Sharks, L.P. *5-23-02*

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

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

2. Name and address of receiving party(ies)  
Name: San Jose Sharks LLC  
Internal  
Address: San Jose Arena  
Street Address: 525 West Santa Clara Street  
City: San Jose State: CA Zip: 95113

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State \_\_\_\_\_  
 Other a Delaware limited liability company

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

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

Execution Date: February 22, 2002  
Effective Date: May 1, 2002

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s) \_\_\_\_\_  
(See Attached Schedule)

Additional number(s) attached  Yes  No

B. Trademark Registration No.(s) \_\_\_\_\_  
(See Attached Schedule)

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: Alison Nunez  
Internal Address: NHL Enterprises, LP  
Street Address: 1251 Avenue of the Americas  
City: New York State: NY Zip: 10020

6. Total number of applications and registrations involved: ..... 26

7. Total fee (37 CFR 3.41).....\$ 715.00  
 Enclosed  
 Authorized to be charged to deposit account (and any additional fees)

8. Deposit account number:  
500205

OFFICE OF PUBLIC RECORDS  
FINANCE SECTION  
MAY 23 AM 8:22

DO NOT USE THIS SPACE

9. Signature.  
Alison Nunez  
Name of Person Signing                      *Alison Nunez* Signature                      *May 9, 2002* Date

69

05/24/2002 LMJELLER 00000159 500205 76354975 Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

01 FC:481 40.00 CH  
02 FC:482 675.00 CH

TRADEMARK  
REEL: 002514 FRAME: 0309

**SCHEDULE OF TRADEMARKS**





	<b>TRADEMARK</b>	<b>APPLICATION NUMBER</b>
1.	SAN JOSE JR. SHARKS & Design	76/354,975
2.	SAN JOSE SHARKS X TENTH ANNIVERSARY	76/054,871
3.	Shark with hockey stick logo	76/289,596
4.	Shark with hockey stick logo	76/289,598
5.	Shark with hockey stick logo	76/289,597
6.	SHARK BYTE	76/338,182
7.	PROPERTY OF SAN JOSE JR. SHARKS	76/354,967

	<b>TRADEMARK</b>	<b>REGISTRATION NUMBER</b>
1.	FINATICAL SHARKS FAN CLUB & Design	1,809,261
2.	Ice Smoother with Shark Fin Design	1,741,835
3.	Menacing Shark with hockey stick Design	1,791,732
4.	S.J. SHARKIE	1,830,899
5.	SAN JOSE SHARKS	1,730,360
6.	SAN JOSE SHARKS	1,740,682
7.	SAN JOSE SHARKS & Design	1,728,700
8.	San Jose Sharks biting hockey stick logo	2,435,445
9.	San Jose Sharks biting hockey stick logo	2,182,564
10.	San Jose Sharks fin logo	1,739,087
11.	San Jose Sharks fin logo	1,741,781
12.	Shark (blimp) design	2,193,217
13.	Shark head design	2,193,231
14.	SHARKS	1,769,354

15.	SHARKS	1,796,012
16.	SHARKS	1,796,118
17.	SHARKS & Design	1,794,315
18.	SHARKS & Design	2,433,737
19.	SHARKS & Design	1,769,484
20.	SHARKS & PARKS	2,047,703
21.	TEAL TOWN USA	2,378,460

Trademark List

Trademark Name      Division      Attorney(s)      Case Number      Application Number      Registration Number/Date      Renewal Date      First Use Date

PROPERTY OF SAN JOSE JR. SHARKS Country: United States of America	CLB	CLB Owner: San Jose Sharks, LLC Classes: 25	us2637	76/354,967 02-Jan-2002				
Status: Pending								
SAN JOSE JR. SHARKS & Design Country: United States of America	CLB	CLB Owner: San Jose Sharks, LLC Classes: 25, 41	us2635	76/354,975 02-Jan-2002				
Status: Pending								
								
SAN JOSE SHARKS X TENTH ANNIVER Country: United States of America	CLB	CLB Owner: San Jose Sharks, LLC Classes: 16, 25, 26, 38	us2630	76/054,871 22-May-2000				
Status: Pending								
								
SHARK BYTE Country: United States of America	CLB	CLB Owner: San Jose Sharks, LLC Classes: 41	us2636	76/338,182 15-Nov-2001				
Status: Pending								
Shark with hockey stick Country: United States of America	CLB	CLB Owner: San Jose Sharks, LLC Classes: 41	us2627	76/289,596 24-Jul-2001				
Status: Pending								
								
Shark with hockey stick Country: United States of America	CLB	CLB Owner: San Jose Sharks, LLC Classes: 25	us2628	76/289,598 24-Jul-2001				
Status: Pending								
								

Trademark Name	Division	Attorney(s)	Case Number	Application Number	Registration Number/Date	Renewal Date	First Use Date
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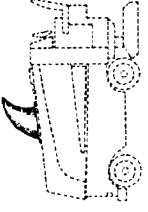

Shark with hockey stick	CLB	CLB	us2629	76/289,597			
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Country: United States of America  
 Owner: San Jose Sharks, LLC  
 Classes: 16



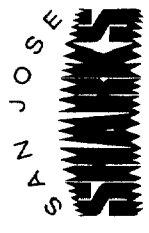
Status: Pending

Trademark List



Trademark Name	Division	Attorney(s)	Case Number	Application Number	Registration Number/Date	Renewal Date	First Use Date
FINATICAL SHARKS FAN CLUB & Desig	CLB	CLB	us2614	74/255,750	1,809,261	07-Dec-2003	11-Nov-1991
Country: United States of America	Owner: San Jose Sharks, LLC			16-Mar-1992	07-Dec-1993		
	Classes: 25,41				Status: Registered		
							
Ice Smoother with Shark Fin Design	CLB	CLB	us2619	74/254,277	1,741,835	22-Dec-2002	14-Sep-1991
Country: United States of America	Owner: San Jose Sharks, LLC			11-Mar-1992	22-Dec-1992		
	Classes: 41				Status: Registered		
							
Menacing Shark Design	CLB	CLB	us2618	74/256,852	1,791,732	07-Sep-2003	05-Oct-1991
Country: United States of America	Owner: San Jose Sharks, LLC			19-Mar-1992	07-Sep-1993		
	Classes: 28, 41, 42				Status: Registered		
							
S.J. SHARKIE	CLB	MJS RHZ	us2617	74/801,424	1,830,899	12-Apr-2004	01-Aug-1992
Country: United States of America	Owner: San Jose Sharks, LLC			23-Mar-1992	12-Apr-1994		
	Classes: 41				Status: Registered		
SAN JOSE SHARKS	CLB	MJS RHZ	us2604	74/151,019	1,730,360	03-Nov-2002	12-Feb-1991
Country: United States of America	Owner: San Jose Sharks, LLC			25-Mar-1991	03-Nov-1992		
	Classes: 25				Status: Registered		
SAN JOSE SHARKS	CLB	MJS RHZ	us2605	74/150,581	1,740,682	15-Dec-2002	13-Sep-1991
Country: United States of America	Owner: San Jose Sharks, LLC			25-Mar-1991	15-Dec-1992		
	Classes: 41				Status: Registered		

Trademark List

Trademark Name	Division	Attorney(s)	Case Number	Application Number	Registration Number/Date	Renewal Date	First Use Date
SAN JOSE SHARKS & Design Country: United States of America	CLB	MJS RHZ Owner: San Jose Sharks, LLC Classes: 41	us2613	74/151,195 25-Mar-1991	1,728,700 27-Oct-1992 Status: Registered	27-Oct-2002	13-Sep-1991
San Jose Sharks Primary Logo Country: United States of America	CLB	MJS RHZ Owner: San Jose Sharks, LLC Classes: 41	us2608	74/150,985 25-Mar-1991	2,435,445 13-Mar-2001 Status: Registered	13-Mar-2011	
San Jose Sharks Primary Logo Country: United States of America	CLB	MJS RHZ Owner: San Jose Sharks, LLC Classes: 25	us2609	74/150,576 25-Mar-1991	2,182,564 18-Aug-1998 Status: Registered	18-Aug-2008	12-Feb-1991
San Jose Sharks Secondary Logo Country: United States of America	CLB	MJS RHZ Owner: San Jose Sharks, LLC Classes: 25	us2606	74/151,023 25-Mar-1991	1,739,087 08-Dec-1992 Status: Registered	08-Dec-2002	28-Feb-1991
San Jose Sharks Secondary Logo Country: United States of America	CLB	MJS RHZ Owner: San Jose Sharks, LLC Classes: 41	us2607	74/152,949 01-Apr-1991	1,741,781 22-Dec-1992 Status: Registered	22-Dec-2002	12-Feb-1991





**Trademark List**

Trademark Name	Division	Attorney(s)	Case Number	Application Number	Registration Number/Date	Renewal Date	First Use Date
Shark (Blimp) Design Country: United States of America	CLB Owner: San Jose Sharks, LLC Classes: 41	CLB	us2623	75/251,278 04-Mar-1997	2,193,217 06-Oct-1998 Status: Registered	06-Oct-2008	14-Oct-1993
							
Shark Head Design Country: United States of America	CLB Owner: San Jose Sharks, LLC Classes: 41	CLB	us2624	75/255,459 11-Mar-1997	2,193,231 06-Oct-1998 Status: Registered	06-Oct-2008	14-Oct-1993
							
SHARKS Country: United States of America	CLB Owner: San Jose Sharks, LLC Classes: 25	MJS RHZ	us2601	74/095,817 10-Sep-1990	1,769,354 04-May-1993 Status: Registered	04-May-2003	28-Feb-1991
SHARKS Country: United States of America	CLB Owner: San Jose Sharks, LLC Classes: 28	MJS RHZ	us2602	74/800,395 10-Sep-1990	1,796,012 28-Sep-1993 Status: Registered	28-Sep-2003	13-Feb-1991
SHARKS Country: United States of America	CLB Owner: San Jose Sharks, LLC Classes: 41	MJS RHZ	us2603	74/800,396 10-Sep-1990	1,796,118 28-Sep-1993 Status: Registered	28-Sep-2003	19-Sep-1991
SHARKS & Design Country: United States of America	CLB Owner: San Jose Sharks, LLC Classes: 25	MJS RHZ	us2610	74/096,420 12-Sep-1990	1,794,315 21-Sep-1993 Status: Registered	21-Sep-2003	01-Oct-1990





Trademark List

Trademark Name	Division	Attorney(s)	Case Number	Application Number	Registration Number/Date	Renewal Date	First Use Date
SHARKS & Design Country: United States of America	CLB	MJS RHZ Owner: San Jose Sharks, LLC Classes: 28	us2611	74/800,397 12-Sep-1990	2,433,737 06-Mar-2001 Status: Registered	06-Mar-2011	28-Feb-2001
							
SHARKS & Design Country: United States of America	CLB	MJS RHZ Owner: San Jose Sharks, LLC Classes: 41	us2612	74/800,398 12-Sep-1990	1,769,484 04-May-1993 Status: Registered	04-May-2003	13-Sep-1991
							
SHARKS & PARKS Country: United States of America	CLB	MJS RHZ Owner: San Jose Sharks, LLC Classes: 41	us2620	75/091,426 19-Apr-1996	2,047,703 25-Mar-1997 Status: Registered	25-Mar-2007	30-Nov-1991
TEAL TOWN USA Country: United States of America	CLB	CLB Owner: San Jose Sharks, LLC Classes: 25, 41	us2625	75/470,718 20-Apr-1998	2,378,460 22-Aug-2000 Status: Registered	22-Aug-2010	

PURCHASE AGREEMENT

Dated as of February 22, 2002, by and among

SAN JOSE SPORTS AND ENTERTAINMENT ENTERPRISES LLC,

(the "Buyer")

and

SAN JOSE SHARKS CORP.,

TRUST UNDER AGREEMENT AND DECLARATION OF TRUST UID  
DECEMBER 31, 1940 FOR THE PRIMARY BENEFIT OF  
GEORGE GUND, III (KNOWN AS TRUST NO. 7),

and

SAN JOSE ARENA MANAGEMENT CORP.,  
(collectively, the "Sellers")

and

GEORGE GUND, III

TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE 1 TRANSFER OF BUSINESS; PURCHASE OF INTERESTS; CLOSING.....</b>	<b>2</b>
1.1 Transfer of Business.....	2
1.2 The Closing.....	2
1.3 Purchase Price; Purchase of Interests.....	2
1.4 Tax Treatment.....	4
1.5 Procedure at the Closing.....	4
<b>ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF THE BUYER.....</b>	<b>4</b>
2.1 Due Organization; Good Standing; Authority; Binding Nature of Agreements.....	5
2.2 No Violation.....	5
2.3 Investment Intent.....	5
2.4 Accredited Investor.....	6
2.5 Adequate Funds.....	6
2.6 Brokers and Finders.....	6
2.7 No Filing Under the HSR Act.....	6
<b>ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SHARKS CO. AND         ARENA CO. ....</b>	<b>6</b>
3.1 Due Organization; Good Standing; Authority; Binding Nature of Agreements.....	6
3.2 Organizational Documents; Records.....	8
3.3 Capitalization; Ownership of Equity Interests.....	8
3.4 Financial Statements.....	9
3.5 Absence of Changes.....	9
3.6 Title to Assets; Equipment; Real Property, Leases; Inventory.....	11
3.7 Bank Accounts.....	12
3.8 Receivables; Major Customers.....	12
3.9 Proprietary Assets.....	13
3.10 Contracts.....	14
3.11 Compliance With Legal Requirements.....	16
3.12 Governmental Authorizations.....	17
3.13 NHL Authorizations.....	17
3.14 Tax Matters.....	17
3.15 Employee and Labor Matters.....	20
3.16 Benefit Plans; ERISA.....	21
3.17 Environmental Matters.....	23
3.18 Sale of Products; Performance of Services.....	24
3.19 Insurance.....	24
3.20 Related Party Transactions.....	24
3.21 Proceedings; Orders.....	25
3.22 Non-Contravention; Consents.....	25
3.23 Brokers.....	26

**TABLE OF CONTENTS**

	<u>Page</u>
3.24 Full Disclosure.....	27
3.25 Powers of Attorney.....	27
3.26 Voting Arrangements.....	27
<b>ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE GUND TRUST.....</b>	<b>27</b>
4.1 Status.....	27
4.2 Power and Authority.....	27
4.3 Brokers.....	28
4.4 Interests in the Partnership and Other Enterprises.....	28
<b>ARTICLE 5 CONDUCT OF BUSINESS PENDING THE CLOSING.....</b>	<b>28</b>
5.1 Conduct of Business by the Gund Entities Pending the Closing.....	28
5.2 Conduct of Franchise.....	30
<b>ARTICLE 6 ADDITIONAL AGREEMENTS.....</b>	<b>30</b>
6.1 Further Assurances.....	30
6.2 Compliance with Covenants.....	31
6.3 Cooperation.....	31
6.4 Other Actions.....	31
6.5 Access to Information; Due Diligence Review.....	31
6.6 Notification of Certain Matters.....	31
6.7 Confidentiality; Publicity.....	32
6.8 No Other Discussions Etc.....	32
6.9 Taxes.....	32
6.10 Change of Corporate Names.....	33
6.11 Buyer Indemnity.....	33
6.12 Indemnity of Sharks Co. and Arena Co.....	33
<b>ARTICLE 7 CONDITIONS TO THE OBLIGATIONS OF THE BUYER.....</b>	<b>34</b>
7.1 Accuracy of Representations and Warranties and Compliance with Obligations.....	<b>34</b>
7.2 No Material Adverse Effect or Destruction of Property.....	34
7.3 Corporate Certificate.....	34
7.4 Opinion of Counsel.....	35
7.5 Consents.....	35
7.6 No Adverse Litigation.....	35
7.7 Certificates; Termination.....	35
7.8 Agreements.....	35
7.9 NHL Approval.....	35
7.10 Contribution.....	35
7.11 Resignations.....	35
7.12 ATP Tour, Inc.....	36

TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE 8 CONDITIONS TO THE OBLIGATIONS OF THE SELLERS</b> .....	36
8.1 Accuracy of Representations and Warranties and Compliance with Obligations.....	36
8.2 Purchase Price.....	36
8.3 No Order or Injunction.....	36
8.4 Agreements.....	36
8.5 NHL Approval.....	36
8.6 City Approval.....	37
<b>ARTICLE 9 INDEMNIFICATION</b> .....	37
9.1 Indemnification.....	37
9.2 Holdback on Payment of Promissory Note.....	37
9.3 Limitations on Indemnification.....	38
9.4 Claims Made.....	38
9.5 Objections to Claims.....	38
9.6 Resolution of Conflicts.....	39
9.7 Seller's Agent.....	39
9.8 Actions of Seller's Agent.....	39
9.9 Claims.....	40
9.10 Payment of Claims.....	40
9.11 Survival of Representations and Covenants.....	40
<b>ARTICLE 10 DEFINITIONS</b> .....	40
10.1 Defined Terms.....	40
10.2 Other Definitional Provisions.....	46
<b>ARTICLE 11 TERMINATION</b> .....	47
11.1 Termination.....	47
11.2 Effect of Termination.....	47
<b>ARTICLE 12 GENERAL PROVISIONS</b> .....	47
12.1 Notices.....	47
12.2 Entire Agreement.....	49
12.3 Expenses.....	49
12.4 Amendment; Waiver.....	49
12.5 Binding Effect; Assignment.....	49
12.6 Counterpart Execution and Facsimile Delivery.....	49
12.7 Interpretation.....	49
12.8 Governing Law; Interpretation.....	50
12.9 Jurisdiction.....	50
12.10 Arm's Length Negotiations.....	50
12.11 Severability.....	50
12.12 Third Party Beneficiaries.....	50
12.13 Jury Trial Waiver.....	50

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "**Agreement**") is entered into as of February 22, 2002, by and among George Gund, III, an individual ("**Gund**"), the Trust Under Agreement and Declaration of Trust UID December 31, 1940 for the Primary Benefit of George Gund, III (the "**Gund Trust**"), San Jose Sharks Corp., a California corporation ("**Sharks Co.**"), San Jose Arena Management Corp., a California corporation ("**Arena Co.**" and, collectively with the Gund Trust and Sharks Co., the "**Sellers**") and San Jose Sports and Entertainment Enterprises LLC, a Delaware limited liability company (the "**Buyer**"). Certain capitalized terms in this Agreement are defined in Article 10 of this Agreement.

### RECITALS

A. Sharks Co. and the Gund Trust own all of the partnership interests in San Jose Sharks, L.P., a California limited partnership ("**Sharks LP**") and Arena Co. and the Gund Trust own all of the partnership interests in San Jose Arena Management, L.P., a California limited partnership ("**Arena LP**," and with Sharks LP, the "**Partnerships**").

B. The Sellers own, directly or indirectly, interests in certain other entities listed in Schedule A (the "**Schedule A Interests**" and, collectively, with the interests in the Partnerships, the "**Purchased Interests**").

C. Gund is the primary beneficiary of the Gund Trust and the controlling stockholder of both Sharks Co. and Arena Co.

D. The Buyer wishes to purchase the Purchased Interests from the Sellers, and the Sellers wish to sell the Purchased Interests to the Buyer, on the terms and conditions set forth in this Agreement.

E. The Buyer has formed San Jose Sharks LLC, a Delaware limited liability company ("**Sharks LLC**") and San Jose Arena Management LLC, a Delaware limited liability company ("**Arena LLC**"), and at the Closing, the Sellers shall transfer, assign and convey their entire right, title and interest in the Purchased Interests to Sharks LLC and Arena LLC, as directed by the Buyer.

F. As a condition and inducement to the Buyer's willingness to enter into this Agreement, Gund and certain other investors will enter into an Amended and Restated Limited Liability Company Agreement of San Jose Sports and Entertainment Enterprises LLC (the "**Amended LLC Agreement**"), a copy of which is attached hereto as Exhibit A.

# AGREEMENT

The Buyer and each of the Sellers, intending to be legally bound, agree as follows:

## ARTICLE 1

### TRANSFER OF BUSINESS; PURCHASE OF INTERESTS; CLOSING

**1.1 Transfer of Business.** At the Closing, the Gund Trust, Sharks Co. and Arena Co., unless otherwise directed by the Buyer, shall take all action necessary or desirable to transfer, assign and convey all right, title and interest in the Purchased Interests, free and clear of any and all Encumbrances, as follows: (i) the portion of the Purchased Interests comprising Arena LP shall be transferred, assigned and conveyed to Arena LLC, (ii) the portion of the Purchased Interests comprising Sharks LP shall be transferred, assigned and conveyed to Sharks LLC, and (iii) the Schedule A Interests shall be transferred, assigned and conveyed as directed by the Buyer.

**1.2 The Closing.** Subject to the terms and conditions of this Agreement, the consummation of the purchase and sale of the Purchased Interests and the other transactions contemplated hereunder (the “Closing”) shall take place within two (2) business days of the satisfaction or waiver of the conditions set forth in Article 7 and Article 8 hereof. The Closing shall take place at the offices of Morrison & Foerster LLP, 755 Page Mill Road, Palo Alto, California 94304, or such other place and, subject to Section 11.1, time as the parties may otherwise agree. The date of the Closing is referred to herein as the “Closing Date.” All transactions contemplated hereunder to occur on the Closing Date shall be deemed to have occurred simultaneously at 12:01 a.m. on the Closing Date.

### **1.3 Purchase Price; Purchase of Interests.**

(a) For purposes of this Agreement, “Purchase Price” means: (i) Forty Million Dollars (U.S. \$40,000,000) in cash, (ii) a promissory note in the principal amount of Forty Million Dollars (U.S. \$40,000,000) in the form of Exhibit B hereto (the “Promissory Note”) and (iii) all of the Class C Units in the Buyer as set forth in the Amended LLC Agreement (the “Class C Units”).

(b) At the Closing, subject to the terms and conditions of this Agreement, upon delivery to the Buyer by the Sellers of certificates duly endorsed for transfer to the Buyer representing all of the Purchased Interests or other instruments of transfer reasonably requested by the Buyer, the Sellers shall be entitled to receive the Purchase Price as provided in this Section 1.3. In addition, to the extent Gund, the Gund Trust or a related entity has since July 31, 2001 contributed to the Gund Entities an amount of cash in excess of Nineteen Million Dollars (\$19,000,000), the Buyer at Closing shall pay to the Sellers in cash an amount equal to such excess, plus interest on such excess applying the interest rate applicable to outstanding borrowings under that certain Revolving Credit Agreement by and among San Jose Sharks, L.P., San Jose Arena Management, L.P., and Comerica Bank-California dated as of April 11, 1997, as

amended (the payment set forth in this sentence shall be referred to herein as the “**Excess Contribution**”).

(c) (i) The Purchase Price shall be adjusted downward as follows: the amount, if any, by which the Net Liabilities, as calculated consistent with Schedule 1.3(c), exceed Forty-Five Million Dollars (\$45,000,000) (the “**Net Liabilities Excess**”). The Net Liabilities shall be calculated from the December 31, 2001 Balance Sheet (as defined below). The “**Net Liabilities**” shall be determined by subtracting the Designated Assets as of December 31, 2001 (the “**Balance Sheet Date**”) from the Designated Liabilities as of the Balance Sheet Date. An illustration of the method of calculating the “**Designated Assets**” and “**Designated Liabilities**” is set forth on Schedule 1.3(c). The principal amount of the Promissory Note shall be reduced by the amount of the Net Liabilities Excess.

(ii) The Purchase Price shall be adjusted upward by (x) the amount, if any, by which the Net Liabilities, as calculated consistent with Schedule 1.3(c), is less than Forty-Five Million Dollars (\$45,000,000) multiplied by (y) 0.8046 (the “**Purchase Price Increase**”). Any Purchase Price Increase shall be paid by the delivery by the Buyer to the Sellers of an executed promissory note in the principal amount of such Purchase Price Increase in the form of Exhibit C hereto (the “**Purchase Price Increase Promissory Note**”). The Purchase Price Increase Promissory Note, if applicable, shall be delivered to the Sellers within five (5) business days of the December 31, 2001 Balance Sheet being deemed final as set forth below.

(iii) As promptly as practicable, but in no event later than thirty (30) days following the Closing Date, Buyer shall cause to be prepared and delivered to the Sellers a consolidated audited balance sheet of the Partnerships as of December 31, 2001 (the “**December 31, 2001 Balance Sheet**”), together with an audit report thereon by KPMG Peat Marwick (the “**Buyer Accountants**”), prepared (x) in accordance with GAAP consistently applied with prior periods, (y) assuming that the Gund Entities continue to operate as going concerns and (z) without taking into account any of the transactions contemplated by this Agreement or any Transaction Agreement. Except as set forth below, the December 31, 2001 Balance Sheet shall be deemed to be and shall be final, binding and conclusive on the parties hereto. The December 31, 2001 Balance Sheet shall be deemed final for the purposes of this Section upon the earlier of (1) the failure of the Sellers to notify the Buyer in writing of a dispute within thirty (30) days of the delivery of the December 31, 2001 Balance Sheet to the Sellers, (2) the resolution of all disputes, pursuant to the next following paragraph, by the Buyer’s Accountants and the Sellers’ Accountants, and (3) the resolution of all disputes, if any, pursuant to the next following paragraph, by the Independent Accounting Firm.

(iv) The Sellers may dispute any amounts reflected on the December 31, 2001 Balance Sheet delivered pursuant to Section 1.3(c)(iii), but only on the basis that the amounts reflected on such statement are incorrect or were not arrived at in accordance with Section 1.3(c)(iii). In the event of such a dispute, the Buyer’s Accountants and the accountants selected by the Sellers (the “**Sellers’ Accountants**”) shall attempt to reconcile their differences, and any resolution by them as to any disputed amounts shall be final, binding and conclusive on the parties hereto. If the Buyer’s Accountants and the Sellers’ Accountants are



unable to reach a resolution within sixty (60) days after the delivery of the December 31, 2001 Balance Sheet, the Buyer's Accountants and the Sellers' Accountants shall submit the items remaining in dispute for resolution to Ernst & Young LLP or another independent accounting firm of international reputation mutually acceptable to the Buyer and the Sellers (the "**Independent Accounting Firm**"), which shall, within thirty (30) days after such submission, determine and report to Buyer and the Sellers upon such remaining disputed items, and such report shall be final, binding and conclusive on the Buyer and the Sellers. The balance sheet resulting from that report shall be the December 31, 2001 Balance Sheet. The fees and disbursements of the Independent Accounting Firm shall be split evenly between the Buyer and the Sellers.

**1.4 Tax Treatment.** The Buyer and the Sellers agree to (i) allocate the Purchase Price and any of the Partnerships' liabilities as of the Closing Date among the Purchased Interests and (ii) with respect to any such allocation to the Partnerships' interests (the "**Partnership Interests Purchase Price**"), allocate the Partnership Interests Purchase Price among the Partnerships' assets, in accordance with an appraisal report from KPMG Consulting to be delivered within sixty (60) days following the Closing Date, and (c) report the sale and purchase of the Purchased Interests for all federal, state and local tax purpose in a manner consistent with this allocation.

**1.5 Procedure at the Closing.** At the Closing, the parties agree that the following shall occur:

(a) The Sellers shall have satisfied each of the applicable conditions set forth in Article 7 and the Sellers shall deliver to the Buyer the certificates representing the Purchased Interests (together with such instruments of transfer as are determined to be necessary by the Buyer), and the documents, certificates, opinions, Consents, letters and other items required by Article 7 or otherwise reasonably requested by the Buyer.

(b) The Buyer shall have satisfied each of the applicable conditions set forth in Article 8 and shall deliver the documents, certificates, Consents, letters and other items required by Article 8.

(c) Upon the satisfaction of all Closing conditions, the Buyer shall (i) effect the wire transfer of the cash portion of Purchase Price to the Sellers and (ii) deliver to the Sellers the Promissory Note, which will be due and payable to the Sellers on July 31, 2002, subject to the Holdback Amount provisions of Section 9.2 hereof and the reduction provisions set forth in Section 1.3(c) and (iii) deliver to Gund the Class C Units. Consistent with Section 1.3, the payment and deliveries will be divided among the Sellers as they may direct.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to each of the Sellers as follows:

## **2.1 Due Organization; Good Standing; Authority; Binding Nature of Agreements.**

(a) Each of the Buyer, Arena LLC and Sharks LLC is a limited liability company duly organized and validly existing under the laws of the State of Delaware. Arena LLC and Sharks LLC are wholly owned by the Buyer. Each of the Buyer, Arena LLC and Sharks LLC has the requisite power and authority: (i) to conduct its business in the manner in which its business is currently conducted, (ii) to own, lease or use its assets in the manner in which its assets are currently being owned and used, (iii) to execute and deliver this Agreement and the Transaction Agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereunder and thereunder, including the ownership of the Purchased Interests. The Buyer has taken all limited liability company actions necessary to authorize its execution and delivery of this Agreement and the Transaction Agreements to which it is a party, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereunder and thereunder. There is no pending or threatened Proceeding for the dissolution, liquidation, insolvency or rehabilitation of the Buyer, Arena LLC and Sharks LLC or the winding up of the Buyer's, Arena LLC's or Sharks LLC's business or affairs.

(b) This Agreement and the Transaction Agreements to which it is a party have been duly executed and delivered by the Buyer and each constitutes its legal, valid and binding obligation enforceable against the Buyer in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance and other similar Legal Requirements and generally applicable principles of equity affecting the enforcement of creditors rights and remedies generally regardless of whether such enforceability is considered in a proceeding at law or in equity.

**2.2 No Violation.** The execution and delivery of this Agreement and the Transaction Agreements to which it is a party by the Buyer, the performance by the Buyer, Arena LLC or Sharks LLC of its obligations hereunder and the consummation of the transactions contemplated by this Agreement or the Transaction Agreements to which it is a party will not (i) contravene any provision of the certificate of formation or the limited liability agreement, as amended, of the Buyer, Arena LLC or Sharks LLC, (ii) violate or conflict with any Legal Requirement or Order that is either applicable to, binding upon, or enforceable against the Buyer, Arena LLC or Sharks LLC, (iii) conflict with, result in any breach of, or constitute a default (or an event that would, with the passage of time or the giving of notice or both, constitute a default) under, or give rise to a right to terminate, amend, modify, abandon or accelerate, any material Contract that is applicable to, binding upon or enforceable against the Buyer, Arena LLC or Sharks LLC.

**2.3 Investment Intent.** The Buyer is acquiring the interests in the Purchased Interests for its own account and with no present intention of distributing or selling the interests in the Partnerships or any of the Schedule A Interests in violation of the Securities Act or any applicable state securities Legal Requirements. The Buyer will not sell or otherwise dispose of any interest in the Partnerships, or any of the Schedule A Interests unless such sale or other disposition has been registered or is exempt from registration under the Securities Act or has

been registered or qualified or is exempt from registration or qualification under applicable state securities laws.

**2.4 Accredited Investor.** The Buyer and each member of the Buyer is an “accredited investor” as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act, and, either alone or in connection with its financial advisors has such knowledge and experience in such financial and business matters that it is capable of evaluating the merits and risks of an investment in the interests of the Partnerships, any Schedule A Interests or the Buyer, as the case may be.

**2.5 Adequate Funds.** The Buyer has valid, binding and enforceable capital commitments that will enable the Buyer to meet its obligations under this Agreement and the Transaction Agreements and to pay the principal and interest, if any, due on the Promissory Note in accordance with its terms.

**2.6 Brokers and Finders.** The Buyer has not employed an investment banker, broker, finder, consultant or intermediary in connection with this Agreement or the purchase and sale contemplated hereby that would be entitled to any investment banking, brokerage, finders or similar fee or commission in any way relating thereto or in connection therewith, other than those (if any) that shall be the sole responsibility of and paid in full by the Buyer.

**2.7 No Filing Under the HSR Act.** Upon the Closing, Blue Line Associates LLC, is and will be its own ultimate parent entity and together with all entities controlled by Blue Line Associates LLC, will not have assets having an aggregate book value of Ten Million Dollars (\$10,000,000.00) or more, excluding all cash that will be used as consideration for the acquisition contemplated hereby (including the payment of liabilities assumed as part of the acquisition contemplated hereby), and excluding all cash that will be used for expenses incidental to the acquisition contemplated hereby. The term “controlled” as used in the preceding sentence shall have the meaning set forth in 16 C.F.R. 801.1(b). The term “ultimate parent entity” as used in this Section 2.7 shall have the meaning set forth in 16 C.F.R. 801.1(a)(3). This representation and warranty is made solely for the purpose of determining the applicability to the transactions contemplated by this Agreement of the HSR Act.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES OF SHARKS CO. AND ARENA CO.

Except as specifically set forth in the disclosure schedule delivered by the Sellers to the Buyer at or prior to the execution of this Agreement (the “**Disclosure Schedule**”), the parts of which are numbered to correspond to the Section numbers of this Agreement, each of Sharks Co. and Arena Co., jointly and severally, hereby represents and warrants to the Buyer as follows:

**3.1 Due Organization; Good Standing; Authority; Binding Nature of Agreements.**

(a) Each of the entities listed on Schedule 3 (each a “**Gund Entity**” and collectively, the “**Gund Entities**”), Sharks Co. and Arena Co. is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all necessary power and authority: (i) to conduct its business in the manner in which its business is currently being conducted; (ii) to own and use its assets in the manner in which its assets are currently owned and used; and (iii) to execute and deliver this Agreement and the Transaction Agreements to which it is a party. Schedule 3.1(a) provides a brief description of the primary business of each Gund Entity. Each of Sharks Co. and Arena Co. has the necessary power and authority to perform its obligations under, and to consummate the transactions contemplated by, this Agreement and the Transaction Agreements to which it is a party. Each Gund Entity has the necessary power and authority to (i) perform its obligations under, and to consummate the transactions contemplated by, the Transaction Agreements to which it is a party, and (ii) to perform its obligations under all material Contracts to which it is a party. Each of Sharks Co. and Arena Co. has taken all corporate actions necessary to authorize its execution and delivery of this Agreement and the Transaction Agreements to which it is a party, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereunder and thereunder and each of the Gund Entities has taken all corporate, partnership or limited liability company actions, as applicable, necessary to authorize its execution and delivery of the Transaction Agreements to which it is a party, the performance of its obligations thereunder and the consummation of the transactions contemplated thereunder.

(b) None of the Gund Entities has in the past five years conducted any business under or otherwise used, for any purpose or in any jurisdiction, any fictitious name, assumed name, trade name or name other than the name set forth in its Organizational Documents.

(c) Each of the Gund Entities is duly qualified and in good standing as a foreign entity in each of the jurisdictions in which the nature of its business or the ownership or leasing of its properties requires such qualification. Section 3.1(c) of the Disclosure Schedule sets forth a true and complete list of each jurisdiction in which each Gund Entity has an officer or an employee or owns or leases property and of each jurisdiction in which such Gund Entity is qualified to do business.

(d) Section 3.1(d) of the Disclosure Schedule accurately sets forth the names and titles of Sharks Co.’s, Arena Co.’s, and each Gund Entity’s officers, board of directors and board of managers, as applicable.

(e) There is no pending or threatened proceeding for the dissolution, liquidation, insolvency or rehabilitation of any Gund Entity, Sharks Co. or Arena Co. or the winding up or cessation of such Gund Entity’s, Sharks Co.’s or Arena Co.’s business or affairs.

(f) This Agreement has been, and each of the Transaction Agreements to be delivered by it at the Closing will have been, duly executed and delivered by each of Sharks Co. and Arena Co., as applicable, and each constitutes, or when delivered at the Closing, will constitute each such entity’s legal, valid and binding obligation enforceable against such entities in accordance with its terms, except as the same may be limited by applicable bankruptcy,

insolvency, reorganization, moratorium, liquidation, fraudulent conveyance and other similar Legal Requirements and generally applicable principles of equity affecting the enforcement of creditors rights and remedies generally regardless of whether such enforceability is considered in a proceeding at law or in equity.

### **3.2 Organizational Documents; Records.**

(a) Each of the Sharks Co. and Arena Co. have made available to the Buyer accurate and complete copies of: (i) such entity's respective Organizational Documents, including all amendments thereto through the date hereof; (ii) the stock or other equity ownership records of each Gund Entity; and (iii) the minutes and other records of the meetings and other proceedings (including any actions taken by written consent or otherwise without a meeting) of the Management of a Gund Entity. Upon the Closing, Buyer will own all of the records and documents referred to in the preceding sentence as well as any and all other documents, Contracts and records, including all financial records, of each Gund Entity.

(b) There has not been any breach or violation of any of the provisions of any Gund Entity's, Sharks Co.'s or Arena Co.'s Organizational Documents, and to the Knowledge of Sharks Co. or Arena Co., no event has occurred, and no condition or circumstance exists, that likely would (with or without notice or lapse of time) constitute or result directly or indirectly in such a material violation. Each of Sharks Co. and Arena Co. has taken all corporate actions necessary to authorize such entity's execution and delivery of this Agreement and the Transaction Agreements to which it is a party, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereunder and thereunder. Neither the execution and delivery of this Agreement and the Transaction Agreements to which Sharks Co. or Arena Co. is party, nor the performance by each of Sharks Co. and Arena Co. of its obligations hereunder and thereunder or the consummation of the transactions contemplated hereunder and thereunder, will (i) contravene any provision of the Organizational Documents of Sharks Co. or Arena Co. or any Gund Entity, (ii) violate or conflict with any Legal Requirement or Order that is either applicable to, binding upon, or enforceable against Sharks Co., Arena Co. or any Gund Entity, (iii) conflict with, result in any breach of, or constitute a default (or an event that would, with the passage of time or the giving of notice or both, constitute a default) under, or give rise to a right to terminate, amend, modify, abandon or accelerate, any material Contract that is applicable to, binding upon or enforceable against any Gund Entity, or require (iv) any Governmental Authorization.

(c) As of the Closing, the equity ownership records and minute books of each Gund Entity will be accurate, up to date and complete. All of the records of each Gund Entity are in the actual possession and direct control of the Partnerships.

**3.3 Capitalization; Ownership of Equity Interests.** As of the date of this Agreement:

(a) The outstanding membership, equity and other ownership interests of each Gund Entity is as stated in Section 3.3 to the Disclosure Schedule.

(b) All of the equity interests of the Gund Entities currently outstanding (i) have been duly authorized and validly issued, and (ii) have been issued in full compliance with all applicable securities laws and other applicable Legal Requirements.

(c) There is no (i) outstanding preemptive right, subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any interest in any Gund Entity; (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any interest in any Gund Entity; (iii) Contract under which a Gund Entity is or may become obligated to sell or otherwise issue any interest in any Gund Entity; or (iv) condition or circumstance that likely would directly or indirectly give rise to or provide a basis for the assertion of a claim by any Person to the effect that such Person is entitled to acquire or receive any interest in any Gund Entity. The Purchased Interests are owned solely by the Sellers free and clear of any and all Encumbrances.

(d) None of the Gund Entities has any outstanding agreement or obligation to repurchase, redeem or otherwise reacquire, (in writing or otherwise), any shares of capital stock or other securities of any Gund Entity.

### 3.4 Financial Statements.

(a) Sharks Co. and Arena Co. have delivered to the Buyer the audited consolidated balance sheet of the Partnerships as of July 31, 2001 (the "**Audited Balance Sheet**") and related audited statements of operations and cash flows for the twelve months then ended (collectively, the "**Financial Statements**").

(b) All of the Financial Statements are accurate and complete in all material respects. The Financial Statements are in accordance with the books and records of the Partnerships, present fairly, in all material respects, the consolidated financial position of the Partnerships at the respective dates thereof and the results of operations of the Partnerships for the period covered thereby, and have been prepared in conformity with GAAP consistently applied throughout the periods indicated.

(c) As of the Balance Sheet Date, the Partnerships had no Liabilities that are required to be reflected on a balance sheet prepared in accordance with GAAP, except for Liabilities which shall be identified as such in the "liabilities" column of the December 31, 2001 Balance Sheet. As of the date of this Agreement and of the Closing, the Partnerships have and will have, no Liabilities, except for (i) Liabilities which shall be identified as such in the "liabilities" column of the December 31, 2001 Balance Sheet; (ii) accounts payable and Liabilities (of the type required to be reflected as current liabilities in the "liabilities" column of a balance sheet prepared in accordance with GAAP) incurred and accrued by the Partnerships in the Ordinary Course of Business since December 31, 2001; (iii) Liabilities approved by the Buyer as required herein; (iv) Liabilities identified on the Disclosure Schedule as of the date hereof; and (v) continuing obligations under Contracts that do not meet the minimum dollar threshold for disclosure under Section 3.10(a)(i) of the Disclosure Schedule.

### 3.5 Absence of Changes. Since July 31, 2001:

(a) there has not been any material adverse change in any of the Gund Entities' business, condition, assets, liabilities, operations, financial performance, results of operations, and, to the Knowledge of Sharks Co. and Arena Co., no event has occurred that likely would have a Material Adverse Effect on any of the Gund Entities' business, condition, assets, liabilities, operations, financial performance or results of operations;

(b) there has not been any material loss, damage or destruction to, or any interruption in the use of, any of the Gund Entities' assets (whether or not covered by insurance);

(c) none of the Gund Entities has (i) declared, accrued, set aside or paid any dividend or made any other distribution in respect of any shares of capital stock, or (ii) repurchased, redeemed or otherwise reacquired any shares of capital stock or other securities;

(d) none of the Gund Entities has sold or otherwise issued any shares of capital stock or any other securities;

(e) none of the Gund Entities has amended its Organizational Documents and none of the Gund Entities has effected or been a party to any recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction;

(f) none of the Gund Entities has purchased or otherwise acquired any asset from any other Person, except for assets acquired by a Gund Entity in the Ordinary Course of Business;

(g) none of the Gund Entities has leased or licensed any asset from any other Person except for assets leased or licensed in the Ordinary Course of Business;

(h) except as contemplated by the capital expenditure budget dated January 29, 2002, delivered by the Sellers to the Buyer prior to the execution of this Agreement, none of the Gund Entities has made any individual capital expenditure, measured by invoice amount, in excess of \$15,000;

(i) none of the Gund Entities has sold or otherwise transferred, and has not leased or licensed, any asset to any other Person except for sales, transfers, leases or licenses granted in the Ordinary Course of Business;

(j) none of the Gund Entities has pledged or hypothecated any of its assets or otherwise permitted any of its assets to become subject to any Encumbrance, except in the Ordinary Course of Business;

(k) none of the Gund Entities has made any loan or advance to any other Person (other than loans to employees reflected on the books of a Gund Entity) which exceeds \$25,000, individually or in the aggregate;

(l) none of the Gund Entities has paid any bonus or made any profit sharing or similar payment to, or increased the amount of the wages, salary, commissions, fringe benefits or other compensation payable or to become payable (A) to its officers (all employees at or

above the rank of vice president), or (B) any other employees except in the Ordinary Course of Business;

(m) there has been no borrowing or agreement to borrow by a Gund Entity or change in the contingent obligations of a Gund Entity by way of guaranty, endorsement, indemnity, warranty or otherwise or grant of a mortgage or security interest in any property of a Gund Entity, and a Gund Entity has not incurred, assumed or otherwise become subject to any Liabilities, other than Liabilities incurred by a Gund Entity in the Ordinary Course of Business;

(n) none of the Gund Entities has changed any of its methods of accounting or accounting practices in any respect;

(o) none of the Gund Entities has made or changed any material election in respect of Taxes, amended any Tax Return, adopted or changed any accounting method in respect of Taxes, entered into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement, settlement or compromise of any claim or assessment in respect of Taxes, or consented to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes with any Governmental Body or otherwise; and

(p) none of the Gund Entities has agreed or committed (in writing or otherwise) to take any of the actions referred to in clauses (c) through (o) above.

### **3.6 Title to Assets; Equipment; Real Property, Leases; Inventory.**

(a) Each of the Gund Entities owns, and has good and valid title to, all assets (other than Proprietary Assets) it purports to own on the Audited Balance Sheet, including (i) all assets reflected on the Audited Balance Sheet except for assets sold or disposed of by a Gund Entity since the date thereof in the Ordinary Course of Business; and (ii) all assets acquired by a Gund Entity since the Balance Sheet Date except for assets sold or disposed of by a Gund Entity since the Balance Sheet Date in the Ordinary Course of Business. All of said assets are owned by each Gund Entity free and clear of any Encumbrances, except liens for (y) Encumbrances identified in Section 3.6(a) of the Disclosure Schedule and (z) the Permitted Exceptions.

(b) To the Knowledge of Sharks Co. and Arena Co., each tangible asset reflected on the Audited Balance Sheet (i) is in good condition and repair, consistent with its age and intended use (ordinary wear and tear excepted); (ii) complies in all material respects, and is being operated and otherwise used in material compliance, with all applicable Legal Requirements; and (iii) is adequate for the uses to which it is being put.

(c) None of the Gund Entities owns any real property or any interest in real property, except for the interests created under the use agreements identified in Section 3.6(c) of the Disclosure Schedule (such real property used thereunder is collectively referred to as the "**Leased Premises**"). Such Gund Entity enjoys peaceful and undisturbed possession of such premises. The Sellers have made available to the Buyer complete copies of all such use agreements. Such Gund Entity holds a valid interest in such use agreements, in each case free and clear of all title defects, Encumbrances and restrictions of any kind, except: (i) mechanics',



carriers', workers' and other similar liens arising in the Ordinary Course of Business and (ii) liens for current taxes not yet due and payable.

(d) None of the Gund Entities has leased or licensed any tangible personal property assets where annual payments under any such lease or license will exceed \$50,000 per annum.

(e) All leases pursuant to which a Gund Entity leases real or personal property are valid and effective in accordance with their respective terms and, to Sharks Co.'s or Arena Co.'s Knowledge, there exists no material default thereunder or occurrence or condition which could result in a material default thereunder or termination thereof.

(f) The Leased Premises are in a condition adequate for the conduct of the business of the Gund Entities in the Ordinary Course of Business.

**3.7 Bank Accounts.** Section 3.7 of the Disclosure Schedule accurately sets forth, with respect to each account, safe deposit box or similar arrangement maintained by or for the benefit of a Gund Entity at any bank or other financial institution:

- (a) the name and location of the institution at which such account is maintained;
- (b) the name in which such account is maintained and the account number of such account; and
- (c) the names of all individuals authorized to draw on or make withdrawals from such account.

**3.8 Receivables; Major Customers.**

(a) All existing accounts receivable of the Gund Entities as of December 31, 2001 (including those accounts receivable reflected on the Audited Balance Sheet that have not yet been collected and those accounts receivable that have arisen since such date and have not yet been collected) represent valid obligations of customers of the Gund Entities arising from bona fide transactions entered into in the Ordinary Course of Business. The Sellers do not have any Knowledge of any fact which causes it to believe that such accounts receivable, in the aggregate, will not be collected in full, net of reserves, on or before 180 days from the date of invoice.

(b) None of the Gund Entities has received any notice or other communication (in writing) specifically directed to a Gund Entity, indicating that a sponsor or other Person to a Contract listed pursuant to Section 3.10 may reduce the volume of business transacted by such Person with a Gund Entity below historical levels.

### **3.9 Proprietary Assets.**

(a) Section 3.9 of the Disclosure Schedule sets forth each of the following owned by a Gund Entity: all United States and foreign (i) patent and patent applications; (ii) registered trademarks, registered service marks, pending trademark applications, pending service mark applications, and registered domain names; (iii) registered copyrights and applications for copyright registration; and (iv) any other similar Proprietary Asset that is the subject of an application to, or certificate or registration issued by, any state, government or foreign legal authority. Section 3.10 of the Disclosure Schedule sets forth all agreements to which a Gund Entity is a party under which (A) Proprietary Assets are licensed by a third party to a Gund Entity, or licensed by a Gund Entity to a third party, and (B) the aggregate of all amounts (including, without limitation, royalties, honoraria and fees) payable by each party to such agreement has exceeded or will exceed \$100,000. Section 3.10 of the Disclosure Schedule also sets forth all agreements to which a Gund Entity is a party and any of the NHL, an NHL team or an NHL player is a party under which Proprietary Assets are licensed or otherwise conveyed, whether to or by such Gund Entity.

(b) Except for those trademarks and service marks licensed by a Gund Entity from a third party and except for immaterial common law trademarks, all of the trademarks and service marks presently used by a Gund Entity in connection with such Gund Entity's business are set forth in Section 3.9 of the Disclosure Schedule. All of the registered trademarks, registered service marks, pending trademark applications and pending service mark applications listed in Section 3.9 of the Disclosure Schedule are current, valid, and in full force and effect, and the trademarks and service marks covered by such registrations and applications have been used by the Gund Entities (and, to the Knowledge of Sharks Co. and Arena Co., by the licensees of the Gund Entities) in a manner that preserves and maintains the Gund Entities' rights in such trademarks and service marks. For purposes of clarification, nothing in the foregoing sentence is intended or shall be deemed to be a representation or warranty that any of the trademarks and service marks described in the foregoing sentence, if properly registered and maintained, are enforceable against third parties.

(c) The Gund Entities have paid all of the fees and made all of the filings (e.g., affidavits of use and renewals) necessary to maintain the registered trademarks, registered service marks, and registered domain names listed in Section 3.9 of the Disclosure Schedule and to maintain and prosecute the pending trademark applications and pending service mark applications listed in Section 3.9 of the Disclosure Schedule. Each Gund Entity owns all goodwill associated with all of the registered trademarks, registered service marks, pending trademark applications and pending service mark applications listed in Section 3.9 of the Disclosure Schedule.

(d) The Gund Entities own all copyrightable materials used by a Gund Entity in connection with such Gund Entity's business except for copyrightable materials: (i) licensed by a Gund Entity from a third party; or (ii) developed by a Gund Entity specifically for a third party (e.g., under a work-made-for hire agreement) and not used by such Gund Entity in connection with such Gund Entity's business following completion of such development; or (iii) to which a Gund Entity has the right under applicable law (e.g., under fair use, joint copyright

ownership, etc.) to use such copyrightable materials in the manner in which such Gund Entity currently uses such materials. There is no third party joint ownership copyright interest in any copyrightable materials owned by a Gund Entity that would have a Material Adverse Effect on such Gund Entity.

(e) All Proprietary Assets that are used by a Gund Entity in connection with such Gund Entity's business but are not owned by the Gund Entities have been licensed to the Gund Entities by third parties pursuant to current, valid and existing agreements. With respect to all Proprietary Assets to which a Gund Entity has granted any right currently in effect (including, without limitation, the right to manufacture, reproduce, license, use, distribute, market, display, modify, create derivative works of or exploit) to a third party, such grants have been made pursuant to current, valid and existing agreements.

(f) To the Knowledge of Sharks Co. and Arena Co., the use by a Gund Entity of Proprietary Assets owned or used by a Gund Entity will not infringe, misappropriate or otherwise violate or, if used by a Gund Entity in its business as currently conducted, would not misappropriate, infringe or otherwise violate, any Intellectual Property Right of others. To the Knowledge of Sharks Co. and Arena Co., none of the Gund Entities is infringing and has not at any time infringed or received any notice or other communication (in writing or otherwise) of any actual, alleged, possible or potential infringement of any Proprietary Asset owned or used by any other Person.

(g) To the Knowledge of Sharks Co. and Arena Co., no Person is misappropriating, infringing or otherwise violating, and no Proprietary Asset owned or used by any other Person misappropriates, infringes or otherwise violates or conflicts with, any Proprietary Asset owned by a Gund Entity.

(h) The Proprietary Assets owned by or licensed to the Gund Entities include all Proprietary Assets necessary to conduct the Gund Entities business to the same extent and in the same manner as currently conducted. To the Knowledge of Sharks Co. and Arena Co., such Proprietary Assets are owned by or licensed to the Gund Entities (as the case may be) free and clear of, and without liability under, all claims and right of third parties (other than, in the case of Proprietary Assets licensed to the Gund Entities, the respective licensors).

### **3.10 Contracts.**

(a) Section 3.10 of the Disclosure Schedule lists each of the following Contracts:

(i) any Contract or series of related Contracts requiring in the aggregate payments after the date hereof by or to a Gund Entity of more than \$100,000;

(ii) any Contract with or for the benefit of any current or former officer, director, stockholder, partner, member or employee of a Gund Entity (other than those Contracts listed in Section 3.15(b) of the Disclosure Schedule and Employee Benefit Plans described in Section 3.16(a) of the Disclosure Schedule);

(iii) any Contract with any labor union or association representing any employee of a Gund Entity;

(iv) any Contract for sale of any of the assets or properties of a Gund Entity other than in the Ordinary Course of Business;

(v) any agreement of surety, guarantee or indemnification, other than agreements in the Ordinary Course of Business;

(vi) any Contract containing covenants of a Gund Entity not to compete in any line of business, in any geographic area or with any Person or covenants of any other Person not to compete with a Gund Entity or in any line of business of a Gund Entity;

(vii) any Contract restricting the right of a Gund Entity to use any trademark, service mark or business name owned by a Gund Entity;

(viii) any Contract with any holder of securities of a Gund Entity as such (including, without limitation, any Contract containing an obligation to register any of such securities under any federal or state securities laws);

(ix) any Contract relating to the acquisition by a Gund Entity of any operating business or the securities of any other person;

(x) any Contract requiring the payment to any Person of a brokerage or sales commission or a finder's or referral fee (other than arrangements to pay a commission or fee in the Ordinary Course of Business);

(xi) any Contract or note relating to or evidencing outstanding indebtedness for borrowed money;

(xii) any lease, sublease or other Contract under which a Gund Entity is lessor or lessee of any real property or equipment or other tangible property with respect to obligations due after the date of hereof by or to a Gund Entity in excess of \$100,000;

(xiii) any Contract to which a Gund Entity is a party and any of the NHL, an NHL team or an NHL player is a party under which Proprietary Assets are licensed or otherwise conveyed, whether to or by such Gund Entity.

(xiv) any other material Contract not made in the Ordinary Course of Business.

(b) Each Contract listed on Section 3.10 of the Disclosure Schedule is valid and in full force and effect, and is enforceable by a Gund Entity in accordance with its material terms, except as enforceability may be limited by bankruptcy and other similar laws and general principles of equity.

(c) None of the Gund Entities nor, to the Knowledge of Sharks Co. and Arena Co., any other party to a material Contract is in default under such Contract. To the Knowledge of Sharks Co. or Arena Co., no action has been taken or has failed to be taken, that likely would (with or without notice or lapse of time) (i) result in a violation or breach of any of the provisions of any material Contract, (ii) give any Person the right to declare a default or exercise any remedy or hinder any material Contract, (iii) give any Person the right to accelerate the maturity or performance of any material Contract, or (iv) give any Person the right to cancel, terminate or modify any material Contract. None of the Gund Entities has waived any of its rights under any material Contract, except in the Ordinary Course of Business.

(d) (i) None of the Gund Entities has guaranteed or otherwise agreed to cause, insure or become liable for, and has ever pledged any of its assets to secure, the performance or payment of any obligation or other Liability of any other Person; and (ii) none of the Gund Entities has been a party to or bound by (A) any joint venture agreement, partnership agreement, profit sharing agreement, cost sharing agreement, loss sharing agreement or similar Contract, or (B) any Contract that creates or grants to any Person, or provides for the creation or grant of, any stock appreciation right, phantom stock right or similar right or interest.

(e) To the Knowledge of Sharks Co. and Arena Co., the performance of the Contracts will not result in any violation of or failure to comply with any Legal Requirement or cause (or has caused) a violation of the NHL's rules and regulations.

(f) Sharks Co. and Arena Co. have not received notice that a party to a material Contract is terminating, cancelling or modifying such material Contract or reducing or otherwise changing its activity thereunder so as to adversely affect the benefits derived or expected to be derived therefrom by a Gund Entity.

### **3.11 Compliance With Legal Requirements.**

(a) Each of the Gund Entities is in compliance with each material Legal Requirement and each rule and regulation of the NHL of any kind that is applicable to it or to the conduct of its business or the ownership or use of any of its assets. The representations and warranties in this Section 3.11 shall not apply with respect to any Plans.

(b) To the Knowledge of Sharks Co. and Arena Co., no event has occurred, and no condition or circumstance exists, that likely would (with or without notice or lapse of time) constitute or result directly or indirectly in a violation by a Gund Entity of, or a failure on the part of a Gund Entity to comply with, any material Legal Requirement.

(c) In the past five years, none of the Gund Entities has received any notice or other communication (in writing or otherwise) from any Governmental Body or the NHL, or any other Person, regarding (i) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement and each rule and regulation of the NHL of any kind, or (ii) any actual, alleged, possible or potential obligation on the part of a Gund Entity to undertake, or to bear all or any portion of the cost of, any cleanup or any remedial, corrective or response action of any nature.

(d) To the Knowledge of Sharks Co. and Arena Co., neither a Governmental Body nor the NHL has proposed any Legal Requirement or rule or regulation of any kind (other than any Legal Requirement that would be applicable generally to the sports and entertainment industry) that, if adopted or otherwise put into effect, would specifically affect a Gund Entity and could reasonably be expected to have the effect of preventing, delaying, making illegal or otherwise interfering with any of the transactions contemplated herein.

### **3.12 Governmental Authorizations.**

(a) There is no (i) Governmental Authorization that is held by a Gund Entity; or (ii) other Governmental Authorization that, to the Knowledge of Sharks Co. and Arena Co., is held by any employee and is used in connection with a Gund Entity's business. To the Knowledge of Sharks Co. and Arena Co. each Governmental Authorization, held by a Gund Entity, is valid and in full force and effect.

(b) The Governmental Authorizations identified in Section 3.12 of the Disclosure Schedule, if any, constitute all of the Governmental Authorizations that a Gund Entity is required to hold (i) to enable a Gund Entity to conduct its business in the manner in which its business is currently being conducted and (ii) to permit a Gund Entity to own and use its assets in the manner in which they are currently owned and used.

### **3.13 NHL Authorizations.**

(a) There is no (i) NHL Authorization held by a Gund Entity; or (ii) other NHL Authorization that is held by any employee and is used in connection with the business of the Partnerships.

(b) The NHL Authorizations identified in Section 3.13 of the Disclosure Schedule constitute all of the NHL Authorizations necessary (i) to enable a Gund Entity to conduct its business in the manner in which its business is currently being conducted and (ii) to permit a Gund Entity to own and use its assets in the manner in which they are currently owned and used.

### **3.14 Tax Matters.**

(a) Each Tax required to have been paid by a Gund Entity, or, to the Knowledge of a Gund Entity, Sharks Co. or Arena Co., claimed by any Governmental Body to be payable by a Gund Entity (whether pursuant to any Tax Return or otherwise) has been duly paid in full either on a timely basis or together with any interest and penalties thereon. Any Tax required to have been withheld or collected by a Gund Entity has been duly withheld and collected, and (to the extent required) each such Tax has been paid to the appropriate Governmental Body. Each Gund Entity has complied with all information reporting requirements, including maintenance of required records with respect thereto, in connection with amounts paid or owing to any employee, creditor, independent contractor, or other third party. There are no liens on any of the assets of any Gund Entity with respect to Taxes, other than liens for Taxes not yet due and payable or for Taxes that a Gund Entity is contesting in good faith through appropriate proceedings and for which appropriate reserves have been established.

(b) Section 3.14(b) of the Disclosure Schedule accurately identifies all Tax Returns required to be filed by or on behalf of a Gund Entity (“**Gund Returns**”) with any Governmental Body with respect to any taxable period ending on or before the date hereof. All Gund Returns (i) have been or will be filed when due, and (ii) have been, or will be when filed, accurately and completely prepared in material compliance with all applicable Legal Requirements. All amounts shown on the Gund Returns to be due from a Gund Entity on or before the date hereof, and all amounts otherwise payable by a Gund Entity in connection with the Gund Returns on or before the date hereof, have been paid. The Sellers have made available to the Buyer accurate and complete copies of Gund Returns filed by each Gund Entity. Each Gund Entity shall continue to file Tax Returns for the periods ending on or before the Closing Date and pay any Taxes due thereon from a Gund Entity.

(c) The Gund Entities’ liability for unpaid Taxes for all periods ending on or before the date of the Financial Statements does not, in the aggregate, exceed the amount of the current liability accruals for Taxes (excluding reserves for deferred taxes) reported in the Financial Statements. The Gund Entities have established in the Ordinary Course of Business reserves for the payment of all Taxes for the period from the date of the Financial Statements through the date hereof.

(d) Section 3.14(d) of the Disclosure Schedule accurately identifies each examination or audit of any Gund Return that has been conducted by any Governmental Body. The Sellers have made available to the Buyer accurate and complete copies of all audit reports and similar documents relating to Gund Returns. No extension or waiver of the limitation period applicable to any of the Gund Returns, is currently in effect, and no such extension or waiver has been requested from a Gund Entity.

(e) None of the Gund Entities is liable for Taxes incurred by any individual, trust, corporation, partnership or other entity other than a Gund Entity, either as a transferee or pursuant to Treasury Regulations Section 1.1502-6, or pursuant to any other provision of federal, state or local law or regulation. None of the Gund Entities is, or has ever been, a party to or bound by any tax indemnity agreement, tax sharing agreement, tax allocation agreement or similar Contract.

(f) None of the Gund Entities has any net operating losses or other tax attributes presently subject to limitation under Code Sections 382, 383, or 384, or the federal consolidated return regulations.

(g) None of the Gund Entities is a party to any joint venture, partnership or other arrangement or Contract which could be treated as a partnership for United States federal income tax purposes.

(h) None of the Gund Entities is (or has ever been) a party to any tax sharing agreement or tax indemnity agreement or has assumed the Tax liability of any other person under contract.

(i) No Gund Entity is a party to any safe harbor lease within the meaning of Section 168(f)(8) of the Code, as in effect prior to amendment by the Tax Equity and Fiscal Responsibility Act of 1982. The Buyer is not required to withhold tax on the Purchase Price by reason of Section 1445 of the Code or otherwise. No Gund Entity is a “consenting corporation” under Section 341(f) of the Code. No Gund Entity has entered into any compensatory agreements with respect to the performance of services which payment thereunder would result in a nondeductible expense pursuant to Sections 162(m) or 280G of the Code or an excise tax to the recipient of such payment pursuant to Section 4999 of the Code. No Gund Entity has been the “distributing corporation” (within the meaning of Section 355(c)(2) of the Code) with respect to a transaction described in Section 355 of the Code within the 3-year period ending as of the date of this Agreement. No Gund Entity has participated in an international boycott as defined in Code Section 999. No Gund Entity has agreed to any adjustment under Code Section 481(a) by reason of a change in accounting method or otherwise which will cause a Gund Entity to recognize income or gain following the Closing Date that the Gund Entity would not recognize absent such change. No Gund Entity has a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States of America and such foreign country. All Gund Entities are in compliance with the terms and conditions of any applicable Tax exemptions, Tax agreements or Tax orders of any government to which it may be subject or which it may have claimed, and the transactions contemplated by this Agreement will not have any adverse effect on such compliance.

(j) No Gund Entity will recognize taxable income on or after the Closing Date (i) attributable to events, transactions, sales, deposits, services or rentals occurring, received or performed before the Closing Date, (ii) attributable to any change in accounting method employed by a Gund Entity during any of its four previous taxable years, or (iii) attributable to any items of income or gain of a partnership reporting a Gund Entity as a partner, to the extent such items are properly attributable to periods of the partnership ending on or before the Closing Date.

(k) All options that a Gund Entity has treated as incentive stock options under Section 421 of the Code meet the requirements of Section 422 of the Code.

(l) Each Gund Entity has made timely and valid tax identification of any and all hedge transactions, including the hedged assets and/or liabilities. Each Gund Entity has made timely and valid tax identification of any securities held for sale in its capacity as a dealer in securities as defined in Section 475 of the Code.

(m) No Gund Entity has received a Tax Ruling (as defined below) or entered into a Closing Agreement (as defined below) with any taxing authority that would have a continuing material adverse effect after the Closing Date. “**Tax Ruling**”, as used in this Agreement, shall mean a written ruling of a taxing authority relating to Taxes. “**Closing Agreement**”, as used in this Agreement, shall mean a written and legally binding agreement with a taxing authority relating to Taxes.

(n) No Gund Entity has “corporate acquisition indebtedness” within the meaning of Section 279(b) of the Code.



(o) No Gund Entity has ever qualified as an "S corporation," within the meaning of Section 1361 of the Code.

(p) No Gund Entity has received a Tax opinion with respect to any transaction relating to it other than a transaction in the ordinary course of business. No Gund Entity is (or has ever been) the direct or indirect beneficiary of a guaranty of Tax benefits or any other arrangement that has the same economic effect with respect to any transaction or Tax opinion relating to it. No Gund Entity is a party to an understanding or arrangement described in Section 6111(d) or Section 6662(d)(2)(C)(iii) of the Code. No Gund Entity is a party to a lease arrangement involving a defeasance of rent, interest or principal.

### **3.15 Employee and Labor Matters.**

(a) There is no former employee of a Gund Entity who is receiving or is scheduled to receive (or whose spouse or other dependent is receiving or is scheduled to receive) any benefits (whether from a Gund Entity or otherwise) relating to such former employee's employment with a Gund Entity, other than health benefits as required under Section 4980B of the Code and Sections 601 through 608 of ERISA, in each case to be paid at such former employee's expense, and governmental benefits attributable to payroll taxes which benefits are to be paid directly from governmental sources and not by the employer.

(b) None of the Gund Entities is a party to or bound by any employment agreement or any union contract, collective bargaining agreement or similar Contract.

(c) The employment of each of a Gund Entity's employees is terminable by the Gund Entity at will.

(d) Prior to the Closing, the Sellers have made available to the Buyer accurate and complete copies of all employee manuals and handbooks, disclosure materials, policy statements, employment agreements and other materials relating to the employment of the current employees, other than hockey players, of the Gund Entities.

(e) To the Knowledge of Sharks Co. or Arena Co., no employee of a Gund Entity is a party to or is bound by any confidentiality agreement or other Contract (with any Person other than a Gund Entity) that would be reasonably likely to have a Material Adverse Effect on a Gund Entity's business or operations.

(f) To the Knowledge of Sharks Co. and Arena Co, none of the Gund Entities is engaged, nor in the past three years has been engaged, in any unfair labor practice of any nature. There has not in the past three years been any slowdown, work stoppage, labor dispute or union organizing activity, or any similar activity or dispute, affecting a Gund Entity or any of its employees. There is not now pending, and to the Knowledge of Sharks Co. and Arena Co., no Person has threatened to commence, any such slowdown, work stoppage or labor dispute.

(g) No Gund Entity has received notice that a Proceeding has been or is being initiated against an employee of a Gund Entity relating to visa and work permit requirements.

(h) No Gund Entity has received notice of any charge, investigation, administrative proceeding, or formal complaint of discrimination (including discrimination based upon sex, age, religion, marital status, race, national origin, sexual preference, disability, or veteran status) pending, or threatened, before the Equal Employment Opportunity Commission or any federal, state, or local agency.

### **3.16 Benefit Plans; ERISA.**

(a) Section 3.16(a) of the Disclosure Schedule lists (i) all Employee Benefit Plans maintained by the Gund Entities, (ii) all employment agreements, including, but not limited to, any individual benefit arrangement, policy or practice with respect to any current or former employee, partner, member or director of a Gund Entity, and (iii) all other employee benefit, bonus or other incentive compensation, stock option, stock purchase, stock appreciation, severance pay, lay-off or reduction in force, change in control, sick pay, vacation pay, salary continuation, retainer, leave of absence, educational assistance, service award, employee discount, fringe benefit plans, arrangements, policies or practices, whether legally binding or not, which a Gund Entity maintains, contributes to or has any obligation to or liability for (collectively, the “Plans”).

(b) Section 3.16(b) of the Disclosure Schedule identifies which of the Current Benefit Plans is a Defined Benefit Plan.

(c) Section 3.16(c) of the Disclosure Schedule identifies which Current Benefit Plans is a Multiemployer Plan.

(d) Section 3.16(d) of the Disclosure Schedule identifies which of the Current Benefit Plans of a Gund Entity is a welfare benefit plan that provides health benefits to an employee after the employee’s termination of employment or retirement in addition to those required under Section 4980B of the Code and Sections 601 through 608 of ERISA.

(e) Each Plan set forth on Section 3.16(e) of the Disclosure Schedule (a “Section 3.16(e) Plan”) complies by its terms and in operation in all material respects with the requirements provided by any and all statutes, orders or governmental rules or regulations currently in effect and applicable to the Section 3.16(e) Plan, including but not limited to ERISA and the Code.

(f) All reports, forms and other documents required to be filed with any Governmental Body with respect to any Section 3.16(e) Plan (including without limitation, Forms 5500) have been timely filed and are accurate in all material respects.

(g) Each Section 3.16(e) Plan intended to qualify under Section 401(a) of the Code is the subject of a favorable determination letter or an opinion letter issued by the Internal Revenue Service that provides that it so qualifies through the last day of the “TRA 86 Remedial Amendment Period,” as such term is defined in Section 3.02 of Revenue Procedure 96-55 issued by the Internal Revenue Service and that its related trust is exempt from taxation under Section 501 of the Code. To the Knowledge of Sharks Co. and Arena Co., nothing has occurred since

the date of the Internal Revenue Service's favorable determination letter that could adversely affect the qualification of such Section 3.16(e) Plan or the tax exempt status of its related trust.

(h) None of the Section 3.16(e) Plans is a "defined benefit plan" as defined in Section 3(35) of ERISA.

(i) None of the Section 3.16(e) Plans is a pension plan subject to the funding standards of Section 302 of ERISA or Section 412 of the Code, a "multiemployer plan" as defined in Section 3(37) of ERISA or Section 414(f) of the Code or a "multiple employer plan" within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code.

(j) With respect to each Section 3.16(e) Plan, all contributions for all periods ending prior to the Closing (including periods from the first day of the current plan year to the Closing) have been made prior to the Closing by a Gund Entity in accordance with past practice and the recommended contribution in any applicable actuarial report.

(k) All insurance premiums have been paid in full, subject only to normal retrospective adjustments in the ordinary course, with regard to the Section 3.16(e) Plans for plan years ending on or before the Closing.

(l) With respect to each Section 3.16(e) Plan:

(i) no prohibited transactions (as defined in Section 406 or 407 of ERISA or Section 4975 of the Code) have occurred for which an exemption is not available;

(ii) no action or claims (other than routine claims for benefits made in the ordinary course of administration of a Section 3.16(e) Plan for which administrative review procedures have not been exhausted) are pending, or to the Knowledge of Sharks Co. and Arena Co., threatened or imminent against or with respect to the Section 3.16(e) Plan, any employer who is participating (or who has participated) in any Section 3.16(e) Plan or any fiduciary (as defined in Section 3(21) of ERISA) of the Section 3.16(e) Plan and none of the Gund Entities or any fiduciary has any Knowledge of any facts which could give rise to any such action or claim;

(iii) it provides that it may be amended or terminated at any time and, except for benefits protected under Section 411(d) of the Code or otherwise vested, all benefits payable to current, terminated employees or any beneficiary may be amended or terminated by a Gund Entity at any time without liability; and

(iv) it does not provide for any increase in benefits on or after the Closing.

(m) With respect to each Section 3.16(e) Plan, none of the Gund Entities has any liability or is threatened with any liability (whether joint or several) (i) for any excise tax imposed by Sections 4971, 4975, 4976, 4977 or 4979 of the Code, or (ii) to a fine under Section 502 of ERISA.

(n) All of the Section 3.16(e) Plans, to the extent applicable, are in material compliance with the continuation of group health coverage provisions contained in Section 4980B of the Code and Sections 601 through 608 of ERISA.

(o) True, correct and complete copies of all documents creating or evidencing any Plan listed in the Disclosure Schedule have been made available to the Buyer, and true, correct and complete copies of all reports, forms and other documents required to be filed with any governmental entity (including, without limitation, summary plan descriptions, Forms 5500 and summary annual reports for all plans subject to ERISA) have been made available to the Buyer. There are no negotiations, demands or proposals which are pending or have been made which concern matters now covered, or that would be covered, by the Section 3.16(e) Plans.

(p) All expenses and liabilities relating to all of the Section 3.16(e) Plans have been, and will on the Closing be fully and properly accrued on a Gund Entity's books and records and disclosed in accordance with generally accepted accounting principles and in Section 3.16(e) Plan financial statements.

(q) With respect to any Multiemployer Plan to which any Gund Entity contributed (or has at any time contributed or had an obligation to contribute): (i) each Gund Entity has or will have, as of the Closing Date, made all contributions to each such Multiemployer Plan required by the terms of such Multiemployer Plan or any collective bargaining agreement; (ii) none of the Gund Entities has incurred any withdrawal liability under Title IV of ERISA; (iii) to the Knowledge of the Gund Entities, no such Multiemployer Plan is in reorganization or insolvent (as those terms are defined in Sections 4241 and 4245 of ERISA, respectively); and (iv) none of the Gund Entities has engaged in a transaction which could subject it to liability under Section 4212(c) of ERISA.

**3.17 Environmental Matters.** Each of the Gund Entities is and always has been in compliance in all material respects with all Environmental Laws. Each of the Gund Entities has now and at all times has had all the necessary material permits required under Environmental Laws for the operation of its business, and is not and has not been in violation of any of the terms and conditions of any of its permits in any material respect. To the Knowledge of Sharks Co. and Arena Co., there are no circumstances currently existing that may prevent or interfere with a Gund Entity's material compliance with any Environmental Law. None of the Gund Entities has received any notice or other communication (in writing or otherwise) that alleges that it is not in compliance with or otherwise potentially liable under any Environmental Law including, without limitation, notice of any listing, investigation, or liability under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, or comparable state statutes with respect to any of the Leased Premises or any parcel of real property or facility owned, occupied, controlled, leased, or operated by a Gund Entity or to which a Gund Entity has sent any Hazardous Materials at any time prior to the date hereof. None of the Gund Entities is or has been engaged in any activities involving the generation, manufacture, production, transportation, recycling, importation, use, treatment, refinement, processing, handling, storage, discharging, release, or disposal of any Hazardous Materials, or the arrangement for any of the foregoing at any of the Leased Premises or at any parcel of real property or facility owned, occupied, controlled, leased, or operated by a Gund Entity on or at any time prior to the date

hereof other than as required in the Ordinary Course of Business (without giving effect to subparagraph (b) of the definition thereof) and in material compliance with applicable Environmental Laws. Additionally, (a) there are not and have not been any releases or threatened releases of any Hazardous Materials in any quantity that could be expected to give rise to liability under any Environmental Law by any Gund Entity or any employee, contractor, agent or invitee of a Gund Entity at, on, or from any of the Leased Premises or any parcel of real property or facility owned, occupied, controlled, leased, or operated by a Gund Entity at any time prior to the date hereof and (b) to the Knowledge of Sharks Co. and Arena Co. and except with respect to those Hazardous Materials for which the City of San Jose or the Redevelopment Agency of the City of San Jose is required to investigate, remediate or provide indemnity pursuant to the San Jose Arena Agreement to Enter dated as of October 24, 1991 by and between The City of San Jose, The Redevelopment Agency of the City of San Jose and Arena Co., there are not and have not been any releases or threatened releases of any Hazardous Materials in any quantity by any other entity or person at, on, or from any of the Leased Premises or any parcel of real property or facility owned, occupied, controlled, leased, or operated by a Gund Entity at any time prior to the date hereof.

**3.18 Sale of Products; Performance of Services.** Except in the Ordinary Course of Business, none of the Gund Entities has made any express warranties or guarantees relating to its products or services that are in effect as of the date hereof. No customer or other Person has ever asserted or threatened to assert any material claim against a Gund Entity (i) under or based upon any warranty provided by or on behalf of a Gund Entity, or (ii) under or based upon any other warranty relating to any product sold by a Gund Entity or any services performed by a Gund Entity. To the Knowledge of Sharks Co. and Arena Co., no event has occurred, and no condition or circumstance exists, that likely would (with or without notice or lapse of time) directly or indirectly give rise to or serve as a basis for the assertion of any such claim.

**3.19 Insurance.** The Sellers and the Gund Entities, as applicable, have in place insurance policies sufficient to adequately insure the business, assets, operations, and potential liabilities of the Gund Entities and comply with all insurance coverage requirements of the NHL and the Contracts. All of the information contained in the applications submitted in connection with said policies was (at the times said applications were submitted) accurate and complete in all material respects, and all premiums and other amounts owing with respect to said policies have been paid in full on a timely basis. All such policies are "claims made" policies and will be maintained by the Sellers and the Gund Entities, as applicable, through the Closing.

**3.20 Related Party Transactions.**

(a) No Related Party has at any time since January 1, 2001, had, any direct or indirect interest of any nature in any asset used in or otherwise relating to the business of a Gund Entity;

(b) As of the Balance Sheet Date and as of the Closing, no Related Party is, or has been, indebted to a Gund Entity;

(c) No Related Party has entered into, or has had any direct or indirect financial interest in, any material Contract, transaction or business dealing of any nature involving a Gund Entity and no such Contract, transaction or business dealing of any nature is necessary to operate the business of a Gund Entity as it is currently conducted;

(d) No Related Party has any claim or right against a Gund Entity; and

(e) To the Knowledge of Sharks Co. and Arena Co., no event has occurred, and no condition or circumstance exists, that likely would (with or without notice or lapse of time) directly or indirectly give rise to or serve as a basis for any claim or right in favor of any Related Party against a Gund Entity.

**3.21 Proceedings; Orders.** There is no pending Proceeding which will not be covered in full by Shark's Co.'s, Arena Co.'s or a Gund Entity's insurance policy. Neither Sharks Co. nor Arena Co. is aware of an event which would give rise to a Proceeding which will not be covered in full by its or a Gund Entity's insurance policy. To the Knowledge of Sharks Co. and Arena Co., no Person has threatened to commence any Proceeding (i) that involves a Gund Entity as a party; or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated hereunder or under the Transaction Agreements.

(b) There is no Order to which a Gund Entity, or any of the assets owned or used by a Gund Entity, is subject that would have a Material Adverse Effect on a Gund Entity.

(c) To the Knowledge of Sharks Co. and Arena Co., no officer or employee of a Gund Entity is subject to any Order that prohibits such officer or employee from engaging in or continuing any conduct, activity or practice relating to a Gund Entity's business.

(d) There is no Order that, or to the Knowledge of Sharks Co. and Arena Co., proposed Order (other than any proposed Order that would be applicable generally to the sports and entertainment industry) that, if issued or otherwise put into effect, (i) likely would have a Material Adverse Effect on a Gund Entity's business, condition, assets, liabilities, operations, financial performance, net income or prospects (or on any aspect or portion thereof) or on the ability of a Gund Entity to comply with or perform any covenant or obligation under this Agreement or any of the other Transaction Agreements, or (ii) may have the effect of preventing, delaying, making legal or otherwise interfering with any of the transactions contemplated hereunder or thereunder.

**3.22 Non-Contravention; Consents.** Neither the execution and delivery of this Agreement or the other Transaction Agreements, nor the consummation or performance of any of the transactions contemplated hereunder or thereunder, will directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with or result in a violation of any of the provisions of a Gund Entity's Organizational Documents;

(b) to the Knowledge of Sharks Co. and Arena Co., contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the transactions contemplated hereunder or to exercise any remedy or obtain any relief under, any Legal Requirement or any Order to which a Gund Entity, or any of the assets owned or used by a Gund Entity, is subject;

(c) cause a Gund Entity to become subject to, or to become liable for the payment of, any Tax;

(d) cause any of the assets owned or used by a Gund Entity to be reassessed or revalued by any taxing authority or other Governmental Body;

(e) to the Knowledge of Sharks Co. and Arena Co., contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by a Gund Entity or any of its employees or that otherwise relates to a Gund Entity's business or to any of the assets owned or used by a Gund Entity;

(f) contravene, conflict with or result in a violation or breach of, or result in a default under, any material provision of any of the Contracts;

(g) give any Person the right to (i) declare a default or exercise any remedy under any Contract, (ii) accelerate the maturity or performance of any Contract, or (iii) cancel, terminate or modify any Contract;

(h) give any Person the right to any payment by a Gund Entity or give rise to any acceleration or change in the severance payments or other contingent obligations of any nature whatsoever of a Gund Entity in favor of any Person, in any such case as a result of the change in control of a Gund Entity or otherwise resulting from the transactions contemplated hereunder;

(i) result in the imposition or creation of any Encumbrance upon or with respect to any asset owned or used by a Gund Entity; or

(j) require a Gund Entity to make any filing with or give any notice to, or obtain any Consent from, any Person in connection with the execution and delivery of this Agreement and the other Transaction Agreements or the consummation or performance of any of the transactions contemplated hereunder.

**3.23 Brokers.** None of Sharks Co., Arena Co. or the Gund Entities has agreed or become obligated to pay, or taken any action that likely would result in any Person claiming to be entitled to receive, any brokerage commission, finder's fee or similar commission or fee in connection with any of the transactions contemplated hereunder.

### **3.24 Full Disclosure.**

(a) This Agreement (including all Schedules and Exhibits hereto), and the Transaction Agreements taken as a whole do not contain any untrue statement of material fact or omit to state any fact necessary to make any of the representations, warranties or statements contained therein on behalf of each of Sharks Co. and Arena Co. not misleading. To the extent any representation or warranty permits omission of items otherwise required to be discussed because they are not material or do not or would not have a Material Adverse Effect on any of the Gund Entities, such omissions in the aggregate will not and do not have a Material Adverse Effect on any of the Gund Entities.

(b) As of the date of this Agreement, the Sellers have provided the Buyer and their Representatives with full and complete access to all records of each Gund Entity, including without limitation, all of the Contracts listed on Section 3.10 of the Disclosure Schedule.

**3.25 Powers of Attorney.** None of the Gund Entities has given a power of attorney to any Person.

**3.26 Voting Arrangements.** There are no outstanding agreements, voting trusts, proxies or other arrangements or understandings relating to the voting of any shares of the capital stock or partnership or member interests of any of the Gund Entities.

## **ARTICLE 4**

### **REPRESENTATIONS AND WARRANTIES OF THE GUND TRUST**

The Gund Trust represents and warrants to the Buyer as follows:

**4.1 Status.** The Gund Trust is an entity duly organized and validly existing. The Gund Trust has all requisite trust power and authority to own or lease and operate its properties and to enter into and carry out the provisions of this Agreement and the Transaction Agreements to which it is a party.

**4.2 Power and Authority.** The Gund Trust has the trust power and authority to execute and deliver, and to perform its obligations under this Agreement and the Transaction Agreements to which it is a party. The Gund Trust has duly authorized the execution, delivery and performance by the Gund Trust of this Agreement and the Transaction Agreements to which it is a party. This Agreement has been, and, as of the Closing, Transaction Agreements to be delivered by the Gund Trust at the Closing will have been, duly executed and delivered by the Gund Trust, and this Agreement constitutes, and each of the Transaction Agreements to which it is a party, will constitute upon execution and delivery by the Gund Trust, a valid and binding agreement of the Gund Trust enforceable against the Gund Trust in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance and other similar Legal Requirements and generally applicable principles of equity affecting the enforcement of creditors rights and



remedies generally regardless of whether such enforceability is considered in a proceeding at law or in equity.

**4.3 Brokers.** The Gund Trust has not agreed or become obligated to pay, or taken any action that likely would result in any Person claiming to be entitled to receive, any brokerage commission, finder's fee or similar commission or fee in connection with any of the transactions contemplated hereunder.

**4.4 Interests in the Partnership and Other Enterprises.** The Gund Trust has not granted to any Person other than the Buyer any right to purchase or acquire the Gund Trust's interests in the Partnerships. The Gund Trust owns its interests in the Partnerships free and clear of any and all Encumbrances. After the Closing, the Gund Trust will retain no rights under the limited partnership agreement of Sharks LP or Arena LP. The Gund Trust acknowledges that upon the Closing, Gund shall own the Class C Units and that the Gund Trust shall have no interest of any kind in such Class C Units.

## ARTICLE 5

### CONDUCT OF BUSINESS PENDING THE CLOSING

#### 5.1 Conduct of Business by the Gund Entities Pending the Closing.

(a) Subject to Section 5.1(c), Sharks Co. and Arena Co. agree that, between the date of this Agreement and the Closing, unless the Buyer shall otherwise consent in writing (which consent shall not be unreasonably withheld or delayed):

(i) the business of each of the Gund Entities shall be conducted only in, and each Gund Entity shall not take any action except in, the Ordinary Course of Business; and

(ii) each of the Gund Entities shall use its reasonable commercial efforts to preserve substantially intact its business organization, to keep available the services of the current officers, employees and consultants of such Gund Entity and to preserve the current relationships of such Gund Entity with customers, suppliers and other persons with which such Gund Entity has significant business relations.

(b) Subject to Section 5.1(c), each Gund Entity shall not, between the date of this Agreement and the Closing, directly or indirectly, do, or propose to do, any of the following without the prior written consent of the Buyer (which consent shall not be unreasonably withheld or delayed):

(i) amend or otherwise change its Organizational Documents;

(ii) issue, sell, pledge, lease, dispose of, grant, create an Encumbrance on, or authorize the issuance, sale, pledge, lease, disposition, grant or creation of an Encumbrance on, (A) any ownership interest of a Gund Entity (including, without limitation, any

(ix) delay or postpone the payment of accounts payable or other Liabilities outside the Ordinary Course of Business;

(x) except in the Ordinary Course of Business, grant any license in respect of the trademarks, service marks or business names owned by a Gund Entity;

(xi) cancel, compromise, waive, release or settle any Proceeding, except with respect to any cancellation, compromise, waiver, release or settlement which involves only the payment of damages in an amount less than \$25,000 individually or in an aggregate amount of less than \$75,000 and does not involve injunctive or other equitable relief (excluding amounts covered by Sharks Co.'s, Arena Co's or any Gund Entity's insurance);

(xii) make or change any material election in respect of Taxes, amend any Tax Return, adopt or change any accounting method in respect of Taxes, enter into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement, settlement or compromise of any claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes with any Governmental Body or otherwise; or take any action with respect to the computation of Taxes or the preparation of Tax Returns except in the Ordinary Course of Business or

(xiii) authorize, enter into or amend any Contract that, if fully performed, would not be permitted under this Section 5.1(b).

(c) Nothing in this Section 5.1 entitles the Buyer to any control over or consent rights with respect to the operation of the Franchise, provided, however, if an action by a Seller or Gund Entity contravenes, violates or is inconsistent with a term or provision of this Agreement or any Transaction Agreement, the Buyer may pursue any and all remedies available to it pursuant to this Agreement, the Transaction Agreements or applicable law except that any remedy or damages for breach or alleged breach of Section 5.2 will be determined by the commissioner of the NHL pursuant to Article VI of the Lex Scripta. Notwithstanding the foregoing, the Buyer may decide not to consummate the transactions contemplated by this Agreement because of a breach or alleged breach of Section 5.2.

**5.2 Conduct of Franchise.** After the date of this Agreement, Gund will not authorize any player trade, amendment to any player agreement, make a commitment to any player for the Franchise or otherwise make a material commitment or change in the operation of the Franchise without the written consent of Greg Jamison.

## ARTICLE 6

### ADDITIONAL AGREEMENTS

**6.1 Further Assurances.** Each party shall execute and deliver such additional instruments and other documents and shall take such further actions as may be necessary or

appropriate to effectuate, carry out and comply with all of the terms of this Agreement and the Transaction Agreements and the transactions contemplated hereunder and thereunder.

**6.2 Compliance with Covenants.** Each of Sharks Co. and Arena Co. shall use reasonable best efforts to cause the other Sellers to comply with all of the covenants of such Sellers under this Agreement.

**6.3 Cooperation.** Each of the parties agrees to cooperate with the other in the preparation and filing of all forms, notifications, reports and information, including, without limitation, any communications with the NHL, required or reasonably deemed advisable pursuant to any law, rule or regulation in connection with the transactions contemplated by this Agreement and to use its reasonable best efforts to agree jointly on a method to overcome any objections by the NHL or any Governmental Body to any such transactions.

**6.4 Other Actions.** Each of the parties hereto shall use its reasonable best efforts to take, or cause to be taken, all appropriate actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated herein, including, without limitation, using its reasonable best efforts to obtain all Governmental Authorizations, NHL Authorizations and Consents of parties to Contracts with the Sellers as are necessary for the consummation of the transactions contemplated under this Agreement and the Transaction Agreements. Each of the parties shall make on a prompt and timely basis all governmental or regulatory notifications and filings required to be made by it for the consummation of the transactions contemplated under this Agreement and the Transaction Agreements.

**6.5 Access to Information; Due Diligence Review.** From the date hereof to the Closing Date, the Sellers shall, and shall cause each Gund Entity and each of their directors, officers, employees, trustees, auditors, counsel and agents to, afford the Buyer and the Buyer's officers, employees, auditors, counsel and agents reasonable access at such mutually agreed upon reasonable times to its properties, offices and other facilities, to its officers and employees and to all books and records, and shall furnish such persons with all financial, operating and other data and information as may be reasonably requested. No information provided to or obtained by the Buyer shall affect any representation or warranty in this Agreement. After the Closing, the Buyer shall afford the Sellers and its auditors reasonable access at such mutually agreed upon reasonable times to its properties, offices and other facilities, to its officers and employees, and shall furnish such persons with all financial, operating and other data and information as may be reasonably requested in connection with the review of the December 31, 2001 Balance Sheet as contemplated by Section 1.3.

**6.6 Notification of Certain Matters.** Each of the parties to this Agreement shall give prompt notice to the other parties of the occurrence or non-occurrence of any event that would likely cause any representation or warranty made by such party herein to be untrue or inaccurate or any covenant, condition or agreement contained herein not to be complied with or satisfied (other than to actions taken or events occurring that were consented to by the Buyer); provided, however, that, any such disclosure (other than to actions taken or events occurring that were consented to by the Buyer) shall not in any way be deemed to amend, modify or in any way

affect the representations, warranties and covenants or indemnities made by any party in or pursuant to this Agreement).

**6.7 Confidentiality; Publicity.** Except as may be required by law or as otherwise permitted or expressly contemplated herein, no party hereto or their respective Affiliates, employees, agents and representatives shall disclose to any third party this Agreement, the subject matter or terms hereof or any confidential information or other proprietary knowledge concerning the business or affairs of any other party that it may have acquired from such party in the course of pursuing the transactions contemplated by this Agreement ("**Confidential Information**") without the prior consent of the other parties hereto; provided, that any information that is otherwise publicly available, without breach of this provision, or has been obtained from a third party without a breach of such third party's duties, shall not be deemed Confidential Information. The Buyer and the Sellers will agree to make such press releases as they determine is appropriate and may make such public disclosure as they believe in good faith to be required by law. No press release or other public announcement related to this Agreement or the transactions contemplated hereunder shall be issued by a party hereto without the prior written consent of the other parties hereto. Notwithstanding the foregoing, upon the Closing, all Confidential Information will be owned by the Buyer and the Buyer may disclose such Confidential Information to a third party at its sole discretion, without the consent of the Sellers.

**6.8 No Other Discussions Etc.** The Sellers and their Affiliates, employees, agents and representatives will not (i) initiate or encourage the initiation by others of discussions or negotiations with third parties or respond to solicitations by third persons relating to any merger, sale or other disposition of any of the Gund Entities or any substantial part of the assets, capital stock (or derivatives thereof), business or properties of any of the Gund Entities (whether by merger, consolidation, sale of stock, sale of assets, license or otherwise), or (ii) enter into any agreement or commitment (whether or not binding) with respect to any of the foregoing transactions.

**6.9 Taxes.**

(a) The Sellers shall be responsible for all Taxes due by reason of the consummation of the Buyer's purchase of the Interests hereunder. At their sole cost and expense, Sharks Co. and Arena Co. shall cause the Gund Entities' accountants to prepare and the Gund Entities to timely file all Gund Returns not already filed for them for all tax periods ended or ending on or before the Closing Date due after the Closing Date (the "**Final Returns**"), and the Sellers shall pay any Taxes due thereon. The Final Returns shall be prepared in a manner consistent with previously filed Gund Returns. Sharks Co. and Arena Co. (or their authorized representative) shall send a copy of all Final Returns to the Buyer for its review and comment and, if required, appropriate execution, at least fifteen (15) days prior to the filing thereof.

(b) Notwithstanding anything herein to the contrary, the Sellers shall pay all federal and state income Taxes with respect to Gund Entities arising in connection with the operation of the Gund Entities for periods up to the Closing that may be due after the Closing Date. The parties agree that if a Gund Entity is permitted but not required under applicable Tax Laws to treat the Closing Date as the last day of a taxable period, they shall treat such day as the

last day of a taxable period. For purposes hereof, any federal and state Taxes for a taxable period beginning before and ending after the Closing Date with respect to a Gund Entity shall be apportioned between the portion of the period ending on the Closing Date and the portion of the period commencing on the day immediately following the Closing Date based on a closing of the books, and each such portion of such period shall be deemed to be a taxable period (whether or not it is in fact a taxable period). If requested by the Buyer, the Sellers will make elections under Section 754 of the Code for the Schedule A Interests and the Partnerships.

(c) The Buyer will permit the Sellers and their representatives to have access to any and all books and records as they may reasonably request, and will provide Sellers with reasonable assistance of Buyer employees consistent with the assistance historically provided by employees in connection with the preparation of Gund Returns, in connection with preparing any such Tax Return or responding to the requests of any Governmental Body regarding any tax return filed by Sharks LP, Arena LP, any Schedule A Interest or their partners, members or shareholders.

**6.10 Change of Corporate Names.** The Sellers will cause the Board of Directors and shareholders of Sharks Co. and Arena Co. to approve and authorize the change of name of Sharks Co. and Arena Co., and an amendment of the Articles of Incorporation of each corporation will be filed with the California Secretary of State within thirty (30) days of the Closing.

**6.11 Buyer Indemnity.** Buyer (the “**Indemnitor**”) will indemnify and hold each of Sharks Co. and Arena Co. (each a “**Beneficiary**”) harmless from and against any loss, expense, liability or other damage, including reasonable attorneys’ fees and costs of investigation, to the extent of the amount of such loss, expense, liability or other damage (collectively, “**Damages**”) arising from or relating to any past, present or future liability or obligation of Sharks LP, Arena LP or Bay Area Tennis to the extent that such liability was included in the “liabilities” column in the December 31, 2001 Balance Sheet. If a Beneficiary desires to make a claim against an Indemnitor for indemnification, the Beneficiary will give written notice to the Indemnitor of any action, suit, proceeding or demand made on the Beneficiary for which Beneficiary could claim indemnification under this Section 6.11 and will advise Indemnitor, in writing, to the extent known, of the amount and circumstances of the claim. Indemnitor is obligated to defend Beneficiary, with counsel reasonably acceptable to Beneficiary. If the Indemnitor agrees in writing that it is responsible to indemnify (fully and completely) for the claim under this Section 6.11, the Beneficiary will give the Indemnitor (at the sole expense of the Indemnitor) full authority to defend, adjust, compromise or settle the action, suit, proceeding, demand or claim as to which notice has been given, except to the extent any settlement, judgment, order or decree involves anything, other than the payment of money by the Indemnitor. If the exception of the preceding sentence applies, the Indemnitor will use all reasonable efforts to consult with Beneficiary, and no Indemnitor has any authority to agree to any settlement, judgment, order or decree without the Beneficiary’s consent which consent will not be unreasonably withheld.

**6.12 Indemnity of Sharks Co. and Arena Co.** Sharks Co. and Arena Co. will jointly and severally indemnify the Buyer against any claim by Premier Sports Marketing for the \$250,000 payable recorded on the Partnership’s books and retained by Sharks Co. and Arena Co.

## ARTICLE 7

### CONDITIONS TO THE OBLIGATIONS OF THE BUYER

The obligation of the Buyer to effect the Purchased Interests and the other transactions contemplated hereunder shall be subject to the fulfillment at or prior to the Closing of the following conditions, any or all of which may be waived in whole or in part by the Buyer:

**7.1 Accuracy of Representations and Warranties and Compliance with Obligations.** The representations and warranties of each of Sharks Co., Arena Co. and the Gund Trust in this Agreement shall be true and correct in all material respects (or, for representations and warranties that have any materiality qualifiers, in all respects) at and as of the Closing Date with the same force and effect as though made at and as of that time, except (i) for changes permitted by Section 5.1 or other sections of this Agreement and (ii) that those representations and warranties that address matters only as of a particular date shall remain true and correct as of such date. The Sellers shall have performed or complied with all of their obligations required by this Agreement to be performed or complied with at or prior to the Closing Date. Sharks Co. and Arena Co. shall have delivered to the Buyer a certificate signed by a duly authorized officer of each of Sharks Co. and Arena Co., dated as of the Closing Date, certifying that their representations and warranties in Article 3 are true and correct in all material respects and that all such obligations have been performed and complied with as of the Closing Date. The Gund Trust shall have delivered to the Buyer a certificate signed by its trustee, dated as of the Closing Date, certifying that its representations and warranties in Article 4 are true and correct in all material respects and that all such obligations have been performed and complied with as of the Closing Date.

**7.2 No Material Adverse Effect or Destruction of Property.** Between the date hereof and the Closing Date: (a) there shall have been no Material Adverse Effect on any Gund Entity or the Leased Premises, (b) there shall have been no adverse federal, state or local legislative or regulatory change or change in the NHL's rules and regulations, affecting in any respect the services, products or business of the Gund Entities which change is reasonably likely to have a Material Adverse Effect on a Gund Entity and (c) none of the assets of a Gund Entity (including the Leased Premises) shall have been damaged by fire, flood, casualty, act of God or the public enemy or other cause (regardless of insurance coverage for such damage) which damage is reasonably likely to have a Material Adverse Effect on a Gund Entity or the Leased Premises, and the Sellers shall have delivered to the Buyer a certificate as to clauses (a), (b) and (c), dated as of the Closing Date, to that effect.

**7.3 Corporate Certificate.** The Sellers shall have delivered to the Buyer (i) copies of each Gund Entity's Organization Documents no later than fifteen (15) days prior to the Closing Date, (ii) copies of resolutions adopted by the respective Management of each Gund Entity authorizing the transactions contemplated by this Agreement, and (iii) a certificate of good standing of each Gund Entity issued by the jurisdiction of its formation and each other state in which it is qualified to do business as of a date not more than five (5) days prior to the Closing Date, and all of such documents as to such Gund Entity shall be certified as of the Closing Date by an officer of each Gund Entity as being true, correct and complete.

**7.4 Opinion of Counsel.** The Buyer shall have received an opinion, dated as of the Closing Date, from counsel for Sharks Co., Arena Co. and Gund, covering the matters set forth in Exhibit D. The Buyer shall have received an opinion, dated as of the Closing Date, from counsel for the Gund Trust covering the matters set forth in Exhibit E.

**7.5 Consents.** The Buyer shall have received (at its sole expense) the Consents to the purchase and sale of the Purchased Interests and other transactions contemplated hereunder and waivers of rights to terminate or modify any rights or obligations of the Sellers, from the AHL, the City of San Jose, Logitech Ice Center at San Jose, the CAVS/Gund Arena Company, and Anheuser-Busch, Incorporated (pursuant to the Contract listed as Item 1 of Section 3.2(b) of the Disclosure Schedule). The Buyer shall have obtained any applicable license or other approvals required under state laws and all other Governmental Bodies with respect to the transactions contemplated hereunder.

**7.6 No Adverse Litigation.** There shall not be pending or threatened any Proceeding by or before any court or other governmental body that shall seek to restrain, prohibit, invalidate or collect damages arising out of the Purchased Interests or other transactions hereunder.

**7.7 Certificates; Termination.** The Sellers shall have delivered to the Buyer (a) the certificates representing all of the Purchased Interests, if any, together with such instruments of transfer as are determined to be necessary by the Buyer in its reasonable discretion to vest title in the Purchased Interests in the Buyer, (b) a certificate, in a form and substance reasonably acceptable to the Buyer, from an officer of an United States national bank, brokerage firm or similar institution certifying that Gund's net worth exceeds One Hundred Million Dollars (\$100,000,000.00) and (c) spousal consents and releases, if applicable. There shall not have been made or threatened by any Person other than the Sellers any assertion that such Person (i) except as set forth in Section 3.3(c) of the Disclosure Schedule, is the holder or beneficial owner of, or has the right to acquire or to obtain beneficial ownership of the Purchased Interests, or (ii) is entitled to all or any portion of the Purchase Price for the Purchased Interests.

**7.8 Agreements.** The Transaction Agreements shall have been executed by each of the parties thereto.

**7.9 NHL Approval.** The Buyer's application to the NHL for the approval of the transfer of the Sharks to the Buyer shall be approved by the NHL pursuant to the rules and regulations of the NHL.

**7.10 Contribution.** Since July 31, 2001, Gund, the Gund Trust or a related entity will have contributed at least Nineteen Million Dollars (\$19,000,000.00) in cash to the Gund Entities.

**7.11 Resignations.** The Buyer shall have received the resignations, effective as of the Closing, of such directors, officers and/or appointed NHL representatives of Sharks Co., Arena Co. or any other Gund Entity, as the Buyer shall determine. At least five (5) days prior to the Closing, the Buyer shall identify the resignations it requires under this Section 7.11.

**7.12 ATP Tour, Inc.** ATP Tour, Inc. ("ATP Tour") shall have waived any right of first refusal it may have in connection to the transactions contemplated hereby pursuant to its by-laws or otherwise and the Buyer shall have received reasonably sufficient assurances from ATP Tour that ATP Tour will permit all rights relating to the Siebel Open Tennis Tournament, an Association of Tennis Professionals tournament (the "Siebel Open"), to be transferred to the Buyer pursuant to the transactions contemplated hereby. In the event of any transfer or similar fee in connection with the transfer of such rights relating to the Siebel Open to the Buyer exceeds \$250,000, such excess over \$250,000 shall be deemed Damages incurred by the Buyer under Section 9.1 hereof.

## ARTICLE 8

### CONDITIONS TO THE OBLIGATIONS OF THE SELLERS

The obligations of the Sellers to effect the sale of the Purchased Interests and the other transactions contemplated hereunder to be effected at the Closing shall be subject to the fulfillment at or prior to the Closing of the following conditions, any or all of which may be waived in whole or in part by the Sellers.

**8.1 Accuracy of Representations and Warranties and Compliance with Obligations.** The representations and warranties of the Buyer contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as though made at and as of that time, except (i) for changes specifically permitted by this Agreement, and (ii) that those representations and warranties that address matters only as of a particular date shall remain true and correct as of such date. The Buyer shall have performed and complied with all of its obligations required by this Agreement to be performed or complied with at or prior to the Closing Date. The Buyer shall have delivered to the Sellers a certificate, dated as of the Closing Date, and signed by its manager and a manager of Blue Line Associates LLC, certifying that such representations and warranties are true and correct in all material respects and that all such obligations have been performed and complied with.

**8.2 Purchase Price.** At the Closing, the Buyer shall have delivered the cash portion of the Purchase Price, the Promissory Note and the Excess Contribution, as provided in Section 1.3.

**8.3 No Order or Injunction.** There shall not be issued and in effect by or before any court or other governmental body an order or injunction restraining or prohibiting the transactions contemplated hereunder.

**8.4 Agreements.** The Transaction Agreements shall have been executed by each of the parties thereto.

**8.5 NHL Approval.** The Buyer's application to the NHL for the approval of the transfer of the Sharks to the Buyer shall be approved by the NHL pursuant to the rules and regulations of the NHL.



**8.6 City Approval.** Arena LP shall have received consent from the City of San Jose pursuant to (i) the Amended and Restated Arena Management Agreement, dated as of December 19, 2000, by and between the City of San Jose and Arena LP and (ii) the Lease and Management Agreement concerning the Logitech Ice Center at San Jose, by and between the City of San Jose and Arena LP for the transfer of the rights of Arena LP thereunder.

## ARTICLE 9

### INDEMNIFICATION

#### 9.1 Indemnification.

(a) From and after the Closing and subject to the limitations contained in Sections 9.2 and 9.3, Gund, Sharks Co. and Arena Co., jointly and severally, will indemnify, defend and hold each of the Buyer and its officers, directors, managers, agents, employees and Affiliates (collectively, the “**Buyer Indemnitees**”) harmless against any Damages that the Buyer Indemnitees have incurred by reason of the breach of any representation, warranty, covenant or agreement of the Gund Trust, Sharks Co. or Arena Co. contained in this Agreement. Gund, Sharks Co. and Arena Co. jointly and severally, will also indemnify, defend and hold the Buyer Indemnitees harmless against any Damages arising from the failure to file Forms 5500 that should have been filed prior to the Closing for any Section 3.16(e) Plan. In addition, Gund, Sharks Co. and Arena Co. jointly and severally, will indemnify, defend and hold the Buyer Indemnitees harmless against any Damages arising from (i) any employee benefit plan, program or arrangement maintained or contributed to by an ERISA Affiliate which is not a Section 3.16(e) Plan, including any joint and several liabilities imposed under ERISA or the Code; and (ii) the participation of any employee of any ERISA Affiliate in a Section 3.16(e) Plan (the “**ERISA Indemnity**”).

(b) A Buyer Indemnitee shall first seek recovery of Damages from the Holdback Amount. If the Holdback Amount is not sufficient to satisfy any claim in its entirety, then the Buyer Indemnitee shall seek recovery from Sharks Co. and Arena Co. If Sharks Co. and Arena Co. do not indemnify in full such Buyer Indemnitee within five (5) business days of the delivery of the Officer’s Certificate described in Section 9.4, Gund shall indemnify in full such Buyer Indemnitee for the Damages not indemnified by Sharks Co. and Arena Co.

**9.2 Holdback on Payment of Promissory Note.** As partial security for the indemnities in Section 9.1, the terms of the Promissory Note shall state that the Buyer shall not be required to pay Ten Million Dollars (\$10,000,000) of the principal amount of the Promissory Note (the “**Holdback Amount**”) until the one year anniversary of the Closing Date, provided that there does not exist any pending claim made by the Buyer under the terms of this Article 9 on the one year anniversary of the Closing Date; provided, however, the Buyer shall be required to pay that portion of the Holdback Amount of the Promissory Note in excess of the reasonable dollar value of any pending claim.

### 9.3 Limitations on Indemnification.

(a) Buyer's Indemnitees' Damages. Notwithstanding the foregoing, no indemnification shall be payable pursuant to Section 9.1 unless and until an Officer's Certificate or Certificates for an aggregate amount of Damages in excess of \$750,000 has been delivered to the Seller's Agent; provided, however, that after an Officer's Certificate or Certificates for an aggregate of \$750,000 in Damages has been delivered, the Buyer Indemnitees shall be entitled to indemnification for the amount of Damages identified in such Officer's Certificate or Certificates in excess of \$750,000.

(b) No indemnification shall be payable pursuant to Section 9.1 after October 31, 2003 (the "**Expiration Date**"), except with respect to (i) claims made prior to the Expiration Date, but not resolved by the Expiration Date or (ii) claims based on a breach of Section 3.14 in which case the indemnification obligation of Gund, Sharks Co. and Arena Co. shall survive until the date on which the statute of limitation applicable to the relevant tax liability expires.

(c) The limitations of this Section 9.3 shall not apply in the case of a fraudulent or intentional misrepresentation or the ERISA Indemnity.

(d) For purposes of determining the amount of Damages, no effect will be given to any Tax benefit to any party in connection with the payment of Damages or the incurrence of losses indemnified hereunder.

**9.4 Claims Made.** In order to make a valid claim under this Article 9, the Buyer Indemnitees shall deliver by registered mail or courier or express delivery on or before the Expiration Date to the Seller's Agent a certificate signed by any appropriately authorized officer or manager of the Buyer (an "**Officer's Certificate**"):

(i) stating the aggregate amount of the Buyer Indemnitees' Damages or an estimate thereof, in each case to the extent known or determinable at such time, and

(ii) specifying in reasonable detail the individual items of such Damages included in the amount so stated, the date each such item was paid or properly accrued or arose, and the nature of the misrepresentation, breach or claim to which such item is related. In determining the amount of any indemnity, there shall be taken into account any insurance proceeds or other similar recovery or offset realized, directly or indirectly.

**9.5 Objections to Claims.** Within forty-five (45) days of delivery of any Officer's Certificate to the Seller's Agent, the Seller's Agent may object in a written statement to the claim made in the Officer's Certificate, and such statement shall have been delivered to the Buyer, on behalf of any Buyer Indemnitee, prior to the expiration of such forty-five day period. Failure to deliver such objection within such forty-five day period shall be deemed an acceptance of the claim by Seller's Agent and the principal amount of the Promissory Note shall be reduced by the amount of the claim pursuant to Section 9.10 hereof, or, if the Promissory Note has been paid, the amount of Damages shall be paid by Gund within five (5) business days.

## 9.6 Resolution of Conflicts.

(a) In case Seller's Agent shall so object in writing to any claim or claims made in any Buyer Indemnitees' Officer's Certificate, the Buyer, on behalf of such Buyer Indemnitee, shall have thirty days to respond in a written statement to the objection. If after such thirty day period there remains a dispute as to any claims, Seller's Agent and the Buyer, on behalf of such Buyer Indemnitee, shall attempt in good faith for thirty days to agree upon the rights of the respective parties with respect to each of such claims. If Seller's Agent and the Buyer, on behalf of such Buyer Indemnitee, should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties which shall serve as a legally binding agreement of the parties with respect to such claims.

(b) If no such agreement can be reached after good faith negotiation, either the Buyer, on behalf of the Buyer Indemnitee, or Seller's Agent may, by written notice to the other, demand arbitration of the matter unless the amount of the damage or loss is at issue in pending litigation with a third party, in which event arbitration shall not be commenced until such amount is ascertained or both parties agree to arbitration; and in either such event the matter shall be settled by arbitration conducted by three arbitrators. Within fifteen days after such written notice is sent, the Buyer, on behalf of the Buyer Indemnitee, (on the one hand) and Seller's Agent (on the other hand) shall each select one arbitrator, and the two arbitrators so selected shall select a third arbitrator. The decision of the arbitrators as to the validity and amount of any claim in such Officer's Certificate or Seller's Agent Certificate shall be binding and conclusive upon the parties to this Agreement.

(c) Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction. Any such arbitration shall be held in Santa Clara County, California under the commercial rules then in effect of the American Arbitration Association. Each party to an arbitration shall pay its own expenses and one-half (1/2) of the fees of each arbitrator and the administrative fee of the American Arbitration Association.

**9.7 Seller's Agent.** Richard T. Watson (or in event of his death or disability, Irvin A. Leonard) shall be constituted and appointed as agent ("**Seller's Agent**") for and on behalf of Gund, Sharks Co. and Arena Co. to give and receive notices and communications, to authorize the reduction of the principal amount of the Promissory Note, to authorize delivery to the Buyer Indemnitees of additional funds in satisfaction of claims by the Buyer Indemnitees, to object to such reductions or deliveries, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, and to take all actions necessary or appropriate in the judgment of Seller's Agent for the accomplishment of the foregoing.

**9.8 Actions of Seller's Agent.** A decision, act, consent or instruction of Seller's Agent shall constitute a decision of Gund, Sharks Co. and Arena Co. and shall be final, binding and conclusive upon the Sellers and the Buyer Indemnitees may rely upon any decision, act, consent or instruction of Seller's Agent as being the decision, act, consent or instruction of Gund, Sharks Co. and Arena Co. Each Buyer Indemnitee is hereby relieved from any liability to any

person for any acts done by them in accordance with such decision, act, consent or instruction of Seller's Agent.

**9.9 Claims.** In the event any Buyer Indemnitee becomes aware of a third-party claim which any Buyer Indemnitee believes may result in a demand against the Sellers, the Buyer Indemnitees shall notify Seller's Agent of such claim, and Seller's Agent and the Sellers shall be entitled, at their expense, to participate in any defense of such claim. The Buyer Indemnitee shall have the right in its sole discretion to settle any such claim; provided, however, that the Buyer Indemnitees may not effect the settlement of any such claim without the consent of Seller's Agent, which consent shall not be unreasonably withheld. In the event that Seller's Agent has consented to any such settlement, Seller's Agent shall have no power or authority to object to the amount of any claim by the Buyer against the Sellers for indemnity with respect to such settlement, unless such claim is in an amount in excess of any amount consented to by Seller's Agent.

**9.10 Payment of Claims.** Upon Buyer Indemnitees' compliance with the delivery of the Officer's Certificate described in Section 9.4, the amount of Buyer Indemnitees' Damages shall be satisfied by a reduction in the principal amount of the Promissory Note by the amount of Buyer Indemnitees' Damages. If the amount of Buyer Indemnitees' Damages exceeds the then remaining principal amount of the Promissory Note (the "Excess Damages"), Gund, Sharks Co. and Arena Co. shall pay to the Buyer Indemnitees the Excess Damages, in cash, no later than five (5) business days after the Sellers' acceptance of the Officer's Certificate.

**9.11 Survival of Representations and Covenants.** All representations, warranties, covenants and agreements of the Gund Trust, Sharks Co. and Arena Co. contained in this Agreement shall survive the Closing and any investigation at any time made by or on behalf of the Buyer Indemnitees until the Expiration Date, except with respect to claims based on a breach of Section 3.14 in which case the indemnification obligations of Gund, Sharks Co. and Arena Co. shall survive until the date on which the statute of limitation applicable to the relevant tax liabilities expires and claims based on a breach of Section 3.3(b)(i) or 3.3(c) which are not limited by this Agreement. All representations, warranties, covenants and agreements of the Buyer contained in this Agreement shall survive the Closing and any investigation at any time made by or on behalf of the Sellers until the Expiration Date.

## ARTICLE 10

### DEFINITIONS

**10.1 Defined Terms.** As used herein, the following terms shall have the following meanings:

"Affiliate" shall have the meaning ascribed to it in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date hereof.

"AHL" shall mean the American Hockey League.

“Assumed Liabilities” shall mean the Liabilities assumed by the Buyer pursuant to this Agreement and the transactions contemplated hereunder.

“Buyer Transaction Fees” means all broker, legal, accounting, tax, consulting and financial advisory and other fees, commissions and expenses incurred, paid, or payable by the Buyer in connection with the transactions contemplated hereunder.

“Certificate of Formation” shall mean a certificate or similar document filed by a Gund Entity with the appropriate Governmental Body of its state of formation in order to legally create such entity.

“Code” means the Internal Revenue Code of 1986, as amended.

“Consent” shall mean any approval, consent, ratification, permission, waiver or authorization (including any Governmental Authorization).

“Contract” means any agreement, contract, lease, note, mortgage, indenture, loan agreement, franchise agreement, covenant, employment agreement, license, instrument, purchase and sales order, commitment, undertaking, obligation, whether written or oral, express or implied, of a particular Person, to which (i) such Person is party or (ii) by which such Person or any of its assets is or may become bound or has or may become subject to an obligation or (iii) under which such Person has or may acquire any right or interest.

“Current Benefit Plan” shall mean any Employee Benefit Plan that is currently in effect and:

- (a) that was established or adopted by a Gund Entity or any ERISA Affiliate or is maintained or sponsored by a Gund Entity;
- (b) in which a Gund Entity participates;
- (c) with respect to which a Gund Entity or any ERISA Affiliate is or may be required or permitted to make any contribution; or
- (d) with respect to which a Gund Entity or any ERISA Affiliate is or may become subject to any Liability.

“Defined Benefit Plan” shall mean either a plan described in Section 3(35) of ERISA or a plan subject to the minimum funding standards set forth in Section 302 of ERISA and Section 412 of the Code.

“Employee Benefit Plan” shall have the meaning specified in Section 3(3) of ERISA.

“Encumbrance” shall mean any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, equity, trust, equitable interest, claim, preference, right of possession, lease, tenancy, licensee, encroachment, covenant, infringement, interference, Order, proxy, option, right of first refusal, preemptive right, community property interest, legend, defect,

impediment, exception, reservation, limitation, impairment, imperfection of title, condition or restriction of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

“Environmental Law” shall mean any federal, state, local or foreign Legal Requirement relating to pollution or protection of human health or the environment.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” shall mean any Person that is, was or would be treated as a single employer with a Gund Entity under Section 414 of the Code.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Franchise” means the San Jose Sharks, a member team of the NHL.

“GAAP” means generally accepted accounting principles in effect in the United States of America from time to time.

“Governmental Authorization” shall mean any:

(a) permit, license, certificate, franchise, concession, approval, consent, ratification, permission, clearance, confirmation, endorsement, waiver, certification, designation, rating, registration, qualification or authorization that is issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement; or

(b) right under any Contract with any Governmental Body.

“Governmental Body” shall mean any:

(a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature;

(b) federal, state, local, municipal, foreign or other government;

(c) governmental or quasi governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or entity and any court or other tribunal);

(d) multinational organization or body; or

(e) individual, entity or body exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

“Hazardous Material” shall mean any substance, chemical, waste or other material which is listed, defined or identified as hazardous, toxic or dangerous or otherwise regulated under any applicable law; as well as any petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel, and “source,” “special nuclear,” and “by-product” material as defined in the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Intellectual Property Rights” shall mean any and all United States and foreign rights (whether provided by statute, common law or otherwise, and whether provided at the national, federal, state, local or other level) provided by patent law, copyright law, moral rights, law, trade secret law, trademark law, unfair competition law, and other proprietary rights. Without limiting the generality of the foregoing, Intellectual Property Rights include any rights of privacy and publicity that may be granted by federal, state, common or other law.

“Knowledge” means whether an individual shall be deemed to have Knowledge of a particular fact or other matter if:

(a) such individual is actually aware of such fact or other matter; or

(b) a prudent individual could reasonably be expected to discover or otherwise become aware of such fact or other matter in the Ordinary Course of Business.

An entity shall be deemed to have “Knowledge” of a particular fact or matter only if a director, manager, member, partner or officer of such entity has or had Knowledge of such fact or matter.

“Legal Requirement” shall mean any federal, state, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, requirement, specification, determination, decision, opinion or interpretation that is or has been issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under the authority of any Governmental Body.

“Lex Scripta” shall mean the constitution and by-laws of the NHL.

“Liability” shall mean any debt, obligation, duty or liability of any nature including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability or indemnity, regardless of whether such debt, obligation, duty or liability would be required to be disclosed on a balance

sheet prepared in accordance with generally accepted accounting principles and regardless of whether such debt, obligation, duty or liability is immediately due and payable.

“Management” shall mean and include all members and managers, in the case of a limited liability company, all partners, in the case of a general or limited partnership, the board of directors and stockholders, in the case of a corporation, and the trustees, in the case of a trust.

“Material Adverse Effect” means an effect that is, or is reasonably likely to have a materially adverse effect on a Person’s business, condition, assets, liabilities, operations, financial performance or results of operations or on the ability of the Person to comply with or perform any covenant or obligation under this Agreement or any Transaction Agreement.

“NHL” shall mean the National Hockey League.

“NHL Authorization” shall mean any:

(a) permit, license, certificate, franchise, concession, approval, consent, ratification, permission, clearance, confirmation, endorsement, waiver, certification, designation, rating, registration, qualification or authorization that is issued, granted, given or otherwise made available by or under the authority of the NHL or any of its Affiliates; or

(b) right under any Contract with the NHL or any of its Affiliates.

“Order” shall mean any:

(a) order, judgment, injunction, edict, decree, ruling, pronouncement, determination, decision, opinion, verdict, sentence, subpoena, writ or award that is issued, made, entered, rendered or otherwise put into effect by or under the authority of any court, administrative agency or other Governmental Body or any arbitrator or arbitration panel; or

(b) Contract with any Governmental Body that is entered into in connection with any Proceeding.

“Ordinary Course of Business” means an action taken by or on behalf of a Gund Entity if:

(a) such action is consistent with the Gund Entity’s past practices and taken in the ordinary course of the Gund Entity’s normal day to day operations; or

(b) such action is not required to be authorized by the Management and does not require any Governmental Authorization; or

(c) such action is similar in nature and magnitude to actions customarily taken, without any special or separate authorization, in the ordinary course of the normal day to day operations of other entities that are employed in businesses similar to the Gund Entity’s business; or



(d) such action was taken in connection with events scheduled on or before the date of this Agreement at Compaq Center or Logitech Ice Center at San Jose (which includes events booked before such date to occur after such date), or in connection with the Siebel Open (2002), or the Siebel Classic (2002) or promotions held in connection with Cleveland Barons games.

“Organizational Document” shall mean an entity’s Certificate of Formation and in the case of a limited liability company, its limited liability company agreement, in the case of a partnership, its partnership agreement, in the case of a corporation, its by-laws or regulations, as well as any amendments to the aforementioned documents.

“Permitted Exceptions” means (i) statutory liens for Taxes, assessments, fees and other charges by Governmental Bodies which are not due and payable, and of landlords, liens of carriers, warehousemen, mechanics and materialmen incurred in the Ordinary Course of Business for sums not yet due, (ii) liens incurred or deposits made in the Ordinary Course of Business in connection with workers’ compensation, unemployment insurance and other types of social security, (iii) zoning ordinances which do not preclude the operation of the Gund Entity’s business as currently conducted and (iv) any covenants, restrictions, easements, agreements of record and other matters, the existence of which would not, individually or in the aggregate, have a Material Adverse Effect on the value or the continued use of the property of any Gund Entity.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, estate, trust, unincorporated association, joint venture, Governmental Body or other entity, of whatever nature.

“Proceeding” shall mean any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding and any informal proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation, commenced, brought, conducted or heard by or before, or otherwise has involved, any Governmental Body or any arbitrator or arbitration panel.

“Proprietary Asset” shall mean any patent, patent application, trademark (whether registered or unregistered and whether or not relating to a published work), trademark application, trade name, fictitious business name, service mark (whether registered or unregistered), service mark application, copyright (whether registered or unregistered), copyright application, maskwork, maskwork application, trade secret, know how, franchise, system, computer software, invention, design, blueprint, proprietary product, technology, proprietary right or other Intellectual Property Right, except for third party off-the-shelf software.

“Related Party.” Each of the following shall be deemed to be a “Related Party”:

- (a) each individual who is, or who has at any time been, an officer of a Seller or Gund Entity;
- (b) each spouse, sibling and child of each of the individuals referred to in clause “(a)” above;

(c) any entity (other than a Gund Entity) in which any one of the Persons referred to in clauses “(a)” or “(b)” above holds (or in which more than one of such individuals collectively hold), beneficially or otherwise, a material voting, proprietary or equity interest..

“Seller Transaction Fees” means all broker, legal, accounting, tax, consulting and financial advisory and other fees, commissions and expenses (including any transfer taxes, fees and expenses), incurred by the Sellers in connection with the transactions contemplated hereunder.

“Tax” shall mean any tax (including any income tax, franchise tax, capital gains tax, estimated tax, gross receipts tax, value added tax, surtax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, occupation tax, inventory tax, occupancy tax, withholding tax or payroll tax), levy, assessment, tariff, impost, imposition, toll, duty (including any customs duty), deficiency or fee, and any related charge or amount (including any fine, penalty or interest), (a) imposed, assessed or collected by or under the authority of any Governmental Body, or (b) payable pursuant to any tax sharing agreement or similar Contract.

“Tax Laws” means the Code, and any other federal, state, county, local or foreign laws related to any Taxes, as well as any regulations, administrative pronouncements, rules or requirements thereto.

“Tax Return” shall mean any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information that is, has been or may in the future be filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

“Transaction Agreements” means the Amended LLC Agreement, the Promissory Note, the Purchase Price Increase Promissory Note, general releases, consents and all other agreements and instruments executed or delivered at the Closing.

## **10.2 Other Definitional Provisions.**

(a) All terms defined in this Agreement shall have the defined meanings when used in any certificates, reports or other documents made or delivered pursuant hereto or thereto, unless the context otherwise requires.

(b) Terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) All matters of an accounting nature in connection with this Agreement and the transactions contemplated hereunder shall be determined in accordance with GAAP applied on a basis consistent with prior periods, where applicable.

(d) As used herein, the neuter gender shall also denote the masculine and feminine, and the masculine gender shall also denote the neuter and feminine, where the context so permits.

## ARTICLE 11

### TERMINATION

**11.1 Termination.** This Agreement may be terminated at any time:

(a) by mutual written consent of all of the parties hereto at any time prior to the Closing Date;

(b) by the Buyer upon delivery of written notice to the Sellers in accordance with Section 12.1 of this Agreement in the event of a (i) material breach by any Seller of any provisions of this Agreement, including covenants, warranties or representations, which breach is not cured within thirty (30) days following written notice to the party committing such breach or which breach cannot by its nature be cured prior to the Closing or (ii) if the Closing shall not have occurred on or before March 30, 2002, by reason of the failure of any condition precedent set forth in Article 7 (unless the failure results primarily from the Buyer breaching any representation, warranty or agreement contained in this Agreement).;

(c) by the Sellers upon delivery of written notice to the Buyer in accordance with Section 12.1 of this Agreement in the event of (i) a material breach by the Buyer of any provision of this Agreement, including covenants, warranties or representations, which breach is not cured within thirty (30) days following written notice to the party committing such breach or which breach cannot by its nature be cured prior to the Closing or (ii) if the Closing shall not have occurred on or before March 30, 2002, by reason of the failure of any condition precedent set forth in Article 8 (unless the failure results primarily from the Sellers breaching any representation, warranty or agreement contained in this Agreement).

**11.2 Effect of Termination.** Except for the provisions of Section 6.7 and Section 12.3 hereof, which shall survive any termination of this Agreement, in the event of termination of this Agreement pursuant to Section 11.1, this Agreement shall forthwith become void and of no further force and effect, and the parties shall be released from any and all obligations hereunder; provided, however, that nothing herein shall relieve any party from liability for the breach of any of its representations, warranties, covenants or agreements set forth in this Agreement.

## ARTICLE 12

### GENERAL PROVISIONS

**12.1 Notices.** All notices, requests, demands, claims, and other communications hereunder shall be in writing and shall be deemed given if delivered by certified or registered mail (first class postage pre-paid), guaranteed overnight delivery or facsimile transmission if

such transmission is confirmed by delivery by certified or registered mail (first class postage pre-paid) or guaranteed overnight delivery, to the following addresses and telecopy numbers (or to such other addresses or telecopy numbers that any party shall designate in writing to the other parties):

**(a) if to the Buyer to:**

San Jose Sports and Entertainment Enterprises LLC  
c/o Blue Line Associates LLC  
2025 Garcia Avenue  
Mountain View, CA 94043  
Attention: Harvey L. Armstrong  
Telecopy: (650) 210-5010

with a copy (which shall not constitute notice) to:

Clarence Kellogg Jr., Esq.  
Hopkins & Carley, a Law Corporation  
The Letitia Building  
70 S. First Street  
San Jose, CA 95113

and to:

Morrison & Foerster LLP  
755 Page Mill Road  
Palo Alto, CA 94304  
Attn: Richard Scudellari, Esq.  
Telecopy: (650) 494-0792

and to:

Greg Jamison  
525 W. Santa Clara Street  
San Jose, CA 95113  
Telecopy: (408) 999-5797

**(b) if to the Sellers or to the Seller's Agent:**

Richard T. Watson, Esq.  
Speith Bell McCurdy & Newell  
2000 Huntington Building  
925 Euclid Avenue  
Cleveland, OH 44115  
Telecopy: (216) 696-1351

with a copy (which shall not constitute notice) to:

Irvin A. Leonard, Esq.  
Jones, Day, Reavis & Pogue  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114  
Telecopy: (216) 579-0212

**12.2 Entire Agreement.** This Agreement (including the Schedules attached hereto) and other documents delivered at the Closing pursuant hereto, contain the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between or among the parties with respect to such subject matter. The Schedules constitute a part hereof as though set forth in full herein.

**12.3 Expenses.** Except as otherwise set forth herein, the Buyer shall pay the Buyer Transaction Fees and the Sellers shall pay the Seller Transaction Fees.

**12.4 Amendment; Waiver.** This Agreement may not be modified, amended, supplemented, canceled, or discharged, except by written instrument executed by all parties. No failure to exercise, and no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege hereunder preclude the exercise of any other right, power or privilege. No waiver of any breach of any provision shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision, nor shall any waiver be implied from any course of dealing between the parties. No extension of time for performance of any obligations or other acts hereunder or under any other agreement shall be deemed to be an extension of the time for performance of any other obligations or any other acts.

**12.5 Binding Effect; Assignment.** The rights and obligations of this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing expressed or implied herein shall be construed to give any other Person any legal or equitable rights hereunder. Except as expressly provided herein, the rights and obligations of this Agreement may not be assigned or delegated by the Sellers without the prior written consent of the Buyer. The Buyer may assign all or any portion of its rights hereunder, but not its obligations, to one or more of its wholly owned subsidiaries.

**12.6 Counterpart Execution and Facsimile Delivery.** This Agreement may be executed in any number of counterparts and delivered by facsimile, each of which shall be an original but all of which together shall constitute one and the same instrument.

**12.7 Interpretation.** When a reference is made in this Agreement to an article, section, paragraph, clause, schedule or exhibit, such reference shall be deemed to be to this Agreement unless otherwise indicated. The headings contained herein and on the schedules are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or the schedules. Whenever, the words "include," "includes" or "including" are used

in this Agreement they shall be deemed to be followed by the words "without limitation." Time shall be of the essence in this Agreement.

**12.8 Governing Law; Interpretation.** This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of California applicable to contracts executed and to be wholly performed within such State.

**12.9 Jurisdiction.** The parties to this Agreement agree that any Proceeding arising out of, or with respect to, this Agreement shall be brought in state or federal courts located in California, and the parties hereby accept the exclusive jurisdiction of those courts for the purpose of any Proceeding. In addition, each party hereby irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any such Proceeding in any such court and hereby further irrevocably waives any claim that any such Proceedings brought in any such court has been brought in an inconvenient forum.

**12.10 Arm's Length Negotiations.** Each party herein expressly represents and warrants to all other parties hereto that (a) before executing this Agreement, said party has fully informed itself of the terms, contents, conditions, and effects of this Agreement; (b) said party has relied solely and completely upon its own judgment in executing this Agreement; (c) said party has had the opportunity to seek and has obtained the advice of counsel before executing this Agreement; (d) said party has acted voluntarily and of its own free will in executing this Agreement; (e) said party is not acting under duress, whether economic or physical, in executing this Agreement; and (f) this Agreement is the result of arm's length negotiations conducted by and among the parties and their respective counsel.

**12.11 Severability.** In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

**12.12 Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any person other than the parties hereto, and subject to any restrictions on assignment herein contained, their respective successors and assigns.

**12.13 Jury Trial Waiver.** Except as prohibited by applicable law, the Buyer and the Sellers shall, and they hereby do, expressly waive trial by jury in any matter arising out of, or connected with, this Agreement. With respect to any claim for which a jury trial cannot be waived, the parties agree not to assert any such claim as a counterclaim in, or move to consolidate such claim with, any Proceeding in which a jury trial is waived unless failure to do so would result in a waiver of that claim.

The parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

SAN JOSE SPORTS AND ENTERTAINMENT  
ENTERPRISES LLC

By: Greg Jamison  
Its: \_\_\_\_\_

SAN JOSE SHARKS CORP.,  
a California corporation

By: George Gund III  
Its: \_\_\_\_\_

TRUST UNDER AGREEMENT AND  
DECLARATION OF TRUST UID  
DECEMBER 31, 1940 FOR THE PRIMARY  
BENEFIT OF GEORGE GUND, III (KNOWN AS  
TRUST NO. 7)

By: \_\_\_\_\_  
Its: \_\_\_\_\_

SAN JOSE ARENA MANAGEMENT CORP.,  
a California corporation

By: George Gund III  
Its: \_\_\_\_\_

George Gund III  
GEORGE GUND, III

**SECTION 3.9 DISCLOSURE SCHEDULE**

<i>MARK</i>	<i>APP#</i>	<i>FIRST USE</i>	<i>REG #</i>	<i>REG DATE</i> <i>(Or Filing Date)</i>	<i>CLASS</i>	<i>STATUS</i> <i>(Date=Renewal Date)</i>
Air Shark Design	75/251278	10/14/1993	2,193,217	10/6/1998	41	10/6/2008
Classic in Silicon Valley	76/355562	9/1/2000		1/4/2002	35, 41, 42	Pending
Classic in Silicon Valley	76/355562	3/1/2001		1/4/2002	28	Pending
Cleveland Barons Primary Logo	76/289596	Intent to Use		7/24/2001	41	Pending
Cleveland Barons Primary Logo	76/289598	Intent to Use		7/24/2001	25	Pending
Cleveland Barons Primary Logo	76/289597	Intent to Use		7/24/2001	16	Pending
Finatical Fan Club Design	74/255750	11/11/1991	1,809,261	12/7/1993	25, 41	12/7/2003
Menacing Shark Design (Plush Toy)	74/256852	10/5/1991	1,791,732	9/7/1993	28, 41, 42	9/7/2003
Misc. (Binary Digital Golfer)	76/355526	9/1/2000		1/4/2002	35, 41, 42	Pending
Misc. (Binary Digital Golfer)	76/355526	3/1/2001		1/4/2002	28	Pending
Misc. Design (Green/Black Golfer)	76/355327	3/1/2001		1/4/2002	25, 28	Pending
Property of San Jose Jr. Sharks	76/354967	9/1/2000		1/2/2002	25	Pending
San Jose Jr. Sharks (words and design)	76/354975	9/1/2000		1/2/2002	25, 41	Pending
San Jose Sharks & Design	74/151195	9/13/1991	1,728,700	10/27/1992	41	10/27/2002
San Jose Sharks (word mark)	74/151019	2/12/1991	1,730,360	11/3/1992	25	11/3/2002
San Jose Sharks (word mark)	74/150581	9/13/1991	1,740,682	12/15/1992	41	12/15/2002
San Jose Sharks Primary Logo	74/150985		2,435,445	3/13/2001	41	3/13/2011
San Jose Sharks Primary Logo	74/150576	2/12/1991	2,182,564	8/18/1998	25	8/18/2008
San Jose Sharks Secondary Logo	74/151023	2/28/1991	1,739,087	12/8/1992	25	12/8/1992
San Jose Sharks Secondary Logo	74/152949	2/12/1991	1,741,781	12/22/1992	41	12/22/2002
San Jose Sharks Tenth Anniversary Design (stylized letters + X design)	76/054871	Intent to Use		5/22/2000	16, 25, 26, 38	Pending
Shark Byte	76/338182	9/24/2001		11/15/2001	41	Pending
Shark Head Tunnel Design	75/255459	10/14/1993	2,193,231	10/6/1998	41	10/6/2008
Sharks	74/095817	2/28/1991	1,769,354	5/3/1993	25	5/4/2003
Sharks	74/800395	2/13/1991	1,796,012	9/28/1993	28	9/28/2003
Sharks	74/800396	9/19/1991	1,796,118	9/28/1993	41	9/28/2003



**SECTION 3.9 DISCLOSURE SCHEDULE**

Sharks & Design	74/096420	10/1/1990	1,794,315	9/21/1993	25	9/21/2003
Sharks & Design	74/800397	2/28/2001	2,433,737	3/6/2001	28	3/6/2011
Sharks & Design	74/800398	9/13/1991	1,769,484	5/4/1993	41	5/4/2003
Sharks & Parks *	75/091426	11/30/1991	2,047,703	3/25/1997	41	3/25/2007
SJ Sharkie	74/801424	8/1/1992	1,830,899	4/12/1994	41	4/12/2004
Sunburst Design	76/218455	Intent to Use		3/1/2001	41	Pending
SVSE Silicon Valley Sports & Entertainment (stylized letters)	76/355567	9/1/2000		1/4/2002	35, 41	Pending
Teal Town USA	75/470718	4/21/1998	2,378,460	8/22/2000	25, 41	8/22/2010
Zamboni & Shark Fin Design	74/254277	9/14/1991	1,741,835	12/22/1992	41	12/22/2002

**California Trademark Registrations:**

TRADEMARK	APP#	FIRST USE	REG #	REG DATE	CLASS	STATUS
Misc. (Design of a fin)	2002389	1991	95741	3/2/1992	25	Current
Plush Toy Design (Sharkie)			40691	7/28/1992	107	Current

**Domain Names:**

1. CLEVELANDBARONS.NET
2. GROUPTICKETSDIRECT.COM
3. SANJOSEARENAGROUPSALES.COM
4. SANJOSEEARTHQUAKES.COM
5. SHARKIE.COM
6. SJ-ARENA.COM
7. SJEARTHQUAKES.COM
8. SJSHARKIE.COM
9. SJ-SHARKIE.COM
10. SJSHARKS.COM
11. SVSE.NET
12. TIXDEALS.COM

## SECTION 3.9 DISCLOSURE SCHEDULE

### Copyright Registrations:

1. San Jose Sharks theme song (Class: PA; Registration Number: PAu2147947; Date Registered: December 16, 1996; Owner: San Jose Sharks, LP; Date of Creation: 1996).
2. Sharks plush toy (Class: VA; Registration Number: VA517010; Date Registered: March 12, 1992; Owner: San Jose Sharks; Date of Creation: 1992).

\* Ownership status of this mark and certain California state trademarks related to Sharks & Parks is being investigated; it may be owned by the NHL per prior agreement relating to the Sharks TV Parks program.

POST-ACQUISITION ORGANIZATIONAL CHART

