07-14-2004

Form PTO-1594
(Rev. 10/02)
OMB No. 0651-0027 (exp. 6/30/2005)

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

1. Name of conveying party(ies):
THE HILSINGER COMPANY, L.P. 7·12·04

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

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

2. Name and address of receiving party(ies)
Name: THE HILSINGER COMPANY
Internal Address:
Street Address: 33 West Bacon Street
City: Plainville State: MA Zip: 02762

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

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
Execution Date: 05/05/2003

4. Application number(s) or registration number(s):
A. Trademark Application No.(s) SEE ATTACHED
B. Trademark Registration No.(s) SEE ATTACHED
Additional number(s) attached ☐ Yes ☑ No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: David R. Josephs, Esquire
Internal Address: Barlow, Josephs & Holmes, Ltd.
Street Address: 101 Dyer Street, 5th Floor
City: Providence State: RI Zip: 02903

6. Total number of applications and registrations involved: 23

7. Total fee (37 CFR 3.41) $ 590.00
☐ Enclosed
☑ Authorized to be charged to deposit account

8. Deposit account number:
020900

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01 FC:8521 40.00 DA
02 FC:8522 550.00 DA

9. Signature.
Cynthia M. Branca
Name of Person Signing

Cynthia M Branca
Signature

July 8, 2004
Date

Total number of pages including cover sheet, attachments, and document: 91

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

Schedule of Trademarks

U.S. Trademarks and Trademark Applications

Serial No.	Filed	Mark	App/Reg. No.	Issued	Owner
72127227	Sep 5, 1961	COLORMATIC	739732	Oct 23, 1962	The Hilsinger Company*
76005800	Mar 21, 2000	DUALIES	2425331	Jan 30, 2001	The Hilsinger Company*
75379885	Oct 27, 1997	DURA TEC (and Design)	2298736	Dec 7, 1999	The Hilsinger Company*
75527564	Jul 27, 1998	EQUALEYES	2322462	Feb 22, 2000	The Hilsinger Company*
72196861	Jul 1, 1964	EVANS	792205	Jul 6, 1965	The Hilsinger Company*
72041814	Dec 5, 1957	EYECESSORIES	674580	Feb 24, 1959	The Hilsinger Company*
72196862	Jul 1, 1964	EYECESSORIES	802650	Jan 25, 1966	The Hilsinger Company*
72270201	Apr 28, 1967	EYECESSORIES	836452	Oct 3, 1967	The Hilsinger Company*
72270205	Apr 28, 1967	EYECESSORIES	844982	Feb 27, 1968	The Hilsinger Company*
75518124	Jul 13, 1998	GORILLA GRIPS	2304875	Dec 28, 1999	The Hilsinger Company*
72030491	May 22, 1957	HILCO	665046	Jul 29, 1958	The Hilsinger Company*
72228459	Sep 23, 1965	HILCO	809668	Jun 7, 1966	The Hilsinger Company*
75520113	Jul 16, 1998	LOGIC	2270731	Aug 17, 1999	The Hilsinger Company*
73547401	Jul 11, 1985	NO SLIP (and Design)	1397476	Jun 17, 1986	The Hilsinger Company*
73213083	Apr 25, 1979	OPTICLOTH	1153190	May 5, 1981	The Hilsinger Company*
73697699	Nov 27, 1987	OPTI-WIPE	1495099	Jul 5, 1988	The Hilsinger Company*
75526278	Jul 27, 1998	READERS FIT FOR YOU	2302939	Dec 21, 1999	The Hilsinger Company*
73732665	Jun 6, 1988	SHIELD	1536028	Apr 25, 1989	The Hilsinger Company*
75266867	Mar 31, 1997	SMART OPTICAL SOLUTIONS	2265408	Jul 27, 1999	The Hilsinger Company*
75443285	Mar 2, 1998	SMART OPTICAL SOLUTIONS (and Design)	2300764	Dec 14, 1999	The Hilsinger Company*
75073231	Mar 15, 1996	TAP'N'LOK	2100497	Sep 23, 1997	The Hilsinger Company*
74361925	Feb 25, 1993	TAP'N'SNAP	1803055	Nov 9, 1993	The Hilsinger Company*
78/390469	Mar 25, 2004	A2	N/A	N/A	The Hilsinger Company*

TRADEMARK
REEL: 003006 FRAME: 0620

Delaware

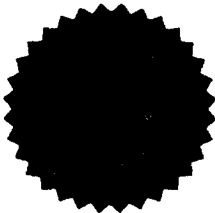
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"THE HILSINGER COMPANY L.P.", A DELAWARE LIMITED PARTNERSHIP,

WITH AND INTO "HILSINGER MERGERSUB, INC." UNDER THE NAME OF "THE HILSINGER COMPANY", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE SIXTEENTH DAY OF MAY, A.D. 2003, AT 12:03 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3630161 8100M

030319010

AUTHENTICATION: 2421448

DATE: 05-16-03

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State of Delaware
Secretary of State
Division of Corporations
Delivered 12:03 PM 05/16/2003
FILED 12:03 PM 05/16/2003
SRV 030319010 – 3630161 FILE

STATE OF DELAWARE
CERTIFICATE OF MERGER OF
THE HILSINGER COMPANY L.P.
INTO A
HILSINGER MERGERSUB, INC.

6

Pursuant to Title 8, Section 263 of the Delaware General Corporation Law and Title 6, Section 17-211 of the Delaware Limited Partnership Act, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is Hilsinger MergerSub, Inc., a Delaware corporation, and the name of the limited partnership being merged into this surviving corporation is The Hilsinger Company L.P., a Delaware limited partnership.

SECOND: The Agreement and Plan of Merger has been approved, adopted, certified, executed and acknowledged by the surviving corporation and the merging limited partnership.

THIRD: The name of the surviving corporation in the merger herein is Hilsinger MergerSub, Inc., which will continue its existence as said surviving corporation which shall change its name to The Hilsinger Company upon the effective date of the merger pursuant to the provisions of the Delaware General Corporation Law.

FOURTH: The Certificate of Incorporation of the surviving corporation is to be amended by reason of the merger by striking Article One thereof relating to the corporation name of the surviving corporation, and substituting in lieu thereof the following article:

"Article One
The name of the corporation is The Hilsinger Company (hereinafter called the "Corporation")."

FIFTH: The merger is to become effective on filing.

SIXTH: The Agreement and Plan of Merger is on file at 33 West Bacon Street, Plainville, MA 02762, the place of business of the surviving corporation.

SEVENTH: A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of any constituent corporation or partner of any constituent limited partnership.

EIGHTH: The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation.

IN WITNESS WHEREOF, said Corporation has caused this certificate to be signed by an authorized officer, the 15th day of May, 2003.

6

HILSINGER MERGERSUB, INC.

7

8

By: [signature]

Name: Tamus L. Richardson

Title: President

AMENDED AND RESTATED
AGREEMENT AND PLAN OF MERGER

by and among

HILSINGER HOLDINGS, INC.,

HILSINGER MERGERSUB, INC.,

and

THE HILSINGER COMPANY L.P.

dated as of April 23, 2003,
as amended and restated as of May 5, 2003

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AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER

THIS AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER, made and entered into as of April 23, 2003, as amended and restated as of May 5, 2003 is by and among:

THE HILSINGER COMPANY L.P., a Delaware limited partnership (the "Partnership"), HILSINGER HOLDINGS, INC., a Delaware corporation (the "Acquiror") and HILSINGER MERGERSUB, INC., a Delaware corporation ("Merger Sub").

Recitals:

WHEREAS, the Persons listed on Schedule 1 hereto are all of the holders of the Partnership's Units (collectively, the "Unitholders") as of the date hereof;

WHEREAS, the Persons listed on Schedule 2 hereto are all of the holders of the Partnership's Options (collectively, the "Optionholders") as of the date hereof;

WHEREAS, the Acquiror wishes to acquire the business of the Partnership and the Partnership Subsidiaries (collectively, the "Business") by way of a merger of the Partnership with and into Merger Sub;

WHEREAS, the General Partner deems it advisable and generally to the welfare and advantage of the Unitholders and the Optionholders that, subject to the terms and conditions set forth herein, the Partnership merge with and into Merger Sub pursuant to this Agreement and the Limited Partnership Act of the State of Delaware (the "Act") and the General Corporation Law of the State of Delaware (the "GCL") with the effect being that the Partnership is dissolved by operation of law, the Business is transferred to Merger Sub by operation of law, and the Securityholders (as hereinafter defined) receive the consideration for their Units and Options as provided herein (the "Merger");

WHEREAS, the parties hereto entered into that certain Agreement and Plan of Merger dated as of April 23, 2003 (the "Original Merger Agreement"), but have determined that it is advisable and in their respective interests to amend the Original Merger Agreement in certain respects by entering into this Amended and Restated Agreement and Plan of Merger.

NOW, THEREFORE, the parties hereto agree to amend and restate the Original Merger Agreement, including the following terms and conditions relating to the Merger contemplated hereby and the means of carrying the Merger into effect, as follows.

ARTICLE I

CERTAIN DEFINITIONS

As used herein, the following terms shall have the following meanings:

Acquiror Indemnified Parties. The term the "Acquiror Indemnified Parties" shall mean the Acquiror, Merger Sub and their respective members, partners, officers, directors, employees and shareholders, and the successors to the foregoing (and their respective officers, directors, employees and shareholders), including after the Closing Date, the Surviving Corporation.

Adjusted Net Merger Consideration. The term "Adjusted Net Merger Consideration" shall mean Net Merger Consideration calculated after the transfers and deductions by the Securityholders Representative pursuant to Section 4.2(b) hereof.

Affiliate. The term "Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, the first Person. For the purposes of this definition, "control," when used with respect to any Person, means the possession, directly or indirectly, of the power to (i) vote more than 50% of the securities having ordinary voting power for the election of directors (or comparable positions) of such Person or (ii) direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Agreement. The term "Agreement" shall mean this Amended and Restated Agreement and Plan of Merger and all Schedules and Exhibits attached hereto and certificates delivered in connection herewith, and any and all amendments, modifications and supplements hereto entered into in accordance with the terms hereof.

Balance Sheet. The term "Balance Sheet" shall mean the audited consolidated balance sheet of the Partnership and the Partnership Subsidiaries dated December 28, 2002.

Balance Sheet Date. The term "Balance Sheet Date" shall mean December 28, 2002.

Business Day. The term "Business Day" shall mean a day other than a Saturday or Sunday or a day on which banks located in Boston, Massachusetts are authorized or required to close.

Capitalized Lease Obligations. The term "Capitalized Lease Obligations" shall mean, with respect to any Person, for any applicable period, the obligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP, and the amount of such obligations at any date shall be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

Cash on Hand. The term "Cash on Hand" at any time shall mean cash and cash equivalents held by the Partnership and the Partnership Subsidiaries at such time as determined on a consolidated basis in accordance with GAAP, excluding any cash that may be deemed to be

received by the Partnership at the Closing in respect of (i) the Option Aggregate Exercise Price and (ii) repayment of the Option Loans pursuant to Section 4.2(d).

Closing. The term "Closing" shall mean the closing of the transactions contemplated herein.

Closing Date. The term "Closing Date" shall mean the first Business Day following the meeting described in Section 7.11 hereof, or such other date as the Acquiror and the Partnership may agree to in writing, but in no event later than the Outside Date.

Code. The term "Code" shall mean the Internal Revenue Code of 1986, as amended, and the U.S. Department of the Treasury regulations promulgated thereunder.

Confidentiality Agreement. The term "Confidentiality Agreement" shall mean that certain Confidentiality Agreement between Edgeview Partners, on behalf of the Partnership, and ICV Capital Partners on behalf of the Acquiror.

Contract. The term "Contract" shall mean any agreement, contract, commitment, lease, sublease, license, note, bond, mortgage or indenture, or any other legally binding obligation, promise or undertaking (whether written or oral).

Deemed Units Outstanding. The term "Deemed Units Outstanding" shall mean all Units issued and outstanding as of the Effective Time, including all Units to be issued pursuant to the terms of the Put and Call Agreement, and all Units issuable upon exercise of the Participating Options.

Employee Plan. The term "Employee Plan" shall mean (i) each ERISA Plan and (ii) each material other retirement, profit sharing, deferred compensation, incentive compensation, bonus, stock option, stock purchase, severance pay, unemployment benefit, vacation pay, health, life, or other insurance (including, to the extent applicable under the Laws of the relevant jurisdiction, Section 125 cafeteria plans or flexible benefit arrangements), fringe benefit or other employee benefit plan, program, agreement or arrangement maintained or contributed to as of the date hereof by the Partnership or any Partnership Subsidiary in respect of or for the benefit of any employee or former employee, or director, with respect to service for the Partnership or Partnership Subsidiary and their eligible dependents and beneficiaries or with respect to which the Partnership or any Partnership Subsidiary has any liability.

Encumbrances. The term "Encumbrances" shall mean, with respect to any property, asset or security, any mortgage, pledge, option, lien, security interest, charge, easement, right of first refusal, encroachment, license, encumbrance, property restriction or other adverse claim against title in respect of such property, asset or security, including any material restriction on use, transfer or, in the case of any security, voting. For purposes of this Agreement, a Person will be deemed to own, subject to an Encumbrance, any asset or security which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset or security.

Environmental Escrow Account. The term "Environmental Escrow Account" shall mean an account established under the Escrow Agreement into which the Environmental Escrow

Amount is deposited, the funds in which shall be available to satisfy indemnification obligations of the Securityholders Representative on behalf of the Securityholders solely for Environmental Indemnity Claims as defined below and pursuant to ARTICLE XI hereto.

Environmental Escrow Amount. The term "Environmental Escrow Amount" shall mean $500,000.

Environmental Indemnity Claim. The term "Environmental Indemnity Claim" shall mean: (i) any Claim by an Acquiror Indemnified Party asserting a breach of a representation and warranty of the Partnership set forth in Section 5.18 hereto, or (ii) a Claim by an Acquiror Indemnified Party for payment of Limited Special Environmental Expenditures. For the avoidance of doubt, neither a General Indemnity Claim nor a Special Environmental Indemnity Claim shall be an Environmental Indemnity Claim.

Environmental Insurance Policy. The term "Environmental Insurance Policy" shall mean an environmental risk insurance policy covering those named insureds and having the terms and conditions substantially in accordance with the provisions of Exhibit E attached hereto.

Environmental Laws. The term "Environmental Laws" shall mean any federal, state, local or foreign statute, law (including common law), treaty, ordinance, rule, regulation, policy, permit, consent, approval, license, judgment, order, administrative order or decision, decree or injunction or other legal requirement relating to: (a) releases or threatened releases of hazardous materials, substances or wastes into the environment, (b) the generation, treatment, storage, recycling, presence, disposal, use, handling, manufacturing, transportation or shipment of hazardous materials, substances or wastes, (c) protection of natural resources, or (d) protection of human health or the environment, including those pertaining to providing safe and healthful working conditions and reducing occupational safety and health hazards.

ERISA. The term "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended and as the same may be in effect from time to time.

ERISA Affiliate. The term "ERISA Affiliate" shall mean each entity which is treated as a single employer with the Partnership or any Partnership Subsidiary for the purposes of Section 414 of the Code.

ERISA Plan. The term "ERISA Plan" shall mean (i) each "employee pension benefit plan" as defined in Section 3(2) of ERISA and (ii) each "employee welfare benefit plan" as defined in Section 3(1) of ERISA maintained or contributed to as of the date hereof by the Partnership or any Partnership Subsidiary in respect of or for the benefit of any employee or former employee, or director, with respect to service for the Partnership or any Partnership Subsidiary and their eligible dependents and beneficiaries or with respect to which the Partnership or any Partnership Subsidiary has any liability or (iii) an equivalent plan, if any, maintained or contributed to by any Non-US Subsidiary in respect of or for the benefit of any of its employees or former employees, or directors, and their eligible dependents and beneficiaries or with respect to which the Partnership or any Non-US Subsidiary has any liability.

Escrow Agent. The term "Escrow Agent" shall mean The Capital Trust Company of Delaware.

Escrow Agreement. The term "Escrow Agreement" shall mean that certain Escrow Agreement by and among Securityholders Representative, the Acquiror, and Escrow Agent dated as of the Closing Date, in substantially the form of Exhibit A attached hereto.

Estimated Net Current Asset Value. The term "Estimated Net Current Asset Value" shall mean the Net Current Asset Value of the Partnership estimated by the General Partner in good faith after consultation with management of the Partnership as of the close of business on the date immediately preceding the Closing Date, which such Estimated Net Current Asset Value shall be reflected on a schedule in the form of Schedule 4.4(c) hereto and delivered to the Acquiror three (3) Business Days prior to the Closing Date.

France Subsidiary. The term "France Subsidiary" shall mean Hilco France, a French société á responsibilité limitée and majority owned by Hilsinger L.L.C. Subsidiary.

GAAP. The term "GAAP" shall mean United States generally accepted accounting principles, consistently applied.

General Indemnity Claim. The term "General Indemnity Claim" shall mean any Claim by an Acquiror Indemnified Party asserting a claim for indemnity pursuant to Section 11.1(a)(i), (ii) or (iii) (other than a breach of a representation and warranty in Section 5.18) or pursuant to Section 11.1(b). For the avoidance of doubt, neither an Environmental Indemnity Claim nor a Special Environmental Indemnity Claim shall be a General Indemnity Claim.

General Indemnity Escrow Account. The term "General Indemnity Escrow Account" shall mean an account established under the Escrow Agreement into which the General Indemnity Escrow Amount is deposited, the funds in which shall be available to satisfy indemnification obligations of the Securityholders Representative on behalf of the Securityholders pursuant to ARTICLE XI hereto, but specifically and expressly excluding indemnification obligations relating to or arising from: (i) Environmental Indemnity Claims, (ii) Special Environmental Indemnity Claims, (iii) any other environmental-related Claims with respect to the Plainville Facility and (iv) and any other environmental-related Claims relating to the Business.

General Indemnity Escrow Amount. The term "General Indemnity Escrow Amount" shall mean an amount equal to $4,500,000.

General Partner. The term "General Partner" shall mean THC Management Corp., a Delaware corporation and sole general partner of the Partnership.

Governmental Authority. The term "Governmental Authority" shall mean any court, administrative body, arbitrator, tribunal, department, commission, board, bureau, agency or other instrumentality of the United States of America, any state, commonwealth, county, municipality, province, territory or possession thereof, any foreign state or government, and any political subdivision or quasi-governmental authority of any of the same.

Governmental Authorization. The term "Governmental Authorization" shall mean any approval, consent, license, permit, waiver, registration, franchise or other authorization issued,

granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law.

Hazardous Substance. The term "Hazardous Substance" shall mean (a) hazardous substances as defined in 42 U.S.C. §9601(14), (b) petroleum or petroleum products, including crude oil and any fractions thereof, (c) natural gas, synthetic gas and any mixtures thereof, (d) asbestos and/or asbestos containing materials, (e) polychlorinated biphenyls ("PCBs") or materials containing PCBs, (f) radioactive materials, and (g) any other pollutants, contaminants or hazardous, toxic or dangerous substances, materials or wastes that are identified, defined, listed or regulated by any Governmental Authority under any Environmental Law or as to which liability or standards of conduct may be imposed under such Environmental Laws.

Hilsinger L.L.C. Subsidiary. The term "Hilsinger L.L.C. Subsidiary" shall mean Hilsinger L.L.C., a Delaware limited liability company and majority owned by the Partnership.

Historical Financial Statements. The term "Historical Financial Statements" shall mean the audited consolidated balance sheets of the Partnership and the Partnership Subsidiaries as at December 28, 2002, December 29, 2001 and December 30, 2000 and the related audited consolidated statements of income, cash flows and partners' capital for the fiscal years then ended, determined in accordance with GAAP, together with the report thereon of Arthur Andersen LLP, or for 2002 by Vitale, Caterano & Company, PC.

Indebtedness. The term "Indebtedness" shall mean with respect to any Person, at any date, without duplication: (i) all obligations of such Person for borrowed money, including, without limitation, all principal, interest, premiums, fees, expenses, breakage costs, overdrafts and penalties with respect thereto, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade payables incurred in the Ordinary Course of Business, (iv) all obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, interest rate hedge or similar instrument, (v) Capitalized Lease Obligations of such Person, (vi) any payments required of such Person as a result of a change of control in respect of such Person or any Affiliate thereof and (vii) all Indebtedness of any other Person of the type referred to in clauses (i) to (vi) above directly or indirectly guaranteed by such Person or secured by any assets of such Person; provided, however, that Indebtedness shall not include any intercompany debts, liabilities or obligations among the Partnership and the Partnership Subsidiaries.

Intellectual Property. The term "Intellectual Property" shall mean all patents, registered and unregistered trademarks, trade dress, trade secrets and confidential information, trade names, service marks and copyrights and all applications therefor, computer software (other than commercially available computer software with an annual license fee of less than $5,000), computer databases, rights in telephone numbers, Internet addresses (including uniform resource locators) or domain names (including any registrations or applications for registration of any of the foregoing) and any other similar type of proprietary intellectual property rights owned, used or held for use by the Partnership or any Partnership Subsidiary.

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Interim Financial Statements. The term "Interim Financial Statements" shall mean: (i) the unaudited consolidated balance sheet of the Partnership and the Partnership Subsidiaries as at March 1, 2003 and the related unaudited consolidated statements of income and cash flows for the two-month period then ended and (ii) the unaudited consolidated balance sheets of the Partnership and the Partnership Subsidiaries and the related unaudited consolidated statements of income and cash flows for each monthly period ending after March 1, 2003 and before the Closing prepared by the Partnership and delivered to the Acquiror from time to time pursuant to Section 5.8 hereof.

Knowledge. The term "Knowledge" shall mean actual knowledge of the following Persons after reasonable inquiry: (i) Brian D. Fitzgerald, A. George Gebauer, Robert Nahmias, Paul Janell and Robert Rymeski when reference is made to the Partnership or any Partnership Subsidiary, (ii) Tim Cadman when reference is made to NFR Subsidiary or UK Subsidiary, (iii) Scott Heck when reference is made to Wilson Subsidiary, or (iv) the executive officers and directors of the Acquiror or Merger Sub, when reference is made to the Acquiror or Merger Sub, respectively.

Law. The term "Law" or "Laws" shall mean all United States federal, state, local and foreign constitutions, statutes, laws, rules, regulations, ordinances, codes, permits and licenses, including those pertaining to providing safe and healthful working conditions and reducing occupational safety and health hazards.

Limited Special Environmental Expenditures. The term "Limited Special Environmental Expenditures" shall mean Special Environmental Expenditures which are incurred by the Surviving Corporation following the release of all funds held in the Special Environmental Indemnity Escrow Account so long as such expenditures (a) are recommended in writing by an LSP reasonably acceptable to the Securityholders Representative (and any LSP listed on Schedule 3 hereto is hereby deemed to be reasonably acceptable to the Securityholders Representative) as reasonably necessary to ensure compliance with Environmental Laws or (b) as to matters outside the scope of the LSP's authority, are required pursuant to applicable Environmental Laws.

LSP. The term "LSP" shall mean either GZA GeoEnvironmental, Inc., an environmental services company serving as the Licensed Site Professional under applicable Environmental Laws in connection with certain contamination conditions at the Plainville Facility, or Web Engineering Associates, Inc., an environmental services company serving as the Licensed Site Professional in connection with certain other environmental conditions at the Plainville Facility, as the case may be, or any other qualified environmental services company who may be appointed by the Surviving Corporation to assume the respective responsibilities of each.

Losses. The term "Losses" shall mean any and all losses, costs, liabilities, settlement payments, awards, judgments, fines, penalties, damages, taxes, liens, fees, deficiencies or other out-of-pocket charges incurred or suffered (in each case Tax adjusted in accordance with Section 11.9(e)), including reasonable attorney's fees and expenses.

Management Bonus Amount. The term "Management Bonus Amount" shall mean that amount determined by the Securityholders Representative at or prior to the Closing, which

amount reflects the discretionary bonus payments to be paid on or after the Closing Date by the Securityholders Representative on behalf of the Partnership to management employees of the Partnership or a Partnership Subsidiary identified by the Securityholders Representative.

Material Adverse Effect. The term "Material Adverse Effect" shall mean with respect to any Person, any effect that is materially adverse to (i) the business, assets, liabilities, results of operations or condition, financial or otherwise, of such Person and all Persons included with such Person, including all its Subsidiaries, and where used with reference to a Person and its Subsidiaries, shall mean such Person and its Subsidiaries taken as a whole, or (ii) the ability of such Person to consummate timely the transactions contemplated hereby.

Mass DEP. The term "Mass DEP" shall mean the Commonwealth of Massachusetts Department of Environmental Protection.

Merger Consideration. The term "Merger Consideration" shall mean an aggregate amount equal to: (A) the sum of (i) Fifty Nine Million Thirty Eight Thousand Dollars ($59,038,000) and (ii) Cash on Hand at the Effective Time, minus (B) an amount equal to fifty percent (50%) of the aggregate premium cost of the Environmental Insurance Policy to the extent such premium cost exceeds $500,000, provided that in no event shall such premium cost exceed $800,000, plus or minus, as the case may be (C) the amount of the adjustment based on the Estimated Net Current Asset Value in accordance with Section 4.4(a).

Net Current Asset Value. The term "Net Current Asset Value" shall mean that amount as of a specified date calculated in accordance with GAAP applied in a manner consistent with the Historical Financial Statements (subject to the policies, practices and procedures described in the footnotes to Schedule 4.4(c) and in Schedule 5.8 hereof) and the Partnership's and the Partnership Subsidiaries' past practices, equal to (i) the sum of all current assets of the Partnership and each Partnership Subsidiary excluding amounts due as Option Loans, Cash on Hand and prepaid expenses associated with the contemplated transactions (but including without limitation accounts receivable, other current receivables, inventory, prepaid expenses, and other current assets), determined on a consolidated basis, less (ii) all current liabilities of the Partnership and each Partnership Subsidiary, including without limitation, all accounts payable, accrued expenses and other current liabilities and accruals, determined on a consolidated basis, but excluding (x) all liabilities relating to Taxes to be borne by Securityholders, (y) all liabilities relating to Indebtedness to be repaid or prepaid at the Closing or otherwise reducing the Merger Consideration at or following the Closing in accordance with the terms hereof and (z) all liabilities relating to Partnership Transaction Expenses, the Management Bonus Amount and Partnership distributions.

Net Merger Consideration. The term "Net Merger Consideration" shall mean the remaining Merger Consideration after the following adjustments and payments: (i) subtracting the payment of all Indebtedness of the Partnership and the Partnership Subsidiaries outstanding immediately prior to the Effective Time, including without limitation, the unpaid principal and interest balance of Capitalized Lease Obligations of the Partnership and each Partnership Subsidiary listed on Schedule 4.2(a) as not being paid at or immediately prior to the Effective Time, (ii) subtracting the payment of the Management Bonus Amount, and (iii) subtracting the

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payment of all Partnership Transaction Expenses, all as provided in Section 4.2 hereof and subject to adjustment pursuant to Section 4.4 hereof.

Net Merger Consideration Per Unit. The term "Net Merger Consideration Per Unit" shall mean that amount per Deemed Unit Outstanding equal to: (x) the sum of (i) the Net Merger Consideration, plus (ii) the Option Aggregate Exercise Price, plus (iii) the proceeds from the Option Loans deemed to have been repaid to the Partnership as provided in Section 4.2(d) hereof, divided by (y) the total number of Deemed Units Outstanding.

NFR Subsidiary. The term "NFR Subsidiary" shall mean Nationwide Frame Repairs Limited, a private limited non-trading company registered under the laws of England and Wales and wholly owned by UK Subsidiary.

Non-US Subsidiary. The term "Non-US Subsidiary" or "Non-US Subsidiaries" shall mean the France Subsidiary, NFR Subsidiary and the UK Subsidiary, individually or collectively, as applicable.

O&M Costs. The term "O&M Costs" shall mean out-of-pocket costs incurred by the Surviving Corporation following the Closing for operating and maintaining the environmental remediation programs at the Plainville Facility, exclusive of costs of utilities, which include but are not limited to electricity, wastewater disposal, and/or natural gas associated with operation and maintenance of the groundwater treatment system. For the avoidance of doubt, O&M Costs shall not include salaries and other expenses in respect of employees of the Surviving Corporation, allocation of overhead of the Surviving Corporation or environmental compliance in the Ordinary Course of Business (such as waste disposal for hazardous materials generated in the manufacture of products of the Business).

Option Aggregate Exercise Price. The term "Option Aggregate Exercise Price" shall mean the aggregate exercise price for the purchase of all Units issuable under all Participating Options issued and outstanding immediately prior to the Effective Time.

Option Consideration Per Unit. The term "Option Consideration Per Unit" shall mean with respect to any Participating Option an amount equal to the Net Merger Consideration Per Unit minus an amount equal to the exercise price per Unit specified for such Participating Option.

Option Loans. The term "Option Loans" shall mean loans from the Partnership to the Persons listed on Schedule 4.2(d) hereto made for the purpose of financing the acquisition of Units held by such Persons.

Optionholders. The term "Optionholders" shall mean any Person who holds Options at any time prior to the Effective Time.

Options. The term "Options" shall mean outstanding options to purchase Units of the Partnership issued by the Partnership to employees of the Partnership and other Persons prior to the Merger.

Ordinary Course of Business. The term "Ordinary Course of Business" shall mean with respect to any Person, the ordinary course of business of such Person, consistent with such Person's past practice and custom, including, with respect to any category, quantity or dollar amount, the terms and frequency of payment, delivery, accrual, expense or other accounting entry.

Order. The term "Order" shall mean any award, decision, injunction, writ, judgment, judicial or administrative order or decree, ruling, subpoena or verdict entered, issued, made or rendered by any Governmental Authority or by any arbitrator.

Organizational Documents. The term "Organizational Documents" shall mean the articles or certificate of incorporation, partnership agreement, limited liability company or operating agreement, bylaws or other similar organizational or charter documents, including all amendments, of the referenced Person.

Participating Options. The term "Participating Options" shall mean all Options.

Partnership Subsidiary. The term "Partnership Subsidiary" or "Partnership Subsidiaries" shall mean the following entities that are Subsidiaries of the Partnership: (i) France Subsidiary, (ii) Hilsinger L.L.C. Subsidiary, (iii) NFR Subsidiary, (iv) UK Subsidiary and (v) Wilson Subsidiary.

Partnership Transaction Expenses. The term "Partnership Transaction Expenses" shall mean the fees, costs and expenses incurred or reasonably estimated to be incurred by the Partnership or any Partnership Subsidiary through the Effective Time and, to the extent the Partnership or any of the Partnership Subsidiaries have agreed prior to the Effective Time to pay the fees, costs and expenses of any Securityholders, those fees, cost and expenses incurred or reasonably estimated to be incurred by any of the Securityholders, but only if directly related to the transactions contemplated by this Agreement, including, without limitation: (i) the fees and expenses of Edwards & Angell, LLP, Wragge & Co., and any other counsel engaged by the Partnership or any Partnership Subsidiary with respect to this Agreement or the transactions contemplated hereby; (ii) the fees and expenses of Edgeview Partners and any other investment banking firm or financial advisor engaged for advice by the Partnership or its general partner in connection with this Agreement or the transactions contemplated hereby; and (iii) the fees and expenses of Ernst & Young LLP; Sheen Stickland Chartered Accountants; Vitale, Caturano & Company PC and any other Person rendering accounting and other professional services to the Partnership or any Partnership Subsidiary prior to the Effective Time or to the Securityholders Representative at any time, in any case, directly related to the transactions contemplated by this Agreement.

Percentage Interest. The term "Percentage Interest" shall mean, with respect to any Person, a fraction, the numerator of which is the number of Deemed Units Outstanding held by such Person and the denominator of which is the number of all Deemed Units Outstanding.

Person. The term "Person" shall mean any individual, corporation, partnership, limited liability company, association, joint venture, trust or unincorporated entity or organization, or a Governmental Authority.

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Permitted Encumbrances. The term "Permitted Encumbrances" shall mean (a) any Encumbrance relating to Indebtedness of the Partnership or any Partnership Subsidiary that is not required by the terms of this Agreement to be paid on or before the Closing; (b) any Encumbrance relating to Indebtedness of the Partnership or any Partnership Subsidiary that is required by the terms of this Agreement to be paid on or before the Closing Date, but only until the Closing Date; (c) any Encumbrance relating to deposits or pledges made in the Ordinary Course of Business of the Partnership or any Partnership Subsidiary in connection with, or to secure payment of, utilities or similar services, workers' compensation, unemployment insurance, old age pensions or other social security obligations; (d) any easements, rights of way, restrictions and other similar Encumbrances not materially interfering with the Ordinary Course of Business of the Partnership or any Partnership Subsidiary; (e) any Encumbrance for Taxes not delinquent or which are being contested in good faith and for which appropriate reserves have been established in accordance with GAAP; (f) any inchoate materialmen's, mechanics, workmen's, repairmen's or other similar Encumbrance arising in the Ordinary Course of Business of the Partnership or any Partnership Subsidiary, and other statutory Encumbrances arising in the Ordinary Course of Business of the Partnership or any Partnership Subsidiary, including Encumbrances arising in connection with bills of lading, warehouse receipts and other documents of title which would not, individually or in the aggregate, have a Material Adverse Effect on the business conducted thereon and (g) any replacement, extension, modification or renewal of any Encumbrance described in clauses (a) through (f) above.

Plainville Facility. The term "Plainville Facility" shall mean that certain owned real property of the Partnership located at 33 West Bacon Street, Plainville, Massachusetts 02762 at which a portion of the Business is conducted.

Post-Closing Tax Period. The term "Post-Closing Tax Period" shall mean any Tax period (or portion thereof) ending after the Closing Date.

Pre-Closing Tax Period. The term "Pre-Closing Tax Period" shall mean any Tax period (or portion thereof) that ends on or before the Closing Date.

Proportionate Share. The term "Proportionate Share" shall mean, with respect to any Securityholder, a fraction, the numerator of which is an amount equal to the sum of (i) the Net Merger Consideration Per Unit multiplied by the number of Units, if any, held by such Securityholder immediately prior to the Effective Time, plus (ii) the Option Consideration Per Unit multiplied by the number of Units issuable under Participating Options, if any, held by such Securityholder immediately prior to the Effective Time, minus (iii) the proceeds from any Option Loans of such Securityholder deemed to have been repaid as provided in Section 4.2(d), and the denominator of which is Net Merger Consideration. A schedule of each Securityholder's Proportionate Share will be attached to the Escrow Agreement upon its execution and delivery at the Closing.

Put and Call Agreement. The term "Put and Call Agreement" shall mean that certain Put and Call Agreement, dated June 30, 1995, by and among the Partnership and P.D.J. Wignall and Jayne Wignall.

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Real Property. The term "Real Property" shall mean the real estate owned or leased by the Partnership or any Partnership Subsidiary described in Schedule 5.13, together with all buildings, structures, improvements and fixtures thereon and all easements and other rights and interests pertaining thereto.

Reserve Amount. The term "Reserve Amount" shall mean an amount not less than $1,000,000 to be determined by the Securityholders Representative and presented to the Acquiror prior to the Closing Date, which amount shall be retained by the Securityholders Representative to pay for certain expenses and obligations of, or incurred for the benefit of, the Securityholders as contemplated pursuant to ARTICLE IV hereto.

Reportable Event. The term "Reportable Event" shall have the meaning set forth in Section 4043 of ERISA.

Securityholders. The term "Securityholders " shall mean the Unitholders and the holders of Participating Options.

Securityholders Representative. The term "Securityholders Representative" shall mean the General Partner and shall include any successor appointed in accordance with Section 4.5 hereof.

Special Environmental Indemnity Escrow Account. The term "Special Environmental Indemnity Escrow Account" shall mean an account established under the Escrow Agreement into which the Special Environmental Indemnity Escrow Amount is deposited, the funds in which shall be available to satisfy indemnification obligations pursuant to ARTICLE XI hereto of the Securityholders Representative on behalf of the Securityholders solely for Special Environmental Expenditures.

Special Environmental Indemnity Escrow Amount. The term "Special Environmental Indemnity Escrow Amount" shall mean $1,500,000.

Special Environmental Expenditures. The term "Special Environmental Expenditures" shall mean out-of-pocket costs (including without limitation, disbursements related thereto) incurred by the Surviving Corporation following the Closing for services rendered, materials provided and worked performed by third parties for the purpose of (i) conducting additional environmental site characterization at or relating to the Plainville Facility, (ii) ensuring continued compliance by the Surviving Corporation with Environmental Laws applicable to the Plainville Facility, as such Environmental Laws may be amended from time to time following the Closing, (iii) improving or upgrading the existing environmental remediation systems or otherwise conducting environmental remediation of pollution conditions at or migrating from the Plainville Facility, (iv) O&M Costs to the extent in excess of $75,000 per year (pro-rated for partial years on a monthly basis), or (v) payment of deductibles or self-insured retention amounts under the Environmental Insurance Policy.

Special Environmental Indemnity Claim. The term "Special Environmental Indemnity Claim" shall mean any Claim by an Acquiror Indemnified Party for payment of Special Environmental Expenditures.

<u>Subsidiary</u>. The term "Subsidiary" or "Subsidiaries" shall mean any Person of which the Partnership (or any other specified Person) now owns, directly or indirectly, through a Subsidiary at least a majority of the outstanding equity securities or other ownership interests entitled to vote generally, including with respect to the Partnership, the Partnership Subsidiaries.

<u>Target Net Current Asset Value</u>. The term "Target Net Current Asset Value" shall mean $10,200,000.

<u>Tax Returns</u>. The term "Tax Returns" shall mean all returns, declarations, reports and forms (including estimated Tax and information returns and reports) required to be filed with any Governmental Authority or sent by or with respect to such Persons in respect of any Taxes.

<u>Tax Sharing Agreements</u>. The term "Tax Sharing Agreements" shall mean all existing Tax sharing agreements or arrangements (whether or not written) binding upon the Partnership or any Partnership Subsidiary or requiring the Partnership or any Partnership Subsidiary to assume or be liable for some or all of the Tax obligations of the parties for such agreement or arrangement.

<u>Taxes</u>. The term "Taxes" shall mean all foreign, federal, state and local taxes (including deficiencies, interest and penalties relating thereto) of any kind, including, without limitation, all income, gross income, alternative or add-on minimum taxes, gross receipts, sales, use, ad valorem, franchise, profits, payroll withholding, employment, excise, stamp, occupancy, premium, property, environmental or windfall profits tax, customs, duty or other taxes or governmental fees, assessments or charges imposed by any taxing authority.

<u>Third Party Claim</u>. The term "Third Party Claim" shall mean any claim, suit, litigation, proceeding, hearing, investigation, demand, injunction or other action by a third party against the Indemnified Party, including, without limitation, any claim by a third party for contribution, equitable share or like claim under any Environmental Law.

<u>UK Subsidiary</u>. The term "UK Subsidiary" shall mean Hilco Europe, an unlimited company registered under the laws of England and Wales (company number 01551254) and majority owned by Hilsinger L.L.C. Subsidiary.

<u>Units</u>. The term "Units" shall mean the limited partnership interests of the Partnership.

<u>Wilson Subsidiary</u>. The term "Wilson Subsidiary" shall mean Wilson Ophthalmic Corporation, an Oklahoma corporation, and wholly owned by the Partnership.

<u>Additional Definitions</u>. The following additional terms are defined herein in the Sections noted opposite each such term:

Term	Section Reference
AAA Rules	11.3(e)
Accountants	4.4(c)
Act	Recitals
Acquiror	Preamble

Admitted Liability	11.3(c)
Business	Recitals
Business Records	12.11
Certificate of Merger	3.1
Claim	11.3(a)
Claim Notice	11.3(a)
Claimed Amount	11.5(b)
Closing Adjustment Arbitrator	4.4(d)
Closing Net Current Asset Schedule	4.4(c)
Closing Net Current Asset Value	4.4(c)
Closing Statements	4.4(c)
COBRA	5.21(l)
Dispute	11.3(e)
Dispute Notice	4.4(d)
Dispute Statement	11.3(b)
Disputing Parties	11.3(e)
Effective Time	3.2(b)
Equity Agreement	5.2(a)
Excluded Representations	11.7(a)
Financing Commitments	6.7
GCL	Recitals
Indemnified Party	11.3(a)
Indemnifying Party	11.3(a)
Initial Meeting	11.3(e)
LSP	12.12
Merger	Recitals
Merger Sub	Preamble
Optionholders	Recitals
Other Adjustments Certification	4.4(c)
Outside Date	10.1(b)
Other Adjustments	4.4(b)
Partnership	Preamble
Partnership Disclosure Schedules	ARTICLE V
Payment Claims	11.5(c)(i)
Recourse Obligations	11.6(b)
Release Claim	11.5(c)(i)
Resolved Claim	11.3(h)
Senior Debt	6.7
Surviving Corporation	2.1
Tax Matter	12.4
Third Party Claim	11.4(a)
Threshold	11.8(d)
Unitholders	Recitals

ARTICLE II

THE MERGER AND RELATED MATTERS

2.1 Merger. In accordance with the Act and the GCL, the Partnership shall, at the Effective Time, be merged with and into Merger Sub and Merger Sub shall be the surviving entity (in its capacity as surviving entity being sometimes hereinafter called the "Surviving Corporation") and shall continue to be a Delaware corporation.

2.2 Name of Surviving Corporation. The name of the Surviving Corporation shall be The Hilsinger Company.

2.3 Certificate of Incorporation and By-laws. At the Effective Time, the Certificate of Incorporation of Merger Sub, as in effect immediately before the Effective Time, shall be amended to state that the name of such corporation is "The Hilsinger Company". As so amended, such Certificate of Incorporation shall be the Certificate of Incorporation of the Surviving Corporation and shall continue to be its Certificate of Incorporation until amended or changed as provided by the GCL. The By-laws of Merger Sub, as in effect immediately before the Effective Time, shall be the By-laws of the Surviving Corporation until amended as provided therein or pursuant to or as required by the Laws of the State of Delaware.

2.4 Directors and Officers. (a) From and after the Effective Time, the Persons designated by the Acquiror in writing before the Effective Time shall be the directors and officers of the Surviving Corporation, to serve in each case until their respective successors shall have been duly elected and shall have duly qualified; and (b) if at the Effective Time a vacancy shall exist, it may be filled in the manner provided in the By-laws of the Surviving Corporation.

2.5 Certain Effects of the Merger. At the Effective Time, (i) the Partnership shall be merged into Merger Sub; (ii) the separate existence of the Partnership shall cease; (iii) Merger Sub, as the Surviving Corporation, shall have all the rights, privileges, immunities and powers, and shall be subject to all of the duties and liabilities, of a corporation organized under the Laws of the State of Delaware; (iv) Merger Sub, as the Surviving Corporation, shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, of a public as well as a private nature, of the Partnership; (v) all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest of or belonging to or due to the Partnership shall be deemed to be transferred to and vested in the Surviving Corporation without further act or deed; and (vi) the title to any Real Property, or any interest therein, vested in and of the Partnership shall not revert or be in any way impaired by reason of the Merger. Subject to the terms of this Agreement, the Surviving Corporation shall thenceforth be responsible and liable for all the liabilities and obligations of the Partnership; and any claim existing or action or proceeding pending by or against the Partnership may be prosecuted as if the Merger had not taken place or the Surviving Corporation may be substituted in its place. The Merger shall have all of the other effects specified in Section 211 of the Act and Section 263 of the GCL, and neither the rights of creditors nor any Encumbrances upon the assets of the Partnership or any Partnership Subsidiary shall be impaired by the Merger.

2.6 Further Action. At any time, or from time to time, after the Effective Time, the last acting officers of the General Partner and the corresponding officers of the Surviving Corporation may, in the name of the Partnership or any Partnership Subsidiary, execute and deliver all such proper deeds, assignments, and other instruments and take or cause to be taken all such further or other action as the Surviving Corporation may deem necessary or desirable in order to vest, perfect or confirm in the Surviving Corporation title to and possession of all property, rights, privileges, powers, franchises, immunities and interests of the Partnership and otherwise to carry out the purposes of this Agreement.

ARTICLE III

CLOSING

3.1 Closing and Closing Date. Subject to satisfaction or written waiver of the other conditions in ARTICLE VIII and ARTICLE IX hereof, the Surviving Corporation shall duly execute and verify the certificate of merger relating to the Merger, in substantially the form of Exhibit C hereto (the "Certificate of Merger") in accordance with the Act and the GCL, and the closing of the transactions contemplated by this Agreement shall take place, at the offices of Kirkland & Ellis, Citicorp Center, 153 East 53rd Street, New York, New York at 10:00 A.M., Eastern Standard Time on the Closing Date. On the Business Day immediately preceding the day of the meeting with the customer described in Section 7.11 hereof, the Partnership and its counsel, and the Acquiror and its counsel, shall arrange to have executed all documents and tender all deliverables to hold in escrow, pending consummation of the Closing, and to otherwise use their respective best efforts to satisfy all other conditions to Closing (other than the condition described in Section 8.23 hereof). In addition, the Acquiror will use commercially reasonable efforts to satisfy in all material respects, on or before such Business Day, all conditions to the debt financing that are within its control (other than funding of equity and consummation of the merger), including finalizing the terms of its credit agreement evidencing such debt financing.

3.2 Filing and Effective Time.

(a) On the Closing Date, copies of the Certificate of Merger, so executed and verified, shall be delivered to the Secretary of State of the State of Delaware for filing; and

(b) The Merger shall become effective upon the acceptance for filing of the Certificate of Merger by the Delaware Secretary of State (the date and time of such event being herein called the "Effective Time").

ARTICLE IV

STATUS OF UNITS AND OPTIONS; PAYMENT AND DISTRIBUTION; SECURITYHOLDERS REPRESENTATIVE

4.1 Merger Consideration. At the Effective Time:

(a) Each Unit shall, by virtue of the Merger, be changed into the right to receive from the Acquiror, by the Acquiror's payment to the Securityholders Representative for the account of such Unitholder, in cash, subject to the transfers and deductions by the Securityholders

Representative for the purposes and to the extent described in Section 4.2, an amount equal to the Net Merger Consideration Per Unit, all as calculated, determined and distributed in accordance with this ARTICLE IV. Immediately after the Effective Time, all rights in respect of each such Unit shall cease to exist, other than the right of each Unitholder to receive payments pursuant to Section 4.2 hereof, such holder's Proportionate Share of the remaining Reserve Amount, if any, and such holder's Proportionate Share of the remaining General Indemnity Escrow Amount, the remaining Environmental Escrow Amount and the remaining Special Environmental Indemnity Escrow Amount, if any, upon distribution thereof to the Securityholders Representative in accordance with Section 11.5 hereof.

(b) Each Participating Option shall, by virtue of the Merger, be changed into the right to receive from the Acquiror, by the Acquiror's payment to the Securityholders Representative for the account of such Optionholder, in cash, subject to the transfers and deductions by the Securityholders Representative for the purposes and to the extent described in Section 4.2, an amount equal to the Option Consideration Per Unit, all as calculated, determined and distributed in accordance with this ARTICLE IV. Immediately before the Effective Time, all Options, including all Participating Options, shall be cancelled and all rights in respect of each Option shall cease to exist, other than the right of each holder of Participating Options to receive such holder's payments pursuant to Section 4.2 hereof, such holder's Proportionate Share of the remaining Reserve Amount, if any, and such holder's Proportionate Share of the remaining General Indemnity Escrow Amount, the remaining Environmental Escrow Amount and the remaining Special Environmental Indemnity Escrow Amount, if any, upon distribution thereof to the Securityholders Representative in accordance with Section 11.5 hereof.

4.2 Payment of Merger Consideration; Post-Closing Distributions. On the Closing Date, the Acquiror shall, and to the extent necessary shall cause the Surviving Corporation to, wire transfer to (or at the written direction of) the Securityholders Representative in immediately available funds an amount equal to the Merger Consideration (less the amount of such Indebtedness expressly identified on Schedule 4.2(a) hereto as a Capitalized Lease Obligation not being paid at or immediately prior to the Effective Time), to be distributed as follows:

(a) First, to pay out of the Merger Consideration: (i) all Indebtedness of the Partnership and each Partnership Subsidiary outstanding immediately prior to the Effective Time, which Indebtedness is described on Schedule 4.2(a) (unless such Indebtedness is expressly identified on Schedule 4.2(a) hereto as a Capitalized Lease Obligation not being paid at or immediately prior to the Effective Time) for payment in full to the holders thereof, (ii) all Partnership Transaction Expenses, for payment in full to such creditors, and (iii) the Management Bonus Amount, to fund the bonuses declared by the Partnership for employees of the Partnership and the Partnership Subsidiaries who are identified in writing by the Securityholders Representative to the Acquiror.

(b) Second, to transfer or deduct from the Net Merger Consideration: (i) the General Indemnity Escrow Amount, the Environmental Escrow Amount and the Special Environmental Indemnity Escrow Amount for payment to the Escrow Agent for deposit to the General Indemnity Escrow Account, the Environmental Escrow Account and the Special Environmental Indemnity Escrow Account, respectively, and (ii) the Reserve Amount, to be retained by the

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Securityholders Representative for payment of obligations of, or incurred for the benefit of, the Securityholders in connection herewith.

(c) Third, subject to Section 4.2(e), to pay out of the Adjusted Net Merger Consideration in cash to each Securityholder (i) an amount equal to (A) in the case of a Unitholder, the Net Merger Consideration Per Unit multiplied by the total number of Units held by such Unitholder immediately prior to the Effective Time, and (B) in the case of a holder of Participating Options, the Option Consideration Per Unit for the applicable Participating Option multiplied by the total number of such Participating Options held by such Optionholder immediately prior to the Effective Time, minus (ii) in the case of each Securityholder, such Securityholder's Proportionate Share of amounts transferred or deducted by the Securityholders Representative from the Net Merger Consideration pursuant to Section 4.2(b) hereof, minus (iii) in the case of certain Unitholders identified on Schedule 4.2(d) hereto, the amounts deducted by the Securityholders Representative to repay Option Loans pursuant to Section 4.2(d) hereof.

(d) Prior to making any payment by the Securityholders Representative of the Adjusted Net Merger Consideration as provided in Section 4.2(c) hereof to the Unitholders listed on Schedule 4.2(d) hereto, each of whom is indebted to the Partnership in the amount set forth on such Schedule 4.2(d) for Option Loans, the Securityholders Representative shall deduct from the payment due to each such Unitholder an amount equal to the outstanding principal and interest accrued to the Effective Time under such Unitholder's Option Loan obligation to the Partnership.

(e) Prior to the Securityholders Representative making any payment to a Securityholder pursuant to this ARTICLE IV, such Securityholder shall have executed and delivered to the Securityholders Representative a Securityholder's Agreement in substantially the form attached hereto as Exhibit D (a "Securityholder's Agreement"), pursuant to which the Securityholders Representative is (i) appointed as such Securityholder's representative and attorney-in-fact and authorized to undertake the actions contemplated herein on behalf of such Securityholder and (ii) indemnified by such Securityholder to the extent described herein and therein. In the event that a Securityholder fails to execute and deliver a Securityholder's Agreement, the Securityholders Representative shall be authorized to withhold from distribution such Securityholder's share of the Net Merger Consideration and retain the same, without interest thereon, until the earlier of (x) such time as a Securityholder's Agreement is executed and delivered by such Securityholder to the Securityholders Representative, (y) the applicable survival periods with respect to all of the such Securityholder's indemnification and post-Closing purchase price obligations hereunder shall have expired, or (z) Acquiror requests payment over to it of such amount in accordance with Section 4.2(g). Any such amount withheld and retained by the Securityholders Representative may be applied by the Securityholders Representative to satisfy obligations of such Securityholder to indemnify the Securityholders Representative as provided herein or in respect of such Securityholder's share of adjustments under Section 4.4 or of Losses on account of Recourse Obligations.

(f) Any payments to the Securityholders by or at the direction of the Securityholders Representative shall be net of any withholdings required by applicable Law.

(g) Net Merger Consideration, if any, that was due to be paid to a Securityholder pursuant to Sections 4.2(c) hereof, but that remains unclaimed and is retained by the

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Securityholders Representative pursuant to Section 4.2(e), shall be paid over to the Acquiror, upon the written request of the Acquiror on or after the sixth anniversary of the Closing Date, and applied by it in accordance with the terms of this Section 4.2(g). A Securityholder whose distributions have been retained and paid over to the Acquiror pursuant to this Section 4.2(g) shall be deemed to be a general creditor of the Acquiror with respect to amounts payable hereunder. The Acquiror will promptly pay such retained amounts to such Securityholder without interest if and so long as (i) such Securityholder has executed and delivered to the Acquiror an indemnification agreement reasonably acceptable to the Acquiror or (ii) the applicable survival periods with respect to all of the such Securityholder's indemnification obligations hereunder shall have expired. The Acquiror hereby agrees to indemnify fully the other Securityholders and the Securityholders Representative from and against any Losses suffered by the other Securityholders or Securityholders Representative arising out of non-payment by the Acquiror of a retained amount paid over to the Acquiror hereunder. Acquiror's indemnification pursuant to this Section 4.2(g) shall not be subject to any limitations set forth in Section 11.7 [Survival].

(h) The Securityholders Representative hereby agrees to indemnify the Acquiror from and against any Losses suffered by the Acquiror as a result of the Securityholders Representative's failure to make the payments to the Securityholders required by Sections 4.2(a), (b) and (c). The Securityholders Representative's indemnification pursuant to this Section 4.2(h) shall not be subject to any limitation set forth in Section 11.7 or Section 11.8.

4.3 Options. Prior to the Effective Time, the General Partner shall adopt appropriate resolutions and take such other actions as may be necessary and lawful to provide that (i) immediately prior to the Effective Time, all Options shall be vested in full and (ii) each Option, other than Participating Options, shall be cancelled immediately before the Effective Time.

4.4 Merger Consideration and Payment Adjustments; Closing Balance Sheet.

(a) At the Closing, the Merger Consideration to be paid to or as otherwise directed in writing by the Securityholders Representative pursuant to Section 4.2 hereto shall be (i) reduced by that amount, if any, by which the Estimated Net Current Asset Value is less than the Target Net Current Asset Value, or (ii) increased by that amount, if any, by which the Estimated Net Current Asset Value is more than the Target Net Current Asset Value.

(b) Following the Closing, (i) the Securityholders Representative shall pay to the Acquiror, out of funds held in the Reserve Amount or otherwise collected from the Securityholders for such purpose, cash equal to that amount, if any, by which the Net Current Asset Value as reflected on the Closing Net Current Asset Schedule is less than the Estimated Net Current Asset Value, or (ii) the Acquiror shall pay to the Securityholders Representative for the benefit of the Securityholders cash equal to that amount, if any, by which the Net Current Asset Value as reflected on the Closing Net Current Asset Schedule is more than the Estimated Net Current Asset Value (in either case by wire transfer or delivery of other immediately available funds within three (3) Business Days from the time that such Net Current Asset Value is finally determined in accordance with this Section 4.4). In addition, promptly following the Closing, the Securityholders Representative and the Acquiror shall consult with each other as necessary to determine final calculations of (x) Cash on Hand as of the Effective Time, (y)

outstanding Indebtedness as of the Effective Time, and (z) any Partnership Transaction Expenses for which the Surviving Corporation or any Subsidiary is liable after the Effective Time (collectively, the "Other Adjustments"), and, if mutually agreed, shall make payments to the other as appropriate to reflect such calculations.

(c) Not later than 90 days after the Closing Date, the Acquiror shall cause to be prepared and delivered to the Securityholders Representative (i) a schedule (the "Closing Net Current Asset Schedule") setting forth the Net Current Asset Value as of the close of business on the date immediately preceding the Closing Date (the "Closing Net Current Asset Value") and a report from a nationally-recognized accounting firm (the "Accountants") to the effect that such Closing Net Current Asset Value set forth on the Closing Net Current Asset Schedule was calculated in accordance with the definition of "Net Current Asset Value" as provided herein and (ii) a certification from the chief financial officer of the Acquiror as to the calculation of the Other Adjustments pursuant to Section 4.4(b) (the "Other Adjustments Certification" and, together with the Closing Net Current Asset Schedule, collectively, the "Closing Statements"). The Closing Net Current Asset Schedule shall be in substantially the form attached as Schedule 4.4(c), without accompanying schedules or footnotes and prepared without procedures required by an audit or review. The Accountants shall apply the same accounting practices, principles and policies utilized by the Partnership in the preparation of its Historical Financial Statements prior to the Closing Date, subject to the practices, principals and policies described in the footnotes to Schedule 4.4(c) and on Schedule 5.8(b)).

(d) If the Securityholders Representative does not provide written notice disputing in reasonable detail the calculation of the Closing Net Current Asset Value or the Other Adjustments (the "Dispute Notice") within 60 days after receipt of the Closing Statements, the Closing Net Current Asset Value and the Other Adjustments set forth in the Closing Statements delivered by the Acquiror shall be deemed to be final and binding, and appropriate payments to the Acquiror or the Securityholders Representative for the benefit of the Securityholders, if any, shall be made within three (3) Business Days by wire transfer or delivery of other immediately available funds. Payments by the Acquiror to the Securityholders Representative for the benefit of the Securityholders shall be distributed by the Securityholders Representative and allocated among the Securityholders based on their Proportionate Share of such payment amount. Payments by the Securityholders Representative shall be payable to the Acquiror at the direction of the Securityholders Representative out of funds held in the Reserve Amount or otherwise collected from the Securityholders. In the event that the Securityholders Representative has delivered a Dispute Notice with regard to the Closing Net Current Asset Schedule or the Closing Net Current Asset Value, or with regard to any of the Other Adjustments, such dispute(s) shall be subject to good faith negotiation among the Acquiror and the Securityholders Representative for a period of 30 days, and if there has been no resolution of all such dispute(s) within such 30 day period, then unless otherwise agreed, any remaining disputes shall then be submitted to the Boston office of an independent "Big Four" accounting firm (or, if all "Big Four" accounting firms shall have a conflict of interest, any other nationally recognized accounting firm) selected by the Acquiror and reasonably acceptable to the Securityholders Representative as long as no conflict of interest would then exist with respect to such firm (the "Closing Adjustment Arbitrator"), which shall act as an arbitrator and shall issue its report resolving all such disputes within sixty (60) days after such dispute is referred to and accepted by it. The Closing Adjustment Arbitrator shall afford each of the Acquiror and its representatives and the

Securityholders Representative and its representatives up to 30 days in the aggregate to present their respective positions as to the disputed items in the Closing Statements initially submitted by the Acquiror, whereupon the Closing Adjustment Arbitrator shall make its decision based solely upon one of the two positions presented to it with respect to each disputed item. If either party fails to make such a presentation on a timely basis, the Closing Adjustment Arbitrator shall be required to decide without further delay or extension on the basis of the submission made to it and the terms of this Agreement. The Closing Net Current Asset Value and the Other Adjustments, each as modified by any adjustments determined to be appropriate by the Closing Adjustment Arbitrator, shall be final, binding and non-appealable. The fees and expenses of the Closing Adjustment Arbitrator shall be paid one-half by the Acquiror and one-half by the Securityholders Representative.

(e) Upon final determination of the Closing Net Current Asset Value and the Other Adjustments pursuant to Section 4.4(d), payments to the Acquiror or the Securityholders Representative for the benefit of the Securityholders, if any, shall be made as required by this Section 4.4.

4.5 Securityholders Representative.

(a) The Partnership hereby irrevocably designates and appoints the Securityholders Representative to be the representative of each Securityholder for the purposes of (i) distributing, or directing the distribution of, the Merger Consideration, (ii) repaying the Indebtedness of the Partnership and the Partnership Subsidiaries as set forth in Section 4.2 (or directing the Acquiror to repay such Indebtedness on its behalf), (iii) funding the General Indemnity Escrow Amount into the General Indemnity Escrow Account, the Environmental Escrow Amount into the Environmental Escrow Account and the Special Environmental Indemnity Escrow Amount into the Special Environmental Indemnity Escrow Account, retaining the Reserve Amount and making payments therefrom as necessary or appropriate, paying the Partnership Transaction Expenses and paying the Management Bonus Amount so as to fund the bonuses declared by the Partnership, all as set forth in Section 4.2, (iv) investigating, defending, negotiating, settling and arbitrating any other claim relating to the Closing Net Current Asset Value, the Other Adjustments or any claim for indemnification by the Acquiror or the Surviving Corporation hereunder, and (v) any other purposes specified in this Agreement. Partnership, Merger Sub and Surviving Corporation shall not be responsible or liable in any manner for any actions taken or omitted to be taken by the Securityholders Representative, including but not limited to the obligation of the Securityholders Representative to pay to the Securityholders the amounts received by it and due to the Securityholders pursuant to this Agreement.

(b) The Securityholders Representative hereby accepts the appointment by the Partnership contemplated herein and agrees to take such actions as the Securityholders Representative in its sole discretion shall deem appropriate to accomplish the purposes, enforce the rights and protect the interests of the Securityholders under this Agreement so that the Securityholders may receive the full benefit thereof.

(c) Following the Effective Time, the Securityholders Representative shall pay and distribute, or direct the payment and distribution of, the Merger Consideration subject to and in accordance with this ARTICLE IV. The Securityholders Representative is authorized to take

such additional action as in the sole judgment of the Securityholders Representative is necessary or advisable to accomplish the purposes, enforce the rights and protect the interests of the Securityholders under this Agreement, including the authority to investigate, negotiate, prosecute and defend, to resolve and settle by arbitration or otherwise, any claim of or against the Securityholders or the Securityholders Representative under this Agreement or otherwise, to waive, compromise or release any rights of the Securityholders under this Agreement or otherwise, to authorize indemnification payments from each of the Securityholders based on their Proportionate Share from the General Indemnity Escrow Amount, the Environmental Escrow Amount and the Special Environmental Indemnity Escrow Amount in accordance with ARTICLE XI hereof and to pay or satisfy any debt, Tax or claim of or on account of the Securityholders under this Agreement, upon any evidence deemed to be sufficient by the Securityholders Representative. In the administration of its powers and duties hereunder, the Securityholders Representative is authorized to employ or contract for services of financial advisors, consultants, accountants, attorneys and other professionals and experts, and to employ or contract for clerical and other administrative assistance and to make payments from the Reserve Amount of all reasonable fees for services or expenses in any manner thus incurred and the Merger Consideration shall be deemed to be reduced by such amounts. As soon as is practicable after receipt of notice of any claim for indemnification from the Acquiror under this Agreement, or the occurrence of any other event under this Agreement which in the sole judgment of the Securityholders Representative materially adversely affects the Securityholders, the Securityholders Representative shall give written notice thereof to each of the Securityholders.

(d) The Securityholders Representative shall be entitled to withhold from distribution to the Securityholders and maintain the Reserve Amount for such reasonable period of time as the Securityholders Representative may determine in its sole discretion (provided, that no funds from the Reserve Amount may be distributed to any Securityholder until all adjustments required by Section 4.4 have been finally determined and all payments due from Securityholders Representative under Section 4.4 shall have been made), and to pay from the Reserve Amount any Partnership Transaction Expenses which were not ascertained or payable on the Closing Date, any out-of-pocket fees, costs and expenses incurred in the discharge of its responsibilities hereunder and to pay or discharge out of the Reserve Amount any other claims or contingencies as the Securityholders Representative may elect to pay or discharge in its sole discretion which may arise after the Effective Time for which the Securityholders are responsible in connection with the transactions contemplated hereby. In addition, upon a final determination of the Closing Net Current Asset Value or the Other Adjustments in accordance with Section 4.4 hereof, if an adjustment is due to the Acquiror pursuant to Section 4.4, the Securityholders Representative is authorized to release and deliver to the Acquiror cash from the Reserve Amount in an amount equal to such adjustment. If any Reserve Amount remains with the Securityholders Representative following the discharge of all of its duties hereunder, such remainder shall be distributed to the Securityholders in accordance with their Proportionate Share.

(e) No provision of this Agreement shall be construed to relieve the Securityholders Representative from liability for its own gross negligence or its own willful misconduct. Notwithstanding the foregoing, however,

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(i) the Securityholders Representative shall not be liable for any error of judgment made in good faith nor any action taken or omitted to be taken by it in good faith and reasonably believed by it to be within the discretion or powers conferred upon it or in good faith omitted to be taken by it because such action is reasonably believed to be beyond the discretion or powers conferred upon it, or taken pursuant to any direction or instruction under this Agreement or omitted to be taken for any reason or the lack of direction or instruction required for such action, or be responsible for the consequences of any error of judgment reasonably made by it;

(ii) the Securityholders Representative need not take or refrain from taking any action hereunder unless it shall have been indemnified in a manner and form satisfactory to it against any and all costs, expenses, demands, losses and liabilities which have been or could be asserted against it;

(iii) the Securityholders Representative need not take any action if it shall have been advised in writing by independent counsel that such action is contrary to law or this Agreement (as the same may be from time to time amended) or is likely to result in liability to the Securityholders Representative;

(iv) no provision of this Agreement shall require the Securityholders Representative to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, unless it has been furnished with indemnity in form and substance satisfactory to the Securityholders Representative;

(v) the Securityholders Representative may rely, and shall be protected in acting or in refraining from acting in reliance, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties and shall not be bound to make any investigation into any of the matters contained in any of the foregoing; and

(vi) the Securityholders Representative may consult with professionals to be selected by it and the Securityholders Representative shall not be liable for any action taken or omitted to be taken by it in accordance with the advice of such professionals.

(f) All moneys and other assets received by the Securityholders Representative shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Securityholders and invested in demand deposit accounts with federally insured institutions, U.S. government obligations or money-market funds invested primarily in U.S. government obligations. The Securityholders Representative shall be under no liability for interest or for producing income on any moneys received by the Securityholders Representative hereunder and held for distribution or payment to the Securityholders, except as such interest shall actually be received by the Securityholders Representative. The Securityholders Representative shall provide to the Securityholders on a quarterly basis an accounting (unaudited) of the Reserve Amount, the General Indemnity Escrow Amount, the Environmental Escrow Amount and the Special Environmental Indemnity Escrow Amount and a status report in narrative form regarding

existing claims and contingencies, if any, against which the Reserve Amount, the General Indemnity Escrow Amount, the Environmental Escrow Amount and the Special Environmental Indemnity Escrow Amount are being retained.

(g) Subject to Section 11.6(c) and (d), the Securityholders shall indemnify the Securityholders Representative, and the Securityholders Representative shall be entitled to reimbursement from the Securityholders against and from any and all loss, liability, expense or damage which the Securityholders Representative may sustain in good faith and without gross negligence or willful misconduct in the exercise and performance of any of the powers and duties of the Securityholders Representative under this Agreement. The provisions of this Section shall survive termination of this Agreement and shall remain available to any former Securityholders Representative replaced or resigning under Section 4.5(h).

(h) The Securityholders Representative may resign by giving not less than sixty (60) days' prior written notice thereof to the Securityholders. Such resignation shall become effective on the day specified in such notice or upon the appointment of a successor and the acceptance by such successor of such appointment, whichever is earlier. The Securityholders Representative may be removed at any time, with or without cause, by action of the Securityholders holding a majority of the Units immediately prior to the Effective Time. In the event of the Securityholders Representative's resignation or removal, a successor Securityholders Representative shall be selected by the Securityholders holding a majority of the Units immediately prior to the Effective Time. Any successor Securityholders Representative appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Acquiror, with a copy to Escrow Agent. Thereupon, such successor Securityholders Representative shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor hereunder with like effect as if originally named herein.

4.6 Allocation of Merger Consideration. The Merger Consideration herein shall be allocated among the various categories of assets and among the Partnership and Partnership Subsidiaries as set forth on Schedule 4.6 hereto. The Acquiror or the Surviving Corporation and the Securityholders Representative (i) shall execute and file all Tax returns using the allocation set forth on Schedule 4.6 and (ii) shall not take any position on any Tax return, before any Governmental Authority or in any judicial proceeding that is inconsistent with such allocation. The Acquiror or the Surviving Corporation and the Securityholders Representative shall each timely file a Form 8594 with the Internal Revenue Service in accordance with the requirements of Section 1060 of the Internal Revenue Code in accordance with the immediately preceding sentence. Within sixty (60) days following the final determination of the Closing Net Current Asset Value pursuant to Section 4.4 hereof, the Acquiror may propose to the Securityholders Representative modifications to such Schedule 4.6 to the extent that such modifications relate to the allocation of the Merger Consideration among the entities listed on such Schedule. If the Acquiror and the Securityholders Representative agree in writing to such modifications within the thirty (30) day period following the delivery of such proposal, Schedule 4.6 shall be modified as so mutually agreed. If the Acquiror and the Securityholders Representative do not agree in writing on such modifications within such thirty (30) day period following the delivery of such proposal, Schedule 4.6 shall remain as attached hereto without modification.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE PARTNERSHIP

The Partnership hereby represents and warrants to the Acquiror and Merger Sub that the statements contained in this ARTICLE V are correct and complete on the date hereof, except as set forth on the disclosure schedule of the Partnership accompanying this Agreement (the "Partnership Disclosure Schedules"). The Partnership Disclosure Schedules will be arranged in a manner which corresponds to the numbered Sections contained in this ARTICLE V. The mere inclusion of an item in the Partnership Disclosure Schedules as an exception to a representation or warranty shall not be deemed an admission by the Partnership that such item represents a material exception or fact, event or circumstance or that such item is reasonably expected or likely to result in a Material Adverse Effect on the Partnership.

5.1 Existence and Qualification.

(a) The Partnership is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Delaware, and has full power and authority to own, use and lease the properties and assets owned, used or leased by it and to carry out its business as presently conducted and as presently proposed by it to be conducted. The Partnership is qualified to do business as a foreign entity and is in good standing under the laws of each jurisdiction identified on Schedule 5.1(a), and, is qualified to do business as a foreign entity and is in good standing under the laws of each other jurisdiction in which either the ownership or use of the properties owned or used by it or the nature of the activities conducted by it requires such qualification, other than any jurisdiction in which the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect on the Partnership.

(b) Each of the Partnership Subsidiaries (other than NFR Subsidiary, UK Subsidiary and France Subsidiary) is duly formed, validly existing and in good standing under the laws of its jurisdiction of formation, and has full power and authority to own, use and lease the properties and assets owned, used or leased by it and to carry out its business as presently conducted and as presently proposed by it to be conducted. Each Partnership Subsidiary (other than NFR Subsidiary, UK Subsidiary and France Subsidiary) is qualified to do business as a foreign entity and is in good standing under the laws of each jurisdiction identified on Schedule 5.1(b), and is qualified to do business as a foreign entity and is in good standing under the laws of each other jurisdiction in which either the ownership or use of the properties owned or used by it or the nature of the activities conducted by it requires such qualification, other than any jurisdiction in which the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect on the Partnership.

(c) NFR Subsidiary is duly incorporated and validly existing under the laws of England and Wales as a private limited non-trading company and has the power to carry on its business as it is now being conducted and to own the properties and other assets owned by it.

(d) UK Subsidiary is duly incorporated and validly existing under the laws of England and Wales as an unlimited company and has the power to carry on its business as it is

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now being conducted and to own, use and lease the properties and other assets owned, used or leased by it.

(e) France Subsidiary is duly incorporated with the Versailles Commercial Court and validly existing under the laws of France as a société á responsibilité limitée and has the power to carry on its business as it is now being conducted and to own the properties and other assets owned by it.

5.2 Capitalization and Ownership of the Partnership and the Partnership Subsidiaries.

(a) All of the Units are owned beneficially and of record by the Persons listed on Schedule 1 hereto, free and clear of all Encumbrances, other than Encumbrances arising pursuant to that certain Equity Agreement by and among the Partnership and the other parties thereto dated March 11, 1994 (the "Equity Agreement") and as disclosed on Schedule 5.2(a) hereto. All of the Units have been, and will be as of the Closing, validly issued, fully paid and nonassessable, and have not been, and will not be as of the Closing, issued in violation of any federal or state securities law or any preemptive, first refusal or similar rights of any Person. Except as set forth in the Equity Agreement and as disclosed on Schedule 5.2(a), the Units are not subject to any voting trust agreement or other Contract, option, proxy, right of first refusal or understanding, including, without limitation, any Contract restricting or otherwise relating to voting, dividend rights or disposition of the Units.

(b) The outstanding equity securities of the Partnership consist of 7,846,056 Units as of the date hereof. Other than (x) 476,708 Units which are issuable under the Put and Call Agreement and which will be issued thereunder prior to the Closing, and (y) 918,198 outstanding Options to purchase Units, there are no options, warrants or other rights to subscribe for or purchase from the Partnership, or any securities convertible into or exchangeable for, or any plans, contracts or commitments providing for the issuance of, or the granting of rights to acquire, (i) any equity securities of the Partnership or (ii) any securities convertible into or exchangeable for any other equity securities of the Partnership. There are no outstanding or authorized unit appreciation, phantom unit, profit participation or similar rights with respect to the Partnership.

(c) All of the Options are owned beneficially and of record by the Optionholders, free and clear of all Encumbrances, as set forth on Schedule 2 hereto.

(d) Except as disclosed on Schedule 2, there are no outstanding contractual obligations or understandings of the Partnership to repurchase, redeem or otherwise acquire any of the Units or Options.

5.3 Subsidiaries.

(a) Schedule 5.3 (a) sets forth for each Partnership Subsidiary (i) its name and jurisdiction of incorporation or formation, (ii) the number of shares of authorized capital stock of each class of its capital stock, (iii) the number of issued and outstanding shares of each class of its capital stock, the name of the holders thereof, and the number of shares held by each such holder, and (iv) the number of shares of its capital stock held in treasury. The Partnership, directly or indirectly, owns beneficially and of record the issued and outstanding equity securities

of the Partnership Subsidiaries listed on Schedule 5.3 (a) and all other equity securities of the Partnership Subsidiaries are owned of record by the other Persons listed on Schedule 5.3(a). Except as set forth on Schedule 5.3(a) hereto, the Partnership does not own securities or have any ownership of or other property interest in any Person or have rights, contingent or otherwise, to acquire any securities or any ownership of or property interest in any other Person. Other than the pledges of the Partnership Subsidiaries equity securities to the Partnership's lenders which will be released at Closing and as disclosed in the Put and Call Agreement, all of the Partnership's Subsidiaries equity securities are free and clear of all Encumbrances, were validly issued and are fully paid and nonassessable, and have not been, and will not have been issued in violation of any preemptive or similar right of any Person.

(b) There are no options, warrants or other rights to subscribe for or purchase from any Partnership Subsidiary, or any securities convertible into or exchangeable for, or any plans, contracts or commitments providing for the issuance of, or the granting of rights to acquire, (i) any equity securities of any Partnership Subsidiary or (ii) any securities convertible into or exchangeable for any other equity securities of any Partnership Subsidiary. There are no outstanding or authorized unit appreciation, phantom unit, profit participation or similar rights with respect to any Partnership Subsidiary.

(c) Except as disclosed on Schedule 5.3(c), the equity securities of the Partnership Subsidiaries are not subject to any voting trust agreement or other Contract, option, proxy, right of first refusal or understanding, including, without limitation, any Contract restricting or otherwise relating to voting, dividend rights or disposition of such equity securities.

5.4 Authorization. The Partnership has full power and authority and all approvals required by applicable Laws to enter into and execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder. The execution, delivery and performance by the Partnership of this Agreement and the consummation by the Partnership of the transactions contemplated hereby are within the Partnership's powers and have been duly authorized by all necessary partnership action. This Agreement has been duly executed and delivered by the Partnership and constitutes and will constitute at the Closing a valid and legally binding obligation of the Partnership, enforceable against the Partnership in accordance with its terms, except as the enforcement thereof may be limited by Laws affecting the rights of creditors generally or general principles of equity.

5.5 No Breach or Violation. The execution and delivery of this Agreement by the Partnership, compliance with and fulfillment of the terms hereof and the consummation by the Partnership of the transactions contemplated hereby, do not and will not, with notice or passage of time or both, (A) except as set forth on Schedule 5.5, (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in the creation or imposition of any Encumbrance upon the assets of the Business pursuant to, (iv) require any filing, notice or consent or approval under, or (v) result in the acceleration of, or give any Person the right to terminate, modify, cancel or accelerate any obligation under, any material Contract to which the Partnership or any Partnership Subsidiary is subject or by which the Partnership or any Partnership Subsidiary is or any of their respective properties or assets are bound or (B) violate any Organizational Documents of the Partnership or any Partnership Subsidiary or any Law or Order to which the Partnership or any Partnership Subsidiary is subject or by which the

Partnership or any Partnership Subsidiary or any of their respective properties or assets are bound.

5.6 Governmental Consents and Approvals. Except as disclosed on Schedule 5.6, no material consent, approval, exemption, audit, waiver, order or authorization of, action by, or registration, qualification, designation, declaration, notice or filing with, any Governmental Authority, is required on the part of the Partnership or any Partnership Subsidiary in connection with the execution, delivery and performance of this Agreement by the Partnership, or the other transactions contemplated by this Agreement, other than Governmental Authorizations that will be obtained or made on or before Closing.

5.7 Organizational Documents and Minute Books. Complete and correct copies of the Organizational Documents of the Partnership and each Partnership Subsidiary have been previously made available to the Acquiror and no material changes in such documents will be made on or before the Closing Date. Neither the Partnership nor any Partnership Subsidiary is in default under or in violation of any provision of its Organizational Documents. The minute books of the General Partner which shall be delivered to the Acquiror at the Closing are correct and complete in all material respects, contain records of all meetings and consents in lieu of meetings of the partners of the Partnership since formation. Except as reflected in such minute books, there are no minutes of meetings or consents in lieu of meetings of the General Partner.

5.8 Financial Statements.

(a) True and complete copies of the Historical Financial Statements and the Interim Financial Statements as of March 1, 2003 and for the two month period then ended (the "February 2003 Statements") have previously been delivered to the Acquiror and are attached hereto as Schedule 5.8(a). The Historical Financial Statements, including the footnotes thereto, and, except as described on Schedule 5.8(a), the February 2003 Statements have been prepared on a consolidated basis in accordance with GAAP and present fairly in all material respects the consolidated financial condition of the Partnership and the Partnership Subsidiaries as of such dates and the related consolidated statements of income, cash flows and partners' capital for the periods indicated, are correct and complete in all material respects and are consistent with the books and records of the Partnership and the Partnership Subsidiaries; provided, however, that the February 2003 Statements are subject to normal year-end adjustments (which, except as described on Schedule 5.8(a), will not be material individually or in the aggregate) and lack footnotes and other presentation items.

(b) Any Interim Financial Statements delivered to the Acquiror following the date hereof pursuant to the terms of this Agreement will have been prepared on a consolidated basis in accordance with GAAP, except as disclosed therein or described on Schedule 5.8(b). Any such Interim Financial Statements, when delivered to the Acquiror pursuant to the terms of this Agreement, will fairly present in all material respects the consolidated financial condition of the Partnership and the Partnership Subsidiaries at the respective dates thereof and the consolidated results of operations and cash flows of the Partnership and the Partnership Subsidiaries for the respective periods indicated, and will be correct and complete in all material respects and consistent with the books and records of the Partnership and the Partnership Subsidiaries; provided, however, that such Interim Financial Statements will be subject to normal year-end

of the Partnership Subsidiaries listed on Schedule 5.3 (a) and all other equity securities of the Partnership Subsidiaries are owned of record by the other Persons listed on Schedule 5.3(a). Except as set forth on Schedule 5.3(a) hereto, the Partnership does not own securities or have any ownership of or other property interest in any Person or have rights, contingent or otherwise, to acquire any securities or any ownership of or property interest in any other Person. Other than the pledges of the Partnership Subsidiaries equity securities to the Partnership's lenders which will be released at Closing and as disclosed in the Put and Call Agreement, all of the Partnership's Subsidiaries equity securities are free and clear of all Encumbrances, were validly issued and are fully paid and nonassessable, and have not been, and will not have been issued in violation of any preemptive or similar right of any Person.

(b) There are no options, warrants or other rights to subscribe for or purchase from any Partnership Subsidiary, or any securities convertible into or exchangeable for, or any plans, contracts or commitments providing for the issuance of, or the granting of rights to acquire, (i) any equity securities of any Partnership Subsidiary or (ii) any securities convertible into or exchangeable for any other equity securities of any Partnership Subsidiary. There are no outstanding or authorized unit appreciation, phantom unit, profit participation or similar rights with respect to any Partnership Subsidiary.

(c) Except as disclosed on Schedule 5.3(c), the equity securities of the Partnership Subsidiaries are not subject to any voting trust agreement or other Contract, option, proxy, right of first refusal or understanding, including, without limitation, any Contract restricting or otherwise relating to voting, dividend rights or disposition of such equity securities.

5.4 Authorization. The Partnership has full power and authority and all approvals required by applicable Laws to enter into and execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder. The execution, delivery and performance by the Partnership of this Agreement and the consummation by the Partnership of the transactions contemplated hereby are within the Partnership's powers and have been duly authorized by all necessary partnership action. This Agreement has been duly executed and delivered by the Partnership and constitutes and will constitute at the Closing a valid and legally binding obligation of the Partnership, enforceable against the Partnership in accordance with its terms, except as the enforcement thereof may be limited by Laws affecting the rights of creditors generally or general principles of equity.

5.5 No Breach or Violation. The execution and delivery of this Agreement by the Partnership, compliance with and fulfillment of the terms hereof and the consummation by the Partnership of the transactions contemplated hereby, do not and will not, with notice or passage of time or both, (A) except as set forth on Schedule 5.5, (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in the creation or imposition of any Encumbrance upon the assets of the Business pursuant to, (iv) require any filing, notice or consent or approval under, or (v) result in the acceleration of, or give any Person the right to terminate, modify, cancel or accelerate any obligation under, any material Contract to which the Partnership or any Partnership Subsidiary is subject or by which the Partnership or any Partnership Subsidiary is or any of their respective properties or assets are bound or (B) violate any Organizational Documents of the Partnership or any Partnership Subsidiary or any Law or Order to which the Partnership or any Partnership Subsidiary is subject or by which the

adjustments (which, except as described on Schedule 5.8(a), will not be material individually or in the aggregate) and will lack footnotes and other presentation items.

5.9 Absence of Certain Developments. Since the Balance Sheet Date and except as set forth on Schedule 5.9, the Partnership has not and has not caused or permitted the Partnership Subsidiaries to do any of the following:

(i) issued or sold any equity securities or any rights, options or warrants with respect thereto, or purchased, redeemed or otherwise acquired any of its equity securities, or declared, set aside or paid any dividend or other distribution in respect of its equity securities, other than distributions by a Partnership Subsidiary to the Partnership and other than redemptions in connection with the termination of employment of any employee of the Partnership or any Partnership Subsidiary;

(ii) made any increase in the base compensation, bonuses, or paid vacation time allowed for its officers or employees, except for the Management Bonus Amount payable on or after the Closing Date and except for normal periodic increases in base compensation and bonus pool allocations for employees made in the Ordinary Course of Business pursuant to established compensation policies and bonus plans of the Partnership or the Partnership Subsidiaries applied on a basis consistent with that of prior years;

(iii) suffered any material adverse change in the business relationship of the Partnership or any Partnership Subsidiary with any customer, distributor or supplier with whom the Partnership together with the Partnership Subsidiaries transacted business in excess of $100,000 in the past twelve months;

(iv) suffered damage, destruction or other casualty loss to any portion of the Business, whether or not covered by insurance, in excess of $100,000;

(v) made any commitments for capital expenditures, additions or improvements either involving more than $100,000 in the aggregate or made outside of the Ordinary Course of Business;

(vi) made any material change to any of its Organizational Documents or in its accounting procedures or practices (other than as mandated by FASB accounting standards);

(vii) sold, leased, subleased, assigned or transferred any of its assets, except for the sale or other disposition of inventory, equipment or other immaterial assets for fair consideration (as determined in good faith by the General Partner) in the Ordinary Course of Business;

(viii) canceled, waived or compromised any debts or claims, other than write-offs and write-downs of accounts in the Ordinary Course of Business;

(ix) mortgaged or pledged any of its assets, or subjected them to any Encumbrance, except in the Ordinary Course of Business and except for Permitted Encumbrances;

(x) entered into any other material transaction (other than this Agreement), or any material amendment of any Contract, except in the Ordinary Course of Business;

(xi) incurred, assumed or guaranteed any Indebtedness, except in the Ordinary Course of Business;

(xii) made any loan, advance or capital contribution to or investment in any Person, other than to or in a Partnership Subsidiary and advances to employees for business expenses in the Ordinary Course of Business;

(xiii) terminated or closed any facility, business or operation of the Partnership;

(xiv) delayed or postponed the payment of accounts payable or other liabilities outside the Ordinary Course of Business;

(xv) entered into any collective bargaining agreement or material Contract of employment, written or oral, or modified the terms of any such existing Contract or agreement;

(xvi) transferred, assigned, or granted to any third party, or been granted by any third party, any license or sublicense of any rights under or with respect to any Intellectual Property, other than in the Ordinary Course of Business;

(xvii) adopted, amended or modified in any material respect, or terminated any bonus, profit sharing, incentive, severance, or other plan, contract, or commitment for the benefit of any of its directors, officers, or employees;

(xviii) adopted, amended or modified in any material respect, or terminated any Employee Plan;

(xix) failed to take any action reasonably necessary to maintain, renew or protect any material Intellectual Property; and

(xx) agreed to do any of the foregoing.

5.10 Taxes, Tax Returns and Audit. Except as disclosed on Schedule 5.10:

(i) All Tax Returns required to be filed on or before the date hereof by or on behalf of the Partnership and the Partnership Subsidiaries have been filed when due in accordance with all applicable Laws;

(ii) The Tax Returns are true, correct and complete in all material respects;

(iii) All Taxes owed by the Partnership (which are shown as due and payable on Tax Returns filed on or before the date hereof) and each Partnership Subsidiary have been timely paid or withheld and remitted to the appropriate Governmental Authority;

(iv) Any accruals established for Taxes with respect to the Partnership and each Partnership Subsidiary for any period ending on or before the date hereof reflected on the books of the Partnership or such Partnership Subsidiary (excluding any provision for deferred income Taxes) are adequate for their stated purposes;

(v) Neither the Partnership nor any Partnership Subsidiary is delinquent in the payment of any Tax nor has any such Person requested any extension of time within which to file any Tax Return which has not been previously filed except for extensions granted as a matter of right;

(vi) Neither the Partnership nor any Partnership Subsidiary has granted any extension or waiver of the statute of limitations period applicable to any Tax Return, which period (after giving effect to such extension or waiver) has not yet expired;

(vii) There is no action, suit, proceeding, claim, audit or investigation now pending or, to the Knowledge of the Partnership, any action, suit, proceeding, claim, audit or investigation threatened against or with respect to the Partnership or any Partnership Subsidiary in respect of any Tax;

(viii) To the Knowledge of the Partnership, since 1994 no claim has been made by a Governmental Authority in any jurisdiction in which the Partnership or any Partnership Subsidiary has not filed Tax Returns that the Partnership or any of the Partnership Subsidiaries is or may be subject to taxation by that jurisdiction;

(ix) There are no security interests on any of the assets of any of the Partnership or the Partnership Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax other than Taxes which are being contested in good faith and for which appropriate reserves have been reflected on the Balance Sheet;

(x) Neither the Partnership nor any of the Partnership Subsidiaries is a party to or bound by any Tax allocation or sharing agreement; and

(xi) Each of the Partnership and the Partnership Subsidiaries has withheld all Taxes required to have been withheld in connection with any amounts paid or owing to any partner, employee or independent contractor based on the information provided by such employee, and all such Taxes so withheld and required to be paid have been paid.

5.11 Contracts. Attached hereto as Schedule 5.11 is a list of all of the following Contracts to which the Partnership or any Partnership Subsidiary is a party:

(i) all outstanding purchase orders or agreements for the purchase of materials, products, services, goods or supplies, the performance of which will extend over a period of one year, or which involve annual payments by the Partnership or any

Partnership Subsidiary of $100,000 or more, or which were entered into other than in the Ordinary Course of Business;

(ii) all sales, distribution or other similar Contracts, the performance of which will extend over a period of one year or which provide for the sale by the Partnership or any Partnership Subsidiary of materials, supplies, goods, services, equipment or other assets that provide for annual payments to the Partnership or any Partnership Subsidiary of $100,000 or more;

(iii) all Contracts relating to the acquisition or disposition of any business or product line (whether by merger, sale of stock, sale of assets or otherwise) during the past five years;

(iv) all licenses, franchises or similar Contracts;

(v) all collective bargaining agreements and all Contracts of employment with any officer, director, or employee of the Partnership or any Partnership Subsidiary which either provide for annual compensation in excess of $75,000 or are not terminable (in their entirety) at will by the Partnership or such Partnership Subsidiary;

(vi) all Contracts providing for options or equity security purchases, profit sharing, share appreciation, bonuses, deferred or incentive compensation, retirement or severance payments, stay or change of control bonuses or similar incentives for any officer or employee of the Partnership or any Partnership Subsidiary;

(vii) all Contracts for construction or for the purchase of real estate, improvements, fixtures, equipment, machinery and other items which under GAAP constitute capital expenditures and which individually or in the aggregate for any related group of items involve planned expenditures of the Partnership or any Partnership Subsidiary in excess of $50,000;

(viii) all Contracts relating to the rental or use of real property, equipment, vehicles, other personal property or fixtures, except for Contracts individually involving payment of annual rentals or sums less than $25,000;

(ix) all Contracts relating to Indebtedness for borrowed money or evidenced by a bond, debenture, note or other evidence of Indebtedness (whether secured or unsecured) of the Partnership or any Partnership Subsidiary, including but not limited to, Indebtedness by way of lease or installment purchase arrangement, guarantee, reimbursement obligations pertaining to letters of credit, and all mortgages, pledges, conditional sales contracts, chattel and purchase-money mortgages and other security arrangements with respect to any real estate, improvements, equipment, other personal property or fixtures, used or owned by the Partnership or any Partnership Subsidiary, except in each case for Contracts individually involving less than $25,000 or not more than $50,000 in the aggregate, and except for Contracts relating to Indebtedness being paid in full at the Closing as provided in Section 4.2 hereof;

(x) all Contracts restricting the Partnership or any Partnership Subsidiary from engaging in any line of business or competing with any Person or in any geographical area, or from using or disclosing any information in its possession or which would so restrict the Partnership or any Partnership Subsidiary after the Closing Date (other than supplier and customer confidentiality covenants entered into the Ordinary Course of Business);

(xi) all Contracts granting to others the right to manufacture, distribute or sell products, including manufacturer's representatives and sales representatives agreements, dealer agreements, distributorship agreements, agency agreements, marketing agreements and agreements with brokers;

(xii) all Contracts relating to joint ventures, partnerships or other agreements involving a sharing of profits;

(xiii) all Contracts concerning the issuance, purchase or sale of any securities of the Partnership or any Partnership Subsidiary;

(xiv) all Contracts of warranty, guaranty, indemnification or similar undertakings with respect to contractual performance extended by the Partnership or any Partnership Subsidiary not in the Ordinary Course of Business;

(xv) all management service, consulting or any other similar type of Contract;

(xvi) any agreement with any holders of Units or Options and their respective Affiliates;

(xvii) any agreement under which it has advanced or loaned any amount to any of its directors, officers, or employees outside the Ordinary Course of Business;

(xviii) all licenses and sublicenses of Intellectual Property; and

(xix) any other Contract not entered into in the Ordinary Course of Business;

The Partnership has delivered or made available to the Acquiror or its representatives a copy of each agreement (as amended to date) listed on Schedule 5.11, each of which is correct and complete in all material respects. Except as set forth on Schedule 5.11, all Contracts required to be disclosed to the Acquiror pursuant to this Section 5.11 are legal, valid, binding, enforceable and in full force and effect as to the Partnership or such Partnership Subsidiary, and neither the Partnership or such Partnership Subsidiary nor, to the Knowledge of the Partnership, any other party thereto, is in material breach of, or in material default under, the terms of any such Contract, and no event has occurred which constitutes a material breach or default by the Partnership or such Partnership Subsidiary thereunder. Except as set forth on Schedule 5.11, no material consent, approval or authorization of any Person is required under any Contract in connection with the consummation of the transactions contemplated by this Agreement, other than any consent, approval or authorization that will be obtained on or before Closing.

5.12 Litigation. Except as set forth in Schedule 5.12 hereto, there is no suit, action, proceeding, hearing or investigation pending or, to the Knowledge of the Partnership, threatened against the Partnership or any Partnership Subsidiary or any of their respective assets or properties, or that may interfere with the transactions contemplated hereby, whether at law or in equity or before any Governmental Authority or arbitrator. Except as set forth on Schedule 5.12, neither the Partnership nor any Partnership Subsidiary has been a party to any such suit, action, proceeding or investigation during the past five years. Except as set forth on Schedule 5.12, neither the Partnership nor any Partnership Subsidiary are a party to or subject to any Order affecting it or the Business or which could interfere with the consummation of the transactions contemplated hereby.

5.13 Real Property Owned or Leased; Structures; Condemnation. (a) The Partnership has good and marketable indefeasible fee simple title, free and clear of all Encumbrances, to all of the Real Property reflected as owned on the Balance Sheet, subject to Permitted Encumbrances. Schedule 5.13 hereto sets forth the address and description of each parcel of Real Property owned by the Partnership or any of the Partnership Subsidiaries. Except as set forth on Schedule 5.13, none of the Partnership or any Partnership Subsidiary has leased or otherwise granted to any Person the right to use or occupy such Real Property or any portion thereof and there are no outstanding options, rights of first offer or rights of first refusal to purchase such Real Property or any portion thereof. Neither the Partnership nor any Partnership Subsidiary is a party to any agreement or option to purchase any real property or interest therein. The Partnership and the Partnership Subsidiaries have leasehold interests in real estate as disclosed in Schedule 5.13 (which constitutes all of the real property leased by Partnership and the Partnership Subsidiaries). The Partnership has delivered to the Acquiror correct and complete copies of the leases listed in Schedule 5.13 and, with respect to each such lease, except as disclosed in Schedule 5.13: (i) the Partnership's or the applicable Partnership Subsidiary's possession and quiet enjoyment of the leased Real Property under such lease has not been disturbed by the lessor thereunder or any third party making a claim through such lessor, and to the Partnership's Knowledge, there are no material disputes with the lessor with respect to such lease; (ii) the Partnership or the applicable Partnership Subsidiary has not subleased, licensed, collaterally assigned or otherwise granted to any Person a security interest in the leased property or the right to use or occupy the leased real property, and (iii) there are no Encumbrances on the estate or interest created by such lease. Except as set forth in Schedule 5.13:

(i) No structure owned by the Partnership or any Partnership Subsidiary encroaches upon property of others, other than any encroachment that has not and would not reasonably be expected to materially interfere with the Partnership's or such Partnership Subsidiary's current use of such structure, nor is any Real Property owned by the Partnership or any Partnership Subsidiary encroached upon by structures of others;

(ii) No charges or violations have been filed or served upon the Partnership or any Partnership Subsidiary during the past five years relating to any Real Property owned or leased by the Partnership or any Partnership Subsidiary or any structure thereon or any of the operations conducted at any such owned or leased Real Property or structure, as a result of any violation or alleged violation of any applicable Laws or restrictive covenants or as a result of any encroachment on the property of others.

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(b) The buildings, improvements and fixtures owned by the Partnership and the Partnership Subsidiaries are structurally sound and, to the Knowledge of the Partnership, have no material defects and are capable of being used in the conduct of the Partnership's business after the Closing in substantially the same manner as conducted before the Closing.

(c) Neither the whole nor any portion of the fee interest, nor to the Knowledge of the Partnership, leasehold interest in any of the Real Property, is subject to any Order requiring its sale nor is it being condemned, expropriated or otherwise taken by any Governmental Authority with or without payment of compensation therefor, nor to the Knowledge of the Partnership, has any such condemnation, expropriation or taking been proposed.

5.14 Title to Assets. The Partnership or a Partnership Subsidiary owns, or has a valid leasehold interest in, free and clear of all Encumbrances other than Permitted Encumbrances, all of the property and assets reflected on the Balance Sheet and all property and assets acquired by any of them after the Balance Sheet Date (except for inventory, equipment and other immaterial assets sold or otherwise disposed of by the Partnership or a Partnership Subsidiary in the Ordinary Course of Business since the Balance Sheet Date).

5.15 Proprietary Rights. Schedule 5.15 sets forth, with respect to all Intellectual Property owned by the Partnership and the Partnership Subsidiaries: (i) all patents and patent applications included in such Intellectual Property; (ii) all trademarks and service marks included in such Intellectual Property which are material or which are or have been the subject of federal or state registration or applications for registration; (iii) all copyrights included in such Intellectual Property for which applications for registration have been filed; and (iv) all domain names. Except as set forth on Schedule 5.15, and except for computer software licensed by the Partnership or a Partnership Subsidiary pursuant to a contract listed on Schedule 5.11, the Partnership or a Partnership Subsidiary owns all right, title and interest in and to (free and clear of all Encumbrances other than Permitted Encumbrances) or has, pursuant to a contract listed on Schedule 5.11, the sole and exclusive right to use all Intellectual Property. The Partnership and each Partnership Subsidiary own or have a valid license pursuant to a Contract listed on Schedule 5.11 to all computer software used in the Business, except where a failure to own or have a valid license will not have a Material Adverse Effect on the Business. Except as set forth on Schedule 5.15, neither the Partnership nor any Partnership Subsidiary are parties to any material license, sublicense or agreement relating to the use by any other Person of any Intellectual Property which is now in effect. Except as disclosed on Schedule 5.15, no action or proceeding is pending or, to the Knowledge of the Partnership, threatened, to the effect that the operation of the Business, the manufacture or sale of any products or any formula, method, process, part or material employed in connection therewith infringes upon or conflicts with any patent or other intellectual property right owned or held by any other Person. Except as disclosed on Schedule 5.15, neither the Partnership nor any of the Partnership Subsidiaries have been sued or charged as a defendant in any claim, suit, action or proceeding during the past five years which involves a claim of infringement of any Intellectual Property held by any third party. To the Knowledge of the Partnership, no Person is infringing upon any Intellectual Property. Each of the Partnership and the Partnership Subsidiaries has taken commercially reasonable measures to maintain and protect each material item of Intellectual Property. To the knowledge of the Partnership, no Intellectual Property is subject to any outstanding, threatened or pending injunction, charge, complaint, claim or demand or any outstanding, threatened or pending

challenge to the legality, validity or enforceability of such Intellectual Property. The Partnership and the Partnership Subsidiaries follow reasonable commercial practices to protect their proprietary and confidential information.

5.16 Governmental Authorizations. The Partnership and the Partnership Subsidiary hold all material Governmental Authorizations (including, without limitation, all material approvals required by the United States Food and Drug Administration or any similar agency in any other jurisdiction) required to own and operate the Business and to conduct the Business as now conducted. Schedule 5.16 sets forth all such material Governmental Authorizations held by the Partnership and the Partnership Subsidiaries. All fees and charges incident to those Governmental Authorizations have been fully paid and are current. To the Knowledge of the Partnership, no cancellation or suspension of any Governmental Authorization held by the Partnership or any such Partnership Subsidiary has been threatened or would result by reason of the transactions contemplated by this Agreement.

5.17 Compliance with Law. Each of the Partnership and the Partnership Subsidiaries has complied in all material respects with all applicable Laws and Orders. Except as may be set forth in Schedule 5.17 hereto, neither the Partnership nor any Partnership Subsidiary is in material violation of any Law or Order and has not received any notification alleging any material violations of Law or Order with respect to which adequate corrective action has not been taken. Neither the Partnership nor any of the Partnership Subsidiaries has taken or failed to take any action which could reasonably be expected to violate or result in the violation of any material provision of the United States Foreign Corrupt Practices Act.

5.18 Environmental Compliance.

(a) Except as set forth on Schedule 5.18 hereto:

(i) Other than with respect to Hazardous Substances that are used, stored, managed, transported, handled and disposed of in the ordinary course of the business of the Partnership or any Partnership Subsidiary and in material compliance with all applicable Environmental Laws, no Hazardous Materials have been or are currently generated, stored, transported, used, managed or located on any parcel of the Real Property.

(ii) There has been no release or threat of release of any Hazardous Substances on, under or from the Real Property, or any other current or former facility of the Partnership, any Partnership Subsidiary or any of their respective predecessors, which would reasonably be expected to give rise to any material liability or investigatory, corrective or remedial obligation pursuant to any such Environmental Law.

(iii) No portion of the Real Property has been listed, designated or identified in the National Priorities List (NPL) or the CERCLA Information System (CERCLIS), or on any similar list of locations to be investigated or disposal sites published under Federal or state law for purposes of requiring investigation, cleanup, or remedial or corrective action under any Environmental Law.

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(iv) Neither the Partnership nor any Partnership Subsidiary nor any of their respective predecessors, has transported, disposed of, reclaimed or arranged for any of the foregoing with respect to Hazardous Substances so as to give rise to any liability under any Environmental Law.

(v) No notice of violation, lien, complaint, suit, order or other notice or communication concerning any alleged violation of, or liability under, any Environmental Law in connection with the business of the Partnership or any Partnership Subsidiary has been received which has not been fully satisfied or complied with in timely fashion so as to bring the affected operations into material compliance with Environmental Laws nor has the Partnership or any Partnership Subsidiary received any document or information request from any Governmental Authority in connection with any off site location of Hazardous Substances or been informed that the Partnership or such Partnership Subsidiary might be a potentially responsible party or otherwise have liability in connection with any such site.

(vi) The Partnership and the Partnership Subsidiaries have all permits and licenses required under applicable Environmental Laws to be issued to them on account of their operations at the Real Property, such permits and licenses are in full force and effect, and the Partnership and the Partnership Subsidiaries have been and are in material compliance with the terms and conditions of same to the extent any may exist or be applicable to their respective operations and facilities and have been and are in material compliance with all Environmental Laws.

(vii) The Partnership has provided to the Acquiror true and correct copies of all environmental audits, environmental assessments or investigation reports, government inspection reports, claims and complaints which are in their possession or reasonable control.

(b) The representations and warranties set forth in this Section 5.18 are the sole representations and warranties pursuant to which any Acquiror Indemnified Party may assert any Environmental Indemnity Claim and any such Claim and any liability with respect thereto shall be discharged solely out of funds on deposit in the Environmental Escrow Account.

5.19 Major Customers and Suppliers.

(a) Set forth on Schedule 5.19(a) hereto is a list of the 15 largest customers of the Partnership and the Partnership Subsidiaries on a consolidated basis based upon dollar volume of sales for the fiscal year ended on December 29, 2001 and for the twelve months ended December 28, 2002.. Since December 29, 2001, no customer listed on Schedule 5.19(a) has discontinued or, to the Knowledge of the Partnership, threatened to discontinue its relationship as a customer of the Partnership or such Partnership Subsidiary, or has materially reduced or, to the Knowledge of the Partnership, threatened to materially reduce its purchases from the Partnership or any Partnership Subsidiary, whether by reason of the consummation of the transactions contemplated by this Agreement or otherwise.

(b) Set forth on Schedule 5.19(b) hereto is a list of the 10 largest suppliers of the Partnership and the Partnership Subsidiaries on a consolidated basis based upon the dollar volume of purchases for the fiscal year ended on December 29, 2001 and for the twelve months ended December 28, 2002. Since December 29, 2001, no supplier listed on Schedule 5.19(b) has discontinued or, to the Knowledge of the Partnership, threatened to discontinue its relationship as a supplier of the Partnership or any Partnership Subsidiary, or has materially reduced or, to the Knowledge of the Partnership, threatened to materially reduce its sales to the Partnership or any Partnership Subsidiary, whether by reason of the consummation of the transactions contemplated by this Agreement or otherwise.

(c) Neither the Partnership nor any Partnership Subsidiary is required to provide any bonding or other financial security arrangements in connection with any of the transactions with any of its customers or suppliers in the Ordinary Course of Business.

5.20 Employees; Labor Relations.

(a) Except as set forth on Schedule 5.20, there is no officer, executive or group of key employees of the Partnership or any Partnership Subsidiary who has or have given or received written notice to terminate his, her or their employment with the Partnership or such Partnership Subsidiary and, to the Knowledge of the Partnership, no executive, key employee or group of employees has any plans to terminate employment with the Partnership or any Partnership Subsidiary. The Partnership has provided to the Acquiror a list of all full-time employees of the Partnership and each Partnership Subsidiary.

(b) Except as disclosed on Schedule 5.20, neither the Partnership nor any Partnership Subsidiary is or has ever been a party to any collective bargaining agreement or other organized labor contract. Except as disclosed on Schedule 5.20, (i) there is not pending, or to the Knowledge of the Partnership, threatened strike, work slowdown, picketing, labor arbitration, work stoppage or other material dispute by any authorized representative of any union or any other elected representative of employees; and (ii) neither the Partnership nor any Partnership Subsidiary has received notice of any unfair labor practice charges or any petitions for representation pending before the National Labor Relations Board or any comparable Governmental Authority, or notice of any threat of such filing.

5.21 Employee Benefit Plans and Arrangements.

(a) Schedule 5.21(a) sets forth a list as of the date hereof of all Employee Plans. With respect to each Employee Plan, the Partnership has furnished or made available to the Acquiror copies of the following: (1) the plan document and summary plan description; (2) the most recent determination letter from the Internal Revenue Service or any equivalent tax authorities, if any, in France and/or the United Kingdom; (3) the most recent annual report; and (4) all related trust agreements, insurance contracts or other funding arrangements that implement such plans in relation to the Partnership and the Partnership Subsidiaries.

(b) Neither the Partnership nor any Partnership Subsidiary, nor any of the ERISA Plans, nor any trust created thereunder nor any trustee or administrator thereof, has engaged in any transaction as a result of which the Partnership or any Partnership Subsidiary would

reasonably be expected to be subject to any material liability pursuant to Sections 406 and 409 of ERISA or to either a civil penalty assessed pursuant to Section 502(i) or (l) of ERISA or a tax imposed pursuant to Section 4975 of the Code or an equivalent enactment, if any, in force in France and/or the United Kingdom.

(c) No liability under Title IV of ERISA or an equivalent enactment, if any, in force in France and/or the United Kingdom has been or is reasonably expected to be incurred by the Partnership, any Partnership Subsidiary or any ERISA Affiliate (other than liability for non-delinquent premiums due to the Pension Benefit Guaranty Corporation ("PBGC") with respect to an ERISA Plan) unless such liability has been, or prior to the Effective Time will be, satisfied in full and no amendment has occurred to an ERISA Plan which has required or could require the Partnership, any Partnership Subsidiary, any ERISA Affiliate or the Acquiror to provide security to any such plan;

(d) No ERISA Plan which is subject to Title IV of ERISA has been completely or partially terminated or been the subject of a Reportable Event. No proceeding by the PBGC to terminate any such ERISA Plan has been instituted or, to the Knowledge of the Partnership or each Partnership Subsidiary, threatened;

(e) Each Employee Plan has been operated and administered in substantial compliance with its governing documents and with all provisions of all applicable Laws, including, but not limited to, ERISA and the Code or an equivalent enactment, if any, in force in France and/or the United Kingdom;

(f) Each ERISA Plan that is intended to be "qualified" within the meaning of Section 401(a) of the Code has been determined by the IRS to be so qualified by issuance and receipt of a favorable determination letter or reliance upon an opinion letter which states that the ERISA Plan meets all requirements under the Code and that any trust(s) associated with such ERISA Plan is tax exempt under Section 501(a) of the Code. Each such ERISA Plan has filed or will file an application for a favorable determination letter from the IRS which covers recent tax law changes commonly known as "GUST" within the GUST remedial amendment period (to the extent such Plan is required to file such an application) and has been or will be timely amended for the tax law changes commonly known as "EGTRRA". No event has occurred since the date of the most recent determination (other than the effective date of certain amendments to the Code the remedial amendment period for which has not expired) that would adversely affect the qualified status of such ERISA Plan.

(g) There are no claims (other than routine claims for benefits), actions or lawsuits pending, or to the Knowledge of the Partnership, threatened, with respect to any Employee Plan or the Partnership or any Partnership Subsidiary in connection with any Employee Plan or the fiduciaries responsible for such Employee Plans, and to the Knowledge of the Partnership, there are no circumstances that would reasonably be expected to give rise to any action, lawsuit or claim, on behalf of or against any of the Employee Plans. There are no audits, investigations or examinations with respect to any Employee Plan by the IRS, the Department of Labor, the PBGC or any other governmental agency (other than a review associated with the application for a determination letter that has been or may be filed with the IRS) and to the Knowledge of the

Partnership and any Partnership Subsidiary, no such audit, investigation or examination is threatened or pending.

(h) None of the Partnership, the Partnership Subsidiaries or any ERISA Affiliate maintains, contributes to, or has any obligation to contribute to or has any liability with respect to a "multiemployer plan" as that term is defined in Section 3(37) of ERISA.

(i) All contributions (including all employer contributions and employee salary reduction contributions) that are due with respect to any Employee Plan have been made within the time periods prescribed by ERISA and the Code to each such Plan and all contributions for any period ending on or before the Closing Date which are not yet due have been made to each such Employee Plan or accrued in accordance with the past custom and practice of the Partnership or the Partnership Subsidiaries. All premiums or other payments for all periods ending before the Closing Date have been paid with respect to each Employee Plan.

(j) Except as disclosed on Schedule 5.21(j), neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will (i) result in a material payment (including, without limitation, severance, unemployment compensation, golden parachute or otherwise) becoming due from the Partnership or any Partnership Subsidiary under any Employee Plan; (ii) materially increase any benefit otherwise payable under any Employee Plan; or (iii) accelerate the time of payment or vesting, or increase the amount of, any compensation due to any individual.

(k) There are no agreements to which the Partnership or any Partnership Subsidiary is a party which will provide payments to any officer, employee or highly compensated individual which will be "parachute payments" under Section 280G or Section 4999 of the Code for which the Acquiror or the Partnership would have withholding liability or that would result in loss of tax deductions under Section 280G of the Code.

(l) The Partnership and the Partnership Subsidiaries do not provide life insurance, medical or health benefit coverage on or after retirement or other termination of employment to any employee or former employee (and their dependents and beneficiaries) of the Partnership or any Partnership Subsidiary other than continuation coverage as required by Section 4980B of the Code, Sections 601-608 of ERISA ("COBRA") or applicable state continuation of coverage statutes or as required by an equivalent enactment, if any, in force in France and/or the United Kingdom. The Partnership, each Partnership Subsidiary and each ERISA Affiliate have complied in all material respects with COBRA.

(m) The Partnership does not make any representations or warranties hereunder with respect to the present value of the benefit liabilities under The Hilsinger Company L.P. Retirement Plan.

5.22 Guarantees. Except as disclosed on Schedule 5.22 or in the Historical Financial Statements, the Partnership and the Partnership Subsidiaries have no contracts guaranteeing the payment or performance by any other Person, or whereby, except for the endorsement of checks in the Ordinary Course of Business, neither the Partnership nor any Partnership Subsidiary in any way is or will be liable with respect to obligations (including Indebtedness) of any other Person.

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5.23 Officers and Certain Authorized Persons. Schedule 5.23 hereto sets forth a complete and accurate list of: (i) the names and offices of all officers of the Partnership and each Partnership Subsidiary; (ii) the names of all persons authorized to borrow money or incur or guarantee Indebtedness on behalf of the Partnership and each Partnership Subsidiary; (iii) all safes, vaults and safe deposit boxes maintained by or on behalf of the Partnership or any Partnership Subsidiary or in which their property is held, and the names of all persons authorized to have access thereto; and (iv) all bank accounts of the Partnership and each Partnership Subsidiary and the names of all persons who are authorized signatories with respect to such accounts, the capacities in which they are authorized signatories and the terms of their authorizations.

5.24 Insurance. Schedule 5.24 hereto contains a description of all policies of title, liability, fire, crime, fidelity, product liability, worker's compensation and other forms of insurance (including bonds) insuring the products, properties, assets, business, operations, employees, officers and directors, and Employee Plans of the Partnership and such Partnership Subsidiary, including for each policy the name of the insurer, the amount of coverage, the type of insurance, the policy number, the renewal or expiration date and all pending claims under the policy. The Partnership has provided the Acquiror with a complete and correct copy of each such insurance policy or bond. All of the insurance policies listed on Schedule 5.24 are outstanding and in full force and effect and all premiums with respect to the policies are currently paid. Neither the Partnership nor any Partnership Subsidiary, nor to the Knowledge of the Partnership any other party to the insurance policies listed on Schedule 5.24 is in material breach or default (including with respect to the payment of premiums or the giving of notices), and no event has occurred which, with notice or the lapse of time, would constitute such a breach or default, or permit termination, modification, or acceleration under the policy.

5.25 Indebtedness to and from Officers and Others. (a) Except as set forth in Schedule 5.25 (a), the Partnership and the Partnership Subsidiaries are not indebted to any officer or employee of the Partnership or any Partnership Subsidiary, except for amounts due as normal salaries, wages, pay, benefits, remuneration or reimbursement of business expenses and except for amounts to become due as the Management Bonus Amount.

(b) Except as set forth on Schedule 5.25(b), no officer or employee of the Partnership or any Partnership Subsidiary is now, or on the Closing Date will be, indebted to the Partnership or any Partnership Subsidiary except for business expense advances.

(c) Except as set forth on Schedule 5.25(c), neither the Partnership nor any Partnership Subsidiary is indebted to any Affiliate of the Partnership or any Partnership Subsidiary (other than intercompany debt).

5.26 Brokers' Fees. Neither the Partnership nor any Partnership Subsidiary, nor anyone acting on their behalf has retained any broker, investment banker, finder, agent or other intermediary or agreed to or has any liability to pay any brokerage fee, finder's fee or commission with respect to the transactions contemplated by this Agreement, other than a fee payable by the Partnership to Edgeview Partners and constituting a Partnership Transaction Expense.

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5.27 Product Warranties. Attached as Schedule 5.27 to this Agreement are true and accurate copies of the forms of standard product warranty now being issued with respect to products sold by the Partnership and each Partnership Subsidiary and all of the forms of standard product warranty which have been issued by the Partnership or any Partnership Subsidiary during the past two years. No product manufactured, sold, leased, or delivered by the Partnership or any of the Partnership Subsidiaries is subject to any guaranty, warranty, or other indemnity beyond the applicable standard terms and conditions of sale or lease set forth on Schedule 5.27.

5.28 Inventory. The inventory of the Partnership and each Partnership Subsidiary reflected on the Balance Sheet has been, and the inventory of the Partnership and each Partnership Subsidiary to be reflected on the Closing Net Current Asset Schedule will be, valued at the lower of cost or net realizable value in accordance with GAAP.

5.29 Accounts Receivable. All accounts receivable of the Partnership and each Partnership Subsidiary are valid and genuine, subject to no known setoffs or counterclaims, and arose in the Ordinary Course of Business. The Partnership and such Partnership Subsidiary has previously made available to the Acquiror a true, complete and accurate list of accounts receivable of the Partnership and each Partnership Subsidiary as of the Balance Sheet Date.

5.30 No Undisclosed Liabilities. To the Knowledge of the Partnership, there are no liabilities of the Partnership or any Partnership Subsidiary, other than (i) those liabilities set forth on the face of the Historical Financial Statements or the Interim Financial Statements, or described in the Partnership Disclosure Schedules, (ii) those liabilities incurred in the Ordinary Course of Business and (iii) those liabilities not required to be disclosed under GAAP which did not result from or arise out of any tort, infringement or violation of law.

5.31 All Material Information. No representation or warranty made herein by the Partnership contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make the statements contained in those representations and warranties not misleading in any material respect.

5.32 Sufficiency of Assets. The Partnership and the Partnership Subsidiaries own, license or lease all assets necessary for the conduct of the Business as presently conducted.

5.33 Powers of Attorney. There are no outstanding powers of attorney executed on behalf of the Partnership or any of the Partnership Subsidiaries.

5.34 Exclusivity. THE REPRESENTATIONS AND WARRANTIES MADE BY THE PARTNERSHIP IN THIS AGREEMENT ARE IN LIEU OF AND ARE EXCLUSIVE OF ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR ADEQUACY FOR ANY PARTICULAR PURPOSE OR USE. THE PARTNERSHIP HEREBY EXCLUDES AND DISCLAIMS ANY SUCH OTHER OR IMPLIED REPRESENTATIONS OR WARRANTIES, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO THE ACQUIROR OR ITS OFFICERS, DIRECTORS, EMPLOYEES, STOCKHOLDERS, AGENTS, ADVISORS OR REPRESENTATIVES OF ANY

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DOCUMENTATION OR OTHER INFORMATION, IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. Without limiting the generality of the foregoing, the Partnership makes no representation or warranty to the Acquiror with respect to (a) any projections, estimates or budgets delivered or made available to the Acquiror or its representatives before or after the date of this Agreement, or (b) except as expressly covered by a representation and warranty contained in this ARTICLE V, any other information or documents (financial or otherwise) made available to the Acquiror or its representatives.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF THE ACQUIROR AND MERGER SUB

In order to induce the Partnership to enter into this Agreement, the Acquiror hereby represents and warrants to the Partnership that the statements contained in this ARTICLE VI are correct and complete on the date hereof, except as set forth on the disclosure schedule of the Acquiror accompanying this Agreement (the "Acquiror Disclosure Schedules"):

6.1 Organization of the Acquiror. Each of the Acquiror and Merger Sub is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, has full corporate power and authority to own, use and lease the properties and assets owned, used or leased by it and to carry out its business as presently conducted or proposed to be conducted by it. The Acquiror is the beneficial and record owner of all of the issued outstanding capital stock of Merger Sub.

6.2 Authorization. Each of the Acquiror and Merger Sub has full corporate power and authority and all approvals required by applicable Laws to enter into and execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby by the Acquiror and Merger Sub have been duly authorized by all requisite corporate action on the part of the Acquiror and Merger Sub. This Agreement has been duly executed and delivered by the Acquiror and Merger Sub and is a legally valid and binding obligation of the Acquiror and Merger Sub, enforceable against the Acquiror and Merger Sub in accordance with its terms, except as the enforcement thereof may be limited by laws affecting the rights of creditors generally or general principles of equity.

6.3 No Breach or Violation. The execution and delivery of this Agreement by the Acquiror and Merger Sub, compliance with and fulfillment of the terms of this Agreement by the Acquiror and Merger Sub, and the consummation by the Acquiror and Merger Sub of the transactions contemplated hereby, do not and will not, with notice or passage of time or both, (A) except as set forth on Schedule 6.3, (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in the creation or imposition of any Encumbrance upon the assets of the Acquiror or Merger Sub pursuant to, (iv) require any filing, notice or consent or approval under, or (v) result in the acceleration of, or give any Person the right to terminate, modify, cancel or accelerate any obligation under, any material Contract to which the Acquiror or Merger Sub is subject or by which the Acquiror or Merger Sub is or any of their respective properties or assets are bound or (B) violate any Organizational Documents of

Acquiror or Merger Sub or any Law or Order to which Acquiror or Merger Sub is subject or by which the Acquiror or Merger Sub or any of their respective properties or assets are bound.

6.4 Litigation. There is no suit, action, proceeding, hearing or investigation pending or, to the Knowledge of the Acquiror or Merger Sub, threatened against the Acquiror or Merger Sub that would reasonably be expected to materially adversely affect the right or ability of the Acquiror or Merger Sub to consummate the transactions contemplated hereby, whether at law or in equity or before any Governmental Authority or arbitrator. Neither the Acquiror nor Merger Sub is a party to or subject to any Order which would reasonably be expected to materially adversely affect the right or ability of the Acquiror or Merger Sub to consummate the transactions contemplated hereby.

6.5 Governmental Consents and Approvals. No material consent, approval, exemption, audit, waiver, order or authorization of, or registration, qualification, designation, declaration, notice or filing with, any Governmental Authority, is required on the part of the Acquiror or Merger Sub in connection with the execution, delivery and performance of this Agreement, or the consummation of the transactions contemplated hereby, other than Governmental Authorizations that will be obtained or made on or before Closing.

6.6 Brokers' Fees. Neither the Acquiror or Merger Sub nor anyone acting on their behalf has retained any broker, investment banker, finder, agent or other intermediary or agreed to or has any liability to pay any brokerage fee, finder's fee or commissions with respect to the transactions contemplated by this Agreement.

6.7 Committed Financing. The Acquiror has furnished to the Partnership correct and complete copies of written commitments (the "Financing Commitments") committing to provide the Acquiror and Merger Sub with senior credit facilities in an aggregate principal amount of at least $36 million ("Senior Debt"), representing all of the Senior Debt financing Acquiror will require in order to consummate the Merger and fund the working capital needs of the Surviving Corporation and its Subsidiaries after the Closing. The Acquiror has commitments from its shareholders to provide equity in an aggregate amount which, together with the Senior Debt, amounts required to be contributed by the Partnership's existing management pursuant to agreements described herein and any Cash on Hand, will be sufficient to pay all of the Merger Consideration as required by this Agreement, to make all other necessary payments required of Acquiror in connection with the transactions contemplated hereby on the Closing Date, and to pay all related fees and expenses required to be paid by Acquiror.

6.8 Solvency. On the Closing Date, after giving effect to the transactions contemplated hereby, the Acquiror and its Subsidiaries, on a consolidated basis, is and will be solvent, will be able to pay its debts as such debts become due, will have and continue to have funds and capital sufficient to carry on its business as now contemplated, and will own property having a value both at fair market valuation and at fair saleable value in the ordinary course of business greater than the amount required to pay its indebtedness and obligations as the same mature and become due.

6.9 All Material Information. No representation or warranty made herein by the Acquiror or Merger Sub contains or will contain any untrue statement of a material fact or omits

or will omit to state any material fact necessary to make the statements contained in those representations and warranties not misleading in any material respect.

ARTICLE VII

CONDUCT OF BUSINESS PRIOR TO CLOSING; CERTAIN AGREEMENTS

7.1 Restrictions on Operations Prior to Closing. (a) From the date of this Agreement until the earlier of the Closing Date or the date of termination of this Agreement, the Partnership and each Partnership Subsidiary agrees to conduct its operations in the Ordinary Course of Business, and to use commercially reasonable efforts to preserve for the Acquiror the business and properties of the Partnership and each Partnership Subsidiary, including its operations, physical facilities, working conditions, insurance policies and the goodwill of all Persons having business dealings with the Partnership and each Partnership Subsidiary and the present business organization and employees of the Partnership and each Partnership Subsidiary. Without limiting the generality of the foregoing, the Partnership will not, and will not cause or permit any Partnership Subsidiary to, at any time from and after the date hereof to and including the Closing Date, without the prior written consent of the Acquiror which consent shall not be unreasonably withheld or delayed, to:

(i) dispose of, or agree to dispose of, or lease or sublease any assets (excluding inventory for which the Partnership and the Partnership Subsidiaries have fully reserved through an allowance account reflected on the Balance Sheet), other than in the Ordinary Course of Business;

(ii) issue any of its equity securities or any options, warrants or other commitments to issue equity securities or securities convertible into or exchangeable for such equity securities, other than Units issuable under the Put and Call Agreement and Units issuable under Participating Options;

(iii) purchase or redeem any shares of its equity securities, other than in connection with the termination of employment of any employee of the Partnership or any Partnership Subsidiary;

(iv) declare or pay any dividends or other distributions in respect of its equity securities, other than distributions by a Partnership Subsidiary to the Partnership, and other than distributions by the Partnership to Unitholders for the payment of Taxes;

(v) make any change in its Organizational Documents or its accounting procedures or practices (except as may be required by GAAP);

(vi) consolidate or merge with any other Person or acquire all or substantially all of the business or assets of any other Person;

(vii) fail to take any action reasonably necessary to maintain, protect or renew any of its or their respective Intellectual Property;

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(viii) allow to lapse any policy of insurance insuring its products, properties, assets or operations;

(ix) enter into any material transaction or amend in any material respect any Contract, in each case outside of the Ordinary Course of Business;

(x) undertake any action which would materially alter the course, or materially increase the expense, of the ongoing environmental matters at the Plainville Facility without having notified, and consulted in good faith with, the Acquiror;

(xi) increase the base compensation, bonuses, or paid vacation time allowed for its officers or employees, except for the Management Bonus Amount payable on or after the Closing Date and except for normal periodic increases in base compensation and bonus pool allocations for employees made in the Ordinary Course of Business pursuant to established compensation policies and bonus plans of the Partnership or the Partnership Subsidiaries applied on a basis consistent with that of prior years;

(xii) make any commitments for capital expenditures, additions or improvements either involving more than $100,000 in the aggregate or made outside of the Ordinary Course of Business;

(xiii) cancel, waive or compromise any debts or claims, other than write-offs and write-downs of accounts in the Ordinary Course of Business;

(xiv) make any loan, advance or capital contribution to or investment in any Person, other than to or in a Partnership Subsidiary and advances to employees for business expenses in the Ordinary Course of Business;

(xv) terminate or close any facility, business or operation of the Partnership;

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

(xvii) enter into any collective bargaining agreement or material Contract of employment, written or oral, or modify the terms of any such existing Contract or agreement;

(xviii) adopt, amend or modify in any material respect, or terminate any bonus, profit sharing, incentive, severance, or other plan, contract, or commitment for the benefit of any of its directors, officers, or employees;

(xix) adopt, amend or modify in any material respect, or terminate any Employee Plan; or

(xx) agree to do any of the foregoing.

7.2 Reasonable Commercial Efforts to Consummate Transaction. Each of the Partnership and the Acquiror will use their reasonable commercial efforts to fulfill the conditions

required to be fulfilled by it and take all action and do all things necessary, proper and advisable to bring about the timely consummation of the transactions contemplated by this Agreement. Each of the parties will give prompt notice to the other party of the occurrence of any event or the failure of any event to occur that might preclude or interfere with the satisfaction of any condition precedent to the obligations of any party under this Agreement or the timely consummation of the transactions contemplated by this Agreement.

7.3 Required Consents.

(a) The Partnership and the Acquiror will use commercially reasonable efforts to obtain consents or approvals of any Person, and to give notices and make all filings with any Person, set forth on Schedules 8.5 and 9.5 or otherwise necessary for the performance of this Agreement and the consummation of the transactions contemplated hereby.

(b) The Partnership will take commercially reasonable efforts to seek from all of the Securityholders pursuant to the Securityholder's Agreement approval of the Merger and consent to the Partnership's appointment of the General Partner as the Securityholders Representative and the related grant to the Securityholders Representative of the power and authority to perform the duties and to execute the functions set forth in Section 4.5 hereto.

7.4 Notification.

(a) Between the date of this Agreement and the Closing Date, the Partnership will promptly notify the Acquiror in writing if the Partnership becomes aware of any fact or condition that causes or constitutes a breach of any of the Partnership's representations and warranties as of the date of this Agreement, or if the Partnership becomes aware of the occurrence after the date of this Agreement of any fact or condition that would (except as expressly contemplated by this Agreement) cause or constitute a breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. Should any such fact or condition require any change in the Partnership's Disclosure Schedules if such Schedules were dated the date of the occurrence or discovery of any such fact or condition, the Partnership will promptly deliver to the Acquiror a supplement to the Partnership's Disclosure Schedules specifying such change. The Acquiror shall be entitled to reject any of the Partnership's supplemental disclosures made pursuant to this Section 7.4 for purposes of determining whether or not the condition to Closing set forth in Section 8.1 has been satisfied. If the Acquiror does not reject any such supplemental disclosure in writing within five business days following the Acquiror's receipt thereof, or if the Acquiror elects to close despite such supplemental disclosures, the supplemental disclosures shall be deemed accepted by the Acquiror, the condition to Closing set forth in Section 8.1 shall be deemed satisfied and the disclosure relative to Partnership's representations and warranties shall be deemed modified and supplemented as indicated in such notice for purposes of ARTICLE XI and Section 12.5 hereof.

(b) Between the date of this Agreement and the Closing Date, each party will promptly notify the other party of the occurrence of any breach of any covenant of such party in this ARTICLE VII or of the occurrence of any event that would reasonably be expected to make the satisfaction of one or more of the conditions in Sections 8.1 or 9.1 impossible or unlikely.

7.5 No Solicitation. From the date of this Agreement and until the earlier of the Closing Date or the date of termination of this Agreement in accordance with its terms, the Partnership will not, nor will it permit any Partnership Subsidiary to, directly or indirectly, through any officer, employee, consultant, agent, attorney, financial advisor or otherwise, solicit, initiate or encourage the submission of proposals, inquiries or offers from any Person relating to any acquisition or purchase of all or a substantial portion of the assets of the Partnership or any Partnership Subsidiary, or any equity interest in the Partnership or of any Partnership Subsidiary, or any business combination with or recapitalization or merger of the Partnership or of any Partnership Subsidiary, or participate in any discussions or negotiations regarding, or furnish to any other Person any information with respect to, or otherwise cooperate with, or assist or participate in, facilitate or encourage, any effort or attempt by any other Person to do or seek any of the foregoing, and the Partnership will promptly advise the Acquiror of any inquiry or proposal relating thereto.

7.6 Further Assurances. From time to time prior to the Closing Date, as and when requested by any party hereto and subject to Section 7.2, the other parties to this Agreement will execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions, as the requesting party may reasonably deem necessary to consummate the transactions contemplated by this Agreement.

7.7 Review of the Partnership; Confidentiality.

(a) The Acquiror may, prior to the Closing Date, directly or through its representatives, review the properties, books and records of the Partnership and each Partnership Subsidiary and their respective financial and legal condition to the extent necessary or advisable to familiarize itself with such properties, books, records and other matters. The Partnership will, and will cause each Partnership Subsidiary to, permit the Acquiror and its representatives (including legal counsel and accountants) to have full access to the premises and to all the books and records of the Partnership and each Partnership Subsidiary and to cause the officers, employees, accountants, financial advisors and other representatives of the Partnership and each Partnership Subsidiary to furnish the Acquiror with such financial and operating data and other information with respect to the business and properties of the Partnership and each Partnership Subsidiary as the Acquiror may from time to time reasonably request; provided, that such review takes place upon reasonable notice during the Partnership's and each Partnership Subsidiary's normal business hours without substantial interference with the Partnership's or any Partnership Subsidiary's operations.

(b) Immediately upon execution of this Agreement by all of the parties hereto, the Confidentiality Agreement shall terminate and be superseded by, and the parties shall be bound by the confidentiality provisions contained in, this Section 7.7(b). Each party hereto shall keep secret and hold in confidence for a period of seven (7) years following the Closing, and shall not use for its benefit, any and all information relating to the other party that is proprietary to such other party, other than the following: (i) information that has become generally available to the public other than as a result of a disclosure by such party in breach of this Agreement; (ii) information that becomes available to such party or an agent of such party on a nonconfidential basis from a third party having, to the recipient's knowledge, no obligation of confidentiality to a party to this Agreement; (iii) information that is required to be disclosed by

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Law; and (iv) disclosures made by any party as shall be reasonably necessary in connection with obtaining consents from third parties as required under a Contract or Law. In connection with disclosure of confidential information under (iii) and (iv) above, the disclosing party shall give the other party hereto timely prior notice of the anticipated disclosure and the parties shall cooperate in designing reasonable procedural and other safeguards to preserve, to the maximum extent possible, the confidentiality of such material. In addition, until the Closing or if this Agreement is terminated pursuant to ARTICLE X, for a period of two (2) years following the date hereof, neither of the Acquiror nor any of its Subsidiaries, affiliates or representatives will initiate contact, or engage in any discussions, with any employee (except any discussions with any management employee regarding the transactions contemplated hereby), customer or supplier of the Partnership or any Partnership Subsidiary without the prior written consent of the Securityholders Representative and shall not hire or solicit for employment any employees of the Partnership or any Partnership Subsidiary without the prior written consent of the Securityholders Representative.

7.8 Notice to Optionholders. The Partnership will deliver to each Optionholder, at least five (5) days prior to the Closing Date, notice of the Merger and the vesting of all Options.

7.9 Financing. Acquiror agrees to use its commercially reasonable efforts to obtain the financing for the Senior Debt contemplated by Section 6.7, including using its commercially reasonable efforts (i) to negotiate definitive agreements with respect thereto and (ii) to satisfy all conditions applicable to Acquiror in such definitive agreements in each case on terms and conditions not inconsistent with those set forth in the Financing Commitments; provided that nothing herein shall be deemed to obligate the Acquiror to accept any economic terms less favorable to the Acquiror in any material respect than those set forth in the Financing Commitments. The Acquiror will notify the Partnership of any written amendment or change to the Financing Commitments; provided that no such amendment or change that would cause any representation set forth in Section 6.7 hereof to be untrue will be made without the consent of the Partnership. The Acquiror will keep the Partnership informed, to the extent requested, on a regular ongoing basis as to the status of its efforts to obtain such Senior Debt financing. In the event any portion of the Senior Debt financing becomes unavailable in the manner or from the sources originally contemplated, the Acquiror will promptly inform the Partnership.

7.10 Annual Report Filings. The Partnership shall submit Form 5500 annual report filings for The Hilsinger Company L.P. Discretionary Severance Plan, for each year in which the plan was in existence, under the Delinquent Filer Voluntary Compliance Program ("DFVC"), paying all associated penalties, and providing the Acquiror with copies of the filed Form 5500 annual reports prior to the Closing.

7.11 Meeting with WalMart Representative. The Partnership shall use its best efforts to arrange a meeting prior to the Outside Date among Robert J. Nahmias, a representative of the Partnership, Tarrus L. Richardson, a representative of the Acquiror, and one or more representatives of WalMart for the purpose of introducing Mr. Richardson as an equity sponsor of the Acquiror, which meeting shall be held as soon as practicable after the Environmental Insurance Policy shall have been bound and presented in satisfaction of the conditions described in Section 8.22 and Section 9.8 hereof.

ARTICLE VIII

CONDITIONS PRECEDENT TO ACQUIROR'S OBLIGATIONS

The Acquiror's obligation to consummate the transactions to be performed by it in connection with the Closing are subject to the satisfaction (or waiver in whole or in part by the Acquiror in writing) on or before the Closing Date, of each of the following conditions:

8.1 Correctness of Representations and Warranties. All representations and warranties of the Partnership contained in this Agreement shall be true and correct in all respects (or, to the extent such representation is not expressly qualified by "materiality," "Material Adverse Effect," or words of similar import, then in all material respects) on the date hereof and on the Closing Date as though such representations and warranties were made on and as of the Closing Date.

8.2 Compliance with Agreement. The Partnership shall have performed and complied with, and shall have caused each Partnership Subsidiary to perform and comply with, all of their respective obligations under this Agreement in all respects (or, to the extent such obligation is not expressly qualified by "materiality," "Material Adverse Effect," or words of similar import, then in all material respects).

8.3 Certificate of Partnership's General Partner. The Partnership shall have delivered to the Acquiror certificates of the General Partner, dated the Closing Date, certifying on behalf of the Partnership, in such form as the Acquiror may reasonably request, as to the fulfillment of the conditions set forth in Sections 8.1 and 8.2 above.

8.4 Absence of Proceedings. No suit, action, proceeding or investigation shall be pending or threatened before any court or Governmental Authority to restrain or prohibit, or to obtain damages or other relief in connection with, or to question the validity or legality of, this Agreement or the consummation of the transactions contemplated hereby, or wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (A) prevent consummation of any of the transactions contemplated by this Agreement, (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, (C) affect materially and adversely the right of the Acquiror to own the capital stock of the Surviving Corporation and to control Surviving Corporation and its Subsidiaries, or (D) affect materially and adversely the right of Surviving Corporation or any of its Subsidiaries to own its assets and to operate its businesses (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect).

8.5 Consents. All filings with, and all consents and approvals of Governmental Authorities and of other Persons which are required to be obtained by the Partnership in connection with the Merger, all as set forth on Schedule 8.5, shall have been made or obtained and all waiting periods required pursuant to any such filings shall have expired or been terminated.

8.6 Resignations. The resignations of all the officers, directors, and pension plan trustees of the Partnership and each Partnership Subsidiary shall have been delivered by the

Partnership, other than those of individuals, if any, designated in writing by the Acquiror to the Partnership as individuals who shall continue in office after the Closing Date.

8.7 Partnership Records. The Acquiror shall have received all original minute books and record books of the Partnership and each Partnership Subsidiary.

8.8 Opinion of the Partnership's Counsel. The Acquiror shall have received an opinion of Edwards & Angell, LLP, counsel to the Partnership, dated the Closing Date substantially in the form of Exhibit B attached hereto.

8.9 No Material Adverse Effect. No event shall have occurred since the date of this Agreement which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on the Partnership.

8.10 Proceedings and Documents. All partnership and other proceedings taken in connection with the transactions contemplated hereby and all certificates, opinions, instruments and other documents incident thereto shall be reasonably satisfactory in form and substance to the Acquiror and its counsel.

8.11 Estimated Net Current Asset Value; Other Financial Deliveries. The Acquiror shall have received the Estimated Net Current Asset Value of the Partnership estimated by the General Partner three (3) Business Days prior to the Closing Date, along with: (a) an estimate of Cash on Hand on the Closing Date and (b) an estimate of Indebtedness of the Partnership and each Partnership Subsidiary being paid in full at Closing in accordance with Section 4.2(a) hereof.

8.12 Financing. Acquiror and Merger Sub shall have closed on and received cash proceeds from the financing of the Senior Debt on terms and conditions substantially in accordance with the Financing Commitments, as amended to the extent permitted by Section 7.9 hereof.

8.13 No Dissenters. No holder of Units shall have any exercised any lawful dissenters' rights or any legal or contractual right to an appraisal.

8.14 Payment of Indebtedness. As of the Closing, (i) all outstanding Indebtedness of the Partnership and the Partnership Subsidiaries shall be paid in full and defeased in a manner that will not result in any liability or obligation being imposed on the Surviving Corporation or any of its Subsidiaries (other than such Indebtedness expressly identified on Schedule 4.2(a) hereto as a Capitalized Lease Obligation not being paid at or immediately prior to the Effective Time), and (ii) all Encumbrances on the capital stock or other equity interests of the Partnership or any of the Partnership Subsidiaries and on all other assets of the Partnership and any of the Partnership Subsidiaries securing such Indebtedness shall be released, pursuant to the terms of a pay-off letter reasonably satisfactory to the Partnership and the Acquiror (other than Encumbrances relating to Indebtedness expressly identified on Schedule 4.2(a) hereto as a Capitalized Lease Obligation not being paid at or immediately prior to the Effective Time). At the Closing, the Partnership shall provide, or arrange to be provided to the Acquiror, copies of all releases, including all UCC termination statements, and other documents in form and substance

reasonably satisfactory to the Acquiror, the originals of which shall be delivered upon payment of the Indebtedness secured thereby.

8.15 Unitholder Approval. This Agreement and the Merger shall have been approved and adopted by the requisite vote of the Unitholders under applicable Law and as required by the Partnership's Organizational Documents.

8.16 Consent of Securityholders. Those Securityholders who hold in the aggregate not less than eighty percent (80%) of the Deemed Units Outstanding shall have consented pursuant to the Securityholder's Agreement to the Partnership's appointment of the General Partner as the Securityholders Representative and the related grant to the Securityholders Representative of the power and authority to perform the duties and to execute the functions set forth in Section 4.5 hereto.

8.17 Escrow Agreement. The Escrow Agent and the Securityholders Representative shall have executed and delivered the Escrow Agreement.

8.18 Non-Competition Agreement. Each of the Securityholders identified on Schedule 8.18 shall have executed and delivered a Non-Competition and Confidentiality Agreement in substantially the form attached to Schedule 8.18, which such attached form of Non-Competition and Confidentiality Agreement is acceptable to the Acquiror.

8.19 Real Property Matters.

(a) A title insurance company selected by the Acquiror (the "Title Company") shall be willing to insure at standard rates the Partnership's marketable title in and to the Real Property owned by the Partnership in fee simple, free and clear of liens other than Permitted Encumbrances and including such endorsements and affirmative coverages as Acquiror shall reasonably require (including, without limitation, non-imputation endorsements).

(b) The Acquiror shall have procured a survey of each parcel of Real Property owned by the Partnership, conforming to the Minimum Standard Detail Requirements jointly established and approved in 1997 by American Land Title Association and American Congress on Surveying and Mapping, certified to the Partnership, the Acquiror, and the Title Company, and showing no liens other than Permitted Encumbrances.

8.20 Put/Call Agreement. All interests in Hilsinger L.L.C. Subsidiary owned by Persons other than the Partnership shall have been exchanged for Units pursuant to the terms of the Put and Call Agreement.

8.21 Employment Agreement. The Acquiror or the Surviving Corporation shall have entered into an Employment Agreement in form and substance reasonably satisfactory to the Acquiror with Robert J. Nahmias and Paul A. Janell, II.

8.22 Environmental Insurance Policy. Coverage under the Environmental Insurance Policy shall have been bound and the aggregate premium for the same shall not exceed $800,000.

8.23 Customer Contact. The Acquiror in cooperation with the Partnership, shall have conferred with the three (3) customers of the Partnership indicated with an asterisk on Schedule 5.19(a) and the meeting described in Section 7.11 hereof shall have occurred and Mr. Richardson shall have attended such meeting and been satisfied with the results of such meeting.

ARTICLE IX

CONDITIONS PRECEDENT TO THE PARTNERSHIP'S OBLIGATIONS

The Partnership's obligation to consummate the transactions to be performed by it in connection with the Closing are subject to satisfaction (or waiver in whole or in part by the Partnership in writing) on or before the Closing Date of each of the following conditions:

9.1 Correctness of Representations and Warranties. All representations and warranties of the Acquiror and Merger Sub contained in this Agreement shall be true and correct in all respects (or, to the extent any such representation is not expressly qualified by "materiality," "Material Adverse Effect," or words of similar import, then in all material respects) on the date hereof and on the Closing Date as though such representations and warranties were made on and as of the Closing Date.

9.2 Compliance with Agreement. The Acquiror shall have performed and complied with all of its obligations under this Agreement in all respects (or, to the extent any such obligation is not expressly qualified by "materiality," "Material Adverse Effect," or words of similar import, then in all material respects).

9.3 Certificate of Officers. The Acquiror shall have delivered to the Partnership a certificate of an executive officer of the Acquiror, dated the Closing Date, certifying, in such form as the Partnership may reasonably request, as to the fulfillment of the conditions set forth in Sections 9.1 and 9.2 above.

9.4 Absence of Proceedings. No suit, action, proceeding or investigation shall be pending or threatened before any court or Governmental Authority to restrain or prohibit, or to obtain damages or other relief in connection with, or to question the validity or legality of, this Agreement or the consummation of the transactions contemplated hereby, or wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (A) prevent consummation of any of the transactions contemplated by this Agreement, or (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation.

9.5 Consents. All filings with, and all consents and approvals of Governmental Authorities and of other Persons which are required to be obtained by the Acquiror in connection with the Merger, the continued operation by Surviving Corporation of the business of the Partnership as presently conducted and the consummation of the transactions contemplated hereby, all as set forth on Schedule 9.5, shall have been made or obtained.

9.6 Proceedings and Documents. All corporate and other proceedings of the Acquiror and Merger Sub taken in connection with the transactions contemplated hereby and all

certificates, instruments and other documents incident thereto shall be reasonably satisfactory in form and substance to the Partnership and its counsel.

9.7 Escrow Agreement. The Escrow Agent and the Acquiror shall have executed and delivered the Escrow Agreement.

9.8 Environmental Insurance Policy. Coverage under the Environmental Insurance Policy shall have been bound.

ARTICLE X

TERMINATION

10.1 Termination of Agreement. This Agreement may be terminated at any time prior to the Closing by:

(a) The mutual written consent of the Acquiror and the Partnership;

(b) The Acquiror or the Partnership, if the Closing shall not have taken place on or before May 16, 2003 (the "Outside Date"), and the party seeking to terminate this Agreement is not in material breach of any covenant or obligation hereunder as of the date of termination;

(c) The Acquiror, if there has been a material breach of representation or warranty or covenant on the part of the Partnership herein which has not been waived or cured within 30 days following such time that the Acquiror delivers notice of such breach to the Partnership, or if any condition precedent to the Acquiror's obligations hereunder is not satisfied by the Closing Date and such condition is not waived by the Acquiror at or prior to the Closing Date and such condition becomes impossible to be satisfied by the Outside Date (in any case, other than through the failure of the Acquiror to comply with its obligations under this Agreement and only so long as the Acquiror is not in material breach of any covenant or obligation hereunder as of the date of termination);

(d) Partnership, if there has been a material breach of representation or warranty or covenant on the part of the Acquiror herein which has not been waived or cured within 30 days following such time that Partnership delivers notice of such breach to the Acquiror, or if any condition precedent to the Partnership's obligations hereunder is not satisfied by the Closing Date and such condition is not waived by the Partnership at or prior to the Closing Date and such condition becomes impossible to be satisfied by the Outside Date (in any case, other than through the failure of the Partnership to comply with its obligations under this Agreement and only so long as the Partnership is not in material breach of any covenant or obligation hereunder as of the date of termination);

(e) The Acquiror or the Partnership, if consummation of the transactions contemplated hereby is restrained, enjoined, or otherwise prohibited or made illegal by any non-appealable Order issued by a Governmental Authority of applicable jurisdiction.

10.2 Procedure and Effect. In the event of the termination of this Agreement by any party to this Agreement pursuant to the provisions of Section 10.1 hereof, written notice thereof shall be given to the other parties hereto and all further obligations of the parties under this Agreement shall terminate and be of no effect, without any liability or obligation on the part of any party or any of their respective directors, officers, stockholders, partners, employees or representatives, except as provided in this Section 10.2 or Sections 7.7(b), 12.7 and 13.2 hereof. If this Agreement is terminated by a party because of a material breach of this Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied or becomes impossible to be satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive the termination unimpaired. In the event that a condition precedent to any party's obligation is not satisfied at the Closing, nothing contained herein shall be deemed to require any party to terminate this Agreement, rather than to waive such condition precedent and proceed with the Closing.

ARTICLE XI

INDEMNIFICATION

11.1 Securityholders Representative Indemnification. From and after the Closing, subject to limitations of this ARTICLE XI, the Securityholders Representative on behalf of the Securityholders, agrees to indemnify and hold harmless the Acquiror Indemnified Parties, against and in respect of:

(a) any and all Losses incurred or suffered by the Acquiror Indemnified Parties that result from:

(i) any breach of representation or warranty by the Partnership under this Agreement or any certificate delivered pursuant to Section 8.3 hereof;

(ii) any breach or nonfulfillment of any agreement or covenant on the part of the Securityholders Representative to be performed under this Agreement following the Closing Date;

(iii) any claim that the Surviving Corporation or the Acquiror is liable for the payment of any Partnership Transaction Expense or any Management Bonus Amount; and

(iv) any Special Environmental Expenditures and any Limited Special Environmental Expenditures.

(b) any and all Losses incurred or suffered by the Acquiror Indemnified Parties that result from a final judgment or pursuant to a settlement agreement resulting from the pending litigation matter disclosed in item 3 under the heading "Pending" of Schedule 5.12 hereto [Optique Breach of Contract Suit].

11.2 Acquiror Indemnification.

certificates, instruments and other documents incident thereto shall be reasonably satisfactory in form and substance to the Partnership and its counsel.

9.7 Escrow Agreement. The Escrow Agent and the Acquiror shall have executed and delivered the Escrow Agreement.

9.8 Environmental Insurance Policy. Coverage under the Environmental Insurance Policy shall have been bound.

ARTICLE X

TERMINATION

10.1 Termination of Agreement. This Agreement may be terminated at any time prior to the Closing by:

(a) The mutual written consent of the Acquiror and the Partnership;

(b) The Acquiror or the Partnership, if the Closing shall not have taken place on or before May 16, 2003 (the "Outside Date"), and the party seeking to terminate this Agreement is not in material breach of any covenant or obligation hereunder as of the date of termination;

(c) The Acquiror, if there has been a material breach of representation or warranty or covenant on the part of the Partnership herein which has not been waived or cured within 30 days following such time that the Acquiror delivers notice of such breach to the Partnership, or if any condition precedent to the Acquiror's obligations hereunder is not satisfied by the Closing Date and such condition is not waived by the Acquiror at or prior to the Closing Date and such condition becomes impossible to be satisfied by the Outside Date (in any case, other than through the failure of the Acquiror to comply with its obligations under this Agreement and only so long as the Acquiror is not in material breach of any covenant or obligation hereunder as of the date of termination);

(d) Partnership, if there has been a material breach of representation or warranty or covenant on the part of the Acquiror herein which has not been waived or cured within 30 days following such time that Partnership delivers notice of such breach to the Acquiror, or if any condition precedent to the Partnership's obligations hereunder is not satisfied by the Closing Date and such condition is not waived by the Partnership at or prior to the Closing Date and such condition becomes impossible to be satisfied by the Outside Date (in any case, other than through the failure of the Partnership to comply with its obligations under this Agreement and only so long as the Partnership is not in material breach of any covenant or obligation hereunder as of the date of termination);

(e) The Acquiror or the Partnership, if consummation of the transactions contemplated hereby is restrained, enjoined, or otherwise prohibited or made illegal by any non-appealable Order issued by a Governmental Authority of applicable jurisdiction.

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10.2 Procedure and Effect. In the event of the termination of this Agreement by any party to this Agreement pursuant to the provisions of Section 10.1 hereof, written notice thereof shall be given to the other parties hereto and all further obligations of the parties under this Agreement shall terminate and be of no effect, without any liability or obligation on the part of any party or any of their respective directors, officers, stockholders, partners, employees or representatives, except as provided in this Section 10.2 or Sections 7.7(b), 12.7 and 13.2 hereof. If this Agreement is terminated by a party because of a material breach of this Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied or becomes impossible to be satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive the termination unimpaired. In the event that a condition precedent to any party's obligation is not satisfied at the Closing, nothing contained herein shall be deemed to require any party to terminate this Agreement, rather than to waive such condition precedent and proceed with the Closing.

ARTICLE XI

INDEMNIFICATION

11.1 Securityholders Representative Indemnification. From and after the Closing, subject to limitations of this ARTICLE XI, the Securityholders Representative on behalf of the Securityholders, agrees to indemnify and hold harmless the Acquiror Indemnified Parties, against and in respect of:

(a) any and all Losses incurred or suffered by the Acquiror Indemnified Parties that result from:

(i) any breach of representation or warranty by the Partnership under this Agreement or any certificate delivered pursuant to Section 8.3 hereof;

(ii) any breach or nonfulfillment of any agreement or covenant on the part of the Securityholders Representative to be performed under this Agreement following the Closing Date;

(iii) any claim that the Surviving Corporation or the Acquiror is liable for the payment of any Partnership Transaction Expense or any Management Bonus Amount; and

(iv) any Special Environmental Expenditures and any Limited Special Environmental Expenditures.

(b) any and all Losses incurred or suffered by the Acquiror Indemnified Parties that result from a final judgment or pursuant to a settlement agreement resulting from the pending litigation matter disclosed in item 3 under the heading "Pending" of Schedule 5.12 hereto [Optique Breach of Contract Suit].

11.2 Acquiror Indemnification.

(a) From and after the Closing, subject to the limitations of this ARTICLE XI, the Acquiror will indemnify and hold harmless the Securityholders and the Securityholders Representative against and in respect of:

(i) any and all Losses incurred or suffered by the Securityholders or the Securityholders Representative that result from:

(x) any breach of representation or warranty by the Acquiror under this Agreement or any certificate delivered pursuant to Section 9.3 hereof;

(y) any breach or non-fulfillment of any agreement or covenant on the part of the Acquiror to be performed under this Agreement before or following the Closing Date; and

(z) any payments that have actually been made from the Special Environmental Indemnity Escrow Account to the extent not constituting Special Environmental Expenditures within the meaning of such term described herein.

(ii) except to the extent which the Acquired Indemnified Parties are indemnified pursuant to Sections 11.1 and 12.5 hereof, any and all Losses arising out of or relating to the operations of the Partnership's or any Partnership Subsidiary's business or the use of their respective properties or assets from and after the Closing.

(b) From and after the Closing, subject to the limitations of this ARTICLE XI, the Acquiror will indemnify and hold harmless the General Partner, in its capacity as general partner of the Partnership, against and in respect of:

(i) any and all Losses, including all Third Party Claims, incurred or suffered by the General Partner as the general partner of the Partnership, to the extent such Losses are attributable to the operations of the Business prior to the Closing and have become the responsibility of the Surviving Corporation by operation of law solely as a result of the Merger, but excluding (x) any Losses arising out of the General Partner's gross negligence, fraud or willful misconduct (y) any such Losses for, but only to the extent, which the Acquiror Indemnified Parties are indemnified pursuant to Section 11.1 and Section 12.5 hereof and (z) any adjustments required to be paid to Acquiror pursuant to Section 4.4 hereof; and

(ii) except to the extent which the Acquired Indemnified Parties are indemnified pursuant to Sections 11.1 and 12.5 hereof, any and all Losses arising out of or relating to the operations of the Partnership's or any Partnership Subsidiary's business or the use of their respective properties or assets from and after the Closing.

11.3 Claims for Indemnification.

(a) A party claiming indemnification under this ARTICLE XI or Section 12.5 (the "Indemnified Party") must notify in writing (a "Claim Notice") the party from whom indemnification is sought (the "Indemnifying Party") of the nature and basis of such claim for indemnification (a "Claim") within 10 days of becoming aware of a Claim or material facts

establishing the basis for such Claim (or within sixty (60) days of becoming aware of a Claim or material facts establishing the basis for such Claim if an Environmental Indemnity Claim), describing in reasonable detail the facts giving rise to such Claim and including in such Claim Notice the reasonably estimated amount of such Claim, if known, and a reference to the provisions of this Agreement or of any other agreement, document or instrument executed hereunder or in connection herewith upon which such Claim is based; provided, however that failure on the part of the Indemnified Party to notify the Indemnifying Party within such 10 or 60 day period, as applicable, shall not relieve the Indemnifying Party from any obligation hereunder unless (and solely to the extent) the Indemnifying Party is thereby prejudiced. Notwithstanding the foregoing, Special Environmental Indemnity Claims for the payment of Special Environmental Expenditures from the Special Environmental Indemnity Escrow Account shall not require a description of the facts giving rise to such Claim or any estimate in respect thereof, but shall be accompanied by an invoice for each such Special Environmental Expenditure reflecting costs actually incurred and a certification from an officer of the Surviving Corporation that such invoice is for payment of a Special Environmental Expenditure within the meaning of such term described herein. Upon submission of a Special Environmental Indemnity Claim, accompanied by such invoice and officer's certificate, the amount of such Special Environmental Indemnity Claim shall be deemed an Admitted Liability (as defined in clause (c) below), subject to the right of the Securityholders and the Securityholders Representative to seek indemnification under Section 11.2(a)(i)(z) hereof.

(b) In the event the Indemnifying Party shall in good faith dispute the validity of all or any amount of a Claim as set forth in the Claim Notice, the Indemnifying Party shall, within fifteen (15) days of its receipt of the Claim Notice (or within sixty (60) days of receiving a Claim Notice in respect of an Environmental Indemnity Claim), execute and deliver to the Indemnified Party a notice setting forth with reasonable particularity the grounds and the basis upon which the Claim or portion thereof is disputed (the "Dispute Statement").

(c) In the event the Indemnifying Party does not dispute the Claim as set forth in the Claim Notice or only disputes a portion thereof, then the amount of the Claim described in the Claim Notice or the portion thereof not disputed shall be deemed to be admitted (the "Admitted Liability") and shall, upon the incurring of Losses resulting therefrom, immediately be due and payable to the Indemnified Party by the Indemnifying Party, subject to the limitations set forth in this Article XI.

(d) In the event the Indemnifying Party shall, within fifteen (15) days of its receipt of the Claim Notice (or within sixty (60) days of receiving a Claim Notice in respect of an Environmental Indemnity Claim), deliver to the Indemnified Party a Dispute Statement, then the portion of the Claim described in the Claim Notice that is disputed by the Indemnifying Party shall not be due and payable, except in accordance with an arbitrator's decision rendered pursuant to this ARTICLE XI or a written agreement by the parties stipulating the amount of the Admitted Liability.

(e) If the Indemnifying Party timely delivers a Dispute Statement to a Claim Notice provided under Section 11.3(b), the dispute as to the underlying claim or claims (each a "Dispute") shall be settled by means of the procedures set forth in this Section 11.3. Promptly upon delivery of the Dispute Statement, one representative of the Indemnifying Party and one

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representative of the Indemnified Party shall meet ("Initial Meeting") and attempt in good faith to resolve the Dispute on a mutually satisfactory basis. If the Disputing Parties (as hereinafter defined) are unable to resolve the Dispute within thirty (30) days after delivery of the Dispute Statement, then the Dispute shall be settled by arbitration in New York, New York pursuant to the procedures set forth in this Section 11.3, and, except as otherwise expressly provided herein, in accordance with the commercial arbitration rules of the American Arbitration Association then in effect ("AAA Rules"). However, in all events, the arbitration provisions of this Section 11.3 shall govern over any conflicting rules which may now or hereafter be contained in the AAA Rules. Any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction over the subject matter thereof. The arbitrator(s) shall have the authority to grant any equitable and legal remedies that could be available in any judicial proceeding instituted to resolve a Dispute. For purposes of this Section 11.3, the term "Disputing Parties" shall mean, with respect to any particular Dispute, those parties hereto (or their successors or assigns) which are involved in the Dispute.

(f) Following the thirty (30) day period referenced above, each Disputing Party may by written notice to the other Disputing Parties request that the Dispute be referred to arbitration before a single arbitrator who is reasonably knowledgeable and familiar with commercial transactions (and with the particular matter which is the subject of the Dispute) and mutually agreed to by the Disputing Parties, provided, that if such parties are unable to agree on an arbitrator within twenty (20) days after receipt of the written notice, the arbitration shall be before three (3) arbitrators, each being reasonably knowledgeable and familiar with commercial transactions (and with the particular matter which is the subject of the Dispute), one of whom shall be appointed by the Acquiror and one of whom shall be appointed by the Securityholders Representative. Each Disputing Party shall provide notice to the other Disputing Parties of the arbitrator so appointed by it within thirty (30) days of the written notice requesting arbitration, and the third arbitrator shall be appointed by the arbitrators so appointed and shall be the chairman.

(g) The selected arbitrator(s) shall be compensated at a reasonable hourly or daily consulting rate to be determined by the Disputing Parties. In the event the Disputing Parties are unable to agree upon a rate of compensation, such decision shall be made by the American Arbitration Association.

(h) Upon the conclusion of any arbitration proceedings hereunder, the arbitrators shall render findings of fact and conclusions of law in a written opinion setting forth the basis thereof and shall deliver such opinion to each of the Disputing Parties along with a signed copy of the award. Any such opinion shall resolve the applicable Dispute, and such resolution shall be final and binding upon the Disputing Parties (a "Resolved Claim").

(i) All costs and expenses attributable to the arbitrators shall be allocated among the parties to the arbitration in such manner as the arbitrator(s) shall determine to be appropriate under the circumstances.

(j) The arbitrator(s) shall not have the power to alter, amend or otherwise affect the terms of this Section 11.3 or the other provisions of this Agreement.

(k) Except for any party's right to seek injunctive relief or the enforcement of any decision made by the arbitrators, arbitration shall be the sole and exclusive forum for adjudication of any Dispute arising out of ARTICLE XI or Section 12.5 of this Agreement.

11.4 Third Party Claims.

(a) If a Claim described in a Claim Notice relates to a Third Party Claim against the Indemnified Party, the Indemnifying Party may elect within thirty (30) days after receipt of a Claim Notice to assume and control the defense of the Third Party Claim at its own expense with counsel selected by the Indemnifying Party satisfactory to the Indemnified Party. The Indemnifying Party may not control the defense (i) if the named parties to the Third Party Claim (including any impleaded parties) include both the Indemnifying Party and the Indemnified Party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, in which case the Indemnified Party shall have the right to join in the defense of the Third Party Claim and to employ counsel reasonably approved by the Indemnifying Party (which approval will not be unreasonably withheld or delayed) at the expense of the Indemnifying Party, (ii) to the extent such Third Party Claim seeks an injunction, restraining order, declaratory relief or other non-monetary relief, or (iii) if settlement of, or an adverse judgment with respect to, the Third Party Claim is, in the reasonable good faith judgment of the Indemnified Party, likely to establish an adverse precedential custom or practice adverse in any material respect to the continuing business interests or the reputation of the Indemnified Party. If the Indemnifying Party assumes the defense of the Third Party Claim and is entitled to control the defense thereof pursuant to the foregoing, the Indemnifying Party shall not be liable for any fees and expenses of counsel for the Indemnified Party incurred thereafter in connection with the Third Party Claim (except in the case of actual or potential differing interests, as provided in the preceding sentence). In the event the Indemnifying Party exercises its right to assume the defense of a Third Party Claim, the Indemnified Party may participate, through counsel of its own choice and at its own expense, in the defense of any Third Party Claim as to which the Indemnifying Party has elected to assume and control the defense thereof.

(b) Any party granted the right to direct the defense of a Third Party Claim hereunder will: (i) conduct the defense of the Third Party claims actively and diligently keep the other parties to this Agreement fully informed of material developments in the Third Party Claim at all stages thereof; (ii) promptly submit to the other parties to this Agreement copies of all pleadings, responsive pleadings, motions and other similar legal documents and papers reviewed in connection therewith; (iii) permit the other parties to this Agreement and their counsel, to the extent practicable, to confer on the conduct of the defense thereof; and (iv) to the extent practicable, permit the other parties to this Agreement and their counsel an opportunity to review all legal papers to be submitted prior to their submission. The parties to this Agreement will make available to each other and each other's counsel and accountants, without charge, all of its or their books and records relating to the Third Party Claim, and each party will render to the other party such assistance as may be reasonably required in order to insure the proper and adequate defense thereof and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnifying Party in connection therewith.

(c) The parties hereto will use their respective good faith efforts to avoid the waiver of any privilege of another party. The assumption of the defense of any Third Party Claim by the Indemnifying Party will not constitute an admission of responsibility to indemnify or in any manner impair or restrict such party's rights to later seek to be reimbursed for its costs and expenses if indemnification under this Agreement with respect thereto was not required. No entry of any judgment or settlement of a matter by the Indemnified Party or the Indemnifying Party will be binding on the other for any purpose, including such other party's indemnification obligations hereunder, without such other party's express prior written consent, which consent will not be unreasonably withheld or delayed.

11.5 Escrow.

(a) General Indemnity Escrow Amount, Environmental Escrow Amount and Special Environmental Indemnity Escrow Amount. At Closing, pursuant to Section 4.5 hereof the Securityholders Representative (or the Acquiror at the Securityholders Representative's direction), will deliver to Escrow Agent for (i) deposit in the General Indemnity Escrow Account, by wire transfer of immediately available funds, an amount equal to the General Indemnity Escrow Amount, (ii) deposit in the Environmental Escrow Account, by wire transfer of immediately available funds, an amount equal to the Environmental Escrow Amount and (iii) deposit in the Special Environmental Indemnity Escrow Account, by wire transfer of immediately available funds, an amount equal to the Special Environmental Indemnity Escrow Amount.

(b) Payment of Claims from Escrow. On or after the date a particular claim for indemnification by an Acquiror Indemnified Party becomes an Admitted Liability in accordance with Section 11.3(c), or a Resolved Claim in accordance with Section 11.3(h), the Acquiror Indemnified Parties may direct Escrow Agent to release and deliver to the Acquiror Indemnified Parties, cash either (i) from the General Indemnity Escrow Account if such Admitted Liability or Resolved Claim is with respect to a General Indemnity Claim, (ii) from the Environmental Escrow Account if such Admitted Liability or Resolved Claim is with respect to an Environmental Indemnity Claim or (iii) from the Special Environmental Indemnity Escrow Account if such Admitted Liability or Resolved Claim is with respect to a Special Environmental Indemnity Claim, in satisfaction of such claim in accordance with the Escrow Agreement. The amount of cash released and delivered to the Acquiror Indemnified Parties from either the General Indemnity Escrow Account, the Environmental Escrow Account or the Special Environmental Indemnity Escrow Account, as the case may be, shall be the aggregate amount of Losses incurred by the Acquiror Indemnified Parties as specified in such Admitted Liability or Resolved Claim, subject to the limitations set forth in Sections 11.8 and 11.9 (the "Claimed Amount").

(c) Release of General Indemnity Escrow Amount, Environmental Escrow Amount and Special Environmental Indemnity Escrow Account.

(i) Release of General Indemnity Escrow Amount on 18 Month Anniversary. At any time from and after the eighteen (18) month anniversary of the Closing Date, the Securityholders Representative may submit a written claim to the Escrow Agent (with a copy by written notice to the Acquiror) (a "Release Claim") for release to the

Securityholders Representative on behalf of the Securityholders of an aggregate amount of cash equal to the General Indemnity Escrow Amount, minus the sum of (A) any amounts previously paid out of such escrow and (B) any amounts then held in escrow and not yet paid in respect of Admitted Liability, Resolved Claims or other pending Claims (collectively, "Payment Claims") for General Indemnity Claims under this ARTICLE XI or Section 12.5.

(ii) Release of Environmental Escrow Amount on Fifth Anniversary. At any time from and after the fifth anniversary of the Closing Date, the Securityholders Representative may submit a Release Claim to the Escrow Agent (with a copy by written notice to the Acquiror) for release to the Securityholders Representative on behalf of the Securityholders of an aggregate amount of cash equal to the Environmental Escrow Account, minus the sum of (A) any amounts previously paid out of such escrow and (B) any amounts then held in escrow and not yet paid in respect of Payment Claims for Environmental Indemnity Claims under this ARTICLE XI or Section 12.5.

(iii) Release of Special Environmental Indemnity Escrow Amount on 18 Month Anniversary. At any time from and after the eighteen (18) month anniversary of the Closing Date, the Securityholders Representative may submit a Release Claim to the Escrow Agent (with a copy by written notice to the Acquiror) for release to the Securityholders Representative on behalf of the Securityholders of an aggregate amount of cash equal to the Special Environmental Indemnity Escrow Amount, minus the sum of (A) any amounts previously paid out of such escrow and (B) any amounts then held in escrow and not yet paid in respect of Payment Claims for Special Environmental Indemnity Claims under this ARTICLE XI or Section 12.5.

11.6 Exclusive Remedies; Special Securityholder Liability Provisions.

(a) Except with respect to any adjustments required to be made pursuant to Section 4.4, and except as may be required to enforce post-closing covenants hereunder and except in the event of actual fraud by the Partnership with respect to a misstatement or omission of a material fact or condition disclosed or required to be disclosed herein, after the Closing the indemnification rights in this ARTICLE XI and in Section 12.5 are the sole and exclusive remedies of the Acquiror, the Surviving Corporation and the Securityholders Representative (on behalf of the Securityholders) with respect to this Agreement and the transactions contemplated hereby, including, without limitation, with respect to any Environmental Indemnity Claims, any General Indemnity Claims and any Special Environmental Indemnity Claims.

(b) Except as provided in Section 4.4 with respect to any adjustments required to be paid to the Acquiror, and except with respect to Losses on account of the: (w) breach by the Partnership of any Excluded Representation (as defined below) , (x) an indemnified Claim of the Acquiror Indemnified Parties covered by Section 11.1(a)(iii) above, (y) breach by the Securityholders Representative of a post-closing covenant hereunder or by any Unitholder that has executed the Non-Competition and Confidentiality Agreement, or (z) actual fraud by the Partnership with respect to a misstatement or omission of a material fact or condition disclosed or required to be disclosed herein (the exceptions identified in clauses (w), (x), (y) and (z), collectively, the "Recourse Obligations"), the Acquiror Indemnified Parties shall have no

recourse to the Securityholders or the Securityholders Representative, other than to the extent of amounts on deposit in the General Indemnity Escrow Account, the Environmental Escrow Account or the Special Environmental Indemnity Escrow Account, and each of the Acquiror Indemnified Parties hereby waives any and all rights to reimbursement, contribution, equitable share or similar rights arising under law or in equity against the Securityholders or the Securityholders Representative. Any Recourse Obligation arising from the breach by a Unitholder of his, her or its Noncompetition and Confidentiality Agreement shall be the sole responsibility of such Unitholder.

(c) Subject to Section 11.6(d), the Securityholders shall be individually liable to indemnify, pay to and reimburse the Securityholders Representative, according to their respective Proportionate Share, (i) for any adjustments due to the Acquiror under Section 4.4 in excess of any then remaining Reserve Amount held by the Securityholders Representative and (ii) subject to the limitations set forth in this ARTICLE XI, for Losses on account of the breach of any of the Recourse Obligations, in either case only up to the amount of Net Merger Consideration actually received by such Securityholder.

(d) In the absence of actual fraud by an Optionholder with respect to a misstatement or omission of a material fact or condition disclosed or required to be disclosed herein, as finally determined by an arbitrator having jurisdiction over such matter pursuant to the terms hereof, the maximum aggregate liability of an individual Optionholder to indemnify, pay to or reimburse the Securityholders Representative hereunder shall be limited to the amount of Net Merger Consideration actually received by such Optionholder pursuant to this Agreement. In the event that the liability of an Optionholder is capped as a result of the limitation on liability set forth in this Section 11.6(d), and the amount otherwise due to the Securityholders Representative exceeds such cap, the indemnification obligations of the Unitholders shall be increased, up to the amount of Net Merger Consideration actually received by such Unitholder, according to their pro rata share to fully compensate for such deficiency.

11.7 Survival.

(a) All representations and warranties in this Agreement shall survive the Closing for a period ending on the eighteen month anniversary of the Closing Date, and may survive thereafter, to the extent a Claim is made prior to such expiration with respect to any breach of such representation or warranty, until such Claim is finally determined or settled, provided, however, that (i) Environmental Indemnity Claims shall survive the Closing for a period ending on the fifth anniversary of the Closing Date and may survive thereafter, to the extent such an Environmental Indemnity Claim is made prior to such expiration, until such Environmental Indemnity Claim is finally determined or settled and (ii) the representations and warranties set forth in Section 5.2, Section 5.4, Section 5.10(iii) and (xi), Section 5.25(a) and (c), Section 5.26 and Section 12.5 (collectively, the representations and warranties in this clause (ii) are the "Excluded Representations") shall survive the Closing for the applicable statute of limitations period and may survive thereafter, to the extent a Claim is made prior to such expiration with respect to any breach of such representation or warranty, until such Claim is finally determined or settled.

(b) No Claim for a breach of a representation or warranty may be made after termination of the applicable survival period set forth in paragraph (a) above. No Claim for a Special Environmental Expenditure shall be made after the eighteen month anniversary of the Closing Date and no Claim for a Limited Special Environmental Expenditure shall be made after the fifth anniversary of the Closing Date.

(c) The pre-Closing covenants and agreements of the parties will not survive the Closing. The covenants and agreements of the parties which by their terms are to be performed after Closing will survive the Closing until the expiration of the applicable statute of limitations.

11.8 Limitations on the Acquiror's Right to Indemnification.

(a) The maximum aggregate liability of the Securityholders and the Securityholders Representative (for and on behalf of the Securityholders) to indemnify the Acquiror Indemnified Parties for any Losses of the Acquiror Indemnified Parties (other than for adjustments due to the Acquiror pursuant to Section 4.4 or any of the Recourse Obligations) for General Indemnity Claims shall be limited to the General Indemnity Escrow Amount, and such liability shall be discharged solely out of funds on deposit in the General Indemnity Escrow Account. Losses for General Indemnity Claims shall not be satisfied in whole or in part from the Special Environmental Indemnity Escrow Account, from the Environmental Escrow Account or, to the extent such claim does not relate to a Recourse Obligation, from any other source other than the General Indemnity Escrow Account.

(b) The maximum aggregate liability of the Securityholders and the Securityholders Representative (for and on behalf of the Securityholders) to indemnify the Acquiror Indemnified Parties for any Losses of the Acquiror Indemnified Parties for Environmental Indemnity Claims shall be limited to the Environmental Escrow Amount, and such liability shall be discharged solely out of funds on deposit in the Environmental Escrow Account. Losses for Environmental Indemnity Claims shall not be satisfied in whole or in part from the General Indemnity Escrow Account, from the Special Environmental Indemnity Escrow Account or from any other source other than the Environmental Escrow Account.

(c) The maximum aggregate liability of the Securityholders and the Securityholders Representative (for and on behalf of the Securityholders) to indemnify the Acquiror Indemnified Parties for any Losses of the Acquiror Indemnified Parties for Special Environmental Indemnity Claims shall be limited to the Special Environmental Indemnity Escrow Amount, and such liability shall be discharged solely out of funds on deposit in the Special Environmental Indemnity Escrow Account; provided that the Acquiror Indemnified Parties shall have access to the Environmental Escrow Account for Limited Special Environmental Expenditures following the release of all funds in the Special Environmental Indemnity Escrow Account. Losses for Special Environmental Indemnity Claims shall not be satisfied in whole or in part from the General Indemnity Escrow Account, from the Environmental Escrow Account (other than for Limited Special Environmental Expenditures following the release of all funds in the Special Environmental Indemnity Escrow Account), or from any other source other than the Special Environmental Indemnity Escrow Account.

(d) There shall be no maximum aggregate liability of the Securityholders and the Securityholders Representative (for and on behalf of the Securityholders) to indemnify the Acquiror Indemnified Parties for any Losses of the Acquiror Indemnified Parties on account of any of the Recourse Obligations or adjustments due to the Acquiror pursuant to Section 4.4.

(e) The Acquiror Indemnified Parties shall be entitled to seek indemnification for Claims (other than for any adjustments due to the Acquiror pursuant to Section 4.4, for Environmental Indemnity Claims, for Special Environmental Indemnity Claims, for Claims made under Section 11.1(b), or for any of the Recourse Obligations), only when the sum of the aggregate of all Losses of the Acquiror Indemnified Parties on account of such Claims (excluding any adjustments due to the Acquiror pursuant to Section 4.4, any of the Claims under Section 11.1(b), any of the Recourse Obligations or any Losses resulting directly from any Environmental Indemnity Claims or Special Environmental Indemnity Claims), exceeds $600,000 (the "Threshold"), at which point the Securityholders Representative (for and on behalf of the Securityholders) shall be liable to the Acquiror Indemnified Parties for all of such Losses from the first dollar up to the General Indemnity Escrow Amount, and such liability shall be discharged solely out of funds on deposit in the General Indemnity Escrow Account. For the avoidance of doubt, the Threshold shall not apply with respect to (i) any Recourse Obligations, (ii) any adjustments due to the Acquiror pursuant to Section 4.4 hereof, (iii) Losses resulting from any Environmental Indemnity Claims, (iv) Losses resulting from any Special Environmental Indemnity Claims, or (v) Losses resulting from Claims made under Section 11.1(b). The Securityholders and the Securityholders Representative (for and on behalf of the Securityholders) shall be liable for the amount of any such adjustments due the Acquiror, for Losses resulting from any Environmental Indemnity Claims (to the extent of the Environmental Escrow Account), from any Special Environmental Indemnity Claims (to the extent of the Special Environmental Indemnity Escrow Account), from any of the Claims under Section 11.1(b)(to the extent of the General Indemnity Escrow Account), and from any Recourse Obligations from the first dollar regardless of whether the Threshold is reached.

11.9 Other Limitations on Indemnification.

(a) In the event that any party to this Agreement makes or disputes a Claim which is determined by an arbitrator to be without reasonable basis in law or fact, such party will bear and promptly reimburse the other parties for all expenses in investigating and defending against that Claim.

(b) Notwithstanding any other provision in this Agreement, the Securityholders and the Securityholders Representative will not be required to indemnify and hold the Acquiror Indemnified Parties harmless with respect to any Claim for a breach of the Partnership's representations and warranties if on the date of this Agreement or on the Closing Date, the Acquiror or any of its representatives has Knowledge of any fact, circumstance or occurrence that constitutes a breach of such representation or warranty or such fact, circumstance or occurrence was disclosed in writing and with reasonable particularity to the Acquiror or its representatives before or at the Closing.

(c) The indemnification obligations of the parties hereunder shall be limited to the obligation to make the other parties whole on a dollar for dollar basis for assets lost or

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diminished, liabilities increased or expenses and costs actually incurred, and under no circumstances shall the Indemnifying Party be liable for claims by the Indemnified Party that as a consequence of the breach in question the Indemnified Party has incurred consequential, enhanced, punitive, special or exemplary damages or damages based on a multiple of the earnings used to establish the Merger Consideration.

(d) To the extent that insurance, or "pass-through" warranty coverage from a manufacturer or other form of recovery or reimbursement from a third party is available to the Acquiror or Surviving Corporation to cover any item for which indemnification may be sought hereunder (except for Special Environmental Indemnity Claims and Environmental Indemnity Claims), the Acquiror will, and will cause Surviving Corporation to, on a timely and expeditious basis, use commercially reasonable efforts to seek recovery under applicable insurance policies and warranties and otherwise pursue available remedies or causes of action to recover the amount of its Claim as may be available from such other party. To the extent the Securityholders Representative on behalf of the Securityholders indemnify the Acquiror on any Claim referred to in the previous sentence, the Acquiror will assign to Securityholders Representative, to the fullest extent allowable, its claim against such insurance, warranty coverage or third-party claim, or in the event assignment is not permissible, Surviving Corporation will be allowed to pursue such Claim in the name of the Acquiror or Surviving Corporation, as appropriate, at the Securityholders Representative's direction and expense and without additional out-of-pocket expense to the Acquiror, with any recovery thereon to be transmitted promptly to Securityholders Representative upon receipt by the Surviving Corporation. To the extent that the Securityholders Representative on behalf of the Securityholders has not indemnified Acquiror on any such Claim, Surviving Corporation may pursue such Claim and will be entitled to retain all recoveries made as a result of any such action. The Acquiror will make its and the Surviving Corporation's books and records relating to such Claim reasonably available to Securityholders Representative and make its and the Surviving Corporation's employees reasonably available (in each case during normal business days and without undue disruption of the business of the Acquiror) for interviews and similar matters to assist the Securityholders Representative in prosecuting such Claim.

(e) Any amount recoverable by the Acquiror from Partnership under this ARTICLE XI (including without limitation any recoveries for Special Environmental Expenditures and for Limited Special Environmental Expenditures) will be net of any Tax benefit actually received by the Acquiror or the Surviving Corporation in connection with federal, state and foreign tax deductions pertaining to the item for which indemnification may be sought hereunder. For purposes of this Section 11.9(e), a Tax benefit shall be treated as actually received by the Acquiror or the Surviving Corporation at the time such entity's income Tax liability is determined to be reduced as a result of the item for which indemnification has been sought hereunder. The amount by which the Acquiror or the Surviving Corporation's income Tax liability is reduced shall be equal to the difference between the Acquiror or the Surviving Corporation's income Tax liability, determined without inclusion of the item for which indemnification has been sought hereunder, and the actual income Tax liability of the Acquiror or the Surviving Corporation, as applicable. To the extent such Tax benefit is incurred after any recovery pursuant to this ARTICLE XI, there will be a corresponding adjustment between the parties without regard to the time limitations imposed under this ARTICLE XI, and if such adjustment is in favor of the Securityholders, the Securityholders Representative may require the

Acquiror or the Surviving Corporation to pay an amount equal to such Tax benefit actually received to the Escrow Agent for deposit into the escrow account from which such recovery was originally paid or, if the time period for which such escrow account is maintained has expired pursuant to the terms hereof, such payment shall be made directly to the Securityholders Representative for the benefit of the Securityholders. This covenant will survive until the expiration of the applicable statute of limitations for the Tax year in which the Tax benefit for the latest recovery hereunder is taken.

ARTICLE XII

ADDITIONAL COVENANTS OF THE ACQUIROR AND THE PARTNERSHIP

12.1 Tax Returns. The Partnership will timely file all Tax Returns which are required to be filed on or prior to the Closing Date in accordance with all applicable Laws, and any accruals established for Taxes with respect to the Partnership and each Partnership Subsidiary, for any period ending on or before the Closing Date reflected on the books and records of the Partnership and each Partnership Subsidiary (excluding any provision for deferred income Taxes) will be adequate. The Securityholders Representative will have the exclusive authority and obligation to prepare and timely file, or cause to be prepared and timely filed, all Tax Returns of the Partnership and each Partnership Subsidiary, that are due with respect to any taxable year or other taxable period ending prior to the Closing Date. Such authority will include, but not be limited to, the determination of the manner in which any items of income, gain, deduction, loss or credit arising out of the income, properties and operations of the Partnership and each Partnership Subsidiary will be reported or disclosed in such Tax Returns; provided, however, that such Tax Returns will be prepared by treating items on such Tax Returns in a manner consistent with the past practice with respect to such items, unless otherwise required by Law. The Securityholders Representative will provide to the Acquiror drafts of all Tax Returns of the Partnership and each Partnership Subsidiary required to be prepared and filed by the Partnership and each Partnership Subsidiary under this Section 12.1 at least 20 calendar days prior to the due date for the filing of such Tax Returns (including any extensions). At least 10 calendar days prior to the due date for filing of such Tax Returns (including any extensions), the Acquiror will notify the Partnership and each Partnership Subsidiary of the existence of any good faith bona fide objection (specifying in reasonable detail the nature and basis of such objection) the Acquiror may have to any items set forth on such draft Tax Returns. The Acquiror and Securityholders Representative will consult and resolve in good faith any such objection and in the event such objection cannot be resolved by the parties, the parties agree to have such matter resolved pursuant to the provisions of Section 11.3 hereof.

12.2 Apportionment of Taxes. All Taxes and Tax liabilities with respect to the income, property or operations of the Partnership and each Partnership Subsidiary that relate to a taxable year or other taxable period beginning before and ending after the Closing Date will be apportioned between the Pre-Closing Tax Period and the Post-Closing Tax Period as follows: (A) in the case of Taxes other than income Taxes, payroll Taxes and sales and use Taxes, on a per diem basis, and (B) in the case of income Taxes, payroll Taxes and sales and use Taxes, as determined from the books and records of the Partnership and each Partnership Subsidiary, between Pre-Closing and Post-Closing Tax Periods as though the taxable year of the Partnership and each Partnership Subsidiary terminated as of 11:59 p.m. Eastern Standard Time on the

Closing Date, and based on accounting methods, elections and conventions that do not have the effect of distorting income and expenses. All transfer, documentary, sales, use, stamp, registration, value added, and other such Taxes (including any penalties and interest) of the Partnership and each Partnership Subsidiary which are incurred in connection with this Agreement will be paid by the Surviving Corporation when due, subject to a right of reimbursement in accordance with Section 12.7 and the Surviving Corporation will, at its own expense, cause to be filed all necessary Tax Returns and other documentation with respect to all such Taxes and fees.

12.3 Cooperation; Audits. In connection with the preparation of Tax Returns, audit examinations and any administrative or judicial proceedings relating to the Tax liabilities imposed on the Securityholders Representative for all Pre-Closing Tax Periods, the Acquiror and the Surviving Corporation, as applicable, on the one hand, and Securityholders Representative, on the other hand, will cooperate fully with each other, including, but not limited to the furnishing or making available without charge during normal business hours of records, personnel (as reasonably required), books of account and other materials necessary and helpful for the preparation of such Tax Returns, the conduct of audit examinations or the defense of claims by Tax authorities as to the imposition of Taxes.

12.4 Controversies. The Acquiror will promptly notify the Securityholders Representative in writing upon receipt by the Acquiror or any Affiliate of the Acquiror (including the Surviving Corporation after the Closing Date) of written notice of any inquiries, claims, assessments, audits or similar events with respect to Taxes relating to a Pre-Closing Tax Period for which the Securityholders may be liable under this Agreement (any such inquiry, claim, assessment, audit or similar event, a "Tax Matter"). The Securityholders Representative at its sole expense, will have the exclusive authority to represent the interests of the Partnership and the Securityholders with respect to any Tax Matter before the Internal Revenue Service, any other taxing authority or any other Governmental Authority and will have the sole right to extend or waive the statute of limitations, with respect to a Tax Matter and to control the defense, compromise or other resolution of any Tax Matter, including responding to inquiries, filing Tax returns and settling audits; provided, however, that such Securityholders Representative will not enter into any settlement of or otherwise compromise any Tax Matter that affects or may affect the liability of the Acquiror or the Partnership, or any Affiliate of the foregoing, without the prior written consent of the Acquiror, which consent will not be unreasonably withheld or delayed. The Securityholders Representative will keep the Acquiror fully and timely informed with respect to the commencement, status and nature of any Tax Matter. The Securityholders Representative will, in good faith, consult with the Acquiror regarding the conduct of or positions taken in any such proceeding. The Securityholders Representative will not file or cause or permit to be filed any amended Tax Return without the prior written consent of the Acquiror, which consent will not be unreasonably withheld or delayed.

12.5 Tax Indemnification. (a) From and after the Closing, the Securityholders Representative, on behalf of the Securityholders, agrees to indemnify and hold harmless the Acquiror Indemnified Parties from and against, without duplication, any Losses attributable to (i) Taxes (or the non-payment thereof) of the Partnership and the Partnership Subsidiaries for all Taxable periods ending before the Closing Date and the portion through the end of the day of the Closing Date for any Taxable period that includes (but does not end on) the Closing Date, (ii) all

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Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Partnership or any of the Partnership Subsidiaries (or any predecessor of any of the foregoing) is or was a member prior to the Closing, and (iii) any and all Taxes of any Person (other than the Partnership and the Partnership Subsidiaries) imposed on the Partnership or any of the Partnership Subsidiaries as a transferee or successor, by contract or pursuant to any law, rule, or regulation, which Taxes relate to an event or transaction occurring before the Closing.

(b) Except to the extent that the Acquired Indemnified Parties are indemnified pursuant to Sections 11.1 or 12.5(a) hereof, from and after the Closing, the Acquiror agrees to indemnify and hold harmless the Securityholders and the Securityholders Representative from and against without duplication, any losses attributable to (i) Taxes (or the non-payment thereof) of the Surviving Corporation and its Subsidiaries for all Taxable periods beginning after the Closing Date and for the portion after the Closing Date of any Taxable period that begins on or before and ends after the Closing Date, (ii) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Surviving Corporation or any of its Subsidiaries is or was a member after the Closing Date, and (iii) any and all Taxes of any Person (other than the Surviving Corporation and its Subsidiaries) imposed on the Surviving Corporation or any of its Subsidiaries as a transferee or successor, by contract or pursuant to any law, rule, or regulation, which Taxes relate to an event or transaction occurring after the Closing.

12.6 Tax Sharing Agreements. All Tax sharing agreements or similar agreements, if any, with respect to or involving the Partnership and the Partnership Subsidiaries shall be terminated as of the Closing Date and, after the Closing Date, the Partnership and the Partnership Subsidiaries shall not be bound thereby or have any liability thereunder.

12.7 Certain Taxes and Fees. All transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with consummation of the transactions contemplated by this Agreement shall be shared equally by the Acquiror and the Securityholders, and shall be paid by the Surviving Corporation when due (subject to its right of reimbursement by the Securityholders Representative for 50% of any payment made). The Surviving Corporation will, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges, and, if required by applicable law, Acquiror will, and will cause its Subsidiaries to, join in the execution of any such Tax Returns and other documentation. Any amounts due as reflected on such Tax Returns shall be paid by the Surviving Corporation, subject to reimbursement by the Securityholders Representative (on behalf of the Securityholders) in accordance with this Section 12.7 out of funds held in the Reserve Amount.

12.8 Non-Foreign Person Affidavit. The Partnership will furnish to the Acquiror on or before the Closing Date a non-foreign person affidavit as required by Section 1445 of the Code.

12.9 Income Tax Position. No party to this Agreement shall take a position for income Tax purposes which is inconsistent with this Agreement. Each party to this Agreement shall notify the others of any Internal Revenue Service audit or challenge to the tax treatment of the transactions contemplated by this Agreement and the results thereof.

12.10 Return of Documents. In the event that the transactions contemplated by this Agreement are not consummated for any reason, the parties hereto (i) shall return to the other documents, contracts and papers supplied by such other party, and (ii) agree that all information derived from the documents, contracts and papers concerning the Partnership and the Partnership Subsidiaries which are furnished to the Acquiror shall be and remain at all times subject to the confidentiality provisions of Section 7.7(c) hereto.

12.11 Books and Records. After Closing, Securityholders Representative will have, upon reasonable advance notice, the right at any time during business hours to inspect and to make copies, at their own expense, of any and all of the Surviving Corporation's books, records, financial information and other data, to the extent the books, records, financial information and other data pertain to the Partnership's business, operations and properties prior to Closing (the "Business Records"), for any proper purpose, including preparing Tax Returns. In addition, Securityholders Representative will have, upon reasonable advance notice, the right to have temporary possession of original copies of the Business Records to defend against or otherwise participate in a tax audit, other Governmental Authority examination or any litigation (other than litigation against the Acquiror or any of the Acquiror's Affiliates). For six years after Closing, the Acquiror will use, and will cause the Surviving Corporation to use, reasonable measure to preserve the Business Records, which measures will not be less comprehensive that the measures used by the Acquiror to preserve its own records.

12.12 Retention of GZA Following the Closing. The parties hereto acknowledge that the current LSP, GZA GeoEnvironmental, Inc. ("GZA") has been primarily responsible for the development, implementation and monitoring of the environmental remediation program at the Plainville Facility. The Surviving Corporation currently intends to maintain GZA as LSP on and after the date hereof. The Surviving Corporation may replace GZA as LSP following prior written notice of not less than twenty (20) days to the Securityholders Representative containing the name and qualifications of the replacement LSP without the consent or approval of the Securityholders Representative (except as otherwise provided in this Agreement in relation to the LSP whose recommendation is required in connection with Limited Special Environmental Expenditures).

12.13 Pension Plan. For a period of not less than two years following the Closing Date, neither the Acquiror nor the Surviving Corporation shall terminate The Hilsinger Company L.P. Retirement Plan.

ARTICLE XIII

MISCELLANEOUS

13.1 Binding Effect; Assignment. All of the terms of this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns. No party will assign, by operation of law or otherwise, any of its rights or obligations under this Agreement to any other Person without the prior written consent of the other party; provided, however, that the Acquiror and the Surviving Corporation may assign this Agreement: (a) to their senior lenders as collateral all representations, warranties and covenants made to the Acquiror or Merger Sub hereunder and their rights to indemnification

under this Agreement without the prior written consent of any other party hereto and (b) following the Closing and with prior written notice to the Securityholders Representative, to an Affiliate controlled by the Acquiror. Any unauthorized assignment will be void.

13.2 Payment of Fees and Expenses. Except as expressly provided for herein, the Acquiror will pay its own expenses, costs and fees (including attorneys' and accountants' fees) and the Securityholders Representative will pay (out of the Merger Consideration as contemplated by Section 4.2 above), or if payable prior to the Closing, the Partnership will pay, all Partnership Transaction Expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

13.3 Further Acts by Securityholders Representative. From and after the Closing Date, upon the reasonable request and at the expense of the Acquiror, the Securityholders Representative shall execute, acknowledge and deliver all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances as may be reasonably appropriate otherwise to carry out the transactions contemplated by this Agreement.

13.4 Entire Agreement; Construction, Counterparts; Effectiveness. This Agreement (including the Schedules, Exhibits, certificates, documents and instruments referred to herein) constitutes the entire agreement of the parties and supersedes all prior agreements, understandings, negotiations and discussions of the parties, whether written or oral. No representation, promise, inducement or statement of intention has been made by any party that is not embodied in this Agreement or in the other documents referred to in the immediately preceding sentence, and no party will be bound by or liable for any alleged representation, promise, inducement or statement of intention not so set forth. The Table of Contents and Headings appearing in this Agreement have been inserted solely for the convenience of the parties and shall be of no force and effect in the construction of the provisions of this Agreement. This Agreement shall be construed under the laws of the State of Delaware applicable to contracts made and to be performed in the State of Delaware without resort to its conflict of laws rules. This Agreement may be executed in several counterparts, and each executed counterpart shall be considered an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. This Agreement shall not become effective until it has been executed by all of the parties hereto.

13.5 Notices. Notices hereunder shall be effective if in writing and shall be deemed to have been given at the earliest of the date when actually delivered to an individual party or to an officer of a corporate party by personal delivery or telephonic facsimile transmission with confirmation, on the succeeding Business Day when deposited with a nationally recognized overnight courier service, or five days after deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, and addressed, in the case of the Partnership or the Securityholders Representative, to:

THC Management Corp.
c/o Capital Partners, Inc.
Three Pickwick Plaza
Suite 310

Greenwich, Connecticut 06830
Attention: President
Fax No.: 203-625-0423

with a copy to:

Christopher D. Graham, Esq.
Edwards & Angell, LLP
2800 Financial Plaza
Providence, Rhode Island 02903
Fax No.: (401) 276-6611

and in the case of the Acquiror, Merger Sub or Surviving Corporation, to:

Hilsinger Holdings, Inc.
c/o ICV Capital Partners, LLC
666 Third Avenue, 29th Floor
New York, NY 10017
Attention: Tarrus L. Richardson
Fax No.: (212) 455-9603

with a copy to:

Kirkland & Ellis
Citigroup Center
153 East 53rd Street
New York, NY 10022
Attention: Eunu Chun, Esq.
Fax No.: (212) 446-4900

Any party may change the address to which notices are to be addressed by giving the other parties notice in the manner herein set forth.

13.6 Amendment and Waiver. This Agreement may be amended, modified, superseded or canceled and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties or, in the case of a waiver, by or on behalf of the party waiving compliance, provided that the Securityholders Representative may amend, modify, supercede, or cancel this Agreement on behalf of the Partnership and the Securityholders. The failure of any party at any time to require performance of any provision of this Agreement will in no manner affect the right of that party at a later time to enforce that provision. No waiver by any party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement, in any one or more instances, will be deemed to be or construed as a further or continuing waiver of that or any other condition or of that or any other breach of any term, covenant, representation or warranty set forth in this Agreement.

13.7 Severability. Any provision, or clause of any provision, of this Agreement that may be found to be contrary to applicable Law or otherwise unenforceable will not affect the remaining terms of this Agreement, which will be construed as if the unenforceable provision or clause were absent from this Agreement, so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party to this Agreement. Upon the determination that such provision or clause is contrary to applicable law or otherwise unenforceable, the parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

13.8 Interpretation.

(a) Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the singular, and all words in any gender shall extend to and include all genders, all references to Sections, Articles, Exhibits or Schedules are to Sections, Articles, Exhibits or Schedules of or to this Agreement, each term defined in this Agreement has the meaning assigned to it, each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with GAAP, the term "including" means "including without limitation", all references to dollar amounts shall be to lawful currency of the United States, and to the extent the term "day or "days" is used, it shall mean calendar days.

(b) No provision of this Agreement will be interpreted in favor of or against any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

13.9 No Third Party Beneficiaries. Except for the parties to this Agreement, the Securityholders and any assignees permitted by Section 13.1 of this Agreement: (a) no Person is entitled to rely on any of the representations, warranties, covenants and agreements of the parties contained in this Agreement; and (b) the parties assume no liability to any Person (other than to the parties to this Agreement and the Securityholders) because of any reliance on the representations, warranties, covenants and agreements of the parties contained in this Agreement. This Agreement is not intended to confer upon any Person other than the parties hereto any benefit, rights or remedies hereunder.

13.10 Partnership Disclosure Schedules. All capitalized terms used in any of Partnership's Disclosure Schedules shall have the definitions specified in this Agreement. To the extent any of the representations and warranties of the Partnership pursuant to this Agreement call for disclosure of matters which are substantially duplicative of matters required to be disclosed by Partnership pursuant to other representations and warranties under this Agreement, disclosure on one schedule hereto of such a matter with reasonable particularity shall be deemed to constitute disclosure of that particular matter on the schedule which corresponds to the other representation or warranty, if the relevance of such information to such other representation or warranty is reasonably apparent on the face of the disclosure schedule of the one schedule.

13.11 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

13.12 Public Disclosure or Communications. (a) Prior to the Closing Date, neither the Partnership, the Securityholders Representative, the Acquiror, Merger Sub nor any of their respective Affiliates shall issue any press release, public announcement or any other public disclosure of any kind concerning the transactions contemplated by this Agreement without the written consent of the Securityholders Representative and the Acquiror; and in the event that any such press release, public announcement or other public disclosure is required by law, the Securityholders Representative and the Acquiror will consult prior to the making thereof and shall use their best efforts to agree upon a mutually satisfactory text of such press release, public announcement or other public disclosure.

(b) Following the Closing Date, no press release or formal public announcement of any kind (other than customary tombstones which do not specify the Merger Consideration) shall be issued or made concerning the transactions contemplated by this Agreement unless the Securityholders Representative and the Acquiror agree upon mutually satisfactory text of such press release or public announcement.

13.13 WAIVER OF JURY TRIAL. THE PARTIES HERETO HEREBY EXPRESSLY WAIVE ANY RIGHT THEY MAY HAVE TO A JURY TRIAL IN ANY SUIT, ACTION OR PROCEEDING EXISTING UNDER OR RELATING TO THIS AGREEMENT, TO THE EXTENT SUCH ACTIONS OR PROCEEDINGS ARE NOT SUBJECT TO ARBITRATION PURSUANT TO THE TERMS HEREOF.

(Signatures on next page)

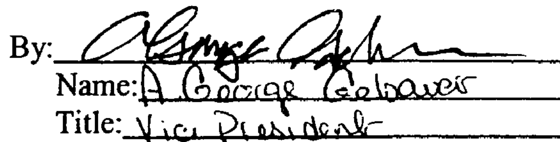
TRADEMARK
REEL: 003006 FRAME: 0707

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

PARTNERSHIP:

THE HILSINGER COMPANY L.P.

By: THC Management Corp.,
its general partner



By:______________________
Name: A George Gebauer
Title: Vice President

ACQUIROR:

HILSINGER HOLDINGS, INC.

By:______________________
Name:____________________
Title:____________________

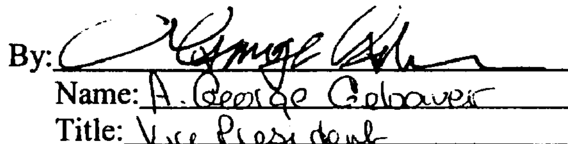
MERGER SUB:

HILSINGER MERGERSUB, INC.

By:______________________
Name:____________________
Title:____________________

AGREEMENT AND ACCEPTANCE:

THC MANAGEMENT CORP.,
as Securityholders Representative



By:______________________
Name: A. George Gebauer
Title: Vice President

[Amended and Restated Agreement and Plan of Merger]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

PARTNERSHIP:

THE HILSINGER COMPANY L.P.

By: THC Management Corp.,
its general partner

By:____________________
Name:____________________
Title:____________________

ACQUIROR:

HILSINGER HOLDINGS, INC.

By: [signature]
Name: TARRUS RICHARDSON
Title: PRES.

MERGER SUB:

HILSINGER MERGERSUB, INC.

By: [signature]
Name: TARRUS RICHARDSON
Title: PRES.

AGREEMENT AND ACCEPTANCE:

THC MANAGEMENT CORP.,
as Securityholders Representative

By:____________________
Name:____________________
Title:____________________

[Amended and Restated Agreement and Plan of Merger]