TRADEMARK ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	10/01/2001

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Apple Hill Orchards Juice Co.		09/28/2001	CORPORATION: COLORADO

RECEIVING PARTY DATA

Name:	Acirca, Inc.
Street Address:	One Ramada Plaza
Internal Address:	7th Floor
City:	New Rochelle
State/Country:	NEW YORK
Postal Code:	10801
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Registration Number:	2479652	MOUNTAIN SUN

CH $40.00 2479652

CORRESPONDENCE DATA

Fax Number: (973)624-7070
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
Phone: 973-622-4444
Email: rsmith@mccarter.com
Correspondent Name: Robert W. Smith
Address Line 1: Four Gateway Center,
Address Line 2: 100 Mulberry Street
Address Line 4: Newark, NEW JERSEY 07102-4056

ATTORNEY DOCKET NUMBER:	36452/56 (RWS-0406)
NAME OF SUBMITTER:	Robert W. Smith

Signature:	/robertwsmith/
Date:	08/20/2007

Total Attachments: 69
source=Acirca Merger#page1.tif
source=Acirca Merger#page2.tif
source=Acirca Merger#page3.tif
source=Acirca Merger#page4.tif
source=Acirca Merger#page5.tif
source=Acirca Merger#page6.tif
source=Acirca Merger#page7.tif
source=Acirca Merger#page8.tif
source=Acirca Merger#page9.tif
source=Acirca Merger#page10.tif
source=Acirca Merger#page11.tif
source=Acirca Merger#page12.tif
source=Acirca Merger#page13.tif
source=Acirca Merger#page14.tif
source=Acirca Merger#page15.tif
source=Acirca Merger#page16.tif
source=Acirca Merger#page17.tif
source=Acirca Merger#page18.tif
source=Acirca Merger#page19.tif
source=Acirca Merger#page20.tif
source=Acirca Merger#page21.tif
source=Acirca Merger#page22.tif
source=Acirca Merger#page23.tif
source=Acirca Merger#page24.tif
source=Acirca Merger#page25.tif
source=Acirca Merger#page26.tif
source=Acirca Merger#page27.tif
source=Acirca Merger#page28.tif
source=Acirca Merger#page29.tif
source=Acirca Merger#page30.tif
source=Acirca Merger#page31.tif
source=Acirca Merger#page32.tif
source=Acirca Merger#page33.tif
source=Acirca Merger#page34.tif
source=Acirca Merger#page35.tif
source=Acirca Merger#page36.tif
source=Acirca Merger#page37.tif
source=Acirca Merger#page38.tif
source=Acirca Merger#page39.tif
source=Acirca Merger#page40.tif
source=Acirca Merger#page41.tif
source=Acirca Merger#page42.tif
source=Acirca Merger#page43.tif
source=Acirca Merger#page44.tif
source=Acirca Merger#page45.tif
source=Acirca Merger#page46.tif
source=Acirca Merger#page47.tif
source=Acirca Merger#page48.tif
source=Acirca Merger#page49.tif

source=Acirca Merger#page50.tif
source=Acirca Merger#page51.tif
source=Acirca Merger#page52.tif
source=Acirca Merger#page53.tif
source=Acirca Merger#page54.tif
source=Acirca Merger#page55.tif
source=Acirca Merger#page56.tif
source=Acirca Merger#page57.tif
source=Acirca Merger#page58.tif
source=Acirca Merger#page59.tif
source=Acirca Merger#page60.tif
source=Acirca Merger#page61.tif
source=Acirca Merger#page62.tif
source=Acirca Merger#page63.tif
source=Acirca Merger#page64.tif
source=Acirca Merger#page65.tif
source=Acirca Merger#page66.tif
source=Acirca Merger#page67.tif
source=Acirca Merger#page68.tif
source=Acirca Merger#page69.tif

ARTICLES OF MERGER

OF DPC 19871297482

APPLE HILL ORCHARDS JUICE CO.,
a Colorado corporation

AND

ACIRCA, INC.,
a Delaware corporation (Nonqual) Survivor

FILED
DONETTA DAVIDSON
COLORADO SECRETARY OF STATE
20011188615 C
$ 110.00
SECRETARY OF STATE
09-28-2001 13:38:37

To the Secretary of State
State of Colorado

Pursuant to the provisions of the Colorado Business Corporation Act, the domestic business corporation and the foreign business corporation herein named do hereby submit the following Articles of Merger.

1. Annexed hereto and made a part hereof is the Plan of Merger for merging Apple Hill Orchards Juice Co., a Colorado corporation ("Apple Hill") with and into Acirca, Inc., a Delaware corporation ("Acirca") as approved by Unanimous Written Consent of the Board of Directors of Apple Hill on September 28, 2001, by Unanimous Written Consent of the Shareholders of Apple Hill on September 28, 2001 and by Written Consent of the Board of Directors of Acirca on September 28, 2001.

2. The number of votes cast for the Plan of Merger by each voting group of Apple Hill entitled to vote separately on the merger was sufficient for approval by that voting group.

COMPUTER UPDATE COMPLETE
CLI

3. The number of votes cast for the Plan of Merger by each voting group of Acirca entitled to vote separately on the merger was sufficient for approval by that voting group.

4. The merger herein provided for is permitted by the laws of the jurisdiction of organization of Acirca and is in compliance with said laws.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

21207141v1

5. The address, wherever located, of the principal office of the surviving corporation is Acirca, Inc., One Ramada Plaza, 7th Floor, New Rochelle, New York 10801.

Executed on September 28, 2001.

APPLE HILL ORCHARDS JUICE CO.,
a Colorado corporation

By: _____
Name: Harold Ware
Capacity: CEO

ACIRCA, INC.,
a Delaware corporation

By: _____
Name: William F. Urich
Capacity: CFO & Secretary

AGREEMENT AND PLAN OF MERGER

among

ACIRCA, INC.,

APPLE HILL ORCHARDS JUICE CO.,

and

THE SHAREHOLDERS

Dated as of September 28, 2001

ARTICLE I
THE MERGER; CONVERSION OF SHARES

ARTICLE II
DEFINITIONS

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE SHAREHOLDERS AND THE COMPANY

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF ACQUIROR

ARTICLE V
COVENANTS

EXHIBITS AND SCHEDULES

Exhibit A	List of Shareholders
Exhibit B	Form of Non-Competition Agreement for Harold Ware
Exhibit C	Form of Non-Competition Agreement for William Russell
Exhibit D	Form of Amended and Restated Investor Rights Agreement
Exhibit E	Form of Escrow Agreement
Exhibit F	Form of Securities Purchase Agreement
Exhibit G	Form of Holland & Hart Opinion
Exhibit H	Form of Debevoise & Plimpton Opinion
Schedule 1.6.2(c)	Payment
Schedule 1.6.2(c)	Capital Leases
Schedule 3.2.1(b)	Qualification
Schedule 3.2.3(a)	Options Outstanding
Schedule 3.2.3(b)	Equity Interests
Schedule 3.2.4(a)	Conflicts
Schedule 3.2.4(b)	Consents
Schedule 3.2.5	GAAP Exceptions
Schedule 3.2.7	Events Subsequent to Latest Financial Statements
Schedule 3.2.8(a)	Tax Returns
Schedule 3.2.8(b)	Tax Extensions, etc.
Schedule 3.2.8(c)	Tax Filing Groups; Income Tax Jurisdictions
Schedule 3.2.8(d)	Tax Contractual Obligations
Schedule 3.2.8(e)	Tax Sharing Agreements
Schedule 3.2.9	Litigation
Schedule 3.2.10	Compliance with Laws
Schedule 3.2.11(a)	Employee Benefits Plans
Schedule 3.2.11(c)	Pending or Threatened Legal Actions, etc.
Schedule 3.2.11(f)	Benefits Obligations
Schedule 3.2.11(g)	Effect on Plans
Schedule 3.2.12	Permits
Schedule 3.2.13(a)	Owned Real Property
Schedule 3.2.13(b)	Real Property Exceptions
Schedule 3.2.13(f)	Options on Real Property
Schedule 3.2.13(g)	Leases of Owned Real Property
Schedule 3.2.14(a)	Leases
Schedule 3.2.15(a)	Intellectual Property
Schedule 3.2.15(b)	Licenses
Schedule 3.2.16	Contracts
Schedule 3.2.17	Insurance
Schedule 3.2.18	Environmental Matters
Schedule 3.2.19	Labor Matters

Schedule 3.2.20	Affiliate Transactions
Schedule 3.2.21	Product Warranties
Schedule 3.2.22	Product Returns
Schedule 3.2.23	Customers
Schedule 3.2.24	Accounts Receivable
Schedule 3.2.25	Inventories
Schedule 3.2.26	Suppliers; Raw Materials
Schedule 3.2.28	Existing Debt
Schedule 4.3.1	Conflicts
Schedule 5.1	Conduct of the Company and its Subsidiaries
Schedule 5.11	Write-Off Items
Schedule 6.1(g)	Terminated Agreements
Schedule 8.10	Knowledge Group

AGREEMENT AND PLAN OF MERGER, dated as of September 28, 2001, among Acirca, Inc., a Delaware corporation ("Acquiror"), Apple Hill Orchards Juice Co., d/b/a Mountain Sun Organic and Natural Juices, a Colorado corporation (the "Company"), NCP-MS, L.P., a Delaware limited partnership ("NCP-MS"), NCP Co-Investment Fund, L.P., a Delaware limited partnership ("NCP Co-Fund"), Friends of North Castle Fund, L.P., a Delaware limited partnership ("Friends"), and Harold Ware, William Russell and Peter Roy (together with NCP-MS, NCP Co-Fund and Friends, the "Shareholders"). Capitalized terms used in this Agreement have the meanings indicated in Article II.

WITNESSETH:

WHEREAS, the respective Boards of Directors of Acquiror and the Company have approved the Merger, upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the shareholders of Acquiror have approved the Merger, upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the Shareholders have approved the Merger, upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, such transaction is intended to qualify as a reorganization within the meaning of Section 368(a) of the Code;

WHEREAS, each of the Shareholders owns the number of shares of common stock of the Company, par value $0.01 per share (the "Company Common Stock"), set forth opposite his or its name on Exhibit A to this Agreement, and those shares of Company Common Stock (the "Shares"), in the aggregate, represent all of the issued and outstanding equity interests of the Company;

WHEREAS, certain employees (the "MS Optionees") of the Company have options ("Options") to purchase shares of Company Common Stock, pursuant to the Apple Hill Orchards Juice Co. Stock Incentive Plan, as amended (the "Stock Incentive Plan"); and

WHEREAS, the parties hereto intend that the Acquiror Common Stock issuable pursuant to this Agreement be "Registrable Securities" as such term is defined in the Second Amended and Restated Investor Rights Agreement (the "Investor Rights Agreement"), which will be entered into as a condition precedent to Closing, among Acquiror and the other parties thereto, and that such Acquiror Common Stock shall be entitled to the rights and subject to the obligations created under such Investor Rights Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and warranties made herein and of the mutual benefits to be derived therefrom, the parties hereto agree as follows:

ARTICLE I

THE MERGER; CONVERSION OF SHARES

1.1. The Merger. Upon the terms and subject to the conditions of this Agreement and in accordance with the applicable provisions of the Colorado Business Corporation Act (the "CBCA") and the Delaware General Corporation Law (the "DGCL"), at the Effective Time, the Company shall be merged with and into Acquiror and the separate corporate existence of the Company shall cease (the "Merger"). After the Merger, Acquiror shall continue as the surviving corporation (sometimes hereinafter referred to as "Surviving Corporation") and shall continue to be governed by the laws of the State of Delaware. The Merger shall have the effect as provided in the applicable provisions of the CBCA and the DGCL. Without limiting the generality of the foregoing, upon the Merger, all the rights, privileges, immunities, powers and franchises of the Company and Acquiror shall vest in Surviving Corporation and all restrictions, obligations, duties, debts and liabilities of the Company and Acquiror shall be the obligations, duties, debts and liabilities of Surviving Corporation.

1.2. Effective Time. On the Closing Date, Acquiror and the Company will cause (a) the appropriate articles of merger (the "Articles of Merger") to be executed and filed with the Secretary of State of the State of Colorado (the "Colorado Secretary of State") in such form and executed as provided in Section 7-111-105 of the CBCA and (b) the appropriate certificate of merger (the "Certificate of Merger") to be executed and filed with the Secretary of State of the State of Delaware (the "Delaware Secretary of State") in such form and executed as provided in Section 252(c) of the DGCL. The Merger shall become effective at the time when the Articles of Merger and the Certificate of Merger have been duly filed with the Colorado Secretary of State and the Delaware Secretary of State, respectively (the "Effective Time").

1.3. Certificate of Incorporation; By-Laws.

1.3.1. Certificate of Incorporation. The certificate of incorporation of Acquiror as in effect immediately prior to the Effective Time shall be the certificate of incorporation of Surviving Corporation until duly amended in accordance with the terms thereof and the DGCL.

1.3.2. By-Laws. The By-laws of Acquiror as in effect immediately prior to the Effective Time shall be the By-laws of Surviving Corporation until thereafter

amended as provided by applicable law, the certificate of incorporation of Surviving Corporation and such By-laws.

1.4. Directors and Officers of Surviving Corporation.

1.4.1. Directors. The directors of Acquiror immediately prior to the Effective Time shall, from and after the Effective Time, be the directors of Surviving Corporation until their successors shall have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with Surviving Corporation's certificate of incorporation and by-laws.

1.4.2. Officers. The officers of Acquiror immediately prior to the Effective Time shall be the initial officers of Surviving Corporation and shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal.

1.5. Conversion of Shares. At the Effective Time, by virtue of the Merger and without any action on the part of any holders of any shares of Company Common Stock:

(a) Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive a combination of (i) cash and/or (ii) shares of Acquiror Common Stock valued at the Acquiror Stock Price with a sum total value equal to the Per Share Merger Consideration (as defined below), as provided by Section 1.6.2(c). The issued and outstanding Company Common Stock, when converted, shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Per Share Merger Consideration upon the surrender of such certificate in the manner provided in and in accordance with Section 1.6; *provided* that such Per Share Merger Consideration may be reduced or increased in accordance with Section 1.8.4 and the terms of the Escrow Agreement. The "Per Share Merger Consideration" shall be an amount equal to the quotient of (y) (1) the Merger Consideration minus (2) the Existing Debt minus (3) the Severance Obligations, divided by (z) the Shares.

(b) All shares of Company Common Stock that are held by the Company as treasury stock shall be cancelled and retired and shall cease to exist and no Per Share Merger Consideration shall be delivered in exchange therefor.

1.6. Closing.

1.6.1. Time and Place. The closing of the Merger (the "Closing") shall take place at the offices of Debevoise & Plimpton, 919 Third Avenue, New York, New

York, at 10:00 a.m., New York time, on September 28, 2001, or at such other place, time and date as the parties may agree. The "Closing Date" shall be the date upon which the Closing occurs.

1.6.2. Closing Deliveries. At the Closing, subject to the terms and conditions of this Agreement:

(a) each Shareholder will deliver to Surviving Corporation a certificate or certificates representing all shares of Company Common Stock in respect of which such Shareholder is the registered owner;

(b) each Option outstanding immediately prior to the Closing shall be (i) cancelled immediately following consummation of the Closing and without any further action by the parties hereto pursuant to the Option Letter Agreements, or (ii) with respect to Options held by individuals who have not entered into Option Letter Agreements and upon consummation of the Closing, such Options shall be substituted for options to purchase Surviving Corporation stock without any further action by the parties hereto which, in accordance with the terms of the Stock Incentive Plan, shall be equitably adjusted to prevent the dilution or enlargement of rights under the Stock Incentive Plan;

(c) Acquiror shall cause to be paid or delivered to each Shareholder, (A) by wire transfer of immediately available funds to an account designated by such Shareholder in writing at least three Business Days prior to the Closing Date the cash amount set forth on Schedule 1.6.2(c) and (B) a stock certificate or certificates representing the number of shares of Acquiror Common Stock set forth on Schedule 1.6.2(c), *provided* that such portion as described in Section 1.6.2(d) below shall be delivered to the Escrow Agent and shall be disbursed to the Shareholders in accordance with the terms of the Escrow Agreement;

(d) Acquiror shall cause to be delivered to the Escrow Agent on behalf of each Shareholder an amount in cash and/or shares of Acquiror Common Stock valued at the Acquiror Stock Price, in the proportions set forth in Schedule 1.6.2(c) totaling the Escrow Amount to be held in an escrow account pursuant to the Escrow Agreement.

1.7. Withholding. All payments under this Agreement shall be reduced by and made net of applicable withholding.

1.8. Purchase Consideration Adjustment.

1.8.1. Delivery and Review of Closing Balance Sheet. As promptly as practicable, but no later than 90 days after the Closing Date, Surviving Corporation shall prepare with assistance from Surviving Corporation's independent public accountants

(who, following the Closing, shall be Ernst & Young or such other firm of nationally recognized independent accountants as Surviving Corporation shall determine) and deliver to the Shareholders' Representative (a) the Closing Balance Sheet, and (b) a certificate of Surviving Corporation, setting forth the Closing Net Working Capital together with supporting calculations in reasonable detail (the "Adjustment Certificate"). The Closing Balance Sheet shall be prepared in accordance with GAAP and in a manner that is consistent with the Balance Sheet; *provided*, however, that (x) if the Closing Balance Sheet cannot be prepared both in accordance with GAAP and in a manner that is consistent with the Balance Sheet, compliance with GAAP shall be given priority and (y) deferred tax assets and deferred tax liabilities shall not be taken into account. The Shareholders' Representative shall have 45 days from the date on which the Closing Balance Sheet and the Adjustment Certificate are delivered to it to review such documents (the "Review Period"). The Shareholders' Representative and their accountants shall be provided with full access to the work papers of Surviving Corporation's independent public accountants in connection with such review. If the Shareholders' Representative disagrees in any respect with any item or amount shown or reflected in the Closing Balance Sheet or the Adjustment Certificate, or with the calculation of the Closing Net Working Capital, the Shareholders' Representative may, on or prior to the last day of the Review Period, deliver a notice to Surviving Corporation setting forth, in reasonable detail, each disputed item or amount and the basis for its disagreement therewith, together with supporting calculations (the "Dispute Notice"). The Dispute Notice shall set forth the Shareholders' Representative's position as to the proper Closing Net Working Capital. If no Dispute Notice is received by Surviving Corporation on or prior to the last day of the Review Period, the Closing Balance Sheet and the Adjustment Certificate shall be deemed accepted by the Shareholders.

1.8.2. The Accountant. Within 15 days after Surviving Corporation's receipt of a Dispute Notice, if any, Surviving Corporation and the Shareholders' Representative shall jointly contact the National Office of Arthur Andersen LLP ("Arthur Andersen") and shall retain Arthur Andersen to resolve the issues set forth in the Dispute Notice. If for any reason Arthur Andersen shall not be available to resolve such issues consistent with this Section 1.8.2, Surviving Corporation and the Shareholders' Representative shall promptly contact the national office of, and shall retain the services of, an independent accounting firm, which does not at the time of retention provide and has not in the prior three years provided services to Acquiror, the Company and the Shareholders (or to the respective Affiliates of any of the foregoing Persons). If Surviving Corporation and the Shareholders' Representative cannot agree on the independent accounting firm to be retained, Surviving Corporation and the Shareholders' Representative shall each submit the name of one accounting firm that satisfies the qualifications set forth in this Section 1.8.2, and the independent accounting firm shall be selected by lot from those two firms. The independent accounting firm retained by Surviving Corporation and the Shareholders' Representative (the "Accountant") shall conduct such review of the Closing Balance Sheet, any related work papers of Surviving

Corporation's independent public accountants, the Adjustment Certificate and the Dispute Notice, and any supporting documentation as the Accountant in its sole discretion deems necessary, and the Accountant shall conduct such hearings or hear such presentations by the parties as the Accountant in its sole discretion deems necessary.

1.8.3. The Adjustment Report. The Accountant shall, as promptly as practicable and in no event later than 60 days following the date of its retention, deliver to the Shareholders' Representative and Surviving Corporation a report (the "Adjustment Report"), in which the Accountant shall, after considering all matters set forth in the Dispute Notice, determine what adjustments, if any, should be made to the Closing Balance Sheet and shall determine the appropriate Closing Net Working Capital on that basis. The Adjustment Report shall set forth, in reasonable detail, the Accountant's determination with respect to each of the disputed items or amounts specified in the Dispute Notice, and the revisions, if any, to be made to the Closing Balance Sheet, together with supporting calculations. The Adjustment Report shall be final and binding upon Surviving Corporation and the Shareholders, and shall be deemed a final arbitration award that is enforceable pursuant to the terms of the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.* and the state law counterparts thereto.

1.8.4. Adjustment and Payment. The sum of (y) Closing Net Working Capital less (z) Base Net Working Capital is referred to herein as the "Net Adjustment Amount". If the Net Adjustment Amount is a positive number, Surviving Corporation shall pay to each Shareholder the lesser of (y) an amount in cash and/or shares of Acquiror Common Stock valued at the Acquiror Stock Price, in the proportions set forth in Schedule 1.6.2(c) equal to the Net Adjustment Amount multiplied by the quotient determined by dividing (A) the number of shares of Company Common Stock held by such Shareholder immediately prior to the Effective Time by (B) the Shares and (z) an amount in cash and/or shares of Acquiror Common Stock valued at the Acquiror Stock Price, in the proportions set forth in Schedule 1.6.2(c) equal to the Escrow Property (as defined in the Escrow Agreement). If the Net Adjustment Amount is a negative number, each Shareholder shall, subject to the terms of the Escrow Agreement, pay to Acquiror the lesser of (y) an amount in cash and/or shares of Acquiror Common Stock valued at the Acquiror Stock Price, in the proportions set forth in Schedule 1.6.2(c) equal to the absolute value of the Net Adjustment Amount (i.e., the positive value of the Net Adjustment Amount) multiplied by the quotient determined by dividing (A) the number of shares of Company Common Stock held by such Shareholder immediately prior to the Effective Time by (B) the Shares and (z) the Escrow Property (as defined in the Escrow Agreement). Any payment pursuant to this Section 1.8.4 shall be paid by the Shareholders or Surviving Corporation, as the case may be, on the fifth Business Day following the end of the Review Period (if a timely Dispute Notice is not delivered); or five Business Days after the date on which the Adjustment Report has been received by the Shareholders and Acquiror (if a timely Dispute Notice is delivered). Any such cash or share payment shall be made if payable by the Surviving Corporation by wire transfer

of immediately available funds to the account or accounts of the Shareholders, as the case may be, such account or accounts designated by a written notice delivered in accordance with Section 8.5 at least two Business Days prior to the date on which such payment is scheduled to be made and, if payable by the Shareholders, in accordance with the terms of the Escrow Agreement.

ARTICLE II

DEFINITIONS

2.1. Specific Definitions. As used in this Agreement and the Schedules hereto, the following terms have the following meanings:

Accountant: the meaning set forth in Section 1.8.2.

Acquiror: the meaning set forth in the preamble.

Acquiror Common Stock: the common stock of Acquiror, par value $0.0001 per share.

Acquiror Stock Price: $0.568215 per share.

Acquisition Proposal: the meaning set forth in Section 5.4.

Adjustment Certificate: the meaning set forth in Section 1.8.1.

Adjustment Report: the meaning set forth in Section 1.8.3.

Affiliate: with respect to any Person, a Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. "Control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise. "Affiliate," when used with reference to the Company, includes without limitation (A) North Castle and (B) the employees and directors of North Castle.

Agreement: this Merger Agreement, including the Exhibits and Schedules hereto.

Ancillary Agreements: the (i) Non-Competition Agreement, dated the Closing Date, between the Surviving Corporation and Harold Ware substantially

in the form of Exhibit B hereto, (ii) Non-Competition Agreement, dated the Closing Date, between the Surviving Corporation and William Russell substantially in the form of Exhibit C hereto, (iii) the Second Amended and Restated Investor Rights Agreement by and among various shareholders and new investors of Acquiror substantially in the form of Exhibit D hereto, (iv) the Escrow Agreement by and among the parties hereto substantially in the form of Exhibit E hereto, and (v) the Consulting Agreement between the Acquiror and William Russell.

Articles of Merger: the meaning set forth in Section 1.2.

Arthur Andersen: the meaning set forth in Section 1.8.

Balance Sheet: the balance sheet of the Company as of August 31, 2000, included in the Financial Statements.

Base Net Working Capital: $2,100,000.

Business: the business and operations of the Company as conducted as of the date of this Agreement.

Business Day: any day other than a Saturday, Sunday or other day on which the commercial banks in New York City are authorized or required to close.

Capital Leases: the capital leases listed on Schedule 2.1.

CBCA: the meaning set forth in Section 1.1.

Certificate of Merger: the meaning set forth in Section 1.2.

Closing: the meaning set forth in Section 1.6.

Closing Balance Sheet: the audited balance sheet of the Company as of the Closing Date, which shall (a) fairly present the financial position of the Company as at the close of business on the Closing Date (without giving effect to the merger or any subsequent transaction contemplated hereby or by any of the Ancillary Agreements), (b) be prepared in accordance with GAAP applied on a basis consistent with those used in the Balance Sheet, (c) include line items substantially consistent with those in the Balance Sheet, and (d) be prepared in accordance with accounting policies and practices consistent with those used in the preparation of the Balance Sheet.

Closing Current Assets: the consolidated current assets of the Company as shown on the Closing Balance Sheet, as modified by the Adjustment Report, excluding any deferred tax assets.

Closing Current Liabilities: the consolidated current liabilities of the Company as shown on the Closing Balance Sheet, as modified by the Adjustment Report, excluding (i) any deferred tax liabilities, (ii) Existing Debt, (iii) amounts payable with regard to the consent and settlement with the EPA with regards to alleged BOD wastewater violations, (iv) the $450,000 liability for replacement apples, and (v) the $700,000 possible liability for the litigation filed by Apple Valley Farms.

Closing Date: the meaning set forth in Section 1.6.

Closing Net Working Capital: an amount equal to the Closing Current Assets less the Closing Current Liabilities.

Code: the Internal Revenue Code of 1986, as amended.

Colorado Secretary of State: the meaning set forth in Section 1.2.

Company: the meaning set forth in the preamble.

Company Common Stock: the meaning set forth in the recitals.

Confidentiality Agreement: the meaning set forth in Section 5.3.

Consent: any consent, approval, authorization, order, filing, registration or qualification of or with any Person.

Contracts: the meaning set forth in Section 3.2.16.

Convertible Subordinated Notes: the (i) Company 8% Senior Subordinated Convertible Promissory Note, dated March 20, 2001 with initial principal amount of $684,773.88 made payable to NCP-MS, (ii) Company 8% Senior Subordinated Convertible Promissory Note, dated March 20, 2001 with initial principal amount of $11,761.12 made payable to NCP Co-Fund, and (iii) Company 8% Senior Subordinated Convertible Promissory Note, dated March 20, 2001 with initial principal amount of $3,465.00 made payable to Friends of North Castle Fund, L.P.

Credit Agreement: the Loan and Security Agreement, dated June 14, 1999, as amended, between the Company and U.S. Bancorp AG Credit, Inc., a Colorado corporation.

Delaware Secretary of State: the meaning set forth in Section 1.2.

DGCL: the meaning set forth in Section 1.1.

Dispute Notice: the meaning set forth in Section 1.8.1.

Effective Time: the meaning set forth in Section 1.2.

Employment and Withholding Taxes: any federal, state, provincial, local, foreign or other employment, unemployment insurance, social security, disability, workers' compensation, payroll, health care or other similar tax, duty or other governmental charge or assessment or deficiencies thereof and all Taxes required to be withheld by or on behalf of each of the Company and each of its Subsidiaries in connection with amounts paid or owing to any employee, independent contractor, creditor or other party, in each case, on or in respect of the business or assets thereof.

Environmental Law: any federal, state, or local law, statute, rule, regulation or order relating to (a) the manufacture, transport, use, treatment, storage, disposal, release or threatened release of Hazardous Substances, or (b) the protection of human health or the environment (including, without limitation, natural resources, air, and surface or subsurface land or waters).

ERISA: the Employee Retirement Income Security Act of 1974, as amended.

Escrow Agent: Webster Trust Company, NA.

Escrow Agreement: the escrow agreement entered into by the parties hereto in substantially the form of Exhibit E attached hereto.

Escrow Amount: $1,550,000.

Existing Debt: All outstanding principal, accrued interest, and all other amounts due and payable at the Closing under (i) the Credit Agreement, (ii) the Convertible Subordinated Notes (iii) the Subordinated Promissory Notes and (iv) the Capital Leases.

FDA: the meaning set forth in Section 3.2.10.

Financial Statements: the meaning set forth in Section 3.2.5.

GAAP: the meaning set forth in Section 3.2.5.

Governmental Entity: any governmental or regulatory authority, agency, court, commission or other entity, domestic or foreign.

Hazardous Substance: any material or substance that is: (a) listed, classified or regulated as "hazardous" pursuant to any applicable Environmental Law, or (b) any petroleum product or by-product, asbestos or polychlorinated biphenyls.

HSR Act: the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

Income Tax: any federal, state, provincial, local or foreign Tax on or measured by net income.

Income Tax Return: any Tax Return relating to Income Taxes.

Indebtedness: with respect to any Person at any time and from time to time, the sum, without duplication, of the following: (a) all obligations of such Person for money borrowed (whether by loan, the issuance of debt securities or otherwise); (b) the available amount at such time of all letters of credit issued for the account of such Person and all outstanding reimbursement obligations with respect thereto; (c) all capitalized lease obligations; (d) all Indebtedness of others guaranteed by such Person; (e) all obligations of such Person to pay the deferred purchase price or acquisition price of property or services, other than trade payables and accrued expenses incurred that are not past due, as classified by the Company, by more than thirty (30) days; (f) all obligations of such Person under trade or bankers' acceptances or under agreements providing for swaps, ceiling rates, ceiling and floor rates, or contingent participation or other hedging mechanisms with respect to the payment of interest; (g) all indebtedness, liabilities and obligations of such Person to redeem or retire shares of capital stock of such Person; and (h) all liabilities or obligations, to the knowledge of the Company, secured by any Lien on any property owned by such Person.

Insurance Claims: the meaning set forth in Section 5.9.

Intellectual Property: the meaning set forth in Section 3.2.15(a).

IP Assets: the meaning set forth in Section 3.2.15(a).

IRS: the Internal Revenue Service.

Investor Rights Agreement: the meaning set forth in the recitals.

Leased Real Property: all real property interests leased by the Company or its Subsidiaries.

Leases: the meaning set forth in Section 3.2.14(a).

Licenses: the meaning set forth in Section 3.2.15(b).

Lien: any mortgage, pledge, deed of trust, hypothecation, claim, security interest, title defect, encumbrance, burden, charge or other similar restriction, lease, sublease, claim, title retention agreement, option, easement, covenant, encroachment or other adverse claim.

Material Adverse Effect: any event, violation or other matter that (i) could reasonably be expected to be material and adverse in impact or amount to the Company's business (including any potential effect upon the Company after the transaction contemplated by this Agreement as if the Company is in existence immediately after the consummation of this Agreement), intellectual property rights, assets, liabilities, financial performance, financial condition or results of operations, or (ii) that materially impairs the ability of the Company to perform its obligations hereunder and to consummate the transactions contemplated hereby.

Merger: the meaning set forth in Section 1.1.

Merger Consideration: $11,493,500.

NCP Co-Fund: the meaning set forth in the preamble.

NCP-MS: the meaning set forth in the preamble.

Net Adjustment Amount: the meaning set forth in Section 1.8.4.

North Castle: North Castle Partners, L.L.C.

Option: the meaning set forth in the recitals.

Option Letter Agreements: the letter agreements between the Acquiror and each of Michael Noel, Steve Porter, Joe Browne, Michelle Schaefer and John Murphy, each dated as of the Closing Date.

Organizational Documents: with respect to any corporation, its articles or certificate of incorporation and by-laws.

Owned Real Property: the meaning set forth in Section 3.2.13.

Pension Plan: the meaning set forth in Section 3.2.11.

Per Share Merger Consideration: the meaning set forth in Section 1.5.

Permitted Liens: (a) Liens reserved against in the interim financial statements of the Company for the nine month period ended May 31, 2001, to the extent so reserved, (b) Liens for Taxes not yet due and payable or which are being contested in good faith and by appropriate proceedings, (c) easements, restrictions, covenants or other similar matters set forth in any deed conveying title to real property or any recorded instrument, agreement or plat (other than those that would have a Material Adverse Effect), (d) statutory Liens of landlords for amounts not yet due and payable, or (e) Liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for amounts not yet due and payable, or (f) statutory liens for sums that are not yet due and payable; and (g) the Liens set forth on Schedule 2.1.

Permits: the meaning set forth in Section 3.2.12.

Per Share Merger Consideration: the meaning set forth in Section 1.5.

Person: any natural person, firm, partnership, association, corporation, company, trust, business trust, Governmental Entity or other entity.

Plans: the meaning set forth in Section 3.2.11.

Products: the meaning set forth in Section 3.2.10.

Real Property: the meaning set forth in Section 3.2.13.

Review Period: the meaning set forth in Section 1.8.

Securities Act: the meaning set forth in Section 3.1.5.

Severance Obigations: $400,000 of severance and retention obligations owed by the Company.

Shares: the meaning set forth in the recitals.

Shareholder: the meaning set forth in the preamble.

Shareholders Agreement: the Shareholders Agreement, dated as of June 14, 1999, among the Company, NCP-MS, L.P., William Russell, Harold Ware, and Peter Roy.

Shareholders' Representative: NCP-MS, L.P.

State Food Authorities: the meaning set forth in Section 3.2.10.

Stock Incentive Plan: the meaning set forth in the recitals.

Subordinated Promissory Notes: the (i) Company Amended and Restated 8% Subordinated Promissory Note with principal amount of $76,480.00 payable to William Russell, (ii) Company Amended and Restated 8% Subordinated Promissory Note with principal amount of $131,775.00 payable to Denise Russell, and (iii) Company Amended and Restated 8% Subordinated Promissory Note with principal amount of $182,985.00 payable to Harold Ware.

Subsidiary: with respect to any Person, any other Person (other than a natural person), whether incorporated or unincorporated, of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such Person.

Surviving Corporation: the meaning set forth in Section 1.1.

Tax: any federal, state, provincial, local or foreign income, alternative, minimum, accumulated earnings, personal holding company, franchise, capital stock, profits, windfall profits, gross receipts, sales, use, value added, transfer, registration, stamp, premium, excise, customs duties, severance, real property, personal property, ad valorem, occupancy, license, occupation, employment, payroll, social security, disability, unemployment, workers' compensation, withholding, estimated or other similar tax, assessment or other governmental charge (together with interest, penalties and additions thereto).

Tax Return: any return, report, declaration, form, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof that relates to the Company or any of its Subsidiaries.

Treasury Regulations: the regulations prescribed under the Code.

USDA: the meaning set forth in Section 3.2.10.

2.2. Other Definitional Provisions.

2.2.1. The words "hereof", "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

2.2.2. Terms defined in the singular have the same meaning when used in the plural, and vice versa.

2.2.3. References to "Sections," "Exhibits" and "Schedules" refer to Sections of, and Exhibits and Schedules to, this Agreement, unless otherwise specified.

2.2.4. References to "$" or "dollars" refer to U.S. dollars.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SHAREHOLDERS AND THE COMPANY

3.1. Representations and Warranties of the Shareholders as to the Shareholders. As of the date hereof and as of the Closing Date, each Shareholder severally and not jointly with the other Shareholders, represents and warrants as to himself or itself to Acquiror, as follows:

3.1.1. Authorizations, etc. Such Shareholder has full power and authority to execute and deliver this Agreement and any Ancillary Agreement to which it will be a party, to perform fully its obligations hereunder or thereunder, and to consummate the transactions contemplated hereby and thereby. Such Shareholder has duly executed and delivered this Agreement and on the Closing Date will have duly executed and delivered any Ancillary Agreement to which such Shareholder is a party. This Agreement constitutes, and on the Closing Date each such Ancillary Agreement will constitute, legal, valid and binding obligations of such Shareholder enforceable against such Shareholder in accordance with their respective terms.

3.1.2. Title to Shares, etc. Such Shareholder owns beneficially and of record and has the sole dispositive power with respect to the number of shares of Company Common Stock set forth beside such Shareholder's name on Exhibit A and has good and marketable title to such Company Common Stock, free and clear of all Liens.

3.1.3. No Brokers. Such Shareholder is not obligated for the payment of fees or expenses of any broker or finder in connection with the origin, negotiation or execution of this Agreement or any Ancillary Agreement or in connection with any transaction contemplated hereby or thereby.

3.1.4. Shareholder Agreements etc. Except as set forth in Schedule 3.1.4, such Shareholder is not a party to any Shareholder agreements, voting trusts or other agreements or understandings relating to the voting, purchase, redemption or other acquisition of any shares of the capital stock of the Company.

3.1.5. Acquiror Common Stock and Shareholder Status.

(a) Any shares of Acquiror Common Stock that are or will be acquired by such Shareholder pursuant to this Agreement are or will be so acquired for such Shareholder's own account, for investment and not with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act or applicable state securities laws. Such Shareholder understands that such shares of Acquiror Common Stock have not been registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), and have not been qualified under any state securities laws. Such Shareholder understands that the resale of such shares of Acquiror Common Stock may be restricted indefinitely unless a subsequent disposition thereof is registered under the Securities Act and registered under any state securities law or is exempt from such registration.

(b) Such Shareholder is an "Accredited Investor" as that term is defined in Rule 501 of Regulation D promulgated under the Securities Act. Such Shareholder is able to bear the economic risk of any acquisition by such Shareholder of shares of Acquiror Common Stock pursuant to the terms of this Agreement, including a complete loss of such Shareholder's investment in such shares of Acquiror Common Stock.

3.2. Representations and Warranties of the Company as to the Company. As of the date hereof and as of the Closing Date, the Company represents and warrants to Acquiror as follows:

3.2.1. Corporate Status, etc.

(a) Organization. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Colorado, and has full corporate power and authority to own, lease and operate its properties and to carry on its business as presently conducted.

(b) Qualification. Schedule 3.2.1(b) contains a true and complete list of the states and foreign countries in which the Company is qualified to do business. Except as set forth on Schedule 3.2.1(b), the Company is duly qualified to do business and in good standing as a foreign corporation in all jurisdictions in which the failure to be so qualified would have a Material Adverse Effect.

(c) Organizational Documents. The Company is not in violation of any provisions of its Organizational Documents as currently in effect.

(d) Corporate Records. The Company has furnished or made available to the Acquiror or its counsel, for their examination, true and complete copies of the minute books containing required records setting forth proceedings, consents,

actions, and meetings of its shareholders, board of directors and any committees thereof.

3.2.2. Authorization, etc. The Company has full corporate power and authority to enter into this Agreement to perform its obligations hereunder. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Company. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligations of the Company enforceable against the Company in accordance with its terms, except as limited by laws affecting the enforcement of creditor's rights generally or by general equitable principles.

3.2.3. Capitalization.

(a) The authorized capital stock of the Company consists of 10,000,000 shares of Company Common Stock, of which, as of the date hereof, 7,065,174.84 shares are issued and outstanding and, except for the Options, constitute all of the issued and outstanding equity interest of the Company. Exhibit A lists all Persons owning of record any outstanding shares of Company Common Stock and specifies for each such Person the number of Shares owned by such Person. The Company has issued its equity interests in material compliance with applicable federal and state securities laws. The outstanding shares of Company Common stock have been duly authorized and validly issued and are fully paid and nonassessable. Except for this Agreement, or as set forth on Schedule 3.2.3(a), no options or other rights (or any agreement to issue the same) to purchase or subscribe for any shares of capital stock of any class of the Company , or any securities convertible into or exchangeable for any such shares, are outstanding or authorized.

(b) Equity Interests. Except as set forth in Schedule 3.2.3(b), the Company does not own any capital stock of or other equity securities or interests in any other Person. Except as set forth in Schedule 3.2.3(b), the Company is not a party to any Shareholder agreements, voting trusts or other agreements or understandings relating to the voting, purchase, redemption or other acquisition of any shares of capital stock or equity interests in the Company or any other Person.

3.2.4. Conflicts, Consents, Subsequent Actions.

(a) Conflicts. Except as set forth in Schedule 3.2.4(a), the execution and delivery of this Agreement by the Company, and the consummation by the Company of the transactions contemplated hereby, will not conflict with or result in any violation of or default under (or any event that, with notice or lapse of time

or both, would constitute a default under), or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a benefit under, any provision of (i) the Organizational Documents of the Company, or (ii) any judgment, order, decree, law, statute, rule or regulation applicable to the Company, or (iii) any mortgage, indenture, loan agreement, note, bond, deed of trust, other agreement, commitment or obligation for the borrowing of money or the obtaining of credit, material lease or other material agreement, contract, license, franchise, permit or instrument to which the Company is a party or by which the Company or any of its assets may be bound, other than, in the case of clauses (ii) and (iii), any conflicts, violations or defaults that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(b) Consents. Except (i) as set forth in Schedule 3.2.4(b) and (ii) for any Consents where the failure to obtain such Consents, either in any individual case or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, no Consent of or with any court, Governmental Entity or third Person is required to be obtained by the Company in connection with the execution and delivery of this Agreement by the Company or the consummation by the Company of the transactions contemplated hereby.

3.2.5. Financial Statements. The Company has delivered to Acquiror complete and correct copies of consolidated statements of operations, changes in Shareholders' equity and cash flows of the Company for the fiscal years ended August 31, 1999 and 2000 and for the nine month period ended May 31, 2001 consolidated balance sheets of the Company as at such dates and in the case of the statements and balance sheet for and as of the fiscal years ended August 31, 1999 and 2000, audited by Ernst & Young, the Company's certified public accountants (the "Financial Statements"). Except as set forth in Schedule 3.2.5, the Financial Statements have been prepared in accordance with generally accepted accounting principles ("GAAP") consistently applied throughout the periods indicated and present fairly in all material respects the financial condition of the Company on a consolidated basis at the respective dates indicated and the results of operations, cash flows and equity transactions of the Company on a consolidated basis for the respective periods indicated.

3.2.6. Absence of Undisclosed Liabilities. Except as reflected or reserved against in the Financial Statements (including the notes thereto) or reflected in the Schedules hereto, the Company has no liabilities or commitments other than those incurred in the ordinary course of business since August 31, 2000 or that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, and to the knowledge of the Company there is no existing condition, situation or set of circumstances that would reasonably be expected to result in a material liability or commitment.

3.2.7. Events Subsequent to Latest Financial Statements. Except as set forth in Schedule 3.2.7, since August 31, 2000, other than in connection with the transactions contemplated by this Agreement, the Company has conducted its business in the ordinary course (including without limitation its pricing and discounting practices), and in substantially the same manner in which it has been previously conducted, the Company has not suffered any Material Adverse Effect and the Company has not:

(a) except as required by GAAP, made any material change in its accounting principles or the methods by which such principles are applied for financial accounting purposes;

(b) amended its Organizational Documents;

(c) sold, leased or otherwise disposed of any of its assets having a value in excess of $20,000 in any individual case or $50,000 in the aggregate, other than in the ordinary course of business consistent with past practice;

(d) suffered any property or casualty damage, destruction or loss, whether or not covered by insurance, in an amount in excess of $10,000 in the aggregate;

(e) incurred any Indebtedness, commitments or liabilities, contingent or otherwise, in excess of $50,000 in the aggregate, other than Indebtedness, commitments or liabilities incurred in the ordinary course of business or reflected in the Financial Statements;

(f) other than in the ordinary course of business, modified any existing Contract or entered into any new Contract that, pursuant to its terms, is not cancelable without penalty on less than 90 days' notice;

(g) paid or set aside or agreed to any bonus to any officer, director, employee, sales representative, agent or consultant, or granted to any officer, director, employee, sales representative, agent or consultant any other increase in compensation payable in any form, except in the ordinary course of business consistent with past practice; provided, however, the Company has properly accounted for any accrued and unpaid bonuses or other compensation;

(h) entered into, adopted or amended any employment, consulting, retention, change-in-control, collective bargaining, bonus or other incentive compensation, profit-sharing, health or other welfare, stock option or other equity, pension, retirement, vacation, severance, deferred compensation or other employment compensation or benefit plan, policy, agreement, trust fund or arrangement for the benefit of any officer, director, employee, sales

representative, agent or consultant or Affiliate (whether or not legally binding), except in the ordinary course of business consistent with past practice;

(i) made any material changes in policies or practices relating to selling practices, returns, discounts or other terms of sale or accounting therefore or in policies of employment;

(j) declared, set aside or paid any dividend or made any other distribution on or in respect of the shares of capital stock of the Company or declared or agreed to any direct or indirect redemption, retirement, purchase or other acquisition by the Company of such shares;

(k) issued any shares of capital stock of the Company or any warrants, rights, options or entered into any commitment relating to the shares of capital stock of the Company;

(l) instituted, settled or agreed to settle any litigation, action or proceeding before any Governmental Authority relating to the Business or the Assets;

(m) made capital expenditures in excess of $50,000 in any individual case;

(n) sold, assigned, transferred or otherwise disposed of, or licensed or been licensed to use, any Intellectual Property or entered into any settlement regarding the infringement of any Intellectual Property;

(o) been involved in any dispute involving any employee which may result in a Material Adverse Effect;

(p) permitted or allowed any of its property or assets to be subjected to any mortgage, deed of trust, pledge, lien, security interest or other encumbrance of any kind, except for Permitted Liens, other than any purchase money security interests incurred in the ordinary course of its business;

(q) paid, loaned or advanced any amount to, or sold, transferred or leased any properties or assets to, or entered into any agreement or arrangement with any of its Affiliates, officers, directors or shareholders or, to the Company's knowledge, any Affiliate or associate of any of the foregoing;

(r) made any amendment to or terminated any agreement that, if not so amended or terminated, would be material to the business, assets, liabilities, operations or financial performance of the Company; or

(s) entered into any agreement to take any of the actions described in clauses (a) through (r).

3.2.8. Tax Matters.

(a) Filing of Returns and Payment of Taxes. Except as set forth in Schedule 3.2.8(a), the Company has fully and timely, properly and accurately filed all Tax Returns required to be filed by or on behalf of the Company. All such Tax Returns were prepared in the manner required by applicable law in all material respects. All Taxes due from the Company prior to the Closing Date have been paid or will be paid on or before the Closing Date. Except as set forth on Schedule 3.2.8(a), there are no pending assessments, audits, asserted deficiencies or claims for additional Taxes that have not been paid. The reserves for Taxes, if any, reflected on the Financial Statements are adequate, and there are no Liens with respect to Taxes on any property or assets of the Company (other than liens for Taxes not yet due and payable). Except as set forth on Schedule 3.2.8(a), there have been no audits or examinations of any Tax Returns of the Company by any Governmental Entity. No state of facts exists or has existed which would constitute grounds for the assessment of any penalty or any further liability for Taxes in a material amount, either individually or in the aggregate, beyond that shown on the Company's Tax Returns. Except as set forth in Schedule 3.2.8(a), all Employment and Withholding Taxes that the Company has been required to collect or withhold have been duly collected or withheld and, to the extent required, have been paid to the proper taxing authority.

(b) Extensions, etc. Except as set forth in Schedule 3.2.8(b), there are no outstanding agreements or waivers extending the statutory period of limitation applicable to any Tax Return of or with respect to the Company for any period, and there are no powers of attorney that have not expired with respect to any Taxes or Tax Returns of or with respect to the Company.

(c) Tax Filing Groups; Income Tax Jurisdictions. Except as set forth in Schedule 3.2.8(c), at no time has the Company been a member of any affiliated, consolidated, combined or unitary group for purposes of filing Income Tax Returns or paying Income Taxes. Set forth in Schedule 3.2.8(c) are all countries, states, provinces, cities or other jurisdictions in which the Company and its Subsidiaries currently file or have filed within the last year a material Income Tax Return.

(d) Contractual Obligations. The Company is not currently under any contractual obligation to pay to any Governmental Entity any Tax obligations of, or with respect to any transaction relating to, any other Person or to indemnify any other Person with respect to any Tax.

(e) Tax Sharing Agreements. Except as set forth in Schedule 3.2.8(e), the Company is not a party to, is not bound by, and has no obligation under, any Tax sharing agreement or arrangement.

(f) Section 1445(a) of the Code. Acquiror will not be required to deduct and withhold any amount pursuant to section 1445(a) of the Code upon the transfer of the Shares to Acquiror pursuant to this Agreement.

3.2.9. Litigation. Except as set forth in Schedule 3.2.9, there is no action, claim, suit or proceeding pending or, to the knowledge of the Company, threatened against the Company and there is no investigation pending or, to the knowledge of the Company, threatened against the Company, in each case, before any Governmental Entity, that would reasonably be expected to have a Material Adverse Effect. There is no judgment, decree, injunction, investigation, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator outstanding or pending against the Company. The representations and warranties in this Section 3.2.9 do not relate to or cover environmental matters, which are instead the subject of Section 3.2.18.

3.2.10. Compliance with Laws. Except as set forth in Schedule 3.2.10, the Business has not been, and is not being, conducted in violation of any applicable law, regulation, judgment, order, decree, license or permit of any Governmental Entity, except for possible violations that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing sentence, the Company has not violated, nor is in violation of, the applicable provisions of the federal Food, Drug and Cosmetics Act, as amended, the regulations and requirements adopted by the United States Food and Drug Administration (the "FDA") pursuant to such Act, the regulations and requirements adopted by the United States Department of Agriculture (the "USDA"), applicable state law and the requirements established by state and local authorities responsible for regulating food products and establishments, including, without limitation, the California Organic Foods Act of 1990 and all applicable organic food certification programs (collectively "State Food Authorities"), as well as with the terms and conditions imposed in any licenses granted to the Company by the FDA, USDA or State Food Authorities. In addition, the Company is not aware of any facts that would indicate that the FDA, USDA, or any State Food Authorities has or will prohibit or materially restrict the marketing, sale, license or use in the United States of any product currently produced, marketed, or under development, by the Company ("Products"), or the operation or use of any Products, and the Company is not aware of any product or process which the FDA or the USDA has prohibited from being marketed or used in the United States which in function and composition is substantially similar to any Products. The Company has complied in all material respects at all times with any and all applicable federal and state laws, rules, regulations, proclamations and orders relating to the importation or exportation of its products. Except as set forth in Schedule 3.2.10, no investigation or review by any Governmental

Entity with respect to the Company is pending, or to the knowledge of the Company, threatened, in each case other than those the outcome of which would not reasonably be expected to have a Material Adverse Effect. This Section 3.2.10 does not relate to tax matters, which are instead the subject of Section 3.2.8, employee benefits matters, which are instead the subject of Section 3.2.11, or environmental matters, which are instead the subject of Section 3.2.18.

3.2.11. Employee Benefits.

(a) Schedule 3.2.11(a) contains a true and complete list of each "employee benefit plan," as such term is defined in section 3(3) of ERISA, and each bonus, incentive or deferred compensation, severance, termination, retention, change of control, stock option, stock appreciation, stock purchase, phantom stock or other equity-based, performance or other employee or retiree benefit or compensation plan, program, arrangement, agreement, policy or understanding, whether written or unwritten, that provides or may provide benefits or compensation to any employee or former employee of the Company or any of its Subsidiaries, or to the beneficiaries or dependents of any such employee or former employee (collectively, the "Employees") or under which any Employee is or may become eligible to participate or derive a benefit and that is or has been maintained or established by the Company or any of its Subsidiaries, or to which the Company or any of its Subsidiaries contributes or is or has been obligated or required to contribute (all such plans being hereinafter referred to as "Plans"). Neither the Company nor any of its Subsidiaries has any plan or commitment to establish any new Plan or to modify or to terminate any Plan (except to the extent required by law) nor has any intention to do any of the foregoing been communicated to Employees.

(b) The Company has furnished or made avaliable to the Acquiror, (i) current, accurate and complete copies of all documents embodying each Plan, including, as applicable, all amendments thereto, and trust or funding agreements with respect thereto; (ii) the most recent determination letter received by the IRS, if any, for each Plan and related trust which is intended to satisfy the requirements of Section 401(a) of the Code, and all material communications to or from the IRS or any other government or regulatory authority relating to each Plan, if any; (iii) if the Plan is funded, the most recent annual and periodic accounting of Plan assets; (iv) if the Plan is subject to ERISA, the most recent summary plan description together with the most recent summary of material modifications, if any, with respect to such Plan; and (v) all material communications during the past two years to any Employee or Employees relating to each Plan, if any.

(c) With respect to each Plan, (i) the Company and its Subsidiaries have performed all obligations required to be performed by them under each Plan,

except for any failure to so perform that could not be reasonably be expected to have a Material Adverse Effect and neither the Company nor any of its Subsidiaries is in default under, or in violation of, any Plan, except for any default or violation that could not be reasonably be expected to have a Material Adverse Effect; (ii) each Plan has been established and maintained in accordance with its terms and in compliance with all applicable laws, except for any failure to so establish, maintain or comply that could not be reasonably be expected to have a Material Adverse Effect; (iii) each Plan that is intended to qualify under Section 401 of the Code has received a favorable determination letter from the IRS and the Company is not aware of any circumstances reasonably likely to result in the revocation of any such favorable determination letter; (iv) no "prohibited transaction" within the meaning of section 4975 of the Code or 406 of ERISA has occurred with respect to any Plan that could reasonably be expected to have a Material Adverse Effect; (v) no action or failure to act, or transaction or holding of any asset by, or with respect to, any Plan, has or could reasonably be expected to subject the Company or any of its Subsidiaries to any tax, penalty or other liability that could reasonably be expected to have a Material Adverse Effect; (vi) except as set forth on Schedule 3.2.11(c), there are no actions, proceedings, arbitrations, suits or claims pending, or to the knowledge of the Company, threatened or anticipated (other than routine claims for benefits) against any Plan or the Company or any of its Subsidiaries with respect to any Plan; (vii) the Company and its Subsidiaries have made all payments which are due with respect to all periods through the date hereof, which are required by each Plan, each related trust, or by law, except for those payments not yet due or for those reserved against on the Financial Statements; and (viii) except as set forth on Schedule 3.2.11(c), no Plan is under audit or investigation by the IRS or the U.S. Department of Labor or any other governmental or regulatory authority, and to the knowledge of the Company no such audit or investigation is pending or threatened; and (ix) each of the Plans that is intended to satisfy the requirements of section 125 and 501(c)(9) of the Code satisfies such requirements.

(d) No Plan is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code. Full payment has been made of all amounts the Company, each Subsidiary and each trade or business, whether or not incorporated, that together with the Company or any Subsidiary would be deemed to be a "single employer" under section 414 of the Code ("ERISA Affiliate"), is required to pay under section 412 of the Code or section 302 of ERISA. No pension plan within the meaning of Section 3(2) of ERISA established, maintained or contributed to by the Company, any Subsidiary or any ERISA Affiliate currently has an "accumulated funding deficiency" within the meaning of section 412 of the Code and section 302 of ERISA, whether or not waived, which remains unsatisfied. Neither the Company, any Subsidiary nor any ERISA Affiliate has any liability for any excise Tax in connection with any "employee

benefit plan" within the meaning of section 3(3) of ERISA, except for any such excise Tax liability which could not reasonably be expected to have a Material Adverse Effect. Neither the Company, any Subsidiary nor any ERISA Affiliate has incurred any liability under Title IV of ERISA since the effective date of ERISA that has not been satisfied in full or with respect to which the applicable statute of limitations has not run and no condition exists that presents a risk to the Company, any Subsidiary or any ERISA Affiliate of incurring a liability under such Title or for liability for PBGC premiums which have been or will be paid when due. Neither the Company, any Subsidiary nor any ERISA Affiliate has contributed, been required to contribute, or has incurred any withdrawal liability (within the meaning of section 4201 of ERISA) to any "multiemployer plan" (within the meaning of section 3(37) of ERISA) within the six year period prior to the date hereof.

(e) None of the Plans is currently a "multiple employer welfare arrangement," as such term is defined in section 3(40) of ERISA, or a single employer plan that has two or more contributing sponsors, at least two of whom are not under common control, within the meaning of section 4063(a) of ERISA.

(f) Except as set forth on Schedule 3.2.11(f), neither the Company nor any of its Subsidiaries (i) maintains or contribute to any Plan which provides, or has any liability to provide, life insurance, medical, severance or other employee welfare benefits to any Employee upon his retirement or termination of employment, except as may be required by Section 4980B of the Code or other applicable law; or (ii) has ever represented, promised or contracted (whether orally or in writing) to any Employee or Employees that such Employee(s) would be provided with life insurance, medical, severance or other employee welfare benefits upon their retirement or termination of employment, except to the extent required by Section 4980B of the Code or other applicable law.

(g) Except as set forth on Schedule 3.2.11(g), the execution of, and performance of the transactions contemplated in, this Agreement will not (either alone or upon the occurrence of any additional or subsequent events) (i) constitute an event under any Plan, trust or loan, that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Employee, or (ii) result in the triggering or imposition of any restrictions or limitations on the right of the Company or any of its Subsidiaries to amend or terminate any Plan. In connection with the execution of, and performance of the transactions contemplated in this Agreement (whether or not the occurrence of any additional or subsequent events is required), no payment or benefit which will be made by the Company or any of its Subsidiaries to any Employee under the terms of any Plan or any other agreement between the

Company and an Employee as in effect as of the date hereof will be characterized as an "excess parachute payment" within the meaning of Section 280G of the Code.

3.2.12. Permits. Except as disclosed on Schedule 3.2.12, to the knowledge of the Company, the Company has all permits, licenses, waivers and authorizations that are necessary for them to conduct their operations and the Business in the manner in which they have been or are presently conducted (collectively, "Permits"). To the knowledge of the Company, no event has occurred or other fact exists with respect to the Permits that (i) allows, or after notice or lapse of time or both would allow, revocation or termination of any of the Permits or (ii) would result in any other impairment of the rights of the holder of any of the Permits that individually or in the aggregate would reasonably be expected to have a Material Adverse Effect. There is not pending or, to the knowledge of the Company, threatened, any application, petition, objection or other pleading with any Governmental Entity that challenges or questions the validity of or any rights of the holder under any Permit, except for such applications, petitions, objections or other pleadings that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. This Section 3.2.12 does not relate to environmental matters, which are instead the subject of Section 3.2.18.

3.2.13. Real Property.

(a) Except for the real property (the "Owned Real Property") set forth on Schedule 3.2.13(a), the Company does not own any real property. The Company has good, valid and marketable fee simple title to the Owned Real Property, free and clear of any Liens other than Permitted Liens.

(b) Except as set forth in Schedule 3.2.13(b), the Leased Real Property, together with easements appurtenant thereto, and the Owned Real Property (together, the "Real Property") includes all of the Real Property used or held for use in connection with or otherwise required to carry on the business of the Company and its Subsidiaries.

(c) There are no proceedings in eminent domain or other similar proceedings pending or, to the knowledge of the Company, threatened, affecting any portion of the Real Property. There exists no writ, injunction, decree, order or judgment outstanding, nor any Litigation, pending or, to the knowledge of the Company, threatened, relating to the ownership, lease, use, occupancy or operation by any person of any Real Property.

(d) The use and operation of the Real Property in the conduct of the Business does not violate any instrument of record or agreement affecting the Company or the Real Property. There is no violation of any covenant, condition,

restriction, easement or agreement or order of any Governmental Authority that affects the Real Property or the ownership, operation, use or occupancy thereof.

(e) Each parcel included in the Real Property is assessed for real estate tax purposes as a wholly independent tax lot, separate from any adjoining lot or improvements not constituting a part of that parcel.

(f) Except as set forth in Schedule 3.2.13(f), the Company has not granted or conveyed to any Person any right or option to acquire the Owned Real Property or any part thereof or any easement, license or lease except for matters of record of the Owned Real Property or other right relating to the use or possession of the Owned Real Property.

(g) Except as set forth in Schedule 3.2.13(g), there are no leases, subleases, licenses or other occupancy agreements, whether oral or written, affecting all or any portion of the Owned Real Property.

(h) At the time of Closing there will be no outstanding contracts made by anyone other than the Acquiror for any improvements to the Real Property which have not been fully paid for.

(i) To the Company's knowledge, the Real Property now is, and at Closing will be in compliance with, applicable zoning codes and land use laws, and the Company has not received written notice of any proposed change in any such codes or laws which would prevent or otherwise impact the use of the Real Property to carry on the business of the Company and its subsidiaries.

(j) No Person has a right of first refusal, right of first negotiation or option to purchase all or any portion of the Property.

(k) The Company has not made, nor to Company's knowledge are there, any commitments to any governmental or quasi-governmental authority, utility company, school board, church or other religious body, or to any other organization, group or individual, relating to the Real Property that would impose on Acquiror the obligation to make any contributions of money, dedications of land or grants of easements or rights-of-way, or to construct, install or maintain any improvements, public or private, on or off the Real Property.

3.2.14. Leases.

(a) Schedule 3.2.14(a) contains a complete and correct list of all real property leases relating to the Leased Real Property to which the Company is a party or is bound (the "Leases"). The Company has made available to Acquiror correct and complete copies of the Leases. Except as disclosed in Schedule

3.2.14(a), (i) each of the Leases is in full force and effect and, to the knowledge of the Company, is enforceable against the landlord which is party thereto in accordance with its terms, and (ii) neither the Company nor any of its Subsidiaries, and to the knowledge of the Company, no other party, is in default under any Lease, nor is the Company aware of any events, acts or omissions which, with the passage of time, giving of notice or both, would constitute a default under any of the Leases except (x) in the case of clause (i), as such enforceability may be limited by bankruptcy, insolvency, reorganization and similar laws affecting creditors generally and by the availability of equitable remedies, and (y) in the cases of clauses (i) and (ii), for such failures to be enforceable or such defaults as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth in Schedule 3.2.20, neither the Company nor any of its Subsidiaries is a party to any Lease with (i) any of their respective directors or officers or (ii) any Affiliate of the Company and its Subsidiaries.

(b) Neither the Company nor any of its Subsidiaries has received written notice of a proceeding in eminent domain or other similar proceeding affecting the Leased Real Property that would reasonably be expected to have a Material Adverse Effect.

(c) The Company has not entered into any leases, subleases, licenses or other occupancy agreements, whether oral or written, other than the Leases.

(d) There are no leasing commissions due and payable or that will become due and payable in connection with any of the Leases.

3.2.15. Intellectual Property.

(a) Schedule 3.2.15(a) sets forth a complete and correct list, as of the date hereof, of all Intellectual Property (as defined below) and, with respect to each such Intellectual Property of the Company registered with or issued by any Governmental Body or for which an application has been filed with any Governmental Entity, (i) a brief description of such Intellectual Property, and (ii) the names of the jurisdictions covered by the applicable registration or application or in which the Intellectual Property has been issued, and all such registrations, issuances and applications are in full force and effect. The Company has good and marketable title to all Intellectual Property, trade secrets, know-how, methods, processes, inventions and discoveries (collectively with the Intellectual Property, the "IP Assets") necessary for its business as currently conducted, free and clear of all Liens, except for (y) third party rights licensed to it, as to which the Company has a valid right to use such IP Assets and (z) Permitted Liens. The Company is not obligated to make any material payment to

any Person for the use of any IP Assets. The Company has not developed jointly with any other Person any IP Assets with respect to which such other Person has any rights or the Company has any obligations. The term "Intellectual Property" means all material trademarks, service marks, trade names, copyrights, and patents, including applications for any of the foregoing, that are owned by the Company and are necessary for the conduct of the business of the Company in the manner in which such business has been and is being conducted.

(b) Schedule 3.2.15(b) identifies and provides a brief description of each Intellectual Property licensed to the Company by any Person (other than software licenses relating to unmodified commercial computer software that is generally available in the ordinary course of business), and identifies the license agreement(s) under which such Intellectual Property is being licensed to the Company (the "Licenses"). The Company has taken all measures required under the Licenses and all other commercially reasonable and customary measures to protect and maintain the confidentiality and secrecy of all its IP Assets (except trademarks, issued patents and other IP assets similarly known to the public and IP Assets whose value would be materially unimpaired by public disclosure) and otherwise to maintain and protect the value of its IP Assets.

(c) To the knowledge of the Company, the Company is not infringing, misappropriating or making any unlawful use of, and the Company has not at any time infringed, misappropriated or made any unlawful use of, any IP Assets owned or used by any other Person. No written claims or notices with respect to IP Assets have been received by the Company: (y) to the effect that the manufacture, sale, license or use of any IP Asset or product, practice of any process or provision of any service as now made, sold, practiced, used or provided or currently offered or proposed by the Company infringes or potentially infringes, or constitutes a misappropriation or unlawful use of any copyright, patent, trade secret or other intellectual property right of a third party, or (z) challenging the ownership or validity of any of the Company's rights to or interest in such IP Assets. The Company has received no written notice to the effect that any patents or registered trademarks, service marks, or registered copyrights held by the Company are invalid. To the Company's knowledge, no other Person is infringing, misappropriating or making any unlawful use of, and no intellectual property owned or used by any other Person infringes or conflicts with any IP Assets used or pertaining to the business of the Company.

(d) The Intellectual Property owned by the Company or licensed by the Company and identified in Schedule 3.2.15(a)and(b) and the other IP Assets constitute all the intellectual property necessary, in the Company's reasonable judgment, to enable the Company to conduct its business in the manner in which such business has been, is being and is intended to be conducted. Except as

identified on Schedule 3.2.15(a)and(b), the Company has not licensed any of its Intellectual Property to any Person on an exclusive basis and the Company has not entered into any covenant not to compete or contract limiting its ability to exploit fully any of its Intellectual Property or to transact business in any market or geographical area or with any Person.

3.2.16. Contracts. Schedule 3.2.16 contains a complete and correct list, as of the date hereof, of all Contracts (as defined below). The term "Contracts" means all of the following types of contracts and agreements to which the Company is a party, excluding any Leases, Licenses and Plans:

(a) all written employment and consulting agreements and other written contracts with current officers, other employees, consultants, advisors, sales representatives of the Company or a Subsidiary thereof, other than (x) contracts and agreements that by their terms may be terminated or canceled by the Company or a Subsidiary thereof with notice of not more than 90 days without penalty, (y) contracts and agreements relating to severance payments not in excess of $50,000 in any one case and (z) contracts and agreements that provide for payments based solely on products sold and require no minimum payments;

(b) all written sponsorship or endorsement contracts and agreements other than any contract or agreement that provides for aggregate payments by the Company and its Subsidiaries not in excess of $10,000;

(c) all collective bargaining or union agreements, contracts or commitments with any labor union;

(d) all loan agreements, notes, mortgages, indentures, security agreements, or guarantees of or agreements to assume or acquire the obligations of a third party;

(e) joint venture and limited partnership agreements;

(f) contracts, agreements and other instruments and arrangements (excluding individual purchase orders) for the purchase by the Company of materials, supplies, products or services, and contracts, agreements and other instruments or arrangements (excluding individual purchase orders) for the sale or provision by the Company of materials, supplies, products or services (including without limitation distribution, marketing and brokerage agreements), in each case, not terminable on notice of 90 days or less without penalty, and under which the amount that would reasonably be expected to be paid or received by the Company exceeds $50,000 individually or in the aggregate;

(g) contracts prohibiting or restricting the ability of the Company to compete with any Person, engage in any business or operate in any geographical area;

(h) stock purchase agreements, asset purchase agreements and other acquisition or divestiture agreements relating to the acquisition, lease or disposition by the Company of material assets and properties (other than in the ordinary course of business) or any capital stock or other equity interest of the Company, in each case which was entered into by the Company after January 1, 1999 or under which the Company has any executory indemnification obligations;

(i) Shareholder agreements, voting trusts or other agreements or understandings to which the Company or any Shareholder is a party or to which the Company or any Shareholder is bound relating to the voting, purchase, redemption or other acquisition of any shares of the capital stock of the Company; and

(j) any contract or agreement entered into other than in the ordinary course of business involving aggregate payments in excess of $10,000, to be made by or to the Company or any of its Subsidiaries after the date hereof.

The Company has furnished or made available to Acquiror complete and correct copies of the Contracts listed in Schedule 3.2.16, as in effect on the date hereof. Except as listed on Schedule 3.2.16, the Company has not entered into any material oral contracts. Neither the Company nor, to the knowledge of the Company, any other party thereto, is in default under any Contract, and to the knowledge of the Company each Contract is valid and in full force and effect and enforceable in accordance with its terms as to the Company, and to the knowledge of the Company, as to each other party thereto, except for such defaults and failures to be so in full force and effect and enforceable as would not reasonably be expected to have a Material Adverse Effect.

3.2.17. Insurance. Schedule 3.2.17 sets forth a complete and correct list of all of the policies of insurance carried by or on behalf of the Company on the date of this Agreement for the benefit of or in connection with the business of the Company and the applicable termination or renewal dates of such policies. Each such policy is in full force and effect and no notice of termination or cancellation of any such policy has been received by the Company. All policy premiums due and payable prior to the Closing have been or will be (on or prior to the Closing Date) paid up to and through the Closing. Schedule 3.2.17 sets forth all claims greater than $5,000 by the Company under any insurance policy maintained by or on behalf of the Company.

3.2.18. Environmental Matters. Except as disclosed in Schedule 3.2.18, or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) The Company has been, and is currently, in compliance with all applicable Environmental Laws. To the knowledge of the Company, no condition has existed or event has occurred with respect to the Company that will or is likely to result in liability under Environmental Laws.

(b) To the knowledge of the Company, the Company has obtained, and is in compliance with, all permits and authorizations required under applicable Environmental Laws.

(c) The Company has not received from any Governmental Entity any written notice of violation, alleged violation, non-compliance, liability or potential liability regarding compliance with applicable Environmental Laws concerning any of the Real Property.

(d) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Company, threatened, under any applicable Environmental Law pursuant to which the Company is named as a party with respect to the Real Property.

(e) The Company has not transported, stored, used, manufactured, disposed of, released or exposed its employees or others to Hazardous Substances, nor has the Company disposed of, transported, sold or manufactured any product containing a Hazardous Substance in violation of any rule, regulation, treaty or statute promulgated by any Governmental Entity to prohibit, regulate or control Hazardous Substances or any activity relating to Hazardous Substances. No Hazardous Substances have been deposited or disposed of by the Company, or to the Company's knowledge, any other Person, in, on, or under the Company's owned or leased properties (including properties managed or controlled by the Company).

(f) To the knowledge of the Company, no action, suit, claim, demand, proceeding, investigation, complaint, arbitration or charge alleging failure to comply with, violation of, or liability under, any Environmental Law (collectively, "Environmental Claim") has been made and Seller has not received any written notice alleging an Environmental Claim. Seller has not received a request for information pursuant to an Environmental Law.

(g) To the knowledge of the Company, there are no Hazardous Substances, tanks, containers, cylinders, drums, or cans buried, stored or

deposited in or on any real property, facility, or site currently or formerly owned or operated by Seller. To the knowledge of the Company, there has not been any contamination of ground waters, surface waters, soils, or sediments, as a result of the manufacture, storage, processing, loss, leak, escape spillage, disposal, or other handling or disposition by or on behalf of Seller of any product or substance on or prior to the closing date in violation of Environmental Laws.

(h) All material environmental site assessments, compliance audits and similar environmental reports relating to environmental conditions at the Company which have been received by the Company have been made available to Acquiror.

3.2.19. Labor Matters. Except as set forth in Schedule 3.2.19,

(a) the Company is not a party to any collective bargaining agreements and, to its knowledge, there are no attempts to organize the employees of the Company;

(b) to the knowledge of the Company, no employee of the Company is subject to any judgment, decree or order of any court or administrative agency, or any other restriction that would materially interfere with the use of his or her best efforts to carry out his or her duties for the Company or that would conflict with the Company's business as currently conducted;

(c) the Company has received no written notice from any former employer that an employee of the Company has prior obligations to a former employer that would interfere or conflict with such employee's ability to perform his or her intended services for the Company;

(d) to the Company's knowledge, no employee or advisor of the Company is or is now expected to be in violation of any term of any employment contract, disclosure agreement, proprietary information and inventions agreement or any other contract or agreement or any restrictive covenant or any other common law obligation to a former employer relating to the right of any such employee to be employed by the Company because of the nature of the business conducted or to be conducted by the Company or to the use of trade secrets or proprietary information of others, and the employment of the Company's employees does not subject the Company or the Company's shareholders to any liability that, individually or in the aggregate, could reasonably be expected to have or result in a Material Adverse Effect;

(e) there is neither pending nor, to the Company's knowledge, threatened any actions, suits, proceedings or claims, or, to its knowledge, any

basis therefor or threat thereof with respect to any contract, agreement, covenant or obligation referred to in the preceding sentence;

(f) the Company has complied with all applicable laws pertaining to the employment or termination of employment of its employees, including, without limitation, all such laws relating to equal employment opportunities, fair employment practices, prohibited discrimination or distinction and other similar employment activities, except for any failure so to comply that, individually and in the aggregate, could reasonably be expected to have or result in a Material Adverse Effect; and

(g) The Company, the Company has correctly categorized the individuals who provide services to the Company for federal tax purposes, and is not liable for any payment to any trust or other fund or to any governmental or administrative authority, with respect to unemployment compensation benefits, social security or other benefits for employees, except for those payments not yet due or for those reserved against on the Financial Statements.

3.2.20. Affiliate Transactions. Except as set forth in Schedule 3.2.20, the Company is not a party to any agreement with (i) any of their respective directors or officers or (ii) any Affiliate of the Company.

3.2.21. Product Claims. Except as disclosed in Schedule 3.2.21 or as would not reasonably be expected to have a Material Adverse Effect, there are no actions, claims, demands, lawsuits, proceedings, arbitrations or grievances before or by any Governmental Entity or, to the knowledge of the Company, threatened in writing, against the Company (whether based on strict liability, negligence, breach of warranty, breach of contract or otherwise) and relating to any product alleged to have been distributed or sold by the Company.

3.2.22. Product Returns. Except as set forth in Schedule 3.2.22, the Company has not experienced any returns of its products since December 31, 2000 other than returns in the ordinary course of business that, individually and in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

3.2.23. Customers. Schedule 3.2.23 sets forth, for the year ended December 31, 2000, the names of the ten largest customers of the Company based on aggregate value of products and services purchased. Except as set forth on Schedule 3.2.23, to the knowledge of the Company, none of such ten largest customers has ceased, or has delivered to the Company notice of any intention to cease, to purchase products and services from the Company and, to the Company's knowledge, there has not been any material dispute with any such customer.

3.2.24. Accounts Receivable. Acquiror has been furnished with a complete and accurate aging of all accounts receivable of the Company as of May 31, 2001. Except as provided on Schedule 3.2.24, all allowances, rebates and cash discounts to clients of the Company are as shown on its books and records. All accounts receivable due or recorded in the records and books of account of the Company as being due to the Company as of the Closing Date (net of applicable reserves) were made in the ordinary course of business and are valid, existing and bona fide obligations of the obligors thereof owed to the Company. None of such accounts receivable (net of applicable reserves) is, or at the Closing Date will be, subject to any material counterclaim, set-off or any other similar limitations, except as would not reasonably be expected to be material to the Company. To the Company's knowledge, all such accounts receivables (net of the Company's customary reserve for uncollectible accounts) are or will be collectible by the Company in the ordinary course of business.

3.2.25. Inventories. All inventories of raw materials, supplies and work in progress of the Company are, in the aggregate, of good, usable and merchantable quality in all material respects, and except as set forth on Schedule 3.2.25, do not include unsalable obsolete or unsalable discontinued items. Except as set forth on Schedule 3.2.25, all finished goods are salable in the ordinary course of business, except for items of below-standard quality, all of which, in the aggregate, are immaterial in amount. Items included in such inventories are carried on the books of the Company and are valued on the Financial Statements in accordance with GAAP. Except as set forth on Schedule 3.2.25, (a) all such inventories are of such quality as to materially meet the quality control standards of the Company and (b) all such finished goods are saleable as current inventories at the current prices of the Company in the ordinary course of business.

3.2.26. Suppliers; Raw Materials. Schedule 3.2.26 sets forth, for the year ended December 31, 2000, the names of the ten largest suppliers of the Company based on aggregate value of raw materials, supplies, merchandise and other goods and services ordered by the Company. Except as set forth on Schedule 3.2.26, to the knowledge of the Company, none of the ten largest suppliers has ceased, or has delivered to the Company notice of any intention to cease to supply products and services to the Company and, to the Company's knowledge, there has not been any material dispute with any such supplier.

3.2.27. Brokers and Finders. The Company has not employed any broker or finder in connection with the transactions contemplated herein so as to give rise to any claim against Acquiror or Surviving Corporation for any brokerage or finder's commission, fee or similar compensation.

3.2.28. Company Indebtedness. Except as set forth on Schedule 3.2.28, the Existing Debt constitutes all of the Company's Indebtedness as of the date hereof.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF ACQUIROR

Acquiror represents and warrants to the Company as follows:

4.1. Corporate Status. Acquiror is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware.

4.2. Authorization, etc. Acquiror has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and to perform its obligations hereunder. The execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby have been, or with respect to the Ancillary Agreements on the Closing Date will have been, duly authorized by all requisite corporate action on the part of Acquiror. This Agreement, and on the Closing Date, each Ancillary Agreement, has been and will be duly executed and delivered by Acquiror and constitutes and will constitute the legal, valid and binding obligation of Acquiror enforceable against Acquiror in accordance with its terms, except as limited by laws affecting the enforcement of creditor's rights generally or by general equitable principles.

4.3. Conflicts, Consents.

4.3.1. Conflicts. Except as set forth in Schedule 4.3.1, the execution and delivery of this Agreement and the Ancillary Agreements by Acquiror, and the consummation by Acquiror of the transactions contemplated hereby and thereby, will not conflict with or result in any violation of or default under (or any event that, with notice or lapse of time or both, would constitute a default under), or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a benefit under, any provision of (i) the Organizational Documents of Acquiror, or (ii) any mortgage, indenture, loan agreement, note, bond, deed of trust, other agreement, commitment or obligation for the borrowing of money or the obtaining of credit, material lease or other material agreement, contract, license, franchise, permit or instrument to which Acquiror is a party or by which Acquiror may be bound, or any judgment, order, decree, law, statute, rule or regulation applicable to Acquiror, other than, in the case of this clause (ii), any conflicts, violations or defaults that, individually or in the aggregate, would not reasonably be expected to have a material adverse effect on the ability of Acquiror to consummate the transactions contemplated by this Agreement.

4.3.2. Consents. No Consent of or with any Governmental Entity or third Person is required to be obtained by Acquiror in connection with the execution and delivery by Acquiror of this Agreement or the consummation by Acquiror of the transactions contemplated hereby.

4.4. Capitalization of Acquiror; Acquiror Common Stock. The authorized capital stock of Acquiror consists of: (a) 90,000,000 shares of Acquiror Common Stock, of which 4,648,438 shares were issued and outstanding immediately prior to the Closing, (b) 24,000,000 shares of Series A Preferred Stock of Acquiror, par value $0.01 per share, of which 21,250,000 shares were issued and outstanding immediately prior to the Closing, and (c) 60,000,000 shares of Series B Preferred Stock of Acquiror, par value $0.01 per share, of which 26,398,438 shares were issued and outstanding immediately prior to the Closing. Prior to the Closing, the Acquiror shall amend its Certificate of Incorporation and its Certificate of Designation of Series B Preferred Stock respectively to increase its authorized capital to 200,000,000 shares of Acquiror Common Stock and 164,000,000 shares of Acquiror Preferred Stock, of which 140,000,000 shares shall be designated Series B Preferred Stock.

4.5. Litigation. There is no action, claim, suit or proceeding pending or, to the knowledge of Acquiror, threatened against Acquiror and there is no investigation pending or, to the knowledge of Acquiror, threatened against Acquiror, in each case, before any Governmental Entity, that would reasonably be expected to have a material adverse effect on the consummation of the transactions contemplated by this Agreement.

4.6. Brokers and Finders. Acquiror has not employed any broker or finder in connection with the transactions contemplated herein so as to give rise to any claim against the Shareholders for any brokerage or finder's commission, fee or similar compensation.

4.7. Company Representations and Warranties. To Acquiror's knowledge, all representations and warranties made by the Shareholders are true and correct as of the date hereof and all representations and warranties made by Company are true and correct as of the date hereof. For the purposes of this Section 4.7, "Acquiror's knowledge" shall mean (i) the actual knowledge, after reasonable inquiry, of Mark Rodriguez, William Urich, Olivier Sonnois, Terence Dalton and Jeff Powers, *provided* that such persons shall not be required to inquire as to the knowledge of the members of the Board of Directors of Acquiror other than Mark Rodriguez and (ii) knowledge of such matters as to which a reasonably prudent person in similar circumstances as such persons would have had after reasonable inquiry.

ARTICLE V

COVENANTS

5.1. Conduct of the Company. Except as set forth in Schedule 5.1, from the date hereof to the Closing, except (i) for entering into and performing this Agreement, (ii) for the effect of the consummation of the transactions contemplated hereby, (iii) as

contemplated by the Company's budgets heretofore made available to Acquiror or (iv) as otherwise consented to by Acquiror in writing, such consent not to be unreasonably withheld or delayed, the Company shall (x) conduct its business in the ordinary course in substantially the same manner in which it is conducted as of the date hereof, (y) and not take any action that would cause a breach of Section 3.2.7 and (z) maintain the Intellectual Property in the same manner in which it has been maintained as of the date hereof and continue to process all applications relating thereto.

5.2. Efforts to Consummate Transaction. Each of Acquiror and the Company shall use its reasonable best efforts to take or cause to be taken all actions required to consummate the transactions contemplated hereby. Each of Acquiror and the Company shall file or supply, or cause to be filed or supplied, all material applications, notifications and information required to be filed or supplied by them pursuant to applicable law in connection with the transactions contemplated hereby. Acquiror shall use its reasonable best efforts to obtain all consents and approvals from Governmental Entities and third Persons required to be obtained by Acquiror for the consummation by Acquiror of the transactions contemplated hereby, other than any consents and approvals the failure of which to be obtained, either in any case or in the aggregate, could not have a material adverse effect on the transactions contemplated hereby. The Company shall use its reasonable best efforts to obtain all consents and approvals from Governmental Entities and third Persons required to be obtained by it for the consummation by it of the transactions contemplated hereby, other than any consents and approvals the failure of which to be obtained, either in any case or in the aggregate, could not have a material adverse effect on the transactions contemplated hereby. Each of Acquiror and the Company shall cooperate in good faith with the other in the obtaining by the other of all consents and approvals from Governmental Entities and third Persons required to be obtained by the Company for the consummation of the transactions contemplated hereby.

5.3. Access and Information. Prior to the Closing, and subject to the restrictions set forth in the Confidentiality Agreement (as defined below), the Company shall permit Acquiror and its representatives after the date of execution of this Agreement to have reasonable access, during regular business hours, to the properties, books and records relating to the Company as Acquiror may reasonably request. All information provided or obtained pursuant to the foregoing shall be held by Acquiror in accordance with and subject to the terms of the Letter Agreement, dated June 8, 2001, between Acquiror and the Shareholders (the "Confidentiality Agreement"). Acquiror hereby agrees that the provisions of the Confidentiality Agreement will apply to any properties, books, records, data, documents and other information relating to the Company that the Company provided to Acquiror or its Affiliates or any of their respective advisers or employees pursuant to this Agreement.

5.4. Non-Solicitation. The Company and the Shareholders shall not, and the Company shall use its best efforts to cause the Company's employees, agents and

representatives (including, without limitation, any investment banker, attorney or accountant retained by the Company or the Shareholders) not to, initiate, solicit or encourage, directly or indirectly, any inquiries or the making of any proposal or offer (including, without limitation, any proposal or offer to any Shareholder) with respect to a merger, consolidation or similar transaction involving, or any purchase of all or any significant portion of the assets or any equity securities of, the Company (any such proposal or offer being hereinafter referred to as an "Acquisition Proposal") or engage in any negotiations concerning, or provide any confidential information or data to, or have any discussions with, any Person relating to an Acquisition Proposal, or otherwise facilitate any effort or attempt to make or implement an Acquisition Proposal. The Company will immediately cease and cause to be terminated any existing activities, discussions or negotiations with any parties conducted heretofore with respect to any of the foregoing.

5.5. Contact with Customers and Suppliers, etc. From the date of execution of this Agreement, Acquiror (and all of the agents and Affiliates thereof and any employees, directors and officers thereof) shall contact and communicate with the employees, consultants, sponsors, endorsers, customers, suppliers, distributors and licensors of the Company in connection with the transactions contemplated hereby only with the prior written consent of the Company, which consent may be conditioned upon an officer or representative of the Company being present at any such meeting or conference.

5.6. Publicity. Except as required by applicable law, Acquiror shall not, directly or indirectly, make or cause to be made any public announcement or issue any notice in respect of this Agreement or the transactions contemplated hereby without the prior written consent of the Company, and the Company shall not, directly or indirectly, make or cause to be made any such public announcement or issue any notice without the prior written consent of Acquiror. The Company and Acquiror shall consult with each other prior to issuing any press releases or otherwise making public statements with respect to the transactions contemplated hereby and prior to making any filings with any Governmental Entity or with any national securities exchange with respect thereto.

5.7. Transfer Taxes. Acquiror shall be liable for all transfer Taxes arising from the transactions contemplated by this Agreement. Acquiror shall file all Tax Returns relating to such transfer Taxes.

5.8. Debt Repayment. At the Closing, Acquiror shall pay or cause to be paid in full, the Existing Debt.

5.9. [Reserved.]

5.10. Legend.

(a) Certificates representing shares of Acquiror Common Stock to be acquired by the Shareholders under this Agreement (collectively, the "Securities") shall be endorsed with the following legends, and any other legends required by applicable securities laws:

(i) Each certificate representing the Securities shall be endorsed as follows:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND ARE "RESTRICTED SECURITIES" AS DEFINED IN RULE 144 PROMULGATED UNDER THE ACT. THE SECURITIES MAY NOT BE SOLD OR OFFERED FOR SALE OR OTHERWISE DISTRIBUTED EXCEPT (I) IN CONJUNCTION WITH AN EFFECTIVE REGISTRATION STATEMENT FOR THE SHARES UNDER THE ACT, OR (II) IN COMPLIANCE WITH RULE 144 OR (III) OTHERWISE PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS UNDER THE ACT. THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT DATED AS OF SEPTEMBER 28, 2001, AMONG THE COMPANY, THE STOCKHOLDER AND OTHER PARTIES THERETO, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

(ii) Any other legends required by applicable securities laws.

(b) Acquiror may instruct its transfer agent not to register the transfer of the Securities, unless the conditions specified in the foregoing legends are satisfied.

(c) Any legend endorsed on a certificate pursuant to this Section 5.11 and the stop transfer instructions with respect to such Securities shall be removed and the Company shall issue a certificate without such legend to the holder thereof (i) if such Securities are registered under the Securities Act and a prospectus meeting the requirements of Section 10 of the Securities Act is available, or (ii) if such legend may be properly removed under the terms of Rule 144 promulgated under the Securities Act.

5.11. Mountain Sun Fiscal 2001 Balance Sheet and Income Statement. At or prior to the Closing Date, the Company shall have reflected on their income statements and balance sheet the write off of the items described on Schedule 5.11.

5.12. Existing Debt. On or prior to the Closing Date, the Company shall deliver to the Acquiror (a) a certificate, executed by its Chief Executive Officer, stating such officer's calculation of the amount of the Existing Debt and setting forth in reasonable detail the calculation of such amount and attaching copies of all evidence of relevant payments and account balances and (b) a payoff letter from U.S. Bancorp AG Credit, Inc. (the "Payoff Letter"). The Acquiror shall have the right to review and approve (which approval shall not be unreasonably withheld) the calculation of the Existing Debt.

5.13. Consents. The Shareholders and the Company shall use their reasonable best efforts to obtain as soon as practicable all Consents required to be obtained by the Company pursuant to Section 3.2.4(b).

5.14. Intellectual Property. None of the Shareholders may assert any rights in, or to use, any of the Intellectual Property, nor create or attempt to create any bar to, or impair or attempt to impair, the Surviving Corporation's rights in, or to use, the Intellectual Property.

ARTICLE VI

CONDITIONS TO CLOSING

6.1. Conditions to the Obligation of Acquiror. The obligation of Acquiror to effect the Merger shall be subject to the satisfaction or waiver by Acquiror on or prior to the Closing Date of each of the following conditions:

(a) Each of the representations and warranties of the Shareholders and the Company contained in Article III shall be true in all material respects when made and as of the Closing Date, with the same effect as though those representations and warranties had been made on and as of the Closing Date, except to the extent that any such representation or warranty is made as of a specified date, in which case such representation or warranty shall be true in all material respects as of such date; each of the covenants and agreements of the Shareholders and the Company to be performed on or prior to the Closing Date shall have been duly performed in all material respects; and Acquiror shall have received at the Closing certificates to that effect dated as of the Closing Date and executed (i) on behalf of the Company by its President or Vice President and (ii) by the Shareholders.

(b) Each of the Shareholders shall have delivered to Acquiror a certificate, as contemplated under and meeting the requirements of section 1.1445-2(b)(2)(i) of the Treasury Regulations, to the effect that such Shareholder is not a foreign person within the meaning of the Code and the applicable Treasury Regulations.

(c) The Securities Purchase Agreement pursuant to which Acquiror will sell shares of Acquiror Series B Preferred Stock for an aggregate amount of $30,000,000 substantially in the form attached hereto as Exhibit F shall have been executed and delivered by the parties thereto, and the closing of such sale in the amount of $30,000,000 shall have taken place.

(d) Acquiror shall have received an opinion, addressed to it, and dated the Closing Date, from Holland & Hart, L.L.P., counsel to the Company, in substantially the form of Exhibit G hereto and from Debevoise & Plimpton, in substantially the form of Exhibit H hereto.

(e) The Company shall have delivered to Acquiror, pursuant to Section 5.12 hereof, a certificate, executed by its Chief Executive Officer, stating the amount of the Existing Debt and setting forth in reasonable detail the calculation of Existing Debt, and Acquiror shall have approved such calculation in accordance with Section 5.12.

(f) The Company shall have delivered to Acquiror the Payoff Letter.

(g) The agreements and other arrangements between, among or involving the Company and any Person(s) as set forth in Schedule 6.1(g) shall have been terminated.

6.2. Conditions to the Obligation of the Company. The obligation of the Shareholders and the Company to consummate the transactions contemplated hereby shall be subject to the satisfaction or waiver by the Shareholders and the Company on or prior to the Closing Date of each of the following conditions:

(a) Each of the representations and warranties of Acquiror contained in Article IV shall be true in all material respects when made and as of the Closing Date, with the same effect as though those representations and warranties had been made on and as of the Closing Date, except to the extent that any such representation or warranty is made as of a specified date, in which case such representation or warranty shall be true in all material respects as of such date; each of the covenants and agreements of Acquiror to be performed on or prior to the Closing Date shall have been duly performed in all material respects; and the Company shall have received at the Closing certificates to that effect dated as of

the Closing Date and executed on behalf of Acquiror by its President or Vice President.

(b) Acquiror shall (i) have paid in full the Existing Debt and (ii) have available funds on hand to pay the cash portion of the aggregate Per Share Merger Consideration (in accordance with Section 1.6.2(c)).

6.3. Conditions to the Obligations of Each Party. The obligations of the parties to consummate the transactions contemplated hereby shall be subject to the satisfaction or waiver by each party, on or prior to the Closing Date, of each of the following conditions:

(a) There shall not have been issued and be in effect any order, decree or judgment of or in any court or tribunal of competent jurisdiction which makes the consummation of the transactions contemplated hereby illegal.

(b) Each of the Shareholders and Acquiror shall have executed and delivered each Ancillary Agreement to which he, she or it is a party.

ARTICLE VII

TERMINATION

7.1. Termination. This Agreement may be terminated at any time prior to the Closing Date:

(a) By the written agreement of the parties hereto;

(b) By the Shareholders, on the one hand, or Acquiror, on the other hand, by written notice to the other party after 5:00 p.m. New York City time on September 30, 2001, if the transactions contemplated hereby shall not have been consummated pursuant hereto, unless such date is extended by the mutual written consent of the Shareholders and Acquiror;

(c) By either Acquiror, on the one hand, or the Company (on behalf of itself or the Shareholders), on the other hand, by written notice to the other party if:

(i) the other party has (and the terminating party shall not have) failed to perform and comply with, in all material respects, all agreements, covenants and conditions hereby required to have been performed or complied with by such party prior to the time of such termination, and such failure shall not have been cured within 30 days following notice of such failure,

(ii) any event shall occur after the date hereof that shall have made it impossible to satisfy a condition precedent to the terminating party's obligations to consummate the transactions contemplated by this Agreement, unless the occurrence of such event shall be due to the failure of the terminating party to perform or comply with any of the agreements, covenants or conditions hereof to be performed or complied with by such party prior to the Closing, or

(iii) any representation or warranty made hereunder by the other party that (a) contains materiality qualifications shall not be true and correct, or (b) does not contain materiality qualifications shall not be true and correct in all material respects.

7.2. Effect of Termination. In the event of the termination of this Agreement pursuant to the provisions of Section 7.1, this Agreement shall become void and have no effect, without any liability to any Person in respect hereof or of the transactions contemplated hereby on the part of any party hereto, or any of its directors, officers, representatives, Shareholders or Affiliates, except as provided in Sections 5.6 and the second sentence of Section 5.3 and this Section 7.2. If the transactions contemplated by this Agreement are terminated as provided herein:

(a) Acquiror shall return to the Company all documents and other materials received from the Company, its Affiliates or their agents (including all copies of or materials developed from any such documents or other materials) relating to the transactions contemplated hereby, whether obtained before or after the execution hereof; and

(b) all confidential information received by Acquiror with respect to the Company and its Affiliates shall be treated in accordance with the Confidentiality Agreement which shall remain in full force and effect notwithstanding the termination of this Agreement.

ARTICLE VIII

GENERAL PROVISIONS

8.1. Expenses. Except as otherwise specifically provided for in this Agreement, each of Acquiror and the Company shall bear their own expenses, costs and fees (including attorneys', auditors' and financing fees, if any) in connection with the transactions contemplated hereby, including the preparation, execution and delivery of this Agreement and compliance herewith (the "Expenses"), whether or not the transactions contemplated hereby shall be consummated; *provided* that (i) Acquiror shall

pay all filing fees in connection with any filings with Governmental Entities required to effect the Merger and *provided further* that (ii) the Company shall only be responsible for up to an aggregate of $10,000 of attorneys' fees for Harold Ware and William Russell in connection with this transaction payable at Closing and (iii) Acquiror shall be responsible for NCP-MS's legal fees in connection with the transactions contemplated hereby.

8.2. Further Actions. Each party shall execute and deliver such certificates and other documents and take such other actions as may reasonably be requested by the other party in order to consummate or implement the transactions contemplated hereby.

8.3. Certain Limitations. It is the explicit intent and understanding of each of the parties that no party nor any of its Affiliates, representatives or agents is making any representation or warranty whatsoever, oral or written, express or implied, other than those set forth in Articles III and IV and no party is relying on any statement, representation or warranty, oral or written, express or implied, made by another party or such other party's Affiliates, representatives or agents, except for the representations and warranties set forth in such Articles. The parties agree that this is an arm's-length transaction in which the parties' undertakings and obligations are limited to the performance of their obligations under this Agreement.

8.4. No Survival of Representations and Warranties. Except for tortious claims brought by any party against any other party for fraud, the representations, warranties and covenants of the Company, Acquiror and the Shareholders contained in this Agreement, or in any certificate delivered in connection with this Agreement (other than the covenants contained in Sections 1.8, 5.2, 5.3, 5.7, 5.8 and Article VIII of this Agreement) shall not survive the Closing, and any and all breaches of such representations and warranties and covenants shall be deemed waived as of the Closing.

8.5. Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) mailed, certified or registered mail with postage prepaid, (c) sent by next-day or overnight mail or delivery or (d) sent by fax or telegram, as follows:

(i) if to the Company,

Apple Hill Orchards Juice Co.
18390 Hwy. 145
Dolores, Colorado 81323
Fax: (970) 882-2270
Telephone: (970) 882-2283
Attention: Harold Ware

with a copy to:

North Castle Partners, L.L.C.
183 East Putnam Avenue
Greenwich, Connecticut 06830
Fax: (203) 862-3273
Telephone: (203) 862-3200
Attention: Brent Knudsen

and

Debevoise & Plimpton
919 Third Avenue
New York, New York 10022
Fax: (212) 909-6836
Telephone: (212) 909-6000
Attention: Franci J. Blassberg, Esq.

(ii) if to the Acquiror,

Acirca, Inc.
One Ramada Plaza
7th Floor
New Rochelle, New York 10801
Fax: (914) 380-8080
Telephone: (914) 380-8000
Attention: Mark S. Rodriguez

with a copy to:

Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004
Fax: (202) 942-5999
Telephone: (202) 942-5000
Attention: Neil M. Goodman, Esq.

(iii) if to the Shareholders,

NCP-MS, L.P., as Shareholders' Representative
c/o North Castle Partners, L.L.C.
183 East Putnam Avenue
Greenwich, Connecticut 06830
Fax: (203) 862-3273
Telephone: (203) 862-3200
Attention: Peter Shabecoff

with a copy to:

Debevoise & Plimpton
919 Third Avenue
New York, New York 10022
Fax: (212) 909-6836
Telephone: (212) 909-6000
Attention: Franci J. Blassberg, Esq.

or, in each case, at such other address as may be specified in writing to the other parties hereto.

All such notices, requests, demands, waivers and other communications shall be deemed to have been received (w) if by personal delivery, on the day after such delivery, (x) if by certified or registered mail, on the seventh business day after the mailing thereof, (y) if by next-day or overnight mail or delivery, on the day delivered or (z) if by fax or telegram, on the next day following the day on which such fax or telegram was sent, provided that a copy is also sent by certified or registered mail.

8.6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

8.7. Assignment; Successors. This Agreement shall not be assignable by any party hereto without the prior written consent of all of the other parties and any attempt to assign this Agreement without such consent shall be void and of no effect. This Agreement shall inure to the benefit of, and be binding on and enforceable against, the successors and permitted assigns of the respective parties hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any Person other than the parties, any Affiliate of the Company, and the successors and assigns permitted by this Section 8.7 any right, remedy or claim under or by reason of this Agreement.

8.8. Amendment; Waivers, etc. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment,

modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. The waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall not be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. The rights and remedies herein provided are cumulative and none is exclusive of any other, or of any rights or remedies that any party may otherwise have at law or in equity.

8.9. Entire Agreement. This Agreement (including the Exhibits and Schedules referred to herein or delivered hereunder) and the Confidentiality Agreement constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

8.10. Knowledge; Interpretation. For the purposes of the representations and warranties of the Company contained in Articles III, the knowledge of the Company shall be deemed to consist solely of the actual knowledge of those individuals listed in Schedule 8.10. The disclosure of any matter in the Schedules hereto shall be deemed to be a disclosure for all purposes of this Agreement to which such matter could reasonably be likely to be pertinent, but shall expressly not be deemed to constitute an admission by the disclosing party, or to otherwise imply, that any such matter is material for purposes of this Agreement.

8.11. Severability. If any provision, including any phrase, sentence, clause, section or subsection, of this Agreement is invalid, inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering such provisions in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision herein contained invalid, inoperative, or unenforceable to any extent whatsoever.

8.12. Headings. The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

8.13. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

8.14. Governing Law. EXCEPT TO THE EXTENT THAT THE LAWS OF THE STATE OF DELAWARE AND THE STATE OF COLORADO MANDATORILY APPLY, THIS AGREEMENT SHALL BE CONSTRUED, PERFORMED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF

CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

8.15. Consent to Jurisdiction, etc.

8.15.1. Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any court of New York State or any Federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby or for recognition or enforcement of any judgment relating thereto, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

8.15.2. Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

8.15.3. Each of the parties hereto hereby irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 8.5. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

8.16. Waiver of Punitive and Other Damages and Jury Trial.

8.16.1. THE PARTIES TO THIS AGREEMENT EXPRESSLY WAIVE AND FOREGO ANY RIGHT TO RECOVER PUNITIVE, EXEMPLARY, LOST PROFITS, CONSEQUENTIAL OR SIMILAR DAMAGES IN ANY ARBITRATION, LAWSUIT, LITIGATION OR PROCEEDING ARISING OUT OF OR RESULTING FROM ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

8.16.2. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT

HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

8.16.3. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF THE FOREGOING WAIVERS, (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (iii) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.16.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

ACIRCA, INC.

By:_____
Name:
Title:

APPLE HILL ORCHARDS JUICE CO.

By:_____
Name:
Title:

NCP-MS, L.P.
By: NCP-MS Acquisition, LLC, its General Partner

By:_____
Name:
Title:

NCP CO-INVESTMENT FUND, L.P.
By: NCP Co-Investment GP, L.L.C.,
its General Partner

By:_____
Name:
Title:

FRIENDS OF NORTH CASTLE FUND, L.P.
By: NCP Co-Investment GP, L.L.C.,
its General Partner

By:_____
Name:
Title:

HAROLD WARE

_____

WILLIAM RUSSELL

_____

PETER ROY

_____

Exhibit A
List of Shareholders

1.	NCP-MS, L.P.	5,886,505.80
2.	NCP Co-Investment Fund, L.P.	139,070.83
3.	Friends of North Castle Partners, L.P.	4,102.21
4.	Harold Ware	464,372
5.	William Russell	464,370
6.	Peter Roy	106,754

Exhibit B

[see attached]

Exhibit C

[see attached]

Exhibit D

[see attached]

Exhibit E

[see attached]

Exhibit F

[see attached]

Exhibit G

[see attached]

Exhibit H

[see attached]

Please include a typed self-addressed envelope

MUST BE TYPED
FILING FEE: $5.00
MUST SUBMIT TWO COPIES

Mail to: Secretary of State
Corporations Section
1560 Broadway, Suite 200
Denver, CO 80202
(303) 894-2251
Fax (303) 894-2242

For office use only 006

FILED
DONETTA DAVIDSON
COLORADO SECRETARY OF STATE

20011189854 C
$ 55.00
SECRETARY OF STATE
10-01-2001 15:40:07

DPC 19981297482

CERTIFICATE OF CORRECTION

Pursuant to the Colorado Business Corporation Act, the undersigned hereby executes the following certificate of correction:

FIRST: The exact name of the corporation is Apple Hill Orchards Juice Co. NCCS

organized under the laws of Colorado

SECOND: Description of the documents being corrected (i.e. Articles of Incorporation, Amendment, Merger or other) or an attached copy of the document: Articles of Merger

THIRD: Date document was filed September 28, 19 2001.

FOURTH: Statement of incorrect information:

The Articles of Merger did not contain a delayed effective date of October 1, 2001.

FIFTH: Statement of corrected information:

Paragraph 6 of the Articles of Merger should be added stating "The effective date of the merger is October 1, 2001.

Signature Harold Ware

Title CEO

Revised 7/97