

P95000096593

ANN HILL/SMITH, THOMPSON, SHAW & MANAUSA

Requester's Name

3520 Thomasville Road, 4th Floor

Address

Tallahassee, Florida 32309 (850) 893-4105

City/State/Zip

Phone #

Call Ann if you have  
any questions.  
Thank you

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01 NOV 21 PM 2:49

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1. Plantation Equipment, Inc.  
(Corporation Name) (Document #)
2. Construction Partners Acquisition Corp  
(Corporation Name) (Document #)
3. \_\_\_\_\_  
(Corporation Name) (Document #)
4. \_\_\_\_\_  
(Corporation Name) (Document #)

☒ Walk in

☐ Pick up time \_\_\_\_\_

☒ Certified Copy

☐ Mail out

☐ Will wait

☐ Photocopy

☐ Certificate of Status

NEW FILINGS

- ☐ Profit
- ☐ Not for Profit
- ☐ Limited Liability
- ☐ Domestication
- ☐ Other

AMENDMENTS

- ☐ Amendment
- ☐ Resignation of R.A., Officer/Director
- ☐ Change of Registered Agent
- ☐ Dissolution/Withdrawal
- ☒ Merger

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OTHER FILINGS

- ☐ Annual Report
- ☐ Fictitious Name

REGISTRATION/QUALIFICATION

- ☐ Foreign
- ☐ Limited Partnership
- ☐ Reinstatement
- ☐ Trademark
- ☐ Other

Examiner's Initials

ARTICLES OF MERGER  
Merger Sheet

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MERGING:

CONSTRUCTION PARTNERS ACQUISITION CORP., a Florida corporation,  
P01000110284

INTO

**PLANTATION EQUIPMENT, INC.**, a Florida entity, P95000096593

File date: November 21, 2001

Corporate Specialist: Doug Spitler

**ARTICLES OF MERGER  
PROVIDING FOR THE MERGER  
OF  
CONSTRUCTION PARTNERS ACQUISITION CORP.  
INTO  
PLANTATION EQUIPMENT, INC.**

**FILED**

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Pursuant to Section 607.1109 of the Florida Business Corporation Act ("FBCA"), Construction Partners Acquisition Corp., a Florida corporation ("CPAC") and Plantation Equipment, Inc., a Florida corporation ("PEI"), adopt the following Articles of Merger effecting the merger (the "Merger") of CPAC with and into PEI, with PEI as the surviving corporation.

1. The Agreement and Plan of Merger attached hereto as Exhibit A, and the performance thereof, was duly authorized, approved and adopted by the Board of Directors of each of CPAC and PEI in accordance with the FBCA, respectively, and by the respective articles of incorporation and bylaws of CPAC and PEI.


2. The effective date ("Effective Date") of the Merger is the date of filing of these Articles.

3. Pursuant to Section 607.1109 of the FBCA, the shareholders of CPAC and PEI have approved the Agreement and Plan of Merger.


4. The Agreement and Plan of Merger was adopted by both CPAC and PEI as of November 20, 2001.

IN WITNESS WHEREOF, the undersigned authorized officers of the respective corporations have signed these Articles of Merger, as of November 20, 2001, but effective for all purposes as of the Effective Date.

CONSTRUCTION PARTNERS ACQUISITION CORP.,  
a Florida corporation

By:   
Name: Craig F. Jennings  
Title: Vice President

PLANTATION EQUIPMENT, INC.  
a Florida corporation

By:   
Name: C.W. Roberts, III  
Title: President

**EXHIBIT A**  
**AGREEMENT AND PLAN OF MERGER**

AGREEMENT AND PLAN OF MERGER

By and Among

CONSTRUCTION PARTNERS, INC.,

CONSTRUCTION PARTNERS ACQUISITION CORP.

PLANTATION EQUIPMENT, INC.,

and

C. W. ROBERTS, III

## STOCK PURCHASE AGREEMENT

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement"), is entered into as of the 30<sup>th</sup> day of November, 2001, by and among CONSTRUCTION PARTNERS, INC., a Delaware corporation (the "Buyer"), CONSTRUCTION PARTNERS ACQUISITION CORP., a Florida corporation ("CPAC"), PLANTATION EQUIPMENT, INC., a Florida corporation ("PEI"), and C. W. ROBERTS, III ("CW"). PEI is sometimes referred to as the "Target." CW is sometimes referred to as the "Shareholder" and/or "Seller."

### RECITALS:

WHEREAS, the Board of Directors of each of Buyer and PEI have determined that it is in the best interests of each corporation and their respective stockholders that the Parties consummate the business combination transaction provided for herein in which CPAC will merge with and into PEI (the "Merger") and, in furtherance thereof, have approved this Agreement, the Merger and the transactions contemplated by this Agreement and declared the Merger advisable;

WHEREAS, Buyer, as the sole shareholder of CPAC, has approved this Agreement, the Merger and the transactions contemplated by this Agreement pursuant to action taken in accordance with the requirements of the Florida Business Corporation Act and the bylaws of CPAC;

WHEREAS, pursuant to the Merger, the outstanding shares of common stock of PEI shall be converted into shares of capital stock of Buyer at the rate determined herein;

WHEREAS, for federal income tax purposes, it is intended that the Merger shall qualify as a reorganization within the meaning of [Section 368(a)] of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder;

WHEREAS, concurrently with the consummation of the Merger, Buyer is acquiring from Seller all of the outstanding capital stock of C.W. Roberts Contracting, Inc.;

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements set forth herein, the Parties hereby agree as follows:

### AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises herein made, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Seller, the Target (the Seller and each of the Target do so jointly and severally) and the Buyer warrant and agree as follows:

## ARTICLE I DEFINITIONS

Section 1.1 Defined Terms. For purposes of this Agreement and the Exhibits, Schedules and other documents and instruments attached hereto, the following terms shall have the meanings specified in this Section 1.1:

“Accountants” means Diane E. Kelley & Associates, P.A., the firm of certified public accountants regularly employed by the Target.

“Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Actions” means any claims, actions, suits, proceedings and investigations, whether at law or in equity, before any court, arbitrator, arbitration panel or Governmental Authority.

“Affiliate” means with respect to a given Person, any (1) Person which, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person, (2) officer, director, member, shareholder, partner, beneficiary or trustee of such Person or any Person described in clause (1) above, (3) spouse, parent, child (including an adult child or an adopted child), grandchild, or sibling of such Person or of a Person described in (1) or (2) above, or (4) trust established for the benefit of any Person described in (1) through (3) above.

“Ancillary Agreements” shall mean the Employment Agreement, Acquired Assets transfer documents, the Option Agreement, the Lease and each and every other agreement or instrument attached hereto or delivered in connection with the transactions contemplated hereunder.

“Closing” shall have the meaning as ascribed to such term in Section 2.4 of this Agreement.

“Closing Date” shall have the meaning ascribed to such term in Section 2.4 of this Agreement.

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

“Contracts” means all contracts, agreements, indentures, licenses, leases, commitments, plans, arrangements, sales orders and purchase orders of every kind, whether written or oral.

“Control” means with respect to a Person, the power, directly or indirectly, to: (1) vote twenty-five percent (25%) or more of the securities having ordinary voting power for the election of directors (or comparable positions) of such Person; or (2) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.



"CRI" means C. W. Roberts Contracting, Inc., a Florida corporation, and its successors and assigns.

"Disclosure Schedule" means those disclosure schedules attached to the Stock Purchase Agreement.

"Effective Date" means September 30, 2001.

"Employment Agreement" means the agreements by and between the Target and Seller, substantially in the form attached hereto as Exhibit B.

"Employees" shall have the meaning ascribed to such term in Section 4.17 of this Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"Environmental Law" means any applicable Law, Permit, agreement or governmental restriction, each as in effect on or prior to the Closing Date, relating to the environment, natural resources, worker health/safety, or to any Hazardous Substance.

"Environmental Liabilities" means any demand, suit, judgment, or claims for penalties, fines, assessments, reimbursement, cost recovery, damages, natural resources damages, and attorney fees by any Person emanating from any Environmental Law, and/or any debts, liabilities, obligations, duties and responsibilities of any kind and description whatsoever, whether absolute or contingent, monetary or nonmonetary, direct or indirect, matured or unmatured, arising under any Environmental Law.

"Financial Statement Date" shall mean August 31, 2001.

"Fund" shall mean, SunTx Fulcrum Fund, Ltd, a Delaware limited partnership and its successors and assigns.

"Governmental Authority" means any government of any nation, state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to a branch of government.

"Hazardous Substance" means any material, waste, substance, chemical (virgin or spent), petroleum, pollutant or by-product which is regulated by, or pursuant to, any federal, state, or local Law relating to the environment, natural resources or worker health/safety.

"Indebtedness" shall mean:

- (1) all indebtedness for borrowed money, whether current or funded, or secured or unsecured;

(2) all indebtedness for the deferred purchase price of property or services represented by a note or other security;

(3) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired;

(4) all indebtedness secured by a purchase money mortgage or other lien to secure all or part of the purchase price of property subject to such mortgage or lien;

(5) lease obligations under leases that shall have been or must be, in accordance with generally accepted accounting principles, recorded as capital leases in respect of which the Target, jointly or severally, are liable as lessees;

(6) any liability of the Target in respect of banker's acceptances or letters of credit; and

(7) any obligation that is directly or indirectly guaranteed by the Target or that the Target, jointly or severally, have agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which they have otherwise assured a creditor against loss.

"Investment Entity" shall mean Buyer; provided, however, that if Buyer is a wholly owned subsidiary of another entity, Investment Entity shall mean any entity which is the ultimate parent of the Buyer and of which third parties (including, without limitation the Fund) have purchased shares of capital stock or other equity interests.

"Investment Interest" shall mean shares of capital stock or other equity securities of the Investment Entity which rank *pari passu* with shares of capital stock or other equity securities of the Investment Entity owned, directly or indirectly, by the Fund.

"Laws" means any and all laws, rules, regulations, treaties, codes, orders, ordinances, judgments, injunctions, decrees, guidelines, guidance documents and policies issued by a Governmental Authority.

"Lease" means that certain lease between Roberts and Roberts, Inc. ("R&R") and CRI, substantially in the form of Exhibit C to the Stock Purchase Agreement.

"Liabilities" means debts, liabilities, claims, obligations, duties and responsibilities of any kind and description, whether absolute or contingent, monetary or non-monetary, direct or indirect, matured or unmatured, including Environmental Liabilities.

"Lien" means any security interest, lien, mortgage, claim, charge, pledge, restriction, equitable interest or encumbrance of any nature.

"Material Adverse Effect" means an event, change or effect that is material and adverse to the business, Assets, condition (financial or otherwise), results of operations, management, manner of conducting business, contractual rights, properties, Liabilities or prospects of the Target as currently conducted; provided, however, that Material Adverse Effect shall not be deemed to include the impact on the Target of actions or omissions required to be taken in performance of their or the Seller's obligations under this Agreement.

"Option Agreement" means that certain Option Agreement between the Seller and the Buyer, substantially in the form of Exhibit D.

"Permit" means any permit, license, certificate, plan or authorization for a service or activity that may have an impact on health, safety, or the environment or that is otherwise required to be obtained from a Governmental Authority to legally perform a given service or activity.

"Person" means any natural person, corporation, limited partnership, general partnership, joint venture, association, company, trust, joint stock company, bank, trust company, land trust, vehicle trust, business trust, real estate investment trust, estate, limited liability company, limited liability partnership or other organization irrespective of whether it is a legal entity, and any Governmental Authority.

"Shares" means all of the issued and outstanding shares of stock of the Target.

"Stock Purchase Agreement" means that Amended and Restated Stock Purchase Agreement, dated of even date herewith, among Buyer, CRI and Seller, as it may be amended from time to time

"Taxes" means all taxes, charges, fees, levies, assessments, including, without limitation, income, gross receipts, excise, real and personal property, sales, use, transfer, stamp, license, payroll and franchise taxes imposed by any Governmental Authority and shall include any interest, penalties or additions to tax attributable to any of the foregoing.

Section 1.2 Additional Definitions. The definitions in Section 1.1 shall apply equally to both the singular and plural forms of the terms defined. Additional terms are defined in this Agreement where first used. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine and neuter forms. Unless otherwise expressly provided, the words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The words "herein," "hereof," "hereunder," and similar terms shall refer to this Agreement, unless the context otherwise requires.

ARTICLE II  
THE MERGER; EFFECTIVE TIME; CLOSING

2.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Florida Business Corporation Act, as amended (the "FBCA"), at the Effective Time, CPAC shall be merged with and into PEI, the separate corporate existence of CPAC shall thereupon cease and PEI shall continue as the surviving corporation and shall succeed to and assume all the rights and obligations of CPAC in accordance with the FBCA. PEI, as the surviving corporation after the consummation of the Merger, is sometimes hereinafter referred to as the "Surviving Corporation."

2.2 Closing. Unless this Agreement shall have been terminated and the transactions contemplated herein shall have been abandoned pursuant to Article XI, the closing of the Merger (the "Closing") shall take place at 10:00 a.m., local time, at the offices of Smith, Thompson, Shaw & Manausa, 3520 Thomasville Road, 4<sup>th</sup> Floor, Tallahassee, Florida, on the first business day after all of the conditions (excluding conditions that, by their nature, cannot be satisfied until the Closing Date) to the obligations of the Parties to consummate the Merger as set forth in Article VII have been satisfied or waived (subject to applicable law), or such other date, time or place as is agreed to in writing by the Parties (the actual time and date of the Closing being referred to herein as the "Closing Date").

2.3 Effective Time. Subject to the provisions of this Agreement, the Parties shall cause the Merger to be consummated by filing the certificate of merger of CPAC and PEI (the "Certificate of Merger") with the Secretary of State of the State of Florida in such form as required by, and executed in accordance with, the relevant provisions of the FBCA as soon as practicable on or before the Closing Date. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of Florida or at such subsequent date or time as the Parties shall agree and specify in the Certificate of Merger (the date and time the Merger becomes effective being hereinafter referred to as the "Effective Time").

2.4 Effect of the Merger. At and after the Effective Time, the effect of the Merger shall be as provided in this Agreement and the applicable provisions of the FBCA. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of PEI and CPAC shall vest in the Surviving Corporation, and all debts, liabilities and duties of PEI and CPAC shall become the debts, liabilities and duties of the Surviving Corporation.

2.5 Certificate of Incorporation of the Surviving Corporation. At and after the Effective Time, and without any further action on the part of PEI and CPAC, the certificate of incorporation of PEI shall be amended to read in its entirety as the certificate of incorporation of CPAC reads as in effect immediately prior to the Effective Time until thereafter changed or amended as provided therein or by applicable law.

2.6 Bylaws of the Surviving Corporation. At the Effective Time, the bylaws of CPAC as in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Corporation, until thereafter changed or amended as provided therein or by applicable law.

2.7 Directors of the Surviving Corporation. The directors of the Surviving Corporation, as of the Effective Time, will be the directors of CPAC immediately prior to the Effective Time.

2.8 Officers of the Surviving Corporation. The directors of the Surviving Corporation, as of the Effective Time, will be the directors of CPAC immediately prior to the Effective Time.

2.9 Share Consideration for the Merger; Conversion or Cancellation of Shares in the Merger. At the Effective Time, the manner of converting or canceling shares of PEI shall be as follows:

(a) At the Effective Time, each share of common stock, \$0.01 par value ("PEI Shares"), of PEI issued and outstanding immediately prior to the Effective Time (other than the Cancelled Shares, as defined in Section 4.1(b)), shall be converted into the right to receive that            shares of common stock, \$0.01 par value, of Buyer (collectively, "Buyer Common Shares") and            shares of Series A Pay-In-Kind Preferred Stock, \$0.01 par value, of Buyer (collectively, "Buyer Preferred Shares") (together with the Buyer Common Shares the "Buyer Shares" or the "Merger Consideration").

(b) As a result of the Merger and without any action on the part of the holders thereof, at the Effective Time, all PEI Shares shall cease to be outstanding and shall automatically be canceled and retired and shall cease to exist, and each holder of a certificate which immediately prior to the Effective Time represented any PEI Shares (a "Certificate") shall thereafter cease to have any rights with respect to such shares of PEI Common Stock, except as provided herein or by law.

(c) Each share of common stock, \$1.00 par value, of CPAC issued and outstanding immediately prior to the Effective Time, shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted automatically into and exchanged for one (1) validly issued, fully paid and nonassessable share of common stock, \$0.01 par value, of the Surviving Corporation. Each stock certificate representing any shares of CPAC shall continue to represent ownership of such shares of capital stock of the Surviving Corporation.

2.10 Payment for Shares in the Merger. The manner of making payment for Shares in the Merger shall be as follows:

(a) Exchange Procedures. Promptly after the Effective Time, upon surrender of certificates evidencing PEI Shares for cancellation to the Buyer, the holder of such certificates shall be entitled to receive in exchange for each of PEI Shares represented by the certificates held of record by such holder, the whole number of Buyer Shares that such holder has the right to receive pursuant to Section 2.9 and, if applicable, a check in the amount equal to the cash that such holder has the right to receive in lieu of any fractional Buyer Shares pursuant to Sections 1.11. No interest will be paid or will accrue on any cash payable pursuant to Sections 2.11. The Certificates so surrendered pursuant to this Section 2.10 shall forthwith be canceled. Until so surrendered, such Certificates

shall represent solely the right to receive the Merger Consideration allocable to such Certificates.

(b) Distributions with Respect to Unexchanged Shares. No dividends or other distributions that are declared or made with respect to Buyer Shares with a record date after the Effective Time shall be paid to the holder of any unsurrendered certificate evidencing PEI Shares with respect to the Buyer Shares that such holder would be entitled to receive by reason of the Merger upon surrender of such certificate and no cash payment in lieu of fractional Buyer Shares shall be paid to any such holder pursuant hereto until such holder shall surrender such certificate. Subject to the effect of applicable law, following surrender of any such certificate, there shall be paid to such holder of Buyer Shares issuable in exchange therefor, without interest, (i) promptly after the time of such surrender, the amount of any cash payable in lieu of fractional Buyer Shares to which such holder is entitled pursuant to Section 2.11 and the amount of dividends or other distributions with a record date after the Effective Time theretofore paid prior to the time of such surrender with respect to such whole Buyer Shares, and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender and a payment date subsequent to such surrender payable with respect to such Buyer Shares. Any dividends or other distributions that are payable with respect to Buyer Shares deliverable upon surrender of unexchanged Certificates shall be deposited by Buyer in the Stock Merger Exchange Fund.

(c) Transfers of Ownership. If any certificate representing Buyer Shares is to be issued in a name other than that in which the Certificate surrendered in exchange therefor is registered, it shall be a condition of such exchange that the Certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer and that the Person requesting such exchange shall pay to the Exchange Agent any transfer or other taxes required by reason of the issuance of certificates for such Buyer Shares in a name other than that of the registered holder of the Certificate surrendered, or shall establish to the satisfaction of the Exchange Agent that such tax has been paid or is not applicable.

2.11 Cash For Fractional Buyer Shares. No certificates or scrip or shares of Buyer Shares representing fractional Buyer Shares or shall be issued upon the surrender for exchange of Certificates and such fractional share interests will not entitle the owner thereof to vote or to have any rights of a stockholder of Buyer or a holder of Buyer Shares. Notwithstanding any other provision of this Agreement, each holder of PEI Shares exchanged pursuant to the Merger who would otherwise have been entitled to receive a fractional Buyer Share (after taking into account all Certificates delivered by such holder) shall receive, in lieu thereof, a cash payment (without interest) in an amount equal to the fair market value of the fractional Buyer Shares, as determined in good faith by the Board of Directors of the Buyer.

2.12 Transfer of Shares after the Effective Time. No transfers of PEI Shares shall be made on the stock transfer books of PEI after the close of business on the day prior to the date of the Effective Time.

2.13 Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation (or Buyer, as applicable), the posting by such Person of a bond in such reasonable amount as the Surviving Corporation (or Buyer, as applicable) may direct as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will deliver in exchange for such lost, stolen or destroyed Certificate the applicable Merger Consideration with respect to PEI Shares formerly represented thereby and unpaid dividends and distributions on Buyer Shares deliverable in respect thereof, pursuant to and in accordance with the terms of this Agreement.

2.14 Further Assurances. At and after the Effective Time, the officers and directors of the Surviving Corporation will be authorized to execute and deliver, in the name and on behalf of PEI or CPAC, as applicable, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of PEI or CPAC, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

### ARTICLE III CERTAIN OTHER AGREEMENTS

Section 3.1 Transfer of Employees. The Buyer intends that the Target will continue to employ its employees after the consummation of the transactions contemplated by this Agreement.

Section 3.2 Purchase and Sale of Certain Property. Immediately after the Closing, PEI will sell and transfer to CW, or his designee, and CW will purchase, or cause such designee to purchase, from PEI, free and clear of all Liens, (i) the equipment and other personal property more fully described on attached Exhibit E-1 (the "Acquired Assets"), which are currently owned by PEI, and (ii) the real property more fully described on attached Exhibit E-2 (the "Acquired Real Property"), which is currently owned by PEI. CW shall pay to PEI the aggregate sum of \_\_\_\_\_ in cash, by wire transfer or certified check, in full payment for the Acquired Assets and Acquired Real Property.

### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE SELLER AND THE TARGET

Each of the Target and the Seller, jointly and severally, represents and warrants that the following statements are true and correct as of the date hereof.

Section 4.1 Organization; Good Standing; Foreign Qualification. The Target is duly organized, validly existing and in good standing under the laws of its incorporation or formation. The Target is duly qualified to do business as a foreign corporation and is in good standing under the laws of the state(s) in which it owns, leases or operates properties, or conducts business or otherwise are required to be so qualified, a list of such states and foreign qualifications is set forth on Schedule 4.1 of the Disclosure Schedules. The Target has the requisite corporate powers to own, lease and operate its properties.

Section 4.2 Records. The Seller has delivered to the Buyer on behalf of the Target, true and complete copies of (i) certificates of incumbency, (ii) certified copies of the articles of incorporation and bylaws of the Target, as currently in effect, and (iii) the minute books, stock books and stock transfer records of the Target (the "Records"). No revision, amendment, rescission or restatement of any of the Records has been authorized by the Target, and no such revision, amendment, rescission or restatement of any of the Records is planned. -

Section 4.3 Authorization. The Target has been authorized, and Target and Seller have all requisite legal and, with respect to the Target, corporate power to enter into this Agreement and the Ancillary Agreements, and to carry out and perform their other obligations under the terms of this Agreement and the Ancillary Agreements, to which it is a party.

Section 4.4 Consent; Breach. No consent of any lender, trustee or other Person is required for the Seller or the Target to enter into and deliver this Agreement or to consummate the transactions contemplated hereby. The execution and delivery by the Target and the Seller of this Agreement and the consummation by the Target and the Seller of the transactions contemplated hereby, will not violate, breach, be in conflict with, or constitute a default under, or permit the termination or the acceleration of maturity of, or result in the imposition of any lien, claim, or encumbrance upon any property or asset of any of the Target or the Shares owned by the Seller, or any note, bond, indenture, mortgage, deed of trust, evidence of indebtedness, lease agreement, loan agreement, other agreement or instrument (including with customers), or any judgment, order, injunction, or decree by which the Target are bound, to which they are a party, or to which any of their assets or its properties are subject.

Section 4.5 Capitalization.

(a) The authorized capital stock of PEI consists solely of 100 shares of Common Stock, \$1.00 par value, of which 100 shares are issued and outstanding as of the date hereof. All of the Shares are validly issued and outstanding, fully paid and nonassessable, and are owned beneficially and of record by the Shareholder as follows:

Except as set forth on Schedule 4.5 the of the Disclosure Schedules there are no outstanding warrants, options or rights (preemptive or otherwise) or other securities, plans or agreements that give the holder or any other Person the right to purchase or otherwise acquire (whether from Target, CRI or the Seller) any shares of capital stock of the Target or any securities or instruments convertible into, or exchangeable or exercisable for, shares of such capital stock. The agreements and rights described on Schedule 4.5 of the Disclosure Schedules, if any, shall be terminated or canceled as of the Closing Date and copies of the documents providing for such termination or cancellation shall be provided to the Buyer on or before Closing. Except as set forth on Schedule 4.5 of the Disclosure Schedules, the Shares are not subject to any Lien, options, proxies, shareholder agreements, voting agreements or charges, or to any restriction on their transfer.



(b) At the Effective Time, Buyer will, by virtue of the Merger, have good and indefeasible title to all outstanding shares of capital stock of the Surviving Corporation, free and clear of any Lien or restriction on transfer.

Section 4.6 Subsidiaries; Investments; Affiliate Notes. Target does not have any direct or indirect subsidiaries and the Target (a) has not made advances to or investments in, and owns any securities of or other interests in, any Person, and (b) does not hold notes issued by any of the Seller or any Affiliate of the Seller.

Section 4.7 Financial Statements; Corporate Books.

(a) Schedule 4.7 of the Disclosure Schedules are true, correct and complete copies of the balance sheets and the related statements of income and cash flow of the Target as of and for the fiscal years ended December 31, 1998, 1999 and 2000, audited by the Accountants (the "Audited Financial Statements"); and an unaudited balance sheet as of August 31, 2001, and the related unaudited statements of income of the Target for the seven months then ended (the "Unaudited Financial Statements," and together with the Audited Financial Statements (the "Financial Statements").

(b) Prior to Closing, and promptly after they have been prepared, the Target shall deliver to the Buyer on behalf of the Seller audited balance sheets and the related statements of income as of and for the nine months ended September 30, 2001 (the "Updated Financial Statements").

(c) The Financial Statements are correct, complete, and fairly represent the financial condition and results of operation of the Target as of the dates and for the periods indicated, and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved, except as otherwise disclosed therein. The Financial Statements reflect all Liabilities, contingent, or otherwise, of the Target at the times indicated, except Liabilities that are not required to be so reflected in accordance with generally accepted accounting principles. Such Liabilities not so reflected were incurred in the ordinary course of business and in the aggregate do not and will not have any Material Adverse Effect.

(d) The Updated Financial Statements will be correct, complete, and fairly represent the financial condition and results of operation of the Target as of the dates and for the periods indicated, and will be prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved, except as otherwise disclosed in the Target's certification accompanying such Updated Financial Statements.

(e) Since the Financial Statement Date, there has been no Material Adverse Effect, except as disclosed on the Financial Statements.

(f) The Target and the Seller are not aware of any facts or circumstances that have occurred or are likely to occur that might result in the occurrence of a Material Adverse Effect.

(g) The books and records of the Target have been and are being maintained in accordance with all applicable legal and accounting requirements and good business practices, reflect only valid transactions, are complete and correct in all material respects and fairly present the consolidated financial condition and results of operations of the Target.

Section 4.8 Absence of Certain Changes. Since the Financial Statement Date (or other date indicated below), the Target has not (except as may result from the transactions contemplated by this Agreement):

- (a) suffered any Material Adverse Effect;
- (b) suffered any damage or destruction to or loss of assets or property not covered by insurance, or any loss of material suppliers, or terminated or lost the services of any key employee (including any employee who had agreed with Target to maintain the confidentiality of proprietary or technical information or know-how or to assign inventions, patents, or copyrights) that has had or may have a Material Adverse Effect;
- (c) acquired or disposed of any assets or property, or incurred, assumed, guaranteed, endorsed, paid or discharged any indebtedness, Liability, or obligation, or subjected or permitted to be subjected any amount of assets or property to any Lien, claim, or encumbrance of any kind;
- (d) forgiven, compromised, canceled, released, waived, or permitted to lapse any material rights or claims;
- (e) entered into or terminated any agreement or commitment, or agreed or made any changes in leases or agreements, other than renewals or extensions thereof in the ordinary course of business, since the Financial Statement Date, which requires such Target to make annual payments that exceed \$20,000;
- (f) formed or acquired or disposed of any interest in any partnership, joint venture, or other entity;
- (g) written up, written down, or written off the book value of any amount of assets or property;
- (h) declared, paid, or set aside for payment any dividend or distribution with respect to its capital stock;
- (i) redeemed, purchased, or otherwise acquired, or sold, granted, or otherwise disposed of, directly or indirectly, any of its capital stock or securities or any rights to acquire such capital stock or securities, nor agreed to changes in the terms and conditions of any such rights;

(j) increased the compensation of or paid or accrued any bonus to any employee or contributed or accrued or contributed to any employee benefit plan, other than in accordance with policies, practices, or requirements established and in effect on the Financial Statement Date other than in the ordinary course of business;

(k) entered into any employment, compensation, consulting or collective bargaining agreement with any person or group, other than in the ordinary course of business, or entered into, adopted, or materially amended any employee benefit plan;

(l) changed any accounting principles applicable to, or methods of accounting utilized by such Target; or

(m) entered into any other material commitment or transaction not disclosed elsewhere herein.

Neither the Target nor the Seller is aware of any facts or circumstances that have occurred or are likely to occur that might result in any of the representations in this Section 4.8 being false in any material respect.

Section 4.9 No Material Undisclosed Liabilities. There is no Liability of Target of any nature, whether absolute, accrued, contingent, potential, or otherwise, other than: (i) the Liabilities that are fully reflected, accrued, or reserved against on the Unaudited Financial Statements, for which the reserves are appropriate and reasonable, or incurred in the ordinary course of business and consistent with past practices since the Financial Statement Date; and (ii) the contractual obligations under the Material Contracts. The Target not is a signatory to, or is in any manner a guarantor, endorser, assumptor, or otherwise primarily or secondarily liable for or responsible for the payment of, any notes payable other than those set forth in the Financial Statements.

#### Section 4.10 Tax Liabilities.

(a) Tax Returns. Target has filed all material federal, state, county, local, and foreign tax returns and reports required to have been filed by it, including but not limited to those with respect to income, payroll, property, employee withholding, social security, unemployment, franchise, excise, use, and sales taxes, and has either paid in full all Taxes that have become due as reflected on any such returns or reports (including any interest and penalties with respect thereto shown to be due) or has fully accrued on its books or has established adequate reserves for all Taxes payable but not yet due.

#### (b) Preparation.

(1) Such filings, returns and reports in each case were prepared in accordance with applicable Law. Target does not have any Liability for such Taxes for any period prior to the Closing, except as shown on such returns and reports.

(2) The Liabilities (including deferred Taxes, if any) shown on the Unaudited Financial Statements and accrued on the books and records of the Target through the Closing Date for Taxes, interest, and penalties are and will be adequate accruals with respect to income from operations, including any extraordinary items, of the Target for all periods commencing after the Financial Statement Date, and ending on the Closing Date, and have been and will be accrued in a manner consistent with the practices utilized for accruing for Taxes as reflected on the Audited Financial Statements.

(c) Pending Actions; Extensions. No governmental claim for additional Taxes, interest, or penalties for any fiscal year is pending or threatened with respect to Target or its business or Assets. No extension or waiver of any statute or limitations has been requested or granted by Target with respect to any tax year, and no extension or waiver of time within which to file any tax return has been requested by or granted to Target, except with respect to tax returns not yet filed but otherwise due. No unsatisfied deficiency, delinquency, or default for any Tax, assessment, or governmental charge has been claimed, proposed, or assessed against Target, nor has Target or the Shareholder received notice of any such deficiency, delinquency, or default, for any tax period. No pending audit or investigation by a Government Authority has been claimed, proposed or commenced with respect to Target, and no notice of any plans to do so have been received by any of the Seller or Target.

(d) Contingent Liabilities. Neither the Target nor the Seller has any reason to believe that Target has any contingent Tax Liabilities other than (i) those reflected in the Financial Statements, (ii) those arising in the ordinary course of business since the date thereof, and (iii) those arising as a result of the transactions contemplated hereby.

#### Section 4.11 Assets.

(a) Title to Assets. The Target is the sole and exclusive legal owner of all right, title and interest in, and has good and marketable title to, all of the assets and property of such Target that it purports to own (the "Assets"), free and clear of Liens, claims and encumbrances except Liens, claims and encumbrances to be released at Closing.

(b) Assets Owned by the Target. As of the date of this Agreement, the Target owns all of the assets, property and goodwill of every kind (personal, tangible or intangible) and character necessary for the conduct of business as presently conducted, including investments in other businesses, trademarks and trade names. At the Closing, the Assets to be indirectly acquired by Buyer through the consummation of the Merger shall include, by way of example and not of limitation, the following (to the extent owned by such Target jointly or severally):

(1) all the assets and properties shown on the Target's balance sheets dated December 31, 2000 (as previously provided to Buyer) or otherwise acquired by the Target since such date;

(2) current assets, accounts receivables, equipment, tools, spare parts, furniture, office equipment and other tangible assets and property used in the Target's operations;

(3) all liquid asphalt, sand, coarse aggregates, fine aggregates, motor fuel and oil in bulk storage and other inventory and supplies;

(4) rights under agreements and contracts entered into by the Target in the ordinary course of their operations, including, without limitation, Material Contracts (as defined below), and pending bids, agreements, or quotations for the acquisition of inventory or for the sale of asphalt or aggregates;

(5) rights, whether ownership or otherwise, to trade names, trademarks, and service marks used or owned by the Target;

(6) all books and records related to the Target, the Assets or the operation of the Business, including all financial, accounting and tax records, computer data and programs, and records and all correspondence with and documents pertaining to suppliers, governmental authorities and other third parties;

(7) client records;

(8) state and regulatory Permits as required to conduct the Business;  
and

(9) except as set forth on Schedule 4.11(a) of the Disclosure Schedules, all of the assets, property and goodwill of every kind (personal, tangible or intangible) and character necessary for the conduct of the Target's business as presently conducted, including investments in other businesses, trademarks and trade names.

At the closing, all of the Equipment comprising a part of the Assets will be located at one of the active job sites described on Schedule 4.11(a) of the Disclosure Schedules. To the best of Seller's and Target's knowledge, the materials of construction or improvements located at the sites described on Schedule 4.11(a) of the Disclosure Schedules do not include asbestos. Schedule 4.11(b) of the Disclosure Schedules is a true and correct list of all Assets, having a value in excess of \$5,000, acquired by the Target since December 31, 2000, or sold or otherwise disposed of by the Target since such date.

Section 4.12 Condition of Tangible Assets. The Assets are in good condition and repair (ordinary wear and tear excepted) and are adequate for the uses to which they are being put in the ordinary course of the Target's business and conform in all respects with all applicable ordinances, regulations, and other Laws.

Section 4.13 Contracts and Agreements: Bank Accounts.

(a) Material Contracts. Schedule 4.13 of the Disclosure Schedules lists any material Contract (the "Material Contracts"), to which Target or CRI is party or by which Target or the Assets or business is bound by, whether or not in writing, including, but not limited to, any:

- (1) partnership or joint venture agreement;
- (2) deed of trust or other security agreement;
- (3) guaranty or suretyship, indemnification or contribution agreement or performance or completion bond; employment, consulting or compensation agreement or arrangement, including the election or retention in office of any director or officer;
- (4) labor or collective bargaining agreement;
- (5) debt instrument, loan agreement or other obligation relating to indebtedness for borrowed money or money lent to another;
- (6) document evidencing an interest in or contract to purchase or sell real property;
- (7) agreement with dealers or sales or commission agents, public relations or advertising agencies, accountants or attorneys;
- (8) lease of real or personal property, whether as lessor, lessee, sublessor or sublessee;
- (9) agreement relating to any matter or transaction in which an interest is held by a person or entity which is an Affiliate of a Target;
- (10) any agreement for the acquisition or providing of services, supplies, equipment or other personal property entered into other than in the ordinary course of business and involving more than \$20,000 in the aggregate;
- (11) asphalt paving or road construction contracts described on Section 11 of Schedule 4.13(a) of the Disclosure Schedules (the "Construction Contracts");
- (12) subcontracts relating to the Construction Contracts, which subcontracts are listed on Section 12 of Schedule 4.13(a) of the Disclosure Schedules (the "Subcontracts");
- (13) powers of attorney;

(14) Contracts containing noncompetition covenants;

(15) any other Contract or arrangement that involves either an unperformed material Contract in excess of \$20,000 or that terminates more than one year from the Date hereof other than those entered into in the ordinary course of business; or

(16) any other agreement or material contract not made in the ordinary course of business-or that is material to the business or financial condition of the Target.

(b) Delivery of Contracts. True, correct and complete copies of the written Material Contracts, and true, correct and complete written descriptions of the oral Material Contracts, have heretofore been delivered to Buyer.

(c) Defaults. There are no existing defaults, events of default or events, occurrences or acts that, with the giving of notice or lapse of time or both, would constitute defaults, and no penalties have been incurred nor are amendments pending, with respect to the Material Contracts, except as described on Schedule 4.13(c) of the Disclosure Schedules.

(d) Validity. The Material Contracts are in full force and effect and are valid and enforceable obligations of the parties thereto in accordance with their terms, and no defenses, off-sets or counterclaims have been asserted or, may be made by any party thereto, nor has Target waived any rights thereunder, except as described on Schedule 4.13(d) of the Disclosure Schedules.

(e) Adverse Effect. Target is not a party to, and none of its assets are subject to or otherwise affected by, any agreement or instrument, or any charter or other restriction, or any judgment, order, writ, injunction, decree, rule or regulation, that could or does materially adversely affect the Assets or business.

(f) Notice of Cancellation. Except as contemplated herein, neither the Seller nor Target has received notice of any plan or intention of any other party to any Material Contract to exercise any right to cancel or terminate any Material Contract or agreement, and neither the Seller nor Target knows of any fact that would justify the exercise of such right.

(g) Amendments. Neither the Seller nor Target currently contemplates, nor has reason to believe any other person or entity currently contemplates, any amendment or change to any Material Contract.

(h) Threatened Breach. Except as listed on Schedule 4.13(h) of the Disclosure Schedules, none of the customers or suppliers Target or CRI has refused, or communicated that they will or may refuse to purchase or supply goods or services, as the case of may be, or have communicated that they will or may substantially reduce the

amounts of goods or services that they are willing to purchase from, or sell to, such Target.

(i) Financial Institutions. The name and location of each institution in which a Target has a bank, trust, checking, savings, custody, brokerage or other account or borrowing authority, and the names of the persons authorized to draw or borrow therefrom are listed on Schedule 4.13(i) of the Disclosure Schedules.

(j) Construction Contracts. Target is performing under each Construction Contract and Subcontract in accordance with the applicable plans and specifications for each and the completion schedules set forth under each. Target is not in breach of or in default under any of the provisions of the Construction Contracts or Subcontracts or any related contract, agreement, license or permit to which it is a party or subject, including, without limitation (i) requirements for hiring minority individuals or subcontracting to minority business enterprises, if any, (ii) provision of any Permits or agreements with any state or federal agency, (iii) requirements or agreements with surety companies under all payment and performance bonds entered into in connection with Construction Contracts, and (iv) provision of all agreements with agencies of the United States government for provision of federal aid in connection with such Construction Contracts. The estimated cost to completion recorded in the Target's budgets for each Construction Contract is adequate.

#### Section 4.14 Real Property.

(a) Property Rights. Other than the real property set forth on Schedule 4.14(a)(i) of the Disclosure Schedules (the "Real Property"), neither the Target nor CRI owns or has ever owned any real property. All of the real property used in the operation of the Target's business, or necessary for the operation of their respective businesses as presently conducted, is described on such schedule (the "Operating Real Property"). All such Operating Real Property, together with all structures, buildings and fixtures, and other improvements thereon (collectively, the "Real Estate"), is or will be, at the Closing, owned by R&R and, at the Closing, R&R will have good and marketable title to the Real Estate, free and clear of all Liens other than those Liens set forth on Schedule 4.14(a)(ii) of the Disclosure Schedules. With respect to the "Real Estate":

(1) applicable zoning ordinances permit the operation of the Target's business;

(2) the Target have all easements and rights, including easements for all utilities, services, roadways and other means of ingress and egress, necessary to operate their respective businesses;

(3) the Real Estate is not located within a flood or lakeshore erosion hazard area; and

(4) neither the whole nor any portion of the Real Estate has been condemned, requisitioned or otherwise taken by any public authority, and no



notice of any such <sup>\*</sup>condemnation, requisition or taking has been received. No such condemnation, requisition or taking is threatened or contemplated, and there are no pending public improvements which may result in special assessments against or which may otherwise affect the Real Estate.

(b) Notice of Violation. The Target has not received notice of, or have actual knowledge of, any material violation of any zoning, building, health, fire, water use or similar statute, ordinance, law, regulation or code in connection with the Real Estate.

Section 4.15 Proprietary Rights. Schedule 4.15 of the Disclosure Schedules sets forth a true and complete list of any trade name, trademark, trade secret, service mark, patent or copyright and any application for or license of any of the foregoing (each, a "Proprietary Right") owned, possessed, used or held by or licensed to the Target or CRI. No claim has been asserted, or is threatened, by any Person with respect to the ownership, validity, license or use of, or any infringement resulting from, any of such Proprietary Rights used by the Target.

Section 4.16 Purchase and Sales Commitments and Orders. Except as set forth on Schedule 4.16 of the Disclosure Schedules, the Target has not, from the Financial Statement Date to the date hereof, entered into any purchase, sales commitment or order except in the ordinary course of business consistent with past practices.

Section 4.17 Labor Relations: Employees.

(a) Schedule 4.17 of the Disclosure Schedules sets forth a true and correct list of all employees of the Target and CRI (the "Employees") as of August 31, 2001, by job classification, their respective rates of compensation and all perquisites provided to each such employee (e.g., company car, etc.).

(b) Except as set forth on Schedule 4.17 of the Disclosure Schedules, the Target has no material existing Contracts with directors, officers, employees or Shareholder that are not cancelable by the Target on notice of not longer than thirty (30) days and without Liability, penalty or premium. True and accurate copies of such Contracts (as amended or supplemented) have been delivered to the Buyer.

(c) Except as set forth on Schedule 4.17 of the Disclosure Schedules:

(1) there are no labor strikes, disputes, slow downs, work stoppages or other labor troubles or grievances pending, or threatened, against or involving the Target;

(2) no unfair labor practice complaint before the National Labor Relations Board, no charges pending before the Equal Employment Opportunity Commission, and no complaint, charge or grievance of any nature before any similar or comparable Governmental Authority in any case relating to the Target or the conduct of their respective businesses, is pending or threatened;

(3) Target has not received notice of and the Seller is not aware of the intent of any Governmental Authority responsible for the enforcement of labor or employment laws to conduct any investigation of or relating to such Target or the conduct of its business;

(4) Target is (i) in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment, and wages and hours, (ii) are in compliance with all of its obligations under applicable workers compensation Laws except where the failure to so comply would not have a Material Adverse Effect, and (iii) not engaged in any unfair labor practice; and

(5) since December 31, 2000, no key employees of Target have been terminated or have resigned their employment.

#### Section 4.18 Pension Plans: ERISA.

(a) Employee Plans. Except for the plans set forth on Schedule 4.18 of the Disclosure Schedules (the "Plans"), the Target does not maintain or contribute to or have any Liability with respect to any "employee benefit plan" as that term is defined in Section 3(3) of ERISA, or any other bonus, incentive, compensation, profit sharing, severance, retirement, health, life, disability, group insurance, vacation, holiday, fringe benefit, employment, stock option, stock purchase, stock appreciation right, supplemental unemployment, layoff or consulting plan, agreement, policy or understanding. True and complete copies of all of the Target's Plan documents and summary plan descriptions have been furnished to the Buyer (along with all related trust agreements, insurance contracts or other funding agreements which implement each Plan, and all other documents, records or other materials related thereto reasonably requested by the Buyer).

(b) ERISA. The Plans and any related trust agreements or annuity contracts (or any other funding instruments) comply in all material respects, both as to form and operation, with the provisions of ERISA and the Code (including Section 410(b) of the Code relating to coverage), where required in order to be tax-qualified under Section 401(a) or 403(a) of the Code, and all other applicable Laws. All necessary governmental approvals for the Plans have been obtained, and a favorable determination as to the qualification under the Code of each Plan and each amendment thereto has been made by the Internal Revenue Service.

(c) Compliance. The Plans have been administered to date in compliance with the requirements of the Code and ERISA, and all reports required by any Government Authority with respect to each Plan have been timely filed.

#### Section 4.19 Legal Proceedings.

(a) Pending Litigation. Except as set forth on Schedule 4.19 of the Disclosure Schedules, neither the Target nor the Seller is a party to, and neither the business nor the Assets of the Target are the subject of or affected by, any pending or threatened Action

with any party or any pending change in any regulations, statutes, or ordinances, which would, severally or in the aggregate, have a Material Adverse Effect. No Action is currently pending, has been made or filed, or is or has been threatened or contemplated by any Person or entity, and there exists no judgment or order (whether or not Target is a party to any of the foregoing) regarding or affecting the ownership, disclosure, copying, possession, or utilization by the Target or the Assets.

(b) Current Actions. Target is not a party in any Action, nor is it subject to any judgment, enforcement or compliance order (administrative or judicial), or decree entered in any Action brought by any Governmental Authority or by any other Person enjoining it from any business practice or the acquisition of any property or the conduct of their business.

#### Section 4.20 Compliance With Laws; Permits and Licenses.

(a) Compliance. Target has complied and is in compliance with all Laws applicable to its Assets, property or operations, including Laws relating to zoning, building codes, licensing, permits, antitrust, occupational safety and health, consumer product safety, product liability, environmental protection and conservation, natural resources, water, soil or air pollution, any and all generated or managed waste streams, environmental investigations and remediations, hiring, wages, hours, employee benefit plans and programs, collective bargaining and withholding and social security taxes, other than any failure to comply that, individually or in the aggregate, would not have a Material Adverse Effect.

(b) Valid Permits. Schedule 4.20 of the Disclosure Schedules lists all Permits held by the Target that are necessary for its current use, occupancy or operation of the Assets or the conduct of the Target's business. Such Permits have been validly issued by the appropriate Governmental Authority in compliance with all applicable Laws. The Target has complied in all material respects, with all terms and conditions of such Permits. All such Permits are in full force and effect, and no Action is pending or threatened to revoke or limit any Permit. The Target has not received notice of any material violation of any applicable zoning Law binding on Target with respect to the Assets, properties or businesses.

Section 4.21 Insurance. Target has in full force and effect fire, liability and other forms of insurance with sufficient coverage for its assets, business dealings and personnel. Schedule 4.21 of the Disclosure Schedules sets forth a true and accurate list of all policies of insurance (specifying the insured, the insurer, the amount of coverage, the type of insurance, the policy number, the expiration date, the annual premium, and any pending claims thereunder) maintained by the Target. All of the policies of insurance so described are in full force and effect and the premiums therefor have been paid currently, and no notice of any termination or threatened termination of such policies has been made. The coverages of such insurance policies are in such amounts as are customary for the types of business engaged in by the Target.

Section 4.22 Environmental Health/Safety Matters.

(a) Environmental Permits. Schedule 4.22 of the Disclosure Schedules lists all environmental Permits held by the Target. The Target has obtained all environmental Permits with respect to its business or on account of any or all of its activities on the real properties it owns or leases now or in the past, and is in compliance with the terms and conditions of such Permits. No change in the facts or circumstances reported or assumed in the application for or granting of such Permits exists, and such environmental Permits are in full force and effect and shall remain in full force and effect notwithstanding the consummation of the transactions contemplated by this Agreement.

(b) Compliant Operations. The Target's operations are in compliance with all Environmental Laws.

(c) Plans and Reports. The Target has prepared and maintained, and continues to maintain, all necessary plans, reports, records, files, information and logs required under all Environmental Laws. The Target has prepared and filed all inventories, reports, forms, analysis, results, and other information required under all Environmental Laws and Permits.

(d) Notice of Violation. None of the Target, the Seller, nor any prior owner or occupant of the real properties owned, leased or used by the Target have received any notice or other communication concerning any:

(1) violation or alleged violation of any Environmental Laws, whether or not corrected to the satisfaction of the appropriate authority;

(2) Liability or alleged Liability for fines, penalties, assessments, reimbursements, costs or damages pursuant to any Environmental Laws in connection with the Target or the Seller relative to their ownership, use, maintenance, or operation of any real property; or

(3) releases of Hazardous Substances into the environment for which the Target, Seller, or any predecessor in interest may be potentially responsible.

(e) Notice of Action. There exists no writ, injunction, decree, order (administrative or judicial), notice or judgment, nor any other Action, pending or, to the knowledge of the Seller and the Target, threatened, relating to the Target or the ownership, use, maintenance, or operation of any real property or any equipment thereon by any Person based upon any alleged violation of any Environmental Laws, or from the suspected presence of a Hazardous Substance thereon, nor does there exist any basis for such Action.

(f) Compliance. Any real property owned or leased incident to the Target's business and the existing and prior uses and activities thereon, including the use, maintenance, and operation of the Target, and all activities and conduct of the Target related thereto, comply and have complied with all Environmental Laws.

(g) Encumbrance. No real property now owned, leased, or used or formerly owned leased or used by the Target is encumbered by any Lien under any Environmental Laws, ordinance, regulation, rule, or requirement, is listed on any contaminated site list or is the subject of any restriction or notice filed or recorded under any Environmental Laws, and no Governmental Authority is considering listing or filing any such Lien.

(h) Unreported Violations. None of the Target, its Employees, or the Seller have any knowledge that any unreported release of any Hazardous Substance has occurred resulting from the operation of the Target's business or at, or in the vicinity of, any real property now or formerly owned or operated by the Target prior to the sale of any such real property or the termination of any such lease (i) in any quantity that requires any report or other notice to any Governmental Authority pursuant to any Environmental Laws or (ii) that has resulted or that threatens to result in the presence of any Hazardous Substance in the environment in a quantity, concentration, state, or other condition that exceeds any applicable standard for the protection of human health or the environment under any Environmental Laws.

(i) Storage. No real property now or formerly owned or leased by the Target, prior to the sale of any such real property or the termination of any such lease, has been used for the storage, treatment or disposal of any Hazardous Substance in violation of any Environmental Laws, and no underground storage tanks (active or abandoned, and regardless of their content) are or have been, at any time, under any such property.

(j) Notice of Liability. Neither the Target nor any predecessor thereof has received any notice from any Governmental Authority of any Liability for any removal, remediation, or other response cost under any Environmental Laws as the result of the release or threatened release of any Hazardous Substance. Neither the Target nor any predecessor thereof has disposed of any Hazardous Substance or arranged for the transportation, treatment, or disposal of any Hazardous Substance at any location.

(k) PCBs/Asbestos. To the best of the knowledge of the Target and Seller, no real property now or formerly owned or leased by the Target, prior to the sale of any such real property or the termination of any such lease, contained any polychlorinated biphenyls or asbestos.

(l) Contamination. No property currently or previously owned, operated or leased by any of the Target has been or is contaminated with Hazardous Substances.

(m) Generation or Transport of Hazardous Substances. The Target has not generated or transported to a location or arranged for the disposal of Hazardous Substances at any location, regardless of whether the site is currently subject to state or federal enforcement.

Section 4.23 Transactions with Affiliates. Except as set forth on Schedule 4.23 of the Disclosure Schedules, neither the Seller, nor any director or officer of the Target or any member of such individual's immediate family owns, directly or indirectly, or has an ownership interest

in any business that is a party to, or any property that is the subject of, business arrangements or relationships of any kind with the Target, or any business that conducts the same business, or a business similar to, that conducted by any of the Target. Except for that certain letter of intent, dated March 28, 2001, among Buyer, Seller, CRI and the Target, neither the Seller nor the Target, or their respective Affiliates, have entered into any contract, arrangement, or understanding with Buyer or any of Buyer's Affiliates, consultants or representatives.

Section 4.24 Absence of Certain Business Practices. Neither any employee nor agent of the Target, nor any officer or director of the Target, acting alone or together, has-(a) received, directly or indirectly, any rebates, payments, or any other economic benefits, regardless of their nature or type, from any customer, supplier, governmental employee, or other Person with whom the Target has done business directly or (b) directly or indirectly, given or agreed to give any gift or similar benefit to any customer, supplier, governmental employee or other Person who is or may be in a position to help or hinder the business of the Target or assist the Target in connection with any actual or proposed transaction.

Section 4.25 Certain Fees. Neither the Target, nor any officer, director, or employee of the Target has employed any broker or finder or incurred any Liability for any brokerage fees, commissions, or finders' fees in connection with the transactions contemplated hereby.

Section 4.26 Listing of Officers and Directors. Set forth on Schedule 4 of the Disclosure Schedules is a true and correct list of the persons who, at Closing, are officers and directors of the Target.

Section 4.27 Corporate Records. The minute books of the Target accurately reflect all corporate action taken by it and contain accurate and complete copies of the respective certificate or articles of incorporation and bylaws and all amendments thereto.

Section 4.28 Accuracy of Information Furnished. No representation or warranty by the Target or the Seller in this Agreement, and none of the forms of agreement attached hereto as Exhibits or Schedules contain any untrue statements of a fact or omits to state any fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not false or misleading. The Schedules to the Stock Purchase Agreement are acknowledged by the Target to have been relied upon by Buyer in making an investment decision to consummate the Merger or the other transactions contemplated hereby. The Target and Seller have reviewed each of the Schedules and have verified all of the information thereon for accuracy and comprehensiveness, notwithstanding the source from which the information came or the fact that such Schedules may have been prepared by persons other than the Target or Seller. The Schedules are true and correct, and do not contain any misstatement of a material fact nor omit to state any material fact necessary to make the statements made therein not misleading.

Section 4.29 Accounts Receivable. The accounts receivable of the Target and CRI on a consolidated basis, reflected on the Financial Statements or otherwise arising in the ordinary course of business after Financial Statement Date, reflect valid sales of products and services made on or before such date. All such accounts receivable net of an aggregate allowance for bad

debts in the amount of \$49,500 will be collected in the usual and ordinary course of business within 120 days after payment of such receivables is due.

Section 4.30 Dividends and Redemptions. The Target will not declare nor pay any dividends, nor make any distribution either in cash or property, on or in respect of, nor make any payment for the redemption, retirement, purchase or other acquisition of, any outstanding shares of the capital stock of the Target.

Section 4.31 Warranties. There is no claim against, or liability of the Target on account of, product, service or labor warranties with respect to jobs completed by the Target, jointly or severally, prior to the Closing and for which the Target has received full or partial payment in full, and there is no basis for any such claim.

Section 4.32 Governmental Consent. No approval, authorization, consent, order or other action of, or filing with, any Governmental Authority is required in connection with the execution and delivery by the Target or the Shareholder of this Agreement or the consummation of the transactions contemplated hereby. Except as set forth on Schedule 4.32 of the Disclosure Schedules, no approval, authorization or consent of any other third party is required in connection with the execution and delivery by the Target or the Shareholder of this Agreement and the consummation of the transactions contemplated hereby.

Section 4.33 Inventory. All of the inventory owned by the Target is of fair average quality and, in the case of raw material held for sale or use in the business of the Target, substantially as of such inventory meets Federal Department of Transportation specifications for materials of this type, and is readily saleable or useable in the ordinary course of business.

Section 4.34 Description and Lists. Schedule 4.34 of the Disclosure Schedules hereto contains the following, all of which are accurate and complete as of the date hereof:

(a) a list of approved capital expenditures of the Target and CRI or otherwise involving the business of the Target and CRI, which are incomplete as of the date hereof involving an expenditure in excess of \$15,000;

(b) a list of each unfilled purchase order or other commitment of the Target and CRI to acquire or lease equipment having a purchase price or aggregate lease payments in excess of \$15,000, or to purchase raw materials, supplies, or other goods or services for the businesses of the Target and CRI for an aggregate price of more than \$15,000; and

(c) a list of each outstanding bid, quotation, pricing commitment, or other offer, or any accepted purchase order or other legal obligation, for construction work or for the sale of goods to customers of the businesses of the Target and CRI for a dollar amount in excess of \$10,000.

The Target has furnished to or made available for inspection by Buyer accurate and complete copies of any document which is referred to or otherwise related to any item referred to in any schedule to this Agreement or otherwise herein. The lists provided pursuant to Section

4.34 (b) and (c) will be updated by Seller and Target through the Closing Date upon the Buyer's request.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller and the Target that the following statements are true and correct as of the date hereof:

Section 5.1 Good Standing. The Buyer is a corporation duly organized, validly existing and in good standing under the laws of Delaware.

Section 5.2 Authorization. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the Buyer's Board of Directors, and all other corporate action of the Buyer, including all authorizations and ratifications necessary to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, have been taken. This Agreement constitutes a binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms. No consent of any lender, trustee or security holder of the Buyer or any other Person is required for the Buyer to enter into and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by the Buyer will not violate any provision of, or constitute a default under, any contract or other agreement to which the Buyer is a party or by which it is bound, or conflict with its Certificate of Incorporation or Bylaws.

Section 5.3 No Adverse Action. There are no Actions, suits, claims or injunctions, orders or proceedings pending to restrain or prohibit the consummation of the transactions contemplated hereby or to obtain damages which would materially and adversely affect the ability of the Buyer to consummate the transactions provided for in this Agreement.

Section 5.4 Investment Intent. The Buyer is acquiring the Shares for its own account and not with a view to their distribution within the meaning of Section 2(11) of the Act, as amended. The Buyer acknowledges that the sale of the Shares as contemplated hereby has not been registered under the Act.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF CW

Section 6.1 Investment Intent. CW represents and warrants to the Buyer that he, or an Affiliate who may accept delivery of the Buyer Shares (herein the "Investment Interest Purchaser"):

(a) (i) is acquiring the Buyer Shares for his or its own account and not with a view to their resale, fractionalization or distribution within the meaning of Section 2(11) of the Act, as amended, (ii) has no agreement or other arrangement, formal or informal,



with any person to sell, transfer or pledge any part of the Buyer Shares or which would guarantee to the Investment Interest Purchaser any profit or against any loss with respect to such Buyer Shares and has no plans to enter into any such arrangement, and (iii) that the sale of the Buyer Shares as contemplated hereby has not been registered under the Act, as amended;

(b) is an "accredited investor", as such term is defined and used in Regulation D promulgated under the Act, as amended;

(c) is a bona fide resident and domiciliary (not a temporary or transient resident) of the State of Florida or, if the Investment Interest Purchaser is a corporation, its principal place of business is within the State of Florida;

(d) understands, among other things, that (i) the undersigned's investment in the Buyer Shares is speculative and involves a high degree of risk of loss, and (ii) there may be no trading market for the Interest and, in such case, such securities will at no time be freely transferable; and, accordingly, it may not be possible for the undersigned to liquidate the Buyer Shares in case of emergency, if at all;

(e) is able (i) to bear the economic risk of such investment in Buyer Shares, and (ii) to hold the Merger Consideration for an indefinite period of time;

(f) is familiar with the nature of and risks attending investments in securities;

(g) has been given the opportunity to examine all documents and to ask questions, and to receive answers concerning the Buyer Shares;

(h) understands that the Buyer Shares has not been registered under the Act, and are being offered and sold under an exemption from registration thereunder; and consequently, understands that he or it must bear the economic risk of his or its investment for an indefinite period of time because his or its Buyer Shares cannot be resold or otherwise transferred unless it is subsequently registered under the Act or an exemption from such registration is available;

(i) the Buyer will make notations in the appropriate records of the Buyer of the restrictions on the transferability of the Buyer Shares, and may stamp or affix to any document or instrument representing the Buyer Shares an appropriate legend stating, in effect, that the Investment Interest has not been registered under the Act and that transfers thereof may be prohibited unless such transfers comply with the Act and applicable state securities laws or unless an opinion of counsel satisfactory to the Buyer is furnished by the undersigned to the effect that an exemption from registration under the Act and such state securities laws is available or is not required.

ARTICLE VII  
ACTIONS PENDING CLOSING

Unless otherwise agreed by the Buyer and the Seller in writing, from the date hereof through the earlier of the Closing Date or the date this Agreement is terminated pursuant to Article XI (the "Termination Date"), the Target and the Seller shall take such actions as are necessary or appropriate to cause the Target to, comply with each of the following:

Section 7.1 Full Access. The Seller shall furnish or cause to be furnished to the Buyer or its authorized representatives all information with respect to the affairs and businesses of the Target and the Seller as the Buyer or such representatives may reasonably request. The Seller shall also make available by appointments, which the Seller may attend, the Employees, and any other person employed by the Target since May 31, 2001, significant customers and vendors of the Target for purposes of ensuring a smooth transition in the ownership of the Target. The foregoing shall be conducted by the Buyer in a manner intended to avoid any unreasonable disruption to the Target or the conduct of its business.

Section 7.2 Exclusivity. The Seller will not, nor will he permit the Target to, directly or indirectly seek, solicit, encourage, or consider indications of interest, or offers from, or negotiate or enter into any agreements or arrangement with, any Person with respect to any sale or transfer of any of the Shares or a substantial amount of the Assets of the Target, or any merger or consolidation of the Target, that is (in any case) inconsistent with this Agreement or the transactions contemplated hereby. The Shareholder will not vote any of his Shares in favor of any such inconsistent transaction. The Seller will promptly notify Buyer of any proposal, offer, inquiry, or contact by any Person with respect to any such inconsistent transaction.

Section 7.3 Conduct of Business. Except for the consummation of the acquisitions described on Schedule 7.3 of the Disclosure Schedules, the Target shall (a) carry on business and manage its working capital (including, without limitation, the payment of accounts payable and the collection of accounts receivable) in the normal and ordinary course consistent with their past practices to maintain and preserve intact its business organization and goodwill, and (b) refrain from entering or agreeing to enter into any Material Contract without the prior written consent of the Buyer. The following covenants shall not limit the generality or application of this Section 7.3 in any manner. Notwithstanding the foregoing, Target may submit bids for providing, and enter into any material contract to provide, asphalt or road construction services without the Buyer's prior written consent provided that the Target shall notify Buyer five business days in advance of the submission of such bid or the execution of such contract, as the case may be, which notification shall contain all of the material terms of such proposed bid or contract.

Section 7.4 Performance of Obligations. The Target will promptly perform or cause to be performed every commitment, undertaking, agreement or covenant of the Target with any third person whether or not specifically referred to in this Agreement, the non-performance of any one of which could cause the acceleration of indebtedness of the Target; provided, however, that (unless and until foreclosure, sale or similar proceedings have been commenced) the Target shall have the right in good faith to contest the obligation to perform any such commitment, undertaking, agreement or covenant.

Section 7.5 Payment of Taxes and Accounts. The Target will pay or cause to be paid all Taxes imposed upon the Target or upon its income, profits, or properties before the same shall become delinquent, and will pay its accounts; provided, however, that (unless and until foreclosure, sale or similar proceedings have been commenced) nothing herein shall require the Target to pay or cause to be paid any such Tax, assessment, charge, levy, or account so long as the validity thereof shall be contested in good faith by appropriate proceedings and the Target has set aside on its books, and maintained, adequate reserves with respect thereto.

Section 7.6 Maintenance of Property. The Target will maintain or cause to be maintained the real and personal property that is required for its business in good repair, working order, and condition, and from time to time will make or cause to be made all repairs, renewals, and replacements that are necessary and proper.

Section 7.7 Insurance on Properties. The Target has and will maintain or cause to be maintained insurance consistent with that described on Schedule 4.21 of the Disclosure Schedules.

Section 7.8 Notice of Litigation or Other Changes in Fact. The Target will notify Buyer, as soon as possible and in any event within five business days, of (a) the existence and status of any litigation, pending or threatened, which could, in the event of an unfavorable outcome, have a Material Adverse Effect considered in the aggregate, (b) any change in any material fact or circumstance represented or warranted in this Agreement, (c) a default or any event or occurrence which with lapse of time or notice or both could become an event of default under a Material Contract, and (d) any event or occurrence that has caused or may reasonably be expected to cause a Material Adverse Effect.

Section 7.9 Notices of Default. The Target shall give the Buyer notice of any occurrence, or set of facts that constitutes, or may (with the passage of time or the giving of notice) constitute, an event of default under any of the Material Contracts as soon as possible, but in no event more than twenty (20) days after the happening of such occurrence or set of facts.

Section 7.10 Compensation. The Target will not create or amend any stock option, bonus, profit sharing, stock purchase, deferred compensation, retainer, pension, retirement or other compensation, benefit, welfare or incentive plans or contracts, nor will it change the compensation of any Employee, except (in each instance) in the ordinary course of business consistent with past practices and after written notice of such proposed change, amendment or other proposed action is provided to Buyer reasonably in advance of the implementation thereof, which notice shall provide reasonable detail of such proposed change, amendment or other proposed action.

Section 7.11 Business With Affiliates. The Target will not at any time make any loans or advances to, guarantee any indebtedness of, or otherwise engage in business with their officers, directors, Shareholder (other than Buyer), or any of their respective Affiliates, except and only in the ordinary course of business on terms no less favorable than those available at the same time from non-Affiliated Persons.

Section 7.12 Change in Corporate Structure; Sale of Assets. The Target will not (a) permit its Articles of Incorporation to be amended, (b) amend its by-laws in a manner which would result in such by-laws conflicting with any provision of this Agreement or any of the other Ancillary Agreements, (c) sell, lease, or otherwise dispose of all or substantially all of its properties and Assets, except as contemplated by this Agreement, or (e) issue any shares of its capital stock or any securities convertible into, or exercisable or exchangeable for, shares of its capital stock.

Section 7.13 Guarantee. The Target will not at any time become a guarantor or surety of or pledge its credit on any undertaking of a third party except (a) in connection with the debt of the Target, or (b) bank that has issued a letter of credit in favor of the Target.

Section 7.14 Indebtedness. The Target will not directly or indirectly create, incur, assume, suffer to exist, or be or remain liable with respect to, any Indebtedness or obligation other than current accounts payable and similar current Liabilities incurred in the ordinary course of the business of the Target.

Section 7.15 Mortgages, Pledges, and Liens. Neither the Target nor the Seller will make, create, incur or suffer, or permit to be created or incurred or to exist any mortgage, pledge, Lien, charge, or other encumbrance or security title or interest of any kind upon or in any of their properties, the Assets, or assets now owned or hereafter acquired, except Liens for Taxes, assessments, or governmental charges not at the time due or which are being contested in good faith by appropriate proceedings.

Section 7.16 Liquidation and Dissolution. The Target will not take, and Seller will not permit Target to take, any action to place Target in dissolution, liquidation, or receivership.

Section 7.17 Issuance of Capital Stock; Distributions. Except for PEI's distribution of \$268,000 in dividends to its shareholders prior to the Closing Date, Target will not issue any capital stock, warrants, options, or other rights to purchase capital stock, or indebtedness convertible into capital stock and will not make any distributions, in cash, property or securities, in respect of any its Shares.

Section 7.18 Acquisitions, Mergers, and Dissolutions. The Target will not, and will not permit any subsidiary to, directly or indirectly, acquire all or any substantial portion of the property, assets, or capital stock or Control of, or interest in, any Person (including, but not limited to, any new subsidiary), or merge or consolidate with any Person without the prior written consent of Buyer, which shall not be unreasonably withheld as to the acquisition of assets or business that are made consistent with the prior practices of the Target.

Section 7.19 Sale of Assets. Target will not directly or indirectly, sell, lease, or otherwise dispose of all or any substantial part of its Assets, except (a) sales of inventory in the ordinary course of business, and (b) sales of equipment for a fair and adequate consideration, provided that if such equipment is sold, and a replacement is necessary for the proper operation of the business of Target, Target will replace such equipment with adequate equipment.

Section 7.20 New Businesses. Target will not, directly or indirectly, engage in any business other than the business in which it is presently engaged.

Section 7.21 Capital Expenditures. Target will not, directly or indirectly, make expenditures for the acquisition, construction, improvement or replacement of fixed or capital assets or leaseholds (excluding, however, expenditures properly attributable or chargeable to repairs or maintenance), other than such expenditures that (a) are of or related to assets or leaseholds used or useful in the normal business operations of such Target or its subsidiaries, and (b) are in such amounts and for such items as are consistent with such Target's past practices; and provided, further, that such Target shall notify the Buyer in advance of each such expenditure, which notice shall be in writing and shall be accompanied by a schedule providing reasonable detail concerning the timing, purpose and amount of such expenditure and provided further that, prior to making such expenditure, such Target shall provide Buyer, in writing, with such other information concerning such expenditure as the Buyer may reasonably request.

Section 7.22 Fiscal Year and Accounting Methods. Target will not change its fiscal years or method of accounting (other than immaterial changes in methods), except to the extent necessary to comply with generally accepted accounting principles.

## ARTICLE VIII

### CONDITIONS OF THE BUYER'S OBLIGATION TO CLOSE

The obligations of the Buyer under this Agreement are subject to the conditions set forth below, which conditions may be waived by the Buyer.

Section 8.1 Representations and Warranties True. The representations and warranties of the Seller and Target contained in this Agreement shall be true and correct in all respects on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made on and as of the Closing Date. Notwithstanding this Section 8.1, the lists set out on Schedules 4.34(a) and (b) of the Disclosure Schedules will be true and correct in all respects as of the date of execution of this Agreement and as updated thereafter upon the request of Buyer.

Section 8.2 Compliance with Agreement. On or before the Closing Date, the Seller shall have complied in all material respects with and duly performed all agreements and conditions on its part to be complied with and performed pursuant to or in connection with this Agreement, including without limitation delivery of the Updated Financial Statements, Employment Agreements, and Noncompete Agreements. At the Closing, the Seller shall have delivered the documents and instruments required to consummate the transactions contemplated under this Agreement.

Section 8.3 No Legal Proceedings. No Action shall have been instituted or threatened to restrain or prohibit the Merger, and on the Closing Date there shall be no Actions pending or threatened against or affecting the Seller or the Target that involve a demand for any judgment or

Liability, whether or not covered by insurance, and that would have a Material Adverse Effect on the Target.

Section 8.4 Opinion of Counsel for the Seller. The Buyer shall have received a favorable opinion of Smith, Thompson, Shaw & Manausa dated as of the Closing Date in the form set forth on Exhibit G attached hereto.

Section 8.5 Consents. All necessary consents, authorizations and other approvals, and the required consents described in Schedules 4.4 and 4.32 of the Disclosure Schedules, required by law for consummation of the transactions contemplated hereby shall have been obtained and all waiting periods required by law shall have expired.

Section 8.6 No Material Adverse Effect. No Material Adverse Effect shall have occurred with respect to the Target.

Section 8.7 Financing. Buyer shall either have secured financing necessary in order for it to consummate the transactions contemplated hereunder, on terms satisfactory to the Buyer in its sole discretion, or Buyer shall have determined that the Target has bank and other financing that is adequate for the operations of Target, as contemplated by Buyer, and that is on terms acceptable to Buyer in its sole discretion.

Section 8.8 Due Diligence. Buyer shall have satisfactorily completed its due diligence investigation of the Target, the Assets, liabilities, pending or threatened litigation, the Target's financial condition, and environmental status, and any other aspects of the Target's business that the Buyer may deem relevant.

Section 8.9 Option Agreement. Prior to the Closing, CW and the Buyer shall have entered into the Option Agreement.

Section 8.10 Material Adverse Effect with Respect to Buyer. No event, change or effect shall have occurred that is material and adverse to the business, assets, condition (financial or otherwise), results of operations, management, manner of conducting business, contractual rights, properties, liabilities or prospects of the Buyer.

Section 8.11. Qualification. Buyer shall have obtained all qualifications, approvals or consents necessary to permit it to perform within the State of Florida all obligations of the Target under any contracts from, with or under the control or supervision of the United States Department of Transportation.

Section 8.12 Closing of Stock Purchase Agreement. The transactions contemplated by the Stock Purchase Agreement shall have been consummated.

ARTICLE IX  
CONDITIONS OF THE SELLER'S OBLIGATION TO CLOSE

The obligations of the Seller under this Agreement are subject to the conditions set forth below, which conditions may be waived by the Seller.

Section 9.1 Representations and Warranties True. The representations and warranties of the Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date.

Section 9.2 Compliance with Agreement. On or before the Closing Date, the Buyer shall have complied in all material respects with and duly performed all agreements and conditions on its part to be complied with and performed pursuant to or in connection with this Agreement. At the Closing, the Buyer shall have delivered the documents and instruments required to consummate the transactions contemplated by this Agreement.

Section 9.3 No Legal Proceedings. No Action shall have been instituted or threatened to restrain or prohibit the purchase of the Shares by the Buyer.

Section 9.4 Consents. All necessary consents, authorizations and other approvals required by law for consummation of the transactions contemplated hereby shall have been obtained and all waiting periods required by law shall have expired.

Section 9.5 Opinion of Counsel for the Buyers. The Seller shall have received a favorable opinion of Hallett & Perrin, P.C. dated as of the Closing Date in the form set forth on Exhibit H attached hereto.

Section 9.6 Option Agreement. Prior to the Closing, the CW and the Buyer shall have entered into the Option Agreement.

Section 9.7 Closing of Stock Purchase Agreement. The transactions contemplated by the Stock Purchase Agreement shall have been consummated.

ARTICLE X  
INDEMNIFICATION

Section 10.1 Indemnification by the Seller. Subject to the limitations set forth below, the Seller, and (before the Closing Date) the Target, jointly and severally, hereby agree to indemnify and hold the Buyer and (after the Closing Date) the Surviving Corporation harmless from and against any and all losses, Liabilities, obligations, penalties, assessments, fines, costs, damages, claims, and expenses (collectively, "Damages") that the Buyer or the Surviving Corporation may sustain by reason of:

- (a) a determination by a Governmental Authority that either Target or the Surviving Corporation owes additional Taxes relating to a taxable year ending on or before December 31, 2000;

(b) the failure of the Seller or Target to disclose any Liabilities arising in connection with the operation of the Target's business on or before the Closing;

(c) the breach or inaccuracy of, or failure to comply with, any of the warranties or representation of the Seller or Target contained in this Agreement; and

(d) the breach of, or failure to comply with, any of the covenants or agreements of Seller or Target contained in this Agreement.

Section 10.2 Indemnification by the Buyer. The Buyer agrees to indemnify and hold Seller harmless from and against any and all Damages that Seller may sustain by reason of the breach or inaccuracy of, or failure to comply with, any of the warranties, representations, conditions, covenants or agreements of the Buyer contained in this Agreement.

Section 10.3 Survival. The indemnifying Party's indemnification obligations shall survive indefinitely, to the extent permitted by applicable law, with respect to (i) the breach of any covenant or agreement, (ii) the breach of any representations or warranties contained in Sections 4.10 (Tax Liabilities), 4.11(a) (Title to Assets) and 4.22 (Environmental Matters). An indemnifying Party's indemnification obligations shall continue as to any claim or demand therefor made within any applicable survival period even though Damages are not imposed or incurred until after the survival period.

Section 10.4 Limitations on Indemnification. A party shall be liable for only 50% of any indemnification claims under this Article X until the aggregate amount of indemnification claims hereunder exceeds \$1,000,000, whereupon the indemnifying Party shall thereafter be liable for all indemnification claims in excess of such amount. In no event shall the acceptance by a party to be indemnified of any money or other tangible properties as partial compensation or indemnification from any source for the amount of its Damages prevent the Party to be indemnified from seeking compensation or indemnification from any source for the rest of the entire amount of its or his Damages. The indemnity obligation of any Party provided for in this Article X, when aggregated with such Party's indemnity obligation under the Stock Purchase Agreement, shall in no event exceed \$1,000,000. Notwithstanding the foregoing, the foregoing provisions of this Section 10.4 shall not apply to (i) breaches of representations or warranties contained in Section 4.11(a) (Title to Assets), or (ii) the breach of any covenant or agreement contained in this Agreement.

#### Section 10.5 Indemnification Procedure.

(a) Procedures for Third-Party Indemnification. In those instances in which a third-party Action is asserted against any party hereto, or any party hereto is made a party defendant in any third-party Action, and such Action involves a matter that is the subject of the indemnification provided for by this Article, then such party (an "Indemnified Party") shall give prompt written notice (the "Notice of Claim") to the other party hereto (the "Indemnifying Party") of such claim, action or proceeding. With respect to any claim or demand set forth in a Notice of Claim relating to a third party claim, the Indemnifying Party may defend, in good faith and at its expense, any such claim or



demand, and the Indemnified Party, at their expense, shall have the right to participate in any such third party claim. So long as the Indemnifying Party is defending in good faith any such third party claim, the Indemnified Party shall not settle or compromise such third party claim. The Indemnified Party shall make available to the Indemnifying Party or its representatives all records and other materials reasonably required by them for use in contesting any third party claim and shall cooperate fully with the Indemnifying Party in the defense of all such claims.

(b) Procedures for Indemnification – Other Claims. A claim for indemnification under this Article for any matter not involving a third-party claim may be asserted by notice to the party from whom indemnification is sought.

(c) Brokerage Indemnity. The Buyer, on the one hand, and Seller, on the other hand, each represent to the other that no broker or finder has been involved with any of the transactions relating to this Agreement. In the event of a claim by any other broker or finder that such broker or finder represented or was retained by the Seller on the one hand, or the Buyer, on the other hand, in connection herewith, the Seller or the Buyer, as the case may be, agree to indemnify and hold the other harmless from and against any and all Damages resulting from such claim, including, without limitation, reasonable attorneys' fees and disbursements, which may be incurred in connection with such claim.

## ARTICLE XI TERMINATION AND ABANDONMENT

Section 11.1 Termination Events. This Agreement may be terminated:

- (a) by mutual written agreement of the Buyer and CW;
- (b) by either the Buyer or Seller if the Closing has not occurred by 11:59 p.m., December 31, 2001, upon written notice by such terminating party, provided that at the time such notice is given, a material breach of this Agreement by such terminating party shall not be the reason for the failure of the Closing to occur;
- (c) subject to the provisions of Section 11.2, by the Buyer, by written notice to the Seller, if there has been a material violation or breach of any of the Target's or Seller's covenants or agreements made herein or in connection herewith (including without limitation in the Stock Purchase Agreement) or if any representation or warranty of the Seller made herein or in connection herewith proves to be materially inaccurate or misleading and reflects a Material Adverse Effect on the Target;
- (d) subject to the provisions of Section 11.2, by written notice to the Buyer, if there has been a material violation or breach of any of the Buyer's covenants or agreements made herein or in connection herewith (including without limitation in the Stock Purchase Agreement) or if any representation or warranty of the Buyer made herein or in connection herewith proves to be materially inaccurate or misleading; or

- (e) Upon termination of the Stock Purchase Agreement for any reason.

Section 11.2 Effect of Termination. If this Agreement is terminated as provided in Section 11.1, then there shall be no Liability or obligation on the part of any party hereto (or any of their respective Affiliates) for costs, expenses, damages or otherwise; provided, that if the Buyer terminates this Agreement pursuant to Section 11.1 (c) or the Seller terminates this Agreement pursuant to Section 11.1 (d), the non-terminating party shall remain liable for any breach hereof.

## ARTICLE XII MISCELLANEOUS

Section 12.1 Benefit of Parties: Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, legal representatives and permitted assigns. The Agreement may not be assigned by either the Buyer or the Seller except with the prior written consent of the other party or parties; provided, that the Buyer may assign its rights hereunder (a) in connection with obtaining financing with respect to the transactions contemplated hereby or (b) to any affiliate of Buyer, or to any wholly-owned direct or indirect subsidiary of the Buyer; provided that no such assignment by the Buyer thereunder shall relieve the Buyer of any of its obligations hereunder. Nothing herein contained shall confer or is intended to confer on any third party or entity that is not a party to this Agreement any rights under this Agreement.

Section 12.2 Further Assurances. Each party hereby agrees at any time and from time to time after the Closing, upon the request of any other party, to do, execute, acknowledge and deliver, or to cause to be done, executed, acknowledged and delivered, all such further acts, assignments, transfers, powers of attorney, and assurances as may be required to transfer the Shares and to carry out the terms and conditions of this Agreement.

### Section 12.3 Governing Law: Choice of Forum: Jurisdiction.

(a) this Agreement shall be governed by and construed and interpreted in accordance with the substantive law of the State of Delaware applicable to agreements made and to be performed entirely within such state, including all matters of enforcement, validity and performance;

(b) the parties hereto agree that any action commenced at law or in equity by either party, or by any other person claiming an interest arising, directly or indirectly, from this Agreement to interpret, construe or enforce this Agreement, or to resolve any case, controversy or dispute arising hereunder, shall be brought exclusively in either the Circuit Courts of the State of Florida sitting in Tallahassee, Florida or the United States District Court for the Northern, District of Florida, Tallahassee Division. The parties further agree to, and hereby do, waive the defenses of *forum non conveniens* or improper venue with respect to any action brought by the other party in either such courts. The parties hereto further agree that any action commenced in or transferred to the United

States District Court for the Northern District of Florida shall designate Tallahassee, Florida as the place of trial;

(c) the parties hereto agree that by executing and delivering this Agreement, they have each submitted themselves to the jurisdiction of the State of Florida.

Section 12.4 Notices. All notices, requests, demands and other communications provided for by this Agreement shall be in writing and shall be deemed to have been given when hand delivered, when received if sent by telecopier or by same day or overnight recognized commercial courier service (provided written or electronic confirmation of receipt is received) or three business days after being mailed in any general or branch office of the United States Postal Service, enclosed in a registered or certified postpaid envelope, addressed to the address of the parties stated below or to such changed address as such party may have fixed by notice:

If to CW or Target: [Name of addressee]  
c/o C.W. Roberts Contracting, Inc.  
P.O. Box 188  
Highway 20 East  
Hosford, Florida 32334  
Telecopy: (850) 379-8188

In each case,  
with a copy to: Smith, Thompson, Shaw & Manausa  
2075 Centre Point Blvd.  
Tallahassee, FL 32308  
Telecopy: (850) 402-1508  
ATTN: Crit Smith

If to the Buyer or CPAC: Construction Partners, Inc.  
2623 Montgomery Hwy, Suite 2  
Dothan, Alabama 36303  
(P.O. Box 8157, Dothan, Alabama 36304)  
Telecopy: (334) 673-9864  
ATTN: President

With copies to:

SunTX Capital Partners, L.P., General Partner  
SunTX Fulcrum Fund, L.P.  
1700 Pacific, Suite 1600  
Dallas, Texas 75201  
Telecopy: (214) 855-0640  
ATTN: Craig Jennings

Hallett & Perrin, P.C.  
717 N. Harwood, Suite 1400  
Dallas, Texas 75201  
Telecopy: (214) 953-3154  
ATTN: Timothy R. Vaughan

provided, that any notice of change of address shall be effective only upon receipt.

Section 12.5 Entire Agreement. This Agreement, including the Exhibits (including the Confidentiality Agreement) and Schedules attached hereto, sets forth the entire agreement and understandings among the parties and merges and supersedes all prior discussions, agreements and understandings of every kind and nature among them as to the subject matter hereof, and no party shall be bound by any condition, definition, warranty or representation (including, without limitation, any warranties or representations that are oral or in any offering documents or other materials given to Buyer) other than as expressly provided for in this Agreement or as may be on a Date on or subsequent to the Date hereof duly set forth in writing signed by each party that is to be bound thereby. Unless otherwise expressly defined, terms defined in this Agreement shall have the same meanings when used in any Exhibit or Schedule and terms defined in any Exhibit or Schedule shall have the same meanings when used in this Agreement or in any other Schedule. In the event of any inconsistency in the definition of terms used in this Agreement and in the Exhibits and Schedules hereto, the definitions contained in this Agreement shall control. This Agreement (including the Exhibits and Schedules hereto) shall not be changed, modified or amended except by a writing signed by each party to be charged and this Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by each party to be charged.

Section 12.6 Representation by Counsel. The parties hereto represent and agree that (1) they have been represented by independent counsel of their own choosing, (2) they have had the full right and opportunity to consult with their respective attorneys and other advisors and have availed themselves of this right and opportunity, (3) their authorized agents and officers have carefully read and fully understand this Agreement in its entirety and have had it fully explained to them by their counsel, (4) they are fully aware of the contents hereof and the meaning, intent and legal effect thereof, and (5) their authorized agents or officers are competent to execute this Agreement and have executed this Agreement free from coercion, duress or undue influence. Each party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against the party that drafted it is of no application and is hereby expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intentions of the parties and this Agreement.

Section 12.7 Section Headings. The headings in the sections, paragraphs and schedules of this Agreement are inserted for convenience of reference only and shall not constitute a part hereof.

Section 12.8 Expenses. The Seller and the Buyer shall pay all of their own expenses relating to the transactions contemplated by this Agreement, including, without limitation, the fees and expenses of their respective counsel, accountants and financial advisors; provided, however, that the Target shall pay the costs and expenses incurred to consummate the pre-Closing transactions set forth in Article III. Any other costs paid by the Target on behalf of the Seller shall be repaid to the Buyer at the Closing, without regard to the limitations of Section 10.1.

Section 12.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

Section 12.11 Exhibits and Schedules. All of the Exhibits and Schedules attached hereto are incorporated herein and made a part of this Agreement by reference thereto.

Section 12.12 WAIVER OF TRIAL BY JURY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, CROSS CLAIM OR COUNTERCLAIM BROUGHT BY ANY PARTY HERETO AGAINST ANY OTHER PARTY HERETO ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE RELATIONSHIP OF THE PARTIES CREATED HEREBY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written, effective for all purposes as of the Effective Date.

**BUYER:**

CONSTRUCTION PARTNERS, INC.

By: Craig Jennings  
Name: Craig J. Jennings  
Title: Vice President

**CPAC:**

CONSTRUCTION PARTNERS ACQUISITION  
CORP.

By: Craig Jennings  
Name: Craig Jennings  
Title: Vice President

**TARGET:**

PLANTATION EQUIPMENT, INC.

By: C. W. Roberts, III  
Name: C. W. Roberts, III  
Title: President

**SELLER:**

C. W. Roberts, III  
C. W. ROBERTS, III