Trade Commission has authorized its staff to commence administrative proceedings or proceedings in Federal court or (ii) the Antitrust Division of the U.S. Department of Justice, only if the U.S. Department of Justice shall have publicly announced or shall have advised Seller or Buyer that the U.S. Department of Justice has authorized its staff to commence administrative proceedings or the Assistant Attorney General has determined to commence proceedings in Federal court, in either case, seeking any of the remedies described in the preceding sentence. No litigation brought by any third party shall be pending based on matters referred to in Section 3.21.

ARTICLE X

Conditions to Seller's Obligation to Close

Seller's obligation to consummate the Asset Purchase is subject to the satisfaction, or written waiver by Seller, on or prior to the Closing Date of all of the following conditions:

Section 10.1 Representations, Warranties and Covenants of Buyer. (a) To Buyer's knowledge as of the date hereof, the representations and warranties of Buyer contained in this Agreement shall have been true and correct in all material respects as of the date of this Agreement.

(b) The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date (except for representations and warranties that expressly speak only as of a specific date or time other than the Closing Date which need only be true and correct in all material respects as of such date or time).

(c) The covenants and agreements of Buyer to be performed on or before the Closing Date in accordance with this Agreement shall have been duly performed in all material respects.

(d) Seller shall have received a certificate of Buyer to the effect that the conditions specified in paragraphs (a), (b) and (c) of this Section 10.1 have been satisfied.

Section 10.2 Filings; Consents; Waiting Periods. The waiting period (and any extension thereof) under the HSR Act shall have expired or shall have been terminated, and any Approval required to be obtained prior to the Closing under the Competition Act (Canada) or the Investment Canada Act (Canada) shall have been obtained. Any consent or approval of the