

organized and existing and in good standing under the laws of their respective states of incorporation, (ii) this Agreement has been duly authorized, executed and delivered by CYANAMID and DEVELOPMENT and constitutes the legal, valid and binding obligation of CYANAMID and DEVELOPMENT, enforceable in accordance with its terms, (iii) the shares of CYANAMID Common Stock to be issued and delivered in accordance herewith, will, upon such issuance and delivery, be validly issued and outstanding, fully-paid and nonassessable, registered under the Securities Exchange Act of 1934, as amended, and fully listed on the New York Stock Exchange, and (iv) all corporate and other proceedings required to be taken by CYANAMID and DEVELOPMENT in connection with the execution, delivery and performance of this Agreement have been duly and validly taken.

(b) The representations and warranties in § 3.02 shall be true on and as of the Effective Date of the Merger in all material respects with the same effect as though made on and as of such date; all agreements to be performed by CYANAMID and DEVELOPMENT hereunder on or before the Effective Date of the Merger shall have been duly performed; and CYANAMID and DEVELOPMENT shall have delivered to ERVIN a certificate, dated the Effective Date of the Merger and signed by two corporate officers of each of CYANAMID and DEVELOPMENT, to such effect.

(c) All corporate and other proceedings to be taken in connection with the transactions contemplated by this agreement, and all documents incident thereto, shall be satisfactory in form and substance to ERVIN and its counsel.

## ARTICLE VII

### INDEMNIFICATION

§ 7.01 INDEMNITY BY CYANAMID. CYANAMID shall indemnify and hold harmless the ERVIN Stockholders from and against any and all actions, suits, proceedings, claims, demands, assessments, judgments, liability, loss, damage, cost or expense arising out of any of the following:

(a) Any misrepresentation contained in § 3.02 or any breach of any warranty of, or any covenant, agreement or other provision to be performed by, CYANAMID hereunder.

(b) Any claim for a brokerage commission or similar payment in connection with any transaction contemplated by this Agreement insofar as such claim is based upon agreements alleged to have been made, or other action alleged to have been taken, by CYANAMID.

§ 7.02 LIMITATION. Any claim under this Article VII must be asserted within five years after the Effective Date of the Merger.

## ARTICLE VIII

### MISCELLANEOUS

§ 8.01 TERMINATION. This Agreement may be terminated and the Merger abandoned at any time prior to the Effective Date of the Merger, whether before or after approval thereof by the stockholders of either or both of the Constituent Corporations:

(a) By either party, without liability to the other, prior to the Effective Date of the Merger, upon notice to the other, in the event that (i) the performance by either party of its obligations hereunder shall have been enjoined by a court of competent jurisdiction and such injunction shall not have been vacated on or prior to the Effective Date of the Merger, or an action in which such an injunction is sought shall have been instituted against either party and shall be pending as of the Effective Date of the Merger, or (ii) default shall be made by the other party, on or before the Effective Date of the Merger, in the performance of any agreement to be performed by such other party hereunder and such default shall not have been cured on or prior to the Effective Date of the Merger, or (iii) any of the conditions precedent to the performance of the obligations of the terminating party shall not have been fulfilled at or prior to the Effective Date of the Merger and such nonfulfillment shall not have been waived by notice to the other party,