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

1. Name of conveying party(ies):
   PictureTel Corporation

   5/15/02

   Additional name(s) of conveying party(ies) attached? | Yes [X] No

2. Name and address of receiving party(ies)
   Name: Polycom, Inc.
   Internal Address: ________________________________

   Street Address: 1565 Barber Lane

   City: Milpitas   State: CA   Zip: 95035
   Additional name(s) & address(es) attached? | Yes [X] No

3. Nature of conveyance:
   [X] Merger
   [ ] Assignment
   [ ] Security Agreement
   [ ] Change of Name
   [ ] Other

   Execution Date: May 24, 2001

4. Application number(s) or patent number(s):
   If this document is being filed together with a new application, the execution date of the application is:
   A. Patent Application No.(s)
      (See attached Schedule B)
   B. Patent No.(s)
      (See attached Schedule A)
   Additional numbers attached? [X] Yes [ ] No

5. Name and address of party to whom correspondence concerning document should be mailed:
   Name: Susan Yee
   Internal Address: Carr & Ferrell LLP

   Street Address: 2225 East Bayshore Road, Suite 200

   City: Palo Alto   State: CA   Zip: 94303

6. Total number of applications and patents involved: 61

7. Total fee (37 CFR 3.41) $2440
   [X] Enclosed
   [X] Authorized to be charged to deposit account

8. Deposit account number:
   06-0600
   (Attach duplicate copy of this page if paying by deposit account)

   To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.
   Susan Yee, Reg. No. 41,388
   Name of Person Signing
   Signature
   5/19/02
   Date

Total number of pages including cover sheet, attachments, and documents: 103

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

PATENT
REEL: 12896 FRAME: 0291
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<td>Reduction of Background Noise for Speech Enhancement</td>
<td>Hell, Brant M. &amp; Chu, Peter L. to PictureTel Corporation</td>
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<td>Method and Apparatus Employing Adaptive Filtering for Efficiently Communicating Image Sequences</td>
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<td>5,644,690</td>
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<td>Spatially Adaptive Blur Filter</td>
<td>Stevers, John C. &amp; Bruder, John E. to PictureTel Corporation</td>
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<td>5,767,897</td>
<td>Video Conferencing System</td>
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<td>4,703,349</td>
<td>Method And Apparatus For Multi-Dimensional Signal Processing Using A Short Space Fourier Transform</td>
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<td>5,883,252</td>
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<td>6,285,561</td>
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<td>Channel Aggregation Having Low Latency And Overhead</td>
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<td>Variable length coding using a plurality of region bit allocation patterns</td>
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<td>Chu, Peter L. and Wang, Hong to PictureTel Corporation</td>
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COMPANY SCHEDULE TO THE
AGREEMENT AND PLAN OF MERGER
BY AND AMONG POLYCOM, INC., PHARAOH ACQUISITION CORP.
AND PICTURESTEL CORPORATION
DATED MAY 24, 2001
COMPANY DISCLOSURE SCHEDULE

In connection with the Agreement and Plan of Merger dated as of May 24, 2001 by and among Polycom, Inc., Pharaoh Acquisition Corp. and PictureTel Corporation (the "Company") (the "Agreement"), the Company hereby delivers this Disclosure Schedule to the Company's representations, warranties and other responses given in the Agreement. The section numbers in this Disclosure Schedule correspond to the section numbers in the Agreement; provided, however, that any information disclosed herein under any section number shall be deemed to be disclosed and incorporated in any other section of the Agreement where such disclosure would be deemed reasonably apparent. Disclosure of any information or document herein is not a statement or admission that it is material or required to be disclosed herein. References to any document do not purport to be complete and are qualified in their entirety by the document itself. Capitalized terms used but not defined herein shall have the same meanings given them in the Agreement.

Section D—Recitals

1) Norman Gaut
2) Lewis Jaffe
3) Ralph Walker
4) Dalton Edgecomb
5) John Peterman
6) Curtis Stewart
7) Timothy Root
8) Wayne McAllister
9) David Snow
10) Jonathan Schau
11) Jonathan Kosheff
12) Craig Clapp
13) Amit Akad
14) Edward Semonite

Section 3.1(b) - Subsidiaries

See Exhibit A.

Company owns an equity interest in Iphysicians Networks, Inc. and Zydacrom, Inc.

Section 3.3(a) - Capitalization

See Exhibit B.
The addresses of the optionees are available at the Company.

The vesting of all outstanding Company Stock Options accelerate upon a change in control as contemplated by this Agreement and the Company Plans.
The Board of Directors of the Company has voted to terminate the Company's ESPPs on the earlier of (i) immediately prior to the consummation of the Offer or (ii) August 31, 2001. If the ESPPs are terminated immediately prior to the consummation of the Offer, the Company shall accelerate the exercise of purchase rights under the ESPPs on a basis such that shares purchased under the ESPPs, upon exercise, shall be outstanding prior to, and shall be exchanged in, the Tender or the Merger.

Shares of Common Stock have been reserved for issuance upon a conversion of 4,478,708 shares of Series A Preference Stock and 4,938,000 shares of Series B Preference Stock pursuant to the Series A and Series B Certificate of Designations, respectively.

Section 3.3(b) – Capitalization

See disclosure made in Exhibit B.

The Company assumed certain warrants in connection with its purchase of Starlight Networks Inc. Those former Starlight Networks, Inc. warrant holders (the “Warrant Holders”) now hold warrants (the “Warrants”) to purchase an aggregate of 2,723 shares of the Company’s Common Stock. Of the Warrants, 1006 have an exercise price of $33.62 per share and 1717 have an exercise price of $24.44 per share.

The holders of Series B Preference Stock have a right of first refusal to acquire new securities issued by the Company in order to maintain their rights under a certain Investor Rights Agreement dated July 2000.

The holders of Series A and B Preference Stock also have registration rights with respect to their shares pursuant to a certain Investor Rights Agreement dated February 1999 and a certain Investor Rights Agreement dated July 2000, respectively.

The Warrant Holders may have registration rights with respect to the underlying shares of the Warrants pursuant to the terms of the Warrants.

The Rights Agreement and the three amendments thereto gives anti-takeover protection with respect to the holders of Company Common Stock.

Shares of Common Stock have been reserved for issuance upon a conversion of 4,478,708 shares of Series A Preference Stock and 4,938,000 shares of Series B Preference Stock pursuant to the Series A and Series B Certificate of Designations, respectively.

Section 3.5(a) – No Conflict

(i) None.
(ii) None.
(iii) As Panther is aware the Company (and various subsidiaries) is a party to Loan and Security Agreement by and between the Company and certain subsidiaries and Congress Financial Corporation (New England) ("Congress"), dated August 21, 2000 (the "Congress Loan and Security Agreement") and related agreements whereby the Company's assets and assets of various subsidiaries are pledged as collateral, and the consent of Congress is required.
Company will need lease consents on the following properties:

1) 50 Minuteman Road, Andover, MA
2) 100 Minuteman Road, Andover, MA

There are other nonmaterial leases that also require consent.

Section 3.6(b) - Compliance

As disclosed in the Company SEC reports, in May 1999, the Company was informed that the SEC had initiated a formal investigation of matters relating to the Company's 1997 restatement of its earnings. The Company has cooperated with the investigation and will continue to do so. The Company does not believe this investigation will have a Company Material Adverse Effect.

Section 3.7(a) – SEC Filings

The Company has made all the documents filed with the SEC since December 31, 1999 available to the Parent through EDGAR.

Section 3.8 – 2001 Restructuring Plan

See Exhibit C for Company's 2001 Restructuring Plan.

The Company has the liabilities contemplated by this Merger Agreement.

Section 3.9 – Change of Events

See Exhibit C for Company's 2001 Restructuring Plan.

The Company may issue a bonus as contemplated in a letter dated May 24, 2001 from Company to the Parent. The letter is attached hereto as Exhibit I.

See disclosure of FVC and CN transaction under Section 5.1(c).

The Company will enter into amendments to the Change of Control Agreements referenced in Section 3.11(b) as contemplated by the Merger Agreement.

Section 3.10 – Company Litigation

The Company is the Plaintiff in a suit against Cerepoint, Inc. The Company believes that Cerepoint does not have grounds for a material counter-claim.

The Company is the Defendant in a suit filed by USI, Inc. The Company doesn't believe that a judgment adverse to the Company would result in a Company Material Adverse Effect.
The Company received two letters from Tandberg asa regarding possible action with respect to a proposed transaction between the Company and Tandberg. Copies of these letters are attached hereto as Exhibit H1 and H2.

The Company is the defendant in a patent infringement suit filed on or about May 23, 2001 by RSI Systems, Inc. The Company has not yet had the chance to form an opinion either on the merits of RSI’s claims or the potential exposure the Company may have in connection with this suit.

See Syndia disclosure in Section 3.16(e).

**Section 3.11(b) – Company Benefit Plans and Employment Agreements**

The Company has employment agreements with the following individuals:

- Norman Gaut
- Lawrence Bornstein (who has now left the Company)
- David Grainger (who has now left the Company)
- Bruce R. Bond (who has now left the Company)
- Catherine O’Rourke (who has now left the Company)
- Enzo Torresi
- Lewis Jaffe
- Edward Semonite
- Jonathan Kosheff
- David Snow
- Dalton Edgecomb
- W. Robert Kellegrew (who has now left the Company)
- Robert Byrnes

The Company has a Consultant Agreement with Enzo Torresi

The Company has in place the following employee plans:

- PictureTel Corporation 401(k) Retirement Plan
- PictureTel Corporation Employee Stock Purchase Plan
- PictureTel Corporation Foreign Subsidiary Employee Stock Purchase Plan
- Deferred Compensation Plan
- Non-Statutory Stock Option Plan

The Company has entered into Change in Control Agreements with:

- Norman Gaut
- Lewis Jaffe
- Dalton Edgecomb
- Jonathan Kosheff
- Edward Semonite
- David Snow
- Ralph Walker
- Amit Akkad
Craig Clapp
Wayne McAllister
John CN Peterman
Timothy Root
Jonathan Schau
Curtis Stewart

The Company has a Group Welfare Program for PictureTel Employees, which includes:
- Group Medical Insurance Program
- Employee Dental Benefit Plan
- Group Life & Accidental Death and Dismemberment Plan; Dependent Life Plan
- Business Travel Accident Plan
- Long Term Disability Income Plan
- Tuition Reimbursement Plan
- Flexible Spending Plan
- Dependent Care Reimbursement Account Plan
- Health Care Reimbursement Account Plan
- Pretax Premium Plan
- Short Term Disability Plan
- Employee Assistance Program
- Key Employee Severance Plan
- Key Employee Change in Control Severance Plan
- Special Change in Control Severance Plan

The Company also Company Pension Plans for employees in the UK, Holland, and Australia.
The Company also Group Life Insurance for employees in the UK, Germany, Holland, Hong Kong, Singapore, Korea and Australia.
The Company has Long Term Disability Plans for employees in the UK, Germany, Hong Kong, Singapore and Australia.
The Company has Short Term Disability Plans for employees in the UK, Germany, Hong Kong and Singapore.
The Company has Group Medical Insurance for employees in the UK, Germany, Holland, Hong Kong, Singapore, Korea and Australia.

The Company also has a consulting contract with Volt, Inc. under with Volt hires consultants for the Company.

See Exhibit D for a list of visas.

The percentage of the Company’s employee base for key employees is 7%.
The percentage of the Company’s employee base for exempt employees is 68%.
The percentage of the Company’s employee base for nonexempt employees is 25%.
The average employee salary for key employees is $114,000.
The average employee salary for exempt employees is $71,000.
The average employee salary for nonexempt employees is $40,000.
The average tenure for key employees is 6 years.
The average tenure for exempt employees is 4 years.
The average tenure for non-exempt employees is 4 years.

**Section 3.11(d) – Company Benefit Plans**

None.

**Section 3.11(g) – Company Benefit Plans**

The Company has an obligation to provide lifetime retiree health benefits to two former employees of MultiLink, Inc., Mr. J. Edward McAteer and spouse and Mr. Frank DiPasquale and spouse.

**Section 3.11(i) – Company Benefit Plans**

The vesting of all outstanding Company Stock Options accelerate upon a change in control.

As listed in 3.11(b) above, the Company has a Key Employee Change in Control Severance Plan, a Special Change in Control Severance Plan, a Deferred Compensation Plan, and a Non-Statutory Stock Option Plan, each of which will be triggered by the transaction contemplated by the Agreement. Additionally, the employment agreements and Change in Control agreements listed in 3.11(b) above contain further provisions regarding vesting and compensation which will be triggered by the transaction contemplated by the Agreement.

The Company may issue a bonus as contemplated in a letter dated May 24, 2001 from Company to the Parent. The letter is attached hereto as Exhibit I.

Depending in part on the value of the consideration received in the transactions contemplated by the Agreement and in part on the characterization of certain grants and payments received or to be received by selected employees of the Company, a portion of the benefits accrued or accruing to such employees under such agreements and plans could be treated as excess parachute payments under Section 280G of the Internal Revenue Code.

**Section 3.11(k) – Labor Matters**

None.

**Section 3.11(m) – International Employee Plan**

The Company maintains the PictureTel Corporation Foreign Subsidiary Employee Stock Purchase Plan.

**Section 3.12 – Restrictions on Business Activities**

The Company is subject to a noncompetition agreements, pursuant to the Technology Licensing Agreement between Intel Corporation and PictureTel Corporation dated July, 2000. This non-competition agreement limits the Company's ability to do business with respect to certain types of conference-call telephones.
The Company is subject to noncompetition agreements as set forth in (a) the Asset Purchase Agreement dated November 27, 2000, among Spectel Group Ltd., MultiLink, Inc., Spectel Limited, PictureTel Corporation and MultiLink, Inc. (Mass), (b) the Asset Purchase Agreement dated January 30, 2001 among Spectel Group Ltd., MultiLink, Inc (Del), Spectel(UL) Limited, PictureTel Corporation, PictureTel Audio Holdings, Inc. and MultiLink Europe Limited, and (c) the Asset Purchase Agreement dated October 4, 2000 by and among Starlight Networks, Inc., PictureTel Technology Corporation, PictureTel Corporation and AxessPoint, Inc. It is the Company's belief that none of such non-competition agreements will bind Parent or Parent's subsidiaries or affiliates (other than Company and its controlled subsidiaries and affiliates) in the ordinary conduct of its business.

Section 3.13(c) – Title to Property

See Exhibit E1 and E2.

Section 3.14 – Tax Matters

See Exhibit F1 and F2.

Depending on the value of the consideration received upon consummation of the Offer, certain key employees, as disclosed in 3.11(i), may receive a payment not deductible under 162(m) of the Code.

The disallowance of a deduction under Section 162(m) of the Code could apply to certain individuals who are party to a Non-Statutory Stock Option Plan and whose non-exempt renumeration would be over $1 million.

Section 3.16(a) – Intellectual Property

See Exhibit G.

Section 3.16(d) – Intellectual Property

(i) None
(ii) None
(iii) The ownership of the following three patents have been assigned to the Company and Microsoft jointly:

   Patent #: 5874960
   5949975
   6032188

On May 15, 2001 the Company received from Syndia Corporation a notice of a claim of Patent infringement regarding the Company’s manufacture, use, and sale of certain semiconductor chips and
integrated circuits, and more particularly of Syndia's patent regarding the general process of depositing a silicon dioxide thin layer on a silicon wafer.

On May 23, 2001 the Company received notice that it is the defendant in a patent infringement suit filed on or about May 23, 2001 by RSI Systems, Inc. ("RSI"). RSI claims that the Company's video conferencing equipment infringes RSI owned patents 5,802,281 and 6,073,192. The Company has not yet had the chance to form an opinion either on the merits of RSI's claims or the potential exposure the Company may have in connection with this suit.

Section 3.16(e) and (g) – Intellectual Property

The Company has created jointly the PictureTel 900 Video Conferencing System with Intel Corporation and the PictureTel 600 Video Conferencing System with Sharp Corporation. The Company has not (i) obtained exclusive ownership of such Company Intellectual Property, or (ii) obtained a perpetual, non-terminable license for such Company Intellectual Property. Nothing in this paragraph shall be deemed to limit the representations contained in Section 3.16(q) or 3.16(r).

Section 3.16(d), (e), (g), (h), (i) – Intellectual Property

The Company announced on May 8, 2001, an agreement with First Virtual Communications ("FVC") and CUseeMe Networks ("CN") (collectively, the "Parties"), pursuant to which the Parties will cross-license their technologies and software. The agreement also calls for the Company to receive a warrant for 15 percent of FVC's current outstanding stock and for the company to provide FVC with engineering personnel and a license for its Pure Point TM rich communications solution.

Section 3.16(h) – Intellectual Property

The Company has material contracts with respect to the licensing of Company Intellectual Property with the Lemelson Medical Education and Research Foundation, L.P., dated June 21, 1999; Mitsubishi Electric Corporations, dated March 1, 2000; and Nortel Networks Limited, dated October 4, 2000.

The Company has been granted a license from Microsoft to use Microsoft's Desktop Operating System in connection with the use of certain Company Intellectual Property.

Section 3.17(a) – Agreements, Contracts, and Commitments

See the employment, consultant and Change in Control agreements set forth in Section 3.11(b), above.

See also disclosure in Section 3.17(c).

Section 3.17(b) – Agreements, Contracts, and Commitments

See the disclosure in Section 3.11(b) and 3.11(i).
3.17(c) – Agreements, Contracts and Commitments

The Company has entered into Indemnification Agreements with all of its officers and directors who have held an officer or director position since the Company’s inception. Pursuant to each of these agreements, the Company is obligated to indemnify such officer or director with respect to all actions taken by such officer or director in his or her official capacity, to the fullest extent permitted by Delaware law. A form of such Indemnification Agreements is attached hereto as Exhibit J.

Section 3.17(d) – Agreements, Contracts, and Commitments

See Intel disclosure in Section 3.13.

See disclosure in Section 3.12.

Section 3.17(e) – Agreements, Contracts, and Commitments

See FVC disclosure in Section 3.11.

Section 3.17(f) – Agreements, Contracts, and Commitments

See FVC and CN disclosure made in Section 3.11.

The Company has a joint marketing and cross-distribution contract with VTEL, Inc.

The Company has development and OEM contracts with Sharp Corporation and Solectron, Inc.

The Company has agreements with Microsoft regarding their joint ownership of three patents as disclosed in Section 3.17(a)(iii).

The Company has a marketing contract with ImageCom Limited.

Section 3.17(g) – Agreements, Contracts and Commitments

See FVC and CN disclosure made in Section 3.11.

Section 3.17(h) – Agreements, Contracts, and Commitments

The Company may license portions of certain source code to facilitate the use of Company business products.

Section 3.17(i) – Agreements, Contracts, and Commitments

See Congress disclosure in Section 3.5(a)(iii).

Section 3.17(j) – Agreements, Contracts, and Commitments

The Company entered into a settlement agreement with RevNet, Inc. on October 30, 2000. See Company SEC Reports for additional information.
Section 3.17(k)--Agreements, Contracts, and Commitments

The Company is not a party to or bound by any agreement with a customer of the Company that obligates payment by a customer in excess of $250,000 in any 12 month period. Although not within the scope of this representation, attached hereto as Exhibit K is a supplemental list of the customers of the Company that have, over the last 12 months, made payments to the Company for products and/or services in excess of $250,000.

Section 5.1.

See disclosures of 2001 Restructuring Plan in Exhibit C.

Section 5.1(a) – Business Conduct

None.

Section 5.1(b) – Business Conduct

As Parent is aware, the Company will amend the 1998 Acquisition Stock Option Plan, as required by Section 6.8 of the Merger Agreement.

The Company may issue a bonus as contemplated in a letter dated May 24, 2001 for Company to the Parent. The letter is attached hereto as Exhibit I.

Section 5.1(c) and (i) – Business Conduct

The Company announced on May 8, 2001, an agreement with FVC and CN, pursuant to which the Parties cross-license their technologies and software. The agreement also calls for the Company to receive a warrant for 15 percent of FVC’s current outstanding stock and for the company to provide FVC with engineering personnel and a license for its Pure Point TM rich communications solution. Notwithstanding the foregoing, the Company will not enter into a definitive agreement with FVC without the prior written consent of Parent (which consent, or refusal thereof, shall not be unreasonably delayed; provided that Parent shall not refuse to consent if such failure would result in a violation of the antitrust laws). In addition, Company will keep Parent informed in all material respects of the status and details of any negotiations that it may have with FVC regarding any such agreement.

Section 5.1(g) – Business Conduct

The Company may, and Parent has agreed that Company may, file a Certificate of Decrease with the State of Delaware to decrease the number of shares of Series B Preference Stock from 9,000,000 shares to 5,000,000 shares.
Section 5.1(k) — Business Conduct

As Panther is aware, the Company will amend the 1998 Acquisition Stock Option Plan in order to provide that, prospectively, no options granted will accelerate upon a change of control of the Company.

Section 5.1(p) — Business Conduct

The Company anticipates that it will renew its contract with its telephone service provider.

Section 5.1(r) — Business Conduct

See disclosure in Sections 5.1(b) and 5.1(c).

Section 6.4 — Nonsolicitation

The Company is a party to a Confidentiality and Standstill Agreement with Tandberg, asa.

Section 6.7 — Third Party Consents.

Consent of Congress Financial is required pursuant to the terms of the Congress Loan and Security Agreement.
### Section 6.18 – Company Affiliates

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<td>Amit Akkad</td>
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AGREEMENT AND PLAN OF MERGER

BY AND AMONG

POLYCOM, INC.,

PHARAOH ACQUISITION CORP.

AND

PICTURETEL CORPORATION
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Exhibit B  Form of Company Affiliate Agreement
AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER is made and entered into as of May 24, 2001, by and among Polycom, Inc., a Delaware corporation ("Parent"), Pharaoh Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Parent ("Merger Sub"), and PictureTel Corporation, a Delaware corporation (the "Company").

RECITALS

A. The Boards of Directors of the Company, Parent and Merger Sub have each (i) determined that the Merger (as defined in Section 2.1) is advisable and fair to and in the best interests of their respective stockholders and (ii) approved the Merger upon the terms and subject to the conditions set forth in this Agreement;

B. In furtherance thereof, it is proposed that Merger Sub shall, as promptly as practicable, commence an exchange offer (the "Offer") to acquire all of the outstanding shares (the "Shares") of Company Common Stock (as defined in Section 2.6), at a price for each Share of (i) $3.11 in cash (such price, or such higher price per share in cash that may be made pursuant to the Offer, is referred to as the "Cash Portion"), and (ii) 0.1177 of a share of Common Stock, $0.0005 par value per share, of Parent (the "Parent Common Stock") of Parent (such fraction of a share, or such higher fraction of a share that may be made pursuant to the Offer, is referred to as the "Stock Portion") (such Cash Portion and Stock Portion being hereinafter referred to as the "Offer Price"), in accordance with the terms and subject to the conditions provided herein;

C. Also in furtherance thereof, it is proposed that, following the consummation of the Offer, Merger Sub will merge with and into the Company (the "Merger") and that the Shares not tendered and accepted pursuant to the Offer will thereupon be converted into the right to receive both cash and a fraction of a share of Parent Common Stock in the amounts set forth in Section 2.6(a) hereof;

D. Concurrently with the execution of this Agreement, as a condition and inducement to Parent’s willingness to enter into this Agreement, (i) all executive officers and directors of Company and all of their respective affiliates and James Crabbe, in their capacity as stockholders, are entering into Tender and Voting Agreements in substantially the form attached hereto as Exhibit A (the “Company Tender and Voting Agreements”), (ii) the Company and certain individuals identified on Schedule D have entered into various forms of amended and restated Executive Officer Change in Control Agreements (all such Executive Officer Change in Control Agreements being referred to herein collectively as the “Executive Officer Change in Control Agreements”), (iii) the Company Affiliates (as defined in Section 6.18) are entering into Company Affiliate Agreements in substantially the form attached hereto as Exhibit B (the “Company Affiliate Agreements”), and (iv) Company and First National Bank of Boston have amended (the “Rights Plan Amendment”) the Rights Agreement between Company and the First National Bank of Boston as Rights Agent dated March 25, 1992, as amended (the "Company Rights Plan"), to render the Rights thereunder
inapplicable to the Offer, the Merger and the other transactions contemplated by this Agreement and the Company Tender and Voting Agreements; and

E. Following the execution of this Agreement, Company may issue to Parent a Senior Convertible Note – Series A and a Senior Convertible Note – Series B (collectively, the "Convertible Notes"), pursuant to a Note Agreement to be entered into between Company and Parent (the "Note Agreement").

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants and agreements herein contained, and intending to be legally bound hereby, the Company, Parent and Merger Sub hereby agree as follows:

ARTICLE I
THE OFFER

1.1 The Offer.

(a) Provided that (i) this Agreement shall not have been terminated in accordance with Section 8.1 and (ii) none of the events set forth in Annex A hereto that would entitle Parent and Merger Sub to fail to consummate the Offer shall have occurred and be continuing, as promptly as practicable, Merger Sub shall (and Parent shall cause Merger Sub to) commence (within the meaning of Rule 14d-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), the Offer for any and all of the Shares, at the Offer Price. The obligation of Merger Sub to accept for payment and to pay for any Shares tendered (and the obligation of Parent to cause Merger Sub to accept for payment and to pay for any Shares tendered) shall be subject only to (i) the condition that at least a majority of Shares on a fully-diluted basis (including for purposes of such calculation all Shares issuable upon conversion of the Company’s Series A Preference Stock and Series B Preference Stock and upon exercise of all vested Company Stock Options (as defined in Section 6.8(a)) and Company Warrants (as defined in Section 2.6(c)) and unvested Company Stock Options that are scheduled to vest (after giving effect to any acceleration that would occur as a result of the consummation of the transactions contemplated by this Agreement) prior to the End Date (as defined in Section 8.1, but excluding any Shares held by the Company or any of its subsidiaries and excluding any Shares issuable upon conversion of the Convertible Notes) be validly tendered (the "Minimum Condition"), and (ii) the other conditions set forth in Annex A. Merger Sub expressly reserves the right to increase the Offer Price or to make any other changes in the terms and conditions of the Offer; provided, however, that unless previously approved by the Company in writing, no change may be made that (i) decreases the Offer Price or the Cash Portion or the Stock Portion thereof, (ii) changes the form or combination of consideration to be paid in the Offer, (iii) reduces the number of Shares to be purchased in the Offer, (iv) amends the conditions set forth in Annex A to broaden the scope of such conditions, add any additional conditions, or otherwise adversely affect the holders of Shares, (v) extends the Offer except as provided in Section 1.1(b), or (vi) amends or waives the Minimum Condition. It is agreed that the conditions set forth in Annex A are for the sole benefit of Parent and Merger Sub and may be waived by Parent and Merger Sub, in whole or in part at any time and from time to time, in their sole discretion, other than the Minimum Condition, as to which prior written Company approval is required. The failure by Parent and
Merger Sub at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right, and each such right shall be deemed an ongoing right that may be asserted at any time and from time to time. The Company agrees that no Shares held by the Company or any of its subsidiaries will be tendered in the Offer.

(b) Subject to the terms and conditions thereof, the Offer shall expire at midnight, New York City time, on the date that is twenty (20) business days after the date the Offer is commenced; provided, however, that without the consent of the Company’s Board of Directors (the “Company Board”), Merger Sub may (i) from time to time extend the Offer, if at the scheduled expiration date of the Offer any of the conditions to the Offer shall not have been satisfied or waived, until such time as such conditions are satisfied or waived; (ii) extend the Offer for any period required by any rule, regulation, interpretation or position of the Securities and Exchange Commission (the “SEC”) or the staff thereof applicable to the Offer; (iii) if the number of Shares tendered pursuant to the Offer is less than 90% of the outstanding Shares (on a fully-diluted basis) but at least 80% of the outstanding Shares (on a fully-diluted basis), extend the Offer for any reason on one or more occasions for an aggregate period of not more than five (5) business days beyond the date on which the Minimum Condition is satisfied if on such date there shall not have been tendered (and not properly withdrawn) at least 90% of the outstanding Shares on a fully-diluted basis; or (iv) include a subsequent offering period (as such term is defined in Rule 14d-1 under the Exchange Act) to the Offer for a period up to twenty (20) business days. Parent and Merger Sub agree that, if any one or more of the conditions to the Offer set forth on Annex A are not satisfied and none of the events set forth in paragraphs (a) through (i) of Annex A that would permit Merger Sub not to accept tendered Shares for payment has occurred and is continuing at the time of any scheduled expiration date of the Offer, then, provided that such conditions are reasonably capable of being satisfied in Parent and Merger Sub’s sole judgement, Merger Sub shall extend the Offer from time to time unless any such condition is no longer reasonably capable of being satisfied or any such event has occurred; provided, however, that in no event shall Merger Sub be required to extend the Offer beyond February 24, 2002. Subject to the terms and conditions of the Offer and this Agreement, Merger Sub shall (and Parent shall cause Merger Sub to) accept for payment, and pay for, all Shares validly tendered and not withdrawn pursuant to the Offer that Merger Sub becomes obligated to accept for payment and pay for pursuant to the Offer, as promptly as practicable after the expiration of the Offer. No fraction of a share of Parent Common Stock will be issued in connection with the payment of the Stock Portion upon consummation of the Offer, but in lieu thereof each tendering stockholder who would otherwise be entitled to receive a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock that otherwise would be received by such holder) in the Offer shall receive from Parent an amount of cash (rounded to the nearest whole cent), without interest, equal to the product obtained by multiplying such fraction by the closing price of one (1) share of Parent Common Stock on the first date Merger Sub accepts Shares for exchange in the Offer, as reported on the Nasdaq National Market (“Nasdaq”). With respect to any such Shares the Cash Portion shall be net to the seller thereof in cash, subject to reduction only for any applicable federal back-up withholding or stock transfer taxes payable by such seller. Upon the issuance of any Parent Common Stock in the Offer, and consistent with, pursuant to and subject to Parent’s existing Preferred Shares Rights Agreement, dated as of September 15, 1998 (as the same may be amended from time to time, the “Parent Rights
Agreement

between Parent and BankBoston N.A., as rights agent, one right issuable pursuant to the Parent Rights Agreement or any other right issued in substitution thereof (a "Parent Right") shall be issued together with and shall attach to each share of Parent Common Stock issued pursuant to the Offer, unless the Rights shall have expired or been redeemed prior to the date that such shares are accepted for payment pursuant to the Offer.

(c) As soon as practicable after the date of this Agreement, Parent shall prepare and file with the SEC a registration statement on Form S-4 to register the offer and sale of Parent Common Stock pursuant to the Offer (the "Registration Statement"). The Registration Statement will include a preliminary prospectus containing the information required under Rule 14d-4(b) promulgated under the Exchange Act (the "Preliminary Prospectus"). As soon as practicable on the date the Offer is commenced, Parent and Merger Sub shall file with the SEC a Tender Offer Statement on Schedule TO (together with all amendments and supplements thereto, and including all exhibits thereto, the "Schedule TO") with respect to the Offer. The Schedule TO shall contain as an exhibit or incorporate by reference the Preliminary Prospectus (or portions thereof) and forms of the related letter of transmittal and summary advertisement, if any. Parent and Merger Sub agree that they shall cause the Schedule TO, the Preliminary Prospectus and all amendments or supplements thereto (which together constitute the "Offer Documents") to comply in all material respects with the Exchange Act and the rules and regulations thereunder and other Legal Requirements (as defined in Section 3.3). Parent and Merger Sub further agree that the Offer Documents, on the date first published, sent or given to the Company's stockholders, shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that no representation or warranty is made by Parent or Merger Sub with respect to information supplied by the Company or any of its stockholders in writing specifically for inclusion or incorporation by reference in the Offer Documents. The Company agrees that the information provided by the Company in writing specifically for inclusion or incorporation by reference in the Offer Documents shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of Parent, Merger Sub and the Company agrees promptly to correct any information provided by it for use in the Registration Statement or the Offer Documents if and to the extent that such information shall have become false or misleading in any material respect, and Parent and Merger Sub further agree to take all steps necessary to cause the Schedule TO as so corrected to be filed with the SEC and the other Offer Documents as so corrected to be disseminated to the Company's stockholders, in each case as and to the extent required by applicable federal securities laws. The Company and its counsel shall be given reasonable opportunity to review and comment on the Schedule TO, the Registration Statement and the Offer Documents prior to the filing thereof with the SEC. Parent and Merger Sub agree to provide in writing to the Company and its counsel with any comments Parent, Merger Sub or their counsel may receive from the SEC or its staff with respect to the Offer Documents promptly after receipt of such comments and shall provide Company and its counsel with a reasonable opportunity to participate in the response of Parent or Merger Sub to such comments.
(a) The Company hereby approves of and consents to the Offer and represents that the Company Board, at a meeting duly called and held, has, subject to the terms and conditions set forth herein, (i) unanimously determined that this Agreement and the transactions contemplated hereby, including the Offer and the Merger, taken together, are at a price and on terms that are advisable and fair to and in the best interests of the Company and its stockholders; (ii) unanimously approved this Agreement and the transactions contemplated hereby, including the Offer and the Merger, in all respects, which approval constitutes approval under Section 203 of Delaware Law such that the Offer, the Merger, this Agreement and the other transactions contemplated hereby and the Company Tender and Voting Agreement and the transactions contemplated thereby, are not and shall not be subject to any restriction pursuant to Section 203 of the Delaware General Corporation Law ("Delaware Law"); and (iii) unanimously resolved to recommend that the stockholders of the Company accept the Offer, tender their Shares thereunder to Merger Sub and approve and adopt this Agreement and the Merger. To the extent that such recommendation is not withheld, withdrawn, amended or modified in accordance with Section 6.4 hereof, the Company consents to the inclusion of such recommendation and approval in the Offer Documents. In addition, Robertson Stephens, Inc. has delivered to the Company Board its opinion referred to in Section 3.18. The Company has been advised by its directors and executive officers that they intend to tender all Shares beneficially owned by them to Merger Sub pursuant to the Offer.

(b) The Company shall file with the SEC, concurrently with the filing of the Schedule TO, a Solicitation/Recommendation Statement on Schedule 14D-9 (together with all amendments and supplements thereto, and including all exhibits thereto, the "Schedule 14D-9") containing the recommendations and opinion described in Section 1.2(a) and shall cause the Schedule 14D-9 to be mailed to the stockholders of the Company, together with the Offer Documents, promptly after the commencement of the Offer; provided, that the Company Board may withhold, withdraw, amend or modify its recommendation and recommend a Superior Proposal in accordance with the terms of Section 6.4. The Company agrees that it shall cause the Schedule 14D-9 to comply in all material respects with the Exchange Act and the rules and regulations thereunder and other Legal Requirements. The Company further agrees that the Schedule 14D-9, on the date first published, sent or given to the Company's stockholders, shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that no representation or warranty is made by the Company with respect to information supplied by Parent or Merger Sub in writing specifically for inclusion or incorporation by reference in the Schedule 14D-9. Parent and Merger Sub agree that the information provided by them specifically in writing for inclusion or incorporation by reference in the Schedule 14D-9 shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of the Company, Parent and Merger Sub agrees promptly to correct any information provided by it for use in the Schedule 14D-9 or the Offer Documents if and to the extent that such information shall have become false or misleading in any material respect, and the Company further agrees to take all steps
necessary to cause the Schedule 14D-9 as so corrected to be filed with the SEC and be disseminated to the Company’s stockholders, in each case as and to the extent required by applicable federal securities laws. Parent and its counsel shall be given reasonable opportunity to review and comment on the Schedule 14D-9 prior to the filing thereof with the SEC. The Company agrees to provide in writing to Parent and its counsel any comments the Company or its counsel may receive from the SEC or its staff with respect to the Schedule 14D-9 promptly after receipt of such comments and shall provide Parent and Merger Sub and their counsel with a reasonable opportunity to participate in the response of Company to such comments.

(c) In connection with the Offer, the Company shall, or shall cause its transfer agent, promptly following a request by Parent, to furnish Parent with such information, including updated lists of the stockholders of the Company, mailing labels and updated lists of security positions, and such assistance as Parent or its agents may reasonably request in communicating the Offer to the record and beneficial holders of Shares. Subject to any Legal Requirements, and except for such steps as are necessary to disseminate the Offer Documents and any other documents necessary to consummate the Merger, Parent and Merger Sub and their agents shall hold in confidence the information contained in any such labels, listings and files, will use such information only in connection with the Offer and the Merger and, if this Agreement shall be terminated, will deliver, and will use their reasonable efforts to cause their agents to deliver, to the Company all copies and any extracts or summaries from such information then in their possession or control.

(d) Solely in connection with the tender and purchase of Shares pursuant to the Offer and the consummation of the Merger, the Company hereby waives any and all rights of first refusal it may have with respect to Shares owned by, or issuable to, any person, other than rights to repurchase unvested shares, if any, that may be held by persons pursuant to the grant of restricted stock purchase rights or following exercise of employee stock options.

1.3 Boards of Directors and Committees; Section 14(f) of Exchange Act.

(a) Effective upon the acceptance for payment by Merger Sub of Shares pursuant to the Offer (the “Appointment Date”) and from time to time thereafter, if the Minimum Condition has been met, and subject to the second to last sentence of this Section 1.3(a), Parent shall be entitled to designate up to such number of directors, rounded up to the next whole number, on the Company Board as will give Parent representation on the Company Board equal to the product of the number of directors on the Company Board (giving effect to any increase in the number of directors pursuant to this Section 1.3) and the percentage that such number of Shares so purchased bears to the total number of outstanding Shares, and the Company shall use its best efforts to, upon request by Parent, promptly, at the Company’s election, either increase the size of the Company Board or secure the resignation of such number of directors as is necessary to enable Parent’s designees to be elected to the Company Board and to cause Parent’s designees to be so elected. At such times, and subject to the second to last sentence of this Section 1.3(a), the Company shall use its best efforts to cause the individuals designated by Parent to constitute the same percentage as is on the Company Board of (i) each committee of the Company Board, (ii) each board of directors of each subsidiary of the Company (subject to Legal Requirements and except to the extent described in Section 1.3(a) of the
Company Schedule) and (iii) each committee of each such board of directors. Notwithstanding the foregoing, the Company shall use its commercially reasonable efforts to ensure that two of the members of the Company Board as of the date hereof (the "Continuing Directors") shall remain members of such Board until the Effective Time and who initially shall be Norman Gaut and David Levi. If a Continuing Director resigns from the Company Board, Parent, Merger Sub and the Company shall permit the remaining Continuing Director or Directors to appoint the resigning Director’s successor who shall be deemed to be a Continuing Director.

(b) The Company’s obligation to appoint designees to the Company Board shall be subject to Section 14(f) of the Exchange Act and Rule 14f-1 promulgated thereunder. The Company shall promptly take all action required pursuant to such Section and Rule in order to fulfill its obligations under this Section 1.3 and shall include in the Schedule 14D-9 such information with respect to the Company and its officers and directors as is required under such Section and Rule in order to fulfill its obligations under this Section 1.3. Parent shall promptly supply to the Company in writing and be solely responsible for any information with respect to itself and its nominees, officers, directors and affiliates required by such Section and Rule.

(c) Following the Appointment Date, if there shall be any Continuing Directors, any amendment of this Agreement, any termination of this Agreement by the Company, any extension by the Company of the time for the performance of any of the obligations or other acts of Parent or Merger Sub or any waiver of any of the Company’s rights hereunder or any other determination with respect to any action to be taken or not to be taken by the Company relating to this Agreement, will require the concurrence of a majority of such Continuing Directors.

ARTICLE II
THE MERGER

2.1 The Merger. At the Effective Time (as defined in Section 2.2) and subject to and upon the terms and conditions of this Agreement and the applicable provisions of Delaware Law, Merger Sub shall be merged with and into Company (the “Merger”), the separate corporate existence of Merger Sub shall cease and Company shall continue as the surviving corporation. Company as the surviving corporation after the Merger is hereinafter sometimes referred to as the “Surviving Corporation.”

2.2 Effective Time; Closing. Subject to the provisions of this Agreement, the parties hereto shall cause the Merger to be consummated by filing this Agreement with the Secretary of State of the State of Delaware in accordance with the relevant provisions of Delaware Law (the “Merger Documents”) (the time of such filing, or such later time as may be agreed in writing by Company and Parent and specified in the Merger Documents, being the “Effective Time”) as soon as practicable on or after the Closing Date (as herein defined). Unless the context otherwise requires, the term “Agreement” as used herein refers collectively to this Agreement and Plan of Reorganization and the Certificate of Merger. The closing of the Merger (the “Closing”) shall take place at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California, at a time and date to be specified by the parties, which shall be no later
than the second business day after the satisfaction or waiver of the conditions set forth in Article VII, or at such other time, date and location as the parties hereto agree in writing (the "Closing Date").

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

2.4  Certificate of Incorporation; Bylaws.

(a) At the Effective Time, subject to the provisions of Section 6.12 hereof, the Certificate of Incorporation of Company shall be amended and restated in its entirety to be the same in substance as the Certificate of Incorporation of Merger Sub, as in effect immediately prior to the Effective Time (except that the name of Company shall remain "PictureTel Corporation"), and such Certificate of Incorporation of Company, as so amended and restated, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter amended in accordance with Delaware Law and such Certificate of Incorporation.

(b) The Bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be, at the Effective Time, the Bylaws of the Surviving Corporation until thereafter amended.

2.5  Directors and Officers. The initial directors of the Surviving Corporation shall be the directors of Merger Sub immediately prior to the Effective Time, each to hold office in accordance with the Certificate of Incorporation and Bylaws of the Surviving Corporation until their respective successors are duly elected or appointed and qualified. The initial officers of the Surviving Corporation shall be the officers of Merger Sub immediately prior to the Effective Time, each to hold office in accordance with the Certificate of Incorporation and Bylaws of the Surviving Corporation until their respective successors are duly appointed.

2.6  Effect on Capital Stock. Subject to the terms and conditions of this Agreement, at the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, Company, or the holders of any of the following securities, the following shall occur:

(a) Conversion of Company Common Stock. Each share of Common Stock, $0.01 par value per share, of Company (the "Company Common Stock") issued and outstanding immediately prior to the Effective Time (other than shares owned by Parent, Merger Sub or any other subsidiary of Parent or shares which are held by shareholders exercising dissenters’ rights pursuant to Section 262 of the Delaware Law ("Dissenting Shares") will be canceled and extinguished and automatically converted into the right to receive (x) the Cash Portion in cash per Share, without any interest thereon and (y) a fraction of a share of Parent Common Stock equal to the Stock Portion (the Cash Portion and the Stock Portion, and cash in lieu of fractional shares as specified below, are collectively referred to as the "Merger Consideration") upon surrender of the
certificate representing such share of Company Common Stock in the manner provided in Section 2.7 (or in the case of a lost, stolen or destroyed certificate, upon delivery of an affidavit (and bond, if required) in the manner provided in Section 2.9). Upon the issuance of any Parent Common Stock in the Merger, and consistent with, pursuant to and subject to the Parent Rights Agreement, one Parent Right shall be issued together with and shall attach to each share of Parent Common Stock issued pursuant to the terms and conditions of this Agreement, unless the Rights shall have expired or been redeemed prior to the Effective Time. Company shall take all action that may be necessary to ensure that, from and after the Effective Time, Parent is entitled to exercise any such repurchase option or other right set forth in any such restricted stock purchase agreement or other agreement.

(b) Cancellation of Parent-Owned Stock. Each share of Company Common Stock held by Company or owned by Merger Sub, Parent or any direct or indirect wholly-owned subsidiary of Company or of Parent immediately prior to the Effective Time shall be cancelled and extinguished without any conversion thereof.

(c) Stock Options; Warrants; Employee Stock Purchase Plans. At the Effective Time: (i) all options to purchase Company Common Stock then outstanding under Company’s Amended and Restated 1984 Stock Option Plan, 1989 Equity Incentive Plan, 1999 Equity Plan, 1998 Acquisition Stock Option Plan and Amended 1992 Non-Employee Directors’ Stock Option Plan or other compensatory option plans or agreements, including option plans or agreements assumed by the Company pursuant to a merger or acquisition (the “Company Option Plans”) shall be treated in accordance with Section 6.8 hereof; and (ii) all warrants to purchase shares of Company Common Stock then outstanding (collectively, the “Company Warrants”) shall be treated as set forth in Section 6.8 hereof. Purchase rights outstanding under Company’s Employee Stock Purchase Plan and 1999 Foreign Subsidiary Stock Purchase Plan (collectively, the “ESPP”) shall be treated as set forth in Section 6.8 hereof.

(d) Capital Stock of Merger Sub. Each share of Common Stock, $0.001 par value per share, of Merger Sub (the “Merger Sub Common Stock”) issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of Common Stock, $0.001 par value per share, of the Surviving Corporation. Each certificate evidencing ownership of shares of Merger Sub Common Stock immediately prior to the Effective Time shall, as of the Effective Time, evidence ownership of such shares of capital stock of the Surviving Corporation.

(e) Adjustments to the Stock Portion and the Cash Portion. The Stock Portion and the Cash Portion shall be adjusted appropriately to reflect the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Company Common Stock), extraordinary cash dividends, reorganization, recapitalization, reclassification, combination, exchange of shares or other like change with respect to the Company Common Stock occurring on or after the date hereof and prior to the Effective Time. The Stock Portion shall be adjusted appropriately to reflect the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Parent Common
Stock), extraordinary cash dividends, reorganization, recapitalization, reclassification, combination, exchange of shares or other like change with respect to the Parent Common Stock occurring on or after the date hereof and prior to the Effective Time.

2.7 **Exchange of Certificates.**

(a) **Exchange Agent.** Parent shall select a bank or trust company reasonably acceptable to Company to act as the exchange agent (the "Exchange Agent") in the Merger.

(b) **Parent to Provide Cash and Stock.** Promptly after the Effective Time, Parent shall make available to the Exchange Agent, for payment in accordance with this Article II, (i) an amount in cash equal to the product of the Cash Portion and the number of Shares that are issued and outstanding at the Effective Time and (ii) a number of shares of Parent Common Stock representing the number of shares of Parent Common Stock equal to the product of the Stock Portion and the number of Shares outstanding at the Effective Time, and (iii) the cash amount payable in lieu of fractional shares in accordance with Section 2.7(f). Any portion of such cash and stock which remains undistributed to the holders of the Certificates for six (6) months after the Effective Time shall be delivered to Parent, upon demand, and any holders of shares of Company Common Stock prior to the Merger who have not theretofore complied with this Article II shall thereafter look for payment of their claim, as general creditors thereof, only to Parent for their claim for the applicable Offer Price which such holders may be entitled.

(c) **Payment Procedures.** Promptly after the Effective Time, Parent shall cause the Exchange Agent to mail to each holder of record (as of the Effective Time) of a certificate or certificates (the "Certificates"), which immediately prior to the Effective Time represented outstanding shares of Company Common Stock (i) a letter of transmittal in customary form (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent, and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration. Upon surrender of Certificates for cancellation to the Exchange Agent or to such other agent or agents as may be appointed by Parent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may be required pursuant to such instructions, the holder of such Certificate shall be entitled to receive in payment therefor an amount equal to the product of the Merger Consideration and the number of Shares represented by such Certificate, and the Certificate so surrendered shall be forthwith cancelled. In the event of a transfer of ownership of Shares that is not registered in the stock transfer books of Company, the proper amount of cash and Parent Common Stock may be paid in exchange therefor to a person other than the person in whose name the Certificate so surrendered is registered if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the person requesting such payment shall pay any transfer or other taxes required by reason of the payment to a person other than the registered holder of such Certificate the Merger Consideration or establish to the satisfaction of Parent that such tax has been paid or is not applicable. The Exchange Agent shall accept such Certificates upon compliance with such reasonable terms and conditions as the Exchange Agent may impose to effect an orderly exchange thereof in accordance with normal exchange practices. No
interest shall be paid or accrued for the benefit of holders of the Certificates on the cash payable upon the surrender of the Certificates. Until so surrendered, outstanding Certificates will be deemed from and after the Effective Time, to evidence only the right to receive the Merger Consideration.

(d) **Required Withholding.** Each of the Exchange Agent, Parent and the Surviving Corporation shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement to any holder or former holder of Company Common Stock such amounts as may be required to be deducted or withheld therefrom under U.S. federal or state, local or foreign law. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the person to whom such amounts would otherwise have been paid.

(e) **No Liability.** Notwithstanding anything to the contrary in this Section 2.7, neither the Exchange Agent, Parent, the Surviving Corporation nor any party hereto shall be liable to a holder of shares of Parent Common Stock or Company Common Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

(f) **Fractional Shares.** No fraction of a share of Parent Common Stock will be issued in connection with the payment of the Stock Portion of the Merger Consideration, but in lieu thereof each holder of a Certificate who would otherwise be entitled to receive a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock that otherwise would be received by such holder) in the Merger shall receive from Parent an amount of cash (rounded to the nearest whole cent), without interest, equal to the product obtained by multiplying such fraction by the closing price of one (1) share of Parent Common Stock on the Effective Time, as reported on the Nasdaq.

2.8 **No Further Ownership Rights in Company Common Stock.** From and after the Effective Time, all shares of Company Common Stock shall no longer be outstanding and shall automatically be cancelled, retired and cease to exist and each holder of a Certificate representing any such shares shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration therefor upon the surrender thereof in accordance with Section 2.7 hereof. The Merger Consideration issued in accordance with the terms hereof shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of Company Common Stock. There shall be no further registration of transfers on the records of the Surviving Corporation of shares of Company Common Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article II.

2.9 **Lost, Stolen or Destroyed Certificates.** In the event that any Certificates shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof, the Merger Consideration pursuant to Section 2.6; provided, however, that Parent may, in its discretion and as a condition precedent to the issuance of such Merger Consideration and other distributions, require the owner of such lost, stolen or destroyed Certificates to deliver a bond in such sum as it may reasonably direct as indemnity against any claim that may be made against Parent, the Surviving
2.10 **Dissenting Shares.** (a) Notwithstanding any provision of this Agreement to the contrary, Shares that are outstanding immediately prior to the Effective Time and that are held by stockholders who shall have neither voted in favor of the Merger nor consented thereto in writing and who shall have demanded properly in writing appraisal for such Shares in accordance with Section 262 of Delaware Law (collectively, the "**Dissenting Shares**") shall not be converted into, or represent the right to receive, the Merger Consideration. Such stockholders shall be entitled to receive payment of the appraised value of such Shares held by them in accordance with the provisions of such Section 262, except that all Dissenting Shares held by stockholders who shall have failed to perfect or who effectively shall have withdrawn or lost their rights to appraisal of such Shares under such Section 262 shall thereupon be deemed to have been converted into, and to have become exchangeable for, as of the Effective Time, the right to receive the Merger Consideration, without any interest thereon, upon surrender, in the manner provided in Section 2.7, of the certificate or certificates that formerly evidenced such Shares.

(a) The Company shall give Parent (i) prompt notice of any demands for appraisal received by the Company, withdrawals of such demands, and any other instruments served pursuant to Delaware Law and received by the Company and (ii) the opportunity to direct all negotiations and proceedings with respect to demands for appraisal under Delaware Law. The Company shall not, except with the prior written consent of Parent, make any payment with respect to any demands for appraisal or offer to settle or settle any such demands.

2.11 **Accounting Consequences.** It is intended by the parties hereto that the Merger shall qualify as a purchase for accounting purposes.

2.12 **Taking of Necessary Action; Further Action.** If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of Company and Merger Sub, the officers and directors of Company and Merger Sub will take all such lawful and necessary action.

**ARTICLE III**

**REPRESENTATIONS AND WARRANTIES OF COMPANY**

Company represents and warrants to Parent and Merger Sub, subject to such exceptions as are disclosed in writing in the disclosure letter supplied by Company to Parent dated as of the date hereof (the "**Company Schedule**"), which disclosure shall provide an exception to or otherwise qualify the representations and warranties of Company contained in the section of this Agreement corresponding by number to such disclosure, as follows:
3.1 **Organization and Qualification: Subsidiaries.**

(a) Each of Company and its subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as it is now being conducted, except where the failure to do so would not, individually, or in the aggregate, have a Material Adverse Effect (as defined in Section 9.3 below) on Company. Each of Company and its subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, easements, consents, certificates, approvals and orders ("Approvals") necessary to own, lease and operate the properties it purports to own, operate or lease and to carry on its business as it is now being conducted, except where the failure to have such Approvals would not, individually or in the aggregate, have a Material Adverse Effect on Company. Company and its subsidiaries are and have been in compliance with the terms of the Approvals, except where the failure to be or have been in such compliance would not, individually or in the aggregate, result in a Material Adverse Effect on Company.

(b) The Company’s annual report on Form 10-K for the fiscal year ended December 31, 2000 lists each of Company’s subsidiaries, the jurisdiction of incorporation of each such subsidiary, and Company’s equity interest therein. Neither Company nor any of its subsidiaries has agreed nor is obligated to make nor is bound by any written or oral agreement, contract, subcontract, lease, binding understanding, instrument, note, option, warranty, purchase order, license, sublicense, insurance policy, benefit plan, commitment or undertaking of any nature, as of the date hereof or as may hereafter be in effect (a “Contract”) under which it may become obligated to make, any future investment in or capital contribution to any other entity. Other than Company’s interests in its subsidiaries or except as set forth in Section 3.1(b) of the Company Schedule, neither Company nor any of its subsidiaries directly or indirectly owns any equity or similar interest in or any interest convertible, exchangeable or exercisable for, any equity or similar interest in, any corporation, partnership, joint venture or other business, association or entity.

(c) Company and each of its subsidiaries is qualified to do business as a foreign corporation, and is in good standing, under the laws of all jurisdictions where the nature of their business requires such qualification, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect on Company.

3.2 **Certificate of Incorporation and Bylaws.** Company has previously furnished to Parent a complete and correct copy of its Certificate of Incorporation and Bylaws as amended to date (together, the “Company Charter Documents”). Such Company Charter Documents and equivalent organizational documents of each of its subsidiaries are in full force and effect, Company is not in violation of any of the provisions of the Company Charter Documents, and no subsidiary of Company is in violation of its equivalent organizational documents except where the failure to be in full force or effect or the violation of any such equivalent organizational documents of a subsidiary of Company would not, individually or in the aggregate, have a Material Adverse Effect on Company.
3.3 Capitalization.

(a) The authorized capital stock of Company consists of 80,000,000 shares of Company Common Stock, $0.01 par value per share and 15,000,000 shares of Preferred Stock, $0.01 par value per share, of which 4,500,000 shares have been designated as Series A Preference Stock, 9,000,000 have been designated as Series B Preference Stock, and 800,000 shares have been designated as Junior Preference Stock. As of the close of business on May 18, 2001: (i) 45,193,880 shares of Company Common Stock were issued and outstanding, all of which were validly issued, fully paid and nonassessable; (ii) 4,478,708 shares of Series A Preference Stock were issued and outstanding, all of which were validly issued, fully paid and nonassessable; (iii) 4,938,000 shares of Series B Preference Stock were issued and outstanding, all of which were validly issued, fully paid and nonassessable; (iv) 92,065 shares of Company Common Stock were held by the Company as treasury stock; (v) no shares of Company Common Stock were held by subsidiaries of Company; (vi) 1,194,555 shares of Company Common Stock were available for future issuance pursuant to the ESPP; (vii) 5,129,442 shares of Company Common Stock were reserved for issuance upon the exercise of outstanding options to purchase Company Common Stock under the Company Option Plans; (viii) 465,000 shares of Company Common Stock were issued and outstanding or reserved for issuance upon the exercise of outstanding options to purchase Company Common Stock; (ix) 2,723 shares of Company Common Stock were reserved for issuance upon the exercise of outstanding Company Warrants; and (x) no shares of Junior Preference Stock, par value $0.01 per share, were outstanding. Prior to the date hereof, the holders of all of the issued and outstanding shares of the Company’s Series A Preference Stock and not less than 86% of Series B Preference Stock have delivered a notice of conversion in respect of all such shares, and such notice of conversion is irrevocable. After giving effect to such notice of conversion, as of the close of business on May 18, 2001, there would have been 54,610,588 shares of Company Common Stock issued and outstanding, all of which were validly issued, fully paid and nonassessable, and no shares of Series A Preference Stock or Series B Preference Stock issued and outstanding. Other than pursuant to the exercise of outstanding stock options set forth on Section 3.3(a) of the Company Schedule and in connection with the conversion of the Series A Preference Stock and Series B Preference Stock, the Company has not issued any shares of capital stock between May 18, 2001 and the date hereof. Except in connection with transactions contemplated by the Note Agreement, other than as listed above, Company has no other securities authorized, reserved for issuance, issued or outstanding. Section 3.3(a) of the Company Schedule sets forth the following information with respect to each Company Stock Option (as defined in Section 6.8) outstanding as of the date of this Agreement: (i) the name and address of the optionee; (ii) the number of shares of Company Common Stock subject to such Company Stock Option; (iii) the exercise price of such Company Stock Option; (iv) the date on which such Company Stock Option was granted and (v) the date on which such Company Stock Option expires. The exercisability of each such Company Stock Option will be accelerated in full upon the acceptance by Merger Sub of Shares for payment pursuant to the Offer. Company has made available to Parent accurate and complete copies of all stock option plans pursuant to which Company has granted such Company Stock Options that are currently outstanding and the form of all stock option agreements evidencing such Company Stock Options. All shares of Company Common Stock subject to issuance as aforesaid, upon issuance on the terms and conditions specified in the instrument pursuant to which they are issuable, would be duly authorized,
validly issued, fully paid and nonassessable. Except as set forth in Section 3.3(a) of the Company Schedule, there are no commitments or agreements of any character to which Company is bound obligating Company to accelerate the vesting of any Company Stock Option as a result of the Merger. All outstanding shares of Company Common Stock, all outstanding Company Stock Options, and all outstanding shares of capital stock of each subsidiary of Company have been issued and granted in compliance with (i) all applicable securities laws and other applicable Legal Requirements (as defined below) and (ii) all requirements set forth in applicable Contracts in all material respects. For the purposes of this Agreement, "Legal Requirements" means any federal, state, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issues, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity (as defined below). The Company has never declared dividends with respect to the Series A Preference Stock or the Series B Preference Stock.

(b) Except for securities set forth in Schedule 3.3(b) of the Company Schedule, Company owns free and clear of all liens, pledges, hypothecations, charges, mortgages, security interests, encumbrances, claims, infringements, interferences, options, right of first refusals, preemptive rights, community property interests or restrictions of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset but other than restrictions imposed by federal or state securities laws) directly or indirectly through one or more subsidiaries, and except for shares of capital stock or other similar ownership interests of subsidiaries of Company that are owned by certain nominee equity holders as required by the applicable law of the jurisdiction of organization of such subsidiaries (which shares or other interests do not materially affect Company's control of such subsidiaries), there are no equity securities, partnership interests or similar ownership interests of any class of equity security of any subsidiary of Company, or any security exchangeable or convertible into or exercisable for such equity securities, partnership interests or similar ownership interests, issued, reserved for issuance or outstanding. Except as set forth in Section 3.3(b) of Company Schedule or as set forth in Section 3.3(a) hereof, there are no subscriptions, options, warrants, equity securities, partnership interests or similar ownership interests, calls, rights (including preemptive rights), commitments or agreements of any character to which Company or any of its subsidiaries is a party or by which it is bound obligating Company or any of its subsidiaries to issue, deliver or sell, or cause to be issued, delivered or sold, or repurchase, redeem or otherwise acquire, or cause the repurchase, redemption or acquisition of, any shares of capital stock, partnership interests or similar ownership interests of Company or any of its subsidiaries or obligating Company or any of its subsidiaries to grant, extend, accelerate the vesting of or enter into any such subscription, option, warrant, equity security, call, right, commitment or agreement. Except as contemplated by the Convertible Notes, the Note Agreement and a registration rights agreement to be prepared in connection therewith in a form satisfactory to Parent (the "Registration Rights Agreement") or as set forth on Schedule 3.4 of the Company Schedule, there are no registration rights and there is, except for the Company Tender and Voting Agreements, no voting trust, proxy, rights plan, antitakeover plan or other agreement or understanding to which Company or any of its subsidiaries is a party or by which they are bound.
with respect to any equity security of any class of Company or with respect to any equity security, partnership interest or similar ownership interest of any class of any of its subsidiaries.

3.4 Authority Relative to this Agreement. Company has all necessary corporate power and authority to execute and deliver this Agreement, the Note Agreement and the Convertible Notes and to perform its obligations hereunder and thereunder and, subject to obtaining the approval of the stockholders of Company of this Agreement and the Merger (if required), to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement, the Note Agreement and the Convertible Notes by Company and the consummation by Company of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of Company and no other corporate proceedings on the part of Company are necessary to authorize this Agreement, the Note Agreement and the Convertible Notes or to consummate the transactions contemplated hereby and thereby (other than the approval and adoption of this Agreement and the Merger by holders of a majority of the outstanding shares of Company Common Stock in accordance with Delaware Law and the Company Charter Documents, if required). This Agreement, the Note Agreement and the Convertible Notes have been duly and validly executed and delivered by Company and, assuming the due authorization, execution and delivery by Parent and/or Merger Sub, constitute legal and binding obligations of Company, enforceable against Company in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditor rights and for general equitable principles.

3.5 No Conflict; Required Filings and Consents.

(a) The execution and delivery of this Agreement by Company does not, and the performance of this Agreement by Company shall not, (i) violate the Company Charter Documents or the equivalent organizational documents of any of Company’s subsidiaries, (ii) subject to obtaining the approval of Company’s stockholders of this Agreement and the Merger (if required) and the consents, approvals, authorizations and permits, and making the filings and notifications, set forth in Section 3.5(b) below, conflict with or violate any law, rule, regulation, order, judgment or decree applicable to Company or any of its subsidiaries or by which its or any of their respective properties is bound or affected, or (iii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or materially impair Company’s or any of its subsidiaries’ rights or alter the rights or obligations of any third party under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a lien or encumbrance on any of the properties or assets of Company or any of its subsidiaries pursuant to, any material note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Company or any of its subsidiaries is a party or by which Company or any of its subsidiaries or its or any of their respective properties are bound or affected.

(b) The execution and delivery of this Agreement, the Note Agreement and the Convertible Notes by Company does not, and the performance of this Agreement, the Note Agreement and the Convertible Notes by Company shall not, require any consent, approval,
authorization or permit of, or filing with or notification to, any court, administrative agency, commission, governmental or regulatory authority, domestic or foreign (a “Governmental Entity”), except (i) for applicable requirements, if any, of the Securities Act of 1933, as amended (the “Securities Act”), the Securities Exchange Act of 1934, as amended (the “Exchange Act”), state securities laws (“Blue Sky Laws”), the pre-merger notification requirements (the “HSR Approval”) of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder (the “HSR Act”) and the applicable requirements of antitrust or competition laws and regulations of foreign Governmental Entities (“Foreign Filings”), the rules and regulations of the Nasdaq, and the filing and recordation of the Agreement of Merger as required by Delaware Law and (ii) where the failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications (A) would not prevent consummation of the Merger or otherwise prevent the parties hereto from performing their respective obligations under this Agreement, the Note Agreement and the Convertible Notes, or (B) would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Company.

3.6 Compliance; Permits

(a) Definitions.

(i) “Hazardous Material” is any material or substance that is prohibited or regulated by any Environmental Law or that has been designated by any governmental authority to be radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment.

(ii) “Environmental Laws” are all applicable laws, rules, regulations, orders, treaties, statutes, and codes promulgated by any governmental authority which prohibit, regulate or control any Hazardous Material or any Hazardous Material activity, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Resource Recovery and Conservation Act of 1976, the Federal Water Pollution Control Act, the Clean Air Act, the Hazardous Materials Transportation Act, the Clean Water Act, comparable laws, rules, regulations, ordinances, orders, treaties, statutes, and codes of other governmental authorities, the regulations promulgated pursuant to any of the foregoing, and all amendments and modifications of any of the foregoing, all as amended to date.

(b) Neither Company nor any of its subsidiaries is in conflict with, or in default or violation of, (i) any law, rule (including Environmental Laws), regulation, order, judgment or decree applicable to Company or any of its subsidiaries or by which its or any of their respective properties is bound, or (ii) any material note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Company or any of its subsidiaries is a party or by which Company or any of its subsidiaries or its or any of their respective properties is bound, except for any conflicts, defaults or violations that (individually or in the aggregate) would not reasonably be expected to have a Material Adverse Effect on the Company. No investigation or review by any governmental or regulatory body or authority is, to the knowledge of Company, pending or threatened against Company or its subsidiaries, nor has any governmental or regulatory body or authority indicated to Company or any of its subsidiaries an intention to conduct the same,
other than, in each such case, those the outcome of which could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(c) Neither Company nor any of its subsidiaries has (and no Hazardous Materials generated, stored or used by Company or any of its subsidiaries have been) disposed of, released, discharged or emitted any Hazardous Materials into the soil or groundwater at any properties owned or leased at any time by Company or any of its subsidiaries, or at any other property, or exposed any employee or other individual to any Hazardous Materials or any workplace or environmental condition in such a manner as would result in any liability or clean-up obligation of any kind or nature to Company or any of its subsidiaries. To the knowledge of Company, no Hazardous Materials are present in, on, or under any properties owned, leased or used at any time by Company or any of its subsidiaries, and no reasonable likelihood exists that any Hazardous Materials will come to be present in, on, or under any properties owned, leased or used at any time by Company or any of its subsidiaries, so as to give rise to any liability or clean-up obligation under any Environmental Laws.

(d) Company and its subsidiaries hold all permits, licenses, variances, exemptions, orders, approvals and other authorizations from governmental authorities which are material to the operation of the business of Company and its subsidiaries taken as a whole (collectively, the “Company Permits”). Company and its subsidiaries have been and are in compliance in all material respects with the terms of the Company Permits and any conditions placed thereon.

3.7 SEC Filings; Financial Statements.

(a) Company has delivered or made available to Parent a correct and complete copy of each report, schedule, registration statement and definitive proxy statement filed by Company with the Securities and Exchange Commission (“SEC”) since December 31, 1999 (the “Company SEC Reports”), which are all the forms, reports and documents required to be filed by Company with the SEC since such time. The Company SEC Reports (i) were prepared in accordance with the requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder, and (ii) did not at the time they were filed (or, if such Company SEC Report was amended or superseded by another filing, then on the date of filing of such amendment or superseding filing) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of Company’s subsidiaries is required to file any reports or other documents with the SEC.

(b) As of their respective dates, each set of consolidated financial statements (including, in each case, any related notes thereto) contained in the Company SEC Reports, (i) complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto, (ii) was prepared in accordance with generally accepted accounting principles (“GAAP”) applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, do not contain footnotes as permitted by Form 10-Q of the Exchange Act) and each fairly presents the consolidated financial position of
Company and its subsidiaries at the respective dates thereof and the consolidated results of its operations and cash flows for the periods indicated, except that the unaudited interim financial statements were or are subject to the absence of footnotes and normal adjustments which (in addition to those noted therein) were not or are not expected to be material in amount.

(c) Company has previously furnished to Parent a complete and correct copy of any amendments or modifications, which have not yet been filed as of the date hereof with the SEC but which are required to be filed, to agreements, documents or other instruments which previously had been filed by Company with the SEC pursuant to the Securities Act or the Exchange Act or any material agreements potentially required to be filed that have not been so filed.

3.8 No Undisclosed Liabilities. Neither Company nor any of its subsidiaries has any liabilities (absolute, accrued, contingent or otherwise) of a nature required to be disclosed on a balance sheet or in the related notes to the consolidated financial statements prepared in accordance with GAAP which are, individually or in the aggregate, material to the business, results of operations, assets or financial condition of Company and its subsidiaries taken as a whole, except (i) liabilities provided for in Company’s balance sheet as of March 31, 2001 set forth in the Company SEC Reports or (ii) liabilities incurred since March 31, 2001 in the ordinary course of business, none of which is material to the business, results of operations or financial condition of Company and its subsidiaries, taken as a whole.

3.9 Absence of Certain Changes or Events. Except as set forth in this Agreement, since March 31, 2001, there has not been: (i) any Material Adverse Effect on Company, (ii) any declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of, any of Company’s or any of its subsidiaries’ capital stock, or any purchase, redemption or other acquisition by Company of any of Company’s capital stock or any other securities of Company or its subsidiaries or any options, warrants, calls or rights to acquire any such shares or other securities except for repurchases from employees following their termination pursuant to the terms of their pre-existing stock option or purchase agreements, (iii) any split, combination or reclassification of any of Company’s or any of its subsidiaries’ capital stock, (iv) any granting by Company or any of its subsidiaries of any increase in compensation or fringe benefits, except for normal increases of cash or non-cash benefits compensation in the ordinary course of business consistent with past practice, or any payment by Company or any of its subsidiaries of any bonus, except for bonuses made in the ordinary course of business consistent with past practice, or any granting by Company or any of its subsidiaries of any increase in severance or termination pay or any entry by Company or any of its subsidiaries into any currently effective employment, severance, termination or indemnification agreement or any agreement the benefits of which are contingent or the terms of which are materially altered upon the occurrence of a transaction involving Company of the nature contemplated hereby, (v) entry by Company or any of its subsidiaries into any material licensing or other agreement with regard to the acquisition or disposition of any Intellectual Property (as defined in Section 3.16) other than licenses in the ordinary course of business consistent with past practice or any amendment or consent with respect to any licensing agreement filed or required to be filed by Company with the SEC, (vi) any material change by Company in its accounting methods, principles or practices, except as required by
concurrent changes in GAAP, or (vii) any material revaluation by Company of any of its assets, including, without limitation, writing down the value of capitalized inventory or writing off notes or accounts receivable or any sale of assets of Company other than in the ordinary course of business consistent with past practice.

3.10 Absence of Litigation. Except as specifically disclosed in the Company SEC Reports as of the date hereof, there are no material claims, actions, suits or proceedings pending or, to the knowledge of Company, threatened (or, to the knowledge of Company, any governmental or regulatory investigation pending or threatened) against Company or any of its subsidiaries or any properties or rights of Company or any of its subsidiaries, before any court, arbitrator or administrative, governmental or regulatory authority or body, domestic or foreign.

3.11 Employee Matters and Benefit Plans.

(a) Definitions. With the exception of the definition of “Affiliate” set forth in Section 3.11(a)(i) below (which definition shall apply only to this Section 3.11), for purposes of this Agreement, the following terms shall have the meanings set forth below:

(i) “Affiliate” shall mean any other person or entity under common control with Company within the meaning of Section 414(b), (c), (m) or (o) of the Code and the regulations issued thereunder;

(ii) “COBRA” shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended;

(iii) “Code” shall mean the Internal Revenue Code of 1986, as amended;

(iv) “Company Employee Plan” shall mean any plan, program, policy, practice, contract, agreement or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written or unwritten or otherwise, funded or unfunded, including without limitation, each “employee benefit plan,” within the meaning of Section 3(3) of ERISA which is or has been maintained, contributed to, or required to be contributed to, by Company or any Affiliate for the benefit of any Employee, or with respect to which Company or any Affiliate has or may have any liability or obligation;

(v) “DOL” shall mean the Department of Labor;

(vi) “Employee” shall mean any current or former or retired employee, consultant or director of Company or any Affiliate;

(vii) “Employment Agreement” shall mean each employment, severance, consulting, relocation, repatriation, expatriation, visas, work permit or other agreement or contract relating to provisions of services between the Company or any Affiliate and any Employee;
(viii) "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended;

(ix) "FMLA" shall mean the Family Medical Leave Act of 1993, as amended;

(x) "International Employee Plan" shall mean each Company Employee Plan that has been adopted or maintained by Company or any Affiliate, whether informally or formally, or with respect to which Company or any Affiliate will or may have any liability, for the benefit of Employees who perform services outside the United States;

(xi) "IRS" shall mean the Internal Revenue Service;

(xii) "Multiemployer Plan" shall mean any "Pension Plan" (as defined below) which is a "multiemployer plan," as defined in Section 3(37) of ERISA; and

(xiii) "Pension Plan" shall mean each Company Employee Plan which is an "employee pension benefit plan," within the meaning of Section 3(2) of ERISA.

(b) Schedule. Section 3.11(b) of the Company Schedule contains an accurate and complete list in all material respects of each Company Employee Plan, International Employee Plan, and each Employment Agreement. Company does not have any plan or commitment to establish any new Company Employee Plan, International Employee Plan, or Employment Agreement, to modify any Company Employee Plan or Employment Agreement (except to the extent required by law or to conform any such Company Employee Plan or Employment Agreement to the requirements of any applicable law, in each case as previously disclosed to Parent in writing, or as required by this Agreement), or to adopt or enter into any Company Employee Plan, International Employee Plan, or Employment Agreement. Section 3.11(b) of the Company Schedule contains a representation of the percentage of the Company's employee base which falls within each of the following categories: non-exempt employees, exempt employees and key employees; average employee salary in each such category; and average tenure in each such category. The Company represents and warrants that the foregoing information, as more fully reflected in Section 3.11(b) of the Company Schedule, is accurate and complete.

(c) Documents. Company has provided to Parent correct and complete copies of: (i) all documents embodying each Company Employee Plan, International Employee Plan, and each Employment Agreement including (without limitation) all amendments thereto and all related trust documents, administrative service agreements, group annuity contracts, group insurance contracts, and policies pertaining to fiduciary liability insurance covering the fiduciaries for each Plan; (ii) the most recent annual actuarial valuations, if any, prepared for each Company Employee Plan; (iii) the three (3) most recent annual reports (Form Series 5500 and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Company Employee Plan; (iv) if Company Employee Plan is funded, the most recent annual and periodic accounting of Company Employee Plan assets; (v) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required under ERISA with
respect to each Company Employee Plan; (vi) the most recent IRS determination letter, and all applications and correspondence to or from the IRS or the DOL with respect to any such application or letter; (vii) all written communications material to any Employee or Employees relating to any Company Employee Plan and any proposed Company Employee Plans, in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of payments or vesting schedules or other events which would result in any material liability to Company; (viii) all material correspondence to or from any governmental agency relating to any Company Employee Plan; (ix) all current model COBRA forms and related notices (or such forms and notices as required under comparable law); (x) the three (3) most recent plan years discrimination tests for each Company Employee Plan; and (xi) all registration statements, annual reports (Form 11-K and all attachments thereto) and prospectuses prepared in connection with each Company Employee Plan.

(d) Employee Plan Compliance. Except as set forth on Section 3.11(d) of the Company Schedule, (i) Company has performed in all material respects all obligations required to be performed by it under, is not in material default or violation of, and has no knowledge of any material default or violation by any other party to each Company Employee Plan, and each Company Employee Plan has been established and maintained in all material respects in accordance with its terms and in compliance with all applicable laws, statutes, orders, rules and regulations, including but not limited to ERISA or the Code; (ii) each Company Employee Plan intended to qualify under Section 401(a) of the Code and each related trust intended to qualify under Section 501(a) of the Code has either received a favorable determination, opinion, notification or advisory letter from the IRS with respect to each such Company Employee Plan as to its qualified status under the Code, including all amendments to the Code effected by the Tax Reform Act of 1986 and subsequent legislation, or has remaining a period of time under applicable Treasury regulations or IRS pronouncements in which to apply for such a letter and make any amendments necessary to obtain a favorable determination as to the qualified status of each such Company Employee Plan; (iii) no “prohibited transaction,” within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 4975 of the Code or Section 408 of ERISA (or any administrative class exemption issued thereunder), has occurred with respect to any Company Employee Plan; (iv) there are no actions, suits or, to the knowledge of the Company, claims pending or threatened (other than routine claims for benefits) against any Company Employee Plan or against the assets of any Company Employee Plan; (v) each Company Employee Plan (other than any stock option plan) can be amended, terminated or otherwise discontinued after the Effective Time, without material liability to Parent, Company or any of its Affiliates (other than benefits accrued to date and ordinary administration expenses); (vi) there are no audits, inquiries or proceedings pending or, to the knowledge of Company, threatened by the IRS or DOL with respect to any Company Employee Plan; and (vii) neither Company nor any Affiliate is subject to any penalty or tax with respect to any Company Employee Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code.

(e) Pension Plan. Neither Company nor any Affiliate has ever maintained, established, sponsored, participated in, or contributed to, any Pension Plan which is subject to Title IV of ERISA or Section 412 of the Code.
Collectively Bargained, Multiemployer and Multiple Employer Plans. At no time within the six (6) year period ending on the date hereof, has the Company or any Affiliate contributed to or been obligated to contribute to any Multiemployer Plan or ever maintained, established, sponsored, participated in, or contributed to any multiple employer plan, or to any plan described in Section 413 of the Code.

No Post-Employment Obligations. Except as set forth in Section 3.11(g) of the Company Schedule, no Company Employee Plan provides, or reflects or represents any liability to provide retiree health insurance coverage to any person for any reason, except as may be required by COBRA or other applicable statute.

Health Care Compliance. Neither Company nor any Affiliate has, prior to the Effective Time and in any material respect, violated any of the health care continuation requirements of COBRA, the requirements of FMLA, the requirements of the Health Insurance Portability and Accountability Act of 1996, the requirements of the Women's Health and Cancer Rights Act of 1998, the requirements of the Newborns' and Mothers' Health Protection Act of 1996, or any amendment to each such act, or any similar provisions of state law applicable to its Employees.

Effect of Transaction.

Except as set forth in Section 3.11(i) of the Company Schedule, the execution of this Agreement and the consummation of the transactions contemplated hereby will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Company Employee Plan, Employment Agreement, trust or loan that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Employee.

Except as set forth in Section 3.11(i) of the Company Schedule, no payment or benefit which will or may be made by Company or its Affiliates with respect to any Employee will be characterized as a "parachute payment," within the meaning of Section 280G(b)(2) of the Code.

Employment Matters. To the best of its knowledge and belief, Company:

(i) is in material compliance in all respects with all applicable foreign, federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment and wages and hours, in each case, with respect to Employees;

(ii) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to Employees;

(iii) is not liable for any arrears of wages or any taxes or any penalty for failure to comply with any of the foregoing; and

(iv) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for Employees (other than routine payments to be made in the normal course of business and consistent with past practice). To the Company's knowledge, there are no pending, threatened
or reasonably anticipated claims or actions against Company under any worker's compensation policy or long-term disability policy (other than routine claims for benefits).

(k) Labor. No work stoppage or labor strike against Company is pending or, to the knowledge of Company, threatened. Company does not know of any activities or proceedings of any labor union to organize any Employees. Except as set forth in Section 3.11(k) of the Company Schedule, there are no actions, suits, claims, labor disputes or grievances pending, or, to the knowledge of Company, threatened or reasonably anticipated relating to any labor, safety or discrimination matters involving any Employee, including, without limitation, charges of unfair labor practices or discrimination complaints, which, if adversely determined, would, individually or in the aggregate, result in any material liability to Company. Neither Company nor any of its subsidiaries has engaged in any unfair labor practices within the meaning of the National Labor Relations Act. Except as set forth in Section 3.11(k) of the Company Schedule, Company is not presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to Employees and no collective bargaining agreement is being negotiated by Company.

(l) International Employee Plan. Except as set forth on Schedule 3.11(l), Company does not now, nor has it ever had the obligation to, maintain, establish, sponsor, participate in, or contribute to any International Employee Plan.

3.12 Restrictions on Business Activities. Except as set forth on Schedule 3.12 of the Company Schedule, there is no agreement, commitment, judgment, injunction, order or decree binding upon Company or its subsidiaries or to which Company or any of its subsidiaries is a party which has or could reasonably be expected to have the effect of prohibiting or materially impairing any material business practice of Company or any of its subsidiaries, any material acquisition of property by Company or any of its subsidiaries or the conduct of business by Company or any of its subsidiaries as currently conducted.

3.13 Title to Property.

(a) Neither Company nor any of its subsidiaries owns any material real property. Company and each of its subsidiaries have good and marketable title to all of their material owned properties and assets, free and clear of all liens, charges and encumbrances except liens for taxes not yet due and payable and such liens or other imperfections of title, if any, as do not materially interfere with the present use of the property affected thereby.

(b) All leases (the "Leases") pursuant to which Company or any of its subsidiaries lease from others material real or personal property are in good standing, valid and effective in accordance with their respective terms, and there is not, under any of such leases, any existing material default or event of default of Company or any of its subsidiaries or, to Company's knowledge, any other party (or any event which with notice or lapse of time, or both, would constitute a material default and in respect of which Company or subsidiary has not taken adequate steps to prevent such default from occurring).
(c) Section 3.13 of the Company Schedule sets forth a list of all real property currently leased by Company, the landlord contact, the expiration date of the Lease and (as regards all Leases of more than 10,000 square feet of space) each amendment thereto, and, with respect to each Lease, the square footage of the premises leased thereunder and the aggregate monthly rental payable thereunder. Company has provided Parent with true, complete and correct copies of each Lease of more than 10,000 square feet of space; no term or condition of any such Lease has been modified, amended or waived except as shown in such copies; each such Lease constitutes the entire agreement of the landlord and the tenant thereunder; and there are no other agreements or arrangements whatsoever relating to Company's use or occupancy of any of the premises described in such Leases. Company has not transferred or assigned any interest in any Lease, nor has Company subleased or otherwise granted rights of use or occupancy of any of the premises described therein to any other person or entity, except as shown in Section 3.13 of the Company Schedule.

(d) As of the date of this Agreement, to the knowledge of Company, the landlord under each Lease has complied with all of the requirements, conditions, representations, warranties and covenants of the landlord thereunder, including, without limitation, the timely completion of construction of the leased premises in a good and workmanlike manner and otherwise in accordance with the Leases.

(e) Company has not received any notice from any insurance company of any defects or inadequacies in any leased property or any part thereof which could materially and adversely affect the insurability of such leased property or the premiums for the insurance thereof. No notice has been given by any insurance company which has issued a policy with respect to any portion of any leased property or by any board of fire underwriters (or other body exercising similar functions) requesting the performance of any repairs, alterations or other work with which compliance has not been made. To Company's knowledge, there exist no structural, soil or other conditions with respect to any leased property that could increase the probability of material damage to any leased property as a result of earthquake or other seismic activity.

(f) To the Company's knowledge, no law, ordinance, regulation or restriction is, or as of the Closing Date will be, violated by the continued occupancy, maintenance, operation or use of the leased properties in their present manner. To Company's knowledge, there are no Legal Requirements now in existence or under active consideration by any Governmental Entity which could require the tenant of any leased property to make any expenditure in excess of $25,000 to modify or improve such leased property to bring it into compliance therewith.

(g) There is no pending or, to Company's knowledge, threatened condemnation or similar proceeding affecting any leased property or any portion thereof, and Company has no knowledge that any such action is currently contemplated. There are no material legal actions, suits or other legal or administrative proceedings pending or threatened against Company, or, to Company's knowledge, against third parties affecting any leased property, and Company is not aware of any facts which might result in any such action, suit or proceeding. All material plants,
structures and equipment of Company and its subsidiaries are in good operating condition and repair in all material respects.

For purposes of this Section 3.13, the Company's knowledge shall be deemed to include the knowledge of the Company's management personnel responsible for the Company's facilities and property.

3.14 Taxes.

(a) Definition of Taxes. For purposes of this Agreement, (i) "Tax" or, collectively, "Taxes", means (i) any and all federal, state, local and foreign taxes, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts; (ii) any liability for the payment of any amounts of the type described in clause (i) as a result of being or ceasing to be a member of an affiliated, consolidated, combined or unitary group for any period (including, without limitation, any liability under Treas. Reg. Section 1.1502-6 or any comparable provision of foreign, state or local law); and (iii) any liability for the payment of any amounts of the type described in clause (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of any obligations under any agreements or arrangements with any other Person with respect to such amounts and including any liability for taxes of a predecessor entity.

(b) Tax Returns and Audits.

(i) The Company and each of its subsidiaries have timely filed all federal, state, local and foreign returns, estimates, information statements and reports ("Returns") relating to Taxes required to be filed by the Company and each of its subsidiaries with any Tax authority, except such Returns which are not material to the Company. All such Returns were correct and complete in all material respects. The Company and each of its subsidiaries have paid all Taxes shown to be due on such Returns.

(ii) The Company and each of its subsidiaries has withheld with respect to its employees, independent contractors, creditors, stockholders, and all other third parties all federal and state income taxes, Taxes pursuant to the Federal Insurance Contribution Act, Taxes pursuant to the Federal Unemployment Tax Act and other Taxes required to be withheld and have timely paid over to the proper governmental authorities all amounts required to be withheld and paid over under all applicable laws.

(iii) Neither the Company nor any of its subsidiaries has executed any unexpired waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(iv) To the knowledge of the Company, no audit or other examination of any Return of the Company or any of its subsidiaries by any Tax authority is presently in progress,
nor has the Company or any of its subsidiaries been notified in writing of any request for such an audit or other examination.

(v) No material adjustment relating to any Returns filed by the Company or any of its subsidiaries (and no claim by a Tax authority in a jurisdiction in which the Company or any of its subsidiaries does not file Returns that the Company or any of its subsidiaries may be subject to taxation by such jurisdiction) has been proposed in writing formally or informally by any Tax authority to the Company or any of its subsidiaries.

(vi) Neither the Company nor any of its subsidiaries has any liability for any unpaid Taxes which has not been accrued for or reserved on the Company Balance Sheet in accordance with GAAP, whether asserted or unasserted, contingent or otherwise, other than any liability for unpaid Taxes that may have accrued since March 31, 2001 in connection with the operation of the business of the Company and its subsidiaries in the ordinary course.

(vii) There is no contract, agreement, plan or arrangement to which the Company or any of its subsidiaries is a party as of the date of this Agreement, including but not limited to the provisions of this Agreement, covering any employee or former employee of the Company or any of its subsidiaries that, individually or collectively, would reasonably be expected to give rise to the payment of any amount that would not be deductible pursuant to Sections 404 or 162(m) of the Code. There is no contract, agreement, plan or arrangement to which the Company is a party or by which it is bound to compensate any individual for excise taxes paid pursuant to Section 4999 of the Code.

(viii) Neither the Company nor any of its subsidiaries has filed any consent agreement under Section 341(f) of the Code or agreed to have Section 341(f)(2) of the Code apply to any disposition of a subsection (f) asset (as defined in Section 341(f)(4) of the Code) owned by the Company or any of its subsidiaries.

(ix) Neither the Company nor any of its subsidiaries (i) has ever been a member of an affiliated group filing a consolidated federal income Tax Return (other than a consolidated group the common parent of which is the Company), (ii) is a party to any Tax sharing or Tax allocation agreement, arrangement or understanding, (iii) is liable for the Taxes of any other person (other than any of the Company and its subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or otherwise, or (iv) is a party to any joint venture, partnership or, to the knowledge of the Company, any other arrangement that could be treated as a partnership for income Tax purposes.

(x) Neither the Company nor any of its subsidiaries has constituted either a “distributing corporation” or a “controlled corporation” in a distribution of stock qualifying for tax-free treatment under Section 355 of the Code (i) in the two years prior to the date of this Agreement or (ii) in a distribution which could otherwise constitute part of a “plan” or “series of related transactions” (within the meaning of Section 355(e) of the Code) in conjunction with the Offer and the Merger.
3.15 **Brokers.** Except for fees payable to Robertson Stephens, Inc. pursuant to an engagement letter, a true and correct copy of which has been provided to Parent, Company has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders fees or agent’s commissions or any similar charges in connection with this Agreement or any transaction contemplated hereby.

3.16 **Intellectual Property.** For the purposes of this Agreement, the following terms have the following definitions:

"**Intellectual Property**" shall mean any or all of the following and all worldwide common law and statutory rights in, arising out of, or associated therewith: (i) U.S. and foreign patents and applications therefor and all reissues, divisions, renewals, extensions, provisions, continuations and continuations-in-part thereof ("**Patents**"); (ii) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know how, technology, technical data and customer lists, and all documentation relating to any of the foregoing; (iii) copyrights, copyrights registrations and applications therefor, and all other rights corresponding thereto throughout the world; (iv) domain names, uniform resource locators ("**URLs**"), other names and locators associated with the Internet, and applications or registrations therefor ("**Domain Names**"); (v) industrial designs and any registrations and applications therefor; (vi) trade names, logos, common law trademarks and service marks, trademark and service mark registrations, related goodwill and applications therefor throughout the world; (vii) all databases and data collections and all rights therein; (viii) all moral and economic rights of authors and inventors, however denominated, (ix) any works of authorship, including, without limitation, computer programs, source code, executable code, whether embodied in software, firmware or otherwise, documentation, designs, files, records, data and mask works; and (x) any similar or equivalent rights to any of the foregoing (as applicable).

"**Company Intellectual Property**" shall mean any Intellectual Property that is owned by, or exclusively licensed to, Company and its Subsidiaries.

"**Registered Intellectual Property**" means all Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded by any private, state, government or other legal authority.

"**Company Registered Intellectual Property**" means all of the Registered Intellectual Property owned by, or filed in the name of, Company or any of its Subsidiaries.

(a) Section 3.16(a) of the Company Schedule is a complete and accurate list of all Company Registered Intellectual Property and specifies, where applicable, the jurisdictions in which each such item of Company Registered Intellectual Property has been issued or registered, the filing date, and the current status of each such item of Company Registered Intellectual Property.

(b) No Company Intellectual Property or product or service offering of Company or any of its Subsidiaries (a "**Company Product**") is subject to any proceeding or outstanding
decree, order, judgment, or stipulation restricting in any manner, or any contract, license, or agreement, restricting in any material manner the use, transfer, or licensing thereof by Company or any of its subsidiaries, or which may affect the validity, use or enforceability of such Company Intellectual Property or Company Product, except as identified in the Company Schedule.

(c) Each item of Company Registered Intellectual Property is valid and subsisting, all necessary registration, maintenance and renewal fees currently due in connection with such Company Registered Intellectual Property have been made and all necessary documents, recordations and certificates in connection with such Company Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Company Registered Intellectual Property, except where such Company Registered Intellectual Property has been intentionally abandoned by the Company, as reflected in section 3.16(a) of the Company Schedule.

(d) Company owns and has good and exclusive title to, each item of Company Intellectual Property owned by it free and clear of any lien or encumbrance (excluding non-exclusive licenses and related restrictions granted in the ordinary course). Without limiting the foregoing: (i) Company is the exclusive owner of all trademarks and trade names used in connection with the operation or conduct of the business of Company and its subsidiaries, including the sale, distribution or provision of any Company Products by Company or its subsidiaries; (ii) Company owns exclusively, and has good title to, all copyrighted works that are Company Products or services or which Company or any of its subsidiaries otherwise purports to own; and (iii) to the extent that any Patents would be infringed by any Company Products, Company is the exclusive owner of such Patents, or has secured appropriate rights through license or other agreement.

(e) Any agreements between Company and third parties for the development or manufacture of a Company product shall permit Company to continue the development or manufacture of any such product notwithstanding any termination or expiration of such agreement(s), without the payment of any additional royalty, fee or other payment to any such third party.

(f) Company knows of no information, materials, facts, or circumstances, including any information or fact that would constitute prior art, that would render any of the Company Registered Intellectual Property invalid or unenforceable, or would adversely affect any pending application for any Company Registered Intellectual Property and the Company has not misrepresented, or knowingly failed to disclose, any facts or circumstances in any application for any Company Registered Intellectual Property that would constitute fraud or a misrepresentation with respect to such application or that would otherwise affect the validity or enforceability of any Company Registered Intellectual Property.

(g) To the extent that any technology, software or Intellectual Property has been developed or created independently or jointly by a third party or employee for Company or any of its subsidiaries or is incorporated into any of the Company Products, Company has a written agreement with such third party or employee with respect thereto and Company thereby either (i) has obtained ownership of, and is the exclusive owner of, or (ii) has obtained a perpetual, non-terminable license
(sufficient for the conduct of its business as currently conducted and as proposed to be conducted) to all such third party’s Intellectual Property in such work, material or invention by operation of law or by valid assignment.

(h) Neither Company nor any of its subsidiaries has transferred ownership of any Intellectual Property that is Company Intellectual Property, to any third party or subsidiary (other than a wholly-owned subsidiary), or knowingly permitted Company’s rights in such Company Intellectual Property to lapse or enter the public domain, except as noted in the Company Schedule.

(i) Section 3.16(h) of the Company Schedule lists all material contracts, licenses and agreements to which Company or any of its subsidiaries is a party: (i) with respect to Company Intellectual Property licensed or transferred to any third party (other than end-user licenses in the ordinary course); or (ii) pursuant to which a third party has licensed or transferred any material Intellectual Property to Company.

(j) All material contracts, licenses and agreements relating to either (i) Company Intellectual Property or (ii) Intellectual Property of a third party licensed to Company or any of its subsidiaries, including, without limitation, third party licenses to Company relating to or in any way permitting Company Products, services or Company Intellectual Property to interoperate with other products, systems or standards, are in full force and effect. The consummation of the transactions contemplated by this Agreement will neither violate nor result in the breach, modification, cancellation, termination or suspension of such contracts, licenses and agreements. Each of Company and its subsidiaries is in material compliance with, and has not materially breached any term of any such contracts, licenses and agreements and, to the knowledge of Company, all other parties to such contracts, licenses and agreements are in compliance with, and have not materially breached any term of, such contracts, licenses and agreements. Following the Closing Date, the Surviving Corporation will be permitted to exercise all of Company’s rights under such contracts, licenses and agreements to the same extent Company and its subsidiaries would have been able to had the transactions contemplated by this Agreement not occurred and without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which Company would otherwise be required to pay. Neither this Agreement nor the transactions contemplated by this Agreement, including the assignment to Parent or Merger Sub by operation of law or otherwise of any contracts or agreements to which Company is a party, will result in (i) either Parent’s or the Merger Sub’s granting to any third party any right to or with respect to any material Intellectual Property right owned by, or licensed to, either of them, (ii) either Parent’s or the Merger Sub’s being bound by, or subject to, any non-compete or other material restriction on the operation or scope of their respective businesses, or (iii) either Parent’s or the Merger Sub’s being obligated to pay any royalties or other material amounts to any third party in excess of those payable by Parent or Merger Sub, respectively prior to the Closing.

(k) The operation of the business of Company and its subsidiaries as such business currently is conducted or is currently contemplated to be conducted, including (i) Company’s and its subsidiaries’ design, development, manufacture, distribution, import, reproduction, marketing or sale of the products or services of Company and its subsidiaries
Neither Company nor any of its subsidiaries has received written notice from any third party alleging that the operation of the business of Company or any of its subsidiaries or any act, product or service (including Products, technology or service offerings currently under development) of Company or any of its subsidiaries, infringes or misappropriates the Intellectual Property of any third party or constitutes unfair competition or trade practices under the laws of any jurisdiction, except as otherwise noted herein and resolved through appropriate license or other agreement.

To the knowledge of Company, no person has or is infringing or misappropriating any Company Intellectual Property.

Company and each of its subsidiaries has taken reasonable steps to protect Company's and its subsidiaries' rights in Company's confidential information and trade secrets that it wishes to protect or any trade secrets or confidential information of third parties provided to Company or any of its subsidiaries, and, without limiting the foregoing, each of Company and its subsidiaries has required each employee and contractor to execute a proprietary information/confidentiality agreement and all current and former employees and contractors of Company and any of its subsidiaries have executed such an agreement, except where the failure to do so is not reasonably expected to be material to Company.

To the knowledge of Company and each of its subsidiaries, no (i) product, technology, service or publication of the Company, (ii) material or collateral published or distributed by the Company, or (iii) conduct or statement of the Company constitutes obscene material, a defamatory statement or material, disparagement of any third party, or false advertising.

None of the Company Intellectual Property was developed by or on behalf of, or using grants or any other subsidies of, any governmental entity or any university.

Under the terms of that certain Joint Development, OEM and Marketing Agreement between Company and Sharp Corporation ("Sharp"), dated April 13, 2000, and any extensions, renewals, amendments or modifications thereof, neither Company nor Sharp has acquired any rights of ownership of more than de minimis significance that are or may be considered "Jointly Owned Technology", as that term is defined in the foregoing agreement, nor is Company aware of any future products, standards or processes, based on the current product and business plans of Company and Sharp, that would give rise to "Jointly Owned Technology" in the future course of business.

The Joint Development, OEM and Marketing Agreement between Company and Intel Corporation ("Intel") dated January 18, 1999, and all amendments, modifications or
extensions thereto, have expired on their terms, and Intel is not currently licensed by the Company to
distribute products or services based on Company Intellectual Property.

(s) Following the Closing, the Company will have the right to grant to Parent an
unrestricted, non-exclusive, perpetual, irrevocable, fully paid up, royalty free, worldwide,
transferable, sublicensable license, under all of the Company’s current and future Intellectual
Property rights, to make, have made, use, sell, offer to sell, import, distribute, reproduce and create
derivative works of Siren technology, in any and all products and components, including, without
limitation, any product whose primary function is as a stand-alone speakerphone, including any and
all services, without any obligation on the part of Parent to license to the Company or any other
party any improvements, enhancements, new versions, new releases, updates or derivative works of
Siren technology.

3.17 Agreements, Contracts and Commitments. Neither Company nor any of its
subsidiaries is a party to or is bound by:

(a) any written employment or consulting agreement, contract or commitment
with any officer, director, Company employee or member of the Company’s Board, or any service,
operating or management agreement or arrangement with respect to any of its properties (whether
leased or owned), other than those that are terminable by Company or any of its subsidiaries on no
more than thirty (30) days’ notice without liability or financial obligation to Company;

(b) any agreement or plan, including, without limitation, any stock option plan, stock
appreciation right plan or stock purchase plan, any of the benefits of which will be increased, or the
vesting of benefits of which will be accelerated, by the occurrence of any of the transactions
contemplated by this Agreement or the value of any of the benefits of which will be calculated on
the basis of any of the transactions contemplated by this Agreement;

(c) any agreement of indemnification or any guaranty other than any agreement of
indemnification entered into in connection with the sale of products in the ordinary course of
business in excess of $50,000;

(d) any material agreement, contract or commitment containing any covenant limiting
in any respect the right of Company or any of its subsidiaries to engage in any line of business or to
compete with any person or entity or granting any exclusive distribution rights;

(e) any agreement, contract or commitment currently in force relating to the
disposition or acquisition by Company or any of its subsidiaries after the date of this Agreement of
an amount of assets in excess of $200,000 not in the ordinary course of business or pursuant to
which Company or any of its subsidiaries has any material ownership interest in any corporation,
partnership, joint venture or other business enterprise other than Company’s subsidiaries;

(f) any dealer, distributor, joint marketing or development agreement currently in
force under which Company or any of its subsidiaries have continuing material obligations to jointly
market any product, technology or service and which may not be canceled without penalty upon
notice of ninety (90) days or less, or any material agreement pursuant to which Company or any of its subsidiaries have continuing material obligations to jointly develop any intellectual property that will not be owned, in whole or in part, by Company or any of its subsidiaries and which may not be canceled without penalty upon notice of ninety (90) days or less;

(g) any agreement, contract or commitment currently in force to license any third party to manufacture or reproduce any Company product, service or technology or any agreement, contract or commitment currently in force to sell or distribute any Company products, service or technology except agreements with distributors or sales representative in the normal course of business cancelable without penalty upon notice of ninety (90) days or less and substantially in the form previously provided to Parent;

(h) any agreement, contract or commitment currently in force to provide source code to any third party for any product or technology that is material to Company and its subsidiaries taken as a whole;

(i) any mortgages, indentures, guarantees, loans or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit;

(j) any material settlement agreement under which Company has ongoing obligations; or

(k) any agreement with a customer of the Company involving in excess of $250,000 in any 12 month period.

Neither Company nor any of its subsidiaries, nor to Company’s knowledge any other party to a Company Contract (as defined below), is in breach, violation or default under, and neither Company nor any of its subsidiaries has received written notice that it has breached, violated or defaulted under, any of the material terms or conditions of any of the agreements, contracts or commitments to which Company or any of its subsidiaries is a party or by which it is bound that are required to be disclosed in the Company Schedule (any such agreement, contract or commitment, a “Company Contract”) in such a manner as would permit any other party to cancel or terminate any such Company Contract, or would permit any other party to seek material damages or other remedies (for any or all of such breaches, violations or defaults, in the aggregate). Company has made available to Parent true and correct copies of any contracts Company may have with its top ten customers.

3.18 Opinion of Financial Advisor. The Board of Directors of the Company has been advised by its financial advisor, Robertson Stephens, Inc. that in its opinion, as of the date of this Agreement, the Offer Price is fair to the holders of shares of Company Common Stock (other than Parent and its affiliates and holders of Dissenting Shares) from a financial point of view, and Company will provide a copy of the written confirmation of such opinion to Parent for informational purposes as soon as reasonably practicable.
3.19 **Insurance.** Company maintains insurance policies or fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of Company and its subsidiaries (collectively, the "Insurance Policies") which the Company believes are of the type and in amounts customarily carried by persons conducting businesses similar to those of Company and its subsidiaries. There is no material claim by Company or any of its subsidiaries pending under any of the material Insurance Policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds.

3.20 **State Takeover Statutes.** The Company Board has approved the Offer, the Merger, this Agreement and the transactions contemplated hereby, and the Convertible Notes, the Note Agreement and the Company Tender and Voting Agreements and the transactions contemplated thereby, and such approval is sufficient to render inapplicable to the Offer, the Merger, the Convertible Notes, the Note Agreement, the Company Tender and Voting Agreements, and the transactions contemplated by each such agreement, the provisions of Section 203 of the Delaware Law to the extent, if any, such section is applicable to the Offer, the Merger, this Agreement and the transactions contemplated hereby, and the Convertible Notes, the Note Agreement and the Company Tender and Voting Agreements and the transactions contemplated thereby. No other state takeover statute or similar statute or regulation applies to or purports to apply to the Offer, the Merger, this Agreement and the transactions contemplated hereby, and the Convertible Notes, the Note Agreement, the Registration Rights Agreement and the Company Tender and Voting Agreements and the transactions contemplated thereby.

3.21 **Board Approval.** The Company Board, at a meeting duly called and held on May 24, 2001, has unanimously (i) determined that this Agreement and the transactions contemplated hereby, including the Offer and the Merger, taken together, are at a price and on terms that are advisable and fair to and in the best interests of the Company and its stockholders; (ii) approved this Agreement and the transactions contemplated hereby, including the Offer and the Merger, in all respects; and (iii) as of the date hereof, resolved to recommend that the stockholders of the Company accept the Offer, tender their Shares thereunder to Merger Sub and approve and adopt this Agreement and the Merger.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB**

Parent and Merger Sub jointly and severally represent and warrant to Company, subject to such exceptions as are disclosed in writing in the disclosure letter supplied by Parent to Company dated as of the date hereof (the "Parent Schedule"), which disclosure shall provide an exception to or otherwise qualify the representations and warranties of Parent and Merger Sub contained in the section of this Agreement corresponding by number to such disclosure, as follows:

4.1 **Organization and Qualification; Subsidiaries.** Each of Parent and its subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as it is now being conducted, except where the failure to do so would not, individually or in the aggregate, have a Material Adverse Effect on
Parent. Each of Parent and its subsidiaries is in possession of all Approvals necessary to own, lease and operate the properties it purports to own, operate or lease and to carry on its business as it is now being conducted, except where the failure to have such Approvals would not, individually or in the aggregate, have a Material Adverse Effect on Parent. Each of Parent and its subsidiaries is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except for such failures to be so duly qualified or licensed and in good standing that would not, either individually or in the aggregate, have a Material Adverse Effect on Parent.

4.2 Certificate of Incorporation and Bylaws. Parent has previously furnished to Company complete and correct copies of its Certificate of Incorporation and Bylaws as amended to date (together, the “Parent Charter Documents”). Such Company Charter Documents and equivalent organizational documents of each of its subsidiaries are in full force and effect, Parent is not in violation of any of the provisions of the Company Charter Documents, and no subsidiary of Company is in violation of any of its equivalent organizational documents except where the failure to be in full force or effect or the violation of any such equivalent organizational documents of a subsidiary of Company would not, individually or in the aggregate, have a Material Adverse Effect on Parent.

4.3 Capitalization. The authorized capital stock of Parent consists of (i) 175,000,000 shares of Parent Common Stock, par value $0.0005 per share, and (ii) 5,000,000 shares of Preferred Stock, par value $0.001 per share (“Parent Preferred Stock”). As of the close of business on May 22, 2001, 83,003,821 shares of Parent Common Stock were issued and outstanding. As of the date hereof, no shares of Parent Preferred Stock were issued or outstanding. As of May 22, 2001, Parent had reserved an aggregate of 18,874,680 shares of Parent Common Stock for issuance pursuant to Parent’s stock option plans, under which options to purchase 10,472,700 shares were outstanding, and 1,076,242 shares of Parent Common Stock were available for issuance pursuant to the Parent Employee Stock Purchase Plan. Except as set forth in the immediately preceding sentence, no shares of capital stock or other equity securities of Parent are issued, reserved for issuance or outstanding except as set forth in the Parent SEC Reports and except for the Parent Rights. Under the Parent Rights Agreement, until the distribution date, (i) the Parent Rights will be evidenced (subject to the provisions of Section 3(b) and 3(c) thereof) by the certificates for Parent Common Stock registered in the names of the holders of thereof (which certificates shall also be deemed to be Rights Certificates, as such term is defined in the Parent Rights Agreement) and not by separate Rights Certificates and (ii) the right to receive Rights Certificates will be transferable only in connection with the transfer of Parent Common Stock. The authorized capital stock of Merger Sub consists of 1,000 shares of common stock, par value $0.001 per share, all of which of are issued and outstanding as of the date hereof. All of the outstanding shares of Parent’s and Merger Sub’s respective capital stock have been duly authorized and validly issued and are fully paid and nonassessable. All shares of Parent Common Stock subject to issuance as aforesaid, upon issuance on the terms and conditions specified in the instruments pursuant to which they are issuable, shall, and the shares of Parent Common Stock to be issued pursuant to the Merger will be, duly authorized, validly issued, fully paid and nonassessable. All of the outstanding shares of capital stock (other
than directors’ qualifying shares) of each of Parent’s subsidiaries is duly authorized, validly issued, fully paid and nonassessable and all such shares (other than directors’ qualifying shares) are owned by Parent or another subsidiary free and clear of all security interests, liens, claims, pledges, agreements, limitations in Parent’s voting rights, charges or other encumbrances of any nature whatsoever.

4.4 Authority Relative to this Agreement. Each of Parent and/or Merger Sub has all necessary corporate power and authority to execute and deliver this Agreement, the Note Agreement and the Convertible Notes and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement, the Note Agreement and the Convertible Notes by Parent and/or Merger Sub and the consummation by Parent and/or Merger Sub of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of Parent and/or Merger Sub, and no other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize this Agreement, the Note Agreement and the Convertible Notes or to consummate the transactions contemplated hereby and thereby. This Agreement, the Note Agreement and the Convertible Notes have been duly and validly executed and delivered by Parent and/or Merger Sub and, assuming the due authorization, execution and delivery by Company, constitute legal and binding obligations of Parent and/or Merger Sub, enforceable against Parent and/or Merger Sub in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditor rights and for general equitable principles.

4.5 No Conflict; Required Filings and Consents.
(a) The execution and delivery of this Agreement, by Parent and Merger Sub and the Company Tender and Voting Agreement by Parent do not, and the performance of this Agreement, by Parent and Merger Sub and the Company Tender and Voting Agreement by Parent shall not, (i) conflict with or violate the Parent Charter Documents or equivalent organizational documents or any of Parent’s subsidiaries, (ii) subject to obtaining the consents, approvals, authorization and permits, and making the filings and notifications, set forth in Section 4.5(b) below, conflict with or violate any law, rule, regulation, order, judgment or decree applicable to Parent or any of its subsidiaries or by which it or their respective properties are bound or affected, or (iii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or impair Parent’s or any such subsidiary’s rights or alter the rights or obligations of any third party under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a lien or encumbrance on any of the properties or assets of Parent or any of its subsidiaries pursuant to, any material note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Parent or any of its subsidiaries is a party or by which Parent or any of its subsidiaries or its or any of their respective properties are bound or affected, except to the extent such conflict, violation, breach, default, impairment or other effect could not in the case of clauses (ii) or (iii), individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

(b) The execution and delivery of this Agreement, the Note Agreement and the Convertible Notes by Parent and Merger Sub do not, and the performance of this Agreement, the Note Agreement and the Convertible Notes by Parent and Merger Sub shall not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity except (i) for applicable requirements, if any, of the Securities Act, the Exchange Act, Blue Sky Laws, the pre-merger notification requirements of the HSR Act and Foreign Filings, the rules and regulations of the Nasdaq, and the filing and recordation of the Agreement of Merger as required by Delaware Law and (ii) where the failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications, (A) would not prevent consummation of the Merger or otherwise prevent Parent or Merger Sub from performing their respective obligations under this Agreement, the Note Agreement and the Convertible Notes, or (B) could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

4.6 SEC Filings; Financial Statements.

(a) Parent has made available to Company a correct and complete copy of each report, schedule, registration statement and definitive proxy statement filed by Parent with the SEC on or after December 31, 1999 and prior to the date of this Agreement (the “Parent SEC Reports”), which are all the forms, reports and documents required to be filed by Parent with the SEC since such date. The Parent SEC Reports (i) were prepared in accordance with the requirements of the Securities Act or the Exchange Act, as the case may be, and (ii) did not at the time they were filed (and if any Parent SEC Report filed prior to the date of this Agreement was amended or superseded by a filing prior to the date of this Agreement, then on the date of such amendment or superceded filing) contain any untrue statement of a material fact or omit to state a material fact required to be
stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of Parent’s subsidiaries is required to file any reports or other documents with the SEC.

(b) At their respective dates, each set of consolidated financial statements (including, in each case, any related notes thereto) contained in the Parent SEC Reports was prepared in accordance with GAAP applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q of the Exchange Act) and each fairly presents the consolidated financial position of Parent and its subsidiaries at the respective dates thereof and the consolidated results of its operations and cash flows for the periods indicated, except that the unaudited interim financial statements were or are subject to the absence of footnotes and normal adjustments which (in addition to those noted therein) were not or are not expected to be material in amount.

(c) Parent has previously furnished to Company a complete and correct copy of any amendments or modifications, which have not yet been filed as of the date hereof with the SEC but which are required to be filed as of the date hereof, to agreements, documents or other instruments which previously had been filed by Parent with the SEC pursuant to the Securities Act or the Exchange Act.

4.7 No Undisclosed Liabilities. Neither Parent nor any of its subsidiaries has any liabilities (absolute, accrued, contingent or otherwise) of a nature required to be disclosed on a balance sheet or in the related notes to the consolidated financial statements prepared in accordance with GAAP which are, individually or in the aggregate, material to the business, results of operations or financial condition of Parent and its subsidiaries taken as a whole, except (i) liabilities provided for in Parent’s balance sheet as of March 31, 2001 or (ii) liabilities incurred since March 31, 2001 in the ordinary course of business, none of which is material to the business, results of operations or financial condition of Parent and its subsidiaries, taken as a whole.

4.8 Absence of Litigation. Except as specifically disclosed in the Parent SEC Reports as of the date hereof, there are no material claims, actions, suits or proceedings that have a reasonable likelihood of success on the merits pending or, to the knowledge of Parent, threatened (or to the knowledge of Parent, any governmental or regulatory investigation pending or threatened) against Parent or any property or rights of Parent or any of its subsidiaries, before any court, arbitrator or administrative, governmental or regulatory authority or body, domestic or foreign, except for those claims, actions, suits or proceedings which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

4.9 Funds. Parent has the funds necessary to consummate the Offer and the Merger and as of the date hereafter has purchased the Convertible Notes pursuant to the Note Agreement.

4.10 Share Ownership. None of Parent, Merger Sub or any of their respective subsidiaries beneficially owns any Shares as of the date of this Agreement, except pursuant to the Convertible Notes.
4.11 **Merger Sub.** Merger Sub was formed solely for the purpose of engaging in the Offer and Merger and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated by this Agreement, including the Offer and Merger. As of the Effective Time, all of the outstanding capital stock of Merger Sub will be owned directly by Parent.

4.12 **Compliance; Permits.** (a) Except as set forth in Section 4.12 of the Parent Schedule, neither Parent nor any of its subsidiaries is in conflict with, or in default or violation of, (i) any law, rule, regulation, order, judgment or decree applicable to Parent or any of its subsidiaries or by which its or any of their respective properties is bound, or (ii) any material note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Parent or any of its subsidiaries is a party or by which Parent or any of its subsidiaries or its or any of their respective properties is bound, except for any conflicts, defaults or violations that (individually or in the aggregate) would not reasonably be expected to have a Material Adverse Effect on Parent. No investigation or review by any governmental or regulatory body or authority is, to the knowledge of Parent, pending or threatened against Parent or its subsidiaries, nor to the knowledge of Parent has any governmental or regulatory body or authority indicated an intention to conduct the same, other than, in each such case, those the outcome of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

(b) Except as set forth in Section 4.12 of the Parent Schedule, Parent and its subsidiaries hold all permits, licenses, variances, exemptions, orders and approvals and other authorizations from governmental authorities which are material to the operation of the business of Parent and its subsidiaries taken as a whole (collectively, the “**Parent Permits**”). Parent and its subsidiaries have been and are in compliance in all material respects with the terms of the Parent Permits and any conditions placed thereon.

4.13 **Brokers.** Except for fees payable to Thomas Weisel Partners and Morgan Stanley Dean Witter, Parent has not incurred nor will it incur, directly or indirectly, any liability for brokerage or finders’ fees or agents’ commissions or any similar charges in connection with this Agreement or any transaction contemplated hereby.

**ARTICLE V**

**INTERIM CONDUCT**

5.1 **Conduct of Business by Company.** Except as contemplated by this Agreement, disclosed in Section 5.1 of the Company Schedule, or consented to by Parent in writing, during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement pursuant to its terms or the Appointment Date, Company and each of its subsidiaries shall, except to the extent that Parent shall otherwise consent in writing, carry on its business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted and in material compliance with all applicable laws and regulations, pay its debts and taxes when due subject to good faith disputes over such debts or taxes, pay or perform other material obligations when due, and use its commercially reasonable efforts consistent with past practices and policies to
(i) preserve intact its present business organization, (ii) keep available the services of its present officers and employees and (iii) preserve its relationships with customers, suppliers, distributors, licensors, licensees and others with which it has significant business dealings.

In addition, except as permitted by the terms of this Agreement and except as provided in Section 5.1 of the Company Schedule, without the prior written consent of Parent (which consent, or refusal thereof, shall not be unreasonably delayed; provided that Parent shall not refuse to consent if such failure would result in a violation of the antitrust laws), during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement pursuant to its terms or the Appointment Date, Company shall not do any of the following and shall not permit its subsidiaries to do any of the following:

(a) Waive any stock repurchase rights, accelerate, amend or change the period of exercisability of options or restricted stock (except as required by the terms of the Company Option Plans as in effect on the date hereof and as permitted by Section 6.8 hereof), or reprice options granted under any employee, consultant, director or other stock plans or authorize cash payments in exchange for any options granted under any of such plans;

(b) Grant any severance or termination pay or benefits, or payments or benefits triggered by a change of control or merger (including the Offer and the Merger), to any officer or employee except to persons who are officers or employees of the Company as of the date hereof pursuant to written agreements outstanding, or written policies existing, on the date hereof and as previously disclosed in writing or made available to Parent (provided, however, that the Company shall not grant, or offer to grant, any such severance or termination payments or benefits, or payments or benefits triggered upon a change of control or merger (including the Offer and the Merger), to any person who is hired or offered employment with the Company on or after the date hereof, and the Company shall revise all employee handbooks and similar materials provided to each such person after the date hereof to reflect the foregoing), or adopt any new severance plan, or amend or modify or alter in any manner any severance plan, agreement or arrangement existing on the date hereof, or take any other action that would trigger the payment of any severance payments or other benefits pursuant to any Executive Officer Change in Control Agreement;

(c) Transfer or license to any person or entity or otherwise extend, amend or modify any rights to the Company Intellectual Property, or enter into grants to transfer or license to any person future patent rights, other than non-exclusive licenses granted to resellers and end-users in the ordinary course of business consistent with past practices;

(d) Declare, set aside or pay any dividends on or make any other distributions (whether in cash, stock, equity securities or property) in respect of any capital stock or split, combine or reclassify any capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for any capital stock, except for (i) dividends required to be paid or accrued with respect to Company's Series A Preference Stock and Series B Preference Stock pursuant to the Company Charter Documents as in effect on the date hereof and (ii) dividends or other distributions paid to the Company by any of its subsidiaries;
(e) Purchase, redeem or otherwise acquire, directly or indirectly, any shares of capital stock of Company or its subsidiaries, except repurchases of unvested shares at cost in connection with the termination of the employment relationship with any employee pursuant to stock option or purchase agreements in effect on the date hereof (or any such agreements entered into in the ordinary course consistent with past practice by Company with employees hired after the date hereof);

(f) Issue, deliver, sell, authorize, pledge or otherwise encumber or propose any of the foregoing with respect to any shares of capital stock or any securities convertible into shares of capital stock, or subscriptions, rights, warrants or options to acquire any shares of capital stock or any securities convertible into shares of capital stock, or enter into other agreements or commitments of any character obligating it to issue any such shares or convertible securities, other than (x) the issuance delivery and/or sale of (i) shares of Company Common Stock pursuant to the exercise of stock options, warrants and convertible preferred stock outstanding as of the date of this Agreement, and (ii) shares of Company Common Stock issuable to participants in the ESPP consistent with the terms thereof and (y) the granting of the Company Grants.

(g) Cause, permit or propose any amendments to the Company’s Certificate of Incorporation or Bylaws (or similar governing instruments of any of its subsidiaries);

(h) Acquire or agree to acquire by merging or consolidating with, or by purchasing any equity interest in or a material portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to enter into any joint ventures, strategic partnerships or alliances, other than ordinary course distribution arrangements which are consistent with past practices and cancellable by the Company upon 90 days prior notice without penalty;

(i) Sell, lease, license, encumber or otherwise dispose of any properties or assets except sales of inventory in the ordinary course of business consistent with past practice, and except for the sale, lease or disposition (other than through licensing permitted by clause (c)) of property or assets which are not material, individually or in the aggregate, to the business of Company and its subsidiaries, taken as a whole;

(j) modify, amend or terminate any existing lease, license or contract affecting the use, possession or operation of any such material properties or assets; grant or otherwise create or consent to the creation of any easement, covenant, restriction, assessment or charge affecting any material owned property or leased property or any part thereof; convey, assign, sublease, license or otherwise transfer all or any portion of any material real property or any interest or rights therein; commit any waste or nuisance on any such property; or make any material changes in the construction or condition of any such property;

(k) Incur any indebtedness for borrowed money other than pursuant to the Convertible Note or guarantee any such indebtedness of another person other than a wholly-owned subsidiary, issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of Company, enter into any “keep well” or other agreement to maintain any financial
statement condition or enter into any arrangement having the economic effect of any of the
foregoing other than in connection with the financing of working capital consistent with past
practice;

(l) Adopt or amend any employee benefit plan, policy or arrangement; any
employee stock purchase or employee stock option plan; or enter into any employment contract or
collective bargaining agreement (other than offer letters and letter agreements entered into in the
ordinary course of business consistent with past practice with employees who are terminable “at
will”); pay any special bonus or special remuneration to any director or employee; or increase the
salaries or wage rates or fringe benefits (including rights to severance or indemnification) of its
directors, officers, employees or consultants except, in each case, as may be required by law;
provided, however, that the foregoing shall not prohibit the Company from making CPI-indexed
adjustments to non-officer employees.

(m) (i) pay, discharge, settle or satisfy any material litigation (whether or not
commenced prior to the date of this Agreement) or any material claims, liabilities or obligations
(absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment,
discharge, settlement or satisfaction, in the ordinary course of business consistent with past practice
or in accordance with their terms, or liabilities recognized or disclosed in the most recent
consolidated financial statements (or the notes thereto) of Company included in the Company SEC
Reports or incurred since the date of such financial statements, or (ii) waive the benefits of, agree to
modify in any manner, terminate, release any person from or knowingly fail to enforce any
confidentiality or similar agreement to which Company or any of its subsidiaries is a party or of
which Company or any of its subsidiaries is a beneficiary;

(n) Except in the ordinary course of business consistent with past practice,
modify, amend or terminate any material contract or agreement to which Company or any subsidiary
thereof is a party or waive, delay the exercise of, release or assign any material rights or claims
thereunder;

(o) Except as required by GAAP, revalue any of its assets or make any change in
accounting methods, principles or practices;

(p) Incur or enter into any agreement, contract or commitment requiring
Company or any of its subsidiaries to pay in excess of $250,000;

(q) Make any Tax election or accounting method change inconsistent with past
practice that, individually or in the aggregate, would be reasonably likely to adversely affect in any
material respect the Tax liability or Tax attributes of Company or any of its subsidiaries, taken as a
whole, settle or compromise any material Tax liability, or consent to any extension or waiver of any
limitation period with respect to Taxes;

(r) Agree in writing or otherwise to take any of the actions described in
Section 5.1 (a) through (q) above.
5.2 Conduct of Business by Parent. During the period from the date of this Agreement and 
continuing until the earlier of the termination of this Agreement pursuant to its terms or the 
Effective Time, except as permitted by the terms of this Agreement and except as provided in 
Section 5.2 of the Parent Schedule, without the prior written consent of Company (which consent, or 
refusal thereof, shall not be unreasonably delayed), Parent shall not declare, set aside or pay any 
dividends on or make any other distributions (whether in cash, stock, equity securities or property) in 
respect of any capital stock or split, combine or reclassify any capital stock or issue or authorize the 
issuance of any other securities in respect of, in lieu of or in substitution for any capital stock, unless 
the Stock Amount shall be appropriately adjusted.

ARTICLE VI 
ADDITIONAL AGREEMENTS

6.1 Stockholder Approval; Preparation of Registration Statement and Proxy 
Statement/Prospectus

(a) If approval of Company’s stockholders is required by applicable law in order 
to consummate the Merger other than pursuant to Section 253 of Delaware Law, following the 
acceptance for exchange of Shares pursuant to the Offer, Parent and Company shall, as soon as 
practicable following the acceptance of Shares pursuant to the Offer, prepare and Company shall file 
with the SEC the Proxy Statement and Parent and Company shall prepare and Parent shall file with 
the SEC a post-effective amendment to the Registration Statement (the “Post-Effective 
Amendment”) for the offer and sale of the Parent Common Stock pursuant to the Merger and in 
which the Proxy Statement will be included as a prospectus. Each of Company and Parent shall use 
all commercially reasonable efforts to have the Post-Effective Amendment declared effective under 
the Securities Act as promptly as practicable after such filing. Company will use all commercially 
reasonable efforts to cause the Proxy Statement to be mailed to Company’s stockholders as promptly 
as practicable after the Post-Effective Amendment is declared effective under the Securities Act. 
Parent shall also take any action (other than qualifying to do business in any jurisdiction in which it 
is not now so qualified or to file a general consent to service of process) required to be taken under 
any applicable state securities laws in connection with the issuance of Parent Common Stock in the 
Merger and Company shall furnish all information concerning Company and the holders of capital 
stock of Company as may be reasonably requested in connection with any such action and the 
preparation, filing and distribution of the Proxy Statement. No filing of, or amendment or 
supplement to, or correspondence to the SEC or its staff with respect to, the Post-Effective 
Amendment will be made by Parent, or with respect to the Proxy Statement will be made by 
Company, without providing the other party a reasonable opportunity to review and comment 
thereon. Parent will advise Company, promptly after it receives notice thereof, of the time when the 
Post-Effective Amendment has become effective or any supplement or amendment has been filed, 
the issuance of any stop order, the suspension of the qualification of the Parent Common Stock 
issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the 
SEC for amendment of the Post-Effective Amendment or comments thereon and responses thereto 
or requests by the SEC for additional information. Company will advise Parent, promptly after it 
receives notice thereof, of any request by the SEC for the amendment of the Proxy Statement or
comments thereon and responses thereto or requests by the SEC for additional information. If at any time prior to the Effective Time any information relating to Company or Parent, or any of their respective affiliates, officers or directors, should be discovered by Company or Parent which should be set forth in an amendment or supplement to either of the Post-Effective Amendment or the Proxy Statement, so that any of such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by law, disseminated to the stockholders of Company. Each of the parties hereto shall cause the Proxy Statement to comply as to form and substance to such party in all material respects with the applicable requirements of (i) the Exchange Act, (ii) the Securities Act, and (iii) the rules and regulations of the Nasdaq.

(b) The Proxy Statement shall include the approval and adoption of this Agreement and the approval of the Merger and the recommendation of the Company Board to Company’s stockholders that they vote in favor of the approval and adoption of this Agreement and approval of the Merger, subject to the right of the Company Board to withhold, withdraw, amend or modify its recommendation and recommend a Superior Proposal in accordance with the terms of Section 6.4 of this Agreement; provided, however, that the Company Board shall submit this Agreement to Company’s stockholders whether or not at any time subsequent to the date hereof such board determines that it can no longer make such recommendation. The Proxy Statement shall also include a reproduced copy of the opinion of Robertson Stephens, Inc. referred to in Section 3.18.

6.2 Stockholder Meeting. If approval of Company’s stockholders is required by applicable law in order to consummate the Merger other than pursuant to Section 253 of Delaware Law, the Company shall call and hold a meeting of the stockholders of the Company (the “Company Stockholders’ Meeting”) as promptly as reasonably practicable after the date upon which the Post-Effective Amendment becomes effective for the purpose of voting upon the adoption and approval of this Agreement and the approval of the Merger pursuant to the Proxy Statement, and Company shall use all reasonable efforts to hold the Company Stockholders’ Meeting as promptly as reasonably practicable after the date upon which the Post-Effective Amendment becomes effective. Nothing herein shall prevent Company from adjourning or postponing the Company Stockholders’ Meeting if there are insufficient shares of Company Common Stock necessary to conduct business at the Company Stockholders’ Meeting. Subject to the right of the Company Board to withhold, withdraw, amend or modify its recommendation and recommend a Superior Proposal in accordance with the terms of Section 6.4 of this Agreement, Company shall use commercially reasonable efforts to solicit from its shareholders proxies in favor of the adoption and approval of this Agreement and the approval of the Merger pursuant to the Proxy Statement and shall take all other commercially reasonable action necessary or advisable to secure the vote or consent of shareholders required by Delaware Law or applicable Nasdaq requirements to obtain such approval. Company shall call and hold the Company Stockholders’ Meeting for the purpose of voting upon the adoption and approval of this Agreement and the approval of the Merger whether or not the Company Board at any time subsequent to the date hereof determines that this Agreement is no longer advisable or recommends
that Company’s shareholders reject it. Notwithstanding anything to the contrary contained in this Agreement, the Company’s obligation to establish a record date for, call, give notice of, convene and hold the Company Stockholders’ Meeting in accordance with this Section 6.2 shall not be limited to or otherwise affected by the commencement, disclosure, announcement or submission to the Company of any Acquisition Proposal (as defined below).

(a) Notwithstanding Section 6.1 hereof or this Section 6.2, in the event that Parent, Merger Sub or any other subsidiary of Parent, shall acquire at least 90 percent of the Shares pursuant to the Offer or otherwise, each of the parties hereto shall take all necessary and appropriate action to cause the Merger to become effective as soon as practicable after such acquisition, without a meeting of stockholders in accordance with Section 253 of Delaware Law.

6.3 Confidentiality; Access to Information. The parties acknowledge that Company and Parent have previously executed a Confidentiality and Standstill Agreement, dated as of March 7, 2001, (the “Confidentiality Agreement”), which Confidentiality Agreement will continue in full force and effect in accordance with its terms. Company will afford Parent and its accountants, counsel and other representatives reasonable access during normal business hours, upon reasonable notice, to the properties, books, records and personnel of Company during the period prior to the Effective Time to obtain all information concerning the business, including the status of product development efforts, properties, results of operations and personnel of Company, as Parent may reasonably request. No information or knowledge obtained by Parent in any investigation pursuant to this Section 6.3 will affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties to consummate the Merger.

6.4 No Solicitation.

(a) From and after the date of this Agreement until the Appointment Date or termination of this Agreement pursuant to Article VIII, Company and its subsidiaries will not, nor will they authorize or permit any of their respective officers, directors, affiliates or employees or any investment banker, attorney or other advisor or representative retained by any of them to, directly or indirectly, (i) solicit, initiate, encourage or induce the making, submission or announcement of any Acquisition Proposal (as defined below), (ii) participate in any discussions or negotiations regarding, or furnish to any person any information relating to Company or any of its subsidiaries or afford access to the business, properties, assets, books or records of Company or any of its subsidiaries to any person that has made, or take any other action intended to assist or facilitate any inquiries or the making of any proposal that constitutes or would reasonably be expected to lead to, any Acquisition Proposal, (iii) engage in discussions or negotiations with any person with respect to any Acquisition Proposal, (iv) approve, endorse or recommend any Acquisition Proposal or (v) enter into any letter of intent or similar document or any contract, agreement or commitment contemplating or otherwise relating to any Acquisition Transaction (as defined below). Notwithstanding the foregoing, prior to the Appointment Date the Company Board, directly or indirectly through advisors, agents or other intermediaries, may (i) subject to Company’s compliance with this Section 6.4, engage or participate in discussions or negotiations with any third party that has made (and not withdrawn) a bona fide Acquisition Proposal that the Company Board reasonably concludes in good faith (after consultation
with a financial advisor of nationally recognized reputation) constitutes a Superior Proposal, (ii) furnish to such third party nonpublic information relating to Company or any of its subsidiaries pursuant to a confidentiality agreement with terms no less favorable to Company than those contained in the Confidentiality Agreement, and/or (iii) following receipt of such an Acquisition Proposal, withhold, withdraw, amend or modify its recommendations and approve, endorse or recommend such Acquisition Proposal; provided, that in each case (x) neither Company nor any representative of Company and its subsidiaries shall have violated any of the restrictions set forth in this Section 6.4 in connection with such Acquisition Proposal or person making such Acquisition Proposal, (y) the Company Board reasonably concludes in good faith, after consultation with its outside legal counsel, that in light of such Superior Proposal such action is required for the Board of Directors of Company to comply with its fiduciary obligations to Company’s stockholders under Delaware Law, (z) at least three days prior to furnishing any such information to, or entering into any such discussions or negotiations with, such person or group, Company gives Parent written notice of the identity of such person or group and all of the material terms and conditions of such Acquisition Proposal and of Company’s intention to furnish nonpublic information to, or enter into discussions or negotiations with, such person or group, and (4) contemporaneously with furnishing any such information to such person or group, Company furnishes such information to Parent (to the extent such information has not been previously furnished by Company to Parent). Company and its subsidiaries will immediately cease any and all existing activities, discussions or negotiations with any parties conducted heretofore with respect to any Acquisition Proposal. Without limiting the foregoing, it is understood that any violation of the restrictions set forth in this Section 6.4 by any officer, director or employee of Company or any of its subsidiaries or any investment banker, attorney or other advisor or representative of Company or any of its subsidiaries shall be deemed to be a breach of this Section 6.4 by Company. Company shall not be entitled to enter into any letter of intent or similar document or any agreement, contract or commitment (other than a confidentiality agreement as permitted by this Section 6.4) contemplating or otherwise relating to an Acquisition Proposal unless and until this Agreement is terminated by its terms pursuant to Section 8.1(h) and Company has paid all amounts due to Parent pursuant to Section 8.3. This Section 6.4 shall not prohibit Company’s Board of Directors from taking and disclosing to its stockholders a position contemplated by Rule 14e-2(a) promulgated under the Exchange Act or complying with the provisions of Rule 14d-9 promulgated under the Exchange Act.

For purposes of this Agreement, (i) “Acquisition Proposal” shall mean any offer or proposal (other than an offer or proposal by Parent) relating to any Acquisition Transaction; (ii) “Acquisition Transaction” shall mean any transaction or series of related transactions other than the transactions contemplated by this Agreement involving: (A) any acquisition or purchase from Company by any person or “group” (as defined under Section 13(d) of the Exchange Act and the rules and regulations thereunder) of more than a 15% interest in the total outstanding voting securities of Company or any of its subsidiaries or any tender offer or exchange offer that if consummated would result in any person or “group” (as defined under Section 13(d) of the Exchange Act and the rules and regulations thereunder) beneficially owning 15% or more of the total outstanding voting securities of Company or any of its subsidiaries or any merger, consolidation, business combination or similar transaction involving Company pursuant to which the shareholders of Company immediately preceding such transaction hold less than 85% of the equity interests in the surviving or resulting entity of such
transaction; (B) any sale, lease (other than in the ordinary course of business), exchange, transfer, license (other than in the ordinary course of business), acquisition or disposition of more than 15% of the assets of Company; or (C) any liquidation, dissolution, recapitalization or other significant corporate reorganization of Company; and (iii) "Superior Proposal" shall mean an Acquisition Proposal involving the acquisition of all outstanding voting securities of the Company with respect to which the Company Board shall have reasonably determined in good faith (after consultation with a financial advisor of a nationally recognized standing) (A) taking into account, among other things, the legal, financial and regulatory aspects of such Acquisition Proposal and the Person making such Acquisition Proposal, that the acquiring party is capable of consummating the proposed Acquisition Transaction on the terms proposed, and which, if any cash consideration is involved, shall not be subject to any financing contingency, and (B) that the proposed Acquisition Transaction would, if consummated, be more favorable to the Company's stockholders (in their capacities as such), from a financial point of view, than the transactions contemplated by this Agreement.

(b) In addition to the obligations of Company set forth in paragraph (a) of this Section 6.4, Company as promptly as practicable, and in any event within 24 hours, shall advise Parent orally and in writing of any request for information which Company reasonably believes would lead to an Acquisition Proposal or of any Acquisition Proposal, or any inquiry with respect to or which Company reasonably believes would lead to any Acquisition Proposal; the material terms and conditions of such request, Acquisition Proposal or inquiry; and the identity of the person or group making any such request, Acquisition Proposal or inquiry, unless any such disclosure is prohibited pursuant to an agreement entered into before the date of this Agreement between the Company and the person making such Acquisition Proposal and such agreement is listed on the Company Schedule. Company will keep Parent informed in all material respects of the status and details (including material amendments or proposed amendments) of any such request, Acquisition Proposal or inquiry, unless any such disclosure is prohibited pursuant to an agreement entered into before the Date of this Agreement between the Company and the person making such Acquisition Proposal and such agreement is listed on the Company Schedule. In addition to the foregoing, Company shall (i) provide Parent with at least 48 hours prior written notice (or such lesser prior notice as provided to the members of the Company Board but in no event less than eight hours) of any meeting of the Company Board at which the Company Board is reasonably expected to consider an Acquisition Proposal and (ii) provide Parent with at least one (1) business days prior written notice of a meeting of the Company Board at which the Company Board is reasonably expected to approve, endorse or recommend a Superior Proposal to its shareholders and together with such notice a copy of the definitive documentation relating to such Superior Proposal.

6.5 Public Disclosure. Parent and Company will consult with each other, and agree, before issuing any press release, and will consult with each other and to the extent practicable, agree, before otherwise making any public statement with respect to the Offer, this Agreement, the other party, or an Acquisition Proposal, and will not issue any such press release or make any such public statement prior to such consultation, except as may be required by law or any listing agreement with a national securities exchange, in which case reasonable efforts to consult with the other party will be made prior to any such release or public statement. All press releases and other public statements by Parent with respect to the Offer and this Agreement shall comply with Section 6.16 hereof.
6.6 Best Efforts: Notification.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the parties agrees to use its best efforts to take, or cause to be taken, all reasonable actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things reasonably necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including to accomplish the following: (i) causing of the conditions precedent set forth in Article VII and on Annex A hereto be satisfied, (ii) the obtaining of all necessary actions or nonactions, waivers, consents, approvals, orders and authorizations from Governmental Entities and the making of all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Entities, if any) and the taking of all commercially reasonable steps as may be necessary to avoid any suit, claim, action, investigation or proceeding by any Governmental Entity, (iii) the defending of any suits, claims, actions, investigations or proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed and (iv) the execution or delivery of any additional instruments reasonably necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement. In connection with and without limiting the foregoing, Company and the Company Board shall, if any state takeover statute or similar statute or regulation is or becomes applicable to this Agreement or any of the transactions contemplated by this Agreement, use its best efforts to take, or cause to be taken, all reasonable actions to ensure that the transactions contemplated by this Agreement may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such statute or regulation on this Agreement and the transactions contemplated hereby. Notwithstanding anything herein to the contrary, nothing in this Agreement shall be deemed to require Parent or Company or any subsidiary or affiliate thereof to agree to any divestiture by itself or any of its affiliates of shares of capital stock or of any business, assets or property, or the imposition of any limitation on the ability of any of them to conduct their business or to own or exercise control of such assets, properties and stock.

(b) Company shall give prompt notice to Parent upon becoming aware that any representation or warranty made by it contained in this Agreement has become materially untrue or inaccurate, or of any failure of Company to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

(c) Parent shall give prompt notice to Company upon becoming aware that any representation or warranty made by it or Merger Sub contained in this Agreement has become materially untrue or inaccurate, or of any failure of Parent or Merger Sub to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement; provided, however, that no such notification shall affect the representations,
warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

6.7 Third Party Consents. As soon as practicable following the date hereof, Parent and Company will each use commercially reasonable efforts to obtain all consents, waivers and approvals set forth in Section 6.7 of the Company Schedule.

6.8 Stock Options; ESPP; Warrants.

(a) Stock Options. Except as provided in Section 6.8(b) below, immediately prior to the Effective Time of the Merger each outstanding option to purchase shares of Company Common Stock (each, a “Company Stock Option”) under the Company Option Plans, and the Company Option Plans themselves (except for the 1998 Acquisition Stock Plan), shall terminate. Company shall take all necessary actions (including providing all required notices) to ensure that all outstanding Company Stock Options and such Company Option Plans are terminated immediately prior to the Effective Time of the Merger. In the case of any holder of a Company Stock Option, the parties shall take steps (i) to enable the holder thereof to exercise the option (including any portion thereof that first becomes exercisable in connection with the Offer) on a basis that enables the holder effectively to tender in the Offer the shares acquired upon exercise, and (ii) in the case of any such option that is not an “incentive stock option,” to permit the holder of the option, in his or her discretion, to tender the option (in lieu of exercising it) and receive the Offer Price payable with respect to the number of shares for which the option was exercisable, net of the exercise price.

(b) Amendment to Company’s 1998 Acquisition Stock Plan; Additional Company Grants, and Assumption of Company Grants.

(i) Prior to the date of the expiration of the Offer (the “Expiration Date”), Company shall take all actions necessary to amend Company’s 1998 Acquisition Stock Plan and form of option agreement thereunder to provide that with respect to the future grant of Company Stock Options (the “Company Grants”): (a) the exercisability of such Company Grants shall not accelerate as a result of the transactions contemplated by this Agreement, including the Offer and the Merger, and (b) in connection with this Agreement, such Company Grants shall be assumed by Parent in accordance with the provisions of Section 6.8(b)(iii) hereof.

(ii) Prior to the Expiration Date, Company shall make such Company Grants in such numbers and pursuant to such terms and conditions as shall be directed by Parent at least five (5) business days prior to the Expiration Date provided, however, that the exercise price of such Company Grants shall be equal to the fair market value of the Company’s common stock on the date of grant; and provided further, that the total number of shares of Company common stock reserved for issuance as Company Grants shall not exceed 5,500,000 shares. The Company Grants shall be non-qualified options.

(iii) At the Effective Time of the Merger, Parent shall assume such Company Grants, and such assumed Company Grants will continue to have, and be subject to, the terms and conditions of such options immediately prior to the Effective Time except that (a) each
Company Grant will be solely exercisable (or will become exercisable in accordance with its terms) for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Company Common Stock that were issuable upon exercise of such Company Grant immediately prior to the Effective Time multiplied by the Option Exchange Ratio (as defined below), rounded down to the nearest whole number of shares of Parent Common Stock and (b) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such assumed Company Grant will be equal to the quotient determined by dividing the exercise price per share of Company Common Stock at which such Company Grant was exercisable immediately prior to the Effective Time by the Option Exchange Ratio, rounded up to the nearest whole cent. Parent shall comply with the terms of all such Company Grants. Parent shall take all corporate actions necessary to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery pursuant to the terms set forth in this Section 6.8(b). The “Option Exchange Ratio” shall be equal to the sum obtained by adding (i) the Stock Portion and (ii) the quotient obtained by dividing the Cash Portion by the average closing sale price of one share of Parent Common Stock as reported on The Nasdaq National Market for the five (5) consecutive trading days ending immediately prior to the Effective Time.

(c) ESPP. Company shall take all steps necessary to terminate Company’s ESPP on the earlier to occur of the (i) the Expiration Date or (ii) August 31, 2001. In the event the ESPP is terminated on the Expiration Date, the exercise date for outstanding purchase rights under the ESPP shall be accelerated to enable participants effectively to exercise and tender in the Offer shares acquired upon exercise.

(d) Company Warrants. At the Effective Time, each outstanding Company Warrant, shall become and represent, for each share of Company Common Stock subject to a Company Warrant, the right to receive a unit consisting of (i) the Cash Portion and (ii) the Stock Portion, and shall have an exercise price per such unit equal to the exercise price of such Company Warrant per share of Company Common Stock immediately prior to the Effective Time. After the Effective Time, each Company Warrant shall be exercisable upon the same terms and conditions as were applicable to such Company Warrant immediately prior to the Effective Time. Parent shall take all corporate actions necessary to reserve for issuance a sufficient amount of cash and number of shares of Parent Common Stock for delivery following the exercise of the Company Warrants, or shall receive such other treatment as shall be required in accordance with the terms of the applicable Company Warrant. The Company will provide any notice to warrantholders required under the terms of each Company Warrant in connection with the Offer and the Merger.

6.9 Employee Benefits.

(a) Company shall terminate, effective as of the day immediately preceding the date the Company becomes a member of the same Controlled Group of Corporations (as defined in Section 414(b) of the Code) as the Parent (the “401(k) Termination Date”), any and all 401(k) plans unless Parent provides notice to Company that such 401(k) plan(s) shall not be terminated. Parent shall receive from Company evidence that Company’s plan(s) and/or program(s) have been terminated pursuant to resolutions of each such entity’s Board of Directors (the form and substance
of such resolutions shall be subject to review and approval of Parent), effective as of the 401(k) Termination Date. To the extent permitted by Parent’s applicable plan and otherwise practicable, Parent shall take appropriate steps to enable continuing employees to roll over distributions from the terminated plans to a tax-qualified defined contribution plan or plans maintained by Parent or an affiliate.

(b) Parent will cause the Surviving Corporation to provide the benefits (including health benefits, severance policies, 401(k) plans and general employment policies and procedures, subject to the terms and conditions of such plans) which are substantially comparable in the aggregate to benefits that are available to similarly situated employees of Parent and its subsidiaries as of the date hereof, provided, however, that such insurance carriers, outside providers or the like are able to provide such benefits on terms reasonably acceptable to Parent, and provided, further, that nothing in this Section 6.8 shall prevent the Surviving Corporation or any of its subsidiaries from making any change required by applicable law, and provided, further, that it shall not result in any duplication of benefits.

(c) To the extent permitted under applicable law, each employee of Company or its subsidiaries shall be given credit for all service with Company or its subsidiaries (or service credited by Company or its subsidiaries) under all employee benefit plans, programs, policies and arrangements maintained by Parent or the Surviving Corporation (other than sabbatical benefits, for which employees of Company or its subsidiaries will not receive any such past service credit) in which they participate or in which they become participants for purposes of eligibility and vesting; provided, however, that no such credit shall be provided in any circumstance that would result in duplicative benefits, and provided, further that such insurance carriers, outside providers or the like are able to honor such commitments or terms reasonably acceptable to Parent.

6.10 Form S-8. Parent agrees to file, if available for use by Parent, a registration statement on Form S-8 for the shares of Parent Common Stock issuable with respect to assumed Company Stock Options granted pursuant to the Company Grants as soon as is reasonably practicable after the Effective Time.

6.11 No Rights Plan Amendment. Prior to the earlier of the termination of this Agreement or the Closing, Company and the Company Board shall not amend or modify or take any other action with regard to the Company Rights Plan in any manner or take another action so as to (i) render the Company Rights Plan inapplicable to any transaction(s) other than the Offer, the Merger and other transactions contemplated by this Agreement and the Company Tender and Voting Agreements, or (ii) permit any person or group (other than Parent, Merger Sub or any of their affiliates) who would otherwise be an Acquiring Person (as defined in the Company Rights Plan) not to be an Acquiring Person, or (iii) provide that a Distribution Date or a Stock Acquisition Date (as such terms are defined in the Company Rights Plan) or similar event does not occur as promptly as practicable by reason of the execution of any agreement or transaction other than this Agreement and the Company Tender and Voting Agreements and the Offer, the Merger and the agreements and transactions contemplated hereby and thereby, or (iv) except as specifically contemplated by this Agreement, otherwise affect the rights of holders of Rights.
6.12 Indemnification.

(a) From and after the Effective Time, Parent will cause the Surviving Corporation to fulfill and honor in all respects the obligations of Company pursuant to any indemnification agreements between Company and its directors and officers in effect immediately prior to the Effective Time (the "Indemnified Parties") and any indemnification provisions under the Company Charter Documents as in effect on the date hereof to the maximum extent permitted by law; provided, however, that the foregoing obligations shall not extend to claims against the Company's officers and directors arising out of or in connection with the SEC’s investigation of the restatement of the financial reports of the Company in certain periods of 1997 and 1998. The Certificate of Incorporation of the Surviving Corporation will contain provisions with respect to exculpation and indemnification that are at least as favorable to the Indemnified Parties as those contained in the Company Charter Documents as in effect on the date hereof, which provisions will not be amended, repealed or otherwise modified in any manner that would adversely affect the rights thereunder of individuals who, immediately prior to the Effective Time, were directors, officers, employees or agents of Company, unless such modification is required by law.

(b) For a period of three (3) years after the Effective Time, Parent will cause the Surviving Corporation to maintain in effect, if available, directors’ and officers’ liability insurance covering those persons who are currently covered by the Company’s directors’ and officers’ liability insurance policy in an amount and on terms no less advantageous, when taken as a whole, to those applicable to the current directors and officers of the Company; provided, however, that in no event will Parent or the Surviving Corporation be required to expend an annual premium for such coverage in excess of 150% of the annual premium currently paid by Company (and if the cost for such coverage is in excess of such amount the Surviving Corporation shall only be required to maintain such coverage as is available for such amount).

(c) In the event the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, proper provisions shall be made so that the successors and assigns of the Surviving Corporation, assume or continue the obligations set forth in this Section 6.12.

(d) The provisions of this Section 6.12 shall survive the consummation of the Merger at the Effective Time and continue for the periods specified in this Section 6.12 and are (i) intended to be for the benefit of, and will be enforceable by, each of the Indemnified Parties and their respective heirs and representatives and (ii) in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have by contract or otherwise.

6.13 Regulatory Filings. As soon as may be reasonably practicable, Company and Parent shall file with the United States Federal Trade Commission (the "FTC") and the Antitrust Division of the United States Department of Justice ("DOJ") Notification and Report Forms relating to the transactions contemplated herein as required by the HSR Act, as well as comparable pre-merger notification filings and submissions with any foreign Governmental Entity as the parties may
agree in their best judgment are necessary, material or appropriate. Company and Parent each shall (a) cooperate and coordinate with one another in the making of such filings, (b) supply the other with any information which may be required in order to effectuate such filings, and (c) supply any additional information which reasonably may be required by the FTC, the DOJ or the competition or merger control authorities of any other Governmental Entity; provided, however, that Parent shall not be required to agree to any divestiture by Parent or Company or any of Parent’s subsidiaries or affiliates of shares of capital stock or of any business, assets or property of Parent or its subsidiaries or affiliates or of Company, its affiliates, or the imposition of any limitation on the ability of any of them to conduct their businesses or to own or exercise control of such assets, properties and stock.


(a) Neither the Schedule 14D-9 nor the Proxy Statement, nor any of the information supplied or to be supplied by Company or its subsidiaries or representatives for inclusion or incorporation by reference in the Offer Documents, the Registration Statement or the Post-Effective Amendment will, at the respective times any such documents or any amendments or supplements thereto are filed with the SEC, are first published, sent or given to stockholders or become effective under the Securities Act or, in the case of the Proxy Statement, at the time of the Company Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading. The Schedule 14D-9 and the Proxy Statement will comply as to form in all material respects with the requirements of all applicable laws, including the Exchange Act and the rules and regulations thereunder. No representations or warranty is made by Company with respect to statements made or incorporated by reference in any such documents based on information supplied by Parent or Merger Sub for inclusion or incorporation by reference therein.

(b) Neither the Offer Documents nor the Registration Statement nor the Post-Effective Amendment, nor any of the information supplied or to be supplied by Parent or its subsidiaries or representatives for inclusion or incorporation by reference in the Schedule 14D-9 or the Proxy Statement will, at the respective times any such documents or any amendments or supplements thereto are filed with the SEC, are first published, sent or given to stockholders or become effective under the Securities Act or, in the case of the Proxy Statement, at the time of the Company Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading. The Offer Documents and the Registration Statement and the Post-Effective Amendment will comply as to form in all material respects with the requirements of all applicable laws, including the Securities Act and the Exchange Act and the rules and regulations thereunder. No representation or warranty is made by Parent or Merger Sub with respect to statements made or incorporated by reference in any such documents based on information supplied by Company for inclusion or incorporation by reference therein.

6.15 Inspection of Real Property. From and after the date of this Agreement, Parent and its agents, contractors and representatives shall have the right and privilege of entering upon all properties owed or leased by Company and of reviewing Company’s books and records regarding
such properties from time to time as needed to make any inspections, evaluations, surveys or tests which Parent may reasonably deem necessary or appropriate. Without limiting the generality of the foregoing, Parent and its agents, contractors and representatives shall have the right and privilege of conducting such engineering studies, seismic tests, environmental studies (including, without limitation, surface and subsurface tests, borings and samplings) and surveys of such properties and such feasibility studies as Parent deems necessary or appropriate and to investigate all matters relating to zoning, use and compliance with other applicable laws regarding the use and occupancy of such properties and any proposed impositions, assessments and governmental regulations affecting such properties. Company shall cooperate reasonably with Parent in completing such inspections and evaluations. Parent’s exercise of its right to inspect such properties, or Parent’s election not to inspect any property, shall in no way be interpreted as a waiver of any of Parent’s rights or remedies contained in this Agreement, including, without limitation, Parent’s right to rely on Company’s representations and warranties made herein.

6.16 Product Support Obligations. In connection with all press releases relating to this Agreement or the Offer, Parent and Company shall make public statements, which will be communicated in writing by each party to their respective sales forces and others, that: (i) Parent’s belief in the iPower PC architecture and Company’s belief in the Viewstation’s architecture are significant factors in their decision to enter into this Agreement as it rounds out their respective product lines allowing them to address increasing customer demand for a broad range of video communication products for the expanding IP and circuit-switched broadband networks and (ii) after the consummation of the Offer and the Merger, in addition to its ViewStation products, Parent intends to sell and support Company’s iPower PC based products, and to develop next generation appliance and PC products that leverage the best of breed features and functionality of the ViewStation and iPower PC platforms. In connection with all press releases relating to this Agreement or the Offer, both Parent and Company will state their respective individual beliefs that appliance and PC based architectures are needed to exploit pent up demand. Parent agrees that it will not issue press releases or make other public statements, or give instructions to its sales force, in contravention of the above obligations. Each of Parent and Company shall carry out its individual obligations under this Section 6.16 in all material respects. Parent and Company acknowledge that the agreements contained in this Section 6.16 are an integral part of the transactions contemplated by this Agreement.

6.17 Tax Planning Cooperation. Prior to the Expiration Date, the parties shall use their commercially reasonable efforts to cooperate in developing and implementing a comprehensive tax planning strategy for the combined entity.

6.18 Company Affiliate Agreements. Set forth in Section 6.18 of the Company Schedule is a complete and accurate list of those persons who may be deemed to be, in Company’s reasonable judgment, affiliates of Company within the meaning of Rule 145 promulgated under the Securities Act (each, a “Company Affiliate”). Company will provide Parent with such information and documents as Parent reasonably requests for purposes of reviewing such list. Company has delivered herewith written Company Affiliate Agreements substantially in the form attached hereto as Exhibit D executed by all Company Affiliates as of the date hereof. Company will use its
commercially reasonable efforts to deliver or cause to be delivered to Parent, on or as promptly as practicable following the date hereof, from each Company Affiliate that has not delivered a Company Affiliate Agreement on or prior to the date hereof, an executed Company Affiliate Agreement. Each Company Affiliate Agreement will be in full force and effect as of the Effective Time. Parent will be entitled to place appropriate legends on the certificates evidencing any Parent Common Stock to be received by a Company Affiliate pursuant to the terms of this Agreement, and to issue appropriate stop transfer instructions to the transfer agent for the Parent Common Stock, consistent with the terms of the Company Affiliate Agreement.

6.19 Nasdaq Listing. Parent agrees to cause the listing on Nasdaq the shares of Parent Common Stock issuable, and those required to be reserved for issuance, in connection with the Offer and Merger, subject to official notice of issuance.

6.20 Assumption of Executive Officer Change in Control Agreements. Immediately prior to the closing of the Merger Parent hereby assumes and agrees to perform in the same manner and to the same extent as the Company would have been required to perform had the Merger not been consummated, the Executive Officer Change in Control Agreements entered into between the Company and certain individuals effective immediately prior to the execution of this Agreement. Parent will cause Company to perform its obligations under the Company’s Key Employee Change in Control Severance Plan and Special Change in Control Severance Plan.

6.21 Preference Stock. On the date Merger Sub first accepts for payment Shares tendered pursuant to the Offer, the holders of Series A Preference Stock of the Company and the holders of Series B Preference Stock of the Company as of such date (to the extent that such shares shall not have previously been converted to Company Common Stock) shall be entitled to a payment equal to the purchase price each originally paid for the Series A Preference Stock and Series B Preference Stock upon issuance of such stock together with, in the case of the Series A Preferred Stock, any declared but unpaid dividends thereon, and, in the case of the Series B Preferred Stock, cumulative but unpaid dividends thereon. Company shall cause to be sent to each holder of Series A Preference Stock and Series B Preference Stock the Offer Documents and the Schedule 14D-9 concurrently with, and in the same manner as, such are sent to the holders of the Company Common Stock. In addition, the Company shall cause to be sent to each holder of Series A Preference Stock and Series B Preference Stock copies of any other documents filed with the SEC on a non-confidential basis promptly following the filing of such documents with the SEC.

6.22 Convertible Note Financing. In the event that each of the following events shall have occurred: (a) Company and Congress Financial Corporation (New England) ("Financial Lender") shall have entered into an amendment to the Loan and Security Agreement dated August 22, 2000 entered into by and between Financial Lender and Company (the "Facility") in a manner satisfactory to Parent, (b) Parent shall have made arrangements to cause a letter of credit to be issued to Lender in respect of Company's obligations to Financial Lender under the Facility, (c) Company shall have granted to Parent a second priority perfected security interest in substantially all of the assets of Company in a manner satisfactory to Parent, (d) Parent shall have been granted a first priority perfected security interest in the deposit account in which the $34,900,000 to be advanced to
Company pursuant to the Senior Convertible Note – Series B will be held, such deposit account to be free and clear of all other liens, and (e) Company shall have executed and delivered to Parent the Convertible Notes, Note Agreement pursuant to which the Convertible Notes will be issued to Parent, and the Registration Rights Agreement then (i) $15,000,000 shall be released from the Escrow Fund (as defined in that certain Escrow Agreement, dated as of May 23, 2001, among Parent, Company and the Escrow Agent Party thereto) to Company pursuant to the Convertible Note – Series A, (ii) Parent shall execute and deliver to Company the Note Agreement and the Registration Rights Agreement, and (iii) the $34,900,000 to be advanced to Company pursuant to the Senior Convertible Note – Series B shall be released to Company pursuant to the Senior Convertible Note – Series B in the manner specified therein and in the Note Agreement pertaining thereto.

**ARTICLE VII**

**CONDITIONS TO THE MERGER**

7.1 **Conditions.** The respective obligations of each party to consummate the Merger shall be subject to the satisfaction or waiver, where permissible, prior to the Effective Time, of the following conditions:

(a) **Stockholder Approval.** If required by Delaware Law, this Agreement and the Merger shall have been duly approved and adopted by the holders of a majority of the outstanding shares of each class of the Company entitled to vote on this Agreement and the Merger, in accordance with applicable law and the Certificate of Incorporation and Bylaws of the Company;

(b) **Purchase of Shares.** Merger Sub (or Parent) shall have purchased all of the Shares validly tendered pursuant to the Offer; and

(c) **Litigation.** No court or other Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) which is in effect and prohibits consummation of the Merger (collectively, an “*Order*”).

(d) **Registration Statement.** The Registration Statement or the Post-Effective Amendment, as the case may be, shall have been declared effective and no stop order suspending effectiveness shall be in effect and no proceedings for such purpose shall be pending before or threatened by the SEC.

(e) **Listing.** The shares of Parent Common Stock to be issued in the Merger shall have been approved for listing on the Nasdaq, subject to official notice of issuance, or shall be exempt from such requirement under then applicable laws, regulations and rules of Nasdaq.
ARTICLE VIII
TERMINATION, AMENDMENT AND WAIVER

8.1 Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time (notwithstanding any approval of this Agreement by the stockholders of Company):

(a) by mutual written agreement of Company and Parent; or

(b) by either Company or Parent, if:

(i) the Offer shall have expired or been terminated in accordance with the terms of this Agreement without Parent or Merger Sub having accepted for exchange any Shares pursuant to the Offer, provided that Parent and Merger Sub shall not be permitted to terminate this Agreement pursuant to this Section 8.1(b)(i) if the Offer is terminated or expires without Shares having been accepted for exchange as a result of a breach by Parent or Merger Sub of this Agreement; or

(ii) the Offer has not been consummated on or before February 24, 2002 (the “End Date”); provided, however, that the right to terminate this Agreement under this Section 8.1(b)(ii) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the principal cause of or resulted in the failure of the Offer to have been consummated on or before such date and such action or failure to act constitutes a material breach of this Agreement; or

(iii) there shall be any applicable law or regulation that makes consummation of the Merger illegal or otherwise prohibited or any judgment, injunction, order or decree of any court or governmental body having competent jurisdiction enjoining Company or Parent from consummating the Merger is entered and such judgment, injunction, judgment or order shall have become final and nonappealable; or

(c) at any time prior to the Appointment Date, by Company, upon a material breach of any covenant or agreement on the part of Parent set forth in this Agreement, or if any representation or warranty of Parent shall have been untrue or inaccurate when made or shall have become untrue or inaccurate such that, in the aggregate, in the case of such representations and warranties, such untruths or inaccuracies would reasonably be expected to have a Material Adverse Effect on Parent; provided, that if such untruth or inaccuracy in Parent’s representations and warranties or breach by Parent is curable by Parent through exercise of its commercially reasonable efforts, then Company may not terminate this Agreement pursuant to this Section 8.1(c) until the earlier of (i) the expiration of a thirty (30) day period after delivery of written notice from Company to Parent of such untruth or inaccuracy or breach, or (ii) Parent ceasing to exercise commercially reasonable efforts to cure such untruth or inaccuracy or breach, provided, that Parent continues to exercise commercially reasonable efforts to cure such untruth or inaccuracy or breach (it being understood that Company may not terminate this Agreement pursuant to this Section 8.1(c) if such untruth or inaccuracy or breach by Parent is cured during such thirty-day period); or
(d) at any time prior to the Appointment Date, by Parent, upon a material breach of any covenant or agreement on the part of Company set forth in this Agreement, or if any representation or warranty of Company shall have been untrue or inaccurate when made or shall have become untrue or inaccurate such that Merger Sub would not have been required to accept for exchange any Shares tendered pursuant to the Offer by virtue of clause (e) or (f) of the condition (v) of Annex A hereto if the expiration of the Offer had occurred on such date, provided, that if such untruth or inaccuracy in Company’s representations and warranties or breach by Company is curable by Company through exercise of its commercially reasonable efforts, then Parent may not terminate this Agreement pursuant to this Section 8.1(d) until the earlier of (i) the expiration of a thirty (30) day period after delivery of written notice from Parent to Company of such untruth or inaccuracy or breach, or (ii) Company ceasing to exercise commercially reasonable efforts to cure such untruth or inaccuracy or breach, provided, that Company continues to exercise commercially reasonable efforts to cure such untruth or inaccuracy or breach (it being understood that Parent may not terminate this Agreement pursuant to this Section 8.1(d) if such untruth or inaccuracy or breach by Company is cured during such thirty-day period); or

(e) by Parent, if an event has occurred or a circumstance has arisen that would reasonably be expected to have a Material Adverse Effect on the Company that is not curable by the Company through the exercise of its commercially reasonable efforts; or

(f) by Company, if an event has occurred or a circumstance has arisen that would reasonably be expected to have a Material Adverse Effect on Parent that is not curable by Parent through the exercise of its commercially reasonable efforts; or

(g) by Parent if a Triggering Event shall have occurred; or

(h) at any time prior to the Appointment Date, by Company, prior to acceptance for payment of Shares in the Offer, to enter into a definitive agreement with respect to an Acquisition Proposal, provided that, (i) Company is not in breach of its obligations under this Section 8.1(f) and under Section 6.4 hereof and continues to comply with all such obligations in all respects, (ii) the Company Board has authorized, subject to complying with the terms of this Agreement, Company to enter into a definitive written agreement for a transaction that constitutes a Superior Proposal, (iii) Company notifies Parent in writing that Company has received a Superior Proposal and intends to enter into a definitive agreement with respect to such Superior Proposal, attaching the most current version of such agreement to such notice, (iv) Parent does not make, within three (3) business days after receipt of Company’s written notice of its intention to enter into a definitive agreement for a Superior Proposal, an offer that the Company Board in good faith reasonably determines, after consultation with a financial advisor of nationally recognized standing and its outside legal counsel, is at least as favorable to Company’s stockholders as such Superior Proposal, (v) during such period Company has informed Parent of the terms and conditions of such Superior Proposal, and the identity of the person making such Superior Proposal, with the intent of enabling both parties to agree to a modification of the terms and conditions of this Agreement so that the transactions contemplated hereby may be effected, (vi) prior to Company’s termination pursuant to this Section 8.1(h), Company pays to Parent the Termination Fee required by Section 8.3, and
following such termination Company enters into a definitive agreement to effect the Superior Proposal.

For purposes of this Agreement, a "Triggering Event" shall be deemed to have occurred if, prior to the Effective Time: (i) the Company Board or any committee thereof shall have approved or recommended to Company stockholders any Acquisition Proposal, (ii) the Company Board or any committee thereof shall for any reason have withheld, withdrawn, amended or modified its recommendation in favor of the Offer, the adoption and approval of the Agreement or the approval of the Merger (the "Recommendations"); (iii) Company shall have failed to include the Recommendations in the Offer Documents or the Schedule 14D-9; (iv) Company shall have breached the provisions of Section 6.4 in any material respect; (v) Company shall have entered into any letter of intent or similar document or any agreement, contract or commitment (other than a confidentiality agreement as permitted by Section 6.4) accepting any Acquisition Proposal; or (vi) a tender or exchange offer shall have been commenced by a person unaffiliated with Parent, and Company shall not have sent to its security holders pursuant to Rule 14e-2 promulgated under the Securities Act, within ten (10) business days after such tender or exchange offer is first published sent or given, a statement disclosing that Company recommends rejection of such tender or exchange offer and reaffirming the recommendations.

The party desiring to terminate this Agreement pursuant to this Section 8.1 (other than pursuant to Section 8.1(a)) shall give notice of such termination to the other party.

8.2 Notice of Termination; Effect of Termination. Any proper termination of this Agreement under Section 8.1 above will be effective immediately (or if the termination is pursuant to Section 8.1(c) or (d) above and the proviso is applicable, thirty (30) days after) upon the delivery of written notice of the terminating party to the other parties hereto. In the event of the termination of this Agreement under Section 8.1, this Agreement shall be of no further force or effect without liability of any party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other parties hereto, except (i) as set forth in this Section 8.2, Section 8.3 and Article IX, each of which shall survive the termination of this Agreement, and (ii) that nothing herein shall relieve any party from liability for any intentional or willful breach of or fraud in connection with this Agreement. No termination of this Agreement shall affect the obligations of the parties contained in the Confidentiality Agreement, all of which obligations shall survive termination of this Agreement in accordance with their terms.

8.3 Fees and Expenses.

(a) General. Except as set forth in this Section 8.3, all attorneys', accountants' and consultants' fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees and expenses whether or not the Merger is consummated; provided, however, that Parent and Company shall share equally all fees and expenses in relation to the printing, filing and mailing of the Offer Documents, Schedule 14D-9, Registration Statement, Post-Effective Amendment and Company Proxy Statement (including any preliminary materials related thereto and including the financial statements included therein and
exhibits thereto) and any amendments or supplements thereto and any filing fees required to be paid under the HSR Act and in connection with any Foreign Filings.

(b) Company Payments. If this Agreement is terminated by Parent or Company, as applicable, prior to the Effective Time pursuant to Sections 8.1(b)(i) or (ii) or Section 8.1(e), Company shall promptly, but in any event no later than one day after the date of such termination, pay Parent a fee equal to $14,500,000 in immediately available funds (the “Termination Fee”); provided, that in the case of a termination under Section 8.1(b)(i) or (ii) prior to which no Triggering Event has occurred, (i) such payment shall be made only if (A) following the date of this Agreement and prior to the termination of this Agreement, any Acquisition Proposal shall have been publicly announced or shall have become publicly known shall not have been unconditionally and publicly withdrawn prior to the date that is five (5) business days prior to the date of any such termination, and (B) within nine (9) months following the termination of this Agreement, either a Company Acquisition (as defined below) is consummated, or Company enters into an agreement providing for a Company Acquisition and such Company Acquisition is later consummated, and (ii) such payment shall be made promptly, but in any event no later than one day after the consummation of such Company Acquisition. Company shall pay to Parent in immediately available funds an amount in cash equal to the Termination Fee prior to any termination of this Agreement by Company pursuant to Section 8.1(h).

Company acknowledges that the agreements contained in this Section 8.3(b) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Parent would not enter into this Agreement. Accordingly, if Company fails to pay in a timely manner the amounts due pursuant to this Section 8.3(b), and, in order to obtain such payment, Parent makes a claim that results in a judgment against Company, Company shall pay to Parent its reasonable costs and expenses (including reasonable attorneys’ fees and expenses) in connection with such suit, together with interest on the amounts set forth in this Section 8.3(b) at the prime rate Bank of America N.T. and S.A. in effect on the date such payment was required to be made. Payment of the fees described in this Section 8.3(b) shall not be in lieu of damages incurred in the event of breach of this Agreement.

For the purposes of this Agreement, “Company Acquisition” shall mean any of the following transactions (other than the transactions contemplated by this Agreement): (i) a merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving Company pursuant to which the shareholders of Company immediately preceding such transaction hold less than 50% of the aggregate equity interests in the surviving or resulting entity of such transaction, (ii) a sale or other disposition by Company of assets representing in excess of 50% of the aggregate fair market value of Company’s business immediately prior to such sale or (iii) the acquisition by any person or group (including by way of a tender offer or an exchange offer or issuance by Company), directly or indirectly, of beneficial ownership or a right to acquire beneficial ownership of shares representing in excess of 50% of the voting power of the then outstanding shares of capital stock of Company.
8.4 Amendment. Subject to applicable law and to Section 1.3(c), this Agreement may be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of each of Parent and Company.

8.5 Extension; Waiver. At any time prior to the Effective Time any party hereto may, to the extent legally allowed and except as otherwise set forth herein, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. Delay in exercising any right under this Agreement shall not constitute a waiver of such right.

ARTICLE IX
GENERAL PROVISIONS

9.1 Non-Survival of Representations and Warranties. The representations, warranties and covenants of Company, Parent and Merger Sub contained in this Agreement shall terminate at the Effective Time, and only the covenants that by their terms survive the Effective Time shall survive the Effective Time.

9.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or sent via telecopy (receipt confirmed) to the parties at the following addresses or telecopy numbers (or at such other address or telecopy numbers for a party as shall be specified by like notice):

(a) if to Parent or Merger Sub, to:

Polycom, Inc.
1565 Barber Lane
Milpitas, CA 95035
Attention: Robert C. Hagerty and Frederick Gonzalez
Telecopier No.: (408) 474-2955

with a copy to:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
Attention: Mark A. Bertelsen, Esq.
Telecopier No.: (650) 496-4367
(b) if to Company, to:

PictureTel Corporation
100 Minuteman Road
Andover, MA 01810
Attention: Lewis Jaffe
Telecopy No.: (978) 292-3394

with a copy to:

Ropes & Gray
One International Place
Boston, MA 02110
Attention: Howard K. Fuguet, Esq.
Telecopy No.: (617) 951-7050

9.3 Interpretation; Knowledge.

(a) When a reference is made in this Agreement to Exhibits, such reference shall be to an Exhibit to this Agreement unless otherwise indicated. When a reference is made in this Agreement to Sections, such reference shall be to a Section of this Agreement. Unless otherwise indicated the words “include,” “includes” and “including” when used herein shall be deemed in each case to be followed by the words “without limitation.” The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. When reference is made herein to “the business of” an entity, such reference shall be deemed to include the business of all direct and indirect subsidiaries of such entity. Reference to the subsidiaries of an entity shall be deemed to include all direct and indirect subsidiaries of such entity.

(b) For purposes of this Agreement, the term “knowledge” means with respect to a party hereto, with respect to any matter in question, knowledge of the executive officers or directors of such party if: (a) such individual is actually aware of such fact or matter; or (b) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonable investigation concerning the existence of such fact or matter.

(c) The word “agreement” when used herein shall be deemed in each case to mean any contract, commitment or other agreement, whether oral or written, that is legally binding.

(d) For purposes of this Agreement, the term “person” shall mean any individual, corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization, entity or Governmental Entity.
(e) When used in connection with Parent or Company, as the case may be, the term "Material Adverse Effect" means any change or effect that, individually or when taken together with all other such changes or effects that have occurred prior to the date of determination of the occurrence of the Material Adverse Effect, is or is reasonably likely to be materially adverse to the business, assets (including intangible assets), financial condition or results of operations of such entity and its subsidiaries, taken as a whole; provided, however, that in no event shall any of the following, alone or in combination, be deemed to constitute, nor shall any of the following be taken into account in determining whether there has been or will be, a Material Adverse Effect on any entity: (i) any change in such entity's stock price or trading volume or any failure by such entity to meet internal projections or forecasts or published revenue or earnings projections, in each case in and of itself; or (ii) any change or effect that results or arises from changes affecting any of the industries in which such entity operates generally or the United States economy generally (which changes or effects in each case do not materially disproportionately affect such entity); (iii) any change or effect that results or arises from changes affecting general worldwide economic or capital market conditions (which changes in each case do not materially disproportionately affect such entity) or (iv) any change or effect resulting from the disruption or loss of any existing or prospective customer, distributor or supplier relationships and any delays or cancellations in customer or distributor orders in that results from either the public announcement or pendency of the transactions contemplated hereby or, in the case of the Company, from a material breach by Parent of its obligations under Section 6.16 hereof.

9.4 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

9.5 Entire Agreement; Third Party Beneficiaries. This Agreement and the documents and instruments and other agreements among the parties hereto as contemplated by or referred to herein, including the Company Schedule and the Parent Schedule (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, it being understood that the Confidentiality Agreement shall continue in full force and effect until the Closing and shall survive any termination of this Agreement; and (b) except with respect to the Indemnified Parties pursuant to Section 6.12, are not intended to confer upon any other person any rights or remedies hereunder.

9.6 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.
9.7 **Other Remedies; Specific Performance.** Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

9.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof.

9.9 **Rules of Construction.** The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

9.10 **Assignment.** No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other parties. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

9.11 **WAIVER OF JURY TRIAL.** EACH OF PARENT, COMPANY AND MERGER SUB HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF PARENT, COMPANY OR MERGER SUB IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

*****
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized respective officers as of the date first written above.

POLYCOM, INC.
By: [Signature]
Name: Robert C. Hagerty
Title: CEO

PHARAOH ACQUISITION CORP.
By: [Signature]
Name: Michael R. Bunsen
Title: CFO

PICTURETEL CORPORATION
By: [Signature]
Name: [Name]
Title: President & CEO for ATC

**** REORGANIZATION AGREEMENT ****
Certain Conditions of the Offer. Notwithstanding any other provisions of the Offer, and in addition to (and not in limitation of) the Parent’s rights to extend and amend the Offer at any time in its sole discretion (subject to the provisions of the Agreement), Parent shall not be required to accept for payment or, subject to any applicable rules and regulations of the SEC, including Rule 14e-1(c) under the Exchange Act (relating to the Parent’s obligation to pay for or return tendered Shares promptly after termination or withdrawal of the Offer), pay for, and may delay the acceptance for payment of or, subject to the restriction referred to above, the payment for, any tendered Shares, and may terminate or amend the Offer as to any Shares not then paid for, if by the expiration of the Offer (as it may be extended in accordance with the requirements of Section 1.1) (i) any applicable waiting period under the HSR Act or any Foreign Filing has not expired or terminated, (ii) the Minimum Condition has not been satisfied, (iii) the Registration Statement shall not have become effective under the Securities Act or shall be the subject of any stop order or proceedings seeking a stop order, (iv) the shares of Parent Common Stock to be issued in the Offer and the Merger shall not have been approved for listing on Nasdaq, subject to official notice of issuance, and shall not be exempt from such requirement under then applicable laws, regulations and rules of Nasdaq, or (v) at any time on or after the date of the Agreement and before the time of acceptance for payment for any such Shares, any of the following events shall occur or shall reasonably be determined by the Parent to have occurred:

(a) there shall be pending or overtly threatened in writing any suit, action or proceeding by any Governmental Entity against Parent, Merger Sub, the Company or any subsidiary of the Company (i) seeking to prohibit or impose any material limitations on Parent’s or Merger Sub ownership or operation (or that of any of their respective subsidiaries or affiliates) of all or a material portion of their or the Company’s businesses or assets, or to compel Parent, Merger Sub or their respective subsidiaries and affiliates to dispose of or hold separate any material portion of the business or assets of the Company or Parent and their respective subsidiaries, in each case taken as a whole, (ii) challenging the acquisition by Parent or Merger Sub of any Shares under the Offer, seeking to restrain or prohibit the making or consummation of the Offer or the Merger or the performance of any of the other transactions contemplated by this Agreement or the Company Tender and Voting Agreements (including the voting provisions thereunder), or seeking to obtain from the Company, Merger Sub or the Parent any damages that are material in relation to the Company and its subsidiaries taken as a whole, (iii) seeking to impose material limitations on the ability of Merger Sub, or render Merger Sub unable, to accept for payment, pay for or purchase some or all of the Shares pursuant to the Offer and the Merger, (iv) seeking to impose material limitations on the ability of the Parent or Merger Sub effectively to exercise full rights of ownership of the Shares, including, without limitation, the right, to vote the Shares purchased by it on all matters properly presented to the Company’s stockholders, (v) compel Parent or its affiliates to dispose of or hold separate any portion of the business or assets of Company or Parent and their respective subsidiaries which would be material in the context of Company and its subsidiaries taken as a whole or Parent and its subsidiaries taken as a whole, whichever is applicable, (vi) oblige Company,
Parent or any of their respective subsidiaries to pay material damages in connection with the
transactions contemplated by the Agreement, or (vii) which otherwise is reasonably likely to have a
Material Adverse Effect on the Company or, as a result of the transactions contemplated by this
Agreement, on Parent;

(b) there shall be any statute, rule, regulation, judgment, order or injunction enacted,
entered, enforced, promulgated, or deemed applicable, pursuant to an authoritative interpretation by
or on behalf of a Government Entity, to the Offer or the Merger, or any other action shall be taken by
any Governmental Entity, other than the application to the Offer or the Merger of applicable waiting
periods under the HSR Act, that, is reasonably likely to result, directly or indirectly, in any of the
consequences referred to in clauses (i) through (iv) of paragraph (a) above;

(c) there shall have occurred (i) any general suspension of trading in, or limitation on
prices for, securities on the Nasdaq, for a period in excess of 24 hours (excluding suspensions or
limitations resulting solely from physical damage or interference with such exchanges not related to
market conditions), (ii) a declaration of a banking moratorium or any suspension of payments in
respect of banks in the United States (whether or not mandatory), (iii) a commencement of a war,
armed hostilities or other international or national calamity directly involving the United States,
(iv) any limitation (whether or not mandatory) by any United States governmental authority on the
extension of credit generally by banks or other financial institutions, or (v) in the case of any of the
foregoing existing at the time of the commencement of the Offer, a material acceleration or
worsening thereof;

(d) the representations and warranties of Company contained in this Agreement (i) shall
not have been true and correct in all respects as of the date of this Agreement and (ii) shall not be
true and correct in all respects on and as of the date of the expiration of the Offer with the same force
and effect as if made or as of such date, except, with respect to clauses (i) and (ii), (A) in each case,
or in the aggregate, as does not constitute a Material Adverse Effect on Company; provided,
however, that such Material Adverse Effect qualifier shall be inapplicable with respect to
representations and warranties contained in Sections 3.1, 3.2, 3.3, 3.4, 3.15, 3.16(q)-(s), 3.18, 3.20
and 3.21 (the “Special Representations”), each of which individually shall have been true and
correct in all material respects as of the date of this Agreement and shall be true and correct in all
material respects on and as of the date of the expiration of the Offer, (B) for changes contemplated
by this Agreement, and (C) for those representations and warranties which address matters only as of
a particular date (which representations shall have been true and correct (subject to the Material
Adverse Effect and materiality qualifications and limitations set forth in the preceding clause (A)) as
of such particular date) (it being understood that, for purposes of determining the accuracy of such
representations and warranties other than the Special Representations, (x) all “Material Adverse
Effect” and materiality qualifications and other qualifications based on the word “material” or
similar phrases contained in such representations and warranties shall be disregarded, and (y) any
update of or modification to the Company Schedule made or purported to have been made after the
date of this Agreement shall be disregarded).
(e) the Company shall have failed to perform in any material respect any material obligation or to comply in any material respect with any material agreement or covenant of the Company to be performed or complied with by it under this Agreement;

(f) the Company shall not have received the consents, waivers and approvals required to be obtained in connection with the consummation of the transactions contemplated by the Agreement, which consents, waivers and approvals are set forth in Section 6.7 of the Company Schedule;

(g) any of the Executive Officer Change in Control Agreements shall fail to be in full force and effect; or

(h) the Rights Plan Amendment shall fail to be in full force and effect; or

(i) the Agreement shall have been terminated in accordance with its terms;

which in the reasonable good faith judgment of Parent or Merger Sub, in any such case, and regardless of the circumstances (including any action or inaction by Parent or Merger Sub) giving rise to such condition makes it inadvisable to proceed with the Offer and/or with such acceptance for payment of or payment for Shares.

The foregoing conditions are for the sole benefit of Parent and Merger Sub and may be waived by Parent or Merger Sub, in whole or in part at any time and from time to time in the sole discretion of Parent or Merger Sub. The failure by Parent or Merger Sub at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.