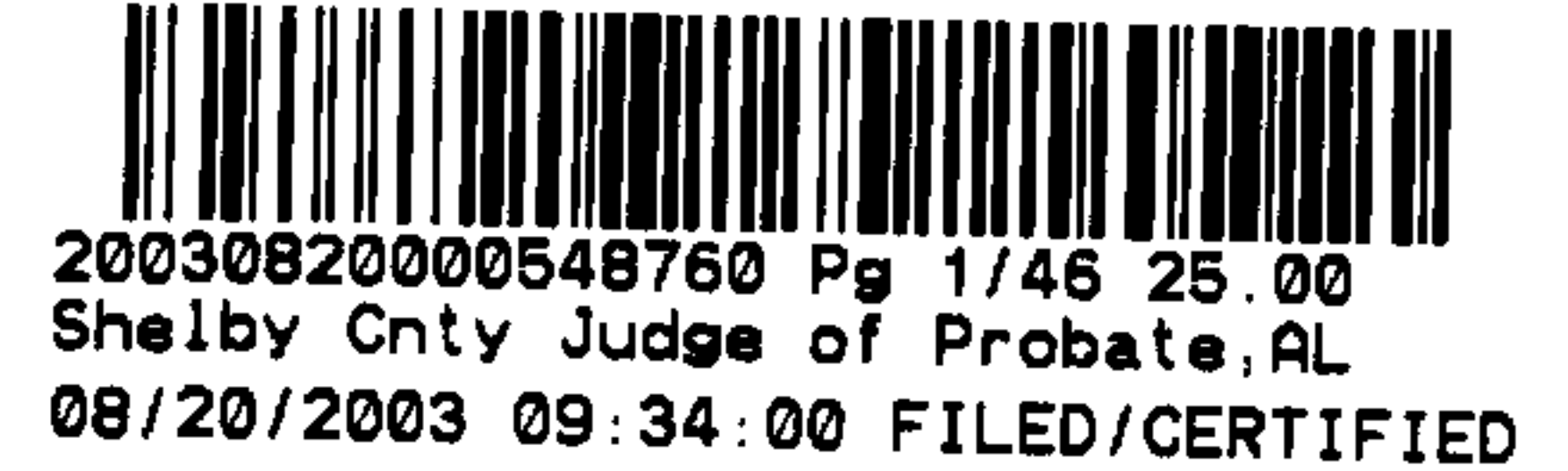
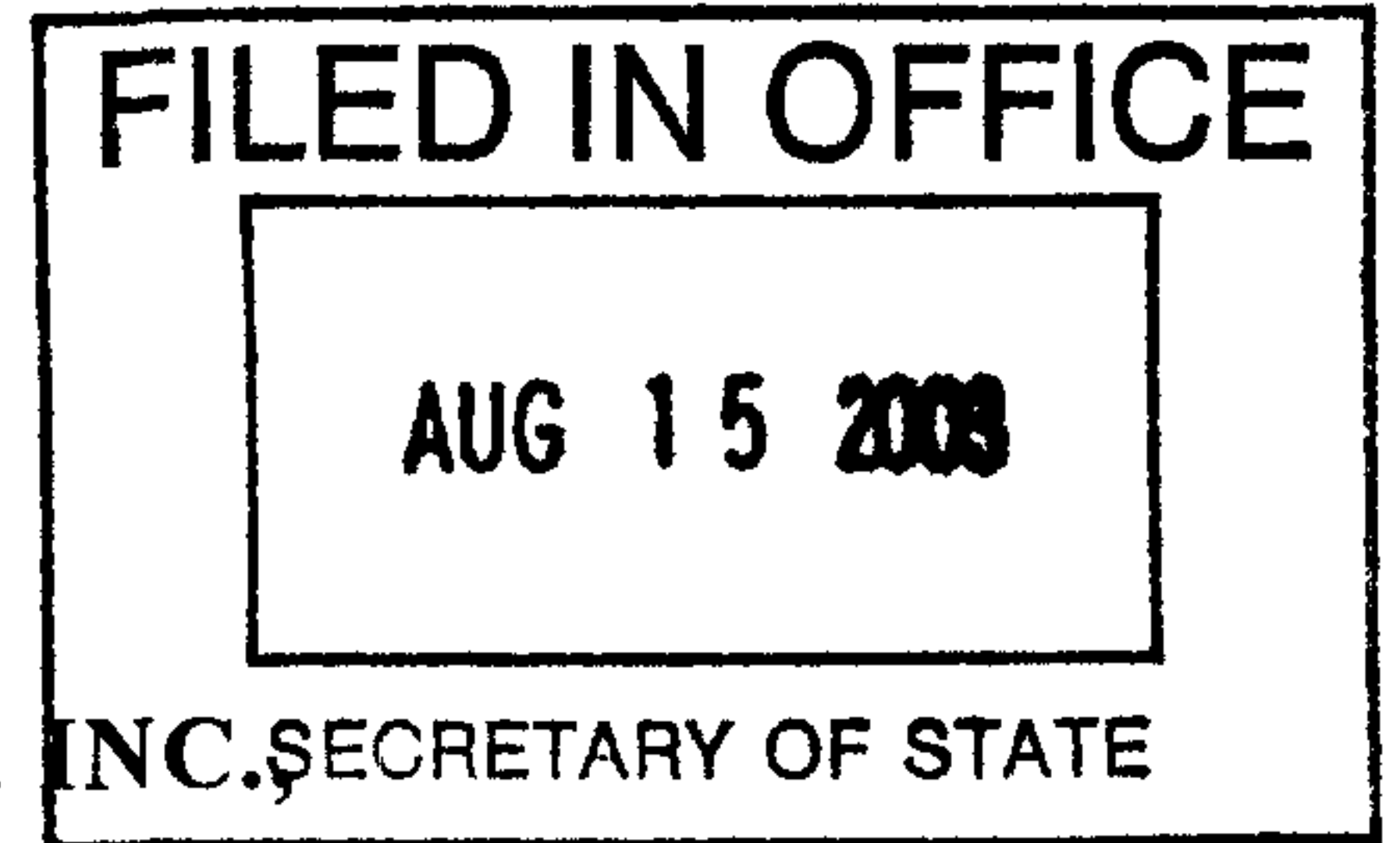


ARTICLES OF MERGER
with respect to the merger of
ABSORBABLE POLYMER TECHNOLOGIES, INC.,
an Alabama corporation,
with and into
BIRMINGHAM POLYMERS, INC.,
an Alabama corporation.



In accordance with the provisions of Section 10-2B-11.05 of the Alabama Business Corporation Act, Birmingham Polymers, Inc., an Alabama corporation ("BPI"), as the surviving corporation of the merger (the "Merger") of Absorbable Polymer Technologies, Inc., an Alabama corporation ("APT") with and into BPI, does hereby execute, deliver, adopt, and certify the following Articles of Merger:

1. The names of the corporations participating in the Merger, the states under the laws of which they are respectively organized, and the counties in which their articles of incorporation are filed are as follows:

<u>Name of Corporation</u>	<u>State</u>	<u>County</u>
Birmingham Polymers, Inc.	Alabama	Jefferson
Absorbable Polymer Technologies, Inc.	Alabama	Shelby

2. The surviving corporation of the Merger is and will be Birmingham Polymers, Inc., an Alabama corporation.

3. The plan of merger approved by the corporations is set forth in the Agreement and Plan of Merger attached hereto as Schedule 1 and made a part hereof.

4. BPI has issued and outstanding 100 shares of its common stock, \$1.00 par value, each of which was entitled to one vote with respect to the plan of merger. APT has issued and outstanding 2,000 shares of its common stock, \$.01 par value, each of which was entitled to one vote with respect to the plan of merger.

5. 100 shares of the common stock of BPI were voted in favor of the plan of merger and no shares of the common stock of BPI were voted against said plan. 2,000 shares of the common stock of APT were voted in favor of the plan of merger and no shares of the common stock of APT were voted against said plan.

6. These Articles of Merger and the Merger shall be effective upon filing with the Secretary of State of the State of Alabama.

[SIGNATURE PAGE FOLLOWS]

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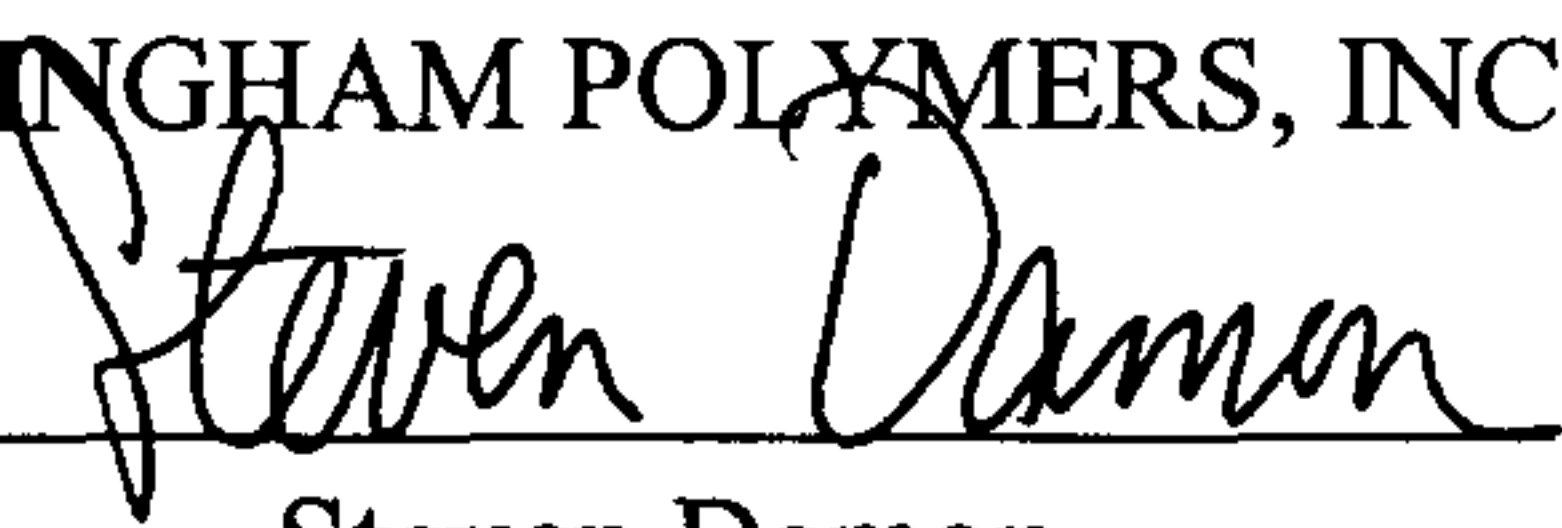
AUG 15 2003

SECRETARY OF STATE

IN WITNESS WHEREOF, the undersigned corporation has caused these Articles of Merger to be executed on its behalf by its duly authorized officer this 15 day of August, 2003.

BIRMINGHAM POLYMERS, INC.

By

A handwritten signature in black ink, appearing to read "Steven Damon", is written over a horizontal line.

Steven Damon,
its President

AGREEMENT AND PLAN OF MERGER

dated as of August 15, 2003

among

DURECT CORPORATION

BIRMINGHAM POLYMERS, INC.

ABSORBABLE POLYMER TECHNOLOGIES, INC.

AND THE

PRINCIPAL SHAREHOLDERS OF ABSORBABLE POLYMER TECHNOLOGIES, INC.

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, dated as of August 15, 2003 (this "**Agreement**"), is entered into by and among Durect Corporation, a Delaware corporation ("**Acquiror**"), Birmingham Polymers, Inc., an Alabama corporation and a wholly owned Subsidiary of Acquiror ("**Sub**"), Absorbable Polymer Technologies, Inc., an Alabama corporation ("**Target**"), and certain shareholders of Target ("**Principal Shareholders**").

RECITALS

A. The Boards of Directors of Acquiror, Sub and Target deem it advisable and in the best interests of each corporation and their respective shareholders that Acquiror and Target combine in order to advance the long-term business interests of Acquiror and Target;

B. The combination of Acquiror, Sub and Target shall be effected by the terms of this Agreement through a transaction in which Target will merge with and into Sub, with Sub surviving as a wholly owned Subsidiary of Acquiror and the shareholders of Target will become shareholders of Acquiror (the "**Merger**");

C. For Federal income tax purposes, it is intended that the Merger shall qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "**Code**");

D. For accounting purposes, it is intended that the Merger shall be accounted for under purchase method accounting;

E. Contemporaneously with the execution of this Agreement, Target shareholders holding, in the aggregate, one hundred percent (100%) of the Common Stock of Target, shall have executed and delivered actions by written consent pursuant to which such shareholders have, among other things, voted their shares of Target capital stock in favor of the Merger;

F. As a condition and inducement to Acquiror's willingness to enter into this Agreement, James P. English has, concurrently with the execution of this Agreement, executed and delivered an Employment Agreement in the form attached hereto as Exhibit A (the "**Employment Agreement**"), which agreements shall only become effective at the Effective Time (as defined in Section 1.1 below); and

G. As a further condition and inducement to Acquiror's willingness to enter into this Agreement, certain shareholders of Target have executed and delivered to Acquiror Shareholders Agreements in the form attached hereto as Exhibit B (the "**Shareholders Agreements**").

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below, the parties agree as follows:

ARTICLE I

THE MERGER

Section 1.1 Effective Time of the Merger.

(a) Subject to the provisions of this Agreement, articles of merger (the "**Articles of Merger**") in such mutually acceptable form as is required by the relevant provisions of the Alabama Business Corporation Act ("**Alabama Law**") shall be duly executed and delivered by the parties hereto and therefor delivered to the Secretary of State of the State of Alabama for filing on the Closing Date (as defined in Section 1.2).

(b) The Merger shall become effective upon the due and valid filing of the Articles of Merger with the Secretary of State of the State of Alabama or at such time thereafter as is provided in the Articles of Merger (the "**Effective Time**").

Section 1.2 Closing. The closing of the Merger (the “**Closing**”) will take place at 10:00 a.m., California time, on August 15, 2003 or such other date to be specified in writing by Acquiror and Target, which shall be no later than the second business day after satisfaction or waiver of the latest to occur of the conditions set forth in Article VIII (the “**Closing Date**”), at the offices of Venture Law Group, A Professional Corporation, 2775 Sand Hill Road, Menlo Park, California.

Section 1.3 Effects of the Merger.

(a) At the Effective Time (i) the separate existence of Target shall cease and Sub shall be merged with and into Target and Sub will be the surviving corporation of the Merger (Sub and Target are sometimes referred to herein as the “**Constituent Corporations**” and Sub following consummation of the Merger is sometimes referred to herein as the “**Surviving Corporation**”), (ii) the Articles of Incorporation of Sub in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Surviving Corporation until further amended in accordance with applicable law and (iii) the Bylaws of Sub as in effect immediately prior to the Effective Time shall become the Bylaws of the Surviving Corporation.

(b) At the Effective Time, the effect of the Merger shall be as provided in this Agreement and the applicable provisions of Alabama Law. Without limiting the generality of the foregoing, at and after the Effective Time, the Surviving Corporation shall possess all the rights, privileges, powers and franchises, and be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations.

Section 1.4 Directors and Officers. The directors of Sub immediately prior to the Effective Time shall become the directors of the Surviving Corporation, each to hold office in accordance with the Articles of Incorporation and Bylaws of the Surviving Corporation, and the officers of Sub immediately prior to the Effective Time shall become the officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified.

ARTICLE II

CONVERSION OF SECURITIES

Section 2.1 Conversion of Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of any holder of any shares of Common Stock, \$0.01 par value, of Target (“**Target Common Stock**”), or on the part of the holder of the shares of capital stock of Sub:

(a) Cancellation of Acquiror-Owned and Target-Owned Stock. Any shares of Target Common Stock that are owned by Acquiror, Sub, Target or any other direct or indirect wholly owned Subsidiary (as defined below) of Acquiror or Target shall be canceled and retired and shall cease to exist and no stock of Acquiror or other consideration shall be delivered in exchange. As used in this Agreement, the word “**Subsidiary**” means, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other Subsidiary of such party is a general partner (excluding partnerships, the general partnership interests of which held by such party or any Subsidiary of such party do not have a majority of the voting interest in such partnership) or (ii) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization or a majority of the profit interests in such other organization is directly or indirectly owned or controlled by such party or by any one or more of its Subsidiaries, or by such party and one or more of its Subsidiaries.

(b) Conversion of Target Common Stock at the Effective Time.

(i) Subject to Sections 2.2 and 2.4, each issued and outstanding share of Target Common Stock (other than shares to be canceled in accordance with Section 2.1(a) and any Dissenting Shares as defined in and to the extent provided in Section 2.3) shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to receive a number of a fully paid and nonassessable shares of

Acquiror Common Stock (as defined in Section 4.2) equal to the “**Exchange Ratio**”, as defined in and determined in accordance with the provisions of this Section 2.1(b), the right to receive Subsequent Merger Consideration, as set forth in Section 2.1(c) and the right to receive cash in lieu of fractional shares of Acquiror Common Stock to be paid in consideration therefor in accordance with Section 2.6 (the “**Merger Consideration**”). All such shares of Target Common Stock, when so converted, shall no longer be outstanding and shall automatically be canceled and retired and shall 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 shares of Acquiror Common Stock to be issued, and any cash in lieu of fractional shares of Acquiror Common Stock to be paid, in consideration therefor upon the surrender of such certificate in accordance with Section 2.4, without interest.

(ii) The “**Closing Consideration Shares**” shall be equal to a number of shares of Acquiror Common Stock calculated by dividing (u) \$1,000,000 plus (v) the difference between (i) the receivables listed on Target’s balance sheet approved by Acquiror as of the day before the Closing Date and (ii) the liabilities listed on Target’s balance sheet approved by Acquiror as of the day before the Closing Date; provided, however, than in no event shall the amount set forth in this Section 2.1(b)(ii)(v) exceed \$25,000 by (w) the average of the last reported sales prices of Acquiror’s Common Stock for the 15 trading days ending three days prior to the Closing Date (as adjusted for stock splits, stock dividends, recapitalizations and the like). The “**Exchange Ratio**” shall be equal to the quotient obtained by dividing (x) the number of the Closing Consideration Shares by (y) the sum of the number of shares of Target Common Stock issued and outstanding immediately prior to the Effective Time. The allocation of the Closing Consideration Shares among each of the Former Target Shareholders (as defined in Section 2.1(c)) based upon the capitalization of Target as of the date of this Agreement is set forth in the Target Disclosure Schedule (“Pro Rata Portion”).

(iii) If, on or after the date of this Agreement and prior to the Effective Time, the outstanding shares of Acquiror Common Stock or Target capital stock shall have been changed into a different number of shares or a different class by reason of any reclassification, split-up, stock dividend or stock combination, then the Exchange Ratio shall be correspondingly adjusted.

(c) Subsequent Merger Consideration. In addition to the Closing Consideration Shares, the Acquiror shall pay the shareholders of Target immediately prior to the Effective Time (the “Former Target Shareholders”) aggregate consideration of \$1,000,000, subject to the provisions in this Section 2.1(b). Within thirty days of the first anniversary of the Closing Date, and subject to the provisions set forth in Sections 2.1(b)(i) and Article X hereof, Acquiror shall pay to the Former Target shareholders aggregate consideration of \$250,000, the “**First Anniversary Merger Consideration.**” Within thirty days of the second anniversary of the Closing Date, and subject to the provisions set forth in Section 2.1(b)(i) below, Acquiror shall pay to the Former Target Shareholders aggregate consideration of \$250,000, the “**Second Anniversary Merger Consideration.**” Within thirty days of the third anniversary of the Closing Date, and subject to the provisions set forth in Section 2.1(c)(i) below, Acquiror shall pay to the Former Target Shareholders aggregate consideration of \$500,000, the “**Third Anniversary Merger Consideration.**” The First Anniversary Merger Consideration, the Second Anniversary Merger Consideration and the Third Anniversary Merger Consideration together shall constitute the “**Subsequent Merger Consideration**” and will be payable in either cash or shares of Acquiror Common Stock, or a combination of both, at Acquiror’s option and in Acquiror’s sole discretion. If any portion of the Subsequent Merger Consideration is paid in cash then the amount of such payment shall be grossed up by an amount equal to the applicable federal and state capital gains taxes due; provide, however that in no event will the aggregate amount of all cash payments to the Former Target Shareholders hereunder exceed \$1,250,000 and any amounts in excess of \$1,250,000 shall be paid in Acquiror Common Stock. If the Subsequent Merger Consideration is paid in Acquiror Common Stock, then the aggregate number of shares of Acquiror Common Stock to be issued as Subsequent Merger Consideration will equal the amount of the respective consideration divided by the average of the last reported sales prices of Acquiror Common Stock for the 15 trading days ending three days prior to the anniversary for which such payment is due.

(i) on first, second and third anniversaries of the Closing Date, except with respect to Dissenting Shares, each Former Target Shareholder shall be entitled to receive such Former Target Shareholder’s Pro Rata Portion of the Subsequent Merger Consideration, either in cash or in Acquiror Common Stock rounded down to the nearest whole share, and cash in lieu of fractional shares as set forth in Section 2.6; and

(ii) Acquiror shall take all corporate action necessary to (A) reserve for issuance a sufficient number of shares of Acquiror Common Stock to be issued as Subsequent Merger Consideration and (b) cause Subsequent Merger Consideration issuable pursuant to Section 2.2(c)(i) to be promptly delivered to the Former Target Shareholders.

(iv) The Subsequent Merger Consideration shall, at the option of James P. English and Charlotte P. English, become payable in full immediately upon a change of control of Acquiror or Sub. For purposes of this Section 2.1, a change of control of Acquiror or Sub shall be deemed to occur if the Acquiror or Sub shall sell, convey, or otherwise dispose of all or substantially all of their property or business or merge with or into or consolidate with any other corporation, limited liability company or other entity (other than a wholly-owned subsidiary of the Acquiror or Sub), provided that a transaction in which the shareholders of the Acquiror or Sub immediately prior to the transaction own 50% or more of the voting power of the surviving Acquiror or Sub following the transaction shall not be deemed a change of control.

Section 2.2 Limitation on Number of Acquiror's Shares Issued.

Notwithstanding anything to the contrary set forth herein, in no event shall the maximum number of shares of Acquiror Common Stock issued in connection with the Merger exceed 19.9% of the number of shares of Acquiror Common Stock outstanding on the date of this Agreement.

Section 2.3 Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary, any shares of Target Common Stock held by a holder who has exercised such holder's appraisal rights in accordance with Article 13 of Alabama Law, and who, as of the Effective Time, has not effectively withdrawn or lost such appraisal rights ("Dissenting Shares"), shall not be converted into or represent a right to receive Acquiror Common Stock pursuant to Section 2.1, but the holder of the Dissenting Shares shall only be entitled to such rights as are granted by Alabama Law.

(b) Notwithstanding the provisions of Section 2.3(a), if any holder of shares of Target Common Stock who demands his/her/ appraisal rights with respect to such shares under Section 2.1 shall effectively withdraw or lose (through failure to perfect or otherwise) his/her/ rights to receive payment for the fair market value of such shares under Alabama Law, then, as of the later of the Effective Time or the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive the Merger Consideration without interest, upon surrender of the certificate or certificates representing such shares.

(c) Target shall give Acquiror (i) prompt notice of any written demands for payment with respect to any shares of capital stock of Target pursuant to Article 13 of Alabama Law, withdrawals of such demands, and any other instruments served pursuant to Alabama Law and received by the Target and (ii) the opportunity to participate at its own expense in all negotiations and proceedings with respect to demands for appraisal rights under Alabama Law. Target shall not, except with the prior written consent of Acquiror, voluntarily make any payment with respect to any demands for appraisal rights with respect to Target Common Stock or offer to settle or compromise any such demands.

Section 2.4 Exchange of Certificates.

(a) From and after the Effective Time, each holder of an outstanding certificate or certificates ("Certificates") which represented shares of Target Common Stock immediately prior to the Effective Time shall have the right to surrender each Certificate to Acquiror (or at Acquiror's option, an exchange agent to be appointed by Acquiror), and receive promptly in exchange for all Certificates held by such holder a certificate representing the number of whole shares of Acquiror Common Stock into which the Target Common Stock evidenced by the Certificates so surrendered shall have been converted pursuant to the provisions of Article II of this Agreement, provided that no certificates representing Subsequent Merger Consideration will be issued prior to the times outlined in Section 2.1(d) above. Acquiror shall cause letters of transmittal ("Letters of Transmittal") to be delivered to

each holder of Target Common Stock not later than ten (10) business days following the Effective Date, for the purpose of effecting the exchange of the Certificates. The surrender of Certificates shall be accompanied by duly completed and executed Letters of Transmittal in such form as may be reasonably specified by Acquiror. Until surrendered, each outstanding Certificate, which prior to the Effective Time represented shares of Target Common Stock, shall be deemed for all corporate purposes to evidence ownership of the number of whole shares of Acquiror Common Stock into which the shares of Target Common Stock have been or will be converted, the right to receive any Subsequent Merger Consideration payable in cash and the right to receive cash in lieu of fractional shares of Acquiror Common Stock to be paid in consideration therefor in accordance with Section 2.6, but shall, subject to applicable appraisal rights under Alabama Law and Section 2.3, have no other rights. Subject to applicable appraisal rights under Alabama Law and Section 2.3, from and after the Effective Time, the holders of shares of Target Common Stock shall cease to have any rights in respect of such shares and their rights shall be solely in respect of the Acquiror Common Stock into which such shares of Target Common Stock have been converted and the right to receive cash in lieu of fractional shares of Acquiror Common Stock to be paid in consideration therefor in accordance with Section 2.6. From and after the Effective Time, there shall be no further registration of transfers on the records of Target of shares of Target Common Stock outstanding immediately prior to the Effective Time.

(b) If any shares of Acquiror Common Stock are to be issued in the name of a person other than the person in whose name the Certificate(s) surrendered in exchange therefor is registered, it shall be a condition to the issuance of such shares that (i) the Certificate(s) so surrendered shall be transferable, and shall be properly assigned, endorsed or accompanied by appropriate stock powers, (ii) such transfer shall otherwise be proper and (iii) the person requesting such transfer shall pay Acquiror, or its exchange agent, any transfer or other taxes payable by reason of the foregoing or establish to the satisfaction of Acquiror that such taxes have been paid or are not required to be paid. Notwithstanding the foregoing, neither Acquiror nor Target shall be liable to a holder of shares of Target Common Stock for shares of Acquiror Common Stock issuable to such holder pursuant to the provisions of Article II of this Agreement that are delivered to a public official pursuant to applicable abandoned property, escheat or similar laws.

(c) In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed, Acquiror shall issue in exchange for such lost, stolen or destroyed Certificate the shares of Acquiror Common Stock issuable in exchange therefor pursuant to the provisions of Article II of the Agreement and shall pay cash in lieu of fractional shares of Acquiror Common Stock to be paid in consideration therefor in accordance with Section 2.6. The Board of Directors of Acquiror may in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificate to provide to Acquiror an indemnity agreement against any claim that may be made against Acquiror with respect to the Certificate alleged to have been lost, stolen or destroyed.

Section 2.5 Distributions with Respect to Unexchanged Shares. No dividends or other distributions declared or made after the Effective Time with respect to Acquiror Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to the shares of Acquiror Common Stock represented thereby and no cash payment in lieu of fractional shares shall be paid to any such holder pursuant to Section 2.6 below until the holder of record of such Certificate shall surrender such Certificate. Subject to the effect of applicable laws, following surrender of any such Certificate, there shall be paid to the record holder of the certificates representing whole shares of Acquiror Common Stock issued in exchange therefor, without interest, (i) at the time of such surrender, the amount of any cash payable in lieu of a fractional share of Acquiror Common Stock to which such holder is entitled pursuant to Section 2.6 below and the amount of any dividends or other distributions with a record date after the Effective Time previously paid with respect to such whole shares of Acquiror Common Stock, and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to surrender and with a payment date subsequent to surrender, payable with respect to such whole shares of Acquiror Common Stock.

Section 2.6 No Fractional Shares. No certificate or scrip representing fractional shares of Acquiror Common Stock shall be issued upon the surrender for exchange of Certificates, and such fractional share interests will not entitle the owner thereof to vote or to any rights of a stockholder of Acquiror. Notwithstanding any other provision of this Agreement, each holder of shares of Target Common Stock exchanged pursuant to the Merger who would otherwise have been entitled to receive a fraction of a share of Acquiror Common Stock (after taking into

account all Certificates delivered by such holder) shall receive, in lieu thereof, cash (without interest) in an amount equal to such fractional part of a share of Acquiror Common Stock multiplied by the average of the last reported sales prices of Acquiror's common stock for the 15 trading days ending three days prior to the Closing Date or other applicable payment date (the "**Average Stock Price**").

Section 2.7 Tax and Accounting Consequences.

(a) It is intended by the parties hereto that the Merger shall constitute a "reorganization" within the meaning of Section 368 of the Code. The parties hereto adopt this Agreement as a "plan of reorganization" within the meaning of Sections 1.368-2(g) and 1.368-3(a) of the United States Income Tax Regulations. Each of the parties agrees to cooperate in order to qualify the transaction as a reorganization within the meaning of Section 368 of the Code and to report the Merger for federal and state income tax purposes in a manner consistent with such characterization.

(b) It is intended by the parties hereto that the Merger shall be accounted for as a purchase transaction.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF TARGET AND THE PRINCIPAL SHAREHOLDERS

Target and the Principal Shareholders identified on Exhibit C hereto represent and warrant to Acquiror and Sub that the statements contained in this Article III are true and correct on and as of the date of this Agreement and shall be true and correct at all times until the Closing Date, except as expressly set forth in the disclosure schedule delivered by Target to Acquiror on the date of this Agreement (the "**Target Disclosure Schedule**"). The Target Disclosure Schedule shall be arranged in paragraphs corresponding to the numbered and lettered paragraphs contained in this Article III.

Section 3.1 Organization of Target. Target is a corporation duly organized, validly existing and in good standing under the laws of the State of Alabama, has all requisite corporate power to own, lease and operate its property and to carry on its business as now being conducted, and is duly qualified or licensed to do business and is in good standing as a foreign corporation in each jurisdiction in which the nature of its business or ownership or leasing of properties makes such qualification or licensing necessary, except where the failure to be so qualified or licensed could reasonably be expected not to result in a material adverse effect on the business, assets (including intangible assets), liabilities, condition (financial or otherwise), or results of operations (provided, however, that none of the following shall be deemed either alone or in combination to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Material Adverse Effect (as defined below): (a) any failure by the Target to meet internal projections or forecasts; (b) any adverse change, event or effect attributable or relating to the announcement or pendency of the Merger; and (c) any adverse change, event or effect attributable or relating to conditions affecting the industry or industry sector in which the Target or the Acquiror or any of its Subsidiaries, as applicable, participates or the U.S. economy as a whole) (a "**Material Adverse Effect**") of Target. The Target Disclosure Schedule contains a true and complete list of all states in which Target is duly qualified or licensed to transact business as a foreign corporation.

Section 3.2 Target Capital Structure.

(a) The authorized capital stock of Target consists of 2,000 shares of Target Common Stock, par value \$0.01 per share. As of the date of this Agreement, there are (a) 2,000 shares of Target Common Stock issued and outstanding, none of which are subject to repurchase rights, (b) no options or option plans to purchase shares of Target Common Stock issued and (c) no warrants, warrant agreements or other agreements, written or oral, to purchase shares of Target Common Stock. The issued and outstanding shares of Target Common Stock are held of record by the persons set forth and identified on Schedule 3.2(a) of the Target Disclosure Schedule as of the date hereof. All shares of Target Common Stock specified above have been duly authorized and validly issued and are fully paid and nonassessable. All outstanding shares of Target Common Stock were issued in compliance with

applicable federal and state securities laws. Except as set forth in the Target Disclosure Schedule, there are no obligations, contingent or otherwise, of Target or its Subsidiaries to repurchase, redeem or otherwise acquire any shares of Target Common Stock or capital stock of any Subsidiary or make any investment (in the form of a loan, capital contribution or otherwise) in any other entity.

(b) Except as set forth in this Section 3.2, there are no equity securities of any class or series of Target, or any security exchangeable into or exercisable for such equity securities, issued, reserved for issuance or outstanding. Except as set forth in this Section 3.2, there are no options, warrants, equity securities, calls, rights, commitments or agreements of any character to which Target is a party or by which it is bound obligating Target to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of capital stock of Target or obligating Target to grant, extend, accelerate the vesting of or enter into any such option, warrant, equity security, call, right, commitment or agreement. Target is not in active discussion, formal or informal, with any person or entity regarding the issuance of any form of additional equity that has not been issued or committed to prior to the date of this Agreement. Except as provided in this Agreement and the other Transaction Documents (as defined in Section 3.3(a)) or any transaction contemplated hereby or thereby, there are no voting trusts, proxies or other agreements or understandings with respect to the voting of the shares of capital stock of Target.

(c) Target does not own, directly or indirectly, any Subsidiary. Except as set forth in the Target Disclosure Schedule Target does not own directly or indirectly any interest or investment (whether equity or debt) in any corporation, partnership, joint venture, business, trust or other entity.

Section 3.3 Authority; No Conflict; Required Filings and Consents.

(a) Target has all requisite corporate power and authority to enter into this Agreement and all Transaction Documents (as defined below) to which it is or will become a party and to consummate the transactions contemplated by this Agreement and such Transaction Documents. The execution and delivery of this Agreement and such Transaction Documents and the consummation of the transactions contemplated by this Agreement and such Transaction Documents have been duly authorized by all necessary corporate action on the part of Target, and on or before the Closing Date the principal terms of the Merger shall have been approved by Target's shareholders under the provisions of Alabama Law and Target's Articles of Incorporation and Bylaws. This Agreement has been and such Transaction Documents have been or, to the extent not executed by Target as of the date hereof, will be duly executed and delivered by Target. This Agreement and each of the Transaction Documents to which Target is a party constitutes, and each of the Transaction Documents to which Target will become a party, when executed and delivered by Target, will constitute, assuming the due authorization, execution and delivery by the other parties hereto and thereto, the valid and binding obligation of Target, enforceable by Acquiror against Target in accordance with their respective terms, except to the extent that enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and by general principles of equity, regardless of whether such enforceability is considered in a proceeding at law or in equity. For purposes of this Agreement, "**Transaction Documents**" means all documents or agreements required to be delivered by any party under this Agreement including the Articles of Merger, the Employment Agreement, the Shareholders Agreements and the Noncompetition Agreements.

(b) The execution and delivery by Target of this Agreement and the Transaction Documents to which it is or will become a party does not, and the consummation of the transactions contemplated by this Agreement and the Transaction Documents to which it is or will become a party will not (i) conflict with, or result in any violation or breach of any provision of the Articles of Incorporation or Bylaws of Target, (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which Target is a party or by which it or any of their respective properties or assets may be bound, or (iii) conflict or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Target or any of its respective properties or assets, except in the case of (ii) and (iii) for any such conflicts, violations, breaches, defaults, terminations, cancellations or accelerations which are listed on

the Target Disclosure Schedule or which would not reasonably be expected to have a Material Adverse Effect on Target.

(c) None of the execution and delivery by Target of this Agreement or of any other Transaction Document to which Target is or will become a party or the consummation of the transactions contemplated by this Agreement or such Transaction Document will require any consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other governmental authority or instrumentality ("**Governmental Entity**"), except for (i) the filing of the Articles of Merger with the Alabama Secretary of State, (ii) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities laws and (iii) such other consents, authorizations, filings, approvals and registrations which are listed on the Target Disclosure Schedule or which, if not obtained or made, could be expected to have a Material Adverse Effect on Target or any Subsidiaries.

Section 3.4 Financial Statements; Absence of Undisclosed Liabilities.

(a) Target has delivered to Acquiror copies of Target's unaudited consolidated balance sheets and profit and loss statements as of December 31, 2002 (the "**Most Recent Balance Sheet**"), and the related unaudited consolidated statement of shareholders' equity for the year ended December 31, 2002, respectively and Target's unaudited consolidated balance sheets, profit and loss statements and stockholder' equity for the period ended the day before the Closing Date (together with the Most Recent Balance Sheet, the "**Target Financial Statements**").

(b) The Target Financial Statements are in accordance with the books and records of Target and present fairly in all material respects, subject to adjustments approved by both Acquiror and Target and matters disclosed in the Target Disclosure Schedule, the financial position, results of operations and cash flows of Target as of their historical dates and for the periods indicated. The Target Financial Statements have been prepared in accordance with generally accepted accounting principles as prepared by Quickbook Pro '99 ("**GAAP**") (except that unaudited financial statements do not have notes thereto and may be subject to ordinary year-end adjustments) applied on a basis consistent with prior periods. The reserves, if any, reflected on the Target Financial Statements are adequate in light of the contingencies with respect to which they were made.

(c) Target has no debt, liability, or obligation of any nature, whether accrued, absolute, contingent, or otherwise, and whether due or to become due, that is not reflected or reserved against in the Most Recent Balance Sheet, except for those that may have been incurred after the date of the Most Recent Balance Sheet. All debts, liabilities, and obligations incurred after the date of the Most Recent Balance Sheet were incurred in the ordinary course of business and are not material both individually and in the aggregate to Target or its respective businesses.

Section 3.5 Tax Matters.

(a) For purposes of this Section 3.5 and other provisions of this Agreement relating to Taxes, the following definitions shall apply:

(i) The term "**Taxes**" shall mean all taxes, however denominated, including any interest, penalties or other additions to tax that may become payable in respect thereof, (A) imposed by any federal, territorial, state, local or foreign government or any agency or political subdivision of any such government, which taxes shall include, without limiting the generality of the foregoing, all income or profits taxes (including but not limited to, federal income taxes and state income taxes), payroll and employee withholding taxes, unemployment insurance, social security taxes, sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, ozone depleting chemicals taxes, transfer taxes, workers' compensation, Pension Benefit Guaranty Corporation premiums and other governmental charges, and other obligations of the same or of a similar nature to any of the foregoing, which are required to be paid, withheld or collected, (B) any liability for the payment of amounts referred

to in (A) as a result of being a member of any affiliated, consolidated, combined or unitary group, or (C) any liability for amounts referred to in (A) or (B) as a result of any obligations to indemnify another person.

(ii) The term “Returns” shall mean all reports, estimates, declarations of estimated tax, information statements and returns relating to, or required to be filed in connection with, any Taxes, including information returns or reports with respect to backup withholding and other payments to third parties.

(b) All Returns required to be filed prior to the date hereof by or on behalf of Target have been duly filed on a timely basis, and such Returns are true, complete and correct in all material respects. All Taxes shown to be payable on such Returns or on subsequent assessments with respect thereto, and all payments of estimated Taxes required to be made prior to the date hereof by or on behalf of Target under Section 6655 of the Code or comparable provisions of state, local or foreign law, have been paid in full on a timely basis or have been accrued on the Most Recent Balance Sheet, and no other Taxes are payable by Target with respect to items or periods covered by such Returns (whether or not shown on or reportable on such Returns). Target has withheld and paid over all Taxes required to have been withheld and paid over prior to the date hereof, and complied with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto, in connection with amounts paid or owing to any employee, creditor, independent contractor, or other third party. There are no liens on any of the assets of Target with respect to Taxes, other than liens for Taxes not yet delinquent or for Taxes that Target is contesting in good faith through appropriate proceedings and for which appropriate reserves have been established on the Most Recent Balance Sheet. Target has not at any time been (i) a member of an affiliated group of corporations filing consolidated, combined or unitary income or franchise tax returns, or (ii) a member of any partnership or joint venture for a period for which the statute of limitations for any Tax potentially applicable as a result of such membership has not expired.

(c) The amount of Target’s liability for unpaid Taxes (whether actual or contingent) for all periods through the date of the Most Recent Balance Sheet does not, in the aggregate, exceed the amount of the current liability accruals for Taxes reflected on the Most Recent Balance Sheet, and the Most Recent Balance Sheet reflects proper accrual in accordance with GAAP applied on a basis consistent with prior periods of all liabilities for Taxes payable after the date of the Most Recent Balance Sheet attributable to transactions and events occurring prior to such date. No liability for Taxes has been incurred (or prior to and including the Effective Time will be incurred) and no material amount of gross taxable income has been realized (or prior to the Effective Time will be realized) since such date other than in the ordinary course of business.

(d) Target has made available to Acquiror true and complete copies of (i) relevant portions of income tax audit reports, statements of deficiencies, closing or other agreements received by or on behalf of Target or its Subsidiaries relating to Taxes, and (ii) all federal and state income or franchise tax Returns and state sales and use tax Returns for or including Target for all periods since the inception of Target or its Subsidiaries. Neither Target nor any Subsidiary does business in or derives income from any state other than states for which Returns have been duly filed and furnished to Acquiror.

(e) Except as disclosed in the Target Disclosure Schedule, the Returns of Target have never been audited by a government or taxing authority, nor is any such audit in process, pending or, to Target’s knowledge, threatened (either in writing or verbally, formally or informally). No deficiencies exist or have been asserted (either in writing or verbally, formally or informally), and Target has not received notice (either in writing or verbally, formally or informally) that it has not filed a Return or paid Taxes required to be filed or paid. Target is not a party to any action or proceeding for assessment or collection of Taxes, nor to the knowledge of Target has such event been asserted or threatened (either in writing or orally, formally or informally) against Target or any of its assets. No waiver or extension of any statute of limitations is in effect with respect to Taxes or Returns of Target. Target has disclosed on its federal and state income and franchise tax Returns all positions taken therein that could give rise to a substantial understatement penalty within the meaning of Code Section 6662 or comparable provisions of applicable state, local, foreign or other tax laws.

(f) Except as may be required as a result of the Merger, Target has not been and will not be required to include any material adjustment in Taxable income for any Tax period (or portion thereof) pursuant to

Section 481 or Section 263A of the Code or any comparable provision under state or foreign Tax laws as a result of transactions, events or accounting methods employed prior to the Closing.

(g) Target is not and has never been a party to any tax sharing agreement.

(h) Target is not and has never been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, and Acquiror is not required to withhold tax by reason of Section 1445 of the Code. Target is not a "consenting corporation" under Section 341(f) of the Code. Target has not entered into any compensatory agreements with respect to the performance of services which payment thereunder would result in a nondeductible expense to Target or any Subsidiary pursuant to Section 280G of the Code or an excise tax to the recipient of such payment pursuant to Section 4999 of the Code. Target is not and has never been a "reporting corporation" subject to the information reporting and record maintenance requirements of Section 6038A and the regulations thereunder. Target is in compliance with the terms and conditions of any applicable tax exemptions, agreements or orders of any foreign government to which it may be subject or which it may have claimed, and the transactions contemplated by this Agreement will not have any adverse effect on such compliance.

Section 3.6 Absence of Certain Changes or Events. Since December 31, 2002, other than as set forth on the Target Disclosure Schedule, Target has not:

(a) suffered any material adverse change in its business, assets (including intangible assets), liabilities, condition (financial or otherwise), prospects or results of operations (provided, however, that any adverse change, event or effect attributable or relating to conditions affecting the industry or industry sector in which the Target or the Acquiror or any of its Subsidiaries, as applicable, participates or the U.S. economy as a whole shall be taken into account) ("Material Adverse Change");

(b) suffered any damage, destruction or loss, whether covered by insurance or not;

(c) granted or agreed to make any increase in the compensation payable or to become payable by Target to its respective directors, officers, employees or consultants;

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

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

(f) made any change in the accounting methods or practices it follows, whether for general financial or tax purposes, or any change in depreciation or amortization policies or rates adopted therein, except as may be required to be adopted under GAAP;

(g) sold, leased, abandoned or otherwise disposed of any real property or any machinery, equipment or other operating property with an individual net book value in excess of \$10,000, except with respect to property worn out in the ordinary course of business;

(h) sold, assigned, transferred, licensed or otherwise disposed of any patent, trademark, trade name, brand name, copyright (or pending application for any patent, trademark or copyright) invention, work of authorship, process, know-how, formula or trade secret or interest thereunder or other intangible asset;

(i) permitted or allowed any of its property or assets to be subjected to any mortgage, deed of trust, pledge, lien, security interest or other encumbrance of any kind (except those permitted under Section 3.7);

(j) made any capital expenditure or commitment individually in excess of \$25,000 or in the aggregate in excess of \$50,000;

(k) paid, loaned or advanced any amount to, or sold, transferred or leased any properties or assets to, or entered into any agreement or arrangement with, any of its Affiliates (as defined in Section 3.16), officers, directors or shareholders or any Affiliate of any of the foregoing, except for travel advances in the ordinary course of business;

(l) made any amendment to or terminated any agreement which, if not so amended or terminated, would be required to be disclosed on the Target Disclosure Schedule; or

(m) agreed to take any action described in this Section 3.6 or outside of its ordinary course of business or which would constitute a breach of any of the representations and warranties of Target and the Principal Shareholders contained in this Agreement.

Section 3.7 Title and Related Matters. Except as disclosed in the Target Disclosure Schedule, Target has good and valid title to all its properties, interests in properties and assets, real and personal, free and clear of all mortgages, liens, pledges, charges or encumbrances of any kind or character, except the lien of current taxes not yet due and payable, liens effecting a landlord's interest in property leased to Target and minor imperfections of an encumbrances on title, if any, as do not materially detract from the value of or interfere with the present use of the property affected thereby. The equipment of Target used in the operation of their respective businesses is, taken as a whole, (i) adequate for the business presently conducted by Target and (ii) in good operating condition and repair, ordinary wear and tear excepted. All personal property leases to which Target is a party are valid, binding, enforceable against the parties thereto and in effect in accordance with their respective terms, except to the extent that enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, or other laws affecting the enforcement of creditors' rights generally and by principles of equity, regardless of whether such enforceability is considered in a proceeding at law or in equity. To the Knowledge of Target, there is not under any of such leases any existing default or event of default or event which, with notice or lapse of time or both, would constitute a default. The Target Disclosure Schedule contains a description of all items of capital assets with an individual net book value in excess of \$1,000 and real property leased, in each case either or owned by Target, describing its interest in said property. True and correct copies of Target's real property and personal property leases have been provided to Acquiror or its representatives. Target does not hold title, either directly or through a third party, to any real property.

Section 3.8 Proprietary Rights.

(a) Except as set forth on the Target Disclosure Schedules, Target owns all right, title and interest in and to, or otherwise possesses legally enforceable rights, or is licensed to use, all patents, copyrights, technology, formulas, compositions of matter, software, software tools, know-how, processes, trade secrets, trademarks, service marks, trade names, Internet domain names and other proprietary rights used in the conduct of their respective business as conducted as of the date of this Agreement, including, without limitation, the technology, formulations, and all proprietary rights developed or discovered or used in connection with or contained in all materials and products sold by Target or any product which has been or is being distributed or sold by Target or currently is or proposed to be under development by Target (collectively, the "**Target Products**"), and with respect to the foregoing which Target own all right, title and interest therein and thereto, free and clear of all liens, claims and encumbrances (including without limitation licensing and distribution rights) (all of which are referred to as "**Target Proprietary Rights**"). The Target Disclosure Schedule contains an accurate and complete (i) description of all patents, trademarks (with separate listings of registered and unregistered trademarks), trade names, Internet domain names and registered copyrights in or related to the Target Products or otherwise included in the Target Proprietary Rights and all applications therefor, including the jurisdictions in which each such Target Proprietary Right has been issued or registered or in which any such application of such issuance and registration has been filed, (ii) list of all licenses and other agreements with third parties (the "**Third Party Licenses**") relating to any patents, copyrights, trade secrets, formulations, software, inventions, technology, know-how, processes or other proprietary rights that Target is licensed or otherwise authorized by such third parties to use, market, distribute or incorporate in

Target Products (such patents, copyrights, trade secrets, formulations, software, inventions, technology, know-how, processes or other proprietary rights are collectively referred to as the “**Third Party Technology**”), provided that such list need not include any license for standard generally commercially available “off-the-shelf” third party products, and (iii) list of all licenses and other agreements with third parties relating to any information, compilations, formulations or compositions of matter that Target or any Subsidiary is licensed or otherwise authorized by such third parties to use, market, disseminate distribute or incorporate in Target Products, provided that such list need not include any license for standard generally commercially available “off-the-shelf” third party products. All of Target’s patents, copyrights, trademarks, trade names or Internet domain name registrations are valid and in full force and effect, and consummation of the transactions contemplated by this Agreement will not alter or impair any such rights. No claims have been asserted or, to the Knowledge of Target, threatened against Target (and Target is not aware of any claims which are likely to be asserted or threatened against Target or which have been asserted or threatened against others relating to Target Proprietary Rights or Target Products) by any person challenging Target’s use, possession, manufacture, sale or distribution of Target Products under any Target Proprietary Rights (including, without limitation, the Third Party Technology) or challenging or questioning the validity or effectiveness of any material license or agreement relating thereto to which Target is a party (including, without limitation, the Third Party Licenses) or alleging a violation of any confidentiality rights. Target knows of no valid basis for any claim of the type specified in the immediately preceding sentence which could in any material way relate to or interfere with the continued enhancement and exploitation by Target of any of the Target Proprietary Rights or Target Products. None of the Target Products or products currently under development nor the use or exploitation of any Target Proprietary Rights in Target’s current business infringes on the rights of or constitutes misappropriation of any proprietary information or intangible property right of any third person or entity, including without limitation any patent, trade secret, copyright, trademark or trade name, and Target has not been sued or named in any suit, action or proceeding which involves a claim of such infringement, misappropriation or unfair competition.

(b) Except as disclosed in the Target Disclosure Schedule, Target has not granted any third party any right to make, use, sell, distribute, market or exploit any of the Target Products or any derivatives thereof or any Target technology under development.

(c) All inventions, methods, formulations, designs, drawings, specifications, documentation, flow charts, diagrams, data lists, databases, compilations and information incorporating, embodying or reflecting any of the Target Proprietary Rights or Target Products at any stage of their development (the “**Target Components**”) were written, developed and created solely and exclusively by employees of Target without the assistance of any third party or entity or were created by third parties who assigned ownership of their rights to Target by means of valid and enforceable confidentiality and invention assignment agreements, copies of which or the form of which have been delivered to Acquiror. Target has at all times used commercially reasonable efforts to treat the Target Proprietary Rights that are not otherwise protected by patents, patent applications, or copyrights (“**Confidential Information**”) as containing Confidential Information or trade secrets and has not disclosed or otherwise dealt with such items in a manner intended or reasonably likely to cause the loss of the nature of such confidential information or such trade secrets by release into the public domain.

(d) To the Target’s Knowledge, no employee, contractor or consultant of Target is in violation of any term of any written employment contract, intellectual property disclosure agreement or any other written contract or agreement relating to the relationship of any such employee, consultant or contractor with Target or, to Target’s Knowledge, any other party because of the nature of the business conducted by Target or proposed to be conducted by Target. The Target Disclosure Schedule lists all employees, contractors and consultants who have participated in any way in the development of any material portion of the Target Products or the Target Proprietary Rights.

(e) Each person presently or previously employed by Target (including independent contractors, if any) has executed a confidentiality and non-disclosure agreement pursuant to the form of agreement previously provided to Acquiror or its representatives.

(f) No product liability or warranty claims have been communicated in writing to or threatened against Target or Subsidiary.

(g) To Target's Knowledge, there is no unauthorized use, disclosure, infringement or misappropriation of any Target Proprietary Rights, or any Third Party Technology to the extent licensed by or through Target, by any third party, including any employee or former employee of Target. Except as disclosed in the Target Disclosure Schedule, Target has not entered into any agreement to indemnify any other person or entity against any charge of infringement of any Target Proprietary Rights or for any other reason.

(h) All use, disclosure or appropriation by Target or, to the best Knowledge of Target, by another party pursuant to rights granted to it by Target, of Confidential Information owned by Target to a third party has been pursuant to the terms of a written agreement between Target and such third party or between such other party and such third party. All use, disclosure or appropriation by Target of Confidential Information not owned by Target has been pursuant to the terms of a written agreement between Target and the owner of such Confidential Information, or is otherwise lawful.

Section 3.9 Employee Benefit Plans.

(a) The Target Disclosure Schedule lists, with respect to Target and any trade or business (whether or not incorporated) which is treated as a single employer with Target (an "ERISA Affiliate") within the meaning of Section 414(b), (c), (m) or (o) of the Code, (i) all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), (ii) each loan to a non-officer employee, loans to officers and directors and any stock option, stock purchase, phantom stock, stock appreciation right, supplemental retirement, severance, sabbatical, medical, dental, vision care, disability, employee relocation, cafeteria benefit (Code Section 125) or dependent care (Code Section 129), life insurance or accident insurance plans, programs or arrangements, (iii) all bonus, pension, profit sharing, savings, deferred compensation or incentive plans, programs or arrangements, (iv) other fringe or employee benefit plans, programs or arrangements that apply to senior management of Target and that do not generally apply to all employees, and (v) any current or former employment or executive compensation or severance agreements, written or otherwise, for the benefit of, or relating to, any present or former employee, consultant or director of Target as to which (with respect to any of items (i) through (v) above) any potential liability is borne by Target (together, the "Target Employee Plans").

(b) Target has delivered to Acquiror or its representatives a copy of each of the Target Employee Plans and related plan documents (including trust documents, insurance policies or contracts, employee booklets, summary plan descriptions and other authorizing documents, and, to the extent still in its possession, any material employee communications relating thereto) and has, with respect to each Target Employee Plan which is subject to ERISA reporting requirements, provided copies of any Form 5500 reports filed for the last three plan years. Any Target Employee Plan intended to be qualified under Section 401(a) of the Code is so qualified, and has either obtained from the Internal Revenue Service a favorable determination letter 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 applied to the Internal Revenue Service for such a determination letter prior to the expiration of the requisite period under applicable Treasury Regulations or Internal Revenue Service pronouncements in which to apply for such determination letter and to make any amendments necessary to obtain a favorable determination with respect to such Target Employee Plan and applicable from the date of its adoption. Target has also furnished Acquiror with the most recent Internal Revenue Service determination letter issued with respect to each such Target Employee Plan, and nothing has occurred since the issuance of each such letter which could reasonably be expected to cause the loss of the tax-qualified status of any Target Employee Plan subject to Code Section 401(a).

(c) Except as set forth in the Target Disclosure Schedule: (i) None of the Target Employee Plans promises or provides retiree medical or other retiree welfare benefits to any person other than as required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") and at the expense of the participant or the participant's beneficiary; (ii) there has been no "prohibited transaction," as such term is defined in Section 406 of ERISA and Section 4975 of the Code, with respect to any Target Employee Plan; (iii) each Target Employee Plan has been administered in accordance with its terms and in compliance with the requirements

prescribed by any and all statutes, rules and regulations (including ERISA and the Code), and Target and each ERISA Affiliate has performed all material obligations required to be performed by them under, are not in any material respect in default, under or violation of, and, to Target's Knowledge there is no material default or violation by any other party to, any of the Target Employee Plans; (iv) neither Target nor any ERISA Affiliate is subject to any liability or penalty under Sections 4976 through 4980 of the Code or Title I of ERISA with respect to any of the Target Employee Plans; (v) all contributions required to be made by Target or any ERISA Affiliate to any Target Employee Plan have been made on or before their due dates and a reasonable amount has been accrued for contributions to each Target Employee Plan for the current plan years; (vi) with respect to each Target Employee Plan, no "reportable event" within the meaning of Section 4043 of ERISA (excluding any such event for which the thirty (30) day notice requirement has been waived under the regulations to Section 4043 of ERISA) nor any event described in Section 4062, 4063 or 4041 of ERISA has occurred; (vii) no Target Employee Plan is covered by, and neither Target nor any Subsidiary or ERISA Affiliate has incurred or expects to incur any material liability under Title IV of ERISA or Section 412 of the Code; (viii) with respect to each Target Employee Plan subject to ERISA as either an employee pension plan within the meaning of Section 3(2) of ERISA or an employee welfare benefit plan within the meaning of Section 3(1) of ERISA, Target has prepared in good faith and timely filed all requisite governmental reports (which were true and correct as of the date filed) and has properly and timely filed and distributed or posted all notices and reports to employees required to be filed, distributed or posted with respect to each such Target Employee Plan; (ix) no suit, administrative proceeding, action or other litigation has been brought, or to the Knowledge of Target is threatened, against or with respect to any such Target Employee Plan, including any audit or inquiry by the IRS or United States Department of Labor; and (x) neither Target nor any ERISA Affiliate is a party to, or has made any contribution to or otherwise incurred any obligation under, any "multi-employer plan" as defined in Section 3(37) of ERISA or any plan maintained by more than one employer within the meaning of Section 413(c) of the Code.

(d) With respect to each Target Employee Plan, Target has complied with (i) the applicable health care continuation and notice provisions of COBRA and the regulations thereunder, (ii) the applicable requirements of the Family Medical Leave Act of 1993 and the regulations thereunder or any similar applicable state law, and (iii) the applicable requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations thereunder.

(e) The consummation of the transactions contemplated by this Agreement will not (i) entitle any current or former employee or other service provider of Target or any other ERISA Affiliate to severance benefits or any other payment (including, without limitation, unemployment compensation, golden parachute or bonus), except as expressly provided in this Agreement, (ii) accelerate the time of payment or vesting of any such benefits, or (iii) increase or accelerate any benefits or the amount of compensation due any such employee or service provider or (iii) result in compensation paid or payable to any employee of Target which compensation is non-deductible by reason of the application of Section 162(m) or 280(G) of the Code.

(f) There has been no amendment to, written interpretation or announcement (whether or not written) by Target or other ERISA Affiliate relating to, or change in participation or coverage under, any Target Employee Plan which would materially increase the expense of maintaining such Plan above the level of expense incurred with respect to that Plan for the most recent fiscal year included in the Target Financial Statements.

Section 3.10 Bank Accounts. The Target Disclosure Schedule sets forth the names and locations of all banks, trust companies, savings and loan associations, and other financial institutions at which Target or any Subsidiary maintains accounts of any nature and the names of all persons authorized to draw thereon or make withdrawals therefrom.

Section 3.11 Contracts.

(a) Except as identified in the Target Disclosure Schedules:

(i) Target has no agreements, contracts or commitments that provide for the sale, licensing or distribution by Target of any Target Products or Target Proprietary Rights. Without limiting the

foregoing, except as set forth on the Target Disclosure Schedule, Target has not granted to any third party (including, without limitation, partners, distributors, original equipment manufacturers (“OEMs”) and customers) any rights to manufacture use, sell or distribute any of the Target Products or products covered by Target Proprietary Rights, nor has Target granted to any third party any exclusive rights of any kind (including, without limitation, territorial exclusivity or exclusivity with respect to particular versions, implementations or embodiments of any of the Target Products or products covered by Target Proprietary Rights), nor has Target granted any third party any right to market any of the Target Products or products covered by Target Proprietary Rights.

(ii) Target has no Third Party Licenses.

(iii) Target has no agreements, contracts or commitments that call for fixed and/or contingent payments or expenditures in excess of \$25,000 by or to Target or such Subsidiary.

(iv) Target has no outstanding supply or development contract, commitment or proposal (including, without limitation, any feasibility studies, testing or other agreements).

(v) Target has no outstanding agreements, contracts or commitments with officers, employees, agents, consultants, advisors, salesmen, sales representatives, distributors or dealers.

(vi) Target has no employment agreements or any independent contractor or similar agreement, contract or commitment that is not terminable on thirty (30) days’ notice or less without penalty, liability or premium of any type, including, without limitation, severance or termination pay.

(vii) Target has no currently effective collective bargaining or union agreements, contracts or commitments.

(viii) Target is not restricted by agreement from competing with any person or from carrying on its business anywhere in the world.

(ix) Target has not guaranteed any obligations of other persons or made any agreements to acquire or guarantee any obligations of other persons.

(x) Target has no outstanding loan or advance to any person; nor is it party to any line of credit, standby financing, revolving credit or other similar financing arrangement of any sort which would permit the borrowing by Target or such Subsidiary in excess of \$10,000.

(xi) Target has no agreements pursuant to which it has agreed to manufacture for, supply to or distribute to any third party any Target Products or Target Components.

(xii) There are no agreements, instruments or contracts to which Target is a party or by which it is bound that involve obligations (contingent or otherwise) of, or payment to, Target in excess of \$25,000.

The agreements, documents and instruments set forth on the Target Disclosure Schedule are referred to herein as “**Material Contracts.**” True and correct copies of each document or instrument listed on the Target Disclosure Schedule pursuant to this Section 3.11(a) have been provided to Acquiror or its representatives.

(b) All of the Material Contracts listed on the Target Disclosure Schedule are valid, binding, in full force and effect, and enforceable by Target in accordance with their respective terms, except to the extent that enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors’ rights generally and by general principles of equity, regardless of whether such enforceability is considered in a proceeding at law or in equity. No Material Contract contains any liquidated damages, penalty or similar provision. To the Knowledge of Target, no party to any such Material Contract intends to cancel, withdraw, modify or amend such contract, agreement or arrangement.

(c) Target is not in default under or in breach or violation of, nor, to Target's Knowledge, is there any valid basis for any claim of default by Target or any Subsidiary under, or breach or violation by Target of, any material provision of any Material Contract. To Target's Knowledge, no other party is in default under or in breach or violation of, nor is there any valid basis for any claim of default by any other party under or any breach or violation by any other party of any Material Contract.

(d) Except as specifically indicated on the Target Disclosure Schedule, none of the Material Contracts provides for indemnification by Target of any third party. No claims have been made or, to the Knowledge of Target, threatened that could require indemnification by Target, and Target has not paid any amounts to indemnify any third party as a result of indemnification requirements of any kind.

Section 3.12 Orders, Commitments and Returns. All accepted supply or development arrangements entered into by Target were made in the ordinary course of business. There are no oral contracts or arrangements for the development or sale of any other product or service by Target.

Section 3.13 Compliance With Law. Target and the operation of its business is in compliance in all material respects with all applicable laws and regulations material to the operation of its business. Neither Target nor to Target's Knowledge, any of its employees has directly or indirectly paid or delivered any fee, commission or other sum of money or item of property, however characterized, to any finder, agent, government official or other party in the United States or any other country, that was or is in violation of any federal, state, or local statute or law or of any statute or law of any other country having jurisdiction. Target has not participated directly or indirectly in any boycotts or other similar practices affecting any of its customers. Target has complied in all material respects at all times with any and all applicable federal, state and foreign laws, rules, regulations, proclamations and orders relating to the importation or exportation of its products.

Section 3.14 Labor Difficulties; No Discrimination.

(a) Target is not engaged in any unfair labor practice and is not in material violation of any applicable laws respecting employment and employment practices, terms and conditions of employment, and wages and hours. There is no unfair labor practice complaint against Target actually pending or, to the Knowledge of Target, threatened before the National Labor Relations Board. There is no strike, labor dispute, slowdown, or stoppage actually pending or, to the Knowledge of Target, threatened against Target. To the Knowledge of Target, no union organizing activities are taking place with respect to the business of Target. No grievance, nor any arbitration proceeding arising out of or under any collective bargaining agreement is pending and, to the Knowledge of Target, no claims therefor exist. No collective bargaining agreement that is binding on Target restricts it from relocating or closing any of its operations. Target has not experienced any material work stoppage or other material labor difficulty.

(b) Target is in compliance in all material respects with all currently applicable federal, state, local and foreign laws and regulations respecting employment, discrimination in employment, terms and conditions of employment, wages, hours and occupational safety and health and employment practices, and is not engaged in any unfair labor practice. There is and has not been any claim against Target, or its respective officers or employees, or to the Target's Knowledge, threatened against Target, its officers or employees, based on actual or alleged race, age, sex, disability or other harassment or discrimination, or similar tortious conduct, or based on actual or alleged breach of contract with respect to any person's employment by Target, nor, to the Target's Knowledge, is there any basis for any such claim.

(c) There are no pending claims against Target under any workers compensation plan or policy or for long term disability. Target does not have any material obligations under COBRA with respect to any former employees or qualifying beneficiaries thereunder. There are no proceedings pending or, to the Knowledge of Target, threatened, between Target and any of its employees, which proceedings have or could reasonably be expected to have a Material Adverse Effect on Target.

(d) Target has not incurred any liability under, and has complied in all material all respects with, the Worker Adjustment Retraining Notification Act (the "WARN Act"), and to the Knowledge of Target no fact or event exists that could give rise to liability under the WARN Act.

(e) The Target Disclosure Schedule contains a list of all employees who are currently on a leave of absence (whether paid or unpaid), the reasons therefor, the expected return date, and whether reemployment of such employee is guaranteed by contract or statute, and a list of all employees who have requested a leave of absence to commence at any time after the date of this Agreement, the reason therefor, the expected length of such leave, and whether reemployment of such employee is guaranteed by contract or statute.

Section 3.15 Trade Regulation. All of the prices charged by Target in connection with the marketing or sale of any products or services have been in compliance with all applicable laws and regulations. No claims have been communicated or, to Target's Knowledge, threatened in writing against Target with respect to wrongful termination of any dealer, distributor or any other marketing entity, discriminatory pricing, price fixing, unfair competition, false advertising, or any other violation of any laws or regulations relating to anti-competitive practices or unfair trade practices of any kind, and to the Target's Knowledge, no specific situation, set of facts, or occurrence provides any basis for any such claim against Target.

Section 3.16 Insider Transactions. To the Knowledge of Target, no affiliate ("Affiliate") as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") of Target has any interest in any equipment or other property, real or personal, tangible or intangible of Target, including, without limitation, any Target Proprietary Rights or any creditor, supplier, customer, manufacturer, agent, representative, or distributor of Target Products; provided, however, that no such Affiliate or other person shall be deemed to have such an interest solely by virtue of the ownership of less than 1% of the outstanding stock or debt securities of any publicly-held company, the stock or debt securities of which are traded on a recognized stock exchange or quoted on the Nasdaq Stock Market.

Section 3.17 Employees, Independent Contractors and Consultants. The Target Disclosure Schedule lists all past and all currently effective written or oral consulting, independent contractor and/or employment agreements and other material agreements concluded with individual employees, independent contractors or consultants to which Target is a party. True and correct copies of all such written agreements have been provided to Acquiror or its representatives. All independent contractors have been properly classified as independent contractors for the purposes of federal and applicable state tax laws, laws applicable to employee benefits and other applicable law. All salaries and wages paid by Target are in compliance in all material respects with applicable federal, state and local laws. Also shown on the Target Disclosure Schedule are the names, positions and salaries or rates of pay, including bonuses, of all persons presently employed by, or performing contract services for, Target. No bonus or other payment will become due to Target employees or contractors as a result of the Merger.

Section 3.18 Insurance. The Target Disclosure Schedule contains a list of the principal policies of fire, liability and other forms of insurance currently held by Target, and all claims made under such policies. To the Knowledge of Target, Target has not done anything, either by way of action or inaction, that might invalidate such policies in whole or in part. There is no claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been paid and Target are otherwise in compliance with the terms of such policies and bonds in all material respects. To the Knowledge of Target, there has been no threatened termination of, or material premium increase with respect to, any of such policies.

Section 3.19 Accounts Receivable. Subject to any reserves set forth in the Most Recent Balance Sheet, the accounts receivable shown on the Most Recent Balance Sheet represent and will represent bona fide claims against debtors for sales and other charges, and are not subject to discount except for normal cash and immaterial trade discounts. The amount carried for doubtful accounts and allowances disclosed in the Most Recent Balance Sheet is sufficient to provide for any losses which may be sustained on realization of the receivables.

Section 3.20 Litigation. There is no private or governmental action, suit, proceeding, claim, arbitration or investigation pending before any agency, court or tribunal, foreign or domestic, or, to the Knowledge of Target, threatened against Target or any of its respective properties, officers or directors (in their capacities as such). There is no judgment, decree or order against Target, or, to the Knowledge of Target, any of its respective directors or officers (in their capacities as such). To the Knowledge of Target, no circumstances exist that could reasonably be expected to result in a claim against Target as a result of the conduct of Target's business (including, without limitation, any claim of infringement of any intellectual property right). The matters described in this Section 3.20 include, but are not limited to, those arising under any applicable federal, state and local laws, regulations and agency interpretations of the same relating to the collection and use of user information gathered in the course of Target's operations.

Section 3.21 Governmental Authorizations and Regulations. Target has obtained each material federal, state, county, local or foreign governmental consent, license, permit, grant, or other authorization of a Governmental Entity (i) pursuant to which it currently operates or holds any interest in any of its properties or (ii) that is required for the operation of its business or the holding of any such interest, and all of such authorizations are in full force and effect.

Section 3.22 Environmental Matters.

(a) Definitions. For the purposes of this Agreement, the following terms shall have the meanings set forth below:

(i) "Environmental Conditions" shall mean any environmental contamination or pollution or threatened contamination or pollution of, or the Release or threatened Release of Hazardous Materials into, the surface water, groundwater, surface soil, subsurface soil, air and land.

(ii) "Environmental Laws" shall mean all federal, regional, state, county or local laws, statutes, ordinances, decisional law, rules, regulations, codes, orders, decrees, directives and judgments relating to public health or safety, worker health or safety, pollution, damage to or protection of the environment, Environmental Conditions, Releases or threatened Releases of Hazardous Materials into the environment or the use, manufacture, processing, distribution, treatment, storage, generation, disposal, transport or handling of Hazardous Materials, whether existing in the past or present or hereafter enacted, rendered, adopted or promulgated. Environmental Laws shall include, but are not limited to, the following laws, and the regulations promulgated thereunder, as the same may be amended from time to time: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. 9601 et seq.) ("CERCLA"); the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) ("RCRA"); the Clean Air Act (42 U.S.C. 7401 et seq.); the Clean Water Act (33 U.S.C. 1251 et seq.); together with their state law analogs.

(iii) "Environmental Permits" shall mean all permits, authorizations, registrations, certificates, licenses, approvals or consents required under or issued by any Governmental Entity pursuant to Environmental Laws.

(iv) "Former Facilities" shall mean any plants, offices, land, manufacturing or other facilities formerly owned, operated, leased, managed, used, controlled or occupied by Target in connection with its business, or by any former subsidiary of Target or any predecessor-in-interest of Target.

(v) "Hazardous Material" shall mean any toxic or hazardous substance, material or waste and any pollutant or contaminant, or infectious or radioactive substance or material, or any substances, materials and wastes defined or regulated under any Environmental Laws, including without limitation, solvents, asbestos, solid wastes, petroleum, polychlorinated biphenyls and urea formaldehyde.

(vi) "Property" shall mean the facilities located at 2683 Pelham Parkway, Pelham, AL 35124, presently owned by EWE, Inc. and leased by Target. (vii) "Release" shall mean any intentional or

unintentional release, leakage, discharge, spill, leaking, pumping, pouring, emitting, emptying, injection, disposal or dumping.

(viii) **“Remedial Action”** shall mean any and all: (i) investigations of Environmental Conditions, including assessments, remedial investigations, sampling, monitoring or the installation of monitoring wells; or (ii) actions taken to address Environmental Conditions, including the use, implementation, application, installation, operation or maintenance of removal actions, in-situ or ex-situ remediation technologies to the surface and subsurface soils, excavation and off-site disposal of such soils, soil vapor extraction systems, recovery wells, sumps or trenches, systems for long-term treatment of surface water or groundwater.

(b) Each of Target and the Principal shareholder represents and warrants:

(i) **Permits.** Section 3.22 of the Target Disclosure Schedule contains a list of all Environmental Permits necessary for the lawful conduct of business by Target, and the lawful operation of their respective assets and the Property. Target possesses all Environmental Permits necessary in order to conduct lawfully its business as it is now being conducted and use the Property as currently operated by Target. Each Environmental Permit issued to Target is in full force and effect. Target is in compliance with all requirements, terms and provisions of the Environmental Permits issued to Target and has filed on a timely basis (and updated as required) all reports, notices, applications or other documents required to be filed pursuant to the Environmental Permits. Target has submitted to Acquiror true and complete copies of all of the Environmental Permits (if any) issued to or held by Target. Target shall take all necessary actions to have such Environmental Permits transferred, renewed or reissued to Target prior to the Closing Date or immediately thereafter so as to allow Surviving Corporation to continue Target's business and use the Property without interruption after the Closing Date. To the Knowledge of Target, there is no reasonable basis to believe that any of the Environmental Permits listed in Section 3.22 of the Target Disclosure Schedule will not transfer, renew or reissue to the Surviving Corporation in the ordinary course.

(ii) **Compliance With Environmental Laws.** Target's businesses and the Property are, and at all times during the time Target or the Principal Shareholders have owned or leased the Property or Former Facilities, have been, in material compliance with all Environmental Laws then applicable to its business, the Former Facilities, or the Property. During the time that Target has leased the Property, there has been no release of a Hazardous Material to the surface, subsurface or groundwater which originated at the Property.

(iii) **Reports, Disclosures and Notifications.** Target has filed on a timely basis (and updated as required) all reports, disclosures, notifications, applications, pollution prevention, stormwater prevention or discharge prevention or response plans or other emergency or contingency plans required to be filed under Environmental Laws. Target has made available to Acquiror all reports, disclosures, notifications, applications and plans filed by Target under Environmental Laws. All such reports, disclosures, notifications, applications and plans were, when made, true, accurate and complete in all material respects, and to the Knowledge of Target, such reports, disclosures, notifications, applications and plans do not contain false or inaccurate information.

(iv) **Notices.** Target has not received any actual notice that Target, the Property or any of the Former Facilities: (i) is in violation of the requirements of any Environmental Permit or Environmental Laws; (ii) is the subject of any suit, claim, proceeding, demand, order, investigation or request or demand for information arising under any Environmental Permit or Environmental Laws; or (iii) has actual or potential liability under any Environmental Laws, including without limitation CERCLA, RCRA, or any comparable state or local Environmental Laws or at common law.

(v) **No Reporting or Remediation Obligations.** There are no Environmental Conditions or other facts, circumstances or activities arising out of or relating to Target's business, the Property or the use, operation or occupancy by Target of the Property or, to the Knowledge of the Target after diligent inquiry, the Former Facilities while leased by Target that result or reasonably could be expected to result in (A) any obligation of Target to file any report or notice, to conduct any investigation, sampling or monitoring or to effect any remedial action, environmental cleanup or remediation, whether onsite or offsite; or (B) liability, either to

governmental agencies or third parties, for damages (whether to person, property or natural resources), cleanup costs or remedial costs of any kind or nature whatsoever arising under any Environmental Law.

(vi) Liens and Encumbrance. No federal, state, local or municipal governmental agency or authority has obtained or asserted an encumbrance or lien upon the Property or any property of Target , or, to the Knowledge of the Target any of the Former Facilities while leased by Target as a result of any Release, use or cleanup of any Hazardous Material for which Target is legally responsible, nor has any such Release, use or cleanup occurred which could result in the assertion or creation of such a lien or encumbrance.

(vii) Storage Transport or Disposal of Hazardous Materials. Except as disclosed in the Target Disclosure Schedule:

(A) To the Knowledge of Target, there is not now nor has there ever been located on the Property any areas or vessels used or intended for the treatment, storage or disposal of Hazardous Materials, including, but not limited to, drum storage areas, surface impoundments, incinerators, landfills, tanks, lagoons, ponds, waste piles or deep well injection systems.

(B) Target has not transported any Hazardous Material for storage, treatment or disposal, or arranged for the transportation, storage, treatment or disposal of any Hazardous Material by contract, agreement or otherwise, at or to any location used for the treatment, storage or disposal of Hazardous Material.

(viii) Future Laws. To the Knowledge of Target, there are no Environmental Laws currently enacted or promulgated, but as to which compliance is not yet required, that would require shareholder, the Surviving Corporation or the Acquiror to take any action at the Property within three (3) years from the Closing of this Agreement in order to bring Target's ' businesses or the operations at the Property as presently conducted into compliance with such Environmental Laws.

Section 3.23 Corporate Documents. Target has furnished to Acquiror or its representatives: (a) copies of its Articles of Incorporation and Bylaws, as amended to date; (b) its minute book containing consents, actions, and meetings of the shareholders, the board of directors and any committees thereof; (c) all material permits, orders, and consents issued by any regulatory agency with respect to Target , or any securities of Target and all applications for such permits, orders, and consents; and (d) the stock transfer books for Target , as the case may be, setting forth all transfers of any capital stock. The corporate minute books, stock certificate books, stock registers and other corporate records of Target are complete and accurate, and the signatures appearing on all documents contained therein are the true or facsimile signatures of the persons purporting to have signed the same.

Section 3.24 No Brokers. Neither Target, nor, to the Knowledge of Target, any Target stockholder is obligated for the payment of fees or expenses of any broker or finder in connection with the origin, negotiation or execution of this Agreement or the other Transaction Documents or in connection with any transaction contemplated hereby or thereby.

Section 3.25 Customers and Suppliers. As of the date hereof, no customer which individually accounted for more than 5% of Target's consolidated gross revenues during the 12-month period preceding the date hereof, and no material supplier of Target has canceled or otherwise terminated prior to the expiration of the contract term, or, to Target's Knowledge, made any written threat to Target to cancel or otherwise terminate its relationship with Target , or has at any time on or after December 31, 2002 decreased materially its services or supplies to Target in the case of any such supplier, or its usage of the services or products of Target in the case of such customer, and to Target's Knowledge, no such supplier or customer intends to cancel or otherwise terminate its contractual relationship with Target or to decrease materially its services or supplies to Target or its usage of the services or products of Target . Target has not knowingly (i) breached, or (ii) engaged in any fraudulent conduct with respect to, any customer or supplier or Target .

Section 3.26 Target Action. The Board of Directors of Target, by unanimous written consent or at a meeting duly called and held, has by the unanimous vote of all directors (i) determined that the Merger is fair and in the best interests of, and advisable to, Target and its shareholders, (ii) approved the Merger and this Agreement in accordance with the provisions of Alabama Law, and (iii) directed that this Agreement and the Merger be submitted to Target shareholders who have not already approved the Merger for their approval and resolved to recommend that such Target shareholders vote in favor of the approval of this Agreement and the Merger.

Section 3.27 Offers. Target is not in active discussion, formal or informal, with any person or entity regarding the issuance of any form of additional equity that has not been issued or committed to prior to the date of this Agreement. Target has suspended or terminated, and has the legal right to terminate or suspend, all negotiations and discussions of Acquisition Transactions (as defined in Section 5.6) with parties other than Acquiror.

Section 3.28 Privacy Laws and Policies Compliance. Target has complied in all material respects, with all applicable federal, state and local laws, and regulations relating to the collection and use of user information gathered in the course of Target's operations, and each of Target has at all times complied with all rules, policies and procedures established from time to time with respect to the foregoing.

Section 3.29 Disclosure. No statements by Target contained in this Agreement, its exhibits and schedules nor in any of the certificates or documents, including any of the Transaction Documents, delivered or required to be delivered by Target to Acquiror or Sub under this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made. Target, to its Knowledge, has disclosed to Acquiror all material information relating specifically to the operations and business of Target and its Subsidiaries as of the date of this Agreement or the transactions contemplated by this Agreement.

Section 3.30 S-Corporation Status. For federal and applicable state income tax purposes, the Company has properly elected to be, and has satisfied the requirements for qualification as, an S corporation within the meaning of Section 1361 of the Internal Revenue Code of 1986 (and corresponding provisions of applicable state law) for all periods since its inception.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF ACQUIROR AND SUB

Acquiror and Sub jointly and severally represent and warrant to Target and Principal Shareholders that, except as disclosed in a filing with the Securities and Exchange Commission (the "Commission"), the statements contained in this Article IV are true and correct on and as of the date of this Agreement and shall be true and correct at all times until the Closing Date.

Section 4.1 Organization of Acquiror and Sub. Each of Acquiror and Sub is a corporation duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation and has all requisite corporate power to own, lease and operate its property and to carry on its business as now being conducted and is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the leasing of properties makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not have a Material Adverse Effect. The authorized capital stock of Sub consists of 100 shares of Common Stock, all of which are issued and outstanding, duly paid and nonassessable and are owned by Acquiror free and clear of all liens, charges and encumbrances.

Section 4.2 Valid Issuance of Acquiror Common Stock. The shares of Acquiror's Common Stock, par value of \$0.0001 per share ("Acquiror Common Stock"), to be issued pursuant to the Merger will when issued be duly authorized, validly issued, fully paid, and non-assessable and issued in compliance with all applicable federal and state securities laws.

Section 4.3 Authority; No Conflict; Required Filings and Consents.

(a) Each of Acquiror and Sub has all requisite corporate power and authority to enter into this Agreement and the other Transaction Documents to which it is or will become a party and to consummate the transactions contemplated by this Agreement and such Transaction Documents. The execution and delivery of this Agreement and such Transaction Documents and the consummation of the transactions contemplated by this Agreement and such Transaction Documents have been duly authorized by all necessary corporate action on the part of Acquiror and Sub. This Agreement has been and such Transaction Documents have been or, to the extent not executed as of the date hereof, will be duly executed and delivered by Acquiror and Sub. This Agreement and each of the Transaction Documents to which Acquiror or Sub is a party constitutes, and each of the Transaction Documents to which Acquiror or Sub will become a party when executed and delivered by Acquiror or Sub will constitute, a valid and binding obligation of Acquiror or Sub, enforceable by Target against Acquiror or Sub, as the case may be, in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and by general principles of equity, regardless of whether such enforceability is considered in a proceeding at law or in equity.

(b) The execution and delivery by Acquiror or Sub of this Agreement and the Transaction Documents to which it is or will become a party does not, and consummation of the transactions contemplated by this Agreement or the Transaction Documents to which it is or will become a party will not, (i) conflict with, or result in any violation or breach of any provision of the Certificate of Incorporation or Bylaws of Acquiror or Sub, (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which Acquiror or Sub is a party or by which either of them or any of their properties or assets may be bound, or (iii) conflict or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Acquiror or Sub or any of their properties or assets, except in the case of (ii) and (iii) for any such conflicts, violations, defaults, terminations, cancellations or accelerations which would not have a Material Adverse Effect.

(c) Neither the execution and delivery of this Agreement by Acquiror or Sub or the Transaction Documents to which Acquiror or Sub is or will become a party or the consummation of the transactions contemplated hereby or thereby will require any consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity, except for (i) the filing of the Articles of Merger with the Alabama Secretary of State, (ii) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities laws and the laws of any foreign country, and (iii) such other consents, authorizations, filings, approvals and registrations which, if not obtained or made, could be expected to have a Material Adverse Effect on Acquiror, taken as a whole.

Section 4.4 Commission Filings; Financial Statements.

(a) Acquiror has filed with the Commission and made available to Target or its representatives all forms, reports and documents required to be filed by Acquiror with the Commission since September 27, 2000 (collectively, the "**Acquiror Commission Reports**"). The Acquiror Commission Reports (i) at the time filed, complied in all material respects with the applicable requirements of the Securities Act of 1933, as amended, (the "**Securities Act**"), and the Exchange Act, as the case may be, and (ii) did not at the time they were filed (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing) contain any untrue statement of a material fact or omit to state a material fact required to be stated in such Acquiror Commission Reports or necessary in order to make the statements in such Acquiror Commission Reports, in the light of the circumstances under which they were made, not misleading.

(b) Each of the financial statements (including, in each case, any related notes) contained in the Acquiror Commission Reports, including any Acquiror Commission Reports filed after the date of this Agreement until the Closing, complied or will comply as to form in all material respects with the applicable published rules and regulations of the Commission with respect thereto, was prepared in accordance with GAAP applied on a consistent basis throughout the periods involved (except as may be indicated in the notes to such

financial statements or, in the case of unaudited statements, as permitted by Form 10-Q of the Commission) and fairly presented the consolidated financial position of Acquiror and its Subsidiaries as at the respective dates 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 normal and recurring year-end adjustments which were not or are not expected to be material in amount.

Section 4.5 Shareholders Consent. No consent or approval of the shareholders or board of directors of Acquiror or Sub is required or necessary for Acquiror to enter into this Agreement or the Transaction Documents or to consummate the transactions contemplated hereby and thereby which has not been obtained.

Section 4.6 Disclosure. No representation or warranties of Acquiror or Sub contained in this Agreement, and no statement contained in any certificate, schedule, list or other information furnished by Acquiror to Target pursuant to the provisions hereof, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein not misleading as of the date of this Agreement.

Section 4.7 No Brokers. Neither Acquiror nor Sub is obligated for the payment of any fees or expenses of any broker or finder in connection with this Agreement and the other Transaction Documents or any transactions contemplated hereby.

ARTICLE V

COVENANTS OF TARGET

Section 5.1 Satisfaction of Conditions Precedent. Target will use its best efforts to satisfy or cause to be satisfied all the conditions precedent which are set forth in Sections 8.1 and 8.2, and Target will use its best efforts to cause the transactions contemplated by this Agreement to be consummated, and, without limiting the generality of the foregoing, to obtain all consents and authorizations of third parties and to make all filings with, and give all notices to, third parties which may be necessary or reasonably required on its part in order to effect the transactions contemplated by this Agreement. Target shall use its best efforts to obtain any and all consents necessary with respect to those Material Contracts listed on Schedule 5.1 of the Target Disclosure Schedule required to consummate the Merger (the “**Material Consents**”).

Section 5.2 Other Negotiations. Following the date hereof and until termination of this Agreement pursuant to Section 9.1, Target will not (and it will not permit any of its officers, directors, employees, representatives (including, without limitation, accountants, attorneys, investment bankers or investors), agents and Affiliates on its behalf directly or indirectly through another person to) take any action to solicit, initiate, seek, encourage or support the initiation of, or take any other action designed to facilitate the initiation of any inquiry, proposal or offer from, furnish any information to, or participate in any negotiations with, any corporation, partnership, person or other entity or group (other than Acquiror) regarding any acquisition of Target, any merger or consolidation with or involving Target, or any acquisition of any material portion of the stock or assets of Target or any license of Target Proprietary Rights (any of the foregoing being referred to in this Agreement as an “**Acquisition Transaction**”) or enter into an agreement concerning any Acquisition Transaction with any party other than Acquiror. If between the date of this Agreement and the termination of this Agreement pursuant to Section 9.1, Target receives from a third party any offer or indication of interest regarding any Acquisition Transaction, or any request for information regarding any Acquisition Transaction, Target shall (i) notify Acquiror immediately (orally and in writing) of such offer, indication of interest or request, including the identity of such party and the full terms of any proposal therein, and (ii) notify such third party of Target’s obligations under this Agreement.

ARTICLE VI

COVENANTS OF ACQUIROR AND SUB

Section 6.1 Reservation of Acquiror Common Stock. Acquiror shall prior to the Effective Time reserve for issuance, out of its authorized but unissued capital stock, the maximum number of shares of Acquiror Common Stock as may be issuable upon consummation or as a result of the Merger.

Section 6.2 Satisfaction of Conditions Precedent. Acquiror and Sub will use their reasonable best efforts to satisfy or cause to be satisfied all the conditions precedent which are set forth in Sections 8.1 and 8.3, and Acquiror and Sub will use their reasonable best efforts to cause the transactions contemplated by this Agreement to be consummated, and, without limiting the generality of the foregoing, to obtain all consents and authorizations of third parties and to make all filings with, and give all notices to, third parties which may be necessary or reasonably required on its part in order to effect the transactions contemplated hereby.

Section 6.3 Lease. Acquiror shall within sixty days after the Effective Time enter into an operating lease for approximately 6,500 usable square feet located at 2683 Pelham Parkway, Pelham, AL 35124 (the “**Lease**”). The Lease shall have a term of five years, with an option for an additional five-year extension, and provide that the rent for the first year will be the current rent paid by Target, with increases of up to 3% per year thereafter. In addition, Acquiror and Sub will have an right of first refusal with respect to approximately 2,750 additional square feet located in the same building, at the same rate as paid under the Lease. The Surviving Corporation shall be located on the premises represented by the Lease.

Section 6.4 Registration of Merger Shares.

(a) Registrable Shares. For purposes of this Agreement, “**Registrable Shares**” shall mean the shares of Acquiror Common Stock issued in the Merger and that number of shares issuable in satisfaction of the Subsequent Merger Consideration which, at the time the Registration Statement (as defined below) becomes effective, is reasonably expected, in the sole discretion of Acquiror, to be offered and sold within two years from the initial effective date of the Registration Statement.

(b) Required Registration. Acquiror shall use its reasonable commercial efforts (i) to prepare and file with the Commission a registration statement on Form S-3 (or such successor or other appropriate form) under the Securities Act with respect to the Registrable Shares (the “**Registration Statement**”) within 60 days of the Closing Date (or as soon thereafter as commercially reasonable if 60 days is determined not to be commercially reasonable) (the “**Registration Date**”), so long as the holders of Registrable Securities who have requested inclusion in the Registration Statement as selling shareholders have provided the information necessary for inclusion therein in a timely manner to enable Acquiror to file the Registration Statement within such period, provided that Acquiror may delay filing of the Registration Statement if Acquiror shall furnish the shareholder Agents with a certificate signed by the President of Acquiror stating that in the reasonable judgment of Acquiror after consultation with counsel there is or may be in existence material undisclosed information or events with respect to Acquiror the disclosure of which would be seriously detrimental to Acquiror, but any such delay shall not exceed 90 days, (ii) to cause such Registration Statement to be declared effective by the Commission as soon thereafter as possible, (iii) to file such amendments or supplements as may be necessary so that the prospectus contained in the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing and (iv) to effect all such registrations, qualifications and compliances (including, without limitation, obtaining appropriate qualifications under applicable state securities or “blue sky” laws and compliance with any other applicable governmental requirements or regulations) as any selling holder of Registrable Shares may reasonably request and that would permit or facilitate the sale of all Registrable Shares (provided, however, that Acquiror shall not be required in connection therewith to qualify to do business or to file a general consent to service of process in any such state or jurisdiction), and in each case Acquiror will use its best reasonable efforts to cause such Registration Statement and all other such registrations, qualifications and compliances to become effective as soon as practicable thereafter. As soon as reasonably practicable after the execution of this Agreement, Acquiror will provide to Target a

questionnaire setting forth the information that Acquiror will require from each Former Target Stockholder to include such holder's Registrable Shares in the Registration Statement. If any Former Target Stockholder shall fail to furnish such information to Acquiror prior to the Registration Date, Acquiror may, at its election, either exclude such holder from the Registration Statement or delay the filing of the Registration Statement for up to ten (10) additional days.

(c) Acquiror Registration. If (but without any obligation to do so) the Acquiror proposes to register any of its stock under the Securities Act in connection with the public offering of such securities solely for cash on Form S-3 (other than a registration relating solely to the sale of securities to participants in a Acquiror stock plan or a transaction covered by Rule 145 under the Securities Act, a registration in which the only stock being registered is Common Stock issuable upon conversion of debt securities which are also being registered, any registration on any form which does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities, or any registration on any form other than SEC Forms S-1, S-2 or S-3 or their successor forms or any successor to such forms which do not permit secondary sales), the Acquiror shall cause to be registered under the Securities Act any shares of Acquiror Common Stock issued in the Merger that are not Registrable Securities subject to the limitations of Rule 415(a)(2) of the Securities Act.

(d) Effectiveness; Delivery of Prospectus; Suspension Right.

(i) Acquiror will use its best efforts to maintain the effectiveness of the Registration Statement and other applicable registrations, qualifications and compliances until the first anniversary of the Closing Date (the "**Registration Effective Period**"). As soon as practicable following the effectiveness of the Registration Statement, Acquiror will furnish to each holder of Registrable Shares such number of copies of the prospectus contained in the Registration Statement in conformity with the requirements of the Securities Act, and such other documents as such holder may reasonably request in order to facilitate the public sale or other disposition of such shares.

(ii) For any offer or sale of any of the Registrable Shares by a stockholder in a transaction that is not exempt under the Securities Act, the stockholder, in addition to complying with any other federal securities laws, will deliver a copy of the final prospectus (or amendment of or supplement to such prospectus) of Acquiror covering the Registrable Shares in the form furnished to the stockholder by Acquiror to the purchaser of any of the Registrable Shares on or before the settlement date for the purchase of such Registrable Shares.

(iii) Following the date on which the Registration Statement is first declared effective, the holder of Registrable Shares will be permitted (subject in all cases to Section 6.5 below) to offer and sell Registrable Shares during the Registration Effective Period in the manner described in the Registration Statement provided that the Registration Statement remains effective and has not been suspended.

(iv) Notwithstanding any other provision of this Section 6.4 but subject to Section 6.5, Acquiror shall have the right at any time to require that all holders of Registrable Shares suspend further open market offers and sales of Registrable Shares under the Registration Statement whenever, and for so long as, in the reasonable judgment of Acquiror after consultation with counsel there is or may be in existence material undisclosed information or events with respect to Acquiror required to be disclosed under federal securities laws in order for sales of Acquiror's securities to be made pursuant to the Registration Statement (the "**Suspension Right**") ; provided, however, that Acquiror shall not be entitled to invoke the Suspension Right unless such right or an equivalent restriction has been imposed on, and is then applicable to, all of Acquiror's executive officers and directors and all other holders of Acquiror Common Stock which are registered for resale under the Securities Act. In the event Acquiror exercises the Suspension Right, such suspension will continue for the period of time reasonably necessary for disclosure (including any necessary filings with the Commission) to occur at a time that is not detrimental to Acquiror and its shareholders or until such time as the information or event is no longer material, each as determined in good faith by Acquiror (it being understood that Acquiror will use all reasonably commercial efforts to minimize the duration of the suspension period). The termination of the Registration Effective Period will

extend by one (1) day for each day during which the holders of Registrable Shares suspend further open market offers and sales of Registrable Shares pursuant to the Acquiror's exercise of the Suspension Right.

(e) Expenses. The costs and expenses to be borne by Acquiror for purposes of this Section 6.4 shall include, without limitation, printing expenses (including a reasonable number of prospectuses for circulation by the selling shareholders), legal fees and disbursements of counsel for Acquiror, "blue sky" expenses, and accounting fees and filing fees, but shall not include underwriting commissions or similar charges, or any legal fees and disbursements of counsel for the selling shareholders.

(f) Indemnification.

(i) To the extent permitted by law, Acquiror will indemnify and hold harmless each holder of Registrable Shares, any underwriter (as defined in the Securities Act) for such shareholder, its officers, directors, shareholders or partners and each person, if any, who controls such shareholder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"): (A) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (B) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (C) any violation or alleged violation by Acquiror of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law; and Acquiror will pay to each such shareholder (and its officers, directors, shareholders or partners), underwriter or controlling person, any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 6.4(e)(i) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of Acquiror; nor shall Acquiror be liable in any such case for any such loss, claim, damage, liability, or action to the extent that it arises out of or is based upon (a) a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in the Registration Statement by any such shareholder, or (b) a Violation that would not have occurred if such shareholder had delivered to the purchaser the version of the Prospectus most recently provided by Acquiror to the shareholder as of the date of such sale.

(ii) To the extent permitted by law, each selling shareholder will indemnify and hold harmless Acquiror, each of its directors, each of its officers who has signed the Registration Statement, each person, if any, who controls Acquiror within the meaning of the Securities Act, any underwriter, any other stockholder selling securities pursuant to the Registration Statement and any controlling person of any such underwriter or other shareholder, against any losses, claims, damages, or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any Violation (which includes without limitation the failure of the stockholder to comply with the prospectus delivery requirements under the Securities Act, and the failure of the stockholder to deliver the most current prospectus provided by Acquiror prior to such sale), in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such shareholder expressly for use in the Registration Statement or such Violation is caused by the shareholder's failure to deliver to the purchaser of the stockholder's Registrable Shares a prospectus (or amendment or supplement thereto) that had been made available to the shareholder by Acquiror; and each such shareholder will pay any legal or other expenses reasonably incurred by any person intended to be indemnified pursuant to this Section 6.4(e)(ii) in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 6.4(e)(ii) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the shareholder, which consent shall not be unreasonably withheld. The aggregate indemnification liability of each shareholder under this Section 6.4(e)(ii) shall not exceed the net proceeds received by such shareholder in connection with sale of shares pursuant to the Registration Statement.

(iii) Each person entitled to indemnification under this Section 6.4(e) (the “**Indemnified Party**”) shall give notice to the party required to provide indemnification (the “**Indemnifying Party**”) promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought and shall permit the Indemnifying Party to assume the defense of any such claim and any litigation resulting therefrom, provided that counsel for the Indemnifying Party who conducts the defense of such claim or any litigation resulting therefrom shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such party’s expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 6.4 unless the Indemnifying Party is materially prejudiced thereby. No Indemnifying Party, in the defense of any such claim or litigation, shall (except with the consent of each Indemnified Party) consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with the defense of such claim and litigation resulting therefrom.

(iv) To the extent that the indemnification provided for in this Section 6.4(e) is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage or expense referred to herein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The aggregate contribution liability of each shareholder under this Section 6.4(e)(iv) shall not exceed the net proceeds received by such shareholder in connection with sale of shares pursuant to the Registration Statement.

Section 6.5 Procedures for Sale of Shares Under Registration Statement.

(a) Notice and Approval. If any shareholder shall propose to sell any Registrable Shares pursuant to the Registration Statement, it shall notify Acquiror of its intent to do so (including the proposed manner and timing of all sales) at least three (3) full trading days prior to such sale the (“**Notice Period**”), and the provision of such notice to Acquiror shall conclusively be deemed to reestablish and reconfirm an agreement by such shareholder to comply with the registration provisions set forth in this Agreement. Such notice will be deemed given if given by email to both Acquiror’s Vice President and General Counsel and Director of Investor Relations (jean.liu@direct.com and schond.greenway@direct.com). Unless otherwise specified in such notice, such notice shall be deemed to constitute a representation that any information previously supplied by such shareholder expressly for inclusion in the Registration Statement (as the same may have been superseded by subsequent such information) is accurate as of the date of such notice. Acquiror may delay the resale by such shareholder of any Registrable Shares pursuant to the Registration Statement by delivering to such shareholder a written notification that Acquiror’s Suspension Right has been exercised and is then in effect (the “**Suspension Notice**”); provided, however, that the Suspension Notice must be delivered within the three (3) trading-day period following receipt of such shareholder’s notice of intent to sell Registrable Securities so long as such notice included a working facsimile number for purposes of delivery of Acquiror’s response, and provided, further, that Acquiror may deliver a Suspension Notice during the Trading Window, in which case the Trading Window shall be extended day-for-day for each day such Suspension Notice is in effect. Upon receipt of the Suspension Notice, such stockholder shall refrain from selling any Registrable Shares in the open market until his, her or its receipt of a supplemented or amended prospectus pursuant to Section 6.5(b) below or written notice from Acquiror that the suspension period has ended and use of the prospectus previously furnished to such stockholder may be resumed. Unless Acquiror delivers a Suspension Notice to a selling shareholder who has delivered notice pursuant to this Section 6.5(a), such selling shareholder shall have fifteen business days following the expiration of the Notice Period in which to effect the sale described in such notice

(the “**Trading Window**”), although settlement of such sales may occur after the Trading Window. Any other sale, or any sale after the Trading Window, shall require a new notice pursuant to this Section 6.5(a).

(b) Copies of Prospectuses. Subject to the provisions of this Section 6.5, when a stockholder is entitled to sell and gives notice of its intent to sell Registrable Shares pursuant to the Registration Statement, Acquiror shall, within two (2) trading days following the request or, in the event that Acquiror’s Suspension Right has been exercised and is then in effect, as soon as practicable following the termination of the suspension period, furnish to such stockholder a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Shares, such prospectus shall not as of the date of delivery to the stockholder include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing.

Section 6.6 Certain Employee Benefit Matters. From and after the Effective Time, the employees of Target selected to continue employment will be provided with employee benefits by the Surviving Corporation or Acquiror which are substantially similar to the benefits provided from time to time by Acquiror to its similarly situated employees. If any employee of Target becomes a participant in any employee benefit plan, program, policy or arrangement of Acquiror, such employee shall be given credit for all service prior to the Effective Time with Target to the extent provided under such plan, program, policy or arrangement.

ARTICLE VII

OTHER AGREEMENTS

Section 7.1 Confidentiality. Each party acknowledges that Acquiror and Target have previously executed a Confidentiality Agreement dated April 29, 2003 (the “**Confidentiality Agreement**”), which agreement shall continue in full force and effect in accordance with its terms.

Section 7.2 No Public Announcement. The parties shall make no public announcement concerning this Agreement, their discussions or any other memoranda, letters or agreements between the parties relating to the Merger; provided, however, that either of the parties, but only after reasonable consultation with the other, may make disclosure if required under applicable law; and provided further, however, that following execution of this Agreement or consummation of the Merger, Acquiror may make a public announcement regarding the Merger and the integration of Target’s business into that of Acquiror.

Section 7.3 Regulatory Filings; Consents; Reasonable Efforts. Subject to the terms and conditions of this Agreement, Target and Acquiror shall use their respective reasonable good faith efforts to (i) make all necessary filings with respect to the Merger and this Agreement under the Exchange Act and applicable blue sky or similar securities laws and obtain required approvals and clearances with respect thereto and supply all additional information requested in connection therewith; (ii) make merger notification or other appropriate filings with federal, state or local governmental bodies or applicable foreign governmental agencies and obtain required approvals and clearances with respect thereto and supply all additional information requested in connection therewith; (iii) obtain all consents, waivers, approvals, authorizations and orders required in connection with the authorization, execution and delivery of this Agreement and the consummation of the Merger; and (iv) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable.

Section 7.4 Further Assurances. Prior to and following the Closing, each party agrees to cooperate fully with the other parties and to execute such further instruments, documents and agreements and to give such further written assurances, as may be reasonably requested by any other party to better evidence and reflect the transactions described herein and contemplated hereby and to carry into effect the intents and purposes of this Agreement.

Section 7.5 FIRPTA. Target shall, prior to the Closing Date, provide Acquiror with a properly executed Foreign Investment and Real Property Tax Act of 1980 (“FIRPTA”) FIRPTA Notification Letter which states that shares of capital stock of Target do not constitute “United States real property interests” under Section 897(c) of the Code, for purposes of satisfying Acquiror’s obligations under Treasury Regulation Section 1.1445-2(c)(3). In addition, simultaneously with delivery of such FIRPTA Notification Letter, Target shall provide to Acquiror, as agent for Target, a form of notice to the Internal Revenue Service in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2), along with written authorization for Acquiror to deliver such notice form to the Internal Revenue Service on behalf of Target upon the Closing of the Merger.

Section 7.6 Blue Sky Laws. Acquiror shall take such steps as may be necessary to comply with the securities and blue sky laws of all jurisdictions which are applicable to the issuance of the Acquiror Common Stock in connection with the Merger. Target shall use its reasonable good faith efforts to assist Acquiror as may be necessary to comply with the securities and blue sky laws of all jurisdictions which are applicable in connection with the issuance of Acquiror Common Stock in connection with the Merger.

Section 7.7 Other Filings. Prior to the Closing Date, Target and Acquiror will prepare and file any other filings required under the Exchange Act, the Securities Act or any other Federal, foreign or state securities or blue sky laws relating to the Merger and the transactions contemplated by this Agreement (the “Other Filings”). The Other Filings will comply in all material respects with all applicable requirements of law and the rules and regulations promulgated thereunder. Whenever any event occurs which is required to be set forth in an amendment or supplement to the Other Filings, Target or Acquiror, as the case may be, will promptly inform the other of such occurrence and cooperate in making any appropriate amendment or supplement, and/or mailing to shareholders of Target, such amendment or supplement.

Section 7.8 Listing of Shares. If required by applicable Nasdaq rules, Acquiror shall use reasonable best efforts to authorize for listing on the Nasdaq National Market the shares of Acquiror Common Stock issuable to shareholders of Target pursuant to this Agreement.

ARTICLE VIII

CONDITIONS TO MERGER

Section 8.1 Conditions to Each Party’s Obligation to Effect the Merger. The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction prior to the Closing Date of the following conditions:

(a) Shareholder Approval. All of the shareholders of Target entitled to vote on or consent to this Agreement and the Merger in accordance with Alabama Law and Target’s Articles of Incorporation shall have approved this Agreement and the Merger. Any agreements or arrangements that may result in the payment of any amount that would not be deductible by reason of Section 280G of the Code shall have been approved by all of the shareholders of Target and shall be obtained in a manner which satisfies all applicable requirements of such Code Section 280G(b)(5)(B) and the proposed Treasury Regulations thereunder, including (without limitation) Q-7 of Section 1.280G-1 of such proposed regulations.

(b) Approvals. Other than the filing provided for by Section 1.1, all authorizations, consents, orders or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Entity shall have been filed, occurred or been obtained.

(c) No Injunctions or Restraints; Illegality. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger or limiting or restricting the conduct or operation of the business of Target by Acquiror after the Merger shall have been issued, nor shall any proceeding brought by a domestic administrative agency or commission or other domestic Governmental Entity or other third party, seeking

Secretary of State
State of Alabama

I hereby certify that this is a
true and complete copy of the
document filed in this office
on August 15, 2003

DATE August 19, 2003

Jancy D. Shirley
Secretary of State

any of the foregoing be pending; nor shall there be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Merger which makes the consummation of the Merger illegal.

Section 8.2 Additional Conditions to Obligations of Acquiror and Sub. The obligations of Acquiror and Sub to effect the Merger are subject to the satisfaction of each of the following conditions, any of which may be waived in writing exclusively by Acquiror and Sub:

(a) Representations and Warranties. The representations and warranties of Target set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date) as of the Closing Date as though made on and as of the Closing Date, except for changes contemplated by this Agreement; and Acquiror shall have received a certificate signed on behalf of Target by the chief executive officer and the chief financial officer of Target to such effect.

(b) Performance of Obligations of Target. Target shall have performed all obligations required to be performed by it under this Agreement at or prior to the Closing Date; and Acquiror shall have received a certificate signed on behalf of Target by the chief executive officer of Target to such effect.

(c) Blue Sky Laws. Acquiror shall have received all state securities or “Blue Sky” permits and other authorizations necessary to issue shares of Acquiror Common Stock pursuant to the Merger.

(d) Dissenting Shareholders. Holders of not more than five percent (5%) of Target’s issued and outstanding capital stock as of the Closing shall have elected to, or continue to have contingent rights to, exercise appraisal rights under Alabama Law as to such shares.

(e) Employment Agreement. The Employment Agreement, in substantially the form attached hereto as Exhibit A executed and delivered concurrently with the execution of this Agreement shall remain in full force and effect.

(f) Shareholders Agreements. Each of the holders of Target Common Stock as of the Closing Date shall have executed and delivered to Acquiror a Shareholders’ Agreement and such agreements shall remain in full force and effect.

(g) Opinion of Target’s Counsel. Acquiror shall have received an opinion dated the Closing Date of Balch & Bingham LLP counsel to Target, as to the matters in the form attached hereto as Exhibit D.

(h) Approvals. All authorizations, consents (including the Material Consents), or approvals of, or notifications to any third party required by Target’s contracts, agreements or other obligations in connection with the consummation of the Merger shall have occurred or been obtained.

(i) Employees. None of the individuals identified on Schedule 8.2(i) shall have ceased to be employed by Target or expressed an intention to terminate his or her employment with Target or to decline to accept employment with Acquiror.

(j) Board Resignations. Target shall have received written letters of resignation from the Target Board of Directors from each of the current members of such Board, in each case effective at the Effective Time.

(k) Absence of Material Adverse Change. There shall have been no material adverse change in the business, properties or prospects of the Target.

(l) Patent Assignment. Acquiror shall have received satisfactory evidence that patent number 6,641,631 “Biodegradable Polymer Composition” and patent number 6,528,080 B2 “Biodegradable Polymer Composition” have been properly assigned to Target.

Section 8.3 Additional Conditions to Obligations of Target. The obligation of Target to effect the Merger is subject to the satisfaction of each of the following conditions, any of which may be waived, in writing, exclusively by Target:

(a) Representations and Warranties. The representations and warranties of Acquiror and Sub set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and (except to the extent such representations speak as of an earlier date) as of the Closing Date as though made on and as of the Closing Date; and Target shall have received a certificate signed on behalf of Acquiror by the chief executive officer of Acquiror to such effect.

(b) Performance of Obligations of Acquiror and Sub. Acquiror and Sub shall have performed in all material respects all obligations required to be performed by them under this Agreement at or prior to the Closing Date; and Target shall have received a certificate signed on behalf of Acquiror by the chief financial officer of Acquiror to such effect.

(c) Execution of Employment Agreement. The Employment Agreement shall have been executed and delivered by the Acquiror.

(d) Target Opinion. Target shall have received an opinion of Acquiror's counsel, Venture Law Group, as to the matter in the form attached as Exhibit E.

ARTICLE IX

TERMINATION AND AMENDMENT EXPENSES

Section 9.1 Termination. This Agreement may be terminated at any time prior to the Effective Time:

- (a) by mutual written consent of Acquiror and Target;
- (b) by either Acquiror or Target, by giving written notice to the other party, if a court of competent jurisdiction or other Governmental Entity shall have issued a nonappealable final order, decree or ruling or taken any other action, in each case having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger, except, if such party relying on such order, decree or ruling or other action shall not have complied with its respective obligations under Sections 5.5 or 6.3 of this Agreement, as the case may be;
- (c) by Acquiror, by giving written notice to Target, if the Closing shall not have occurred on or before August 31, 2003 by reason of the failure of any condition precedent under Section 8.1 or 8.2 (unless the failure results primarily from a breach by Acquiror of any representation, warranty, or covenant of Acquiror contained in this Agreement or Acquiror's failure to fulfill a condition precedent to closing or other default);
- (d) by Target, by giving written notice to Acquiror, if the Closing shall not have occurred on or before August 31, 2003 by reason of the failure of any condition precedent under Section 8.1 or 8.3 (unless the failure results primarily from a breach by Target of any representation, warranty, or covenant of Target contained in this Agreement or Target's failure to fulfill a condition precedent to closing or other default);
- (e) by Acquiror, if Target shall breach any representation, warranty, obligation or agreement hereunder such that the condition set forth in Section 8.2(a) and (b) would not be satisfied as of the time of such breach and such breach shall not have been cured within five (5) business days of receipt by Target of written notice of such breach; provided, that the right to terminate this Agreement by Acquiror under this Section 9.1(f) shall not be available to Acquiror where Acquiror is at that time in breach of this Agreement; or
- (f) by Target, if Acquiror shall breach any representation, warranty, obligation or agreement hereunder such that the condition set forth in Section 8.3(a) and (b) would not be satisfied as of the time of such

breach and such breach shall not have been cured within five (5) business days of receipt by Acquiror of written notice of such breach.

Section 9.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 9.1, this Agreement shall immediately become void and there shall be no liability or obligation on the part of Acquiror, Target, Sub or their respective officers, directors, stockholders or Affiliates, except as set forth in Section 9.3 and further except to the extent that such termination results from the willful breach by any such party of any of its representations, warranties or covenants set forth in this Agreement.

Section 9.3 Fees and Expenses. All fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses, whether or not the Merger is consummated. Notwithstanding the foregoing, any legal fees of Target or expenses incurred in connection with this transaction prior to the Closing that are not in the ordinary course of business shall be borne by Target's shareholders and not Target.

ARTICLE X

ESCROW AND INDEMNIFICATION

Section 10.1 Indemnification.

(a) From and after the Effective Time and subject to the limitations contained in Section 10.2, the Former Target Shareholders will, severally and pro rata, in accordance with their Pro Rata Portion, and not jointly indemnify and hold Acquiror harmless against any loss, expense, reduction in value in Target, liability or other damage, including attorneys' fees and filing fees, to the extent of the amount of such loss, expense, reduction in value, liability or other damage (collectively "**Damages**") that Acquiror or its officers, directors, employees, agents or affiliates (including the Surviving Corporation) (collectively, "**Indemnitees**") has incurred by reason of the breach or, the alleged breach, by Target of any representation, warranty, covenant or agreement of Target contained in this Agreement that occurs or becomes known to an Indemnatee within one year of the Closing Date (the period from the Closing Date to such Date being referred to as the "**Escrow Period**").

(b) The remedies provided in this Article X shall be the sole and exclusive remedies available to Acquiror and Sub with respect to any violation or breach of any representation, warranty, covenant, agreement, or obligation of Target or the Target Shareholders.

Section 10.2 Offset of Payment of First Anniversary Merger Consideration. (a) If Acquiror has a good faith claim for indemnification as set forth above, in addition to any other rights and remedies Acquiror may have against Target, Acquiror may offset and withhold such amounts against the First Anniversary Merger Consideration up to \$100,000 (the "**Escrow Fund**"); provided that Acquiror delivers written notice to the Shareholders' Agent asserting the claim and stating the basis therefore in reasonable detail. Acquiror's right to offset any portion of the First Anniversary Merger Consideration shall not be Acquiror's sole or exclusive remedy in the event of a claim for indemnification against Target, and Acquiror (and each of its directors, officers, employees, shareholders and agents) may also exercise all other rights and remedies available to it under this Agreement.

(b) Notwithstanding any provision of this Agreement to the contrary, (i) the aggregate liability of a Former Target Stockholder hereunder shall not exceed such person's Pro Rata Portion of the Escrow Fund; and (ii) no claim for indemnification for breach of representations and warranties shall be made by Acquiror under this Agreement until the aggregate amount of claims for indemnification exceeds \$20,000.

Section 10.3 Resolution of Conflicts.

(a) In case the Shareholders' Agent shall so object in writing to any claim or claims by Acquiror pursuant to Section 10.2 above, Acquiror shall have thirty (30) days to respond in a written statement to the objection of the Shareholders' Agent. If after such thirty (30) day period there remains a dispute as to any claims,

the Shareholders' Agent and Acquiror shall attempt in good faith for thirty (30) days to agree upon the rights of the respective parties with respect to each of such claims.

(b) If no such agreement can be reached after good faith negotiation, either Acquiror or the Shareholders' Agent may, by written notice to the other, demand arbitration of the matter unless the amount of the damage or loss is at issue in pending litigation with a third party, in which event arbitration shall not be commenced until such amount is ascertained or both parties agree to arbitration; and in either such event the matter shall be settled by arbitration conducted by three arbitrators. Within fifteen (15) days after such written notice is sent, Acquiror (on the one hand) and the Shareholders' Agent (on the other hand) shall each select one arbitrator, and the two arbitrators so selected shall select a third arbitrator. The decision of the arbitrators as to the validity and amount of any claim in the Acquiror's offset to the First Anniversary Merger Consideration shall be binding and conclusive upon the parties to this Agreement.

(c) Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction. Any such arbitration shall be held in Santa Clara or San Mateo County, California under the commercial rules then in effect of the American Arbitration Association. The non-prevailing party to an arbitration shall pay its own expenses, the fees of each arbitrator, the administrative fee of the American Arbitration Association, and the expenses, including, without limitation, the reasonable attorneys' fees and costs, incurred by the prevailing party to the arbitration.

Section 10.4 Shareholders' Agent.

(a) James P. English shall be constituted and appointed as agent (the "Shareholders' Agent") for and on behalf of the Former Target Shareholders to give and receive notices and communications, to authorize delivery to Acquiror of the Escrow Fund in satisfaction of claims by Acquiror, to object to such deliveries, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, and to take all actions necessary or appropriate in the judgment of the Shareholders' Agent for the accomplishment of the foregoing. No bond shall be required of the Shareholders' Agent, and the Shareholders' Agent shall receive no compensation for services. Notices or communications to or from the Shareholders' Agent shall constitute notice to or from each of the Former Target Shareholders.

(b) The Shareholders' Agent shall not be liable for any act done or omitted hereunder as Shareholders' Agent while acting in good faith, and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith. The Former Target Shareholders shall severally and pro rata, in accordance with their Pro Rata Portion, but not jointly, indemnify the Shareholders' Agent and hold him harmless against any loss, liability or expense incurred without gross negligence or bad faith on the part of the Shareholders' Agent and arising out of or in connection with the acceptance or administration of their duties hereunder under this Agreement.

(c) The Shareholders' Agent shall have reasonable access to information about Target and Acquiror and the reasonable assistance of Target's and Acquiror's officers and employees for purposes of performing their duties and exercising their rights under this Article X, provided that the Shareholders' Agent shall treat confidentially and not disclose any nonpublic information from or about Target or Acquiror to anyone (except on a need to know basis to individuals who agree to treat such information confidentially).

Section 10.5 Actions of the Shareholders' Agent. A decision, act, consent or instruction of the Shareholders' Agent shall constitute a decision of all of the Former Target Shareholders for whom shares of Acquiror Common Stock otherwise issuable to them are deposited in the Escrow Fund and shall be final, binding and conclusive upon each such Former Target Shareholder, and Acquiror may rely upon any decision, act, consent or instruction of the Shareholders' Agent as being the decision, act, consent or instruction of each and every such Former Target Shareholder. The Acquiror is hereby relieved from any liability to any person for any acts done by them in accordance with such decision, act, consent or instruction of the Shareholders' Agent.

Section 10.6 Claims. In the event an Indemnitee becomes aware of a third-party claim which the Indemnitee believes may result in a demand against the Escrow Fund, Acquiror shall promptly notify the Shareholders' Agent of such claim. Acquiror shall have the right in its sole discretion to settle any such claim; provided, however, that Acquiror may not effect the settlement of any such claim without the written consent of the Shareholders' Agent, which consent shall not be unreasonably withheld. In the event that the Shareholders' Agent have consented to any such settlement, the Former Target Shareholders shall have no power or authority to object to the amount of any claim by Acquiror against the Escrow Fund for indemnity with respect to such settlement in the amount agreed to.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Survival of Representations and Covenants. All representations, warranties, covenants and agreements of Target contained in this Agreement shall survive the Closing and any investigation at any time made by or on behalf of Acquiror until the earlier of (i) the end of the Escrow Period, or (ii) the termination of this Agreement in accordance with Article IX.

Section 11.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, telecopied (which is confirmed) or two business days after being mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Acquiror or Sub:

Direct Corporation
10240 Bubb Road
Cupertino, CA 95104
Attention: Jean Liu, Vice President and General Counsel
Fax No: (408) 865-1406
Telephone No: (408) 777-1827

with a copy to:

Venture Law Group
A Professional Corporation
2775 Sand Hill Road
Menlo Park, California 94025
Attention: Mark Weeks
Fax No: (650) 233-8386
Telephone No: (650) 854-4488

(b) if to Target, to:

Absorbable Polymer Technologies, Inc.
2683 Pelham Parkway
Pelham, AL 35124
Attention: James P. English
Fax No: (205) _____
Telephone No: (205) _____

with a copy to:

Balch & Bingham LLP

1901 Sixth Avenue North, Suite 2600
Birmingham, Alabama 35203
Attention: Timothy J. Segers
Fax No: (205) 488-5696
Telephone No: (205) 226-8730

Section 11.3 Interpretation. When a reference is made in this Agreement to Sections, such reference shall be to a Section of this Agreement unless otherwise indicated. 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. Whenever the words “include,” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “without limitation.” Whenever the words “to the Knowledge of Target” or “known to Target” or similar phrases are used in this Agreement, they mean the actual knowledge of James P. English, after reasonable inquiry, of the directors, officers and employees of such party.

Section 11.4 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when two or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

Section 11.5 Entire Agreement; No Third Party Beneficiaries. This Agreement (including the documents and the instruments referred to herein), the Confidentiality Agreement, and the Transaction Documents (a) constitute the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and (b) are not intended to confer upon any person other than the parties hereto (including without limitation any Target employees in their capacity as such) any rights or remedies hereunder.

Section 11.6 Governing Law; Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without regard to any applicable conflicts of law, except that the corporate laws of the State of Alabama may be applicable to provisions regarding approval of the Merger. In any action between the parties arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement: (a) each of the parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the state and federal courts located in the State of California and situated within the Northern District of California; (b) if any such action is commenced in a state court, then, subject to applicable law, no party shall object to the removal of such action to any federal court located in the Northern District of California; (c) each of the parties irrevocably waives the right to trial by jury; and (d) each of the parties irrevocably consents to service of process by first class certified mail, return receipt requested, postage prepaid, to the address at which such party is to receive notice in accordance with Section 11.2.

Section 11.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties; provided, however, that Acquiror shall be permitted to assign (i) the rights and obligations of Sub hereunder to another wholly owned Subsidiary of Acquiror, and (ii) its rights and obligations hereunder to any successor in interest to it in connection with a transaction involving a change-in-control of Acquiror. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 11.8 Amendment. This Agreement may be amended by the parties hereto, at any time before or after approval of matters presented in connection with the Merger by the shareholders of Target, but after any such stockholder approval, no amendment shall be made which by law requires the further approval of shareholders without obtaining such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

Section 11.9 Extension; Waiver. At any time prior to the Effective Time, the parties hereto may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or the other acts of the other

parties hereto, (ii) waive any inaccuracies in the representations or warranties contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions 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 a written instrument signed on behalf of such party.

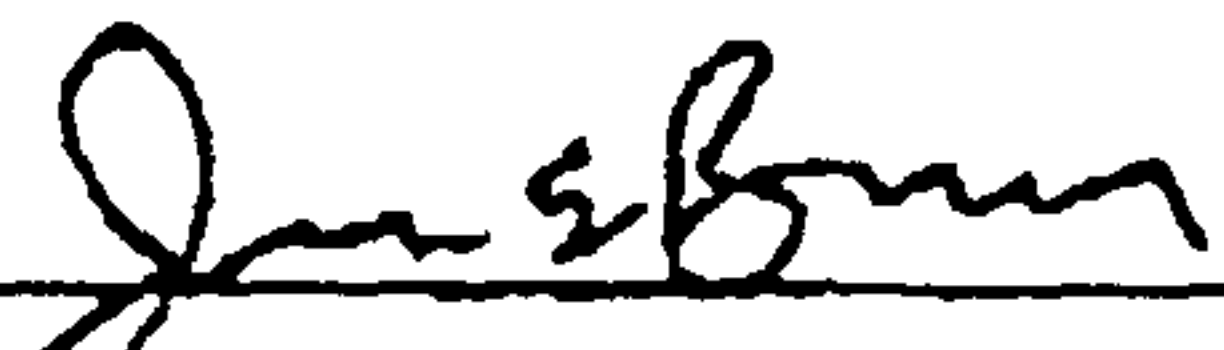
Section 11.10 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to injunctive relief 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.

Section 11.11 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law or regulation, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

[Signature Page Follows]

IN WITNESS WHEREOF, Acquirer, Sub and Target have caused this Agreement and Plan of Merger to be signed by their respective officers thereunto duly authorized as of the date first written above.

DIRECT CORPORATION

By: 
 Name: James E. Brown
 Title: President & Chief Executive Officer

BIRMINGHAM POLYMERS, INC.

By: _____
 Name: _____
 Title: _____

ABSORBABLE POLYMER TECHNOLOGIES, INC.

By: _____
 Name: _____
 Title: _____

SHAREHOLDERS' AGENT (solely for the purposes of Article X)

By: _____
 Name: _____
 Title: _____

PRINCIPAL SHAREHOLDERS:

 James P. English

 Charlotte P. English

0556796.03

IN WITNESS WHEREOF, Acquiror, Sub and Target have caused this Agreement and Plan of Merger to be signed by their respective officers thereunto duly authorized as of the date first written above.

DURECT CORPORATION

By: _____

Name: James E. BrownTitle: President & Chief Executive Officer**BIRMINGHAM POLYMERS, INC.**By: Steven DamonName: PresidentTitle: STEVEN DAMON**ABSORBABLE POLYMER TECHNOLOGIES, INC.**By: James P. EnglishName: JAMES P. EnglishTitle: President**SHAREHOLDERS' AGENT (solely for the purposes of Article X)**By: James P. EnglishName: James P. English

Title: _____

PRINCIPAL SHAREHOLDERS:James P. English

James P. English

Charlotte P. English

Charlotte P. English

SECRETARY OF STATE
STATE OF ALABAMA
I hereby certify that this is a
true and complete copy of the
document filed in this office
on _____
DATE

Secretary of State
State of Alabama

I hereby certify that this is a
true and complete copy of the
document filed in this office
on August 15, 2003

DATE August 19, 2003


Secretary of State