UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **April 18, 2007**

ACCESS PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**0-9314**	**83-0221517**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

2600 Stemmons Freeway, Suite 176 Dallas, Texas	**75207**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(214) 905-5100**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☒ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement

On April 18, 2007, Access Pharmaceuticals, Inc., a Delaware corporation ("Access"), Somanta Acquisition Corporation ("Merger Sub"), a wholly owned subsidiary of Access and a Delaware corporation, and Somanta Pharmaceuticals, Inc., a Delaware corporation ("Somanta"), Somanta Incorporated, a Delaware corporation and a wholly-owned Subsidiary of Somanta, and Somanta Limited, a company organized under the laws of England and a wholly-owned Subsidiary of Somanta Incorporated entered into an Agreement and Plan of Merger (the "Merger Agreement"), as announced in the attached joint press release dated April 19, 2007. Pursuant to the terms and subject to the conditions set forth in the Merger Agreement, Merger Sub will merge with and into Somanta, with Somanta continuing as the surviving corporation and becoming a wholly owned subsidiary of Access (the "Merger"). The Board of Directors of Access has unanimously approved the Merger and the Merger Agreement.

In connection with the Merger, all of Somanta's common stock that is outstanding at the effective time of the Merger (the "Effective Time") will be converted into 500,000 shares of Access' common stock. No fractional shares of Access's common stock will be issued as a result of the Merger. In addition, all of Somanta's preferred stock that is outstanding at the effective time of the Merger (the "Effective Time") will be converted into 1,000,000 shares of Access' common stock. No fractional shares of Access's preferred stock will be issued as a result of the Merger.

At April 18, 2007, there were 15,459,137 shares of Somanta common stock outstanding including 1,166,534 shares issuable upon the exercise of warrants that are expected to be exercised prior to the Effective Timeand 591.6 shares of Somanta preferred shares outstanding. At April 18, 2004, there were outstanding warrants to purchase 5,936,304 shares of Somanta common stock that are not expected to be exercised prior to the Effective Time and are expected to be converted into approximately 192,000 warrants (subject to adjustment as provided in the Merger Agreement) to acquire Access' common stock at the Effective Time of the Merger.

The completion of the Merger is subject to various customary conditions, including obtaining the approval of the Somanta stockholders. The Merger is intended to qualify as a reorganization for federal income tax purposes.

The foregoing description of the Merger Agreement is qualified in its entirety by reference to the full text of the Merger Agreement, which is attached to this Report as Exhibit 2.1 and incorporated herein by reference. The Merger Agreement has been attached to provide investors with information regarding its terms. It is not intended to provide any other factual information about Access or Somanta. In particular, the assertions embodied in the representations and warranties made by Somanta in the Merger Agreement are qualified by information in confidential disclosure schedules provided by Somanta to Access in connection with the signing of the Merger Agreement. These disclosure schedules contain information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the Merger Agreement. Moreover, certain representations and warranties in the Merger Agreement were used for the purpose of allocating risk between Access and Somanta rather than establishing matters as facts. Accordingly, you should not rely on the representations and warranties in the Merger Agreement as characterizations of the actual state of facts about Access or Somanta.

Item 8.01. Other Events

On April 19, 2007, Access issued a press release announcing that it entered into a definitive agreement to acquire Somanta.

The full text of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	**Description**
2.1	Agreement and Plan of Merger, by and among Access Pharmaceuticals, Inc., Somanta Acquisition Corporation, Somanta Pharmaceuticals, Inc., Somanta Incorporated and Somanta Limited, dated April 18, 2007.
99.1	Press release issued by Access Pharmaceuticals, Inc. and Somanta Pharmaceuticals, Inc. dated April 19, 2007.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ACCESS PHARMACEUTICALS, INC.

By: /s/ Stephen B. Thompson

Stephen B. Thompson
Vice President, Chief Financial Officer

Date: April 19, 2007

Exhibit Index

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AGREEMENT AND PLAN OF MERGER

DATED AS OF APRIL 18, 2007,

BY AND AMONG

ACCESS PHARMACEUTICALS, INC.,

SOMANTA ACQUISITION CORPORATION,

SOMANTA PHARMACEUTICALS, INC.,

SOMANTA INCORPORATED

AND

SOMANTA LIMITED

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AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of April 18, 2007, by and among Access Pharmaceuticals, Inc., a Delaware corporation ("Parent"), Somanta Acquisition Corporation, a Delaware corporation and a direct wholly-owned Subsidiary of Parent ("Merger Sub"), Somanta Pharmaceuticals, Inc., a Delaware corporation (the "Company"), Somanta Incorporated, a Delaware corporation and a wholly-owned Subsidiary of the Company, and Somanta Limited, a company organized under the laws of England and a wholly-owned Subsidiary of Somanta Incorporated. Certain capitalized terms used herein are defined in Section 8.04.

WHEREAS, the respective Boards of Directors of Parent, Merger Sub and the Company have deemed it advisable and in the best interests of each corporation and their respective stockholders that Parent acquire the Company in order to advance the long-term business interests of Parent and the Company;

WHEREAS, the acquisition of the Company shall be effected through the merger (the "Merger") of Merger Sub with and into the Company, upon the terms and subject to the conditions set forth in this Agreement and in accordance with the Delaware General Corporation Law ("Delaware Law"), as a result of which the Company shall become a wholly-owned Subsidiary of Parent;

WHEREAS, the Merger and this Agreement require the vote of a (i) majority of the outstanding shares of Company Common Stock (including, for these purposes, all shares of Company Common Stock issuable upon conversion of Company Preferred Stock) and (ii) majority of the outstanding shares of Company Preferred Stock, voting as a separate class, for the approval thereof (the "Company Stockholder Approval");

WHEREAS, concurrently with the execution and delivery of this Agreement and as a condition and inducement to Parent's willingness to enter into this Agreement, certain stockholders of the Company have entered into a Voting Agreement, dated as of the date of this Agreement, in the form attached hereto as Exhibit A, pursuant to which such stockholders have, among other things, granted certain officers of Parent an irrevocable proxy to vote shares of capital stock of the Company that such stockholders own in favor of this Agreement, the Merger and the transactions contemplated herein;

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger; and

WHEREAS, for federal income Tax purposes, it is intended that the Merger shall qualify as a reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code").

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt of sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I.

THE MERGER

1.01. The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with Delaware Law, Merger Sub shall be merged with and into the Company at the Effective Time of the Merger. Upon the Effective Time of the Merger, the separate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation and a wholly-owned Subsidiary of Parent.

1.02. Closing. Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned pursuant to Section 7.01, and subject to the satisfaction or waiver of the conditions set forth in Article VI, the closing of the Merger (the "Closing") shall take place at 10:00 a.m. on the second business day after satisfaction of the conditions set forth in Section 6.01 (or as soon as practicable thereafter following satisfaction or waiver of the conditions set forth in Sections 6.02 and 6.03) (the "Closing Date"), at the offices of Bingham McCutchen, LLP, 150 Federal Street, Boston, Massachusetts 02110, unless another date, time or place is agreed to in writing by the parties hereto.

1.03. Effective Time of the Merger. Upon the Closing, the parties shall file with the Secretary of State of the State of Delaware a certificate of merger (the "Certificate of Merger") executed in accordance with the relevant provisions of Delaware Law and shall make all other filings or recordings required under Delaware Law. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware, or at such other time as is permissible in accordance with Delaware Law and as Merger Sub and the Company shall agree should be specified in the Certificate of Merger (the time the Merger becomes effective being the "Effective Time of the Merger").

1.04. Effects of the Merger. The Merger shall have the effects set forth in the applicable provisions of Delaware Law. As used herein, "Surviving Corporation" shall mean and refer to the Company, at and after the Effective Time of the Merger, as the surviving corporation in the Merger and a wholly-owned Subsidiary of Parent.

1.05. Certificate of Incorporation; By-Laws; Purposes. (a) At the Effective Time of the Merger, and without any further action on the part of the Company or Merger Sub, the certificate of incorporation of Merger Sub as in effect at the Effective Time of the Merger shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as provided therein or by applicable law.

(b) At the Effective Time of the Merger, and without any further action on the part of the Company or Merger Sub, the by-laws of Merger Sub as in effect at the Effective Time of the Merger shall be the by-laws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

(c) The purposes of the Surviving Corporation shall be the purposes set forth in the certificate of incorporation of Merger Sub in effect immediately prior to the Effective Time of the Merger.

(d) The capitalization of the Surviving Corporation shall be as set forth in the certificate of incorporation of Merger Sub in effect immediately prior to the Effective Time of the Merger.

1.06. Directors. The directors of Merger Sub at the Effective Time of the Merger shall be the directors of the Surviving Corporation, until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

1.07. Officers. The officers of Merger Sub at the Effective Time of the Merger shall be the officers of the Surviving Corporation, until the earlier of their resignation or removal or until their respective successors are duly elected or appointed and qualified, as the case may be.

ARTICLE II.

EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS

2.01. Effect on Capital Stock. As of the Effective Time of the Merger, by virtue of the Merger and without any action on the part of the Company, Merger Sub, or any holder of any shares of Company Common Stock or any shares of capital stock of Merger Sub:

(a) Common Stock of Merger Sub. Each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time of the Merger shall be converted into one share of the common stock, par value $0.001 per share, of the Surviving Corporation.

(b) Cancellation of Treasury Stock, Parent-Owned Company Stock and Company Preferred Stock. Each share of Company Common Stock and Company Preferred Stock that is owned by the Company or by any Subsidiary of the Company, and each share of Company Common Stock and Company Preferred Stock that is owned by Parent, Merger Sub or any other Subsidiary of Parent shall automatically be cancelled and retired and shall cease to exist, and no cash, Parent Common Stock or other consideration shall be delivered or deliverable in exchange therefor.

(c) Conversion of Company Common Stock and Company Preferred Stock.

(i) Each issued and outstanding share of Company Common Stock (excluding shares cancelled pursuant to Section 2.01(b) and any Dissenting Shares to the extent provided in Section 2.04 but including all shares of Company Common Stock issued upon conversion of any Company Preferred Stock or exercise of Company Options or Company Warrants occurring after the date of this Agreement) shall be converted into the right to receive a number of shares of Parent Common Stock equal to: (x) 500,000, divided by (y) the total number of shares of Company Common Stock outstanding at the Effective Time, such quotient to be carried out to eight decimal points (the "Common Stock Exchange Ratio");

(ii) Each issued and outstanding share of Company Preferred Stock (excluding shares cancelled pursuant to Section 2.01(b) and any Dissenting Shares to the extent provided in Section 2.04) shall be converted into the right to receive a number of shares of Parent Common Stock equal to: (x) 1,000,000, divided by (y) the total number of shares of Company Preferred Stock outstanding at the Effective Time, such quotient carried out to eight decimal points (the "Preferred Stock Exchange Ratio");

(iii) The total number of shares of Parent Common Stock issuable in exchange for the Company Common Stock and Company Preferred Stock shall be referred to herein collectively as the "Merger Consideration." In no event shall the aggregate number of shares of Parent Common Stock to be issued or issuable hereunder in exchange for Company Common Stock and Company Preferred Stock exceed 1,500,000 (or such lesser number if decreased in accordance with Section 2.04). Except as set forth in this Article II, no other amounts shall be payable with respect to such Company Common Stock.

(d) Cancellation and Retirement of Company Common Stock and Company Preferred Stock. As of the Effective Time of the Merger, all shares of Company Common Stock and Company Preferred Stock issued and outstanding immediately prior to the Effective Time of the Merger shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock and Company Preferred Stock (collectively, the "Certificates") shall, to the extent such Certificate represents such shares, cease to have any rights with respect thereto, except the right to receive the Merger Consideration (and cash in lieu of fractional shares of Parent Common Stock) to be issued or paid in consideration therefor upon surrender of such Certificate in accordance with Section 2.02.

2.02. Exchange of Certificates.

(a) Exchange Agent. As of the Effective Time of the Merger, Parent shall enter into an agreement with such bank or trust company as may be designated by Parent (the "Exchange Agent") which shall provide that Parent shall deposit with the Exchange Agent, for the benefit of the holders of Certificates, for exchange in accordance with this Article II, certificates representing the shares of Parent Common Stock (such shares of Parent Common Stock, together with any dividends or distributions with respect thereto with a record date after the Effective Time of the Merger, and any cash payable in lieu of any fractional shares of Parent Common Stock being hereinafter referred to as the "Exchange Fund") issuable pursuant to Section 2.01 in exchange for outstanding shares of Company Common Stock.

(i) Exchange Procedures. As soon as reasonably practicable after the Effective Time of the Merger, the Exchange Agent shall mail to each holder of record of Certificates immediately prior to the Effective Time of the Merger whose shares of Company Common Stock were converted into shares of Parent Common Stock pursuant to Section 2.01 (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass only upon delivery of the Certificates to the Exchange Agent, and which shall be in such form and have such other provisions as Parent may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for certificates representing shares of Parent Common Stock. Upon surrender of a Certificate for cancellation (or indemnity reasonably satisfactory to Parent and the Exchange Agent, if any of such Certificates are lost, stolen or destroyed) to the Exchange Agent together with such letter of transmittal, duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor a certificate representing that number of whole shares of Parent Common Stock which such holder has the right to receive in respect of all Certificates surrendered by such holder pursuant to the provisions of this Article II (after taking into account all shares of Company Common Stock then held by such holder), and the Certificates so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of shares of Company Common Stock which is not registered in the transfer records of the Company, a certificate representing the proper number of shares of Parent Common Stock may be issued to a transferee if the Certificate is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and by evidence that any applicable stock transfer Taxes have been paid. Until surrendered as contemplated by this Section 2.02, subject to the provisions of Section 2.04, each Certificate shall be deemed at any time after the Effective Time of the Merger to represent only the Parent Common Stock into which the shares of Company Common Stock represented by such Certificate have been converted as provided in this Article II and the right to receive upon such surrender cash in lieu of any fractional shares of Parent Common Stock as contemplated by this Section 2.02.

(ii) Distributions with Respect to Unexchanged Shares. No dividends or other distributions with respect to Parent Common Stock with a record date after the Effective Time of the Merger shall be paid to the holder of any unsurrendered Certificate with respect to the shares of Parent Common Stock represented thereby, and no cash payment in lieu of fractional shares shall be paid to any such holder pursuant to Section 2.02(e) until the surrender of such Certificate in accordance with this Article II. Subject to the effect of applicable laws, following surrender of any such Certificate, there shall be paid to the holder of the certificate representing the whole shares of Parent Common Stock issued in exchange therefor without interest, (i) at the time of such surrender, the amount of any cash payable in lieu of any fractional share of Parent Common Stock to which such holder is entitled pursuant to Section 2.02(e) and the amount of any dividends or other distributions with a record date after the Effective Time of the Merger theretofore paid (but withheld pursuant to the immediately preceding sentence) with respect to such whole shares of Parent Common Stock, and (ii) at the appropriate payment date, the amount of any dividends or other distributions with a record date after the Effective Time of the Merger and a payment date subsequent to such surrender payable with respect to such whole shares of Parent Common Stock.

(iii) No Further Ownership Rights in Company Common Stock or Company Preferred Stock. All shares of Parent Common Stock issued upon conversion of shares of Company Common Stock or Company Preferred Stock in accordance with the terms hereof, and all cash paid pursuant to Sections 2.02(c) and 2.02(e), shall be deemed to have been issued in full satisfaction of all rights pertaining to such Company Common Stock or Company Preferred Stock, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the Company Common Stock or Company Preferred Stock which were outstanding prior to the Effective Time of the Merger. If, after the Effective Time of the Merger, Certificates are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged as provided in this Article II.

(iv) No Fractional Shares. (i) No certificate or scrip representing fractional shares of Parent Common Stock shall be issued upon the surrender for exchange of Certificates, and such fractional share interests shall not entitle the owner thereof to vote or to any rights of a stockholder of Parent. In lieu of such issuance of fractional shares, Parent shall pay each holder of Certificates an amount in cash equal to the product obtained by multiplying (a) the fractional share interest to which such holder would otherwise be entitled (after taking into account all shares of Company Common Stock or Company Preferred Stock held immediately prior to the Effective Time of the Merger by such holder) by (b) the average of the closing sale prices for a share of Parent Common Stock on the OTC Bulletin Board for the ten trading days immediately preceding the date of the Effective Time of the Merger.

(b) As soon as reasonably practicable after the determination of the amount of cash, if any, to be paid to holders of Certificates with respect to any fractional share interests, the Exchange Agent shall make available such amounts to such holders of Certificates, subject to and in accordance with the terms of Section 2.02(c).

(i) Termination of Exchange Fund. Any portion of the Exchange Fund deposited with the Exchange Agent pursuant to this Section 2.02 which remains undistributed to the holders of the Certificates six months after the Effective Time of the Merger shall be delivered to Parent, upon demand, and any holders of Certificates who have not theretofore complied with this Article II shall thereafter look only to Parent and only as general creditors thereof for payment of their claim for Parent Common Stock, cash in lieu of fractional shares of Parent Common Stock and any dividends or distributions with respect to Parent Common Stock to which such holders may be entitled pursuant to this Article II.

(ii) No Liability. None of Parent, Merger Sub, the Company or the Exchange Agent shall be liable to any Person in respect of any shares of Parent Common Stock (or dividends or distributions with respect thereto) or cash from the Exchange Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar law. If any Certificates shall not have been surrendered prior to three years after the Effective Time of the Merger, or immediately prior to such earlier date on which any Merger Consideration, any cash in lieu of fractional shares of Parent Common Stock or any dividends or distributions with respect to Parent Common Stock would otherwise escheat to or become the property of any Governmental Entity, any such Merger Consideration or cash shall, to the extent permitted by applicable law, become the property of the Surviving Corporation, free and clear of all claims or interest of any Person previously entitled thereto.

(iii) Investment of Exchange Fund. The Exchange Agent shall invest any cash included in the Exchange Fund, as directed by Parent on a daily basis. Any interest and other income resulting from such investments shall be paid to Parent.

(iv) Adjustment Provisions. In the event Parent changes (or establishes a record date for changing) the number of shares of Parent Common Stock issued and outstanding prior to the Effective Time of the Merger as a result of, including, without limitation, a forward or reverse stock split, stock dividend, recapitalization or similar transaction with respect to the outstanding Parent Common Stock and the record date therefor shall be prior to the Effective Time of the Merger, the Common Stock Exchange Ratio shall be proportionately adjusted. In the event Parent changes (or establishes a record date for changing) the number of shares of Parent Common Stock issued and outstanding prior to the Effective Time of the Merger as a result of, including, without limitation, a forward or reverse stock split, stock dividend, recapitalization or similar transaction with respect to the outstanding Parent Common Stock and the record date therefor shall be prior to the Effective Time of the Merger, the Preferred Stock Exchange Ratio shall be proportionately adjusted. If, between the date hereof and the Effective Time of the Merger, Parent shall merge, be acquired or consolidate with, by or into any other corporation (a "Business Combination") and the terms thereof shall provide that Parent Common Stock shall be converted into or exchanged for the shares of any other corporation or entity, then provision shall be made as part of the terms of such Business Combination so that securityholders of the Company who would be entitled to receive shares of Parent Common Stock pursuant to this Agreement shall be entitled to receive, in lieu of each share of Parent Common Stock issuable to such securityholders as provided herein, the same kind and amount of securities or assets as shall be distributable upon such Business Combination with respect to one share of Parent Common Stock (provided that nothing herein shall be construed so as to release the acquiring entity in any such Business Combination from its obligations under this Agreement as the successor to Parent).

2.03. Treatment of Company Options and Company Warrants. Parent shall not assume any options to purchase shares of Company Common Stock (the "Company Options"), even if such Company Options are outstanding immediately before the Effective Time of the Merger and are fully vested and exercisable immediately before the Effective Time of the Merger. All Company Options shall have been exercised or terminated prior to the Closing Date. The Company shall have taken all necessary action to implement and carry out the provisions of this Section 2.03, including, without limitation, taking the actions described in Section 6.02(e).

At the Effective Time of the Merger, Parent shall assume all issued and outstanding Company Warrants other than the Company Warrants to be exercised pursuant to Section 6.02(m), including, without limitation, all rights and obligations related thereto (except as otherwise provided in the waivers to be executed and delivered pursuant to Section 6.02(h)), in accordance with the terms of the applicable warrant agreement, in each case as adjusted to take into account the effect resulting from the Merger as follows. At the Effective Time of the Merger, each such Company Warrant, whether or not vested, shall, by virtue of the Merger, be assumed by Parent. Each such Company Warrant so assumed by Parent hereunder will continue to have, and be subject to, the same terms and conditions of such Company Warrant immediately prior to the Effective Time of the Merger (including, without limitation, any repurchase rights or vesting provisions and provisions regarding the acceleration of vesting and exercisability on certain transactions), except that (i) each such Company Warrant will be exercisable (or will become exercisable in accordance with its terms) for that number of whole shares of Parent Common Stock equal to the number of shares of Company Common Stock that were issuable upon exercise of such Company Warrant (assuming full vesting), immediately prior to the Effective Time of the Merger, multiplied by the Common Stock Exchange Ratio and rounded down to the nearest whole share, and (ii) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of each such assumed Company Warrant will be divided by the Common Stock Exchange Ratio and rounded up to the nearest whole cent. At the Effective Time of the Merger, (x) all references in the related warrant agreements to the Company shall be deemed to refer to Parent and (y) Parent shall assume all of the Company's obligations with respect to such Company Warrants as so amended. As promptly as reasonably practicable after the Effective Time of the Merger, Parent shall issue to each holder of any such Company Warrant a document evidencing the foregoing adjustments and assumption by Parent.

2.04. Dissenting Shares.

(a) Subject to the provisions of Section 6.02(i) and notwithstanding any provision of this Agreement to the contrary, the shares of any holder of Company Common Stock or Company Preferred Stock who has demanded and perfected appraisal rights of such shares in accordance with Delaware Law and who, as of the Effective Time of the Merger, has not effectively withdrawn or lost such appraisal rights ("Dissenting Shares") shall not be converted into or represent a right to receive Parent Common Stock pursuant to Section 2.01(c), but the holder thereof shall only be entitled to such rights as are granted by Delaware Law, and the total number of shares of Parent Common Stock issuable as Merger Consideration as provided in Section 2.01(c)(i) or (ii), as applicable, shall be proportionately decreased.

(b) Notwithstanding the foregoing, if any holder of shares of Company Common Stock or Company Preferred Stock who demands appraisal of such shares under Delaware Law shall effectively withdraw the right to appraisal, then, as of the later of the Effective Time of the Merger and the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive Parent Common Stock, without interest thereon, upon surrender of the Certificate representing such shares as provided in Section 2.01(c), and, subject to Section 2.01(c)(iii), the total number of shares of Parent Common Stock issuable as Merger Consideration as provided in Section 2.01(c)(i) or (ii), as applicable, shall be proportionally increased to the extent such number was previously decreased pursuant to Section 2.04(a) with respect to such shares.

(c) The Company shall give Parent (i) prompt notice of any written demands for appraisal of any shares of Company Common Stock or Company Preferred Stock, withdrawals of such demands, and any other instruments served pursuant to Delaware Law and received by the Company which relate to any such demand for appraisal and (ii) the opportunity to participate in all negotiations and proceedings which take place prior to the Effective Time of the Merger with respect to demands for appraisal under Delaware Law. The Company shall not, except with the prior written consent of Parent or as may be required by applicable law, voluntarily make any payment with respect to any demands for appraisal of the Company Common Stock or Company Preferred Stock or offer to settle or settle any such demands.

2.05. Withholding Rights. Each of Parent and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of Company Common Stock or Company Preferred Stock such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign Tax law. To the extent that amounts are so withheld by Parent or the Surviving Corporation, as the case may be, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such holder in respect of which such deduction and withholding was made by Parent or the Surviving Corporation, as the case may be.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES

3.01. Representations and Warranties of the Company and its Subsidiaries. Except as set forth in the disclosure schedule (to the extent each disclosure item therein is clearly marked to indicate the section, paragraph or subparagraph of this Agreement to which such disclosure is an exception, referencing the same section, paragraph and subparagraph as used in this Agreement) delivered by the Company to Parent and Merger Sub at the time of execution of this Agreement (the "Company Disclosure Schedule"), the Company and each of its Subsidiaries hereby jointly and severally represent and warrant to Parent and Merger Sub as follows:

(a) Organization; Standing and Corporate Power. Each of the Company and each of its Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has the requisite corporate power and authority to carry on its business as now being conducted. Except as set forth in Section 3.01(a) of the Company Disclosure Schedule, each of the Company and each of its Subsidiaries is duly qualified or licensed to do business and is in good standing in each jurisdiction (domestic or foreign) in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, other than in

such jurisdictions where the failure to be so qualified or licensed (individually or in the aggregate) would not have a Material Adverse Effect with respect to the Company. The Company has delivered to Parent complete and correct copies of the certificate of incorporation (including any Certificate of Designations thereto) (the "Certificate of Incorporation") and by-laws (the "By-laws") of the Company, in each case as amended and as currently in effect. The Company has delivered to Parent complete and correct copies of the certificates of incorporation and by-laws (or other organizational documents) of each of its Subsidiaries, in each case as amended and currently in effect.

(b) Subsidiaries. All of the Subsidiaries of the Company are listed in Section 3.01(b) of the Company Disclosure Schedule. All of the outstanding shares of capital stock of each Subsidiary of the Company have been validly issued and are fully paid and nonassessable and are owned (of record and beneficially) by the Company or by another wholly-owned Subsidiary of the Company, free and clear of all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever except for Permitted Liens (collectively, "Liens"). The Company does not own, directly or indirectly, any capital stock or other ownership interest in any Person.

(c) Capital Structure. The authorized capital stock of the Company consists of (x) 100,000,000 shares of Company Common Stock and (y) 20,000,000 shares of preferred stock, par value $0.001 per share, of which 2,000 shares are designated as Company Preferred Stock. As of the close of business on April 16, 2007, there were: (i) 14,292,603 shares of Company Common Stock issued and outstanding; (ii) 591.6318 shares of Company Preferred Stock issued and outstanding which are convertible into 9,860,135 shares of Company Common Stock; (iii) accrued but undeclared dividends on the Company Preferred Stock which are convertible into 634,871 shares of Company Common Stock pursuant to the Certificate of Designations of the Company Preferred Stock; (iv) no shares of Company Common Stock held in the treasury of the Company; (v) 4,516,837 shares of Company Common Stock Options available for grant pursuant to the Company Stock Option Plan; (vi) 3,483,163 shares of Company Common Stock reserved for issuance pursuant to outstanding options granted pursuant to the Company Stock Option Plan; and (vii) Company Warrants listed in Section 3.01(c) of the Company Disclosure Schedule, representing the right to purchase 7,102,838 shares of Company Common Stock. Except as set forth above, as of the close of business on April 16 2007, there were no shares of capital stock or other equity securities of the Company issued, reserved for issuance or outstanding. All outstanding shares of capital stock of the Company are, and all shares which may be issued pursuant to the Company Stock Option Plan shall be, when issued, duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights. All securities issued by the Company were issued in compliance in all material respects with all applicable federal and state securities laws and all applicable rules and regulations promulgated thereunder. There are no outstanding bonds, debentures, notes or other indebtedness or debt securities of the Company or any of its Subsidiaries that have the right to vote (or that are convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of the Company may vote (collectively, "Voting Debt"). Except as set forth above, there are no outstanding securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind to which the Company or any of its Subsidiaries is a party or by which any of them is bound obligating the Company or any of its Subsidiaries to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of capital stock or other equity or voting securities of the Company or of any of its Subsidiaries or obligating the Company or any of its Subsidiaries to issue, grant, extend, accelerate the vesting of or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking. There are no outstanding contractual obligations, commitments, understandings or arrangements of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire or make any payment in respect of any shares of capital stock of the Company or any of its Subsidiaries. To the knowledge of the Company, except as provided in Section 3.01(c) of the Company Disclosure Schedule, there are no irrevocable proxies with respect to shares of capital stock of the Company or any Subsidiary of the Company. There are no agreements or arrangements pursuant to which the Company is or could be required to register shares of Company Common Stock or other agreements or arrangements with or, to the knowledge of the Company, among any securityholders of the Company with respect to securities of the Company. Except as set forth in Section 3.01(c) of the Company Disclosure Schedule, the Company has complied in all respects with any obligation to register shares of Company Common Stock and has not incurred any liability in connection with its failure to register such shares.

Except as set forth in Section 3.01(c) of the Company Disclosure Schedule, since April 30, 2006, the Company has not (A) issued or permitted to be issued any shares of capital stock, or securities exercisable for or convertible into shares of capital stock, of the Company or any of its Subsidiaries; (B) repurchased, redeemed or otherwise acquired, directly or indirectly through one or more Subsidiaries, any shares of capital stock of the Company or any of its Subsidiaries or (C) declared, set aside, made or paid to the stockholders of the Company dividends or other distributions on the outstanding shares of capital stock of the Company.

(d) Authority; Noncontravention. Each of the Company and each of its Subsidiaries has the requisite corporate power and authority to enter into this Agreement and, subject to the Company Stockholder Approval in the case of the Agreement, to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Company and each of its Subsidiaries and the consummation by the Company and each of its Subsidiaries of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company and each of its Subsidiaries, subject, in the case of this Agreement, to the Company Stockholder Approval. This Agreement has been duly executed and delivered by the Company and each of its Subsidiaries and (assuming due authorization, execution and delivery by Parent and Merger Sub) constitutes a valid and binding obligation of the Company and each of its Subsidiaries, enforceable against the Company and each of its Subsidiaries in accordance with its respective terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing. Except as set forth in Section 3.01(d) of the Company Disclosure Schedule, the execution and delivery of this Agreement does not, and the consummation by the Company and each of its Subsidiaries of the transactions contemplated by this Agreement and compliance by the Company and each of its Subsidiaries with the provisions hereof shall not, conflict with, or result in any breach or violation of, or any default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of, or a "put" right with respect to any obligation under, or to a loss of a material benefit under, or result in the creation of any Lien upon any of the properties or assets of the Company or any of its Subsidiaries under, (i) the Certificate of Incorporation or By-laws, or the comparable charter or organizational documents of any of its Subsidiaries, (ii) any loan or credit agreement, note, note purchase agreement, bond, mortgage, indenture, lease or other agreement, instrument, permit, concession, franchise or license applicable to the Company or any of its Subsidiaries or their respective properties or assets or (iii) subject to the governmental filings and other matters referred to in the following sentence, any judgment, order, decree, statute, law, ordinance, rule, regulation or arbitration award applicable to the Company or any of its Subsidiaries or their respective properties or assets. No consent, approval, order or authorization of, or registration, declaration or filing with, or notice to, any federal, state or local government or any court, administrative agency or commission or other governmental authority or agency, domestic or foreign (a "Governmental Entity"), is required by or with respect to the Company or any of its Subsidiaries in connection with the execution and delivery of this Agreement by the Company or the consummation by the Company of the transactions contemplated hereby or the performance by the Company and each of its Subsidiaries of their respective obligations hereunder, except for (i) such filings, if any, as may be required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") and the filing of applications by the Company pursuant to antitrust or similar laws in such foreign jurisdictions as necessary, (ii) the filing with the SEC of (A) a proxy statement relating to the Company Stockholder Approval (such proxy statement as amended or supplemented from time to time, the "Stockholder Statement") and (B) such reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as may be required in connection with this Agreement and the transactions contemplated hereby and (iii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and appropriate documents with the relevant authorities of other states in which the Company or any of its Subsidiaries is qualified to do business.

(e) SEC Documents; Undisclosed Liabilities . The Company has filed with the SEC all reports, schedules, forms, statements and other documents required pursuant to the Securities Act of 1933, as amended (the "Securities Act") and the Exchange Act since April 30, 2004 (collectively, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein, the "SEC Documents"). As of their respective dates, the SEC Documents (other than the SEC Financial Statements) comply in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such SEC Documents. Except to the extent that information contained in any SEC Document has been revised or superseded by a later filed SEC Document, none of the SEC Documents (including any and all SEC Financial Statements included therein) contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The consolidated financial statements of the Company included in all SEC Documents filed since April 30, 2004 (the "SEC Financial Statements") comply as to form in all material respects with applicable published accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with generally accepted accounting principles as applied in the United States (except, in the case of unaudited consolidated quarterly statements, as permitted by Form 10-QSB of the SEC), applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited quarterly statements, to normal recurring year-end audit adjustments). Neither the Company nor any of its Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or

otherwise) required by generally accepted accounting principles as applied in the United States to be recognized or disclosed on a consolidated balance sheet of the Company and its Subsidiaries or in the notes thereto, except (i) liabilities reflected in the consolidated balance sheet of the Company as of January 31, 2007 (the "2007 Balance Sheet") and (ii) liabilities incurred since January 31, 2007 in the ordinary course of business consistent with past practice, which, if in an amount in excess of $10,000, are listed in Section 3.01(e) of the Company Disclosure Schedule.

(f) Disclosure Controls and Procedures; Internal Control Over Financing Reporting. The Company maintains disclosure controls and procedures required by Rule 13a-15 and 15d-15 under the Exchange Act. Such disclosure controls and procedures are designed to ensure that all material information relating to the Company and its Subsidiaries is made known to the Company's chief executive officer and chief financial officer by others within those entities, particularly during the period in which the Company's applicable Exchange Act report is being prepared, and effective, in that they provide reasonable assurance that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. The Company's management is responsible for establishing and maintaining adequate internal control over <?xml:namespace prefix = st1 ns = "schemas-workshare-com/workshare" />financial reporting as required by Rule 13a-15 or 15d-15 under the Exchange Act. The Company's internal control over financial reporting was effective as of January 31, 2007.

(g) Information Supplied. None of the information supplied or to be supplied by the Company in writing for inclusion or incorporation by reference in (i) the registration statement on Form S-4 to be filed with the SEC by Parent in connection with the issuance of Parent Common Stock in the Merger (the "Form S-4") shall, at the time the Form S-4 becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) the Stockholder Statement shall, at (A) the date it is first mailed to the Company's stockholders and/or (B) at the time of the Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. The Stockholder Statement shall comply as to form in all material respects with the requirements of the Exchange Act and the rules and regulations promulgated thereunder, except that no representation is made by the Company with respect to statements made or incorporated by reference therein based on information supplied in writing by Parent or Merger Sub specifically for inclusion or incorporation by reference therein.

(h) Absence of Certain Changes or Events . Except as set forth in Section 3.01(h) of the Company Disclosure Schedule, since April 30, 2006, there is not and has not been: (i) any Material Adverse Change with respect to the Company; (ii) any condition, event or occurrence which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or give rise to a Material Adverse Change with respect to the Company; (iii) any condition, event or occurrence which, individually or in the aggregate, could reasonably be expected to prevent or materially delay the ability of the Company or any of its Subsidiaries to consummate the transactions contemplated by this Agreement or perform their respective obligations hereunder. On the date of this Agreement, the Company is not engaged in any discussions nor does it have any intention to engage in a Transaction Proposal.

(i) Litigation; Labor Matters; Compliance with Laws.

(i) Except as set forth in Section 3.01(i)(i) of the Company Disclosure Schedule, there is no suit, action, claim, charge, arbitration, investigation or proceeding pending before a Governmental Entity and, to the knowledge of the Company, no suit, claim, charge, action, arbitration, investigation or proceeding threatened against or investigation pending, in each case with respect to the Company or any of its Subsidiaries, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect with respect to the Company or prevent or materially delay the ability of the Company or any of its Subsidiaries to consummate the transactions contemplated by this Agreement or to perform their respective obligations hereunder, nor is there any judgment, decree, citation, injunction, rule or order of any Governmental Entity or arbitrator outstanding against the Company or any of its Subsidiaries which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect with respect to the Company.

(ii) (1) Neither the Company nor any of its Subsidiaries is a party to, or bound by, any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization; (2) to the knowledge of the Company, neither the Company nor any of its Subsidiaries is the subject of any strike, grievance or other proceeding asserting that the Company or any Subsidiary has committed an unfair labor practice or seeking to compel it to bargain with any labor organization as to wages or conditions of employment; (3) there is no strike, work stoppage or other labor dispute involving it or any of its Subsidiaries pending or, to its knowledge, threatened; (4) no grievance is pending or, to the knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect with respect to the Company; (5) to the knowledge of the Company, the Company and each of its Subsidiaries is in

material compliance with all applicable laws (domestic and foreign), agreements, contracts and policies relating to employment, employment practices, wages, hours, immigration matters and terms and conditions of employment; (6) except as set forth in Section 3.01(i)(ii)(6) of the Company Disclosure Schedule, the Company (or one of its Subsidiaries) has paid in full to all employees of the Company and its Subsidiaries all wages, salaries, commissions, bonuses, benefits and other compensation due and payable to such employees under any policy, practice, agreement, plan, program, statue or other law except for failures, if any, that, individually or in the aggregate, would not have a Material Adverse Effect with respect to the Company; (7) except as set forth in Section 3.01(i)(ii)(7) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries is liable for any severance pay or other payments to any employee or former employee arising from the termination of employment under any benefit or severance policy, practice, agreement, plan, or program of the Company or any of its Subsidiaries, nor to the knowledge of the Company shall the Company or any of its Subsidiaries have any liability which exists or arises, or may be deemed to exist or arise, under any applicable law or otherwise, as a result of or in connection with the transactions contemplated hereunder or as a result of the termination by the Company of any Persons employed by the Company or any of its Subsidiaries on or prior to the Effective Time of the Merger; and (8) the Company and its Subsidiaries are in compliance with their respective obligations pursuant to the Worker Adjustment and Retraining Notification Act of 1988 ("WARN") and any similar state or local laws, and all other employee notification and bargaining obligations arising under any collective bargaining agreement, statute or otherwise.

(j) Employee Benefit Plans.

(i) Section 3.01(j) of the Company Disclosure Schedule contains a true and complete list of each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (including, without limitation, multiemployer plans within the meaning of Section 3(37) of ERISA or any of its foreign equivalents)), stock purchase, stock option, severance, employment, change-in-control, fringe benefit, collective bargaining, bonus, incentive, deferred compensation and all other employee benefit plans, agreements, programs, policies or other arrangements relating to employment, benefits or entitlements, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transactions contemplated by this Agreement or other activities taken by the Company or any of its Subsidiaries on or prior to the date of this Agreement), sponsored by the Company, any of its Subsidiaries or any other entity such as a co-employer, whether formal or informal, oral or written, legally binding or not under which any employee or former employee of the Company or any of its Subsidiaries has any present or future right to benefits based on such employee's employment with the Company or one of its Subsidiaries and under which the Company or any of its Subsidiaries has any present or future liability. All such plans, agreements, programs, policies and arrangements are herein collectively referred to as the "Company Plans."

(ii) With respect to each Company Plan, the Company has delivered to Parent a current, accurate and complete copy (or, to the extent no such copy exists, an accurate description) thereof and, to the extent applicable, (A) any related trust agreement, annuity contact or other funding instrument; (B) the most recent determination letter issued by the U.S. Internal Revenue Service ("IRS"); (C) any summary plan description and other material written communications (or a description of any material oral communications) by the Company or any of its Subsidiaries to its employees concerning the extent of the benefits provided under a Company Plan; and (D) for the three most recent years (I) the Form 5500 and attached schedules; (II) audited financial statements; (III) actuarial valuation reports; and (IV) attorney's response to an auditor's request for information.

(iii) (A) Each Company Plan has been established and administered in accordance with its terms, and in compliance with the applicable provisions of ERISA, the Code and other applicable laws, rules and regulations (including the applicable laws, rules and regulations of foreign jurisdictions), in each case, in all material respects; (B) each Company Plan which is intended to be qualified within the meaning of Code Section 401(a) is so qualified and has received a favorable determination letter as to its qualification and, to the Company's knowledge, nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification; (C) with respect to any Company Plan, no actions, suits or claims (other than routine claims for benefits in the ordinary course) are pending or, to the best knowledge of the Company, threatened; (D) to the Company's knowledge, no facts or circumstances exist which could give rise to any such actions, suits or claims and the Company shall promptly notify Parent in writing of any pending claims or, to the knowledge of the Company, any threatened claims arising between the date hereof and the Effective Time of the Merger; (E) neither the Company nor, to the Company's knowledge, any other party has engaged in a prohibited transaction, as such term is defined under Code Section 4975 or ERISA Section 406, which would subject the Company or Parent or its respective Subsidiaries to any material Taxes, penalties or other liabilities under the Code or ERISA; (F) no event has occurred and no condition exists that could reasonably be expected to subject the Company, either directly or by reason of its relationship to any member of its "Controlled Group" (defined as any organization which is deemed to be a single employer with the Company within the meaning of Code Sections 414(b), (c), (m) or (o) or ERISA Section 4001), to any material Tax, fine or penalty imposed by ERISA, the Code or other applicable laws, rules and regulations (including the applicable laws, rules and regulations of any foreign jurisdiction); (G) all contributions and payments accrued under each Company Plan, determined in accordance with prior funding and accrual practices, as of the Effective Time of the Merger have been or shall be timely paid or made prior thereto and adequate reserves have been provided for in the Company's SEC Financial Statements for any premiums (or portions thereof) and for all benefits attributable to service on or prior to the Effective Time of the Merger; (H) for each Company Plan with respect to which a Form 5500 has been filed, no material change has occurred with respect to the matters covered by the most recent Form 5500 since the date thereof; and (I) no Company Plan provides for an increase in the rate of contribution, benefit accrual or vesting of benefits on or after the date of this Agreement.

(iv) Except as disclosed in Section 3.01(j)(iv) of the Company Disclosure Schedule: (A) no Company Plan nor any "pension plan" (as defined in ERISA Section 3 (2)) maintained or contributed to by any member of the Company's Controlled Group has incurred any "accumulated funding deficiency" as such term is defined in ERISA Section 302

and Code Section 412 (whether or not waived); (B) no event or condition exists which could be deemed a reportable event within the meaning of ERISA Section 4043 which could result in a liability to the Company or any member of its Controlled Group and no condition exists which could subject the Company or any member of its Controlled Group to a fine under ERISA Section 4071; (C) as of the Effective Time of the Merger, the Company and all members of its Controlled Group have made all required premium payments when due to the Pension Benefit Guaranty Corporation (the "PBGC"); (D) neither the Company nor any member of its Controlled Group is subject to any liability to the PBGC for any plan termination occurring on or prior to the Effective Time of the Merger; (E) no amendment has occurred which has required or could require the Company or any member of its Controlled Group to provide security pursuant to Code Section 401(a)(29); and (F) neither the Company nor any member of its Controlled Group has engaged in a transaction which could subject it to liability under ERISA Section 4069.

(v) As of the Effective Time of the Merger, the assets of each Company Plan are at least equal in value to the present value of all accrued benefits (vested and unvested) of the participants in such Company Plan on a termination basis using the assumptions established by the PBGC as in effect on the most recent valuation date.

(vi) (A) the Company and each member of its Controlled Group has or shall have, as of the Effective Time of the Merger, made all contributions to each multiemployer plan (within the meaning of 54001(a)(3) of ERISA) to which the Company or any member of its Controlled Group has any liability or contribution (or has at any time contributed or had an obligation to contribute) required by the terms of such multiemployer plan or any collective bargaining agreement; (B) neither the Company nor any member of its Controlled Group has incurred any material withdrawal liability under Title IV of ERISA or would be subject to such liability if, as of the Effective Time of the Merger, the Company or any member of its Controlled Group were to engage in complete withdrawal (as defined in ERISA Section 4203) or partial withdrawal (as defined in ERISA Section 4205) from any such multiemployer plan; (C) no such multiemployer plan is in reorganization or insolvent (as those terms are defined in ERISA Sections 4241 and 4245, respectively); and (D) neither the Company nor any member of its Controlled Group has engaged in a transaction which could subject it to liability under ERISA Section 4212(c).

(vii) (A) Each Company Plan which is intended to meet the requirements for Tax-favored treatment under Subchapter B of Chapter 1 of Subtitle A of the Code meets such requirements; and (B) the Company has received a favorable determination from the Internal Revenue Service with respect to any trust intended to be qualified within the meaning of Code Section 501(c)(9).

(viii) Each plan, program, arrangement or agreement which constitutes in any part a nonqualified deferred compensation plan within the meaning of Section 409A of the Code is identified as such in Section 3.01(j)(viii) of the Company Disclosure Schedule. Since April 30, 2004, each plan, program, arrangement or agreement there identified has been operated and maintained in accordance with a good faith, reasonable interpretation of Section 409A of the Code and its purpose, as determined under applicable guidance of the Department of Treasury and Internal Revenue Service, with respect to amounts deferred (within the meaning of Section 409A of the Code) after April 30, 2004.

(ix) Except as set forth in Section 3.01(j)(ix) of the Company Disclosure Schedule, no Company Plan exists which could result in the payment to any Company employee of any money or other property or rights or accelerate or provide any other rights or benefits to any Company employee as a result of the transaction contemplated by this Agreement, whether or not such payment would constitute a parachute payment within the meaning of Code section 280G.

(x) The Company has not undertaken to maintain any Company Plan for any period of time and each Company Plan is terminable at the sole discretion of the sponsor thereof, subject only to such constraints as may imposed by applicable law.

(k) Taxes. The Company has timely filed all Tax Returns required to be filed by it, each such Tax Return has been prepared in compliance with all applicable laws and regulations, and all such Tax Returns are true, accurate and complete in all respects. The Company has paid all Taxes shown to be due on such Tax Returns. The Company has made accruals for Taxes on the SEC Financial Statements that are adequate to cover any Tax liability of the Company determined in accordance with generally accepted accounting principles through the date of the applicable SEC Financial Statements, and any Taxes of the Company arising after the date of the most recent SEC Financial Statements and at or before the Effective Time of the Merger have been or will be incurred in the ordinary course of the Company's business. Except as set forth in Section 3.01(k) of the Company Disclosure Schedule, the Company has timely withheld and timely paid all Taxes that are required to have been withheld and paid by it in connection with amounts paid or owing to any employee, independent contractor, creditor or other person. No outstanding deficiency or adjustment in respect of Taxes has been proposed, asserted or assessed by any Tax authority against the Company. The Company has not granted any outstanding extensions of the time in which any Tax may be assessed or collected by any Tax authority. There is no action, suit, proceeding, or audit with respect to any Tax now in progress, pending or, to the knowledge of the Company, threatened against or with respect to the Company. Neither the Company nor any of its Subsidiaries has ever been a member of any affiliated group of corporations (as defined in Section 1504(a) of the Code) other than a group of which the Company was the common parent. Neither the Company nor any of its Subsidiaries has ever filed or been included in a combined, consolidated or unitary Tax Return other than with respect

to a group of which the Company was the common parent. The Company is neither a party to nor bound by any Tax sharing agreement or Tax allocation agreement. Neither the Company nor any of its Subsidiaries is presently liable, nor does the Company or any of its Subsidiaries have any potential liability, for the Taxes of another person (i) under Treasury Regulations Section 1.1502-6 or comparable provision of state, local or foreign law, except with respect to a group of which the Company was the common parent, (ii) as transferee or successor, or (iii) by contract or indemnity or otherwise (other than pursuant to contracts entered into with customers, vendors, real property lessors, or other third parties the principal purpose of which is not to address Tax matters). The Company has not participated, within the meaning of Treasury Regulations Section 1.6011-4(c), in (i) any "reportable transaction" within the meaning of Section 6011 of the Code and the Treasury Regulations thereunder, (ii) any "confidential corporate tax shelter" within the meaning of Section 6111 of the Code and the Treasury Regulations thereunder, (iii) any "potentially abusive tax shelter" within the meaning of Section 6112 of the Code and the Treasury Regulations thereunder, or (iv) any transaction identified as a "transaction of interest" within the meaning of proposed Treasury Regulations Section 1.6011-4(b)(6). The Company will not be required, as a result of a change in method of accounting for any period ending on or before or including the Effective Time of the Merger, to include any adjustment under Section 481(c) of the Code (or any similar or corresponding provision or requirement under any other Tax law) in Taxable income for any period ending on or after the Effective Time of the Merger. The Company will not be required to include any item of income in Taxable income for any Taxable period (or portion thereof) ending after the Closing Date as a result of any (i) prepaid amount received on or prior to the Closing Date, or (ii) "closing agreement" described in Section 7121 of the Code (or any similar or corresponding provision of any other Tax law). The Company has never been either a "distributing corporation" or a "controlled corporation" in connection with a distribution of stock qualifying for Tax-free treatment, in whole or in part, pursuant to Section 355 of the Code. The Company is not and has not been a United States real property holding corporation within the meaning of Code Section 897(c)(2), during the applicable period specified in Code Section 897(c)(1)(A)(ii). For purposes of this Section 3.01(k), references to the Company shall be deemed to include the Company and all of its Subsidiaries except where the context indicates otherwise.

(l) Properties. The Company or one of its Subsidiaries (i) has good and marketable title to all the properties and assets (A) reflected in the 2007 Balance Sheet as being owned by the Company or one of its Subsidiaries (other than any such properties or assets sold or disposed of since such date in the ordinary course of business consistent with past practice) or (B) acquired after January 31, 2007 which are material to the Company's business on a consolidated basis, free and clear of all Liens. Except as set forth in Section 3.01(l) of the Company Disclosure Schedule, the Company or one of its Subsidiaries has good and valid leasehold interests in all real property leases, subleases and occupancy agreements to which the Company or any of its Subsidiaries is a party (the "Leases") and is in sole possession of the properties purported to be leased thereunder. Except as set forth in Section 3.01(l) of the Company Disclosure Schedule, each Lease is in full force and effect and constitutes a legal, valid and binding obligation of, and is legally enforceable against, the respective parties thereto. Except as set forth in Section 3.01(l) of the Company Disclosure Schedule, there is no uncured breach, and no default exists, on the part of landlord under any of the Leases, and the Company has no knowledge of breach or default or any event, condition or state of facts, which with the giving of notice or the passage of time, or both, would constitute a breach or default by the Company or any of its Subsidiaries under any Lease. There is no suit, action, arbitration or other proceeding with respect to the Leases or the premises leased under the Leases. Neither the Company nor or any of its Subsidiaries has received notice and does not otherwise have knowledge of any pending, threatened or contemplated condemnation proceeding affecting any premises owned or leased by the Company or any of its Subsidiaries or any part thereof or of any sale or other disposition of any such owned or leased premises or any part thereof in lieu of condemnation. The real property leased to the Company or any of its Subsidiaries under the Leases encompasses all real property used by the Company and its Subsidiaries, and neither the Company nor or any of its Subsidiaries owns any real property and does not have any options to purchase real property. The landlord under each of the Leases has performed all initial improvements required to be performed by it under such Lease and all tenant improvements allowances have been paid to the Company or any of its Subsidiaries as tenant under such Lease. All insurance required to be maintained by the Company or any of its Subsidiaries under each of the Leases is in full force and effect.

(m) Environmental Matters. Except as could not be reasonably expected to result in any liability under Environmental Laws to the Company or any of its Subsidiaries which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect with respect to the Company:

(i) the Company and its Subsidiaries hold and are in compliance with all Environmental Permits and the Company and its Subsidiaries are, and have been, otherwise in compliance with all Environmental Laws and, to the knowledge of the Company, there are no conditions that might prevent or interfere with such compliance in the future;

(ii) neither the Company nor any of its Subsidiaries has received any Environmental Claim, and to the knowledge of the Company there is no threatened Environmental Claim;

(iii) neither the Company nor any of its Subsidiaries has entered into any consent decree, order or agreement under any Environmental Law;

(iv) there are no (A) underground storage tanks, (B) polychlorinated biphenyls, (C) friable asbestos or asbestos-containing materials, (D) sumps, (E) surface impoundments, (F) landfills, or (G) sewers or septic systems present at any facility currently owned, leased, operated or otherwise used by the Company or any of its Subsidiaries that could reasonably be expected to give rise to liability of the Company or any of its Subsidiaries under any Environmental Laws;

(v) there are no past (including, without limitation, with respect to assets or businesses formerly owned, leased or operated by the Company or any of its Subsidiaries) or present actions, activities, events, conditions or circumstances, including, without limitation, the release, threatened release, emission, discharge, generation, treatment, storage or disposal of Hazardous Materials, that could reasonably be expected to give rise to liability of the Company or any of its Subsidiaries under any Environmental Laws;

(vi) no modification, revocation, reissuance, alteration, transfer, or amendment of the Environmental Permits, or any review by, or approval of, any third party of the Environmental Permits is required in connection with the execution or delivery of this Agreement or the consummation of the transactions contemplated hereby or the

continuation of the business of the Company or its Subsidiaries following such consummation;

(vii) Hazardous Materials have not been generated, transported, treated, stored, disposed of, arranged to be disposed of, released or threatened to be released at, on, from or under any of the properties or facilities currently owned, leased or otherwise used by the Company or any of its Subsidiaries, in violation of or so as could result in liability under, any Environmental Laws; and

(viii) neither the Company nor any of its Subsidiaries has contractually assumed any liabilities or obligations under any Environmental Laws.

(n) Contracts; Debt Instruments.

(i) Except as set forth in Section 3.01(n) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries is, or has received any notice or has any knowledge that any other party is, in default in any respect under any contract, agreement, commitment, arrangement, lease, policy or other instrument to which it or any of its Subsidiaries is a party or by which it or any such Subsidiary is bound, except for those defaults which would not, either individually or in the aggregate, have a Material Adverse Effect with respect to the Company; and, to the knowledge of the Company, there has not occurred any event that with the lapse of time or the giving of notice or both would constitute such a default.

(ii) The Company has delivered to Parent (x) true, complete and correct copies of all loan or credit agreements, notes, bonds, mortgages, indentures and other agreements and instruments pursuant to which any Indebtedness of the Company or any of its Subsidiaries is outstanding and (y) accurate information regarding the respective principal amounts currently outstanding thereunder.

(iii) Neither the Company nor any of its Subsidiaries is party to or bound by any agreement which, pursuant to the requirements of Form 10-KSB under the Exchange Act, would be required to be filed as an exhibit to an Annual Report on Form 10-KSB of the Company except (A) agreements included or incorporated by reference as exhibits to the Company's Annual Report on Form 10-KSB for the fiscal year ended April 30, 2006 and (B) agreements entered into after the date of this Agreement in compliance with Section 4.01 hereof.

(o) Brokers. No broker, investment banker, financial advisor or other Person (including, without limitation, SCO Capital Partners LLC and its affiliates) is entitled to any broker's finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company or any of its Subsidiaries. The Company hereby indemnifies Parent and Merger Sub and holds Parent and Merger Sub harmless from and against any and all claims, liabilities or obligations with respect to any other fee, commission or expense asserted by any Person on the basis of any act or statement alleged to have been made by the Company or its affiliates.

(p) Board Recommendation; Section 203 of the Delaware Law. The Board of Directors of the Company, at a meeting duly called and held, has by unanimous vote of those directors present (i) approved this Agreement and the Merger and has taken all actions necessary on the part of the Company to render the restrictions applicable to business combinations contained in Section 203 of the Delaware Law inapplicable to this Agreement and the Merger and (ii) resolved to recommend that the holders of shares of the Company's capital stock approve this Agreement and the transactions contemplated herein, including the Merger.

(q) Required Company Vote. The Company Stockholder Approval is the only vote of the holders of any class or series of securities of the Company of any of its Subsidiaries necessary to approve this Agreement, the Merger and the other transactions contemplated hereby.

(r) Intellectual Property. (i) Section 3.01(r)(i) of the Company Disclosure Schedule sets forth all Intellectual Property owned by the Company or its Subsidiaries, which is registered or filed with, or has been submitted to, any Governmental Entity, and all Intellectual Property licensed from third parties by the Company or any of its Subsidiaries, and the nature of the Company's or its Subsidiaries' rights therein.

(ii) Except as set forth in Section 3.01(r) of the Company Disclosure Schedule, the Company and its Subsidiaries own or have the right to use all Intellectual Property necessary for the Company and its Subsidiaries to conduct their business as it is currently conducted and consistent with past practice.

(iii) Except as set forth on Section 3.01(r) of the Company Disclosure Schedule: (1) all of the Intellectual Property used by the Company or any of its Subsidiaries is subsisting and unexpired, free of all Liens, has not been abandoned and, to the knowledge of the Company, does not infringe the intellectual property rights of any third party; (2) none of the Intellectual Property used by the Company or any of its Subsidiaries is the subject of any license, security interest or other agreement to which the Company is a party granting rights therein to any third party; (3) no judgment, decree, injunction, rule or order has been rendered by any U.S. federal or state or foreign Governmental Entity which would limit, cancel or question the validity of, or the Company's or its Subsidiaries ' rights in and to any Intellectual Property in any respect that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect with respect to the Company; (4) neither the Company nor or any of its Subsidiaries has received written notice of any pending or threatened suit, action or proceeding that seeks to limit, cancel or question the validity of, or the Company's or its Subsidiaries ' rights in and to any Intellectual Property; and (5) the Company and its Subsidiaries take reasonable steps to protect, maintain and safeguard their Intellectual Property, including any Intellectual Property for which improper or unauthorized disclosure would impair its value or validity, and have executed appropriate agreements and made appropriate filings and registrations in connection with the foregoing.

(s) Permits. The Company and each of its Subsidiaries have all permits, licenses and franchises from Governmental Entities required to conduct their businesses as now being conducted, except for such permits, licenses and franchises the absence of which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect with respect to the Company (the "Company Permits"). The Company and each of its Subsidiaries are in compliance with the terms of the Company Permits. No Company Permit shall cease to be effective as a result of the consummation of the transactions contemplated by this Agreement.

(t) Insurance. Each of the Company and its Subsidiaries maintains insurance policies (each, an "Insurance Policy") with reputable insurance carriers against all risks of a character and in such amounts as are usually insured against by similarly situated companies in the same or similar businesses. Each Insurance Policy is in full force and effect and is set forth in Section 3.01(t) of the Company Disclosure Schedule.

(u) Parent SEC Documents . The Company has received and reviewed all of the Parent SEC Documents.

3.02. Representations and Warranties of Parent and Merger Sub. Except as set forth in the disclosure schedule (to the extent each disclosure item therein is clearly marked to indicate the section, paragraph or subparagraph of this Agreement to which such disclosure is an exception, referencing the same section, paragraph and subparagraph as used in this Agreement) delivered by Parent and Merger Sub to the Company at the time of execution of this Agreement (the "Parent Disclosure Schedule") or in the Parent SEC Documents, Parent and Merger Sub represent and warrant to the Company as follows:

(a) Organization, Standing and Corporate Power. Each of Parent and Merger Sub is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has the requisite corporate power and authority to carry on its business as now being conducted. Each of Parent and Merger Sub is duly qualified or licensed to do business and is in good standing in each jurisdiction (domestic or foreign) in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed (individually or in the aggregate) would not have a Material Adverse Effect with respect to Parent. Parent has made available to the Company complete and correct copies of its certificate of incorporation and by-laws and the certificate of incorporation and by-laws of Merger Sub.

(b) Capital Structure. As of the date of this Agreement, the authorized capital stock of Parent consists of (i) 100,000,000,000 shares of Parent Common Stock and (ii) 2,000,000 shares of Parent Preferred Stock. As of the close of business on April 16, 2007, there were: (i) 3,535,358 shares of Parent Common Stock issued and outstanding; (ii) no shares of Parent Preferred Stock issued and outstanding, (iii) 163 shares of Parent Common Stock held in the treasury of Parent; (iv) 75,146 shares of Parent Common Stock reserved for issuance upon exercise of options available for grant pursuant to Parent's stock option plans (collectively, the "Parent Stock Plans"); (v) 1,888,704 shares of Parent Common Stock issuable upon exercise of awarded but unexercised stock options; (vi) warrants representing the right to purchase 4,826,517 shares of Parent Common Stock; (vii) 6,457,544 shares of Parent Common Stock reserved for issuance upon conversion of Parent Voting Debt; and (viii) 31,985 shares of Parent Common Stock reserved for capitalized interest on Parent Voting Debt. Except as set forth above, as of the close of business on April 16, 2007 there were no shares of capital stock or other equity securities of Parent issued, reserved for issuance or outstanding. All outstanding shares of capital stock of Parent are, and all shares which may be issued as described above shall be, when issued, duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights. The shares of Parent Common Stock to be issued in connection with the Merger (x) shall, when issued, be duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights, and (y) shall be issued in compliance in all material respects with all applicable federal and state securities laws and applicable rules and regulations promulgated thereunder. As of the Effective Time of the Merger, the Board of Directors of Parent shall have reserved for issuance a number of shares of Parent Common Stock as is required by the Company Warrants to be assumed by Parent pursuant to Section 2.03. Except as set forth in Section 3.02(b) of the Parent Disclosure Schedule, there is no outstanding Voting Debt of Parent. Except as set forth above and in the Rights Agreement, dated as of October 31, 2001, between Parent and the American Stock Transfer & Trust Company, there are no outstanding securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind to which Parent is a party or by which it is bound obligating Parent to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of capital stock or other equity or voting securities of Parent or obligating Parent to issue, grant, extend, accelerate the vesting of or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking. There are no outstanding contractual obligations, commitments, understandings or arrangements of Parent to repurchase, redeem or otherwise acquire or make any payment in respect of any shares of capital stock of Parent.

As of the date hereof, the authorized capital stock of Merger Sub consists of 1,000 shares of common stock, par value $0.01 per share, 100 of which have been validly issued, are fully paid and nonassessable and are owned by Parent, free and clear of any Lien, and as of the Closing Date, all the issued and outstanding shares of the common stock of Merger Sub shall be owned by Parent free and clear of any Lien.

(c) Authority; Noncontravention. Parent and Merger Sub have all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Parent and Merger Sub and the consummation by Parent and Merger Sub of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Parent and Merger Sub. This Agreement has been duly executed and delivered by each of Parent and Merger Sub, as applicable, and (assuming due authorization, execution and delivery by the Company) constitute valid and binding obligations of Parent and Merger Sub, as applicable, enforceable against them in accordance with their terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing. The execution and delivery of this Agreement does not, and the consummation by Parent and Merger Sub of the transactions contemplated by this Agreement and compliance by Merger Sub with the provisions of this Agreement shall not, conflict with, or result in any breach or violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of, or a "put" right with respect to any obligation under, or to a loss of a material benefit under, or result in the creation of any Lien upon any of the properties or assets of Parent or Merger Sub under (i) the certificate of incorporation or by-laws of Parent or Merger Sub, (ii) any loan or credit agreement, note, bond, mortgage, indenture, lease or other agreement, instrument, permit, concession, franchise or license applicable to Parent or Merger Sub or any of their respective properties or assets or (iii) subject to the governmental filings and other matters referred to in the following sentence, any judgment, order, decree, statute, law, ordinance, rule, regulation or arbitration award applicable to Parent or Merger Sub or their respective properties or assets, other than, in the case of clauses (ii) and (iii), any such conflicts, breaches, violations, defaults, rights, losses or Liens that individually or in the aggregate would not have a Material Adverse Effect with respect to Parent or prevent or materially delay the ability of Parent and Merger Sub to consummate the transactions contemplated by this Agreement or perform their respective obligations hereunder. No consent, approval, order or authorization of, or registration, declaration or filing with, or

notice to, any Governmental Entity is required by or with respect to Parent or Merger Sub in connection with the execution and delivery of this Agreement by Parent and Merger Sub or the consummation by Parent and Merger Sub of any of the transactions contemplated hereby, except for (i) such filings, if any, may be required under the HSR Act and the filing of any required applications, if any, by Parent and Merger Sub pursuant to antitrust or similar laws in such foreign jurisdictions as necessary, (ii) the filing with the SEC of (A) the Form S-4 and (B) such reports under the Exchange Act as may be required in connection with this Agreement and the transactions contemplated hereby, (iii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and appropriate documents with the relevant authorities of other states in which Parent is qualified to do business, (iv) such other consents, approvals, orders, authorizations, registrations, declarations, filings or notices as may be required under the "takeover" or "blue sky" laws of various states and (v) such other consents, approvals, orders, authorizations, registrations, declarations, filings or notices the failure of which to make or obtain, individually or in the aggregate, could not reasonably be expected to (x) prevent or materially delay consummation of the Merger or the other transactions contemplated hereby or performance of Parent's and Merger Sub's obligations hereunder or (y) have a Material Adverse Effect with respect to Parent.

(d) Parent SEC Documents; Undisclosed Liabilities . Parent has filed with the SEC all reports, schedules, forms, statements and other documents required pursuant to the Securities Act and the Exchange Act since January 1, 2005 (collectively, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein, the "Parent SEC Documents"). As of their respective dates, the Parent SEC Documents (other than the Parent SEC Financial Statements) complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such Parent SEC Documents. Except to the extent that information contained in any Parent SEC Document has been revised or superseded by a later filed Parent SEC Document, none of the Parent SEC Documents (including any Parent SEC Financial Statements included therein) contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The consolidated financial statements of Parent included in all Parent SEC Documents filed since January 1, 2005 (the "Parent SEC Financial Statements") comply as to form in all material respects with applicable published accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with generally accepted accounting principles as applied in the United States (except, in the case of unaudited consolidated quarterly statements, as permitted by Form 10-Q of the SEC), applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present the consolidated financial position of Parent and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited quarterly statements, to normal recurring year-end audit adjustments). Neither Parent nor any of its Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by generally accepted accounting principles as applied in the United States to be recognized or disclosed on a consolidated balance sheet of Parent and its Subsidiaries or in the notes thereto, except (i) liabilities reflected in the audited consolidated balance sheet of Parent as of December 31, 2006 and (ii) liabilities incurred since December 31, 2006, in the ordinary course of business consistent with past practice.

(e) Information Supplied. None of the information supplied or to be supplied by Parent or Merger Sub in writing for inclusion or incorporation by reference in (i) the Form S-4 shall, at the time the Form S-4 becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) the Stockholder Statement shall, (A) at the date it is first mailed to the Company's stockholders and/or (B) at the time of the Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading. The Form S-4 shall comply as to form in all material respects with the requirements of the Securities Act and the rules and regulations promulgated thereunder, except that no representation is made by Parent or Merger Sub with respect to statements made or incorporated by reference therein based on information supplied in writing by the Company specifically for inclusion or incorporation by reference therein.

(f) Absence of Certain Changes or Events . Since December 31, 2006, there is not and has not been: (i) any Material Adverse Change with respect to Parent; (ii) any condition, event or occurrence which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or give rise to a Material Adverse Change with respect to Parent; (iii) any condition, event or occurrence which, individually or in the aggregate, could reasonably be expected to prevent or materially delay the ability of Parent and Merger Sub to consummate the transactions contemplated by this Agreement or perform their respective obligations hereunder.

(g) Litigation; Compliance with Laws .

(i) Except as set forth on Schedule 3.02(g) of the Parent Disclosure Schedules, there is no suit, action, claim, charge, arbitration, investigation or proceeding pending before a Governmental Entity, and, to the knowledge of Parent, no suit, action, claim, charge, arbitration, investigation or proceeding pending, in each case with respect to Parent or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect with respect to Parent or prevent or materially delay the ability of Parent and Merger Sub to consummate the transactions contemplated by this Agreement or to perform their respective obligations hereunder, nor is there any judgment, decree, citation, injunction, rule or order of any Governmental Entity or arbitrator outstanding against Parent or any of its Subsidiaries which, individually or in the aggregate, could reasonably be expected to have, a Material Adverse Effect with respect to Parent.

(ii) The businesses of Parent and its Subsidiaries are not being conducted in violation of any law (domestic or foreign), ordinance or regulation of any Governmental Entity, except for possible violations which, individually or in the aggregate, do not and would not have a Material Adverse Effect with respect to Parent.

(h) Interim Operations of Merger Sub . Merger Sub was formed on April 13, 2007 solely for the purpose of engaging in the transactions contemplated hereby, has engaged in no other business activities and has conducted its operations only as contemplated hereby.

(i) Required Vote. This Agreement has been approved by Parent, as the sole stockholder of Merger Sub. No other vote of holders of any class or series of securities of Parent or Merger Sub is necessary to approve this Agreement, the Merger and the transactions contemplated hereby.

(j) Taxes. Parent has timely filed all Tax Returns required to be filed by it, each such Tax Return has been prepared in compliance with all applicable laws and regulations, and all such Tax Returns are true, accurate and complete in all respects. Parent has paid all Taxes shown to be due on such Tax Returns. Parent has made accruals for Taxes on the Parent SEC Financial Statements that are adequate to cover any Tax liability of Parent determined in accordance with generally accepted accounting principles through the date of the applicable Parent SEC Financial Statements, and any Taxes of Parent arising after the date of the most recent Parent SEC Financial Statements and at or before the Effective Time of the Merger have been or will be incurred in the ordinary course of Parent's business. Parent has timely withheld and timely paid all Taxes that are required to have been withheld and paid by it in connection with amounts paid or owing to any employee, independent contractor, creditor or other person. No outstanding deficiency or adjustment in respect of Taxes has been proposed, asserted or assessed by any Tax authority against Parent. Parent has not granted any outstanding extensions of the time in which any Tax may be assessed or collected by any Tax authority. There is no action, suit, proceeding, or audit with respect to any Tax now in progress, pending or, to the knowledge of Parent, threatened against or with respect to Parent. Neither Parent nor any of its Subsidiaries has ever been a member of any affiliated group of corporations (as defined in Section 1504(a) of the Code) other than a group of which Parent was the common parent. Neither Parent nor any of its Subsidiaries has ever filed or been included in a combined, consolidated or unitary Tax Return other than with respect to a group of which Parent was the common parent. Parent is neither a party to nor bound by any Tax sharing agreement or Tax allocation agreement. Neither Parent nor any of its Subsidiaries is presently liable, nor does Parent or any of its Subsidiaries have any potential liability, for the Taxes of another person (i) under Treasury Regulations Section 1.1502-6 or comparable provision of state, local or foreign law, except with respect to a group of which Parent was the common parent, (ii) as transferee or successor, or (iii) by contract or indemnity or otherwise (other than pursuant to contracts entered into with customers, vendors, real property lessors, or other third parties the principal purpose of which is not to address Tax matters). Parent has not participated, within the meaning of Treasury Regulations Section 1.6011-4(c), in (i) any "reportable transaction" within the meaning of Section 6011 of the Code and the Treasury Regulations thereunder, (ii) any "confidential corporate tax shelter" within the meaning of Section 6111 of the Code and the Treasury Regulations thereunder, (iii) any "potentially abusive tax shelter" within the meaning of Section 6112 of the Code and the Treasury Regulations thereunder, or (iv) any transaction identified as a "transaction of interest" within the meaning of proposed Treasury Regulations Section 1.6011-4(b)(6). Parent will not be required, as a result of a change in method of accounting for any period ending on or before or including the Effective Time of the Merger, to include any adjustment under Section 481(c) of the Code (or any similar or corresponding provision or requirement under any other Tax law) in Taxable income for any period ending on or after the Effective Time of the Merger. Parent will not be required to include any item of income in Taxable income for any Taxable period (or portion thereof) ending after the Closing Date as a result of any (i) prepaid amount received on or prior to the Closing Date, or (ii) "closing agreement" described in Section 7121 of the Code (or any similar or corresponding provision of any other Tax law). Parent has never been either a "distributing corporation" or a "controlled corporation" in connection with a distribution of stock qualifying for Tax-free treatment, in whole or in part, pursuant to Section 355 of the Code. Parent is not and has not been a United States real property holding corporation within the meaning of Code Section 897(c)(2), during the applicable period specified in Code Section 897(c)(1)(A)(ii). For purposes of this Section 3.02(j), references to Parent shall be deemed to include Parent and all of its Subsidiaries except where the context indicates otherwise.

(k) Brokers. Except as set forth on Schedule 3.02(k) of the Parent Disclosure Schedules, no broker, investment banker, financial advisor or other Person (including, without limitation, SCO Capital Partners LLC and its affiliates) is entitled to any broker's finder's, financial advisor's or other similar fee or commission in connection with

the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent. Parent hereby indemnifies the Company and holds the Company harmless from and against any and all claims, liabilities or obligations with respect to any other fee, commission or expense asserted by any Person on the basis of any act or statement alleged to have been made by Parent or its affiliates.

ARTICLE IV.

COVENANTS RELATING TO CONDUCT OF BUSINESS PRIOR TO MERGER

4.01. Conduct of Business by the Company.

(a) During the period from the date of this Agreement to the Effective Time of the Merger (except as otherwise expressly contemplated by the terms of this Agreement or agreed to in writing by Parent), the Company shall, and shall cause its Subsidiaries to, act and carry on their respective businesses in the ordinary course of business consistent with past practice and use its and their respective reasonable best efforts to preserve substantially intact their current business organizations, keep available the services of their current officers and employees and preserve their relationships with customers, supplies, licensors, licensees, advertisers, distributors and others having significant business dealings with them. Without limiting the generality of the foregoing, during the period from the date of this Agreement to the Effective Time of the Merger, except as otherwise expressly contemplated by the terms of this Agreement, the Company Disclosure Schedule or agreed to in writing by Parent, the Company shall not, and shall not permit any of its Subsidiaries to:

(i) (x) except for the payment of dividends on the Company Preferred Stock (by the issuance of shares of Company Common Stock solely to the extent permitted pursuant to the terms of this Agreement), declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its capital stock, other than dividends and distributions by a direct or indirect wholly-owned domestic Subsidiary of the Company to its parent, (y) split, combine or reclassify any capital stock of the Company or any Subsidiary or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of capital stock of the Company or any Subsidiary, or (z) purchase, redeem or otherwise acquire any shares of capital stock of the Company or any of its Subsidiaries or any other securities thereof or any rights, warrants or options to acquire any such shares or other securities;

(ii) authorize for issuance, issue, deliver, sell, pledge or otherwise encumber any such shares of its capital stock or the capital stock of any of its Subsidiaries, any other voting securities or any securities convertible into, or any rights, warrants or options to acquire, any shares, voting securities or convertible securities or any other securities or equity equivalents (including, without limitation, stock appreciation rights), other than the issuance of Company Common Stock upon (a) the exercise of Company Stock Options awarded but unexercised on the date of this Agreement in accordance with their present terms, or (b) the conversion of the Company Preferred Stock;

(iii) amend the Certificate of Incorporation, By-laws or other comparable charter or organizational documents of the Company or any Subsidiary;

(iv) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the stock or assets of, or by any other manner, any business or any corporation, partnership, joint venture, association or other business organization or division thereof;

(v) sell, lease, license, mortgage or otherwise encumber or subject to any Lien or otherwise dispose of any of its properties or assets, except sales of inventory and receivables in the ordinary course of business consistent with past practice;

(vi) (A) incur any Indebtedness or guarantee any Indebtedness of another Person or amend, terminate or seek a waiver with respect to any existing agreement of the Company evidencing Indebtedness of the Company, issue or sell any debt securities or warrants or other rights to acquire any debt securities of the Company or any of its Subsidiaries, guarantee any debt securities of another Person, enter into any "keep well" or other agreement to maintain any financial statement condition of another Person or enter to any arrangement having the economic effect of any of the foregoing, except for intercompany Indebtedness between the Company and its wholly-owned Subsidiaries or between such wholly-owned Subsidiaries, or (B) make any loans, advances or capital contributions to, or investments in, any other Person;

(vii) acquire or agree to acquire any assets, other than inventory in the ordinary course of business consistent with past practice, or make or agree to make any capital expenditures;

(viii) pay, discharge or satisfy any claims (including claims of stockholders), liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), except for the payment, discharge or satisfaction of (x) liabilities or obligations in the ordinary course of business consistent with past practice or in accordance with their terms as in effect on the date hereof or (y) claims settled or compromised to the extent permitted by Section 4.01(a)(xii), or, except as set forth in the Company Disclosure Schedule, waive, release, grant, or transfer any rights of material value or modify or change in any material respect any existing material license, lease, contract or other document;

(ix) adopt a plan of complete or partial liquidation or resolutions providing for or authorizing such a liquidation or a dissolution, merger, consolidation, restructuring, recapitalization or reorganization;

(x) enter into or amend any collective bargaining agreement;

(xi) change any material accounting principle used by it, except as required by generally accepted accounting principles as applied in the United States;

(xii) settle or compromise any litigation (whether or not commenced prior to the date of this Agreement);

(xiii) engage in any transaction with, or enter into any agreement, arrangement, or understanding with, directly or indirectly, any of the Company's affiliates (other than Subsidiaries of the Company);

(xiv) transfer to any Person any rights to its Intellectual Property;

(xv) enter into or amend any agreement pursuant to which any other party is granted exclusive marketing or other exclusive rights of any type or scope with respect to any of its products or technology;

(xvi) make any material Tax election or settle or compromise any material federal, state, local or foreign Tax liability; or

(xvii) authorize, or commit or agree to take, any of the foregoing actions.

(b) Changes in Employment Arrangements. Except as otherwise agreed to in writing by Parent, neither the Company nor any of its Subsidiaries shall adopt or amend (except as may be required by law) any bonus, profit sharing, compensation, stock option, pension, retirement, deferred compensation, employment or other employment benefit plan, agreement, trust, fund or other arrangement for the benefit or welfare of any employee, director or former director or employee or increase the compensation or fringe benefits of any director, employee or former director or employee or pay any benefit not required by any existing plan, arrangement or agreement.

(c) Severance. Neither the Company nor any of its Subsidiaries shall grant any new or modified severance or termination arrangement or increase or accelerate any benefits payable under its severance or termination pay policies in effect on the date hereof.

(d) WARN. Neither the Company nor any of its Subsidiaries shall effectuate a "plant closing" or "mass layoff," as those terms are defined in WARN, affecting in whole or in part any site of employment, facility, operating unit or employee of the Company or any Subsidiary, without notifying Parent in advance and without complying with the notice requirements and other provisions of WARN and any similar state or local law.

(e) Tax Free Reorganization Treatment. The Company and Parent shall not, and shall not permit any of their respective Subsidiaries to, intentionally take or cause to be taken any action not otherwise consistent with the

transactions contemplated by this Agreement which could reasonably be expected to prevent the Merger from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code.

(f) Other Actions. Neither the Company nor Parent shall, or shall permit any of its Subsidiaries to, intentionally take any action that could reasonably be expected to result in any of its representations and warranties set forth in this Agreement being or becoming untrue in any material respect, or in any of the conditions to the Merger set forth in Article VI not being satisfied; provided that the Company and its Board of Directors shall not be required to take or be prohibited from taking any action to the extent that such action is not required to be taken or is permitted, as applicable, pursuant to Section 5.06 of this Agreement. The Company and Parent shall promptly advise the other party orally and in writing of (i) any representation or warranty becoming untrue, (ii) the failure by such party to comply with any covenant, condition or agreement hereunder and (iii) any event which could reasonably be expected to cause the conditions set forth in Article VI not being satisfied; provided, however, that no such notice shall affect the representations, warranties, covenants and agreement of the parties or the conditions to their obligations hereunder.

ARTICLE V.

ADDITIONAL AGREEMENTS

5.01. Preparation of Form S-4 and Stockholder Statement; Stockholder Meeting.

(a) As soon as practicable following the date of this Agreement, Parent and the Company shall prepare the Stockholder Statement and the Form S-4, and Parent shall file with the SEC the Form S-4, in which the Stockholder Statement shall be included. Each party shall notify the other party promptly upon the receipt of any comments from the SEC or its staff and of any request by the SEC or its staff or any government officials for amendments or supplements to the Form S-4 or the Stockholder Statement, or for any other filing or for additional information and shall supply the other party with copies of all correspondence between such party or any of its representatives, on the one hand, and the SEC, or its staff or any other government officials, on the other hand, with respect to the Form S-4, the Stockholder Statement, the Merger or any other filing. Parent and the Company shall each use its reasonable best efforts to have the Form S-4 declared effective under the Securities Act as promptly as practicable after such filing. The Company shall use its reasonable best efforts to cause the Stockholder Statement to be mailed to the Company's stockholders as promptly as practicable after the Form S-4 is declared effective under the Securities Act. Parent shall also take any action (other than qualifying to do business in any state in which it is not now so qualified or filing a general consent to service of process) required to be taken under any applicable state securities laws in connection with the registration and qualification of the Parent Common Stock to be issued in the Merger, and the Company shall furnish all information relating to the Company and its stockholders as may be reasonably requested in connection with any such action.

(b) The Company shall, as promptly as practicable following the date of this Agreement and in consultation with Parent, duly call, give notice of, convene and hold a meeting of its stockholders (the "Stockholder Meeting") for the purpose of approving this Agreement and the transactions contemplated by this Agreement to the extent required by Delaware Law. The Company shall, through its Board of Directors, recommend to its stockholders approval of the foregoing matters, as set forth in Section 3.01(p); provided, however, that the Board of Directors of the Company may fail to make or withdraw or modify such recommendation, but only to the extent that the Board of Directors of the Company shall have concluded in good faith on the basis of advice from outside counsel that such action is required in order to satisfy its fiduciary duties to the stockholders of the Company under applicable law. Any such recommendation shall be included in the Stockholder Statement. The Company shall use its reasonable best efforts to hold the Stockholder Meeting as soon as practicable after the Form S-4 shall have been declared effective.

5.02. Access to Information; Confidentiality.

(a) Each of the Company and Parent shall, and shall cause its Subsidiaries, officers, employees, counsel, financial advisors and other representatives to, afford to the other party and its representatives reasonable access during normal business hours, during the period prior to the Effective Time of the Merger to its properties, books, contracts, commitments, personnel and records, and, during such period, each of the Company and Parent shall, and shall cause its Subsidiaries, officers, employees and representatives to, furnish promptly to the other documents filed by it during such period pursuant to the requirements of federal or state securities laws and (ii) all other information concerning its business, properties, financial condition, operations and personnel as such other party may from time to

time reasonably request. Each of the Company and Parent shall hold, and shall cause its respective directors, officers, employees, accountants, counsel, financial advisors and other representatives and affiliates to hold, any nonpublic information in confidence to the extent required by, and in accordance with, the provisions of the confidentiality agreement, dated February 23, 2007, between Parent and the Company (the "Confidentiality Agreement").

(b) No investigation pursuant to this Section 5.02 shall affect any representations or warranties of the parties herein or the conditions to the obligations of the parties hereto.

5.03. Reasonable Best Efforts.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the parties agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective, in the most expeditious manner practicable, the Merger and the other transactions contemplated by this Agreement, including (i) obtaining all consents, approvals, waivers, licenses, permits or authorizations as are required to be obtained (or, which if not obtained, would result in an event of default, termination or acceleration of any agreement or any put right under any agreement) under any applicable law or regulation or from any Governmental Entities or third parties in connection with the transactions contemplated by this Agreement, (ii) defending any lawsuits or other proceedings challenging this Agreement and (iii) accepting and delivering additional instruments necessary to consummate the transaction contemplated by this Agreement, (iv) in the case of the Company, delivering proper notice to its stockholders in accordance with Delaware Law of such stockholders' appraisal rights under Delaware Law and (v) satisfying the conditions to closing set forth under Article VI hereof.

(b) In furtherance of the foregoing, if required by the HSR Act, Parent and the Company agree to file with the Antitrust Division of the United States Department of Justice and the Federal Trade Commission a Notification and Report Form in accordance with the notification requirements of the HSR Act, and to use their reasonable best efforts to achieve the prompt termination or expiration of the waiting period or any extension thereof provided for under the HSR Act as a prerequisite to the consummation of the transactions provided for herein. Nothing in this paragraph shall be construed as requiring any party to this Agreement or its affiliates to (i) sell or otherwise dispose of any of its assets or voting securities other than as otherwise contemplated by this Agreement or (ii) take any action which either would result in a Material Adverse Change with respect to any such party.

5.04. Indemnification.

(a) From and after the Effective Time of the Merger, Parent and the Surviving Corporation shall jointly and severally indemnify, defend and hold harmless each person who is now, or has been at any time prior to the date hereof or who becomes prior to the Effective Time of the Merger eligible for indemnification pursuant to the Certificate of Incorporation and By-laws (or comparable organizational documents) of the Company or any agreement of indemnification with the Company, in each case as the same existed on the date of this Agreement (the "Indemnified Parties") against (i) all losses, claims, fines, damages, costs, expenses (including, without limitation, reasonable attorneys' fees), liabilities or judgments, or amounts that are paid in settlement of or in connection with any claim, action, suit, proceeding or investigation (whether civil, criminal or administrative) based in whole or in part on or arising in whole or in part out of the fact that such person is or was a director, officer or employee of the Company or such Subsidiary, pertaining to any matter existing or occurring at or prior to the Effective Time of the Merger, whether asserted or claimed prior to, or at or after, the Effective Time of the Merger ("Indemnified Liabilities") and (ii) all Indemnified Liabilities based in whole or in part on, or arising in whole or in part out of, or pertaining to this Agreement or the transaction contemplated hereby, in each case to the extent the Company or its Subsidiaries would have been permitted under the Certificate of Incorporation and By-laws (or comparable organizational documents) or any agreement of indemnification with the Company to indemnify such person, in each case as the same existed on the date of this Agreement. In the event any such claim, action, suit, proceeding or investigation is brought against any Indemnified Parties (whether arising before or after the Effective Time of the Merger), (i) any counsel retained by the Indemnified Parties for any period after the Effective Time of the Merger shall be reasonably satisfactory to Parent; (ii) after the Effective Time of the Merger, Parent or the Surviving Corporation shall pay all reasonable fees and expenses of such counsel for the Indemnified Parties promptly as statements therefor are received; and (iii) after the Effective Time of the Merger, Parent and the Surviving Corporation shall cooperate in the defense of any such matter, provided that neither Parent nor the Surviving Corporation shall be liable for any settlement of any claim effected without its written consent, which consent shall not be unreasonably withheld. Any Indemnified Party wishing to claim indemnification under this Section 5.04, upon learning of any such claim, action, suit, proceeding or investigation, shall notify Parent and the Surviving Corporation (but the failure so to notify Parent and the Surviving Corporation shall not relieve either from any liability which it may have under this Section 5.04 except to the extent

such failure materially prejudices Parent and the Surviving Corporation). Parent and the Surviving Corporation shall be liable for the fees and expenses hereunder with respect to only one law firm to represent the Indemnified Parties as a group with respect to each such matter unless there is, under applicable standards of professional conduct, a conflict between the positions of any two or more Indemnified Parties that would preclude or render inadvisable joint or multiple representation of such parties.

(b) If Parent or the Surviving Corporation or any of their respective successors or assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any individual, corporation or other entity, then, and in each such case, proper provisions shall be made so that the successors and assigns of Parent or the Surviving Corporation shall assume all of the obligations set forth in this Section 5.04.

(c) The provisions of this Section 5.04 are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties.

(d) The rights of the Indemnified Parties under this Section 5.04 shall be in addition to any rights such Indemnified Parties may have under the certificates of incorporation or by-laws of the Company or any of its Subsidiaries, or under any applicable contracts or laws.

(e) Parent shall pay the reasonable costs to obtain a tail Director and Officer insurance policy selected by Parent and covering the officers and directors of the Company effective as of the Effective Time and for a period of six (6) years following the Effective Time, provided that Parent shall not be required to pay more than $150,000 for such policy.

5.05. Public Announcements. Neither Parent and Merger Sub, on the one hand, nor the Company, on the other hand, shall issue any press release or public statement with respect to the transactions contemplated by this Agreement, including the Merger, without the other party's prior consent (such consent not to be unreasonably withheld or delayed), except as may be required by applicable law, court process or by obligations pursuant to any agreement with any securities exchange or quotation system on which securities of the disclosing party are listed or quoted. In addition to the foregoing, Parent, Merger Sub and the Company shall consult with each other before issuing, and provide each other the opportunity to review and comment upon, any such press release or other public statements with respect to such transactions. The parties agree that the initial press release or releases to be issued with respect to the transactions contemplated by this Agreement shall be mutually agreed upon prior to the issuance thereof.

5.06. No Solicitation. Neither the Company nor any of its Subsidiaries shall (whether directly or indirectly through advisors, agents or other intermediaries), nor shall the Company or any of its Subsidiaries authorize or permit any of its or their officers, directors, agents, representatives, advisors or Subsidiaries to, (a) solicit, initiate or take any action knowingly to facilitate the submission of inquiries, proposals or offers from any Person (other than Merger Sub or Parent) relating to (i) any acquisition or purchase of 33.33% or more of the consolidated assets of the Company and its Subsidiaries or of over 33.33% of any class of equity securities of the Company or any of its Subsidiaries, (ii) any tender offer (including a self tender offer) or exchange offer that if consummated would result in any Person beneficially owning 33.33% or more of any class of equity securities of the Company or any of its Subsidiaries, (iii) any merger, consolidation, business combination, sale of substantially all assets, recapitalization, liquidation, dissolution or similar transaction involving the Company or any of its Subsidiaries whose assets, individually or in the aggregate, constitute more than 33.33% of the consolidated assets of the Company other than the transactions contemplated by this Agreement, or (iv) any other transaction the consummation of which would or could reasonably be expected to impede, interfere with, prevent or materially delay the Merger (collectively, "Transaction Proposals"), or agree to or endorse any Transaction Proposal, or (b) enter into or participate in any discussions or negotiations regarding any of the forgoing, or furnish to any other Person any information with respect to its business, properties or assets or any of the foregoing, or otherwise cooperate in any way with, or knowingly assist or participate in, facilitate or encourage, any effort or attempt by any other Person (other than Merger Sub or Parent) to do or seek any of the foregoing; provided, however, that the foregoing shall not prohibit the Company (either directly or indirectly through advisors, agents or other intermediaries) from (i) furnishing information pursuant to an appropriate confidentiality letter (which letter shall not be less favorable to the Company in any material respect than the Confidentiality Agreement, a copy of which shall be provided for informational purposes only to Parent) concerning the Company and its businesses, properties or assets to a third party who has made a bona fide Transaction Proposal, (ii) engaging in discussions or negotiations with such a third party who has made a bona fide Transaction Proposal, (iii) following receipt of a bona fide Transaction Proposal, taking and disclosing to its stockholders a position contemplated by Rule 14d-9 or Rule 14e-2(a) under the Exchange Act or otherwise making disclosure to its stockholders, (iv) following receipt of a bona fide Transaction Proposal, failing to make or withdrawing or modifying its recommendation referred to in Section 3.01(p), and/or (v) taking any action required to be taken by the Company pursuant to a non-appealable,

final order by any court of competent jurisdiction, but in each case referred to in the foregoing clauses (i) through (iv) only to the extent that the Board of Directors of the Company shall have concluded in good faith on the basis of advice from outside counsel that such action is required in order to satisfy its fiduciary duties to the stockholders of the Company under applicable law; provided, further, that the Board of Directors of the Company shall not take any of the foregoing actions referred to in clauses (i) through (iv) until after prompt advance notice to Parent (which notice shall in no event be given less than two (2) business day prior to furnishing such information or entering into such discussions) with respect to such action and that such Board of Directors shall, to the extent consistent with its fiduciary duties, continue to advise Parent after taking such action and, in addition, if such Board of Directors receives a Transaction Proposal, then the Company shall promptly inform Parent of the terms and conditions of such proposal and the identity of the Person making it. The Company shall immediately cease and cause its advisors, agents and other intermediaries to cease any and all existing activities, discussions or negotiations with any parties conducted heretofore with respect to any of the foregoing, and shall use its reasonable best efforts to cause any such parties in possession of confidential information about the Company that was furnished by or on behalf of the Company to return or destroy all such information in the possession of any such party or in the possession of any agent or advisor of any such party.

5.07. Letters of the Company's Accountants. The Company shall use its reasonable best efforts to cause to be delivered to Parent a letter of Stonefield Josephson, the Company's independent public accountants, dated a date within two business days before the Form S-4 shall become effective, addressed to Parent, in form and substance reasonably satisfactory to the Company and customary in scope and substance for letters delivered by independent public accountants in connection with registration statements similar to the Form S-4.

5.08. Letters of Parent's Accountants. Parent shall use its reasonable best efforts to cause to be delivered to the Company a letter of Whitley Penn LLP, Parent's independent public accountants, dated a date within two business days before the Form S-4 shall become effective, addressed to the Company, in form and substance reasonably satisfactory to the Company and customary in scope and substance for letters delivered by independent public accountants in connection with registration statements similar to the Form S-4.

5.09. Information Supplied. The Company shall use its reasonable best efforts to provide to Parent no later than April 30, 2007 all information reasonably requested by Parent for Parent to determine (i) whether any payment resulting from any agreement, contract, plan or other arrangement (separately or in the aggregate) to which either the Company or any of its Subsidiaries is a party would be an "excess parachute payment" within the meaning of Section 280G of the Code (without regard to the exceptions set forth in Sections 280G(b)(4) and 280G(b)(5) of the Code) as a result of any of the transactions contemplated by this Agreement, and (ii) the amount of such excess parachute payments, if any.

5.10. Exemption from Liability Under Section 16(b).

(a) The Board of Directors of Parent, or a committee thereof consisting of non-employee directors (as such term is defined for purposes of Rule 16b-3(d) under the Exchange Act), shall adopt a resolution in advance of the Effective Time of the Merger providing that the receipt by any Company Insiders of options to purchase Parent Common Stock, in each case pursuant to the transactions contemplated hereby and to the extent such securities are listed in the Section 16 Information, is intended to be exempt pursuant to Rule 16b-3 under the Exchange Act.

(b) For purposes of this Agreement, "Section 16 Information" means information regarding the Company Insiders and the number of shares of Company Common Stock or other Company equity securities deemed to be beneficially owned by each such Company Insider and expected to be exchanged for options to purchase Parent Common Stock in connection with the Merger, which shall be provided by the Company to Parent at least ten (10) business days prior to the Closing.

(c) For purposes of this Agreement, "Company Insiders" means those officers and directors of the Company who immediately after the Closing become subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to equity securities of Parent.

5.11. Repayment of Certain Company Payables. Section 5.11 of the Company Disclosure Schedule contains a complete and accurate list of the Company's accounts payable and other liabilities as of the date of this Agreement, identifying the applicable payee and the amount owed to such payee. Immediately prior to the Closing, the Company shall provide to Parent an updated Section 5.11 of the Company Disclosure Schedule setting forth any additional amounts owed to any third party. Subject to Section 6.02(l), Parent shall concurrently with the Closing initiate wire transfers in accordance with the Flow of Funds Memorandum to the payees listed therein for such amounts listed therein.

5.12. Affiliate Letters. The Company will use its commercially reasonable efforts to cause each person whom the Company believes may be deemed to be an "affiliate" of the Company, as that term is defined for purposes of paragraphs (c) and (d) of Rule 145 under the Securities Act, to execute and deliver to it as promptly as practicable an executed copy of an affiliate letter substantially in the form of Exhibit B attached hereto. The Company acknowledges that the shares of Parent Common Stock issued to such affiliates will contain an appropriate legend referring to the restrictions contained in Rule 145 and may be subject to stop order instructions with respect thereto.

5.13. Termination of Company Plans. Effective no later than the day immediately preceding the Closing Date but contingent upon the Closing, the Company shall terminate any and all Company Plans intended to include a Code Section 401(k) arrangement (collectively, the "Terminated Company Plans"). The Company shall provide Parent with evidence that such Terminated Company Plan(s) have been terminated (effective no later than the day immediately preceding the Closing Date) in accordance with each such Terminated Company Plan's respective terms. The Company also shall take such other actions in furtherance of terminating such Terminated Company Plan(s) as Parent may reasonably require.

ARTICLE VI.

CONDITIONS PRECEDENT

6.01. Conditions to each Party's Obligation to Effect the Merger. The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) Company Stockholder Approval. The Company Stockholder Approval shall have been obtained.

(b) HSR Act. The waiting period (and any extension thereof), if any, applicable to the Merger under the HSR Act shall have been terminated or shall have expired.

(c) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger shall be in effect; provided, however, that the parties hereto shall use their best efforts to have any such injunction, order, restraint or prohibition vacated.

(d) Form S-4. The Form S-4 shall have become effective under the Securities Act and shall not be the subject of any stop order or proceedings seeking a stop order, and any material "blue sky" and other state securities laws applicable to the registration and qualification of Parent Common Stock issuable or required to be reserved for issuance pursuant to this Agreement shall have been complied with.

(e) Governmental Approvals. Other than the filing of the Certificate of Merger, all authorizations, consents, orders or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Entity in connection with the Merger and the consummation of the other transactions contemplated by this Agreement, the failure of which to file, obtain or occur is reasonably likely to have a Material Adverse Effect with respect to Parent or a Material Adverse Effect with respect to the Company, shall have been filed, been obtained or occurred on terms and conditions which would not reasonably be likely to have a Material Adverse Effect with respect to Parent or a Material Adverse Effect with respect to the Company.

(f) Stockholder Statement. No stop order suspending the use of the Stockholder Statement shall have been issued and no proceeding for that purpose shall have been initiated or threatened in writing by the SEC or its staff.

(g) Flow of Funds Memorandum. Parent and the Company shall have executed and delivered a mutually agreeable Flow of Funds Memorandum setting forth certain payments to be made by Parent concurrently with the Closing (the "Flow of Funds Memorandum").

6.02. Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Merger are further subject to the following conditions:

(a) Representations and Warranties. The representations and warranties of the Company set forth in this Agreement shall be true and correct in each case 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 where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) would not individually or in the aggregate have a Material Adverse Effect. Parent shall have received a certificate dated as of the Closing Date signed on behalf of the Company by the chief executive officer and the chief financial officer of the Company to the effect set forth in this paragraph.

(b) Performance of Obligations of the Company. The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date. Parent shall have received a certificate signed on behalf of the Company by the chief executive officer and the chief financial officer of the Company to the effect set forth in this paragraph.

(c) Consents, Etc. Parent and Merger Sub shall have received evidence, in form and substance reasonably satisfactory to Parent, that such licenses, permits, consents, approvals, authorizations, qualifications, and orders of governmental authorities and other third parties as are necessary (in Parent's sole discretion) in connection with the transactions contemplated hereby have been obtained, except where the failure to obtain such licenses, permits, consents, approvals, authorizations, qualifications, and orders would not, individually or in the aggregate with all other failures, have a Material Adverse Effect with respect to the Company.

(d) No Litigation. There shall not be pending by any Governmental Entity or any other Person or solely with respect to any Governmental Entity, threatened by any suit, action, or proceeding, (i) challenging or seeking to restrain or prohibit the consummation of the Merger or any of the other transactions contemplated by this Agreement or seeking to obtain from any party hereto or any of their affiliates any damages that are material in relation to the Company and its Subsidiaries taken as a whole; (ii) seeking to prohibit or limit the ownership or operation by the Company or any of its Subsidiaries of any material portion of the business or assets of the Company and its Subsidiaries taken as a whole or to dispose of or hold separate any material portion of the business or assets of the Company and its Subsidiaries taken as a whole, as a result of the Merger or any of the other transactions contemplated by this Agreement; (iii) seeking to impose limitations on the ability of Parent to acquire or hold, or exercise full rights of ownership of, any shares of the common stock of the Surviving Corporation, including, without limitation, the right to vote such common stock on all matters properly presented to the stockholders of the Surviving Corporation; or seeking to prohibit Parent or any of its Subsidiaries from effectively controlling in any material respect the business or operations of the Company and its Subsidiaries taken as a whole.

(e) Termination of Company Options. The Company shall have (i) entered into a termination agreement with each holder of a Company Option pursuant to which all outstanding Company Options held by each such holder shall be terminated and each such holder shall no rights thereunder to purchase shares of Company Common Stock or (ii) in accordance with Section 11.3(d) of the Company Stock Plan, accelerate the expiration date of all such Company Options to a date no later than April 30, 2007 and required each such holder to exercise all such Company Options held by such holder (including, if the Company so elects in accordance thereunder, to accelerate the vesting of such Company Options) by such date.

(f) Opinion of Counsel. Foley & Lardner LLP, counsel to the Company, shall have delivered to Parent a written legal opinion addressed to Parent, dated on and as of the Closing Date, and in form reasonably satisfactory to Parent.

(g) Resignation of Directors and Officers. The directors and officers of the Company, in office immediately prior to the Effective Time of the Merger shall have resigned as directors and officers of the Surviving Corporation effective as of the Effective Time of the Merger.

(h) Termination of Agreements; SCO Waiver; Other Waivers. The Company and each other party thereto shall have terminated each agreement set forth on Schedule 6.02(h) attached hereto. SCO Partners LLC and its affiliates shall have executed and delivered to the Company a waiver, in form satisfactory to Parent, of any rights to (i) liquidated or other damages in respect of any failure by the Company to timely satisfy any such obligation or (ii) any fees resulting from the Merger or any financing, under any agreement with Parent or the Company. Each holder of a Company Warrant to be assumed by Parent pursuant to Section 2.03 shall have executed and delivered to Parent a waiver, in form satisfactory to Parent, of any rights to require Parent to register for resale under the Securities Act any such Company Warrants held by such Person or Parent Common Stock issuable upon exercise of such Company Warrants. The employment agreement between the Company and Agamemnon A. Epenetos, dated January 31, 2006 shall have been amended and restated to be in the form of the standard Parent executive employment agreement and acceptable to Parent.

(i) Dissenters' Rights. Any applicable period during which stockholders of the Company have the right to exercise appraisal, dissenters' or other similar rights under Section 262 of Delaware Law or other applicable law shall have expired and stockholders of the Company holding in the aggregate more than five percent (5%) of the outstanding shares of Company Common Stock or Company Preferred Stock shall not have exercised appraisal, dissenters' or similar rights under Section 262 of Delaware Law or other applicable law with respect to such shares by virtue of the Merger.

(j) No Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Material Adverse Effect with respect to the Company.

(k) FIRPTA Certificate. The Company shall have delivered a properly executed statement, dated as of the Closing Date, in a form reasonably acceptable to Parent, conforming to the requirements of Treasury Regulations Section 1.1445-2(c)(3).

(l) Outstanding Liabilities of the Company. Parent shall have received evidence, satisfactory to it, that as of the Closing Date the amount of the Company's then outstanding accounts payable and other liabilities (including, without limitation, all amounts owed (i) to employees, officers and consultants of the Company (and its Subsidiaries) and (ii) to any Person in respect of any failure by the Company to timely satisfy any obligation to register for resale under the Securities Act any securities of the Company held by such Person) does not exceed $1,000,000 in the aggregate.

(m) Exercise or Termination of Company Warrants. The Company shall have required each holder of the Company Warrants listed in Section 6.02(m) of the Company Disclosure Schedule to exercise each such Company Warrant held by such holder prior to the Closing Date, or such holder and the Company shall have executed and delivered a termination agreement terminating each such Company Warrant and all of such holder's rights thereunder, including any right to purchase shares of Company Common Stock.

(n) Opinion of Financial Advisor. Parent shall have received the opinion of TSG Partners to the effect that the payment by it of the Merger Consideration is fair to Parent's stockholders from a financial point of view.

(o) License Agreements. The Company shall have obtained letter certifications from each licensor of the Company or any of its Subsidiaries (including, without limitation, Virium Pharmaceuticals, Inc. and Immunodex, Inc.), in form satisfactory to Parent, that any agreement between such Person and the Company (or the Company's Subsidiary, if applicable) is in full force and effect, that such agreement constitutes a legal, valid and binding obligation of, and is legally enforceable against, it and the Company (or the Company's Subsidiary, if applicable), that there exists no uncured breach or default by either it or the Company (or the Company's Subsidiary, if applicable) under any such agreement and that any consents required under such agreement have been obtained, are valid and are

currently in effect.

(p) Virium Pharmaceuticals, Inc. All conditions to the approval by NIH of the Phenylbutyrate Co-development and Sublicense Agreement between the Company and Virium Pharmaceuticals, Inc. ("Virium") shall have been met. Virium shall have executed and delivered to the Company each of the two amendments previously negotiated and executed by the Company, copies of which have been provided to Parent. The Company and Virium shall have negotiated, and each shall have executed and delivered to the other party, the letter of intent previously executed by the Company in the form previously provided to Parent with such changes as may be approved by Parent in its sole discretion.

6.03. Conditions to Obligations of the Company. The obligation of the Company to effect the Merger is further subject to the following conditions:

(a) Representations and Warranties. The representations and warranties of Parent and Merger Sub set forth in this Agreement shall be true and correct, in each case 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 where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to "materiality" or "material adverse effect" set forth therein) would not individually or in the aggregate have a Material Adverse Effect with respect to Parent. The Company shall have received a certificate signed on behalf of Parent and Merger Sub by an authorized officer of Parent and Merger Sub to the effect set forth in this paragraph.

(b) Performance of Obligations of Parent and Merger Sub. Parent and Merger Sub shall have performed in all material respects all obligations required to be performed by each of them under this Agreement at or prior to the Closing Date. The Company shall have received a certificate signed on behalf of Parent and Merger Sub by an authorized officer of Parent and Merger Sub to the effect set forth in this paragraph.

(c) Opinion of Counsel. Bingham McCutchen LLP, counsel to Parent and Merger Sub, shall have delivered to the Company a written legal opinion addressed to the Company, dated on and as of the Closing Date, and in form reasonably satisfactory to the Company.

(d) No Litigation. There shall not be pending by any Governmental Entity or any other Person or solely with respect to any Governmental Entity, threatened by any suit, action, or proceeding, (i) challenging or seeking to restrain or prohibit the consummation of the Merger or any of the other transactions contemplated by this Agreement or seeking to obtain from any party hereto or any of their affiliates any damages that are material in relation to Parent and its Subsidiaries taken as a whole; (ii) seeking to prohibit or limit the ownership or operation by Parent or any of its Subsidiaries of any material portion of the business or assets of Parent and its Subsidiaries taken as a whole or to dispose of or hold separate any material portion of the business or assets of Parent and its Subsidiaries taken as a whole, as a result of the Merger or any of the other transactions contemplated by this Agreement; (iii) seeking to impose limitations on the ability of Parent to acquire or hold, or exercise full rights of ownership of, any shares of the common stock of the Surviving Corporation, including, without limitation, the right to vote such common stock on all matters properly presented to the stockholders of the Surviving Corporation; or seeking to prohibit Parent or any of its Subsidiaries from effectively controlling in any material respect the business or operations of the Company and its Subsidiaries taken as a whole.

(e) Outstanding SCO and Oracle Debt. The applicable maturity date of all of Parent's outstanding debt (whether principal or interest) owed to each of SCO Partners LLC (and its affiliates) and Oracle Partners LP (and its affiliates) shall have been extended to a date on or after April 27, 2008, or such debt shall have been converted into Parent Common Stock.

ARTICLE VII.

TERMINATION, AMENDMENT, AND WAIVER

7.01. Termination. This Agreement may be terminated and abandoned at any time prior to the Effective Time of the Merger, whether before or after the Company Stockholder Approval:

(a) by mutual written consent of Parent and the Company;

(b) by either Parent or the Company if any Governmental Entity shall have issued an order, decree, or ruling or taken any other action permanently enjoining, restraining, or otherwise prohibiting the Merger and such order, decree, ruling, or other action shall have become final and nonappealable;

(c) by either Parent or the Company if the Merger shall not have been consummated on or before August 31, 2007 (other than due to the failure of the party seeking to terminate this Agreement to perform in any material respect its obligations under this Agreement required to be performed at or prior to the Effective Time of the Merger);

(d) by either Parent or the Company if at the Stockholder Meeting (including any adjournment thereof) the Company Stockholder Approval shall not have been obtained;

(e) by Parent, if the Company or its Board of Directors shall have (1) withdrawn, modified, or amended in any respect adverse to Parent its approval or recommendation of this Agreement or any of the transactions contemplated herein; (2) failed as promptly as reasonably practicable after the Form S-4 is declared effective to mail the Stockholder Statement to its stockholders or failed to include in such statement such recommendation; (3) recommended any Transaction Proposal from a Person other than Parent or any of its affiliates; (4) resolved to do any of the foregoing; or (5) in response to the commencement of any tender offer or exchange offer for more than 10% of the outstanding shares of Company Common Stock or Company Preferred Stock, not recommended rejection of such tender offer or exchange offer at the time of filing of the requisite Schedule 14d-9 with the SEC;

(f) by the Company, if, pursuant to and in compliance with Section 5.06 hereof, the Board of Directors of the Company concludes in good faith, based on advice from outside counsel, that in order to satisfy its fiduciary duties to the stockholders of the Company under the Delaware Law, such Board of Directors must not make or must withdraw or modify its recommendation referred to in Section 3.01(p), and the Board of Directors does not make or withdraws or modifies such recommendation;

(g) by Parent, upon a breach of any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement, or if any representation or warranty of the Company shall have become untrue, in either case such that the conditions set forth in Section 6.02(a) or Section 6.02(b) (other than with respect to the delivery of the officers' certificates required thereunder) would not be satisfied at the time of such breach or as of the time such representation or warranty shall have become untrue; provided that if such inaccuracy in the Company's representations and warranties or breach by the Company is curable by the Company through the exercise of its commercially reasonable efforts within ten (10) business days of the time such representation or warranty shall have become untrue or such breach, Parent may not terminate this Agreement under this Section 7.01(g) during such ten-day period, provided Company continues to exercise such commercially reasonable efforts; or

(h) by the Company, upon a breach of any representation, warranty, covenant or agreement on the part of Parent or Merger Sub set forth in this Agreement, or if any representation or warranty of Parent shall have become untrue, in either case such that the conditions set forth in Section 6.03(a) or Section 6.03(b) (other than with respect to the delivery of the officers' certificates required thereunder) would not be satisfied at the time of such breach or as of the time such representation or warranty shall have become untrue; provided that if such inaccuracy in Parent's representations and warranties or breach by Parent is curable by Parent through the exercise of its commercially reasonable efforts within ten (10) business days of the time such representation or warranty shall have become untrue

or such breach, the Company may not terminate this Agreement under this Section 7.01(h) during such ten-day period provided Parent continues to exercise such commercially reasonable effort.

7.02. Effect of Termination. In the event of termination of this Agreement by either the Company or Parent as provided in Section 7.01, this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of Parent, Merger Sub, or the Company, provided that (a) any such termination shall not relieve a party from liability for any willful breach of this Agreement and (b) the last sentence of Section 5.02(a), this Section 7.02, Section 8.02, Section 8.07 and the Confidentiality Agreement shall remain in full force and effect and survive any such termination. Nothing contained in this paragraph shall relieve any party for any breach of the covenants or agreements set forth in this Agreement or the Confidentiality Agreement.

7.03. Amendment. This Agreement may be amended by the parties at any time before or after any required approval of matters presented in connection with the Merger by the stockholders of the Company; provided, however, that after any such approval, there shall be made no amendment that by law requires further approval by such stockholders without the further approval of such stockholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

7.04. Extension; Waiver. At any time prior to the Effective Time of the Merger, the parties may (a) extend the time for the performance of any of the obligations or other acts of the other parties; (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant to this Agreement; or (c) subject to the provisions of Section 7.03, waive compliance with any of the agreements or conditions contained in this Agreement. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

7.05. Procedure for Termination, Amendment, Extension or Waiver. A termination of this Agreement pursuant to Section 7.01, an amendment of this Agreement pursuant to Section 7.03 or an extension or waiver pursuant to Section 7.04 shall, in order to be effective, require in the case of any party hereto an action by its Board of Directors or a duly-authorized designee of its Board of Directors.

ARTICLE VIII.

GENERAL PROVISIONS

8.01. Nonsurvival of Representations and Warranties. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time of the Merger and all such representations and warranties shall be extinguished on consummation of the Merger and no party hereto nor any officer, director or employee or stockholder of any of them shall be under any liability whatsoever with respect to any such representation or warranty after such time. This Section 8.01 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after Effective Time of the Merger.

8.02. Fees and Expenses.

(a) Except as set forth in this Section 8.02, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees and expenses, whether or not the Merger is consummated; provided however, that the Company and Parent shall share equally all fees and expenses, other than accountants' and attorneys' fees, incurred with respect to the printing, filing and mailing of the S-4 and the Stockholder Statement (including any related preliminary materials) and any amendments or supplements thereto.

(b) The Company shall pay Parent up to $750,000 as reimbursement for expenses of Parent actually incurred relating to the transactions contemplated by this Agreement prior to termination (including, but not limited to, reasonable fees and expenses of Parent's counsel, accountants and financial advisors, but excluding any discretionary fees paid to such financial advisors), in the event of the termination of this Agreement:

(i) by Parent or the Company pursuant to Section 7.01(c) if the failure to satisfy any of the conditions set forth in Sections 6.02(a)-(c), (e)-(j), (o) and (p) by August 31, 2007 shall have resulted in the Closing not occurring; or

(ii) by Parent pursuant to Section 7.01(g).

The expenses payable pursuant to this Section 8.02(b) shall be paid by wire transfer of same-day funds within five (5) business days after demand therefor following the occurrence of the termination event giving rise to the payment obligation described in this Section 8.02(b).

(c) The Company shall pay Parent a termination fee of $750,000 in the event of the termination of this Agreement (i) by Parent pursuant to Section 7.01(d) or (ii) by Parent or the Company pursuant to Sections 7.01(e)-(g) (except in the case of a termination by Parent due to the failure of the Company to satisfy the condition set forth in Section 6.02(l)).

Any fee due under this Section 8.02(c) shall be paid to Parent by wire transfer of same-day funds within two (2) business days after the date of termination of this Agreement.

(d) Parent shall pay the Company up to $100,000 as reimbursement for expenses of the Company actually incurred relating to the transactions contemplated by this Agreement prior to termination (including, but not limited to, reasonable fees and expenses of the Company's counsel, accountants and financial advisors, but excluding any discretionary fees paid to such financial advisors), in the event of the termination of this Agreement:

(i) by the Company or Parent pursuant to Section 7.01(c) as a result of the failure to satisfy the conditions set forth in Section 6.03(a) or (b); or

(ii) by the Company pursuant to Section 7.01(h).

The expenses payable pursuant to this Section 8.02(d) shall be paid by wire transfer of same-day funds within five (5) business days after demand therefor following the occurrence of the termination event giving rise to the payment obligation described in this Section 8.02(d).

(e) The parties acknowledge that the agreements contained in this Section 8.02 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the parties would not enter into this Agreement. Payment of the fees and expenses described in this Section 8.3 shall not be in lieu of damages incurred in the event of a breach of this Agreement described in clause (a) of Section 7.02 but is otherwise the sole and exclusive remedy of the parties in connection with any termination of this Agreement.

8.03. Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be deemed given if delivered personally or sent by overnight courier (providing proof of delivery) 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 Parent or Merger Sub, to

Access Pharmaceuticals, Inc.

2600 Stemmons Freeway, Suite 176

Dallas, Texas75207

Attention: Stephen Seiler

Telecopier No.: (214) 905-5101

with a copy to:

Bingham McCutchen LLP

150 Federal Street

Boston, MA 02110

Attention: John J. Concannon III, Esq.

Telecopier No.: (617) 951-8736

(b) if to the Company or its Subsidiaries, to

Somanta Pharmaceuticals, Inc.

19200 Von Karman Avenue, Suite 400

Irvine, CA92612

Attention: Terrance Bruggeman

Telecopier No.: (949) 706-3698

with a copy to:

Foley & Lardner LLP

402 W. Broadway, Suite 2100

San Diego, CA 92101

Attention: Adam Lenain, Esq.

Telecopier No.: (619) 234-3510

8.04. Definitions. For purposes of this Agreement:

(a) "Affiliate" of any Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person;

(b) "Company Common Stock" means the common stock, par value $0.001 per share, of the Company.

(c) "Company Preferred Stock" means the Series A Convertible Preferred Stock, par value $0.001 per share, of the Company.

(d) "Company Stock Option Plan" means the Company's 2005 Equity Incentive Plan.

(e) "Company Warrants" means warrants to purchase shares of Company Common Stock as listed in Section 3.01(c) of the Company Disclosure Schedule.

(f) "Environmental Claim" means any written or oral notice, claims, demand, action, suit, complaint, proceeding or other communication by any Person alleging liability or potential liability (including without limitation liability or potential liability for investigatory costs, cleanup costs, governmental response costs, natural resource damages, property damage, personal injury, fines or penalties) arising out of, relating to, based on or resulting from (A) the presence, discharge, emission, release or threatened release of any Hazardous Materials at any location, whether or not owned, leased or operated by the Company or any of its Subsidiaries or (B) circumstances forming the basis of any violation or alleged violation of any Environmental Law or Environmental Permit or (C) otherwise relating to obligations or liabilities under any Environmental Laws;

(g) "Environmental Permits" means all permits, licenses, registrations and other governmental authorizations required under Environmental Laws for the Company and its Subsidiaries to conduct their operations and businesses on the date hereof and consistent with past practices;

(h) "Environmental Laws" means all applicable federal, state and local statutes, rules, regulations, ordinances, orders, decrees and common law relating in any manner to contamination, pollution or protection of the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Solid Waste Disposal Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Emergency Planning and Community-Right-to-Know Act, the Safe Drinking Water Act, all as amended, and similar state laws;

(i) "Hazardous Materials" means all hazardous or toxic substances, wastes, materials or chemicals, petroleum (including crude oil or any fraction thereof) and petroleum products, friable asbestos and asbestos-containing materials, pollutants, contaminants and all other materials, and substances regulated pursuant to, or that could reasonably be expected to provide the basis of liability under, any Environmental Law;

(j) "Indebtedness" means, with respect to any Person, without duplication, (A) all obligations of such Person for borrowed money, (B) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (C) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person, (D) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding obligations of such Person to creditors for raw materials, inventory, services and supplies incurred in the ordinary course of such Person's business), (E) all capitalized lease obligations of such Person, (F) all obligations of others secured by any Lien on property or assets owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (G) all obligations of such Person under interest rate or currency hedging transactions (valued at the termination value thereof), (H) all letters of credit issued for the account of such Person and (I) all guarantees and arrangements having the economic effect of a guarantee of such Person of any Indebtedness of any other Person;

(k) "Intellectual Property" means all rights, privileges and priorities provided under federal, state, foreign and multinational law relating to intellectual property, including, without limitation, all (i)(a) inventions, discoveries, processes, formulae, designs, methods, techniques, procedures, concepts, developments, technology, new and useful improvements thereof and know-how relating thereto, whether or not patented or eligible for patent protection; (b) copyrights and copyrightable works, including computer applications, programs, software, databases and related items (except for off-the-shelf commercial software); (c) trademarks, service marks, trade names, brand names, corporate names, logos and trade dress, the goodwill of any business symbolized thereby, and all common-law rights relating thereto; and (d) trade secrets and other confidential information; and (ii) all registrations, applications, recordings, and licenses or other similar agreements related to the foregoing;

(l) "knowledge of the Company" means the actual knowledge of any officer of the Company or any Subsidiary of the Company.

(m) "Material Adverse Change" or "Material Adverse Effect" means, when used in connection with the Company or Parent, any change, effect, event or occurrence that either individually or in the aggregate with all other such changes, effects, events and occurrences is materially adverse to the business, properties, financial condition or results of operations of the Company or Parent, as the case may be, and its Subsidiaries taken as a whole, provided that (i) with respect to Section 3.01(g)(i) and (ii) hereof, shall exclude any material adverse change in the Company's results of operations for any fiscal period prior to the Closing Date that is directly attributable to a disruption in the conduct of the Company's business arising from the transactions contemplated by this Agreement or the public announcement thereof and (ii) with respect to Section 3.02(f)(i) and (ii) hereof, shall exclude any material adverse change in Parent's results of operations for any fiscal period prior to the Closing Date that is directly attributable to a disruption in the conduct of Parent's business arising from the transactions contemplated by this Agreement or the public announcement thereof; and provided, further, that Material Adverse Effect and Material Adverse Change shall not be deemed to include the impact of (a) any change in laws and regulations or interpretations thereof by courts or governmental authorities generally applicable to the Company and Parent, (b) any change in generally accepted accounting principles as applied in the United States or regulatory accounting principles generally applicable to the

Company and Parent, (c) any change arising or resulting from general industry, economic or capital market conditions or conditions in markets relevant to the Company or Parent, as applicable, that affects Parent or the Company, as applicable (or the markets in which Parent or the Company, as applicable, compete) in a manner not disproportionate to the manner in which such conditions affect comparable companies in the industries or markets in which Company or Parent, as applicable, compete, (d) any act or omission of the Company (or any of its Subsidiaries) taken with the prior written consent of Parent or (e) the expenses reasonably incurred by the Company in entering into this Agreement and consummating the transactions contemplated by this Agreement and the expenses associated with the termination of any Company Plan as and to the extent contemplated herein.

(n) "Parent Common Stock" means the common stock, par value $0.01 per share, of Parent.

(o) "Parent Preferred Stock" means the preferred stock, par value $0.01 per share, of Parent.

(p) "Permitted Lien" means statutory Liens securing payments not yet due and such Liens as do not materially affect the use of the properties or assets subject thereto or affected thereby or otherwise materially impair business operations at such properties.

(q) "Person" means an individual, corporation, partnership, joint venture, association, trust, unincorporated organization or other entity;

(r) "SEC" means the United States Securities and Exchange Commission.

(s) "Subsidiary" of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its Board of Directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person.

(t) "Tax" or "Taxes" (and with correlative meaning, "Taxable" and "Taxing") means any United States federal, state or local, or non-United States, income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, value added, excise, natural resources, severance, stamp, withholding, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, capital stock, net worth, intangibles, social security, unemployment, disability, payroll, license, employee or other Tax or similar levy, of any kind whatsoever, including any interest, penalties or additions to Tax in respect of the foregoing.

(u) "Tax Return" means any return, declaration, report, claim for refund, information return or other document (including any related or supporting estimates, elections, schedules, statements or information) filed or required to be filed in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

8.05. Interpretation. When reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or Section of this Agreement, unless otherwise indicated. The table of contents, table of defined terms and headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." No summary of this Agreement prepared by any party shall affect the meaning or interpretation of this Agreement.

8.06. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. The delivery of a signature page of this Agreement by one party to the other via facsimile transmission shall constitute the execution and delivery of this Agreement by the transmitting party.

8.07. Entire Agreement; No Third-Party Beneficiaries. This Agreement (including the Schedules and Exhibits attached hereto) and the other agreements and instruments referred to herein constitute the entire agreement, and

supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement. This Agreement, other than Section 5.04 (with respect to which the Indemnified Parties shall be third-party beneficiaries), is not intended to confer upon any Person other than the parties any rights or remedies.

8.08. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the laws of the STATE OF NEW YORK, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. Each of the parties to this Agreement (a) consents to submit itself to the personal jurisdiction of any state or federal court sitting in THE BOROUGH OF MANHATTAN in any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, (c) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (d) agrees not to bring any action or proceeding arising out of or relating to this Agreement or any of the transaction contemplated by this Agreement in any other court. Each of the parties hereto waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto. Any party hereto may make service on another party by sending or delivering a copy of the process to the party to be served at the address and in the manner provided for the giving of notices in Section 8.03. Nothing in this Section 8.08, however, shall affect the right of any party to serve legal process in any other manner permitted by law. EACH party hereto HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF any party hereto IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

8.09. Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by any of the parties without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement shall be binding upon, insure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

8.10. Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy shall not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

ACCESS PHARMACEUTICALS, INC.

By: /s/ Stephen R. Seiler
Name: Stephen R. Seiler
Title: President and Chief Executive Officer

Somanta acquisition corporation
By: /s/ Stephen R. Seiler
Name: Stephen R. Seiler
Title: President and Chief Executive Officer

SOMANTA PHARMACEUTICALS, INC.

By: /s/ Terrance J. Bruggeman

Name: Terrance J. Bruggeman
Title: Executive Chairman

SOMANTA INCORPORATED

By: /s/ Terrance J. Bruggeman

Name: Terrance J. Bruggeman
Title: Executive Chairman

Somanta Limited

By: /s/ Terrance J. Bruggeman

Name: Terrance J. Bruggeman
Title: Secretary

[Signature page to Merger Agreement]

This information is not an offer to sell securities and is not soliciting an offer to buy securities. Investors are urged to read the documents relating to the proposed transaction that may be filed from time to time by either party with the Securities and Exchange Commission. These documents will contain important information regarding the proposed transaction and may be obtained after they are filed free of charge at the Securities and Exchange Commission's website at www.sec.gov.

ACCESS NEWS

Contact: Company
Stephen B. Thompson
Vice President, Chief Financial Officer
(214) 905-
5100

Contact: Investor Relations
Donald C. Weinberger/Alisa Steinberg (media)
Wolfe Axelrod Weinberger Assoc. LLC
(212) 370-4500

Andrew Hellman, CEOcast, Inc. for Access Pharmaceuticals
(212) 732-4300

ACCESS PHARMACEUTICALS SIGNS DEFINITIVE MERGER AGREEMENT WITH SOMANTA PHARMACEUTICALS

DALLAS, TX and Irvine, CA, April 19, 2007, ACCESS PHARMACEUTICALS, INC. (OTC BB: ACCP) and **Somanta Pharmaceuticals, Inc. (OTC BB: SMPM)**announced today that they have signed a definitive merger agreement by which Access will acquire Somanta. The companies had previously announced the execution of a non-binding Letter of Intent regarding the merger.

Under the terms of the merger agreement, Access will issue 1.5 million shares of common stock to Somanta stockholders in exchange for all the outstanding capital stock of Somanta. The merger agreement has been approved by the boards of both companies. In addition, Access has received voting agreements from certain Somanta shareholders representing approximately 81% of Somanta's outstanding common shares and approximately 60% of its outstanding preferred shares under which the parties, subject to certain limited exceptions, have granted an irrevocable proxy to vote their Somanta shares in favor of the merger. The closing of the merger is subject to the fulfillment of certain conditions contained in the merger agreement. The parties expect the transaction to be completed during the summer.

With the proposed acquisition of Somanta, Access will acquire four novel anti-cancer compounds in development, one of which is currently in Phase 2 clinical trials. Each of the drug candidates acts by a unique mechanism of action and has the potential to target a wide range of cancer types.

"We believe this transaction will immediately strengthen our drug pipeline, enhancing Access' franchise value within the oncology space," commented Stephen R. Seiler, Access' President and CEO. "In addition to offering a clinical-stage drug candidate, Somanta's pre-clinical pipeline is highly diversified with each anti-cancer compound having its own novel mode of action, which can be applied to a wide range of cancer types."

About Somanta
Somanta Pharmaceuticals is a company focused on the development of novel oncology compounds and anti-cancer agents. Somanta's lead clinical product Sodium Phenylbutyrate (PB) is currently in Phase 2 development and is being developed with its partner, Virium Pharmaceuticals. In National Institute of Health sponsored trials, PB has

demonstrated the greatest activity in CNS cancers, several of which are "orphan" indications such as Glioblastoma Multiforme. Moreover, promising data has also emerged which suggests PB may be an effective therapy for certain blood cancers and other solid tumors. PB has been well tolerated; its safety profile has generally been established due to its many years of clinical use in pediatrics for inherited urea cycle disorders.

Somanta's pre-clinical drug candidates include Angiolix, Prodrax and Alchemix. Angiolix is a humanized monoclonal antibody which appears to induce cell death selectively to tumor blood vessels using a different mode of action than VEGF- oriented therapies. Prodrax, is a novel family of prodrugs that enables compounds to remain inert until they reach the hypoxic region of tumors where they become toxic, thus targeting tumor cells which are typically difficult to kill. Alchemix is a pan-target inhibitor that is effective in tumor cells resistant to conventional chemotherapy by targeting and irreversibly binding to DNA. Somanta believes Prodrax and Alchemix have the ability to overcome many different pathways of drug resistance, and will be studied in a broad range of cancers including lung, colon, ovarian and renal. Proof-of-principle pre- clinical studies have been completed in both of these compounds, and Phase 1 dose escalation trials are being planned. Somanta has prepared clinical development plans for all preclinical projects. For additional information on Somanta Pharmaceuticals, please visit http://www.somanta.com.

About Access

Access Pharmaceuticals, Inc. is an emerging biopharmaceutical company that develops and commercializes propriety products for the treatment and supportive care of cancer patients. Access' products include ProLindac™, currently in Phase II clinical testing of patients with ovarian cancer and MuGard™ for the management of patients with mucositis. The Company also has other advanced drug delivery technologies including Cobalamin™-mediated targeted delivery and oral drug delivery. For additional information on Access Pharmaceuticals, please visit our website at http://www.accesspharma.com.

This press release contains certain statements that are forward-looking within the meaning of Section 27a of the Securities Act of 1933, as amended, and that involve risks and uncertainties, including statements relating to the value of our products in the market, our ability to achieve clinical and commercial success and our ability to successfully develop marketed products. These statements are subject to numerous risks, including but not limited to the risks detailed in our Annual Report on Form 10-KSB for the year ended December 31, 2006 and other reports filed by us and Somanta with the Securities and Exchange Commission.

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