

NETGEAR INC
Form DEF 14A
April 21, 2006

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

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934 (Amendment No.)

Filed by the Registrant
Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

NETGEAR, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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1) Amount Previously Paid:

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NETGEAR, INC.

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

Tuesday, May 23, 2006

10:00 a.m. local time

To Our Stockholders:

The 2006 Annual Meeting of Stockholders of NETGEAR, Inc. will be held on Wednesday, May 23, 2006 at 10:00 a.m. local time at our executive offices at 4500 Great America Parkway, Santa Clara, California 95054 for the following purposes:

1. To elect six (6) directors to serve until the next Annual Meeting of Stockholders;
2. To approve the adoption of the new NETGEAR, Inc. 2006 Long Term Incentive Plan;
3. To ratify the appointment of PricewaterhouseCoopers LLP as our independent auditors for the fiscal year ending December 31, 2006; and
4. To transact such other business as may properly come before the annual meeting, including any motion to adjourn to a later date to permit further solicitation of proxies, if necessary, or before any adjournment thereof.

The foregoing items of business are more fully described in the Proxy Statement accompanying this Notice. Stockholders who owned shares of our stock at the close of business on Tuesday, April 11, 2006 are entitled to attend and vote at the meeting. A complete list of these stockholders will be available during normal business hours for 10 days prior to the meeting at our headquarters located at 4500 Great America Parkway, Santa Clara, California 95054. A stockholder may examine the list for any legally valid purpose related to the meeting. The list also will be available during the annual meeting for inspection by any stockholder present at the meeting.

Whether or not you plan to attend the annual meeting, please complete, date, sign and return the enclosed proxy card as promptly as possible in the accompanying reply envelope. Any stockholder attending the meeting may vote in person even if he or she has returned a proxy.

For the Board of Directors of
NETGEAR, INC.

Jonathan R. Mather
Executive Vice President and Chief Financial Officer

Santa Clara, California
April 21, 2006

YOUR VOTE IS IMPORTANT

PLEASE SUBMIT YOUR PROXY AS PROMPTLY AS POSSIBLE IN THE ENCLOSED ENVELOPE.

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NETGEAR, INC.

**PROXY STATEMENT FOR THE
2006 ANNUAL MEETING OF STOCKHOLDERS**

GENERAL INFORMATION

The Board of Directors of NETGEAR, Inc., a Delaware corporation, is soliciting the enclosed proxy from you. The proxy will be used at our 2006 Annual Meeting of Stockholders to be held at 10:00 a.m. local time on Tuesday, May 23, 2006 at our executive offices located at 4500 Great America Parkway, Santa Clara, California 95054.

This proxy statement contains important information regarding our annual meeting. Specifically, it identifies the proposals on which you are being asked to vote, provides information you may find useful in determining how to vote and describes the voting procedures.

We use several abbreviations in this proxy statement. We may refer to our Company as NETGEAR, we, us or our. The term proxy materials includes this proxy statement, as well as the enclosed proxy card and our Annual Report on Form 10-K for the year ended December 31, 2005.

We are sending the proxy materials on or about April 21, 2006 to all of our stockholders as of the record date, April 11, 2006. Stockholders who owned NETGEAR common stock at the close of business on April 11, 2006 are entitled to attend and vote at the annual meeting. On the record date, we had approximately 33,090,465 shares of our common stock issued and outstanding. We had 21 record stockholders as of the record date and our common stock was held by approximately 8,200 beneficial owners.

Voting Procedures

As a stockholder, you have the right to vote on certain business matters affecting us. The three proposals that will be presented at the annual meeting, and upon which you are being asked to vote, are discussed in the sections entitled Proposal One, Proposal Two and Proposal Three. Each share of NETGEAR common stock you own entitles you to one vote. The enclosed proxy card indicates the number of shares you own. You can vote by returning the enclosed proxy card and proxy in the envelope provided, or by attending the annual meeting and voting in person at the annual meeting.

Methods of Voting

Voting by Mail. By signing and returning the proxy card according to the enclosed instructions, you are enabling our Chairman and Chief Executive Officer, Patrick C.S. Lo, and our Executive Vice President and Chief Financial Officer, Jonathan R. Mather, who are named on the proxy card as proxies and attorneys-in-fact, to vote your shares as proxy holders at the meeting in the manner you indicate. We encourage you to sign and return the proxy card even if you plan to attend the meeting. In this way, your shares will be voted even if you are unable to attend the meeting.

Your shares will be voted in accordance with the instructions you indicate on the proxy card. If you submit the proxy card, but do not indicate your voting instructions, your shares will be voted as follows:

FOR the election of the director nominees identified in Proposal One;

FOR the approval of the adoption of the new NETGEAR, Inc. 2006 Long Term Incentive Plan; and

FOR the ratification of the appointment of PricewaterhouseCoopers LLP as our independent auditors for the fiscal year ending December 31, 2006.

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To reduce the expenses of delivering duplicate voting materials to our stockholders who may have more than one NETGEAR stock account, we are delivering only one set of the proxy statement and the annual report on Form 10-K for the year ended December 31, 2005 to certain stockholders who share an address unless otherwise requested. A separate proxy card is included in the voting materials for each of these stockholders. If you share an address with another stockholder and have received only one set of voting materials, you may write or call us to request a separate copy of these materials at no cost to you. For future annual meetings, you may request separate voting materials, or request that we send only one set of voting materials to you if you are receiving multiple copies, by writing our Corporate Secretary at NETGEAR, Inc., 4500 Great America Parkway, Santa Clara, California 95054, or calling our Corporate Secretary at (408) 907-8000. **You may receive a copy of the exhibits to NETGEAR's Annual Report on Form 10-K for the year ended December 31, 2005 by sending a written request to NETGEAR, Inc., 4500 Great America Parkway, Santa Clara, California 95054, Attn: Corporate Secretary.**

Voting in Person at the Meeting. If you plan to attend the annual meeting and vote in person, we will provide you with a ballot at the meeting. If your shares are registered directly in your name, you are considered the stockholder of record and you have the right to vote in person at the meeting. If your shares are held in the name of your broker or other nominee, you are considered the beneficial owner of shares held in your name, but if you wish to vote at the meeting, you will need to bring with you to the annual meeting a legal proxy from your broker or other nominee authorizing you to vote these shares.

Revoking Your Proxy

You may revoke your proxy at any time before it is voted at the annual meeting. In order to do this, you may either:

sign and return another proxy bearing a later date;

provide written notice of the revocation to Albert Y. Liu, our Corporate Secretary at NETGEAR, Inc., 4500 Great America Parkway, Santa Clara, California 95054, prior to the time we take the vote at the annual meeting; or

attend the meeting and vote in person.

Quorum Requirement

A quorum, which is a majority of our outstanding shares as of the record date, must be present in order to hold the meeting and to conduct business. Your shares will be counted as being present at the meeting if you appear in person at the meeting or if you submit a properly executed proxy card.

Votes Required for Each Proposal

The vote required and method of calculation for the proposals to be considered at the annual meeting are as follows:

Proposal One Election of Directors. The six director nominees receiving the highest number of votes, in person or by proxy, will be elected as directors. You may vote (i) for all nominees, (ii) withhold for all nominees or (iii) withhold for certain nominees by striking a line through the name(s) of such nominees on your proxy card.

Proposal Two Approval of the adoption of the new NETGEAR, Inc. 2006 Long Term Incentive Plan. Approval of the adoption of the new NETGEAR, Inc. 2006 Long Term Incentive Plan will require the affirmative vote of a majority of the shares present at the annual meeting, in person or by proxy. You may vote for, against, or abstain from voting on this proposal.

Proposal Three Ratification of PricewaterhouseCoopers LLP as Independent Auditors. Ratification of PricewaterhouseCoopers LLP as our independent auditors will require the affirmative vote of a majority of the shares present at the annual meeting, in person or by proxy. You may vote for,

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against, or abstain from voting on the proposal to ratify PricewaterhouseCoopers LLP as our independent auditors.

Abstentions and Broker Non-Votes

If you return a proxy card that indicates an abstention from voting on all matters, the shares represented will be counted as present for the purpose of determining a quorum, but they will not be voted on any matter at the annual meeting. Consequently, if you abstain from voting on the proposal to approve the adoption of the new NETGEAR, Inc. 2006 Long Term Incentive Plan or the proposal to ratify the appointment of PricewaterhouseCoopers LLP as our independent accountants, your abstention will have the same effect as a vote against that proposal.

Under the rules that govern brokers who have record ownership of shares that are held in street name for their clients, who are the beneficial owners of the shares, brokers have discretion to vote these shares on routine matters but not on non-routine matters. Thus, if you do not otherwise instruct your broker, the broker may turn in a proxy card voting your shares FOR routine matters but expressly instructing that the broker is NOT voting on non-routine matters. A broker non-vote occurs when a broker expressly instructs on a proxy card that it is not voting on a matter, whether routine or non-routine. Broker non-votes are counted for the purpose of determining the presence or absence of a quorum but are not counted for determining the number of votes cast for or against a proposal. Your broker will have discretionary authority to vote your shares on Proposals One (Election of Directors) and Three (Ratification of Appointment of Independent Auditors), which are routine matters. Absent your instructions, your broker will not be able to vote your shares on Proposal Two (Approval of the Adoption of the New NETGEAR, Inc. 2006 Long Term Incentive Plan).

Proxy Solicitation Costs

We will bear the entire cost of proxy solicitation, including the preparation, assembly, printing and mailing of proxy materials. We expect our Vice President, Legal and Corporate Development and Company Secretary, Albert Y. Liu, to tabulate the proxies and act as inspector of the election.

Deadline for Receipt of Stockholder Proposals for 2007 Annual Meeting

As a stockholder, you may be entitled to present proposals for action at a forthcoming meeting if you comply with the requirements of the proxy rules established by the Securities and Exchange Commission. Proposals by our stockholders intended to be presented for consideration at our 2007 Annual Meeting of Stockholders must be received by us no later than December 22, 2006 (120 calendar days prior to the anniversary of the mailing date of this proxy statement), in order that they may be included in the proxy statement and form of proxy related to that meeting. The submission of the stockholder proposal does not guarantee that it will be included in our 2007 proxy statement.

The Securities and Exchange Commission rules establish a different deadline with respect to discretionary voting for stockholder proposals that are not intended to be included in a company's proxy statement. The attached proxy card grants the proxy holders discretionary authority to vote on any matter raised at the annual meeting. The discretionary vote deadline for our 2007 annual meeting is March 8, 2007, which is 45 calendar days prior to the anniversary of the mailing date of this proxy statement. If a stockholder gives notice of a proposal after the discretionary vote deadline, our proxy holders will be allowed to use their discretionary voting authority to vote against the stockholder proposal when and if the proposal is raised at our 2007 annual meeting.

In addition, our bylaws establish an advance notice procedure with regard to specified matters, including stockholder proposals and director nominations, which are proposed to be properly brought before an Annual Meeting of Stockholders. To be timely, a stockholder's notice shall be delivered no less than 120 days prior to the date of annual meeting specified in the proxy statement provided to stockholders in connection with the preceding year's annual meeting, which is January 23, 2007 in connection with our 2007 Annual Meeting of Stockholders. In the event that no annual meeting was held in the previous year or the date of the annual meeting is changed by more than 30 days from the date contemplated at the time of the previous year's proxy

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statement, notice by the stockholder must be received not later than the tenth business day following the day notice of the date of the meeting was mailed or public disclosure was made, whichever occurs first. A stockholder's notice shall include: (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and address of the stockholder proposing such business, (iii) the class and number of shares of our stock which are beneficially owned by the stockholder, (iv) any material interest of the stockholder in such business and (v) any other information required by the Securities Exchange Act of 1934, as amended (the "1934 Act"). In addition, if a stockholder wishes to nominate a candidate for director, the stockholder's notice shall also include the following information for the candidate: (i) name, age, business address and residence address, (ii) principal occupation or employment of such nominee, (iii) class and number of shares of our stock beneficially owned by such nominee, (iv) description of all arrangements between the stockholder and the nominee and (v) any other information required by the 1934 Act (including the candidate's written consent to being named in the proxy statement as a nominee and to serving as a director if elected). A copy of the full text of our bylaws is available from our Corporate Secretary upon written request. Proposals should be sent to our Corporate Secretary, c/o NETGEAR, Inc., 4500 Great America Parkway, Santa Clara, California 95054.

Nomination of Director Candidates

The Nominating and Corporate Governance Committee considers candidates for board membership suggested by members of our Board of Directors, management and stockholders. It is the policy of the Nominating and Corporate Governance Committee to consider recommendations for candidates to our Board of Directors from stockholders by submitting: the candidate's name; home and business contact information; detailed biographical data and qualifications; information regarding any relationships between the candidate and NETGEAR within the last three years; and evidence of the nominating person's ownership or beneficial ownership of NETGEAR stock and amount of stock holdings. The Nominating and Corporate Governance Committee will consider persons recommended by our stockholders in the same manner as a nominee recommended by our Board of Directors, individual board members or management. See "Election of Directors - Policy for Director Recommendations and Nominations" for additional information.

In addition, a stockholder may nominate a person directly for election to our Board of Directors at an annual meeting of our stockholders provided they meet the requirements set forth in our bylaws and the rules and regulations of the Securities and Exchange Commission related to stockholder proposals. The process for properly submitting a stockholder proposal, including a proposal to nominate a person for election to our Board of Directors at an annual meeting, is described above in the section entitled "Deadline for Receipt of Stockholder Proposals for 2007 Annual Meeting."

Stockholder Communications to Directors

Stockholders may communicate directly with our Board of Directors by writing to them c/o NETGEAR, Inc., 4500 Great America Parkway, Santa Clara, California 95054. Unless the communication is marked "confidential", our Corporate Secretary will monitor these communications and provide appropriate summaries of all received messages to the Chairperson of our Nominating and Corporate Governance Committee. Any stockholder communication marked "confidential" will be logged as received, but will not be reviewed by the Corporate Secretary. Such confidential correspondence will be immediately forwarded to the Chairperson of the Nominating and Corporate Governance Committee for appropriate action. Where the nature of a communication concerns questionable accounting or auditing matters directed directly to the Audit Committee, our Corporate Secretary will log the date of receipt of the communication as well as (for non-confidential communications) the identity of the correspondent in the Company's stockholder communications log.

Other Matters

Other than the proposals listed above, our Board of Directors does not intend to present any other matters to be voted on at the meeting. Our Board of Directors is not currently aware of any other matters that will be presented by others for action at the meeting. However, if other matters are properly brought before the

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stockholders at the meeting and you have signed and returned your proxy card, the proxy holders will have discretion to vote your shares on these matters to the extent authorized under the 1934 Act.

**PROPOSAL ONE
ELECTION OF DIRECTORS**

Nominees

The nominees for election at the Annual Meeting of Stockholders are Patrick C.S. Lo, Ralph E. Faison, A. Timothy Godwin, Jef Graham, Linwood A. Lacy, Jr., and Gregory J. Rossmann. If elected, they will each serve as a director until the Annual Meeting of Stockholders in 2007, and until their respective successors are elected and qualified or until their earlier resignation or removal. Gerald A. Poch, who has served as a director since 2000, will not be standing for re-election at this meeting.

Unless otherwise instructed, the proxy holders will vote the proxies received by them for election of all of the director nominees, all of whom currently serve as directors. In the event the nominees are unable or decline to serve as a director at the time of the annual meeting, the proxies will be voted for any nominee who shall be designated by the present Board of Directors to fill the vacancy. We are not aware that any nominee will be unable or will decline to serve as a director. In the event that additional persons are nominated for election as directors, the proxy holders intend to vote all proxies received by them in such a manner as to assure the election of the nominees listed above.

Vote Required

If a quorum is present and voting, the six nominees receiving the highest number of votes will be elected to our Board of Directors. Abstentions are not counted in the election of directors. If you hold your shares through a broker, bank or other nominee and you do not instruct them how to vote on this proposal, your broker may have the authority to vote your shares. Stockholders are not entitled to cumulative voting in the election of directors.

Information Concerning the Nominees and Incumbent Directors

The name and age of the nominees and incumbent directors as of February 28, 2006, the principal occupation of each and the period during which each has served as our director are set forth below. Information as to the stock ownership of each of our directors and all of our current executive officers as a group is set forth below under Security Ownership of Certain Beneficial Owners and Management.

Name	Age	Office	Director Since
Patrick C.S. Lo	49	Chairman and Chief Executive Officer/Nominee	2000
Ralph E. Faison	47	Director/Nominee	2003
A. Timothy Godwin	56	Director/Nominee	2003
Jef Graham	50	Director/Nominee	2005
Linwood A. Lacy, Jr.	60	Director/Nominee	2002
Gerald A. Poch	58	Director	2000
Gregory J. Rossmann	44	Director/Nominee	2002

Patrick C.S. Lo has served as Chairman of our board of directors since March 2002 and our Chief Executive Officer since March 2000. From September 1999 to March 2002, he served as our President, and since our inception in 1996 to September 1999, he served as Vice President and General Manager. Mr. Lo joined Bay Networks, a networking company, in August 1995 to launch a division targeting the small business and home markets and established the NETGEAR division in January 1996. From 1983 until 1995, Mr. Lo worked at Hewlett-Packard Company, a computer and test equipment company, where he served in various

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management positions in software sales, technical support, network product management, sales support and marketing in the United States and Asia, most recently as the Asia/ Pacific marketing director for Unix servers. Mr. Lo received a B.S. degree in Electrical Engineering from Brown University.

Ralph E. Faison has served as one of our directors since August 2003. From February 2003 to the present, Mr. Faison has served as Chief Executive Officer of Andrew Corporation, a public company and a manufacturer of communications equipment and systems, and from June 2002 to the present, Mr. Faison has also served as President and a director of Andrew Corporation. From June 2002 to February 2003, Mr. Faison served as Chief Operating Officer of Andrew Corporation. From June 2001 to June 2002, Mr. Faison served as President and Chief Executive Officer of Celiant Corporation, a manufacturer of power amplifiers and wireless radio frequency systems, which was acquired by Andrew Corporation in June 2002. From October 1997 to June 2001, Mr. Faison was Vice President of the New Ventures Group at Lucent Technologies, a communications service provider, and from 1995 to 1997, he was Vice President of advertising and brand management at Lucent Technologies. Prior to joining Lucent, Mr. Faison held various positions at AT&T, a voice and data communications company, including as Vice President and General Manager of AT&T's wireless business unit and manufacturing Vice President for its consumer products unit in Bangkok, Thailand. Mr. Faison received a B.A. degree in marketing from Georgia State University and a M.S. degree in management as a Sloan Fellow from Stanford University.

A. Timothy Godwin has served as one of our directors since August 2003. From July 1989 to January 1997, Mr. Godwin worked at Tech Data Corporation, an information technology products distributor, in various capacities including serving as a member of its Board of Directors, Vice Chairman focusing on worldwide finance and administration, President and Chief Operating Officer, Chief Financial Officer and Senior Vice President of Finance. From 1974 to June 1989, Mr. Godwin was employed by Price Waterhouse (now part of PricewaterhouseCoopers LLP), most recently as an audit partner from July 1987 to June 1989. Mr. Godwin is a Certified Public Accountant and received a B.S. degree in Accounting from the University of West Florida.

Jef Graham has served as one of our directors since July 2005. From January 2006 to the present, Mr. Graham has served as the Chairman and CEO of RGB Networks, Inc., a provider of video and bandwidth management products. From July 2005 through January 2006, Mr. Graham served as the Executive Vice President, Application Products Group, of Juniper Networks, Inc., a provider of IP networking and security products. From October 2001 to July 2005, Mr. Graham served as the President and CEO of Peribit Networks Inc., a provider of wide area network optimization appliances, which was acquired by Juniper Networks. Before Peribit, Mr. Graham served as the Senior Vice President of the commercial and consumer business units for 3Com Corporation, where he managed networking and connectivity product offerings. From 1993 to 1995, he served as the CEO of Trident Systems, a document management systems integrator. Mr. Graham has also worked for Hewlett-Packard Company for 15 years, including 10 years in sales and marketing around the world and as general manager of both a hardware and a software division. Mr. Graham holds a B.A. with Honors in Business Studies from Sheffield Hallam University, United Kingdom.

Linwood A. Lacy, Jr. has served as one of our directors since September 2002. From July 1998 to July 2001, Mr. Lacy served as Chairman of 4Sure.com, a direct marketer of computer and technology products. From October 1996 to October 1997, Mr. Lacy served as President and Chief Executive Officer of Micro Warehouse Incorporated, a micro computer direct-marketing company. From 1985 to May 1996, he served as the Co-Chairman and Chief Executive Officer of Ingram Micro, Inc., a microcomputer products distributor and a then wholly-owned subsidiary of Ingram Industries Inc. From April 1996 to May 1996, Mr. Lacy served as Vice Chairman of Ingram Industries Inc.; from June 1995 to April 1996, he served as its President and Chief Executive Officer; and from December 1993 to June 1995, he served as its President. Mr. Lacy is a director of EarthLink, Inc., a public Internet technology company, as well as a director of several private companies, including Ingram Industries Inc. Mr. Lacy received both a B.S. degree in Chemical Engineering and an M.B.A from the University of Virginia.

Gerald A. Poch has served as one of our directors since March 2000. Mr. Poch is not standing for re-election as a director. From January 2000 to the present, Mr. Poch has served as a Senior Managing Director

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of Pequot Capital Management, Inc. and co-head of Pequot Ventures. Since August 1998, Mr. Poch has been one of the leaders of the venture capital team responsible for the growth and strategic direction of the group. From August 1996 to June 1998, he was the Chairman, President and Chief Executive Officer of G.E. Capital Information Technology Solutions, Inc., a technology solutions provider. Prior to that, he served as co-founder, co-chairman and co-president of AmeriData Technologies, Inc. (the predecessor company of G.E. Capital Information Technology Solutions, Inc.), a value-added reseller and systems integrator of hardware and software systems. Mr. Poch is a director of Analex Corporation, an information technology company, Andrew Corporation, a manufacturer of communications equipment and systems, and MTM Technologies, Inc., a network analysis and diagnostics management company, which are public companies, as well as a director of several private companies. Mr. Poch received a B.S. degree from the University of Connecticut and a J.D. degree cum laude from Boston University Law School.

Gregory J. Rossmann has served as one of our directors since February 2002. From April 2000 to the present, Mr. Rossmann has served as a Managing Director of Pequot Capital Management, Inc. From April 1994 to April 2000, Mr. Rossmann served as Managing Director and partner at Broadview International, an investment banking firm. From June 1991 to April 1994, he worked at Dynatech Corporation, a technology holding company, where he served as manager of new business development. Prior to that, he was a co-founder of Telemaster Corporation. Mr. Rossmann is a director of several private companies. Mr. Rossmann received a B.S. degree in Electrical Engineering from the University of Cincinnati and an M.B.A. from Santa Clara University.

There are no family relationships between any director or executive officer. Our Board of Directors has determined that Messrs. Faison, Godwin, Graham, Lacy, Jr., Poch and Rossmann are independent under Rule 4200(a)(15) of the National Association of Securities Dealers listing standards. We strongly encourage the attendance of members of our Board of Directors at the annual meeting. At the 2005 Annual Meeting of Stockholders, all but one of our directors who was a director at that time was in attendance.

Vote Required and Board of Directors Recommendation

The nominees receiving the greatest number of votes of the shares present and entitled to vote at the annual meeting will be elected as directors. **Our Board of Directors has unanimously approved each of the director nominees listed above and recommends that stockholders vote FOR the election of these nominees.**

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Our Board of Directors held a total of 10 meetings during 2005. Our Board of Directors has standing Audit, Compensation and Nominating and Corporate Governance Committees. Each member of the committees meets the independence standards of Rule 4200(a)(15) of the Nasdaq National Market and applicable independence rules of the SEC. All of our directors attended at least 75% of the meetings of our Board of Directors and any applicable committee on which they served held while they were members of our Board of Directors or the applicable committee.

Committee	Date of Inception	Members at the End of 2005	Committee Functions	Meetings Held in 2005
Audit	2000	A. Timothy Godwin Linwood A. Lacy, Jr. Gerald A. Poch*	Reviews internal accounting Procedures Appoints independent auditors Reviews results of independent audit Determines investment policy and oversees its implementation	10
Compensation	2000	Ralph E. Faison Jef Graham Gerald A. Poch* Gregory J. Rossmann	Administers our stock option plans Recommends compensation of executive officers and directors Reviews and recommends general policies relating to compensation and benefits	4
Nominating and Corporate Governance	2004	Gerald A. Poch* A. Timothy Godwin Jef Graham Linwood A. Lacy, Jr.	Recommends nomination of board members Assists with succession planning for executive management positions Oversee and evaluate board performance Evaluate composition, organization and governance of board and its committees	No formal meetings of committee separate from meetings of entire board

* Mr. Poch is not standing for re-election to our Board of Directors, and therefore will no longer be a member of the Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee from and after the Annual Meeting.

Audit Committee

Our Board of Directors first adopted a written charter for the Audit Committee in August 2000. A copy of our current amended and restated Audit Committee charter is available on the investor relations section of our website at www.netgear.com. Our Board of Directors has determined that each of Messrs. Godwin, Lacy, Jr., and Poch is an

audit committee financial expert, as defined in the rules of the Securities and Exchange Commission. Our Board of Directors has determined that Messrs. Godwin, Lacy, Jr., and Poch are independent, as that term is used in Item 7(d)(3)(iv) of Schedule 14A under the 1934 Act. Mr. Godwin serves as chairman of our Audit Committee.

Compensation Committee

Our Board of Directors first adopted a written charter for the Compensation Committee in August 2000. A copy of our current amended and restated Compensation Committee charter is available on the investor

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relations section of our website at www.netgear.com. Our Compensation Committee currently consists of Messrs. Faison, Graham, Poch and Rossmann, each of whom is a non-management member of our Board of Directors. Mr. Faison serves as chairman of our Compensation Committee.

Nominating and Corporate Governance Committee

Our Board of Directors formed a Nominating and Corporate Governance Committee and adopted its written charter in April 2004. A copy of our current Nominating and Corporate Governance Committee charter is available on the investor relations section of our website at www.netgear.com. Our Nominating and Corporate Governance Committee currently consists of Messrs. Godwin, Graham, Lacy, Jr., and Poch. None of the current members of the Nominating and Corporate Governance Committee is an employee of NETGEAR and each is independent under the listing requirements of the Nasdaq National Market. Mr. Poch serves as chairman of the Nominating and Corporate Governance Committee.

Policy for Director Recommendations and Nominations

The Nominating and Corporate Governance Committee considers candidates for board membership suggested by members of our Board of Directors, management and stockholders. It is the policy of the Nominating and Corporate Governance Committee to consider recommendations for candidates to our Board of Directors from stockholders by submitting: the candidate's name; home and business contact information; detailed biographical data and qualifications; information regarding any relationships between the candidate and NETGEAR within the last three years; and evidence of the nominating person's ownership or beneficial ownership of NETGEAR stock and amount of stock holdings. The Nominating and Corporate Governance Committee will consider persons recommended by our stockholders in the same manner as a nominee recommended by our Board of Directors, individual board members or management.

In addition, a stockholder may nominate a person directly for election to our Board of Directors at an annual meeting of our stockholders provided they meet the requirements set forth in our bylaws and the rules and regulations of the Securities and Exchange Commission related to stockholder proposals. The process for properly submitting a stockholder proposal, including a proposal to nominate a person for election to our Board of Directors at an annual meeting, is described above in the section entitled "General Information - Deadline for Receipt of Stockholder Proposals for 2007 Annual Meeting."

Where the Nominating and Corporate Governance Committee has either identified a prospective nominee or determines that an additional or replacement director is required, the Nominating and Corporate Governance Committee may take such measures that it considers appropriate in connection with its evaluation of a director candidate, including candidate interviews, inquiry of the person or persons making the recommendation or nomination, engagement of an outside search firm to gather additional information, or reliance on the knowledge of the members of the committee, the board or management. In its evaluation of director candidates, including the members of our Board of Directors eligible for re-election, the Nominating and Corporate Governance Committee considers a number of factors, including the following:

- the current size and composition of the board of directors and the needs of the board of directors and the respective committees of the board; and

- such factors as judgment, independence, character and integrity, age, area of expertise, diversity of experience, length of service, and potential conflicts of interest.

In connection with its evaluation, the Nominating and Corporate Governance Committee determines whether it will interview potential nominees. After completing the evaluation and review, the Nominating and Corporate Governance Committee approves the nominees for election to our Board of Directors.

Corporate Governance Policies and Practices

We maintain a corporate governance page on our company website at www.netgear.com. This website includes, among other items, profiles of all of our directors and officers, charters of each committee of the Board, the NETGEAR Code of Ethics, and information regarding our whistleblower policy.

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Our key governance policies and practices include:

A majority of the members of the Board are independent directors, as defined by the Nasdaq National Marketplace rules. Independent directors do not receive consulting, legal or other fees from us other than Board and Committee compensation.

The independent directors of the Board meet regularly without the presence of management.

Our Board of Directors has adopted a Code of Ethics that is applicable to all of our employees, officers and directors. This Code is intended to deter wrongdoing and promote ethical conduct. Directors, officers and employees are required to complete annual surveys relating to their knowledge of any violation of legal requirements or the Code of Ethics. We will post any amendments to, or waivers from, our Code of Ethics at that location on our website.

Directors stand for re-election every year.

The Audit, Compensation and Nominating and Corporate Governance Committees each consist entirely of independent directors.

At least annually, the Board reviews our business initiatives, capital projects and budget matters.

The Audit Committee reviews and approves all related party transactions.

The Board has implemented a process of periodic self-evaluation of the Board and its Committees.

As part of our Whistleblower Policy, we have made a whistleblower hotline available to all employees for anonymous reporting of financial or other concerns. The Audit Committee receives directly, without management participation, all hotline activity reports, including complaints on accounting, internal controls or auditing matters.

Directors are encouraged to attend our annual meeting. While their attendance is not required, at the 2005 Annual Meeting of Stockholders, all but one of our directors who was a director at that time was in attendance.

Director Compensation

Our non-employee directors receive \$1,000 per meeting and are entitled to reimbursement of business, travel and other related expenses incurred in connection with their attendance at meetings of our Board of Directors and committee meetings. The chairman of our Audit Committee receives an additional \$1,000 per committee meeting or sub-meeting with management attended, and the chairman of the Compensation Committee and of the Nominating and Corporate Governance Committee each receives an additional \$500 per meeting attended. The chairman of our Audit Committee is also paid an annual retainer of \$10,000, and each chairman of our other committees is also paid an annual retainer of \$4,000. In addition, our directors, including non-employee directors, are eligible to receive stock options under our 2003 Stock Option Plan. New non-employee directors who join our Board of Directors are entitled to receive automatic, non-discretionary initial options to acquire 25,000 shares of our common stock, subject to three-year vesting. Directors who have served at least six months with us receive an annual option of 15,000 shares at each annual meeting, which is subject to one-year vesting under our 2003 Stock Plan. Pursuant to the automatic, non-discretionary grant provisions described above, Jef Graham was granted an initial option to purchase 25,000 shares of our common stock on July 1, 2005 and each of our other outside directors, Messrs. Faison, Godwin, Lacy, Jr., Poch and Rossmann, was granted an annual option to purchase 15,000 shares of our common stock on May 18, 2005. The new NETGEAR, Inc. 2006 Long Term Incentive Plan, detailed in Proposal Two, does not provide for automatic, non-discretionary equity award grants to our Board of Directors.

Stock Ownership Guidelines

Our Board of Directors adopted stock ownership guidelines for our directors and executive officers, effective as of January 1, 2005. The guidelines require our directors to own a minimum of 5,000 shares of NETGEAR common stock, and our executive officers to own NETGEAR common stock with a value equal

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to a multiple of the officer's salary level. Under the guidelines, our Chief Executive Officer is expected to eventually own five times his annual base salary. Other executive officers are expected to achieve ownership levels equal to one to three times salary. Directors and officers have a five year period in which to achieve the required compliance level.

Assuming our stockholders approve the adoption of the new NETGEAR, Inc. 2006 Long Term Incentive Plan detailed in Proposal Two, our Board of Directors plan to revise our stock ownership guidelines to provide that an officer or director who is not in compliance with the ownership requirements would be strongly encouraged to restrict his or her NETGEAR stock sales until he or she becomes compliant with the guidelines.

Compensation Committee Interlocks and Insider Participation

During 2005, our Compensation Committee consisted of Messrs. Faison, Graham, Poch and Rossmann, each of whom is a non-management member of our Board of Directors. Our Compensation Committee is responsible for recommending to our Board of Directors salaries, incentives and other forms of compensation for officers and other employees. No interlocking relationship exists between any member of our Compensation Committee and any other member of our Board of Directors or Compensation Committee.

**PROPOSAL TWO
APPROVAL OF THE ADOPTION OF THE NEW NETGEAR, INC.
2006 LONG TERM INCENTIVE PLAN**

The Board of Directors has approved and is recommending to stockholders the adoption of the new NETGEAR, Inc. 2006 Long Term Incentive Plan, or the 2006 Plan, to provide certain employees, consultants and Board members the opportunity to receive stock-based and other long-term incentives in order to attract and retain qualified individuals and to align their interests with those of our stockholders. A full copy of the 2006 Plan is attached to this proxy statement as Appendix A. The 2006 Plan is intended to be the successor to our 2003 Stock Option Plan. As of December 31, 2005, the 2003 Stock Option Plan had approximately 109,617 shares remaining that were available for issuance.

Administration of the 2006 Plan

The 2006 Plan will be administered and interpreted by the Compensation Committee of our Board of Directors, or such other committee as designated by our Board of Directors. The Committee may delegate authority to one or more of our officers to grant awards to employees who are not members of the Board or officers for purposes of Section 16 of the Securities Exchange Act of 1934. The Committee will have the authority to determine the individuals to whom grants will be made, the time when grants will be made, and the type, size and terms of each grant. Award grants to eligible non-employee directors will be determined solely by non-employee directors, without the participation of employee directors or management. Awards granted to a non-employee director will generally be on par with awards granted to all other similarly situated non-employee directors of our Board of Directors.

Any material amendment to the 2006 Plan will be subject to stockholder approval. Material amendments would include any material increase in the number of shares to be issued under the plan other than to reflect a merger, reorganization, stock split or similar corporate event, any material increase in benefits to participants, any material expansion of the class of participants eligible to participate in the 2006 Plan and any expansion in the types of options or awards provided under the 2006 Plan.

Shares Available Under the 2006 Plan

A maximum of 2,500,000 shares of our common stock has been reserved for issuance under the 2006 Plan.

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In the event of a merger, reorganization, consolidation, recapitalization, stock dividend, stock split, reverse stock split, spin-off, combination repurchase or exchange of shares, or similar corporate event, the number of shares that can be issued under the 2006 Plan, the number of shares subject to outstanding awards, and any exercise price may be adjusted by the Committee in any manner it deems equitable to prevent dilution or enlargement of the benefits or potential benefits intended under the 2006 Plan. Any shares of common stock subject to an award that is forfeited, settled in cash, expires or is otherwise settled without the issuance of shares shall again be available for awards under the 2006 Plan.

Eligibility Under the 2006 Plan

Employees of NETGEAR and its affiliates, consultants who may be retained by the company, and non-employee members of the Board are eligible to participate in the 2006 Plan. The Committee will select the eligible participants who will participate in the 2006 Plan.

Awards Under the 2006 Plan

The Committee may make the following types of awards to eligible participants under the 2006 Plan, with terms and conditions to be established by the Committee: stock options, stock appreciation rights, restricted stock awards, performance awards and other stock awards.

Stock Options. The Committee will determine the number of options to be granted and the terms applicable to each award, subject to the restrictions set forth in the 2006 Plan. The term of any option may not exceed ten (10) years from the date of grant. The exercise price generally cannot be less than the fair market value of NETGEAR's common stock on the date the option is granted. The 2006 Plan generally prohibits the Committee from reducing the exercise price of any option after it is granted.

Stock Appreciation Rights. The Committee will determine the number of stock appreciation rights to be granted and the terms applicable to each award, subject to the restrictions set forth in the 2006 Plan. The term of any stock appreciation right may not exceed ten (10) years from the date of grant. The exercise price generally cannot be less than the fair market value of NETGEAR's common stock on the date the stock appreciation right is granted. The 2006 Plan generally prohibits the Committee from reducing the exercise price of any stock appreciation right after it is granted.

Restricted Stock Awards. The Committee will determine the number of shares or units that will be granted and the terms applicable to each award, provided that the period over which any restricted stock award may fully vest will be no less than three (3) years.

Performance Awards. Performance awards can take the form of performance shares or performance units. A performance share means an award denominated in shares of NETGEAR common stock and a performance unit means an award denominated in units having a dollar value or other currency, as determined by the Committee. The Committee will determine the number of performance awards that will be granted and will establish the performance goals and other conditions for payment of such performance awards. The period of measuring the achievement of performance goals will be a minimum of twelve (12) months. The performance goals established by the Committee for any participant will be based on one or more of the following criteria: cash flow; cash flow from operations; total earnings; earnings per share, diluted or basic; earnings per share from continuing operations, diluted or basic; earnings before interest and taxes; earnings before interest, taxes, depreciation and amortization; earnings from operations; net asset turnover; inventory turnover; capital expenditures; net earnings; operating earnings; gross or operating margin; profit margin; debt; working capital; return on equity; return on net assets; return on total assets; return on capital; return on investment; return on sales; net or gross sales; market share; economic value added; cost of capital; change in assets; expense reduction levels; debt reduction; productivity; new product introductions; delivery performance; safety record; stock price; and total stockholder return.

The performance goals may be determined on an absolute basis or relative to internal goals or to other companies or indices. The Committee shall adjust the performance goals to the extent necessary to prevent dilution or enlargement of any award due to extraordinary events or circumstances or to exclude the effects of

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extraordinary, unusual or non-recurring items; changes in applicable laws, regulations or accounting principles; currency fluctuations; discontinued operations; non-cash items, such as amortization, depreciation or reserves; asset impairment; or any recapitalization, restructuring, reorganization, merger, acquisition, divestiture, consolidation, spin-off, split-up, combination, liquidation, dissolution, sale of assets or other similar corporate transaction.

Other Stock-Based Awards. The Committee will determine the number of other stock-based awards that will be granted and the terms applicable to each award. Other stock-based awards may include dividend equivalents or amounts which are equivalent to all or a portion of any federal, state, local, domestic or foreign taxes relating to an award, and may be payable in shares, cash, other securities or any other form of property as the Committee may determine.

Awards to Covered Employees

The 2006 Plan contains additional restrictions and limitations on awards that are intended to satisfy the requirements of performance-based compensation under Internal Revenue Code Section 162(m) to participants classified as covered employees. No participant may receive an award or awards having an aggregate value of greater than \$3,000,000 for any full fiscal year of NETGEAR, subject to adjustment as described in the 2006 Plan for overlapping performance periods.

If an award to a covered employee under the 2006 Plan is subject to the attainment of performance goals, the Committee shall establish the performance goals within the 90 day period following the commencement of the applicable performance period. The Committee may, in its discretion, reduce the amount of any performance-based award to a covered employee based on any criteria it shall determine. However, the Committee may not increase the amounts payable pursuant to any performance-based award to a covered employee or waive the achievement of the performance goals, except in certain limited circumstances such as death, disability or a change-in-control of NETGEAR.

Termination of Employment

As discussed above, awards granted under the 2006 Plan generally expire on the date determined by the Committee at the time of the award, subject to earlier expiration as specified in the award agreement, in the event the participant terminates employment with the company prior to that date. Generally, unless determined otherwise by the Committee and subject to certain change-in-control provisions, all unvested options, stock appreciation rights and stock awards, and all unpaid performance shares and performance units are forfeited upon termination of service for reasons other than retirement, disability or death.

Upon termination of employment by reason of retirement, disability or death, all unvested options and stock awards become fully vested and any performance shares or performance units become payable to the extent determined by the Committee.

Upon termination by reason of retirement or disability, unless determined otherwise by the Committee, options will be exercisable until not later than the earlier of three years after the termination date or the expiration of their term. Upon termination by reason of death, while employed or after terminating employment by reason of retirement or disability, options will be exercisable by the participant's beneficiary not later than the earliest of one year after the date of death, three years after the date of termination due to retirement or disability, or the expiration of their term. All stock appreciation rights that become vested by reason of retirement, death or disability shall be exercisable as determined by the Committee.

Unless determined otherwise by the Committee, upon termination for any reason other than retirement, disability or death, any options vested prior to termination may be exercised during the three-month period commencing on the termination date, but not later than the expiration of their term. If a participant dies during the post-employment period, the participant's beneficiary may exercise the options (to the extent they were vested and exercisable on the date of employment termination), but not later than the earlier of one year after the date of death or the expiration of their term.

Table of Contents**Change-in-Control**

In the event of a change-in-control of NETGEAR, all awards under the 2006 Plan vest and all outstanding performance shares and performance units shall be paid out upon transfer. Options that vest upon a change-in-control may be exercised only during the 90 days immediately thereafter. Stock appreciation rights that become vested upon a change-in-control shall be exercisable as determined by the Committee.

Tax Consequences

The following description of the federal income tax consequences of awards under the 2006 Plan is a general summary. State, local and other taxes may also be imposed in connection with awards. This discussion is intended for the information of stockholders who are considering how to vote on the 2006 Plan at the annual meeting and not as tax guidance to individuals who participate in the 2006 Plan.

Nonqualified Stock Options. A participant who receives a nonqualified stock option will recognize no income at the time of the grant of the option. Upon exercise of a nonqualified stock option, a participant will recognize ordinary income in an amount equal to the excess of the fair market value of the shares of stock on the date of exercise over the exercise price. The basis in shares acquired upon exercise of a nonqualified stock option will equal the fair market value of such shares at the time of exercise, and the holding period of the shares for capital gain purposes will begin on the date of exercise. In general, NETGEAR will be entitled to a tax deduction in the same amount and at the same time as the participant recognizes ordinary income.

Incentive Stock Options. A participant who receives an incentive stock option will not generally recognize income at the time of grant or upon the exercise of an incentive stock option. Upon the sale of shares subject to an incentive stock option, a participant will recognize income in an amount equal to the excess of the fair market value of the shares on the date of sale over the exercise price. The income is taxed at long-term capital gains rates if the participant has not disposed of the shares within two years after the date of the grant of the incentive stock option and has held the shares for at least one year after the date of exercise. NETGEAR is not entitled to a tax deduction. The exercise of an incentive stock option may in some cases trigger liability for the alternative minimum tax.

If a participant sells shares subject to an incentive stock option before having held them for at least one year after the date of exercise and two years after the date of grant, the participant will recognize ordinary income to the extent of the lesser of: (a) the gain realized upon the sale; or (b) the excess of the fair market value of the shares on the date of exercise over the exercise price. Any additional gain is treated as long-term or short-term capital gain depending upon how long the participant has held the shares prior to disposition. In the year of disposition, NETGEAR receives a federal income tax deduction in an amount equal to the ordinary income that the participant recognizes as a result of the disposition.

Stock Appreciation Rights. No income will be recognized by a participant in connection with the grant of a stock appreciation right. When the stock appreciation right is exercised, the participant will generally be required to include as taxable ordinary income in the year of exercise an amount equal to the sum of the amount of cash received and the fair market value of any common stock received upon the exercise. In general, NETGEAR will be entitled to a tax deduction in the same amount and at the same time as the participant recognizes ordinary income.

Restricted Stock Awards. A participant who receives an award of restricted stock generally will not recognize taxable income until the stock is transferable by the participant or no longer subject to a substantial risk of forfeiture, whichever occurs first. When the stock is either transferable or is no longer subject to a substantial risk of forfeiture, the participant will recognize ordinary income in an amount equal to the fair market value of the shares at that time, less any amounts paid for the shares. A participant may elect to recognize ordinary income when restricted stock is granted in an amount equal to the fair market value of the shares at the date of grant, determined without regard to the restrictions. NETGEAR generally will be entitled to a corresponding tax deduction in the year in which the participant recognizes ordinary income. In the case of restricted stock units, a participant will recognize ordinary income at the time actual shares are delivered to

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the participant in an amount equal to the fair market value of the shares at that time, assuming the applicable non-qualified deferred compensation rules are followed, and we will receive a tax deduction.

Performance Awards. A participant who receives a performance award will not recognize taxable income until the award is paid to the participant. When the award is paid, the participant will recognize ordinary income in an amount equal to the cash and the fair market value of the stock paid to the participant. NETGEAR generally will be entitled to a tax deduction in the same amount and at the same time as the participant recognizes ordinary income.

Other Stock-Based Awards. A participant will recognize ordinary income when dividend equivalents and other stock-based awards are paid to the participant and are transferable by the participant or no longer subject to a substantial risk of forfeiture, in an amount equal to the cash and the fair market value of any shares paid to the participant. NETGEAR generally will be entitled to a corresponding tax deduction when the participant recognizes ordinary income.

Section 162(m)

Section 162(m) of the Internal Revenue Code generally disallows a public company's tax deduction for compensation paid to the Chief Executive Officer and the four other most highly compensated executive officers in excess of \$1 million in any year. Compensation that qualifies as qualified performance-based compensation is excluded from the \$1 million limit, and therefore remains fully deductible by us. Assuming the 2006 Plan is approved by the stockholders, awards that satisfy the appropriate provisions of Section 162(m) will not be subject to the deduction limit. Other awards under the 2006 Plan may be subject to the deduction limit.

Vote Required and Board of Directors Recommendation

The affirmative vote by a majority of shares present in person or by proxy at the annual meeting and entitled to vote is required to approve this proposal. **The Board of Directors recommends a vote FOR the approval of the adoption of the new NETGEAR, Inc. 2006 Long Term Incentive Plan.**

PROPOSAL THREE**RATIFICATION OF APPOINTMENT OF INDEPENDENT AUDITORS**

In accordance with its charter, the Audit Committee has selected PricewaterhouseCoopers LLP, independent auditors, to audit our financial statements for the fiscal year ending December 31, 2006 and, with the endorsement of our Board of Directors, recommends to stockholders that they ratify that appointment. PricewaterhouseCoopers LLP served in this capacity for the year ended December 31, 2005. A representative of PricewaterhouseCoopers LLP will be present at the annual meeting and will have the opportunity to make a statement if he or she desires to do so and be available to answer any appropriate questions.

Audit and Related Fees

The following table is a summary of the fees billed to us by PricewaterhouseCoopers LLP for professional services for the years ended December 31, 2005 and December 31, 2004:

Fee Category	2005 Fees	2004 Fees
Audit Fees	\$ 1,087,420	\$ 1,208,660
Audit-Related Fees		
Tax Compliance Fees	57,852	147,199
Tax Consulting Fees	135,413	158,097
All Other Fees	1,500	
Total Fees	\$ 1,282,185	\$ 1,513,956

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Audit Fees. Consists of fees billed for professional services rendered for the audit of our consolidated financial statements and internal control over financial reporting and review of our quarterly interim consolidated financial statements, as well as services that are normally provided by PricewaterhouseCoopers LLP in connection with statutory and regulatory filings or engagements.

Audit-Related Fees. Consists of fees billed for consultations in connection with Sarbanes-Oxley compliance, financial accounting and reporting standards.

Tax Compliance Fees. Consists of fees billed for professional services including assistance regarding federal, state and international tax compliance and related services.

Tax Consulting Fees. Consists of fees billed for professional services for tax advice and tax planning.

All Other Fees. Consists of fees billed for product provided by PricewaterhouseCoopers LLP.

Before selecting and prior to determining to continue its engagement for 2006 with PricewaterhouseCoopers LLP, the Audit Committee carefully considered PricewaterhouseCoopers LLP's qualifications as independent auditors. This included a review of the qualifications of the engagement team, the quality control procedures the firm has established, as well as its reputation for integrity and competence in the fields of accounting and auditing. The Audit Committee's review also included matters required to be considered under the Securities and Exchange Commission's rules on auditor independence, including the nature and extent of non-audit services, to ensure that the auditors' independence will not be impaired. The Audit Committee pre-approves all audit and non-audit services provided by PricewaterhouseCoopers LLP, or subsequently approves non-audit services in those circumstances where a subsequent approval is necessary and permissible. All of the services provided by PricewaterhouseCoopers LLP described under Audit-Related Fees, Tax Compliance Fees, Tax Consulting Fees and All Other Fees were pre-approved by the Audit Committee. The Audit Committee of our Board of Directors has determined that the provision of services by PricewaterhouseCoopers LLP other than for audit related services is compatible with maintaining the independence of PricewaterhouseCoopers LLP as our independent auditors.

Vote Required and Board of Directors Recommendation

Stockholder ratification of the selection of PricewaterhouseCoopers LLP as our independent auditors is not required by our bylaws or other applicable legal requirement. However, our Board of Directors is submitting the selection of PricewaterhouseCoopers LLP to the stockholders for ratification as a matter of good corporate practice. If the stockholders fail to ratify the selection, our Audit Committee and Board of Directors will reconsider whether or not to retain that firm. Even if the selection is ratified, the Audit Committee at its discretion may direct the appointment of a different independent accounting firm at any time during the year if it determines that such a change would be in our best interests and in the best interests of our stockholders.

The affirmative vote by a majority of shares present in person or by proxy at the annual meeting and entitled to vote is required to approve this proposal. **Our Board of Directors has unanimously approved this proposal and recommends that stockholders vote FOR the ratification of the selection of PricewaterhouseCoopers LLP as independent auditors.**

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information with respect to the beneficial ownership of our common stock as of February 28, 2006 by:

each stockholder who we know beneficially owns more than 5% of our common stock;

each of our directors

each of our current named executive officers; and

all of our directors and executive officers as a group.

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Beneficial ownership is determined in accordance with the rules and regulations of the Securities and Exchange Commission. The column entitled **Number of Shares Beneficially Owned** excludes the number of shares of common stock subject to options held by that person that are currently exercisable or that will become exercisable within 60 days after February 28, 2006. The number of shares subject to options that each beneficial owner has the right to acquire within 60 days of February 28, 2006 is listed separately under the column entitled **Number of Shares Underlying Options Beneficially Owned**. These shares are not deemed outstanding for purposes of computing the percentage ownership of any other person.

Percentage of beneficial ownership is based upon 33,053,883 shares of our common stock outstanding as of February 28, 2006 and the shares of common stock subject to options held by the beneficial owner that are currently exercisable with 60 days of February 28, 2006. The address for those individuals for which an address is not otherwise provided is c/o NETGEAR, Inc., 4500 Great America Parkway, Santa Clara, California 95054. Unless otherwise indicated, we believe the stockholders listed have sole voting or investment power with respect to all shares, subject to applicable community property laws.

Name and Address	Number of Shares Beneficially Owned	Number of Shares Underlying Options Beneficially Owned	Percentage of Total Shares Beneficially Owned
5% Stockholders:			
FMR Corp.(1)	3,304,900		10.0%
Executive Officers and Directors:			
Patrick C.S. Lo(2)	238,378	699,661	2.8%
Jonathan R. Mather(3)	1,502	162,042	*
Mark G. Merrill		287,707	*
Michael F. Falcon(4)	4,953	31,667	*
Charles T. Olson(5)	3,260	43,348	*
Ralph E. Faison	2,000	31,667	*
A. Timothy Godwin(6)	10,415	38,333	*
Jef Graham			*
Linwood A. Lacy, Jr.	95,000	67,317	*
Gerald A. Poch(7)	100,000	15,000	*
Gregory J. Rossmann(8)	100,000	15,000	*
All current directors and executive officers as a group (15 persons)(9)	464,647	1,632,910	6.0%

* Less than 1%

(1) Based on information contained in a Schedule 13G filed with the Securities and Exchange Commission on January 10, 2006, by FMR Corp. (FMR), Edward C. Johnson 3rd, Fidelity Management & Research Company (Fidelity) and Fidelity Low Priced Stock Fund (Fidelity Fund). Fidelity is a wholly owned subsidiary of FMR and, as an investment advisor, is deemed to beneficially own 3,281,596 shares or approximately 9.6% of NETGEAR s common stock as a result of acting as investment advisor to various investment companies including the Fidelity Fund, which is deemed to beneficially own 2,400,000 shares or approximately 7.3% of NETGEAR s common stock. Mr. Johnson, along with other members of the Johnson family, through their ownership of

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Series B voting shares of common stock of FMR and the execution of a shareholders' voting agreement, are deemed to be a controlling group under the Investment Company Act of 1940 with respect to FRM and, this, Mr. Johnson is deemed to beneficially own 3,281,596 shares or 9.6% of NETGEAR's common stock. The address of the reporting persons is 82 Devonshire Street, Boston, Massachusetts 02109.

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- (2) Shares beneficially owned by Mr. Lo include (1) 81,473 shares held of record by The Patrick C. S. Lo Grantor Retained Annuity Trust, (2) 140,414 shares held of record by The Patrick and Emily Lo Revocable Living Trust Dated 4-7-99, (3) 7,204 shares held of record by The Daphne T. W. Lo 2002 Irrevocable Education Trust, (3) 7,204 shares held of record by The Kai W. Lo 2002 Irrevocable Education Trust, and (4) 2,083 shares held of record by Mr. Lo. Shares underlying options beneficially owned by Mr. Lo include 100,000 shares that are subject to resale restrictions that expire as to 25% of the shares each year.
- (3) Shares underlying options beneficially owned by Mr. Mather include 50,000 shares that are subject to resale restrictions that expire as to 25% of the shares each year.
- (4) Shares underlying options beneficially owned by Mr. Falcon include 20,000 shares that are subject to resale restrictions that expire as to 25% of the shares each year.
- (5) Shares underlying options beneficially owned by Mr. Olson include 20,000 shares that are subject to resale restrictions that expire as to 25% of the shares each year.
- (6) Shares are held of record by the Maureen A. Godwin Family Trust.
- (7) Shares are held of record by Pequot Private Equity Fund II, L.P. (the Fund). Mr. Poch is a managing director of Pequot Capital Management, Inc. (PCM), which holds voting and dispositive power for all shares held of record by the Fund. Mr. Poch disclaims beneficial ownership of the shares held in the Fund, except to the extent of his pecuniary interest therein.
- (8) Shares are held of record by Pequot Private Equity Fund II, L.P. (the Fund). Mr. Rossmann is a managing director of Pequot Capital Management, Inc. (PCM), which holds voting and dispositive power for all shares held of record by the Fund. Mr. Rossmann disclaims beneficial ownership of the shares held in the Fund, except to the extent of his pecuniary interest therein.
- (9) Shares underlying options beneficially owned by all officers and directors as a group include 285,500 shares that are subject to resale restrictions that expire as to 25% of the shares each year.

EXECUTIVE COMPENSATION

Summary Compensation Table

The following Summary Compensation Table sets forth certain information regarding the compensation of our chief executive officer and our four next most highly compensated executive officers for 2005 for

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services rendered in all capacities for the years indicated. No restricted stock or stock appreciation rights were granted to any of the persons listed below for the years indicated.

Name and Principal Position	Compensation				Long-Term Compensation Awards:	
	Annual Compensation				Securities Underlying Options (#)	All Other Compensation (\$)(2)
	Fiscal Year	Salary (\$)	Bonus (\$)(1)	Other Annual Compensation (\$)		
Patrick C. S. Lo	2005	414,615	250,000	0	100,000	1,500
Chairman and Chief Executive Officer	2004	356,731	250,000	0	0	1,500
	2003	350,000	100,000	0	0	1,500
Jonathan R. Mather(3)	2005	264,808	88,209	0	50,000	42,075
Executive Vice President and Chief Financial Officer	2004	254,808	65,000	0	0	45,332
	2003	250,000	43,750	0	0	39,069
Michael F. Falcon	2005	215,769	84,250	0	20,000	1,500
Vice President of Operations	2004	213,808	65,000	0	20,000	1,500
	2003	190,000	14,250	0	0	1,500
Charles T. Olson(4)	2005	215,769	70,686	0	20,000	25,500
Vice President of Engineering	2004	212,372	45,000	0	10,000	27,488
	2003	186,346	13,976	0	122,500	27,552
Mark G. Merrill	2005	205,961	67,756	0	0	1,500
Chief Technology Officer	2004	206,904	32,000	0	0	1,500
	2003	203,000	15,225	0	0	1,500

- (1) Represents cash bonuses earned for the indicated fiscal years.
- (2) All other compensation consists of discretionary matching contributions to our 401(k) plan on behalf of each named executive officer, unless otherwise stated. Excludes prerequisites and personal benefits, securities or property to the extent such benefits do not exceed the lesser of either \$50,000 or 10% of the total annual salary and bonus for the named executive officer.
- (3) Mr. Mather received other compensation consisting of a \$1,500 matching contribution to our 401(k) plan on his behalf and a tax protected housing allowance of \$40,575 in 2005, a \$1,500 matching contribution to our 401(k) plan on his behalf and a tax protected housing allowance of \$43,832 in 2004, and a \$1,500 matching contribution to our 401(k) plan on his behalf and a tax protected housing allowance of \$37,569 in 2003.
- (4) Mr. Olson received other compensation consisting of a \$1,500 matching contribution to our 401(k) plan on his behalf and a housing allowance of \$24,000 in 2005, a \$1,500 matching contribution to our 401(k) plan on his behalf and a housing allowance of \$25,988 in 2004, and a \$1,500 matching contribution to our 401(k) plan on his behalf and a housing allowance of \$26,052 in 2003.

Option Grants in Last Fiscal Year

The following table provides certain information relating to stock options granted to each of our executive officers named in the summary compensation table above during the fiscal year ended December 31, 2005. All of these

options were granted under our 2003 Stock Plan and have a term of 10 years, subject to earlier termination in the event that the optionee's services to us cease.

The exercise prices of the options we grant are generally equal to the fair market value of our common stock, as determined by our board of directors, on the date of grant. The exercise price may be paid by cash or check. In the event of an acquisition of NETGEAR by merger or asset purchase, if the acquiring corporation fails to assume or substitute the outstanding options under our 2003 Stock Plan, then all of the option shares will become immediately vested and exercisable for a period of 15 days after notice is given, after which the options will terminate.

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The potential realizable value is calculated by assuming that the fair market value of our common stock increases from the date of grant of the option at assumed rates of stock appreciation of 5% and 10%, compounded annually over the 10 year term of the option, and subtracting from that result the total option exercise price. These assumed appreciation rates comply with the rules of the Securities and Exchange Commission and do not represent our prediction of the performance of our stock price.

Name	Number of Securities Underlying Options Granted	Individual Grants		Exercise Price (\$/Share)	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
		% of Total Options Granted to Employees in Fiscal Year(1)				5% (\$)	10% (\$)
Patrick C.S. Lo	100,000	8.7%		15.35	3/11/2015	965,352	2,446,396
Jonathan R. Mather	50,000	4.4%		15.35	3/11/2015	482,676	1,223,196
Michael F. Falcon	20,000	1.7%		15.35	3/11/2015	193,072	489,280
Charles T. Olson	20,000	1.7%		15.35	3/11/2015	193,072	489,280
Mark G. Merrill							

(1) Based on a total of 1,147,050 options granted to all employees in the fiscal year ended December 31, 2005.

Aggregate Option Exercises in Last Year and Year-End Option Values

The following table provides certain information relating to option exercises by the executive officers named in the summary compensation table during the fiscal year ended December 31, 2005, and the number and value of vested and unvested options held by those executive officers as of December 31, 2005.

The Value Realized and the Value of Unexercised In-the-Money Options at December 31, 2005 are based upon the closing price of our common stock on the date of exercise or at December 31, 2005, as applicable, minus the per share exercise price, multiplied by the number of shares underlying the option. The closing price of our common stock on December 31, 2005 was \$19.25 per share.

Name	Shares Acquired on Exercise of Options	Value Realized for Exercised Options	Shares Underlying Unexercised Options at December 31, 2005		Value of Unexercised In-The-Money Options at December 31, 2005	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Patrick C.S. Lo	397,100	\$ 6,765,204	699,661		\$ 9,229,003	
Jonathan R. Mather	84,000	\$ 1,429,234	162,042		\$ 2,207,274	
Michael F. Falcon	65,894	\$ 805,430	25,208	34,898	\$ 92,166	\$ 348,316
Charles T. Olson	58,650	\$ 729,198	32,304	38,596	\$ 172,926	\$ 369,086
Mark G. Merrill	60,000	\$ 848,608	307,707		\$ 4,532,620	

Table of Contents**Equity Compensation Plan Information**

The following table provides information as of December 31, 2005 about our common stock that may be issued upon the exercise of options and rights granted to employees, consultants or members of our Board of Directors under all existing equity compensation plans, including the 2000 Stock Option Plan (which was terminated as to new grants in May 2003), the 2003 Stock Plan and the 2003 Employee Stock Purchase Plan.

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a))
	(a)	(b)	(c)
Equity compensation plans approved by securityholders	3,673,687(1)	\$ 10.49	483,541(2)
Equity compensation plans not approved by securityholders			
Total	3,673,687	\$ 10.49	483,541

(1) Includes 1,939,224 shares outstanding under the 2000 Stock Option Plan, 1,734,463 shares outstanding under the 2003 Stock Option Plan, and no outstanding shares under the 2003 Employee Stock Purchase Plan.

(2) Includes 109,617 shares available for issuance under the Company's 2003 Stock Option Plan and 373,924 shares under the Company's 2003 Employee Stock Purchase Plan.

Employment Agreements and Change in Control Arrangements

We have entered into employment agreements with the following of our current executive officers. Each agreement may be terminated by either us or the executive officer at any time with or without cause. In addition, the employment agreements provide for annual salary and bonus amounts and severance benefits, as may be adjusted from time to time by our Board of Directors.

On December 3, 1999, we entered into an employment agreement with Patrick C.S. Lo, our Chairman and Chief Executive Officer. The agreement provides that if within one year following a change of control of NETGEAR, Mr. Lo is terminated without cause or resigns for good reason, he is entitled to full acceleration of any unvested portion of his stock options, and severance payments at his final base salary rate for a period of one year after his termination or resignation. If Mr. Lo is terminated without cause, he is entitled to receive severance payments at his final base salary rate for a period of one year and will continue to have his stock options vest for one year after such termination.

On December 9, 1999, we entered into an employment agreement with Mark G. Merrill, our Chief Technology Officer. The agreement provides that if within one year following a change of control of NETGEAR, Mr. Merrill is terminated without cause or resigns for good reason, he is entitled to receive two years acceleration of any unvested

portion of his stock options. If Mr. Merrill is terminated without cause, he is entitled to receive severance payments at his final base salary rate for 26 weeks and will continue to have his stock options vest for one year after such termination.

On August 10, 2001, we entered into an employment agreement with Jonathan R. Mather, our Executive Vice President and Chief Financial Officer. The agreement provides that if within one year following a change of control of NETGEAR, Mr. Mather is terminated without cause or resigns for good reason, he is entitled to receive two years acceleration of any unvested portion of his stock options. If Mr. Mather is terminated without cause, he is entitled to receive severance payments at his final base salary rate for a period of 39 weeks and will continue to have his stock options vest for one year after such termination.

On November 4, 2002, we entered into an employment agreement with Michael F. Falcon, our Senior Vice President of Operations. On January 6, 2003, we entered into an employment agreement with Charles T.

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Olson, our Senior Vice President of Engineering. Each of these agreements provides that if within one year following a change of control of NETGEAR, the officer is terminated without cause or resigns for good reason, he is entitled to receive two years acceleration of any unvested portion of his stock options. If the officer is terminated without cause, he is entitled to receive severance payments at his final base salary rate for a period of 26 weeks and will continue to have his stock options vest for one year after such termination.

On October 18, 2004, we entered into an employment agreement with Albert Y. Liu, our Vice President, Legal and Corporate Development and Company Secretary. On November 16, 2005, we entered into an employment agreement with Christine Gorjanc, our Vice President, Finance. Each of these agreements provides that if within one year following a change of control of NETGEAR, the officer is terminated without cause or resigns for good reason, the officer is entitled to receive two years acceleration of any unvested portion of his or her stock options. If the officer is terminated without cause, the officer is entitled to receive severance payments at the officer's final base salary rate for a period of 13 weeks and will continue to have his or her stock options vest for three months after such termination.

Stock Ownership Guidelines

In 2005, our Board of Directors adopted stock ownership guidelines for our directors and executive officers. For a description of these guidelines, please see [Stock Ownership Guidelines](#) under [Proposal One Election of Directors](#).

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REPORT OF THE COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS

Notwithstanding any statement to the contrary in any of our previous or future filings with the Securities and Exchange Commission, this Report of the Compensation Committee of our Board of Directors shall not be deemed filed with the Commission or soliciting material under the 1934 Act, and shall not be incorporated by reference into any such filings.

During 2005, executive compensation matters were approved by the Compensation Committee, which currently consists of Ralph E. Faison, Jef Graham, Gerald A. Poch and Gregory J. Rossmann. Mr. Poch is not standing for re-election to our Board of Directors, and therefore will no longer be a member of the Compensation Committee from and after the 2006 Annual Meeting. The following is the report of the Compensation Committee of our Board of Directors with respect to compensation during 2005. The Compensation Committee operates under a written charter adopted by our Board of Directors in August 2000 and most recently amended in January 2005.

General Compensation Philosophy

The primary objectives of the executive compensation policies of our Board of Directors include the following:

To attract, motivate, and retain a highly qualified executive management team;

To link executive compensation to our financial performance as well as to define individual management objectives established by the compensation committee;

To compensate competitively with the practices of similarly situated technology companies; and

To create management incentives designed to enhance stockholder value.

NETGEAR competes in an aggressive and dynamic industry and, as a result, our Board of Directors believes that finding, motivating and retaining quality employees, particularly senior managers, sales personnel and technical personnel, are important factors to NETGEAR's future success. The philosophy of the Compensation Committee seeks to align the interests of stockholders and management by tying compensation to NETGEAR's financial performance, either directly in the form of salary and bonuses paid in cash or indirectly in the form of stock options granted to NETGEAR's principal executive officers.

Cash Compensation

NETGEAR seeks to provide cash compensation to our executive officers, including base salary and bonus, at levels that are commensurate with cash compensation of executives with comparable responsibility at similarly situated technology companies. Annual increases in base salary are determined on an individual basis based on market data and a review of the officer's performance and contribution to various individual, departmental and corporate objectives. Cash bonuses, if any, are intended to provide additional incentives to achieve such objectives.

The salaries and cash bonuses of each of NETGEAR's executive officers, other than the chief executive officer, were determined by the Compensation Committee and ratified by our Board of Directors. The chief executive officer's base salary was determined by the Compensation Committee and ratified by our Board of Directors with the abstention by the chief executive officer. During 2005, the compensation of Patrick C.S. Lo, NETGEAR's chief executive officer, consisted of a base salary of \$414,615 and a cash bonus of \$250,000, for total cash compensation equal to \$664,615 for 2005. The Compensation Committee reviewed the chief executive officer's salary at the beginning of 2005 using the same criteria and policies as are employed for the other executive officers.

At the beginning of 2006, based on feedback from an outside compensation consultant and a review of market compensation trends, our Board of Directors determined that it was appropriate to increase the cash compensation paid to NETGEAR's executive officers, including the chief executive officer, in order to be generally consistent with amounts paid to officers with similar responsibilities at similarly situated technology

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companies. As a result, effective for fiscal year 2006, our Board of Directors increased the base salary of Mr. Lo to \$525,000. We note that competition for qualified management and technical personnel in NETGEAR's industry is intense, and we expect such competition to remain intense for the foreseeable future. As a result, in order to insure access to qualified personnel, our Board of Directors believes that it will continue to be necessary to provide compensation packages that are at least competitive with, and in certain instances superior to, compensation paid by other similarly situated networking companies.

Equity-Based Compensation

NETGEAR provides long term incentives through its 2003 stock option plan and anticipates that it will also provide such incentives through the NETGEAR, Inc. 2006 Long Term Incentive Plan upon approval from stockholders. Stock options are periodically granted under NETGEAR's stock plans to provide additional incentive to executives and other employees to maximize long-term total return to our stockholders. We believe that stock options are a particularly strong incentive, because they are valuable to employees only if the fair market value of our common stock increases above the exercise price, which is set at the fair market value of NETGEAR's common stock on the date the option is granted. In addition, employees generally must remain employed with NETGEAR for a fixed period of time in order for the options to vest fully. Options generally vest over a four-year period to encourage option holders to remain employed by NETGEAR. If the NETGEAR, Inc. 2006 Long Term Incentive Plan is approved by stockholders, we may also provide other types of equity incentive awards, including stock appreciation rights, restricted stock awards, performance awards and other stock awards, to executives and other employees.

With respect to the size of the equity awards granted to NETGEAR's executive officers, the Compensation Committee considers the executive's position, the executive's individual performance, the number of equity awards held (if any), the extent to which those equity awards are vested and any other factors that our Board of Directors may deem relevant.

Tax Deductibility of Executive Compensation

Section 162(m) of the Internal Revenue Code limits the federal income tax deductibility of compensation paid to our chief executive officer and to each of the other four most highly-compensated executive officers. NETGEAR may deduct such compensation only to the extent that during any fiscal year the compensation paid to such individual does not exceed \$1 million or meet certain specified conditions (including stockholder approval). NETGEAR has adopted a policy that, where reasonably practicable, NETGEAR will seek to qualify variable compensation paid to its executive officers for an exemption from the deductibility limitations of 162(m).

Respectfully submitted by:

THE COMPENSATION COMMITTEE

RALPH E. FAISON
JEF GRAHAM
GERALD A. POCH
GREGORY J. ROSSMANN

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REPORT OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS

Notwithstanding any statement to the contrary in any of our previous or future filings with the Securities and Exchange Commission, this report of the Audit Committee of our Board of Directors shall not be deemed filed with the Commission or soliciting material under the 1934 Act, and shall not be incorporated by reference into any such filings.

The Audit Committee, which currently consists of A. Timothy Godwin, Linwood A. Lacy, Jr. and Gerald A. Poch, evaluates audit performance, manages relations with our independent auditors and evaluates policies and procedures relating to internal accounting functions and controls. Mr. Poch is not standing for re-election to our Board of Directors, and therefore will no longer be a member of the Audit Committee from and after the 2006 Annual Meeting. Our Board of Directors first adopted a written charter for the Audit Committee in September 2000 and most recently amended it in February 2004, which details the responsibilities of the Audit Committee. This report relates to the activities undertaken by the Audit Committee in fulfilling such responsibilities.

The Audit Committee members are not professional auditors or auditors, and their functions are not intended to duplicate or to certify the activities of management and the independent auditors. The Audit Committee oversees NETGEAR's financial reporting process on behalf of our Board of Directors. NETGEAR's management has the primary responsibility for the financial statements and reporting process, including NETGEAR's systems of internal controls. In fulfilling its oversight responsibilities, the Audit Committee reviewed and discussed with management the audited financial statements included in the Annual Report on Form 10-K for the year ended December 31, 2005. This review included a discussion of the quality and the acceptability of NETGEAR's financial reporting and controls, including the clarity of disclosures in the financial statements.

The Audit Committee also reviewed with NETGEAR's independent auditors, who are responsible for expressing an opinion on the conformity of NETGEAR's audited financial statements with generally accepted accounting principles, their judgments as to the quality and the acceptability of NETGEAR's financial reporting and such other matters required to be discussed with the Audit Committee under generally accepted auditing standards in the United States including Statement on Auditing Standards No. 61. The Audit Committee has received the written disclosures and the letter from the independent auditors required by Independence Standards Board Statement No. 1. The Audit Committee discussed with the independent auditors such auditors' independence from management and NETGEAR, including the matters in such auditors' written disclosures required by Independence Standards Board Statement No. 1.

The Audit Committee further discussed with NETGEAR's independent auditors the overall scope and plans for their audits. The Audit Committee meets periodically with the independent auditors, with and without management present, to discuss the results of the independent auditors' examinations and evaluations of NETGEAR's internal controls, and the overall quality of NETGEAR's financial reporting.

In reliance on the reviews and discussions referred to above, the Audit Committee recommended to our Board of Directors and our Board of Directors approved that the audited financial statements and disclosures under Management's Discussion and Analysis of Financial Condition and Results of Operations be included in the Annual Report on Form 10-K for the year ended December 31, 2005, as filed with the Securities and Exchange Commission on March 16, 2006.

Respectfully submitted by:

THE AUDIT COMMITTEE

A. TIMOTHY GODWIN
LINWOOD A. LACY, JR.
GERALD A. POCH

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SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the 1934 Act requires our officers and directors, and persons who own more than 10% of a registered class of our equity securities, to file reports of ownership and changes in ownership with the Securities and Exchange Commission and the National Association of Securities Dealers, Inc. Executive officers, directors and greater than 10% stockholders are required by Securities and Exchange Commission regulations to furnish us with copies of all Section 16(a) forms they file. Based solely on our review of the copies of such forms that we have received, or written representations from reporting persons, we believe that during 2005, all Section 16(a) filing requirements applicable to our officers, directors and greater than 10% stockholders were met.

RELATED PARTY TRANSACTIONS

We have entered into certain compensation arrangements which are described under Executive Compensation Employment Agreements and Change in Control Agreements.

Table of Contents**COMPANY PERFORMANCE**

Notwithstanding any statement to the contrary in any of our previous or future filings with the Securities and Exchange Commission, the following information relating to the price performance of our common stock shall not be deemed filed with the Commission or soliciting material under the 1934 Act and shall not be incorporated by reference into any such filings.

The following graph shows a comparison from July 31, 2003 (the date our common stock commenced trading on the Nasdaq National Market) through December 31, 2005 of cumulative total return for our common stock, the Nasdaq Market Index and the Nasdaq Computer Index. Such returns are based on historical results and are not intended to suggest future performance. Data for the Nasdaq Market Index and the Nasdaq Computer Index assume reinvestment of dividends. We have never paid dividends on our common stock and have no present plans to do so.

	July 31, 2003	December 31, 2003	December 31, 2004	December 31, 2005
NETGEAR, Inc.	\$ 100.00	\$ 90.39	\$ 102.66	\$ 108.82
NASDAQ Computer Index	\$ 100.00	\$ 116.78	\$ 120.58	\$ 123.89
NASDAQ Market Index	\$ 100.00	\$ 115.47	\$ 125.38	\$ 127.11

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OTHER MATTERS

We know of no other matters to be submitted at the annual meeting. If any other matters properly come before the annual meeting, it is the intention of the persons named in the enclosed proxy card to vote the shares they represent as our Board of Directors may recommend.

It is important that your shares be represented at the annual meeting, regardless of the number of shares, which you hold. You are, therefore, urged to mark, sign, date and return the accompanying proxy card as promptly as possible in the postage-prepaid envelope enclosed for that purpose.

THE BOARD OF DIRECTORS OF
NETGEAR, INC.:

PATRICK C.S. LO
RALPH E. FAISON
JEF GRAHAM
A. TIMOTHY GODWIN
LINWOOD A. LACY, JR.
GERALD A. POCH
GREGORY J. ROSSMANN

Dated: April 21, 2006

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APPENDIX A

**NETGEAR, INC.
2006 LONG-TERM INCENTIVE PLAN**

Section 1. *Purpose:* The purpose of the NETGEAR, Inc. Long-Term Incentive Plan is to provide certain employees and consultants of NETGEAR, Inc. and its Affiliates (as hereinafter defined) and members of the Board (as hereinafter defined) with the opportunity to receive stock-based and other long-term incentive grants in order to attract and retain qualified individuals and to align their interests with those of stockholders.

Section 2. *Effective Date:* This Plan will become effective as of April 14, 2006, subject to the approval of the stockholders at the Annual Meeting to be held on May 23, 2006. Unless sooner terminated as provided herein, the Plan shall terminate ten years from April 14, 2006. After the Plan is terminated, no future Awards may be granted under the Plan, but Awards previously granted shall remain outstanding in accordance with their applicable terms and conditions.

Section 3. *Definitions:* As used in this Plan, unless the context otherwise requires, each of the following terms shall have the meaning set forth below.

(a) **Affiliate** shall mean any entity that, directly or indirectly, controls, is controlled by, or is under common control with, the Company.

(b) **Award** shall mean a grant of an Option, SAR, Restricted Stock Award, Performance Award, or Other Stock Award pursuant to the Plan, which may, as determined by the Committee, be in lieu of other compensation owed to a Participant.

(c) **Award Agreement** shall mean an agreement, either in written or electronic format, in such form and with such terms and conditions as may be specified by the Committee, which evidences the terms and conditions of an Award.

(d) **Beneficiary** means the person or entity (including a trust or the estate of the Participant) designated by the Participant to succeed to any rights that he or she may have in Awards at the time of death. No such designation, or any revocation or change thereof, shall be effective unless made in writing by the Participant on a form provided by the Company and delivered to the Company prior to the Participant's death. If, on the death of a Participant, there is no living person or entity in existence so designated, the term **Beneficiary** shall mean the legal representative of the Participant's estate.

(e) **Board of Directors** or **Board** shall mean the board of directors of the Company.

(f) **Change in Control** means the happening of any of the following events:

(i) the merger or consolidation of the Company with any other corporation following which the holders of the Company's common stock immediately prior thereto hold less than 60% of the outstanding common stock of the surviving or resulting entity;

(ii) the sale of all or substantially all of the assets of the Company to any person or entity other than a wholly-owned subsidiary;

(iii) any person or group of persons acting in concert, or any entity, becomes the beneficial owner, directly or indirectly, of more than 20% of the Company's outstanding common stock, other than an acquisition of more than 20%, in one or more transactions, of the Company's outstanding common stock by (a) a passive institutional investor where such investor is eligible pursuant to Rule 13d-1(b) of the Securities Exchange Act of 1934 (the **Exchange Act**) to, and does, file a report of ownership on Schedule 13G with the Securities and Exchange Commission, (b) a trustee or other fiduciary of an employee benefit plan maintained by the

Company, or (c) a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the Company;

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(iv) those individuals who, as of the close of the most recent annual meeting of the Company's stockholders, are members of the Board (the Existing Directors) cease for any reason to constitute more than 50% of the Board. For purposes of the foregoing, a new director will be considered an Existing Director if the election, or nomination for election by the Company's stockholders, of such new director was approved by a vote of a majority of the Existing Directors. No individual shall be considered an Existing Director if such individual initially assumed office as a result of either an actual or threatened election contest subject to Rule 14a-11 under the Exchange Act or other actual or threatened solicitation of proxies by or on behalf of anyone other than the Board of Directors, including by reason of any agreement intended to avoid or settle any election proxy contest; or

(v) the stockholders of the Company adopt a plan of liquidation.

(g) Code shall mean the Internal Revenue Code of 1986, as amended from time to time, and any references to a particular section of the Code shall be deemed to include any successor provision thereto.

(h) Committee shall mean the Compensation Committee of the Board or such other committee of the Board of Directors, which shall consist solely of two or more outside directors within the meaning of Section 162(m) of the Code and non-employee directors within the meaning of Securities and Exchange Commission Rule 16b-3 promulgated under Section 16 of the Securities Exchange Act of 1934, as amended, or any such successor provision thereto.

(i) Company shall mean NETGEAR, Inc., a Delaware corporation.

(j) Consultant shall mean any person engaged by the Company or an Affiliate to render services to such entity as a consultant or advisor.

(k) Disability shall mean that a Participant is eligible for Social Security disability benefits or disability benefits under the Company's long-term disability plan, based upon a determination by the Committee that the condition arose prior to termination of employment.

(l) Eligible Director shall mean a member of the Board who is not an officer or employee of the Company or any of its Affiliates.

(m) Eligible Employee shall mean an employee of the Company or any Affiliate.

(n) Exercise Price shall mean an amount, as determined by the Committee, at which an Option or SAR can be exercised by a Participant, which amount shall not be less than the Fair Market Value of a Share on the date such Award is granted, unless such Option or SAR is granted pursuant to an assumption or substitution of another option or stock appreciation right in a manner that satisfies the requirements of Section 424(a) of the Code.

(o) Fair Market Value shall mean, as of any date, the value of Shares as the Committee may determine in good faith by reference to the price of such stock on any established stock exchange or a national market system on the day of determination if the Shares are so listed on any established stock exchange or a national market system. If the Shares are not listed on any established stock exchange or a national market system, the value of the Shares will be determined by the Committee in good faith.

(p) Incentive Stock Option means an Option that by its terms qualifies and is otherwise intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(q) Nonqualified Stock Option shall mean an Option not intended to qualify as an Incentive Stock Option.

(r) Option shall mean the right to purchase a Share granted pursuant to Section 8, which may take the form of either an Incentive Stock Option or a Nonqualified Stock Option.

(s) Other Stock Award shall mean an Award of Shares or Awards that are valued in whole or in part, or that are otherwise based on, Shares, including but not limited to dividend equivalents or amounts

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which are equivalent to all or a portion of any federal, state, local, domestic, or foreign taxes relating to an Award, which may be payable in Shares, cash, other securities, or any other form of property as the Committee shall determine, subject to the terms and conditions set forth by the Committee and granted pursuant to Section 12.

(t) Participant shall mean an Eligible Employee, Consultant or Eligible Director selected by the Committee to receive Awards under the Plan.

(u) Performance Awards shall mean Awards of Performance Shares or Performance Units.

(v) Performance Goal(s) shall mean the level or levels of Performance Measures established by the Committee pursuant to Section 7.

(w) Performance Measures shall mean any of the following performance criteria, either alone or in any combination, which may be expressed with respect to the Company or one or more operating units or groups, as the Committee may determine: cash flow; cash flow from operations; total earnings; earnings per share, diluted or basic; earnings per share from continuing operations, diluted or basic; earnings before interest and taxes; earnings before interest, taxes, depreciation, and amortization; earnings from operations; net asset turnover; inventory turnover; capital expenditures; net earnings; operating earnings; gross or operating margin; profit margin, debt; working capital; return on equity; return on net assets; return on total assets; return on capital; return on investment; return on sales; net or gross sales; market share; economic value added; cost of capital; change in assets; expense reduction levels; debt reduction; productivity; new product introductions; delivery performance; safety record; stock price; and total stockholder return. Performance Measures may be determined on an absolute basis or relative to internal goals or relative to levels attained in prior years or related to other companies or indices or as ratios expressing relationships between two or more Performance Measures. The Committee shall provide how any Performance Measure shall be adjusted to the extent necessary to prevent dilution or enlargement of any Award as a result of extraordinary events or circumstances, as determined by the Committee, or to exclude the effects of extraordinary, unusual, or non-recurring items; changes in applicable laws, regulations, or accounting principles; currency fluctuations; discontinued operations; non-cash items, such as amortization, depreciation, or reserves; asset impairment; or any recapitalization, restructuring, reorganization, merger, acquisition, divestiture, consolidation, spin-off, split-up, combination, liquidation, dissolution, sale of assets, or other similar corporate transaction; provided, however, that no such adjustment will be made if the effect of such adjustment would cause the Award to fail to qualify as performance based compensation within the meaning of Section 162(m) of the Code.

(x) Performance Period shall mean a period of at least 12 months established by the Committee pursuant to Section 7 at the end of which one or more Performance Goals are to be measured.

(y) Performance Share shall mean an Award denominated in Shares, which is earned during a specified period subject to the terms and conditions as determined by the Committee and granted pursuant to Section 11.

(z) Performance Unit shall mean an Award denominated in units having a value in dollars or such other currency, as determined by the Committee, which is earned during a specified period subject to the terms and conditions as determined by the Committee and granted pursuant to Section 11.

(aa) Plan shall mean the NETGEAR, Inc. Long-Term Incentive Plan, as amended and restated from time to time.

(bb) Restricted Stock shall mean an Award of Shares, subject to such terms and conditions as determined by the Committee and granted pursuant to Section 10.

(cc) Restricted Stock Award shall mean an Award consisting of Restricted Stock or Restricted Stock Units.

(dd) Restricted Stock Unit shall mean an Award consisting of a bookkeeping entry representing an amount equivalent to the Fair Market Value of one Share, payable in cash or Shares, and representing

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an unfunded and unsecured obligation of the Company, subject to such terms and conditions as determined by the Committee and granted pursuant to Section 10.

(ee) Retirement shall mean termination of an Eligible Employee's employment with the Company and its Affiliates for retirement purposes if such termination occurs (1) on or after his or her sixty-fifth birthday; or (2) on or after his or her fifty-fifth birthday with the written consent of the Chief Executive Officer of the Company or, in the case of the Chief Executive Officer's retirement, with the consent of the Committee. In the case of an Eligible Director, Retirement shall be determined by the Committee in its discretion. In no event shall termination of a Consultant's services with the Company and Affiliates be treated as a Retirement under the Plan.

(ff) Shares shall mean shares of common stock, \$0.001 par value, of the Company.

(gg) Stock Appreciation Right or SAR shall mean an Award, which represents the right to receive the difference between the Fair Market Value of a Share on the date of exercise and an Exercise Price, payable in cash or Shares, subject to such terms and conditions as determined by the Committee and granted pursuant to Section 9.

Section 4. *Administration:*

(a) Subject to the express provisions of this Plan, the Committee shall have authority to interpret the Plan, to prescribe, amend, and rescind rules and regulations relating to it, to designate Participants, to determine the terms and conditions of Awards, and to make all other determinations deemed necessary or advisable for the administration of the Plan. In exercising its discretion, the Committee may use such objective or subjective factors as it determines to be appropriate in its sole discretion. The determinations of the Committee pursuant to its authority under the Plan shall be conclusive and binding. The Committee may delegate to one or more officers of the Company the authority, subject to the terms and conditions as the Committee shall determine, to grant Awards to Participants who are not members of the Board or officers within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended.

(b) The determination of any Award grants to Eligible Directors shall be made solely by the Eligible Directors and without the participation of any non-Eligible Directors or Eligible Employees. Awards granted to an Eligible Director shall generally be on par with Awards granted to all other comparable Eligible Directors.

(c) Notwithstanding the foregoing, any material amendment to the Plan shall require stockholder approval, which shall constitute the affirmative approval by a majority of shares present in person or by proxy and entitled to vote on the proposed material amendment. For the purposes of this Section 4(c), a material amendment would include, among other things, (i) any material increase in the number of shares to be issued under the Plan (other than to reflect an event specified in Section 5(f)); (ii) an material increase in benefits to participants, including any material change to (a) permit a repricing (or decrease in exercise price) of outstanding options, (b) reduce the price at which shares or options to purchase shares may be offered, or (c) extend the duration of a Plan; (iii) any material expansion of the class of participants eligible to participate in the Plan; and (iv) any expansion in the types of options or awards provided under the Plan.

Section 5. *Shares Available for Awards:*

(a) Subject to adjustment as provided in Section 5(f), the maximum number of Shares available for issuance under the Plan shall be 2,500,000.

(b) If any Shares are subject to an Award that is forfeited, is settled in cash, expires, or is otherwise settled without the issuance of the full number of Shares underlying the Awards, any such Shares covered by such Award shall again be available for issuance under the Plan. Any Shares that are tendered by the Participant or retained by the Company as full or partial payment to the Company for the purchase of an Award or to satisfy tax withholding obligations in connection with an Award shall be available for Awards under the Plan.

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(c) Unless otherwise determined by the Committee, Awards that are designed to operate in tandem with other Awards shall not be counted against the maximum number of Shares available under Section 5(a) in order to avoid double counting.

(d) Notwithstanding the foregoing, and, subject to adjustment provided in Section 5(f), the maximum number of Shares that may be issued upon the exercise of Incentive Stock Options shall equal the aggregate number of Shares stated in Section 5(a), plus, to the extent allowable under Section 422 of the Code, any Shares that become available for issuance under the Plan under this Section 5(b).

(e) Any Shares issued under the Plan shall consist, in whole or in part, of authorized and unissued Shares, Shares purchased in the open market or otherwise, Shares in treasury, or any combination thereof, as the Committee or, as appropriate, the Board may determine.

(f) In the event of any merger, reorganization, consolidation, recapitalization, stock dividend, stock split, reverse stock split, spin-off, combination, repurchase or exchange of Shares or other securities of the Company, or similar corporate transaction, as determined by the Committee, the Committee shall, in such manner as it may deem equitable and to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, adjust the number and type of Shares available for Awards under the Plan, the number and type of Shares subject to outstanding Awards, and the Exercise Price with respect to any Award; provided, however, that any fractional Share resulting from an adjustment pursuant to this Section 5(f) shall be rounded to the nearest whole number.

Section 6. *Eligibility*: The Committee from time to time may designate which Eligible Employees, Eligible Directors and Consultants shall become Participants under the Plan.

Section 7. *Code Section 162(m) Provisions*:

(a) Notwithstanding any other provision of the Plan, if the Committee determines at the time an Award is made to a Participant that such Participant is or may be for the tax year in which the Company would claim a tax deduction in connection with the Award, a Covered Employee (as that term is defined in Section 162(m) of the Code), the Committee may provide, in writing, that this Section 7 is applicable to such Award under such terms and conditions as the Committee may specify.

(b) Notwithstanding any other provision of the Plan other than Section 5(f), if the Committee provides that this Section 7 is applicable to a particular Award, no Participant shall receive such an Award or Awards having an aggregate Option/ SAR Value, Performance Share Value, and Performance Unit Value (as hereinafter defined) of greater than \$3,000,000 for any fiscal year of the Company, where: (i) the Option/ SAR Value shall mean the Fair Market Value of the number of Shares underlying an Award of Options in any fiscal year of the Company or the Fair Market Value of a number of Shares equal to the number of SARs awarded in any fiscal year of the Company, with such Fair Market Value determined as of the date of grant of each Award, multiplied by 50%; (ii) the Performance Share Value shall mean the Fair Market Value, as of the date of grant of each such Award, of the maximum number of Shares that the Participant could receive from an Award of Performance Shares granted in the fiscal year; provided, however, that such number of Shares shall be divided by the number of full or partial fiscal years of the Company contained in the Performance Period of a particular Award, and provided further, that if any other Awards of Performance Shares are outstanding for such Participant for a given fiscal year, the Performance Share Value shall be increased for each such given fiscal year by the Fair Market Value of Shares that could be received by the Participant under all such other Awards calculated on the date each such Award was granted, divided, for each such Award, by the number of full or partial fiscal years of the Company contained in the Performance Period of each such outstanding Award; or (iii) the Performance Unit Value shall mean the maximum dollar value that the Participant could receive from an Award of Performance Units granted in the fiscal year, provided, however, that such amount shall be divided by the number of full or partial fiscal years of the Company contained in the Performance Period of a particular Award, and provided further, that if any other Awards of Performance Units are outstanding for such Participant for a given fiscal year, the Performance Unit Value shall be increased for each such given fiscal year by the amount that could be received by the Participant under all such other Awards, divided, for each such Award, by the number of full or partial fiscal

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years of the Company contained in the Performance Period of each such outstanding Award; provided, however, that the limitations set forth in this Section 7(b) shall be subject to adjustment under Section 5(f) of the Plan only to the extent that such adjustment does not affect the status of any Award intended under this Section 7 to qualify as performance based compensation under Section 162(m) of the Code. If an Option is granted in tandem with a SAR, such that exercise of the Option or SAR with respect to one Share cancels the tandem option or SAR, respectively, with respect to such Share, the tandem Option and SAR with respect to such Share shall be counted as covering only one Share for purposes of applying the limitation set forth in this Section 7(b).

(c) If an Award is subject to this Section 7, the grant of any Shares or cash shall be subject to the attainment of Performance Goals for the Performance Period. The Committee shall establish the Performance Goals within 90 days following the commencement of the applicable Performance Period, or such earlier time as prescribed by Section 162(m) of the Code or regulations thereunder, and a schedule detailing the total amount which may be available for payout based upon the relative level of attainment of the Performance Goals.

(d) The Committee may, in its discretion, reduce the amount of any Award subject to this Section 7 based on such criteria as it shall determine. However, the Committee may not increase the amounts payable pursuant to any Award subject to this Section 7 or waive the achievement of the applicable Performance Goals, except as the Committee may provide in a particular Award's Award Agreement for certain events, including but not limited to death, disability, or a change in ownership or control of the Company.

(e) Prior to the payment of any Award subject to this Section 7, the Committee shall verify in writing as prescribed by Section 162(m) of the Code or the regulations thereunder that the applicable Performance Goals were achieved.

(f) The Committee shall have the authority to impose such other restrictions on Awards subject to this Section 7 as it may deem necessary or appropriate to ensure that such Awards meet the requirements for performance based compensation under Section 162(m) of the Code.

Section 8. *Options*: Subject to the terms and conditions of the Plan and this Section 8, the Committee may grant to Participants Options on such terms and conditions as the Committee may prescribe in such Option's Award Agreement, including, but not limited to, the Exercise Price; vesting schedule; term of the Option; method of payment of the Exercise Price; treatment upon termination of employment or service of the Participant; and other terms and conditions that the Committee may deem appropriate:

(a) Each Option will be designated in the Award Agreement as either an Incentive Stock Option or a Nonqualified Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Affiliate) exceeds \$100,000, such Options will be treated as Nonqualified Stock Options. For purposes of this Section 8(a), Incentive Stock Options will be taken into account in the order in which they were granted. The Fair Market Value of the Shares will be determined as of the time the Option with respect to such Shares is granted.

(b) The Committee will determine the term of each Option in its sole discretion. Any Option granted under the Plan will not be exercisable after the expiration of ten (10) years from the date of grant or such shorter term as may be provided in the Award Agreement. Moreover, in the case of an Incentive Stock Option granted to a Participant who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option will be five (5) years from the date of grant or such shorter term as may be provided in the Award Agreement.

(c) The per share exercise price for the Shares to be issued pursuant to exercise of an Option will be determined by the Committee, but will be no less than 100% of the Fair Market Value per Share on the date of grant. In addition, in the case of an Incentive Stock Option granted to an Eligible Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Affiliate, the per Share exercise price

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will be no less than 110% of the Fair Market Value per Share on the date of grant. Notwithstanding the foregoing provisions of this Section 8(c), Options may be granted with a per Share exercise price of less than 100% of the Fair Market Value per Share on the date of grant pursuant to a transaction described in, and in a manner consistent with, Section 424(a) of the Code.

(d) At the time an Option is granted, the Committee will fix the period within which the Option may be exercised and will determine any conditions that must be satisfied before the Option may be exercised.

(e) The Committee will determine the acceptable form(s) of consideration for exercising an Option, including the method of payment, to the extent permitted by applicable laws.

Section 9. *Stock Appreciation Right*: Subject to the terms and conditions of the Plan and this Section 9, the Committee may grant to Participants SARs on such terms and conditions as the Committee may prescribe in such SAR s Award Agreement, including, but not limited to, the Exercise Price; vesting schedule; term of the SAR; form of payment; treatment upon termination of employment or service of the Participant; and other terms and conditions that the Committee may deem appropriate:

(a) The Committee, subject to the provisions of the Plan, will have complete discretion to determine the terms and conditions of SARs granted under the Plan, provided, however, that the exercise price will be not less than 100% of the Fair Market Value of a Share on the date of grant.

(b) Each SAR grant will be evidenced by an Award Agreement that will specify the exercise price, the term of the SAR, the conditions of exercise, and such other terms and conditions as the Committee, in its sole discretion, will determine.

(c) A SAR granted under the Plan will expire upon the date determined by the Committee, in its sole discretion, and set forth in the Award Agreement. Notwithstanding the foregoing, any SARs granted under the Plan will not be exercisable after the expiration of ten (10) years from the date of grant or such shorter term as may be provided in the Award Agreement.

(d) Upon exercise of a SAR, a Participant will be entitled to receive payment from the Company in an amount determined by multiplying (i) the difference between the Fair Market Value of a Share on the date of exercise over the exercise price; times (ii) the number of Shares with respect to which the SAR is exercised. At the discretion of the Committee, the payment upon SARs exercise may be in cash, in Shares of equivalent value, or in some combination thereof.

Section 10. *Restricted Stock Award*: Subject to the terms and conditions of the Plan, the Committee may grant to Participants Restricted Stock Awards on such terms and conditions as the Committee may prescribe in such Restricted Stock Award s Award Agreement, including, but not limited to, the vesting schedule; purchase price, if any; deferrals allowed or required; treatment upon termination of employment or service of the Participant; and other terms and conditions that the Committee may deem appropriate. Notwithstanding the foregoing, the period over which any Restricted Stock Award may fully vest will be no less than three (3) years.

Section 11. *Performance Awards*: Subject to the terms and conditions of the Plan, the Committee may grant to Participants Performance Awards on such terms and conditions as the Committee may prescribe in such Performance Award s Award Agreement, including, but not limited to, the performance period (which will be no less than 12 months); performance criteria; treatment upon termination of employment or service of the Participant; and other terms and conditions that the Committee may deem appropriate.

Section 12. *Other Stock Awards*: Subject to the terms and conditions of the Plan, the Committee may grant to Participants Other Stock Award on such terms and conditions as the Committee may prescribe in such Other Stock Award s Award Agreement, including, but not limited to, the vesting schedule, if any; purchase price, if any; deferrals allowed or required; treatment upon termination of employment or service of the Participant; and other terms and conditions that the Committee may deem appropriate.

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Section 13. *Prohibition on Repricing*: The Committee shall not reduce the Exercise Price of any outstanding Option or SAR, whether through amendment, cancellation, replacement, or any other means, without the approval of stockholders. This Section 13 shall not be construed to apply: (i) to the Options or SARs granted pursuant to an assumption or substitution of another option in a manner that satisfies the requirements of Section 424(a) of the Code; or (ii) to an adjustment made pursuant to Section 5(f) of the Plan.

Section 14. *Termination of Employment*: Unless determined otherwise by the Committee with respect to any Award granted under the Plan, the following rules shall apply to Awards following a Participant's termination of employment with the Company and its Affiliates (or termination of services, in the case of a Consultant):

(a) All unvested Awards shall be forfeited on the date of a Participant's termination of employment for reasons other than Retirement, Disability or death.

(b) Upon a Participant's termination of employment by reason of Retirement, Disability or death, all unvested Options, SARs, Restricted Stock Awards and Other Stock Awards shall become fully vested and any Performance Shares or Performance Units shall be payable to the extent determined by the Committee.

(c) Upon termination of employment by reason of Retirement or Disability, Options shall be exercisable until not later than the earlier of three years after the termination date or expiration of their term. Upon the death of a Participant while employed by the Company or an Affiliate or after terminating by reason of Retirement or Disability, Options shall be exercisable by the Participant's Beneficiary not later than the earliest of one year after the date of death, three years after the date of termination due to Retirement or Disability, or the expiration of their term. All SARs that become vested on termination of employment by reason of Retirement, Disability or death shall be exercisable as determined by the Committee, which determination may provide for an automatic exercise date.

(d) Upon termination for any reason other than Retirement, Disability or death, any Options vested prior to such termination may be exercised during the three-month period (or such other period as may be set by the Committee) commencing on the termination date, but not later than the expiration of their term. If a Participant dies during such post-employment period, such Participant's Beneficiary may exercise the Options (to the extent they were vested and exercisable on the date of employment termination), but not later than the earlier of one year after the date of death or the expiration of their term.

Section 15. *Withholding*: The Committee may make such provisions and take such steps as it may deem necessary and appropriate for the withholding of any taxes that the Company is required by law or regulation of any governmental authority, whether federal, state, local, domestic, or foreign, to withhold in connection with the grant, exercise, payment, or removal of restrictions of an Award, including, but not limited to, requiring the Participant to remit to the Company an amount sufficient to satisfy such withholding requirements in cash or Shares or withholding cash or Shares due or to become due with respect to the Award at issue.

Section 16. *Change in Control*: In the event of a Change-in-Control, all Awards shall vest and the value of each Participant's Performance Units and Performance Shares shall immediately be paid in cash or shares to the Participant in accordance with the relevant Award Agreement. SARs that become vested upon a Change-in-Control shall be exercisable as determined by the Committee, which determination may provide for an automatic exercise date. The surviving entity in the event of a Change-in-Control may assume such fully vested Awards without the consent of Participants.

Section 17. *Postponement of Issuance and Delivery*: The issuance and delivery of any Shares under this Plan may be postponed by the Company for such period as may be required to comply with any applicable requirements under any applicable listing requirement of any national securities exchange or any law or regulation applicable to the issuance and delivery of Shares, and the Company shall not be obligated to issue

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or deliver any Shares if the issuance or delivery of such Shares shall constitute a violation of any provision of any law or regulation of any governmental authority or any national securities exchange.

Section 18. *No Right to Awards*: No employee or Consultant shall have any claim to be granted any Award under the Plan, and there is no obligation for uniform treatment of employees, Consultants or Directors under the Plan. The terms and conditions of Awards need not be the same with respect to different Participants.

Section 19. *No Right to Employment or Directorship*: The grant of an Award shall not be construed as giving a Participant the right to be retained in the employ or as a Consultant of the Company or an Affiliate or any right to remain as a member of the Board, as the case may be. The Company may at any time terminate an employee's employment or a Consultant's provision of services free from any liability or any claim under the Plan, unless otherwise provided in the Plan or an Award Agreement.

Section 20. *No Rights as a Stockholder*: A Participant shall have no rights as a stockholder with respect to any Shares covered by an Award until the date of the issuance and delivery of such Shares.

Section 21. *Severability*: If any provision of the Plan or any Award is, becomes, or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without, in the determination of the Committee, materially altering the purpose or intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction or Award, and the remainder of the Plan or such Award shall remain in full force and effect.

Section 22. *No Trust or Fund Created*: Neither the Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any Affiliate and a Participant or any other person. To the extent any person acquires a right to receive payments from the Company or an Affiliate pursuant to an Award, such right shall be no greater than the right of any unsecured general creditor of the Company or any Affiliate.

Section 23. *Headings*: Headings are given to the Sections of the Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provisions thereof.

Section 24. *Nonassignability*: Unless otherwise determined by the Committee, no Participant or Beneficiary may sell, assign, transfer, discount, or pledge as collateral for a loan, or otherwise anticipate any right to payment under the Plan other than by will or by the applicable laws of descent and distribution. Under such procedures as the Committee may establish, Awards may be transferred by gift to members of a Participant's immediate family (i.e., children, grandchildren and spouse) or to one or more trusts for their benefit or to partnerships in which such family members and the Participant are the only partners, provided that (i) any agreement governing such Award expressly so permits or is amended to so permit, (ii) the Participant does not receive any consideration for such transfer, and (iii) the Participant provides such documentation or information concerning any such transfer or transferee as the Committee may reasonably request. Any transferred Awards shall be subject to the same terms and conditions that applied immediately prior to their transfer. In no event shall such transfer rights apply to any Incentive Stock Option.

Section 25. *Indemnification*: In addition to such other rights of indemnification as members of the Board or the Committee or officers or employees of the Company or an Affiliate to whom authority to act for the Board or Committee is delegated may have, such individuals shall be indemnified by the Company against all reasonable expenses, including attorneys' fees, incurred in connection with the defense of any action, suit, or proceeding, or in connection with any appeal thereof, to which any such individual may be a party by reason of any action taken or failure to act under or in connection with the Plan or any right granted hereunder and against all amounts paid by such individual in a settlement thereof that is approved by the Company's legal counsel or paid in satisfaction of a judgment in any such action, suit, or proceeding, except in relation to matters as to which it shall be adjudged that such person is liable for gross negligence, bad faith, or intentional

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misconduct; provided, however, that any such individual shall give the Company an opportunity, at its own expense, to defend the same before such individual undertakes to defend such action, suit, or proceeding.

Section 26. *Foreign Jurisdictions*: The Committee may adopt, amend, or terminate arrangements, not inconsistent with the intent of the Plan, to make available tax or other benefits under the laws of any foreign jurisdiction to Participants subject to such laws or to conform with the laws and regulations of any such foreign jurisdiction.

Section 27. *Termination and Amendment*: Subject to the approval of the Board, where required, the Committee may at any time and from time to time alter, amend, suspend, or terminate the Plan in whole or in part; provided, however, that no action shall be taken by the Board or the Committee without the approval of stockholders that would:

- (a) Increase the maximum number of Shares that may be issued under the Plan, except as provided in Section 5(f);
- (b) Increase the limits applicable to Awards under the plan, except as provided in Sections 5(f) and 7(b);
- (c) Allow for an Exercise Price below the Fair Market Value of Shares on the date of grant of an Option or SAR, except as provided in Section 3(n);
- (d) Amend Section 13 to permit the repricing of outstanding Options or SARs; or
- (e) Require approval of the Company's stockholders under any applicable law, regulation, or rule.

Notwithstanding the foregoing, no termination or amendment of the Plan may, without the consent of the applicable Participant, terminate or adversely affect any material right or obligation under an Award previously granted under the Plan; provided, however, that the Committee may alter, amend, suspend, or terminate the Plan or an Award in whole or in part, without the consent of the Participant, to the extent necessary to conform the provisions of the Plan or an Award with Section 409A of the Code or regulations thereunder regardless of whether such alteration, amendment, suspension, or termination adversely affects the rights or obligations under the Award.

Section 28. *Applicable Law*: This Plan shall be governed by and construed in accordance with the laws of the State of California, without regard to its principles of conflict of laws.

Section 29. *No Guarantee of Favorable Tax Treatment*: Although the Committee intends to administer the Plan so that Awards will be exempt from, or will comply with, the requirements of Section 409A of the Code, the Company does not warrant that any Award under the Plan will qualify for favorable tax treatment under Section 409A of the Code or any other provision of federal, state, local, or foreign law. The Company shall not be liable to any Participant for any tax the Participant might owe as a result of the grant, holding, vesting, exercise, or payment of any Award under the Plan.

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PROXY

**THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS
NETGEAR, INC.**

Proxy for Annual Meeting of Stockholders

The undersigned stockholder of NETGEAR, Inc., a Delaware corporation, hereby acknowledges receipt of the 2005 Annual Report to Stockholders and the Notice of Annual Meeting of Stockholders and Proxy Statement for the Annual Meeting of Stockholders of NETGEAR, Inc. to be held on May 23, 2006, at 10:00 a.m., local time, at the company's principal executive offices located at 4500 Great America Parkway, Santa Clara, California 95054, and hereby appoints Patrick C.S. Lo and Jonathan R. Mather, and each of them, proxies and attorneys-in-fact, with full power to each of substitution, on behalf and in the name of the undersigned, to represent the undersigned at such meeting, and at any adjournment or adjournments thereof, and to vote all the shares of Common Stock that the undersigned would be entitled to vote if then and there personally present on the matters set forth below:

(Continued, and to be marked, dated and signed, on the other side)

Address Change/Comments (Mark the corresponding box on the reverse side)

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 for Address
 Change or
 Comments
**PLEASE SEE
 REVERSE SIDE**

IF NO DIRECTION IS MADE, THIS PROXY WILL BE VOTED FOR ALL NOMINEES FOR DIRECTOR AND FOR PROPOSALS 2 and 3 AND IN THE DISCRETION OF THE PROXIES AND ATTORNEYS-IN-FACT, UPON SUCH OTHER MATTERS AS MAY PROPERLY COME BEFORE THE MEETING, AND ANY ADJOURNMENT OR ADJOURNMENTS THEREOF.

- | | | | |
|----|-----------------------|--|--|
| 1. | ELECTION OF DIRECTORS | FOR all nominees listed below (except as marked below) | WITHHOLD AUTHORITY to vote for all nominees listed below |
| 01 | Patrick C.S. Lo | <input type="radio"/> | <input type="radio"/> |
| 02 | Ralph E. Faison | | |
| 03 | A. Timothy Godwin | | |
| 04 | Jef Graham | | |
| 05 | Linwood A. Lacy, Jr. | | |
| 06 | Gregory Rossmann | | |
- To withhold authority to vote for any nominee, strike a line through the name of such nominee.
- | | | | | |
|----|---|-----------------------|-----------------------|-----------------------|
| 2. | PROPOSAL TO APPROVE THE ADOPTION OF THE NETGEAR, INC. 2006 LONG TERM INCENTIVE PLAN | FOR | AGAINST | ABSTAIN |
| | | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
- | | | | | |
|----|--|-----------------------|-----------------------|-----------------------|
| 3. | PROPOSAL TO RATIFY THE APPOINTMENT OF PRICEWATERHOUSECOOPERS LLP | FOR | AGAINST | ABSTAIN |
| | | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Either of such proxies and attorneys-in-fact, or their substitutes, as shall be present and shall act at said meeting or any adjournment or adjournments thereof shall have and may exercise all the powers of said proxies and attorneys-in-fact hereunder.

This proxy when properly executed will be voted in the manner directed herein by the undersigned stockholder(s).

Signature

Signature

Date

(This proxy should be marked, dated, signed by the stockholder(s) exactly as the name(s) appear on the stock certificate(s) and returned promptly in the enclosed envelope. Persons signing in a fiduciary capacity should so indicate.)

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this **Agreement**) is entered into as of this 13th day of September, 2008 by and among RENAISSANCE ACQUISITION CORP., a Delaware corporation (**Parent**), FCI MERGER SUB I, INC., a Delaware corporation and wholly owned subsidiary of Parent (**Merger Sub I**), FCI MERGER SUB II, LLC, a Delaware limited liability company and wholly owned subsidiary of Parent (**Merger Sub II**), and, together with the Merger Sub I, collectively, the **Merger Subs**), FIRST COMMUNICATIONS, INC., a Delaware corporation (the **Company**) and The Gores Group LLC, solely in its capacity as the exclusive representative of the stockholders of the Company (**Stockholders Representative**).

RECITALS:

A. The parties hereto desire to effect a business combination of Parent and the Company by means of (i) the merger (the **First Merger**) of Merger Sub I with and into the Company, with the Company continuing as the surviving corporation of the First Merger (the **First Merger Surviving Corporation**), and (ii) immediately following the effectiveness of the First Merger, and as part of the same plan of merger and reorganization, the merger (the **Second Merger** and, together with the First Merger, collectively, the **Mergers**) of the First Merger Surviving Corporation with and into Merger Sub II, with Merger Sub II continuing as the surviving entity of the Second Merger (the **Second Merger Surviving Entity**).

B. The boards of directors of each of the parties hereto (or in the case of Merger Sub II, Parent, as its sole managing member) have determined that this Agreement and the Mergers and such other transactions contemplated hereby (collectively, the **Transactions**) are fair to and in the best interests of their respective stockholders or members, as applicable, and have declared it advisable and approved this Agreement and the Transactions on the terms and conditions set forth in this Agreement.

C. The holders of a majority of the outstanding shares of the Company's Series A Preferred Stock have approved this Agreement and the Transactions on the terms and conditions set forth in this Agreement. The holders of T1 Warrants have delivered irrevocable notices of exercise of their warrant contingent upon the consummation of the Transactions and all the holders of the T2 Warrants and certain of the holders of the T3 Warrants have entered into an exchange agreement for the exercise of their warrants in the form attached hereto as Exhibit A (the **Exchange Agreement**).

D. Simultaneously with the execution and delivery of this Agreement, the Company shall obtain a voting agreement (the **Voting Agreement**) in the form attached hereto as Exhibit B executed by the holders of at least 75% of Company Common Stock whereby each holder irrevocably agrees to vote all of its voting shares of Company Common Stock (as defined herein) held by it in favor of delisting the Company Common Stock from the Alternative Investment Market on the London Stock Exchange (the **AIM**).

E. Immediately following and within forty-eight (48) hours of the execution and delivery of this Agreement, the Company shall obtain the affirmative written consent of the holders of at least a majority of Company Common Stock (as defined herein) to approve this Agreement and the First Merger.

F. The Company, First Global Telecom, Inc., GCI Globalcom Holdings, Inc. (**GCI**) and M. Gavin McCarty, as stockholders' representative, have entered into an Agreement and Plan of Merger, dated July 18, 2008 (the **GCI Merger Agreement**), pursuant to which the Company has agreed to acquire all of the outstanding capital stock of GCI (the **GCI Acquisition**).

G. The Company shall effect the consummation of the GCI Acquisition prior to the Mergers.

H. For United States federal income tax purposes, the parties hereto intend that the Mergers qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the **Code**) and the regulations promulgated thereunder.

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NOW, THEREFORE, in exchange for the mutual promises contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

I. DEFINITIONS

Acquired Companies means the Company and the Company Subsidiaries.

Acquisition means the purchase by the Company or following the Second Merger, the Second Merger Surviving Entity, outside of the ordinary course of business, of another company or any of its assets, securities or business by means of a merger, consolidation, joint venture, exchange offer or purchase or sale of stock or assets.

Additional Warrant Stock shall have the meaning set forth in Section 3.1(c)(ii)(2).

Affiliate means, with respect to any specified Person: (1) any other Person which, directly or indirectly, owns or controls, is under common ownership or control with, or is owned or controlled by, such specified Person; and (2) any immediate family member of the specified Person. For these purposes, an immediate family member shall mean a natural Person's spouse, parents or children.

Aggregate Consideration means the total cash amount and other consideration received (which shall be deemed to include amounts paid into escrow) by the target and/or its shareholders upon the consummation of an Acquisition (including payments made in installments), inclusive of cash, securities, notes, consulting agreements and agreements not to compete, plus the total value of liabilities assumed and to the extent such Aggregate Consideration is paid in stock, then the Fair Market Value of such stock.

Agreement has the meaning set forth in the preamble.

AIM has the meaning set forth in the recitals.

Businesses means the business and operations carried out by the Company and the Company Subsidiaries.

Business Day means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required to remain closed.

Cash Merger Consideration shall have the meaning set forth in Section 3.1(a)(ii).

Certificates shall have the meaning set forth in Section 3.4(b).

Closing shall have the meaning set forth in Section 2.2.

Closing Date shall have the meaning set forth in Section 2.2.

Closing Form 8-K shall have the meaning set forth in Section 6.1(g)(ii).

Closing Press Release shall have the meaning set forth in Section 6.1(g)(ii).

Closing Price for each day shall be the last reported sales price regular way on that day or, in case no such reported sale takes place on such day, the reported closing bid price regular way, in either case as reported on a national securities exchange or other public exchange on which the stock is admitted to trading or listed, or if not so listed or admitted to trading, the last quoted bid price or, if not quoted, the average of the high bid and the low asked prices in the over-the-counter market or such other system then in use.

Closing Stock Payment shall have the meaning set forth in Section 3.1(a)(iii)(1)(x).

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Code has the meaning set forth in the recitals.

Common Stock Merger Consideration shall have the meaning set forth in Section 3.1(a)(iii)(1)(2).

Company has the meaning set forth in the preamble.

Company Audit shall have the meaning set forth in Section 4.9.

Company Common Stock shall have the meaning set forth in Section 3.1.

Company Financial Statements shall have the meaning set forth in Section 4.9.

Company Group shall have the meaning set forth in Section 6.1(i)(ii).

Company Preferred Stock shall have the meaning set forth in Section 3.1.

Company Stock shall have the meaning set forth in Section 3.1.

Company Subsidiaries means all Subsidiaries of the Company.

Company's Knowledge means the actual knowledge of Ray Hexamer, Joe Morris, Jessica Newman, Rick Buyens, Ryan Wiegner and Frank Lomanno, in each case, after a reasonable investigation and inquiry, only with respect to the period of time each such person was employed by the Company.

Company Third Party Acquisition means (I) any sale of 15% or more of the consolidated assets of the Company and its subsidiaries, or 15% or more of the equity or voting securities of the Company or any subsidiary whose assets, individually or in the aggregate, constitute 15% or more of the consolidated assets of the Company (each, a **Material Subsidiary**), (II) any tender offer or exchange offer that, if consummated, would result in a third party beneficially owning 15% or more of the equity or voting securities of the Company or of any Material Subsidiary, (III) a merger, consolidation, business combination, share exchange, sale of substantially all the assets, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving the Company or any Material Subsidiary, in each such case in this clause (III) that would result in either (x) a third party beneficially owning 15% or more of any class of equity or voting securities of the Company or any Material Subsidiary, or 15% or more of the consolidated assets of the Company or (y) the stockholders of the Company receiving securities traded in the U.S. on any nationally-recognized exchange or over-the-counter market; **Company Third Party Acquisition** shall *not* include the GCI Acquisition or any other transaction pursuant to which the Company or a Material Subsidiary is the acquiring party, provided that, except in the case of the GCI Acquisition, such purchase shall not materially impede the consummation of the Acquisition.

Contract means with respect to any Person, any agreement, indenture, debt instrument, contract, guarantee, loan, note, mortgage, license, lease, purchase order, delivery order, commitment or other arrangement, understanding or undertaking, whether written or oral, including all amendments, modifications and options thereunder or relating thereto, to which such Person is a party, by which it is bound, or to which any of its assets or properties is subject.

Credit Agreement means that certain Amended and Restated Loan and Security Agreement, dated as of March 7, 2008 among the Company and JPMorgan Chase Bank, National Association.

Debt means, as at any date of determination thereof (without duplication), all obligations or liabilities (other than intercompany obligations between the Acquired Companies) of the Acquired Companies in respect of: (a) any

borrowed money or funded indebtedness or issued in substitution for or exchange for borrowed money or funded indebtedness (including obligations with respect to principal, accrued interest, and any applicable prepayment charges or premiums) including, without limitation, the aggregate principal balance of, and all accrued and unpaid interest on, the loans outstanding under the Credit Agreement as of the Closing Date, together with all other indebtedness, fees, liabilities, obligations, covenants and duties of the Company of every kind, nature and

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description under or in respect of the Credit Agreement; (b) any indebtedness evidenced by any note, bond, debenture or other debt security; (c) capital lease obligations; (d) any indebtedness guaranteed by the Acquired Companies (excluding intercompany debt and letters of credit and guarantees by one Acquired Company of performance obligations of another Acquired Company); (e) any obligations with respect to any interest rate hedging or swap agreements; (f) any obligations for the deferred purchase price of property or services (including, without limitation, deferred purchase price liabilities from past acquisitions); (g) any commitment by which an Acquired Company assures a creditor against loss (including contingent reimbursement obligations with respect to letters of credit); (h) any liabilities of an Acquired Company under conditional sale or other title retention agreements; (i) any liabilities of an Acquired Company under or in connection with letters of credit (whether or not drawn), bankers acceptances or similar items; (j) any liabilities with respect to vendor advances or any other advances made to an Acquired Company; (k) any indebtedness or liabilities secured by a Lien on an Acquired Company's assets; (l) any amounts owed by an Acquired Company to any Person or entity under any noncompetition, consulting or deferred compensation arrangements; and (m) any success fees or bonuses, change in control or severance payments arising from or otherwise triggered by the Transactions, and any amounts payable to offset any excise Taxes imposed under Section 4999 of the Code and any related income Taxes.

Delaware LLC Act shall have the meaning set forth in Section 2.3(b).

DGCL shall have the meaning set forth in Section 2.3(b).

Disclosing Party shall have the meaning set forth in Section 6.1(c).

Dissenting Shares shall have the meaning set forth in Section 3.3.

EBITDA means for the applicable fiscal quarter, using results taken from the unaudited reviewed financial statements of the Second Merger Surviving Entity, the following calculation: income before provision for income taxes, plus interest expense, less interest income, plus depreciation and amortization, plus amortization of intangible assets, plus any expenses arising solely from the First Merger and the Second Merger charged to income in such fiscal quarter and any subsequent acquisition or transaction costs expensed in connection with FASB Rule No. 141R charged to income in such fiscal quarter.

EBITDA Condition shall have the meaning set forth in Section 3.1(a)(iii)(2).

EBITDA Escrow Release Date shall have the meaning set forth in Section 3.5.

EBITDA Stock shall have the meaning set forth in Section 3.1(a)(iii)(1)(y).

EBITDA Target shall mean \$50 million plus the sum of any Target Increases.

Environmental Laws shall mean all Laws, including all common law, orders, judgments, and all other provisions having the force or effect of law, concerning occupational health or safety, pollution or the protection of the environment, including any laws governing the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control or cleanup of, or exposure to, any Hazardous Materials.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

ERISA Affiliate means any corporation or trade or business (whether or not incorporated) which is treated with any of the Acquired Companies as a single employer within the meaning of Section 414 of the Code.

Escrow Account shall have the meaning set forth in Section 3.5.

Escrow Agent shall have the meaning set forth in Section 3.5.

Escrow Agreement shall have the meaning set forth in Section 3.5.

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Escrowed Stock shall have the meaning set forth in Section 3.5.

Exchange Act means the Securities Exchange Act of 1934, as amended.

Exchange Agent shall have the meaning set forth in Section 3.4(a).

Exchange Agreement has the meaning set forth in the recitals.

Exchange Fund shall have the meaning set forth in Section 3.4(a).

Exclusivity Period shall have the meaning set forth in Section 6.1(i).

Fair Market Value" means at any date, the average of the daily Closing Prices (as defined below) for such share of stock for the five (5) consecutive Trading Days immediately preceding the date of the closing of the Acquisition or if the stock is not publicly held or so listed or traded, the fair market value per share shall be as determined in good faith by the board of directors of the Second Merger Surviving Entity, whose determination shall be conclusive absent manifest abuse or error, and described in a resolution of the board of directors of the Second Merger Surviving Entity certified by the secretary of the Second Merger Surviving Entity.

FCC means the Federal Communications Commission.

FCC Consents means the applications, notices, reports, registrations and other filings and/or consents required to be filed with or obtained from the FCC in connection with the consummation of the Transactions.

First Merger shall have the meaning set forth in the recitals.

First Merger Certificate of Merger shall have the meaning set forth in Section 2.1(a).

First Merger Effective Time shall have the meaning set forth in Section 2.1(a).

First Merger Surviving Corporation shall have the meaning set forth in the recitals.

First Merger Surviving Corporation Common Stock has the meaning set forth in Section 3.1(a)(i).

GAAP means generally accepted accounting principles as applied in the United States of America.

GCI has the meaning set forth in the recitals.

GCI Acquisition shall have the meaning set forth in the recitals.

GCI Merger Agreement shall have the meaning set forth in the recitals.

GCI Subsidiaries means GCI's two wholly-owned subsidiaries, Globalcom, Inc., an Illinois corporation, and Globalcom Equipment, Inc., a Delaware corporation.

Governmental Authority means any federal, state, local or foreign government or any political subdivision thereof or any department, commission, board, bureau, agency, court, panel or other instrumentality of any kind of any of the

foregoing.

Governmental Prohibition shall have the meaning set forth in Section 7.5.

Hazardous Material means any chemical, substance, waste, material, pollutant, or contaminant, the exposure to, presence of, release of, use of, or storage, disposal, treatment or transportation of which may give rise to liability under, is regulated under, or is defined by any Law, including any Environmental Law, including petroleum and petroleum products.

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Intellectual Property means any of the following in any jurisdiction throughout the world: (a) patents, patent applications, patent disclosures and inventions, including any provisionals, continuations, divisionals, continuations-in-part, renewals and reissues for any of the foregoing; (b) Internet domain names, trademarks, service marks, trade dress, trade names, logos, slogans and corporate names and registrations and applications for registration thereof together with all of the goodwill associated therewith; (c) copyrights (registered or unregistered) and copyrightable works and registrations and applications for registration thereof; (d) mask works and registrations and applications for registration thereof; (e) software, data, data bases and documentation thereof; (f) trade secrets and other confidential information (including ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial and marketing plans and customer and supplier lists and information); and (g) copies and tangible embodiments thereof (in whatever form or medium).

Interim Company Financial Statements shall have the meaning set forth in Section 4.9.

Law means all applicable laws of any country or any political subdivision thereof, including, without limitation, all foreign, federal, state and local statutes, regulations, ordinances, codes, orders or decrees or any other laws, common law theories or reported decisions of any court thereof.

Leased Real Property shall have the meaning set forth in Section 4.5(a).

Leases shall have the meaning set forth in Section 4.5(a).

Lien means any charge, claim, right of first refusal, restriction on transfer, mortgage, security deed, deed to secure debt, deed of trust, title defect, mechanic's lien, judgment lien or other similar lien (except for any lien for Taxes not yet due and payable), pledge, assessment, security interest or other encumbrance.

Material Adverse Effect means (x) as to any Person, a material adverse effect on the business, assets, results of operations or financial condition of such Person, and (y) as to any Acquired Company, a material adverse effect on the business, assets, results of operations or financial condition of the Acquired Companies taken as a whole; provided, however, that none of the following shall be deemed, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or would be, a Material Adverse Effect with respect to any Person (including any Acquired Company): any facts, changes, developments, events, occurrences, actions, omissions or effects (i) generally affecting (A) the economy, or financial or capital markets, in the United States or elsewhere in the world, to the extent that they do not disproportionately affect such Person in relation to other companies in the industry in which such Person primarily operates or (B) the industry in which such Person operates to the extent that they do not disproportionately affect such Person in relation to other companies in the industry in which such Person primarily operates, or (ii) arising out of, resulting from or attributable to (1) changes (after the date of this Agreement) in Law or in generally accepted accounting principles or in accounting standards or (2) any decline in the market price, or change in trading volume, of the capital stock of such Person or any failure to meet publicly announced revenue or earnings projections or internal projections (it being understood that, without limiting the applicability of the provisions contained in clause (i) or (ii) above, the cause or causes of any such decline, change or failure may be deemed to constitute, in and of itself and themselves, a Material Adverse Effect and may be taken into consideration when determining whether a Material Adverse Effect has occurred).

Material Contract means the agreements of the following types to which any Person is a party (which is effective and binding on such Person) or by which any material assets of any Person is bound or are subject:

- (a) Contracts or group of related Contracts which involve commitments to make capital expenditures or which provide for the purchase of assets, goods or services by such Person from any one Person under which the undelivered balance of such goods or services has a purchase price in excess of \$300,000 in any consecutive twelve (12) month period after the date hereof or which are not terminable by such Person without a penalty;

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- (b) Contracts or group of related Contracts which provide for the sale of goods or services by such Person and under which the undelivered balance of such goods or services has a sale price in excess of \$150,000 in any consecutive twelve (12) month period after the date hereof or which are not terminable by such Person without penalty;
- (c) joint venture agreements, partnership agreements, and limited liability company agreements and each similar type of Contract (however named) involving a sharing of profits, losses, costs or liabilities with any other Person;
- (d) Contracts that involve the material acquisition or disposition, directly or indirectly, by merger, consolidation or acquisition of stock or assets, between such Person and any another Person;
- (e) employment, non-competition, non-solicitation and profit-sharing plan agreements with any officer or director of such Person;
- (f) Contracts which presently limit in any material respect the freedom of any Acquired Company to engage in any business anywhere in the world or compete with any Person;
- (g) Contracts pursuant to which such Person is a lessor or a lessee of any personal or real property (including the Leases), or holds or operates any tangible personal property owned by another Person, except for any such Leases under which the aggregate annual rent or lease payments do not exceed \$50,000 or which are terminable by such Person without penalty;
- (h) Contracts not included in subsection (e) providing for severance (including contractual notice of termination or pay in lieu thereof), retention, deferred compensation, change in control or other similar payments;
- (i) Contracts with any stockholder, officer or director of such Person, or any Affiliate of any of the foregoing, or in the case of any individual, any immediate family member of any of the foregoing;
- (j) Contracts with material dealers, distributors or sales representatives;
- (k) Contracts under which such Person has made material advances or loans to any other Person, other than expense re-imbursement done in the Ordinary Course of Business;
- (l) Contracts regarding interconnection and carrier agreements with telecommunication and data service providers;
- (m) Contracts relating to material Debt; or
- (n) any settlement or similar agreements relating to any material litigation to which an Acquired Company was a party.

Merger Consideration means the Cash Merger Consideration and the Common Stock Merger Consideration.

Mergers shall have the meaning set forth in the recitals.

Merger Sub I has the meaning set forth in the preamble.

Merger Sub II has the meaning set forth in the preamble.

Merger Subs has the meaning set forth in the preamble.

Most Recent Company Balance Sheet shall have the meaning set forth in Section 4.9.

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New Warrant shall have the meaning set forth in Section 3.1(c)(ii)(1).

Ordinary Course of Business means the ordinary course of business of an applicable Person consistent with past custom and practice (including with respect to quantity and frequency).

Other Filings shall have the meaning set forth in Section 6.1(e)(i).

Outside Date shall have the meaning set forth in Section 11.1(b).

Owned Intellectual Property shall have the meaning set forth in Section 4.12.

Owned Real Property shall have the meaning set forth in Section 4.5(a).

Parent has the meaning set forth in the preamble.

Parent Common Stock means the common stock, par value \$0.0001 per share, of Parent.

Parent Group shall have the meaning set forth in Section 6.1(i)(i).

Parent Knowledge means the actual knowledge of Barry Florescue, Mark Seigel and Richard Bloom, in each case after a reasonable investigation and inquiry.

Parent Preferred Stock shall have the meaning set forth in Section 5.8(a).

Parent SEC Documents shall have the meaning set forth in Section 5.7.

Parent Stock Options shall have the meaning set forth in Section 5.8(b).

Parent Stockholder Approval shall have the meaning set forth in Section 6.1(e)(i).

Parent Stockholders Meeting shall have the meaning set forth in Section 4.27.

Parent Third Party Acquisition means: (I) any purchase of 15% or more of the consolidated assets of a third party and its subsidiaries, or 15% or more of the equity or voting securities of a third party or a Material Subsidiary (as defined in Company Third Party Acquisition definition) thereof, (II) any tender offer or exchange offer that, if consummated, would result in Parent beneficially owning 15% or more of a third party's equity or voting securities or any Material Subsidiary thereof, (III) a merger, consolidation, business combination, share exchange, purchase of substantially all the assets, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving the Parent and any third party, in each such case in this clause (III) that would result in Parent beneficially owning 15% or more of any class of equity or voting securities of such third party or any Material Subsidiary thereof, or 15% or more of the consolidated assets of such third party.

Parent Warrants shall have the meaning set forth in Section 5.8(b).

Permit means a license, permit or other authorization or registration required by any Governmental Authority or applicable Law to carry out a Business, other than those licenses, permits or other authorizations or registrations the absence of which would not cause a Material Adverse Effect with respect to such Business.

Permitted Liens shall mean (a) liens for Taxes not yet due and payable or that are being contested in good faith through appropriate proceedings and for which adequate reserves are reflected in the Company Financial Statements in accordance with GAAP, (b) with respect to any Acquired Company asset, encumbrances, imperfections of title and title defects that will not materially interfere with the use of such asset or materially impair the value thereof, including mechanics liens, materialmen's liens and other inchoate liens, provided that the obligations in respect of which such encumbrances were created are not delinquent, (c) all rights-of-way, licenses, easements, encroachments, covenants, reservations, restrictions, conditions, Leases, tenancies and other

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encumbrances of record that do not materially interfere with the existing use of the Businesses or materially impair the value thereof, provided that the obligations in respect of which such encumbrances are not delinquent, (d) unrecorded easements, Leases, tenancies, license agreements, covenants, rights-of-way and other encumbrances and similar restrictions on the Real Property that do not materially interfere with the existing use thereof, provided that the obligations in respect of which such encumbrances were created are not delinquent, (e) deposits or pledges made in connection with, or to secure payment of, worker's compensation, unemployment insurance, old age pension programs mandated under applicable laws or other social security regulations, and (f) all zoning, building, subdivision and other statutory or regulatory conditions and restrictions relating to the use of real property.

Person means any individual, corporation, proprietorship, joint venture, firm, partnership, trust, limited liability company, association or other entity.

Plans shall have the meaning set forth in Section 4.15(a).

Pre-Closing Tax Period means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

Proxy Statement shall have the meaning set forth in Section 4.27.

Real Property shall have the meaning set forth in Section 4.5(a).

Receiving Party shall have the meaning set forth in Section 6.1(c).

Registration Statement shall have the meaning set forth in Section 4.27.

Replacement Company Financial Statements shall have the meaning set forth in Section 6.2(e).

Company Audit shall have the meaning set forth in Section 4.9.

Schedule Update shall have the meaning set forth in Section 6.2(e).

SEC means the U.S. Securities and Exchange Commission.

Second Merger shall have the meaning set forth in the recitals.

Second Merger Certificate of Merger shall have the meaning set forth in Section 2.1(b).

Second Merger Effective Time shall have the meaning set forth in Section 2.1(b).

Second Merger Surviving Entity shall have the meaning set forth in the recitals.

Securities Act means the Securities Act of 1933, as amended.

Signing Form 8-K shall have the meaning set forth in Section 6.1(g)(i).

Signing Press Release shall have the meaning set forth in Section 6.1(g)(i).

State PUC means any state or local public service or public utilities commission having regulatory authority over the Acquired Companies, in any given jurisdiction.

State PUC Consents means the applications, notices, reports, registrations and other filings and/or consents to be filed with or obtained from any State PUC in connection with the consummation of the Transactions or the Credit Agreement.

Straddle Period means any taxable period that includes but does not end on the Closing Date.

Stockholders Representative shall have the meaning set forth in the preamble.

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Subsidiary means, with respect to any Person, any other Person of which equity securities or other ownership interests having ordinary power to elect a majority of the board of directors or other persons performing similar functions are at any time directly or indirectly owned or controlled by such Person.

Target Increase with respect to any Acquisition is equal to $1/7$ of the Aggregate Consideration paid by the Company or the Second Merger Surviving Entity, as applicable, for any Acquisition consummated between the date hereof and June 30, 2011, other than the GCI Acquisition, provided, however, for determining whether the EBITDA Condition has been satisfied for the fiscal quarter during which such Acquisition is consummated the Target Increase shall be $1/7$ of such Aggregate Consideration multiplied by a fraction (A) the numerator of which shall be the number of days beginning on the date of the consummation of such Acquisition and ending on the last day of such fiscal quarter and (B) the denominator of which shall be the total number of days in such fiscal quarter. By way of example, if the Company purchases a target company for \$70 million, the Target Increase with respect to such Acquisition shall be \$10 million (\$70 million divided by 7). If such Acquisition is consummated on the 30th day of a 90-day fiscal quarter, the Target Increase for such quarter will be \$6.7 million (\$10 million multiplied by $2/3$) and for all subsequent quarters will be \$10 million.

T1 Warrant shall mean the warrants to purchase a total of 5,333,333 shares of the Company Common Stock at an exercise price of \$0.05 per share and with an expiration date of five years from the date of issuance.

T2 Warrant shall mean the warrants to purchase a total of 8,000,000 shares of the Company Common Stock at an exercise price of \$7.50 per share and with an expiration date of three years following the redemption of all the Series A Preferred Stock held by the holder of such warrant.

T3 Warrant shall mean the warrants to purchase a total of 2,000,000 shares of the Company Common Stock at an exercise price of \$7.50 per share and with an expiration date of three years following the redemption of all the Series A Preferred Stock.

Tax means any taxes, assessments, fees and other governmental charges imposed by any Governmental Authority, including income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, workers' compensation, real property, personal property, sales, use, transfer, registration, value added, alternative, or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

Tax Returns means any report, return, declaration or other information required to be supplied to any Governmental Authority in connection with Taxes (including any attached schedules thereto and any amendments thereof), including, without limitation, any information return, claim for refund, amended return and declaration of estimated Tax.

Taxing Authority means any domestic, foreign, federal, state, county or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising Tax regulatory authority.

Trading Day shall be any day on which the principal national securities exchange on which the stock is admitted to trading or listed is open or, if the stock is not so admitted to trading or so listed, any day except Saturday, Sunday, a legal holiday or any day on which banking institutions in the City of New York are obligated or authorized to close.

Transactions shall have the meaning set forth in the recitals.

Treasury Regulations means the regulations promulgated under the Code from time to time, as amended.

Trust Fund shall have the meaning set forth in Section 5.8.

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Voting Agreement has the meaning set forth in the recitals.

Warrants shall have the meaning set forth in Section 3.1(a)(iii)(3).

Warrant Agreement shall have the meaning set forth in Section 3.1(a)(iii)(3).

Warrant Condition shall have the meaning set forth in Section 3.1(a)(iii)(3).

Warrant Escrow Release Date shall have the meaning set forth in Section 3.5.

Warrant Stock shall have the meaning set forth in Section 3.1(a)(iii).

II. THE MERGERS

2.1. Effective Times of the Mergers.

(a) On the terms and subject to the conditions of this Agreement, the parties hereto shall cause the First Merger to be consummated at the Closing by the filing of a certificate of merger (the **First Merger Certificate of Merger**) in a form mutually acceptable to Parent and the Company with the Secretary of State of Delaware as required by, and executed in accordance with, the relevant provisions of the DGCL. The

First Merger shall become effective at the time of the filing of the First Certificate of Merger with the Secretary of State of the State of Delaware or at such time thereafter which the parties hereto shall have agreed upon as is provided in the Certificate of Merger (the **First Merger Effective Time**).

(b) Immediately following the First Merger Effective Time, Parent shall cause the Board of Directors of the First Merger Surviving Corporation to adopt this Agreement and approve the Second Merger (and shall adopt this Agreement and approve the Second Merger as sole shareholder of the Second Merger Surviving Entity). Immediately following such approval, the parties hereto shall cause the Second Merger to be effected by the filing of a certificate of merger (the **Second Merger Certificate of Merger**) in a form that is mutually acceptable to Parent and the Company with the Secretary of State of Delaware as required by, and executed in accordance with, the relevant provisions of the Delaware LLC Act. The Second Merger shall become effective at the time of the filing of the Second Certificate of Merger with the Secretary of State of the State of Delaware or at such time thereafter which the parties hereto shall have agreed upon as is provided in the Second Certificate of Merger (the **Second Merger Effective Time**).

2.2. **Closing.** Upon the terms and subject to the conditions of this Agreement, the closing of the Transactions (the **Closing**) will take place remotely via the exchange of documents and signatures on the date that is two (2) Business Days following the satisfaction or waiver of all conditions to the Closing set forth in Articles VII, VIII and IX (such date, the **Closing Date**).

2.3. Effects of the Mergers.

(a) Upon the terms and subject to the conditions of this Agreement, at the First Merger Effective Time, Merger Sub I shall be merged with and into the Company and the separate existence of Merger Sub I shall cease and the Company shall continue as the First Merger Surviving Corporation. Upon the terms and subject to the conditions of this Agreement, at the Second Merger Effective Time and as part of the same plan of merger and reorganization, the First Merger Surviving Corporation shall be merged with and into Merger Sub II, the separate corporate existence of the First Merger Surviving Corporation shall cease and Merger Sub II shall continue as the Second Merger Surviving Entity under a name that shall be mutually agreeable to Parent and the Company.

(b) The First Merger shall have the effects set forth in this Agreement, the First Merger Certificate of Merger and the applicable provisions of the Delaware General Corporation Law (**DGCL**). The Second Merger shall have the effects set forth in this Agreement, the Second Merger Certificate of Merger and the applicable provisions of the Delaware Limited Liability Company Act (**Delaware LLC Act**).

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2.4. Governing Documents. The certificate of incorporation of the Company as in effect immediately prior to the First Merger Effective Time shall be the certificate of incorporation of the First Merger Surviving Corporation. The initial certificate of formation and limited liability company operating agreement of Merger Sub II shall be the certificate of formation and limited liability company operating agreement of the Second Merger Surviving Entity.

2.5. Directors and Officers. The directors and officers of the Company immediately prior to the Effective Time shall be the directors and officers of the First Merger Surviving Corporation as of the First Merger Effective Time. Merger Sub II shall take all actions necessary so that the directors and officers of the First Merger Surviving Corporation immediately prior to the Second Merger Effective Time shall be the initial directors and officers of the Second Merger Surviving Entity.

III. CONVERSION OF SECURITIES

3.1. Effect on Capital Stock; Merger Consideration.

(a) **First Merger.** At the First Merger Effective Time, by virtue of the First Merger and without any action on the part of the holders of any shares of common stock of the Company, par value \$0.001 per share (**Company Common Stock**), Series A Preferred Stock of the Company, par value \$0.001 per share (**Company Preferred Stock**) and together with the Company Common Stock, the **Company Stock**), or any shares of capital stock of Merger Sub I, said shares shall be converted as follows, and the Merger Consideration to be paid to the holders of Company Stock shall be as follows:

(i) **Capital Stock of the Merger Sub.** Each issued and outstanding share of the capital stock of Merger Sub I shall be converted into and become one fully paid and nonassessable share of common stock, \$.001 par value per share, of First Merger Surviving Corporation (**First Merger Surviving Corporation Common Stock**), so that after the First Merger Effective Time, Parent shall be the holder of all of the issued and outstanding shares of the First Merger Surviving Corporation.

(ii) **Company Preferred Stock.** Each issued and outstanding share of Company Preferred Stock shall, by virtue of the First Merger and without any action on the part of the holder thereof, be converted into the right to receive, in cash, an amount equal to the Company Redemption Price as set forth in the Certificate of the Designations, Powers, Preferences and Rights of the Company Preferred Stock (the **Cash Merger Consideration**).

(iii) **Company Common Stock.** Each issued and outstanding share of Company Common Stock (other than any Dissenting Shares) shall, by virtue of the First Merger and without any action on the part of the holder thereof, be converted into the right to receive:

(1) (x) 0.57361 of a single validly issued, fully paid and nonassessable share of Parent Common Stock (**Closing Stock Payment**), plus

(y) the proportionate share amount of 9,950,000 shares of Parent Common Stock issuable pursuant to Section 3.1(a)(iii)(2) below, if any, which such amount shall be deposited into the Escrow Account pursuant to Section 3.5 hereof (**EBITDA Stock**), plus (z) the proportionate share amount of 8,500,000 shares of Parent Common Stock issuable pursuant to Section 3.1(a)(iii)(3) below, if any, which such amount shall be deposited into the Escrow Account pursuant to Section 3.5 hereof (**Warrant Stock**), which, together with the Closing Stock Payment and EBITDA Stock, shall be referred to collectively, as the **Common Stock Merger Consideration**);

(2) If, for any fiscal quarter from the date hereof through June 30, 2011, the Second Merger Surviving Entity has an annualized adjusted EBITDA (i.e., the actual quarterly EBITDA multiplied by four (4)) equal to or greater than the EBITDA Target, Parent shall cause the Escrow Agent to release from the Escrow Account, in accordance with this Section

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3.1(a)(iii)(2), Section 3.5 hereof and the Escrow Agreement, 9,950,000 shares of Parent Common Stock (reduced by the number of shares that would have been issuable to holders of Dissenting Shares in respect of such Dissenting Shares if the stockholder holding such Dissenting Shares had not exercised its appraisal rights pursuant to Section 3.3) (the **EBITDA Condition**). If the EBITDA Condition is satisfied, the holders of Company Common Stock shall be entitled to receive that number of shares of Parent Common Stock equal to (x) 9,950,000 (reduced by the number of shares that would have been issuable to holders of Dissenting Shares in respect of such Dissenting Shares if the stockholder holding such Dissenting Shares had not exercised its appraisal rights pursuant to Section 3.3). If the EBITDA Condition is not satisfied by June 30, 2011, then Parent and the Stockholders Representative shall deliver joint written instructions to the Escrow Agent to release the remaining shares held in Escrow pursuant to the EBITDA Condition to the Company on August 31, 2011 and such securities shall be cancelled in accordance with Section 3.5.

(3) If Parent shall have the right to redeem the warrants (the **Warrants**) issued pursuant to its Warrant Agreement dated September 19, 2006, by and between Parent and Continental Stock Transfer & Trust Company (the **Warrant Agreement**), Parent shall cause the Escrow Agent to release from the Escrow Account, in accordance with this Section 3.1(a)(iii)(3), Section 3.5 hereof and the Escrow Agreement, 8,500,000 shares of Parent Common Stock (reduced by the number of shares that would have been issuable to holders of Dissenting Shares in respect of such Dissenting Shares if the stockholder holding such Dissenting Shares had not exercised its appraisal rights pursuant to Section 3.3) (the **Warrant Condition**). Subject to the terms and conditions of the Warrant Agreement, Parent has the right to redeem the Warrants at any time prior to their exercise and at any time after the Warrants become exercisable if the last sale price of the Parent Common Stock has been at least \$8.50 per share, on each of twenty (20) trading days within any thirty (30) trading day period ending on January 28, 2011. For the avoidance of doubt, even if all Warrants are exercised prior to the date the Warrant Condition is satisfied, Parent remains obligated to pay such 8,500,000 shares of Parent Common Stock (other than any shares that would otherwise be payable in respect of the Dissenting Shares) upon satisfaction of the Warrant Condition. If the Warrant Condition is not satisfied by January 28, 2011, then on or prior to January 31, 2011, Parent and the Stockholders Representative shall deliver joint written instructions to the Escrow Agent to release all the shares subject to the Warrant Condition deposited into the Escrow Account to Parent and such securities shall be cancelled in accordance with Section 3.5.

(4) If either the EBITDA Condition or the Warrant Condition has been met, Parent shall notify the Stockholders Representative in writing within five (5) Business Days.

(5) All such shares of Company Stock (other than any Dissenting Shares (as defined in Section 3.3 hereof)), when so converted, shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each holder of a certificate representing any such shares shall cease to have any rights with respect thereto, except the right to receive a portion of the Merger Consideration as determined pursuant to the calculation principles set forth in Section 3.1 payable with respect thereto, when and as provided herein upon the surrender of such certificate in accordance with Section 3.3.

(b) Second Merger. Upon the terms and subject to the conditions of this Agreement, at the Second Merger Effective Time, by virtue of the Second Merger and without any action on the part of any holder of First Merger Surviving Corporation Common Stock or any holder of membership interests of Merger Sub II (the Merger Sub Interests):

(i) First Merger Surviving Corporation Common Stock. Each share of First Merger Surviving Corporation Common Stock issued and outstanding immediately prior to the Second Merger Effective Time shall be cancelled and cease to exist and no consideration shall be payable in respect thereof.

(ii) Merger Sub II Membership Interests. The issued and outstanding Merger Sub II Interests (all of which shall be held by Parent) shall remain as the membership interests of the Second Merger Surviving Entity.

(c) Company Warrants.

(i) T1 Warrants. Each of the holders of the T1 Warrants has agreed pursuant to a separate agreement irrevocably to make a cashless exercise of their T1 Warrants, immediately prior to the Closing of the Transactions contingent upon the Closing of the Transactions. The Company Common Stock shall have a fair market value of \$5.00 for purposes of such cashless exercise. Each such share of Company Common Stock received upon the exercise of the T1 Warrant without any further action on the part of the holder thereof shall be converted into the Merger Consideration pursuant to Section 3.1(a)(iii).

(ii) T2 Warrants and T3 Warrants. Certain holders of the T2 Warrants and T3 Warrants have entered into Exchange Agreements in the form attached hereto as Exhibit A providing for the exchange of their T2 Warrants and T3 Warrants for:

(1) for each share of Company Common Stock for which such T2 Warrant or T3 Warrant is currently exercisable (A) a warrant in the form attached hereto as Exhibit C (the **New Warrant**), providing that such holder shall have the right to receive a warrant to acquire 0.25 shares of Parent Common Stock exercisable at \$9.00 per share expiring on January 28, 2011 for a total number of New Warrants not to exceed 2,500,000 in the aggregate and (B) the right to receive 1/10th of a share of Parent Common Stock upon the satisfaction of the Warrant Condition for a total number of shares of Parent Common Stock not to exceed 1,000,000 in the aggregate.

(2) Parent shall deposit into the Escrow Account up to 1,000,000 shares of Parent Common Stock pursuant to Section 3.5 hereof to satisfy its obligations under (B) above (**Additional Warrant Stock**). If the Warrant Condition is not satisfied by January 28, 2011, then on January 31, 2011, all the shares of Additional Warrant Stock deposited into the Escrow Account shall be released to Parent and cancelled pursuant to Section 3.5.

(iii) The Company shall use its reasonable efforts to cause all remaining holders of the T3 Warrants who have not previously exercised their T3 Warrants, to exchange their T3 Warrants on the same terms and conditions as the exchanging holders pursuant to the Exchange Agreement. To the extent such holders still do not exercise their rights, such T3 Warrants shall remain outstanding in accordance with their terms.

3.2. Fractional Shares. No fraction of a share of Parent Common Stock will be issued by virtue of the First Merger, but in lieu thereof Parent shall pay to each holder of shares of Company Common Stock who would otherwise be entitled to a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock that otherwise would be received by such holder (other than those that would be received pursuant to Section 3.1 hereof)), upon surrender of such holder's Certificate(s), an amount of cash (rounded to the nearest whole cent), without interest, equal to the product of: (i) such fraction, multiplied by (ii) six dollars (\$6.00).

3.3. Appraisal Rights. Shares of Company Common Stock outstanding immediately prior to the First Effective Time and held by a holder who has not voted in favor of the Mergers or consented thereto in writing and who has demanded appraisal for such shares in accordance with the DGCL (collectively, the **Dissenting Shares**) shall not be converted into a right to receive Parent Common Stock, unless such holder fails to perfect, withdraws or otherwise loses such holder's right to appraisal under the DGCL. If, after the First Merger Effective Time, such holder fails to

perfect, withdraws or otherwise loses such holder's right to appraisal, each such share shall be treated as if it has been converted as of the First Merger Effective Time into a right to receive Parent Common Stock as set forth in Section 3.1(a)(iii)(1). The Company shall give Parent (i) prompt notice of (A) any demands for appraisal pursuant to the DGCL received by the Company, (B) withdrawals of such demands, and (C) any other instruments served pursuant to the DGCL and received by the Company in connection with such demands and (ii) the opportunity to participate in all negotiations and proceedings with respect to demands for appraisal under the DGCL

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prior to the First Merger Effective Time. The Company shall not, except with the prior written consent of Parent, which shall not be unreasonably withheld, conditioned or delayed, or as otherwise required by any applicable law, make any payment with respect to any such demands for appraisal or offer to settle or settle any such demands and shall not distribute any portion of the Common Stock Merger Consideration to any holder that has not lost its appraisal rights.

3.4. Payment of Merger Consideration; Surrender of Certificates.

(a) At or prior to the First Merger Effective Time, Parent shall engage a nationally-recognized financial institution reasonably satisfactory to the Company to act as exchange agent in connection with the Merger (the **Exchange Agent**). At the First Merger Effective Time, Parent shall deposit with the Exchange Agent, in trust for the benefit of the holders of shares of Company Common Stock immediately prior to the First Merger Effective Time, for exchange in accordance with this Article III, through the Exchange Agent, certificates representing the shares of Parent Common Stock issuable pursuant to the Closing Stock Payment pursuant to Section 3.1(a)(iii)(1)(x) (other than any Dissenting Shares) and for the benefit of the holders of Company Preferred Stock immediately prior to the First Merger Effective Time, for exchange in accordance with Article III, through the Exchange Agent, the Cash Merger Consideration. In addition, Parent shall make available by depositing with the Exchange Agent, as necessary from time to time after the First Merger Effective Time, cash in an amount sufficient to make the payments in lieu of fractional shares pursuant to Section 3.2 and any dividends or distributions to which holders of shares of Company Common Stock may be entitled pursuant to Section 3.4(c). All cash and Parent Common Stock deposited with the Exchange Agent shall hereinafter be referred to as the **Exchange Fund**.

(b) Promptly after the First Merger Effective Time, Parent shall cause the Exchange Agent to mail to each holder of record of a certificate or certificates which immediately prior to the First Merger Effective Time represented outstanding shares of Company Stock (other than any Dissenting Shares) (the **Certificates**), which at the First Merger Effective Time were converted into the right to receive the Merger Consideration pursuant to Section 3.1(a)(ii) or (iii) hereof, (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 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 the Merger Consideration, cash in lieu of any fractional shares pursuant to Section 3.2 and any dividends or other distributions payable pursuant to Section 3.4(c). Upon surrender of Certificates for cancellation to the Exchange Agent or to such other agent or agents as may be appointed by Parent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificates shall be entitled to receive in exchange therefor Cash Merger Consideration to which such holder is entitled pursuant to Section 3.1(a)(ii) and a certificate or certificates representing that number of whole shares of Parent Common Stock (after taking into account all Certificates surrendered by such holder) to which such holder is entitled pursuant to Section 3.1(a)(iii) (which shall be in uncertificated book entry form unless a physical certificate is requested), payment in lieu of fractional shares which such holder is entitled to receive pursuant to Section 3.2 and any dividends or distributions payable pursuant to Section 3.4(c), and the Certificates so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of Company Common Stock which is not registered in the transfer records of the Company, certificates representing the proper number of shares of Parent Common Stock may be issued to a Person other than the Person in whose name the Certificate so surrendered is registered, if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the Person requesting such issuance shall pay any transfer or other taxes required by reason of the issuance of shares of Parent Common Stock to a Person other than the registered holder of such Certificate or establish to the satisfaction of Parent that such tax has been paid or is not applicable. Until surrendered as contemplated by this Section 3.4(b), each Certificate shall be deemed at any time after the First Merger

Effective Time to represent only the right to receive the Merger Consideration pursuant to Section 3.1(a)(iii) hereof (and any amounts to be paid pursuant to Section 3.2 or Section 3.4(c)) upon such surrender. No interest shall be paid or shall accrue on any amount payable pursuant to Section 3.2 or Section 3.4(c).

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(c) No dividends or other distributions with respect to Parent Common Stock with a record date after the First Merger Effective Time 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 3.2 hereof, until such Certificate has been surrendered in accordance with this Article III. Subject to applicable Law, following surrender of any such Certificate, there shall be paid to the recordholder thereof, without interest, (i) promptly after such surrender, the number of whole shares of Parent Common Stock issuable in exchange therefor pursuant to this Article III, together with any cash payable in lieu of a fractional share of Parent Common Stock to which such holder is entitled pursuant to Section 3.2 and the amount of dividends or other distributions with a record date after the First Merger Effective Time theretofore paid with respect to such whole shares of Parent Common Stock and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the First Merger Effective Time and a payment date subsequent to such surrender payable with respect to such whole shares of Parent Common Stock, less the amount of any withholding Taxes that may be required thereon.

(d) All shares of Parent Common Stock, issued upon the surrender for exchange of Certificates in accordance with the terms of this Article III and any cash paid pursuant to Section 3.1(a)(ii), Section 3.2 or Section 3.4(c) and all shares of Parent Common Stock placed into Escrow shall be deemed to have been issued (and paid) in full satisfaction of all rights pertaining to the shares of Company Stock previously represented by such Certificates. At the First Merger Effective Time, the stock transfer books of the Company shall be closed and there shall be no further registration of transfers on the stock transfer books of the First Merger Surviving Corporation of the shares of Company Stock which were outstanding immediately prior to the First Merger Effective Time. If, after the First Merger Effective Time, Certificates are presented to the First Merger Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged as provided in this Article III.

(e) Any portion of the Exchange Fund (other than any shares of Parent Common Stock held in Escrow) which remains undistributed to the holders of Certificates six months after the First Merger Effective Time shall be delivered to the Second Merger Surviving Entity, upon demand, and any holders of Certificates who have not theretofore complied with this Article III (other than Dissenting Shares) shall thereafter look only to the Surviving Corporation for payment of their claim for the Merger Consideration, any cash in lieu of fractional shares of Parent Common Stock pursuant to Section 3.2 and any dividends or distributions pursuant to Section 3.4(c).

(f) None of Parent, Merger Subs, the Company or the Exchange Agent or any of their respective directors, officers, employees and agents 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 Certificate shall not have been surrendered prior to five years after the First Merger Effective Time, or immediately prior to such earlier date on which any shares of Parent Common Stock, any cash in lieu of fractional shares of Parent Common Stock, or any dividends or distributions with respect to Parent Common Stock issuable in respect of such Certificate would otherwise escheat to or become the property of any Governmental Authority, any such shares, cash, dividends or distributions in respect of such Certificate shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of all claims or interests of any Person previously entitled thereto.

(g) The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent on a daily basis; provided that no such investment or loss thereon shall affect the amounts payable to former stockholders of the Company after the First Merger Effective Time pursuant to this Article III. Any interest and other income resulting from such investment shall become a part of the Exchange Fund, and any amounts in excess of the amounts payable pursuant to this Article III shall promptly be paid to Parent.

(h) Parent and the Exchange Agent shall be entitled to deduct and withhold from any consideration payable pursuant to this Agreement to any Person who was a holder of Company Stock immediately prior to the First Merger Effective Time such amounts as Parent or the Exchange Agent may be required to deduct and withhold with respect to the making of such payment under the Code or any other

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provision of federal, state, local or foreign tax law. To the extent that amounts are so withheld by Parent or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person to whom such consideration would otherwise have been paid.

(i) In the event any Certificates shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit (without the posting of a bond) of that fact by the holder thereof, such shares of Parent Common Stock as may be required pursuant to Section 3.4(b), cash for fractional shares pursuant to Section 3.2 and any dividends or distributions payable pursuant to Section 3.4(c); provided, however, that Parent may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificates to deliver an agreement of indemnification in form reasonably satisfactory to Parent, or a bond in such sum as Parent may reasonably direct as indemnity against any claim that may be made against Parent or the Exchange Agent in respect of the Certificates alleged to have been lost, stolen or destroyed.

3.5. Escrow. At the Closing, Parent, the Stockholder's Representative and the escrow agent (**Escrow Agent**) shall enter into an escrow agreement in the form attached hereto as Exhibit D (the **Escrow Agreement**), pursuant to which the EBITDA Stock and Warrant Stock portions of the Common Stock Merger Consideration (other than portions in respect of the Dissenting Shares) and Additional Warrant Stock (such amount being defined as the **Escrowed Stock**) shall be deposited into escrow (the **Escrow Account**), shall be subject in all events to the provisions of this Agreement and the Escrow Agreement and shall be distributed to the holders of Company Common Stock as follows: (i) an amount equal to EBITDA Stock of the Escrowed Stock on or prior to the EBITDA Escrow Release Date (as defined below) shall be distributed to the holders of Company Common Stock in the percentages set forth in Schedule 3.1(a)(iii) hereof within 60 days following the end of a fiscal quarter in which the EBITDA Condition has been satisfied (the **EBITDA Escrow Release Date**), and (ii) an amount equal to Warrant Stock of the Escrowed Stock on or prior to the Warrant Escrow Release Date (as defined below) shall be distributed to the holders of Company Common Stock in the percentages set forth in Schedule 3.1(a)(iii) hereof within 30 days following the satisfaction of the Warrant Condition (the **Warrant Escrow Release Date**), all as more specifically set forth in the Escrow Agreement.

IV. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

As an inducement to Parent and the Merger Subs to enter into this Agreement, the Company represents and warrants to Parent and the Merger Subs that:

4.1. Organization, Qualification, and Corporate Power. Each of the Acquired Companies is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, with full power and authority to conduct its business as owned and conducted on the date hereof and at the Closing. Each of the Acquired Companies is duly qualified or licensed to do business as a foreign corporation in, and is in good standing in, each jurisdiction in which the nature of its business or its ownership of its properties requires it to be so qualified or licensed, except where the failure to be so qualified or licensed would not have a Material Adverse Effect. Each of the Acquired Companies has all requisite organizational power and authority and all Permits from Governmental Authorities and from all other Persons that are necessary and/or appropriate to carry on its Business and to own and use the properties owned and used by it, except for such Permits the absence of which would not result in a Material Adverse Effect.

4.2. Subsidiaries. Except for the Company Subsidiaries, the Company does not have any subsidiaries nor does it own any securities issued by any other Person except temporary investments in the ordinary course of business.

4.3. Capitalization. The authorized capital stock of each of the Acquired Companies and the number and kind of issued and outstanding shares of each of the Acquired Companies and, other than with respect to the Company Common Stock, the holders of record thereof are set forth on Schedule 4.3 and were validly issued, fully paid and nonassessible and were issued in compliance with all applicable federal and state securities laws and any preemptive rights or rights of first refusal of any Person. Except as set forth in Schedule 4.3: (A) to the Company s

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Knowledge, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting of any shares of capital stock of the Acquired Companies; (B) there does not exist nor is there outstanding any right or security granted to, issued to, or entered into with, any Person to cause the Acquired Companies to issue, grant or sell any shares of capital stock of the Acquired Companies to any Person (including any warrant, stock option, call, preemptive right, convertible or exchangeable obligation, subscription for stock or securities convertible into or exchangeable for stock of the Acquired Companies, or any other similar right, security, instrument or agreement), and there is no commitment or agreement to grant or issue any such right or security; (C) there is no obligation, contingent or otherwise, of the Acquired Companies to: (1) repurchase, redeem or otherwise acquire any share of the capital stock or other equity interests of the Acquired Companies; or (2) provide funds to, or make any investment in (in the form of a loan, capital contribution or otherwise), or provide any guarantee with respect to the obligations of any other Person (other than the other Acquired Companies); and (D) there are no bonds, debentures, notes or other indebtedness which have the right to vote (or are convertible into, or exchangeable for, securities having the right to vote) on any matters on which the Company's stockholders are entitled to vote.

4.4. Validity and Execution; Stockholder Approval. The Company has the right, power and authority to enter into this Agreement and perform its obligations hereunder. All necessary corporate action of the Company has been taken to authorize the Company to execute and deliver this Agreement and to consummate the Transactions. The board of directors (including any required committee or subgroup thereof) and stockholders of the Company have, as of the date of this Agreement, duly approved this Agreement and the Transactions. This Agreement constitutes the legal, valid and binding obligation of the Company enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application affecting enforcement of creditors' rights. The execution, delivery and performance by the Company of this Agreement and all other instruments, agreements, certificates and documents contemplated hereby: (a) do not, and will not, violate or conflict with any provision of the Company's certificate of incorporation or bylaws; (b) do not, and will not, violate or constitute a default under any Law or any contract to which any Acquired Company is a party, or by which it or any Company Stock or equity interests in any Acquired Company is bound; and (c) do and will not result in the creation of any Lien, other than Permitted Liens.

4.5. Real and Tangible Personal Properties.

(a) Schedule 4.5(a) identifies (i) all of the real property, including all, land, buildings, towers, structures, improvements and fixtures located thereon, and all easements and other rights and interests appurtenant thereto, owned by any of the Acquired Companies (collectively, the **Owned Real Property**); and (ii) all of the real property devised by leases, subleases, licenses, concessions, co-locations and other agreements (written or oral) (collectively, the **Leases**) pursuant to which the Acquired Companies hold any leased real property (collectively, the **Leased Real Property**, and together with the Owned Real Property, the **Real Property**).

(b) Each Acquired Company (i) has good and marketable indefeasible fee simple title to the Owned Real Property, free and clear of all Liens, except for Permitted Liens, (ii) has not leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof, (iii) has not granted any outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein, and (iv) is not a party to any agreement or option to purchase any real property or interest therein.

(c) Each applicable Acquired Company holds a valid and existing leasehold interest under each of the Leases to which it is a party for the terms set forth therein. Schedule 4.5(a) contains a true and complete listing of all of the Leases, and the Acquired Companies have made available to Parent a complete and accurate copy of each of the Leases, and in the case of any oral Lease, a written summary of the material terms of such Lease, including all

amendments, extensions, renewals and other agreements with respect thereto. With respect to each of the Leases and except as set forth in Schedule 4.5(c): (i) the applicable Acquired Company has not subleased, licensed or otherwise granted any Person the right to use or occupy such Leased Real Property or any portion thereof; (ii) such Lease is legal, valid, binding, enforceable against such Acquired Company and in full force and effect, subject to proper authorization and execution of such Lease by the other party thereto and the application of any bankruptcy or other creditor's rights Laws; (iii) such Acquired Company is not in breach or default under such Lease and no event has occurred or circumstances exist which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, except to the extent such breach or default would not have a Material Adverse Effect; (iv) such Acquired Company has not collaterally assigned or granted any other security interest in such Lease or any interest therein; and (v) there are no Liens or encumbrances on the estate or interest created by such Lease.

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(d) The Acquired Companies own or have a valid leasehold interest in each of the items of tangible personal property reflected on the Most Recent Balance Sheets, or acquired thereafter (except for assets reflected thereon or acquired thereafter that have been disposed of in the Ordinary Course of Business since the date of the Most Recent Balance Sheets), free and clear of all Liens, except for Permitted Liens, and such tangible personal property constitutes all material equipment, machinery, fixtures, improvements and other tangible personal property used in or necessary for the conduct of each of the Businesses of the Acquired Companies as it is currently conducted by the Acquired Companies. All of the tangible personal property, equipment, machinery, fixtures, improvements and other tangible assets (whether owned or leased) owned by the Acquired Companies are in good condition and repair (ordinary wear and tear excepted).

4.6. No Litigation. Except as set forth on Schedule 4.6, there is no litigation, claim, investigation or proceeding pending, or to the Company's Knowledge, threatened, against or relating to any Acquired Company or its Business, nor to the Company's Knowledge is there any reasonable basis for any such litigation, claim, investigation or proceeding. No Acquired Company is named in any order, judgment, decree, stipulation or consent of or with any court or other Governmental Authority that affects or may affect the Company Stock or the Transactions.

4.7. Noncontravention. Except for the FCC Consents and PUC Consents and as set forth on Schedule 4.7, neither the execution and the delivery of this Agreement by the Company, nor the consummation of the Transactions by any of the Acquired Companies, will: (i) violate any material applicable Law or any injunction, judgment, order, decree, ruling, charge, or other restriction of any Governmental Authority to which any Acquired Company or a Business is subject or any provision of any Acquired Company's certificate of incorporation, bylaws, or other governing instrument, as amended, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify, or cancel, or require any notice under any material agreement, contract, lease, license, instrument, or other arrangement to which any Acquired Company is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Lien upon any capital stock or assets of any Acquired Company). Except as set forth on Schedule 4.7 and except where failure to meet such requirement would not result in a Material Adverse Effect, no Acquired Company is required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Authority in order for the parties to consummate the Transactions.

4.8. Tax Matters. Except as set forth on Schedule 4.8:

(a) All income, franchise and all material other Tax Returns required to have been filed by or with respect to the Acquired Companies have been timely filed (taking into account applicable extensions of time to file) and all such Tax Returns (including information provided therewith or with respect thereto) are true, accurate and complete in all material respects. All income Taxes and all other Taxes of the Acquired Companies, whether or not shown as due on any Tax Returns, have been timely paid, other than Taxes that are not yet due and payable or that are being contested in good faith by appropriate proceedings (and are so identified on Schedule 4.8) and for which adequate reserves are reflected in the Company Financial Statements in accordance with GAAP.

(b) Each of the Acquired Companies has complied in all material respects with all applicable Laws, rules and regulations relating to the withholding of Taxes and has duly and timely withheld and paid over to the appropriate Taxing Authorities all amounts required to be so withheld and paid over for all periods under all applicable Laws. No deficiency for any material amount of Taxes has been assessed with respect to any of the Acquired Companies that has not been abated or paid in full or adequately provided for in the Company Financial Statements.

(c) There are no Tax claims, audits, examinations, disputes, investigations, administrative or judicial proceedings by any Taxing Authority pending, or threatened in writing, or as to which any of the Acquired Companies has Knowledge in connection with any Taxes due from or with respect to the Acquired Companies, including without limitation, any claim made by a Taxing Authority in a jurisdiction where any of the Acquired Companies does not file a particular Tax Return such that it is or may be subject to taxation by that jurisdiction.

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(d) There are not currently in force any (i) waivers of any statute of limitations with respect to Taxes or agreements binding upon any of the Acquired Companies for the extension of time for the assessment, reassessment, deficiency or payment of any Tax for any taxable period, and no request for any such waiver or extension is currently pending, (ii) any power of attorney with respect to any Tax matter, or (iii) any Tax allocation or Tax sharing agreement, or any similar agreement pursuant to which any Acquired Company could have an obligation with respect to Taxes of another person or entity following the Closing.

(e) There are no Liens for Taxes (other than Taxes not yet due and payable or that are being contested in good faith) upon any of the assets of the Acquired Companies.

(f) None of the Acquired Companies is or has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(g) None of the Acquired Companies has been the distributing corporation or the controlled corporation (in each case, within the meaning of Section 355(a)(1) of the Code) with respect to a transaction described in Section 355 or Section 361 of the Code (i) within the three (3)-year period ending as of the date of this Agreement or (ii) in a distribution that could otherwise constitute part of a plan or series of related transactions (within the meaning of Section 355(e) of the Code) that includes the Transactions.

(h) None of the Acquired Companies (1) has been a member of any affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company) or of any affiliated, consolidated, combined, or unitary group, as defined under applicable state, local or foreign Law (other than a group the common parent of which was the Company) or (2) has any liability for the Taxes of any Person (other than the Acquired Companies) under Section 1.1502-6 of the Treasury Regulations (or any predecessor or successor thereof or any similar provision of state, local or foreign Law), as a transferee or successor, by contract, assumption, operation of Law or otherwise.

(i) None of the Acquired Companies nor any other Person on behalf of the Acquired Companies has (i) agreed to or is required to make any adjustments pursuant to Section 481(a) of the Code or any similar provision of state, local or foreign Law by reason of a change in accounting method and no Taxing Authority has proposed any such adjustment or change in accounting method, or has any application pending with any Taxing Authority requesting permission for any changes in accounting methods, (ii) executed or entered into a closing agreement pursuant to Section 7121 of the Code or any predecessor provision thereof or any similar provision of state, local or foreign Law that would have continuing effect after the Closing, or (iii) been the subject of a Tax ruling that would have continuing effect after the Closing.

(j) None of the Acquired Companies is a party to any agreement, contract, arrangement or plan that has resulted in, or in connection with the transactions contemplated by this Agreement or the GCI Merger Agreement could result in, the payment of any excess parachute payment within the meaning of Section 280G of the Code (or any similar provision of state, local or foreign Tax law, including without limitation, by reason of (i) the execution and delivery of this Agreement or the GCI Merger Agreement or (ii) the consummation of (y) the Transactions or (z) the transactions contemplated by the GCI Merger Agreement). None of the Acquired Companies has engaged in any reportable transaction as defined in Treasury Regulation Section 1.6011-4(b).

4.9. Financial Statements. The Company has previously provided to Parent true and accurate copies of the unaudited consolidated financial statements of the Company as of and for the six (6) month period ended June 30,

2008 (the **Interim Company Financial Statements**) and (b) the balance sheet of the Company as of December 31, 2007 (the **Most Recent Company Balance Sheet**) and the balance sheets of the Company as of December 31, 2006 and December 31, 2005 and the related statements of income and cash flows for the fiscal years then ended, audited and certified by the Company's Accountants (together with the Interim Financial and including, with respect to the audited balance sheets and related statements of income and cash flows, any notes and schedules thereto, the **Company Financial Statements**). Except as otherwise indicated in the Company Financial Statements or in Schedule 4.9, the Company Financial Statements (x) have been prepared in accordance with GAAP consistently applied throughout the relevant periods, other than, with respect to the Interim Company Financial Statements, the absence of normal year-end adjustments and the absence of footnotes; and (y) present

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fairly, in all material respects, the financial position, the results of operations and cash flows of the Company as of the dates and for the periods presented therein, provided, however, that as of the date of this Agreement, the Company is completing an audit of its financial statements as of and for the six month period ended December 31, 2007 (the **Company Audit**) and that the Company Audit may result in the restatement of one or more items in the financial statements as of and for the fiscal year ended December 31, 2007.

4.10. Undisclosed Liabilities. There are no material liabilities relating to the Acquired Companies, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any liability for Taxes, except for: (a) liabilities set forth on the face of the Most Recent Balance Sheets, (b) liabilities which have arisen after the date of the Most Recent Balance Sheets in the Ordinary Course of Business, (c) liabilities and obligations not required by GAAP to be reflected on an audited balance sheet, or (d) liabilities and obligations set forth on Schedule 4.10(d).

4.11. Material Contracts. The Company has delivered to or otherwise made available to Parent a correct and complete copy of each Material Contract, each of which is listed on Schedule 4.11 hereto. With respect to each Material Contract: (a) such Material Contract is legal, valid and binding, enforceable, and in full force and effect, (b) neither the Company nor, to the Company's Knowledge, any other party to such Material Contract is in material breach or default, and no event has occurred which, with notice or lapse of time, would constitute such a breach or default by any Acquired Company or, to the Company's Knowledge, any other party to such a Material Contract, or permit termination, material modification, or acceleration under the Material Contract, and (c) the Company has not, and to the Company's Knowledge, no other party to a Material Contract has repudiated any material provision of any Material Contract. Schedule 4.11 sets forth a list of the Material Contracts which require the prior consent of or require prior notice to the counterparty to such Material Contract to the consummation of the Transactions. Notwithstanding anything to the contrary contained herein, Schedule 4.11 shall be updated by the Company prior to the Closing Date to reflect any changes required as a result of the passage of time between the date of this Agreement and the First Merger Effective Time, provided that any such changes shall be consistent and in all respects in accordance with Section 6.2.

4.12. Intellectual Property.

(a) Schedule 4.12(a) sets forth a listing of all of the following Intellectual Property: (i) registered or patented Intellectual Property and all pending applications therefor owned by any Acquired Company; (ii) material unregistered trademarks, material unregistered copyrights and material software and (iii) material licenses with respect to the Intellectual Property owned or used by any Acquired Company.

(b) The Acquired Companies own and possess all right, title and interest in or have a valid right or license to use the Intellectual Property set forth on Schedule 4.12(a) and all the Intellectual Property that is material to any Business.

(c) Except for the Permitted Liens, the Intellectual Property owned by any Acquired Company (the **Owned Intellectual Property**) is not subject to any Liens and is not subject to any restrictions or limitations regarding use or disclosure other than pursuant to the written license agreements disclosed on Schedule 4.11.

(d) None of the material Owned Intellectual Property is expired or has been cancelled or abandoned. Each Acquired Company has taken all commercially reasonable actions to maintain and protect all of the Company Intellectual Property.

(e) Except as set forth on Schedule 4.12(e), none of the Acquired Companies has received in the past three (3) years any notice regarding the infringement, misappropriation or other violation by any Acquired Company of any Intellectual Property of any third party (including any demands or unsolicited offers to license any Intellectual Property from any third party) that has not yet been formally and finally resolved. To the Company's Knowledge, neither the conduct of the business of any Acquired Company nor sale of any products or provision of any services by any Acquired Company has infringed, misappropriated or otherwise violated, or infringes, misappropriates or otherwise violates, any Intellectual Property of any third party.

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(f) To the Company's Knowledge, no third party is infringing, misappropriating or violating, or has infringed, misappropriated or otherwise violated, any of the Company Intellectual Property. No such claims have been brought or, to the Company's Knowledge, threatened against any third party by any of the Acquired Companies.

(g) To the Company's Knowledge, all current or former employees, consultants, or contractors who have participated in the creation or development of any Intellectual Property owned or purported to be owned by the Company, including the Intellectual Property listed on Schedule 4.12(a), have executed and delivered to such Acquired Company a valid and enforceable agreement (i) providing for the non-disclosure by such current or former employee, consultant, or contractor of any confidential information of such Acquired Company, and (ii) providing for the assignment by such current or former employee, consultant, or contractor to such Acquired Company of any Intellectual Property arising out of such employee's, consultant's, or contractor's employment by, engagement by, or contract with such Acquired Company.

4.13. Insurance. The Company has furnished to Parent true and complete copies of all insurance policies and fidelity bonds covering the Acquired Companies or any Business and the employees of any Business, each of which is listed on Schedule 4.13 hereto. Except as set forth on Schedule 4.13 hereto, there is no claim by any Acquired Company pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums payable under all such policies and bonds which are due and payable have been paid and each Acquired Company is otherwise in material compliance with the terms and conditions of all such policies and bonds. No Acquired Company has received written notice from any underwriter that any such policy of insurance or bond is not in full force and effect.

4.14. Employees. Except as disclosed on Schedule 4.14(a), each employee of each Acquired Company is an employee at will and the employment of each employee of each Acquired Company is terminable at will without advance notice. To the Company's Knowledge, no officer of any Acquired Company has indicated his or her intent in writing to terminate his or her employment with such Acquired Company. No Acquired Company is a party to or bound by any collective bargaining agreement, nor has it experienced any strikes, grievances, claims of unfair labor practices, or other collective bargaining disputes. To the Company's Knowledge, no organizational effort is presently being made or threatened by or on behalf of any labor union with respect to employees of any Acquired Company. No Acquired Company has received written notice of any alleged violation of federal, state, or local labor, employment or health and safety Law, rule, order, regulation or ordinance. Schedule 4.14(b) sets forth: (i) all present employees (including any leased or temporary employees) and independent contractors of each Acquired Company; (ii) each employee's or independent contractor's current rate of compensation; and (iii) each such employee's accrued vacation, if applicable. Schedule 4.14(c) sets forth a list of all employment agreements containing any severance payments. Except as set forth on Schedule 4.14(d), there are no unpaid wages, bonuses or commissions owed to any employees or independent contractors (other than those not yet due and that have been accrued in the financial books and records of the Company). Except as set forth on Schedule 4.14(e) there are no written or oral employment agreements with any of the employees.

4.15. Employee Benefits.

(a) Schedule 4.15 contains a list of (i) each employee benefit plan, as defined in Section 3(3) of ERISA, (ii) all other pension, retirement, supplemental retirement, equity, equity incentive, severance, change in control, bonus, incentive, retention and deferred compensation plans, programs and arrangements and (iii) all other material plans, programs or arrangements (including vacation, death benefit and fringe benefit plans, programs or arrangements) maintained, contributed to, or required to be contributed to, by any of the Acquired Companies or any ERISA Affiliate for the benefit of any employee, former employee, director, officer or independent contractor of any of the Acquired

Companies or under which any of the Acquired Companies or any ERISA Affiliate has any liability with respect to any employee, former employee, director, officer or independent contractor of any of the Acquired Companies (the **Plans**). The Company has made available to Parent true, complete and correct copies of (i) the current document constituting each Plan, each current summary plan description and each summary of material modifications, if any (or, if a written Plan document does not exist, a written summary of the terms of such Plan), (ii) the most recent annual report on Form 5500 (with all applicable attachments) filed with respect to each Plan (if any such report was required) and (iii) any related trust agreements, investment management contracts, custodial agreements and insurance contracts, as applicable, with respect to each Plan.

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(b) Except as set forth on Schedule 4.15(b):

(i) none of the Plans is (A) a multiemployer plan (as defined in Sections 3(37) or 4001(a)(3) of ERISA), (B) a multiple employer welfare arrangement (as defined in Section 3(40) of ERISA), (C) a multiple employer plan to which Section 413(c) of the Code applies, or (D) subject to Title IV of ERISA or Sections 412 or 430 of the Code;

(ii) none of the Acquired Companies (A) has incurred, or as the result of an ERISA Affiliate will incur, any liability under Title IV of ERISA or Sections 412 or 430 of the Code or (B) is subject to any Lien under ERISA or the Code, and to the Company's Knowledge, there is no basis for the imposition of any such Lien;

(iii) each Plan (and its related trust, insurance contract or other funding vehicle, if any) has been maintained, operated and administered in all material respects in compliance with (A) its terms, (B) the terms, if applicable, of any related funding instrument, and (C) all applicable Laws;

(iv) with respect to each Plan that is intended to be tax-qualified under Section 401(a) of the Code, the Acquired Companies have received a favorable determination letter or opinion letter (which has been made available to Parent) from the Internal Revenue Service that each such Plan is so qualified in form and the related trust is exempt from taxation under Section 501(a) of the Code, and no such determination letter or opinion letter has been revoked (nor, to the Company's Knowledge, has revocation been threatened), and to the Company's Knowledge, no event has occurred since the date of the most recent determination letter or application therefore relating to any such Plan or trust (including any amendment to, or failure to amend, any such Plan) that could reasonably be expected to adversely affect the qualification of any such Plan or the exemption of any such trust;

(v) the Acquired Companies and each ERISA Affiliate have, with respect to each group health plan (as such term is defined in Section 5000(b)(1) of the Code) that is maintained by any such entity, (A) complied in all material respects with the applicable requirements of Section 4980B of the Code and the regulations thereunder and all similar state Laws, as applicable, and (B) complied with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 and the regulations issued thereunder;

(vi) all contributions, premiums or payments under or with respect to each Plan (A) have been made within the time periods prescribed by ERISA, the Code and all other applicable Laws and (B) which are due on or before the Closing Date have been paid;

(vii) neither the execution and delivery of this Agreement nor the consummation of the Transactions, will: (A) result in any payment (including, without limitation, severance, unemployment compensation, parachute payments (as such term is defined in Section 280G of the Code) or otherwise) becoming due to any director, officer or any employee of the Acquired Companies under any Plan or otherwise (except for payments due under arrangements that become effective on or after the date hereof between any such director, officer or employee and Parent or any of the Merger Subs); (B) increase the amount payable, or trigger any funding (through a grantor trust or otherwise), pursuant to any Plan; or (C) result in any acceleration of the time of payment or vesting of any compensation or benefits;

(viii) none of the Plans provide, nor do any of the Acquired Companies or any ERISA Affiliate have an obligation to provide (whether through a promise or guarantee or through a policy or otherwise), any post-employment medical benefits or any other post-employment welfare benefits to any employee, former employee, director, officer or independent contractor of any of the Acquired Companies, except as required by applicable Law (including Section 4980B of the Code or applicable state Laws);

(ix) with respect to each Plan or other arrangement (including employment agreements) to which any of the Acquired Companies is a party that constitutes a nonqualified deferred compensation plan subject to Section 409A of the Code, each such nonqualified deferred compensation plan has been maintained and operated in good faith compliance with the requirements of Sections 409A of the Code and the applicable Internal Revenue Service guidance issued thereunder; and

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(x) the Acquired Companies have, for purposes of each Plan, correctly classified all individuals performing services for each such Acquired Company as common law employees, independent contractors or agents, as applicable.

4.16. Environmental Matters. Except as set forth in Schedule 4.16, with respect to the Acquired Companies:

(a) There is and has been no generation, treatment, storage, release, disposal or transport of, or exposure to any Hazardous Material at, on, under, or from any of the Real Property or by or relating to any Acquired Companies except in material compliance with all applicable Environmental Laws;

(b) The Acquired Companies have complied with and are in compliance with all applicable Environmental Laws. No Acquired Company has received any written notice, order or other communication from any Governmental Authority or other Person claiming that the Acquired Companies are, or may be, liable under, or violated any, Environmental Laws, including any liability or violation relating to any personal injury or property damage or any other costs or expenses or damages or liabilities arising from any release, treatment, storage or disposal transport of, or exposure to, any Hazardous Material;

(c) The Acquired Companies have not owned or operated any property or facility upon which, to or from there has been a release of any Hazardous Material and to the Company's Knowledge, none of the Real Property has had a release of any Hazardous Material, in each case as would give rise to any current or future liabilities under Environmental Laws;

(d) The Acquired Companies have not assumed or undertaken or provided an indemnity with respect to any liability of any other Person relating to Environmental Laws or Hazardous Materials;

(e) None of the Acquired Companies, nor, to the Company's Knowledge, any predecessor or affiliate for which any Acquired Company would have liability, has any liability, contingent or otherwise, with respect to the presence or alleged presence of Hazardous Materials in any product or item or at or upon any property or facility; and

(f) The Company has furnished to Parent all environmental audits, assessment and reports and all other documents materially bearing on environmental, health or safety liabilities, in each case relating to the Acquired Companies or any affiliates or predecessors, including any of their current or prior properties, facilities or operations, to the extent such documents are in the possession or under the reasonable control of the Acquired Companies.

4.17. Compliance with Laws. The Acquired Companies have complied with all applicable material Laws and orders of all Governmental Authorities (including, without limitation, Laws and orders relating to Taxes, employee benefits and the environment, the Acquired Companies' compliance with which, however, is governed exclusively by Sections 4.8, 4.15 and 4.16, respectively) and no Acquired Company is in material default under or in violation of any such applicable Laws and orders of all Governmental Authorities.

4.18. Accounts Receivable. All accounts receivable shown on the Company Financial Statements and all such receivables arising after the date of the Most Recent Company Balance Sheets and now held by the Company are valid obligations arising from sales actually made or services actually performed in the Ordinary Course of Business and, to the Company's Knowledge, were not and are not subject to any off-set, defense or counterclaim (other than customary bad debt reserves for uncollectible accounts receivable).

4.19. No Brokers. None of the Acquired Companies has retained any broker or finder pursuant to any contract or arrangement in connection with the Merger under which such broker or finder could be entitled to a fee or commission from the Company or Parent.

4.20. No Material Changes. Except as otherwise disclosed on Schedule 4.20, since December 31, 2007:

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- (a) the Acquired Companies have not issued any stock or equity interests, notes or other corporate securities or granted any options, warrants or rights calling for the issue thereof;
- (b) the Acquired Companies have not entered into any contract or agreement other than in the Ordinary Course of Business;
- (c) there has been no theft, damage, destruction or other casualty loss to or forfeiture of any portion of the property or assets of the Acquired Companies, after giving effect to payments under applicable insurance policies, which has had a Material Adverse Effect;
- (d) there has been no increase in, or plan or commitment to increase, the compensation payable or to become payable to any of the Acquired Companies officers or employees other than: (i) increases in the Ordinary Course of Business to non-officer employees; or (ii) increases required by employment contracts disclosed to Parent and listed on Schedule 4.20 nor any increases in benefits provided under any employee benefit plan or arrangement (including, without limitation, any severance policies or practices), and the Acquired Companies have not amended nor terminated any existing employee benefit plan or arrangement or adopted any new employee benefit plan or arrangement;
- (e) there has been no guarantee or any indebtedness incurred or committed to by the Acquired Companies, (i) other than guarantees or indebtedness incurred or committed to in the Ordinary Course of Business under existing credit facilities as set forth on Schedule 4.11 or (iii) other than indebtedness in an aggregate amount not exceeding \$500,000 and none of the Acquired Companies has canceled any debt owed to it or released any claim possessed by it other than in the Ordinary Course of Business;
- (f) the Acquired Companies have undertaken no capital expenditures or commitments to make capital expenditures, other than capital expenditures or commitments in the Ordinary Course of Business or that have been otherwise disclosed to and approved by, solely with respect to the period beginning on the date of this Agreement and ending on the Closing Date, Parent;
- (g) the Acquired Companies have not entered into or amended any employment, consulting or similar agreement, or any agreement with any labor union or association representing any employee or any material employee benefit plan or arrangement;
- (h) the Acquired Companies have not acquired, nor disposed, nor encumbered (nor has any Acquired Company agreed to acquire, dispose or encumber) any substantial assets or property, real or personal, of an Acquired Company other than in the Ordinary Course of Business, or delivered or paid any dividend on or made any other distribution in respect of its capital stock;
- (i) there has not been any material change in the accounting policies or practices of an Acquired Company, including practices with respect to the payment of accounts payable or the collection of accounts receivable;
- (j) the Acquired Companies have not permitted or allowed any of their assets or properties (real, personal or mixed, tangible or intangible) to become subject to any Liens, other than Permitted Liens;

(k) the Acquired Companies did not file any amended Tax Return, settle any Tax claim or assessment, enter into any closing agreement with respect to Taxes, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to any Acquired Company or take any similar action if the effect was to increase the Tax liability of any Acquired Company after the Closing Date; and

(l) the Acquired Companies have not agreed or offered, in writing or otherwise, to take any of the actions referred to in clauses (a) through (k) above.

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4.21. Permits and Licenses. The Acquired Companies hold all Permits (each of which is in full force and effect) necessary for the lawful ownership of the Acquired Companies' assets or the operation of the Businesses as presently conducted, and no other Permits are necessary for the lawful ownership of the Acquired Companies' assets or the operation of the Businesses as presently conducted by the Acquired Companies. The Acquired Companies have heretofore conducted the Businesses in compliance in all material respects with the requirements of such Permits, and the Acquired Companies have not received written notice of any default or violation in respect of or under any of such Permits. No Permit is subject to any requirement or condition that is not generally imposed on a similar license or permit. The Acquired Companies have not received written notice of termination, revocation or modification of any material Permit and are not delinquent in the filing of any material reports or in the payment of any Taxes or fees with respect to such Permits. Schedule 4.21 contains a true, accurate and complete list of any Permits which require a third party's consent for the consummation of the Transactions. No event has occurred which permits the revocation or termination of any of Permit or the imposition of any restriction thereon, or that would prevent any Permit from being renewed on a routine basis or in the ordinary course.

4.22. Warranties. The Acquired Companies do not provide guaranties, warranties or indemnities with respect to the performance or integrity of any of the services sold by the Acquired Companies, except for those written standard warranties that are included in the copies of the Material Contracts that have been previously made available to Parent and similar warranties included in non-Material Contracts that are included in the copies of non-Material Contracts that have previously been made available to Parent.

4.23. Major Suppliers and Customers.

(a) Except as set forth on Schedule 4.23(a), to the Company's Knowledge, no Acquired Company has received written notice that any supplier that in the Acquired Company's most recently concluded fiscal year accounted for more than \$300,000 of supplies purchased annually by the Acquired Company in the conduct of the Businesses or any sole supplier will not sell raw materials, supplies, merchandise and other goods and services to the Acquired Company or to any buyer of a Business within the one (1) year period after the date of this Agreement on terms and conditions substantially similar to those used in its current sales to the Acquired Company, subject only to price increases and/or market conditions, unless comparable supplies, merchandise or other goods are readily available from other sources on comparable terms and conditions.

(b) Except as set forth on Schedule 4.23(b), to the Company's Knowledge, no Acquired Company has received written notice from any customer that in the Acquired Company's most recently concluded fiscal year accounted for \$300,000 or greater of the annual sales of a Business or any single contract with total payments in excess of \$500,000 terminating its business relations with the Acquired Company within the one (1) year period after the date of this Agreement.

(c) Except as set forth on Schedule 4.23(c), to the Company's Knowledge, no Acquired Company has received written notice that any distributors, sales representatives, sales agents, or other third party sellers that in an Acquired Company's most recently concluded fiscal year accounted for more than \$50,000 of monthly new sales of a Business, will not sell or market the products or services of a Business within the one (1) year period after the date of this Agreement on terms and conditions substantially similar to those used in the current sales and distribution contracts of the Acquired Company.

4.24. Related Party Transactions. Except as set forth on Schedule 4.24:

- (a) there is no Debt between any Acquired Company and any officer, director or employee of any Former Company Stockholder or its Affiliates;
- (b) no Former Company Stockholder owns, in whole or in part, or provides or causes to be provided, and no Affiliate, officer, director or employee of any Former Company Stockholder owns, in whole or in part, or provides or causes to be provided, to any Acquired Company, any material assets, services or facilities of the Acquired Company; and

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(c) no Acquired Company beneficially owns, directly or indirectly, any investment in or issued by a Former Company Stockholder or such officer, director, employee or Affiliate of a Former Company Stockholder or the Company (other than in another Subsidiary of the Company).

4.25. Prohibited Payments. No Acquired Company or any director, officer, employee, or to the Company's Knowledge, any agent or other Person acting for or on behalf of any Acquired Company has (a) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to political activity, (b) made any unlawful payments to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns or violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, (c) made any other unlawful payment, (d) other than rebates made to customers in the Ordinary Course of Business, made any bribe, rebate, payoff, influence payment, kickback or other payment to any Person, private or public, regardless of form, whether in money, property, or services (i) to obtain favorable treatment in securing business, (ii) to obtain favorable treatment for business secured or (iii) to obtain special concessions or for special concessions already obtained, for or in respect of any Acquired Company or any of its Affiliates or (e) established or maintained any fund or asset that has not been recorded in the books and records of such Acquired Company and which is required to be so recorded under GAAP.

4.26. Books and Records. The books of account, minute books, stock record books, and other records of the Company, all of which have been made available to Parent, are complete and correct and have been maintained in accordance with sound business practices. The minute books of the Company contain accurate and complete records of all meetings held of, and corporate action taken by, the stockholders, the boards of directors and committees of the boards of directors, of the Company, and no meetings of any such stockholders, board of directors or committees of boards of directors have been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Company.

4.27. Proxy Statement. The information to be supplied in writing by the Company for inclusion in Parent's prospectus/proxy statement (such prospectus/proxy statement as amended or supplemented is referred to herein as the **Proxy Statement**), which shall be included in Parent's Registration Statement on Form S-4 (the **Registration Statement**) shall not at the time the Proxy Statement is first mailed, at the time of the meeting of Parent's stockholders to consider the approval of this Agreement (the **Parent Stockholders Meeting**) and at the time of the filing with the SEC, 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 not misleading. If at any time prior to the Closing, any event relating to any Acquired Company or its officers or directors should be discovered by the Company which should be set forth in a supplement to the Proxy Statement, the Company shall promptly inform Parent. Notwithstanding the foregoing, the Company makes no representation or warranty with respect to any information supplied by Parent or any Person other than the Company which is contained in the Proxy Statement.

4.28. Disclaimer. Parent and Merger Subs acknowledge and agree that they are entering into and consummating this Agreement and the Transactions without, and are not relying upon, any representation or warranty, express or implied, at Law or in equity, by the Company or any Former Company Stockholder or any of their respective representatives, except as expressly set forth in this Agreement (and subject to such limitations and qualifications as are expressly contained herein and the disclosure schedules hereto). In furtherance of the foregoing, and not in limitation thereof, Parent and Merger Subs acknowledge and agree that except for the representations and warranties contained in this Agreement, none of the Company or any Former Company Stockholder, any of their respective representatives or any other Person has made any express or implied representation or warranty on behalf of the Company or any Former Company Stockholder or any of their respective representatives, and Parent and Merger Subs hereby waive any and all other representations and warranties, whether express or implied (by statute, common law or

otherwise). Parent and Merger Subs acknowledge and agree that any financial projection or forecast delivered to Parent and Merger Subs with respect to the revenues or profitability that may arise from the Acquired Companies and the Business after the Closing Date, shall not in and of itself form the basis of any claim against the Company, any Former Company Stockholder or any of their respective representatives. With respect to any projection or forecast delivered by or on behalf of the Company to Parent and Merger Subs, Parent and Merger Subs acknowledge and agree that (w) there are uncertainties inherent in attempting to make such projections and forecasts, (x) the accuracy and correctness of such projections and forecasts may be affected by information that may become available through discovery or otherwise after the date of such projections and forecasts, (y) such projections and forecasts have not been independently verified, reflect various assumptions

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and may not prove to be correct, and (z) they are familiar with each of the foregoing. The preceding notwithstanding, nothing in this Section 4.30 shall be deemed to limit or affect in any way any of the representations or warranties expressly made by the Acquired Companies under this Agreement.

V. **REPRESENTATIONS AND WARRANTIES OF PARENT AND THE MERGER SUBS**

As an inducement to the Company to enter into this Agreement, Parent and the Merger Subs jointly and severally represent and warrant to the Company as follows:

5.1. Organization of Parent and the Merger Subs. Each of Parent and Merger Sub I is a corporation duly incorporated, validly existing and in good standing under the laws of Delaware and has all requisite corporate power and lawful authority to enter into this Agreement and to perform its obligations hereunder. Merger Sub II is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware and has all requisite limited liability company power and lawful authority to enter into this Agreement and to perform its obligations hereunder.

5.2. Validity and Execution. Each of Parent, Merger Sub I and Merger Sub II has the full corporate or limited liability company power and authority to enter into this Agreement and to perform its obligations hereunder. All necessary corporate or limited liability company action of each of Parent, Merger Sub I and Merger Sub II has been taken to authorize each of Parent, Merger Sub I and Merger Sub II to execute and deliver this Agreement, and this Agreement constitutes the valid and binding obligation of each of Parent, Merger Sub I and Merger Sub II enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application affecting enforcement of creditors' rights.

5.3. Noncontravention. Neither the execution and the delivery of this Agreement by Parent or the Merger Subs, nor the consummation of the Transactions, will: (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any applicable Law or any injunction, judgment, order, decree, ruling change or other restriction of any Governmental Authority to which Parent and/or either Merger Sub is subject or any provision of the certificate of incorporation or bylaws of Parent and/or Merger Sub I, the certificate of formation or limited liability company agreement of Merger Sub II, or any other governing instrument, as amended, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Parent and/or either Merger Sub is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any security interest upon any of its assets). Except as set forth on Schedule 5.3, neither Parent nor any Merger Sub needs to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Authority in order for the parties to consummate the Transactions.

5.4. No Litigation. There is no litigation or proceeding pending, or to Parent's Knowledge, threatened to which Parent or either Merger Sub is subject that is material to Parent's or the Merger Sub's ability to perform its obligations under this Agreement, or that is reasonably likely to prevent, restrict or materially delay the performance of the Transactions.

5.5. No Brokers. Other than Jefferies & Company, Inc., neither Parent nor either Merger Sub has retained any broker or finder pursuant to any contract or arrangement in connection with the Merger under which such broker or finder could be entitled to a fee or a commission from the Company.

5.6. Disclosure. No representation or warranty made by Parent, Merger Sub I or Merger Sub II in this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which made, not misleading.

5.7. SEC Filings. Parent has filed and furnished all required reports, schedules, forms, prospectuses and registration, proxy and other statements required to be filed or furnished by it with or to the SEC since May 24, 2006 (collectively, and in each case including all schedules thereto and documents incorporated by reference therein, the **Parent SEC Documents**). As of their respective effective dates (in the case of Parent SEC Documents that are

registration statements filed pursuant to the requirements of the Securities Act) and as of the respective dates of the last amendment filed with the SEC (in the case of all other Parent SEC Documents), the Parent SEC Documents complied in all material respects with the requirements of the Exchange Act and the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder, each as in effect on the applicable date referred to above, applicable to such Parent SEC Documents, and none of the Parent SEC Documents as of such respective dates contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Parent maintains effective disclosure controls and procedures pursuant to Rule 13a-15 under the Exchange Act and such disclosure controls and procedures are designed to ensure that all material information concerning Parent is made known on a timely basis to the individuals responsible for the preparation of Parent's filings with the SEC and other public disclosure documents.

5.8. Capitalization.

(a) As of the date of this Agreement, the authorized capital stock of Parent consists of 72,000,000 shares of Parent Common Stock and 1,000,000 shares of preferred stock, par value \$0.0001 per share (the **Parent Preferred Stock**), of which 21,840,000 shares of Parent Common Stock and no shares of the Parent Preferred Stock are issued and outstanding, all of which are validly issued, fully paid and nonassessable.

(b) Except as described in the Parent SEC Documents, (i) no shares of Parent Common Stock or Parent Preferred Stock are reserved for issuance upon the exercise of outstanding options to purchase Parent Common Stock or Parent Preferred Stock granted to employees of Parent or other parties (the **Parent Stock Options**) and there are no outstanding Parent Stock Options; (ii) no shares of Parent Common Stock or Parent Preferred Stock are reserved for issuance upon the exercise of outstanding warrants to purchase Parent Common Stock or Parent Preferred Stock (the **Parent Warrants**) and there are no outstanding Parent Warrants; and (iii) no shares of Parent Common Stock or Parent Preferred Stock are reserved for issuance upon the conversion of the Parent Preferred Stock or any outstanding convertible notes, debentures or securities. All shares of Parent Common Stock and Parent Preferred Stock subject to issuance as aforesaid, upon issuance on the terms and conditions specified in the instrument pursuant to which they are issuable, will be duly authorized, validly issued, fully paid and nonassessable. All outstanding shares of Parent Common Stock and all outstanding Parent Warrants have been issued and granted in compliance with all applicable securities laws.

(c) The shares of Parent Common Stock to be issued by Parent pursuant to this Agreement have been duly reserved for issuance by Parent from Parent's authorized but unissued shares of Parent Common Stock or treasury shares and, upon issuance in accordance with the terms of this Agreement, will be duly authorized and validly issued and such shares of Parent Common Stock will be fully paid and nonassessable.

(d) Except as contemplated by this Agreement or the Parent SEC Documents, there are no registrations rights, and there is no voting trust, proxy, rights plan, agreement to repurchase or redeem, anti-takeover plan or other agreements or understandings to which Parent is a party or by which Parent is bound with respect to any equity security of any class of Parent.

(e) Except as provided for in this Agreement and except as set forth in Schedule 5.8(e), as a result of the consummation of the Transactions, no shares of capital stock, warrants, options or other securities of Parent are issuable and no rights in connection with any shares, warrants, options or other securities of Parent accelerate or otherwise become triggered (whether as to vesting, exercisability, convertibility or otherwise).

5.9. Undisclosed Liabilities. Other than expenses incurred in connection with the negotiation and consummation of the Transactions, there are no material liabilities relating to Parent or Merger Sub, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any liability for Taxes, except as otherwise disclosed in Parent SEC Documents.

5.10. Material Contracts. Except as set forth on Schedule 5.10, there are no Material Contracts of Parent, other than those that are exhibits to the Parent SEC Documents. With respect to each Material Contract: (a) such Material Contract is legal, valid and binding, enforceable, and in full force and effect, (b) neither Parent nor, to Parent's Knowledge, is any other party to such Material Contract in material breach or default, and no event has occurred which, with notice or lapse of time, would constitute such a breach or default by Parent or, to the Parent's Knowledge, any other party to such a Material Contract, or permit termination, material modification, or acceleration under the Material Contract, and (c) Parent has not, and to the Parent's Knowledge, no other party to a Material Contract has repudiated any material provision of any Material Contract.

5.11. Intellectual Property. Parent does not own, license or otherwise have any material right, title or interest in any Intellectual Property.

5.12. Compliance with Laws. Parent has complied with all applicable material Laws and Parent is not in material default under or in violation of any such applicable Laws.

5.13. Related Party Transactions. Except as set forth in the parent SEC Documents filed prior to the date of this Agreement, (a) there is no Debt between Parent and any officer, director, employee or stockholder of Parent and (b) to Parent's Knowledge, none of such individuals provides or causes to be provided, to Parent, any material assets, services or facilities that will be material to the combined companies following the Transaction.

5.14. Tax Matters. Except as set forth on Schedule 5.14:

(a) all income, franchise and all material other Tax Returns required to have been filed by or with respect to Parent have been timely filed (taking into account applicable extensions of time to file) and all such Tax Returns (including information provided therewith or with respect thereto) are true, accurate and complete in all material respects;

(b) all income Taxes and all other Taxes of Parent, whether or not shown as due on any Tax Returns, have been timely paid, other than Taxes that are not yet due and payable or that are being contested in good faith by appropriate proceedings (and are so identified on Schedule 5.14);

(c) there is no action, suit, investigation, audit, claim or assessment pending or proposed or threatened in writing with respect to Taxes of Parent;

(d) Parent has not waived or requested to waive any statute of limitations in respect of Taxes which waiver is currently in effect; and

(e) Parent has complied in all material respects with all applicable Laws, rules and regulations relating to the withholding of Taxes and has duly and timely withheld and paid over to the appropriate Taxing Authorities all amounts required to be so withheld and paid over for all periods under all applicable Laws.

5.15. Business Activities. Since its organization, Parent has not conducted any business activities other than activities directed toward the accomplishment of a business combination. Except as set forth in Parent's Certificate of Incorporation, there is no agreement, commitment, judgment, injunction, order or decree binding upon Parent or to which Parent is a party which has or could reasonably be expected to have the effect of prohibiting or materially impairing any business practice of Parent, any acquisition of property by Parent or the conduct of business by Parent as currently conducted other than such effects as would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect.

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5.16. Title to Property. Parent does not own or lease any real property or personal property. Except as set forth on Schedule 5.16, there are no options or other contracts under which Parent has a right or obligation to acquire or lease any interest in real property or personal property.

5.17. Indebtedness. Except as set forth on Schedule 5.17, Parent has no Debt.

5.18. Trust Funds. As of the date hereof and at the Closing Date, Parent has and will have no less than \$104,147,820 invested in United States Government securities or in money market funds meeting certain conditions under Rule 2a-7 promulgated under the Investment Company Act of 1940 in a trust account administered by Continental Stock Transfer & Trust Company (the **Trust Fund**), less such amounts, if any, as Parent is required to pay (i) to stockholders who elect to have their shares converted to cash in accordance with the provisions of Parent's Certificate of Incorporation and By-Laws, (ii) deferred underwriters' compensation in connection with Parent's initial public offering and (iii) third parties (e.g., professionals) who have rendered services to Parent in connection with its efforts to effect a business combination, including the Mergers.

5.19. No Material Changes.

(a) No conditions, circumstances or facts exist, and since June 30, 2008, there have not been any events, occurrences, changes, developments or circumstances, which would have a Parent Material Adverse Effect.

(b) Parent and the Merger Subs have not since June 30, 2008 and prior to the date of this Agreement taken any action of the type referred to in Section 6.3(b) except in the Ordinary Course of Business

5.20. Board Approval. The board of directors of Parent has, as of the date of this Agreement, unanimously (i) declared the advisability of and approved the Merger in accordance with the terms and conditions of this Agreement, (ii) determined that the Merger is in the best interests of the stockholders of Parent, and (iii) determined that the fair market value of Company is equal to at least 80% of Parent's net assets.

VI. COVENANTS

6.1. Mutual Joint Covenants.

(a) FCC Applications; State PUC Applications.

(i) Within five (5) Business Days after the date hereof, the parties hereto shall commence preparing the necessary applications (including any notices, reports, registrations and other filings) with the FCC seeking the FCC Consents set forth on Schedule 6.1(a)(i), and such submissions shall be filed with the applicable authorities as soon as reasonably practicable thereafter (but in no event later than thirty (30) days after the date hereof). Each party shall provide the other party with all information necessary for the preparation of such applications on a timely basis, including those portions of such applications which are required to be completed by each party.

(ii) Within five (5) Business Days after the date hereof, the parties hereto shall commence preparing the necessary applications (including any notices, reports, registrations and other filings) with the State PUCs seeking the State PUC Consents set forth on Schedule 6.1(a)(ii), and such submissions shall be filed with the applicable authorities as soon as reasonably practicable (but in no event later than thirty (30) days after the date hereof). Each party shall provide the other parties with all information necessary for the preparation of such applications on a timely basis, including those portions of such applications which are required to be completed by the first party. In addition,

the parties hereto shall cooperate to make any notice or ownership filings required in connection with this matter on a timely basis and to assist in the process of obtaining approvals for the Transactions from the FCC and State PUCs (including any related approvals required in connection with the financing contemplated by the Credit Agreement).

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(iii) Subject to the terms and conditions of this Agreement, each of the parties hereto shall use its reasonable best efforts to prosecute the FCC applications and the State PUC applications in good faith and with due diligence before the FCC and the State PUCs and in connection therewith shall take such actions as may be necessary or reasonably required in connection with the FCC applications and the State PUC applications, including furnishing to the FCC and the State PUCs any documents, materials, or other information requested by the FCC and the State PUCs in order to obtain the FCC Consents and the State PUC Consents as expeditiously as practicable. In addition, to the extent practicable, the parties hereto shall use their reasonable best efforts to (i) promptly notify the other parties of any material communication to that party from the FCC, any State PUC or any other party with respect to the FCC applications or the State PUC applications, as applicable, (ii) permit a representative of the other parties reasonably acceptable to the first party to attend and participate in substantive meetings (telephonic or otherwise) with the FCC or any State PUC and (iii) permit the other party to review in advance, as reasonable, any proposed written communication to the FCC or any State PUC. No party hereto shall, without the written consent of the other parties, knowingly take, or fail to take, any action if the intent or reasonably anticipated consequence of such action or failure to act is, or would be, to cause or materially increase the probability of the FCC or any State PUC not to grant approval of any FCC application or of any State PUC application or materially delay either such approval, to the material detriment of the other parties. In the event there are any petitions for reconsideration, appeals or similar filings made seeking to overturn the grant of the FCC Consent or grant of any of the State PUC Consents, or if the FCC or a State PUC seeks to reconsider such grant on its own motion, then the parties shall use their reasonable best efforts to defend the applicable grants against such actions. The filing fees and the Company's costs and expenses associated with obtaining any such State PUC or FCC Consents (including the Company's attorneys' fees) shall be paid by the Company. Parent shall be responsible for payment of its own attorneys' fees and related costs and expenses associated with obtaining any such State PUC or FCC Consents.

(b) **Tax Matters; Books and Records.**

(i) The Parent shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for the Acquired Companies that are required to be filed after the Closing Date (taking into account applicable extensions) including, without limitation, the final federal income Tax Return of the consolidated group that includes the Acquired Companies for the taxable period including the Closing Date. To the extent that such Tax Returns relate to a Pre-Closing Tax Period, Parent shall prepare such Tax Returns consistently with the past practice and custom of the Acquired Companies in filing their Tax Returns unless a different treatment of any item is required by an intervening change in Law.

(ii) All tax-sharing agreements or similar agreements with respect to or involving the Acquired Companies shall be terminated as of the Closing Date and, after the Closing Date, the Acquired Companies shall not be bound thereby or have any liability thereunder.

(iii) On or prior to the Closing Date, the boards of directors of each of Parent, Merger Sub, and the Company shall adopt this Agreement as a Plan of Reorganization within the meaning of Treasury Regulation Section 1.368-3(a).

(iv) On or prior to the Closing, the Stockholders' Representative shall deliver to Parent a properly executed statement in a form reasonably acceptable to Parent for purposes of permitting Parent not to withhold tax as provided for under the Treasury regulations promulgated under Section 1445 of the Code (it being understood and agreed by the parties that the failure to provide such statement shall result in the Parent and/or the Merger Subs withholding (or causing to be withheld) under Section 1445 of the Code).

(c) **Confidentiality.** From the date hereof until the First Merger Effective Time, the parties hereto, their respective members, directors, officers, employees, agents and representatives (collectively, the **Receiving Party**) shall use reasonable good faith efforts to hold in confidence, and shall not use for their own benefit, any and all proprietary and non-public documents and information concerning the other parties (the **Disclosing Party**), as may be furnished to the Receiving Party by or on behalf of the Disclosing Party or otherwise obtained in connection with the Transactions and that are marked with a confidential or similar legend or that should be reasonably understood to be confidential, except that: (i) the Receiving Party may disclose such documents and information to any Governmental Authority reviewing the Transactions, including in any filing with the SEC such as the Proxy Statement and Registration Statement or otherwise as may be required by applicable Law or the rules of any stock exchange; (ii) the Receiving Party may disclose such documents and information to its respective affiliates; (iii) the Receiving Party may disclose such documents and information to its accountants, attorneys, investment bankers, and permitted assignees and to other individuals or entities, with a genuine need to know of such existence, for reasons including preparation for the consummation of the Transactions, on the condition that such disclosure is effected on a confidential basis; and (iv) the Receiving Party may disclose (A) such information that was, at the time of disclosure, in the public domain, (B) such information that has been disclosed by the Disclosing Party or any of its affiliates to others without any obligation of confidentiality or such information became part of the public domain by publication or otherwise without a breach of the provisions of this Agreement, (C) such information that was known by the Receiving Party at the time of disclosure without any obligation of confidentiality and (D) such information that was disclosed to the Receiving Party by a third party without breach of any obligation of confidentiality. If the Transactions shall not be consummated, the Receiving Party shall maintain such confidence, and all documents and information provided to the Receiving Party by or on behalf of the Disclosing Party (and all copies thereof or any documents, spreadsheets, analyses, etc. prepared on the basis of such documents or information) shall promptly be returned to the Disclosing Party by the Receiving Party.

(d) **Efforts.** Subject to the terms and conditions herein provided, the Parent and the Company agree to, and the Company shall cause the other Acquired Companies to, use their commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as practicable the Transactions, including, but not limited to (i) the taking of all reasonable acts necessary to cause the conditions precedent set forth in Article XI to be satisfied, (ii) the obtaining of all necessary actions, waivers, consents, approvals, orders and authorizations from Governmental Authorities and the making of all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any) and the taking of all reasonable steps as may be necessary to avoid any suit, claim, action, investigation or proceeding by any Governmental Authorities, (iii) the obtaining of all consents, approvals or waivers from third parties required as a result of the Transactions, (iv) the defending of any suits, claims, actions, investigations or proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Transactions, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed and (v) the execution or delivery of any additional instruments reasonably necessary to consummate the Transactions, and to fully carry out the purposes of, this Agreement. In furtherance, and not in limitation of the foregoing, the Parent agrees to use its reasonable good faith efforts to obtain the Parent Stockholder Approval and the conversion of less than 20% of the Parent Common Stock.

(e) **Preparation of SEC Documents; Parent Stockholders Meeting.**

(i) As promptly as practicable after the execution of this Agreement, Parent will prepare and file the Proxy Statement and Registration Statement with the SEC. In connection with the Proxy Statement and Registration Statement, the Company shall deliver to Parent requisite annual audited financial statements and interim unaudited financial statements which meet the applicable requirements of Regulation S-X promulgated by the SEC for inclusion

in the Proxy Statement and Registration Statement and (ii) provide information reasonably required to prepare the disclosures relating to the Businesses. The Company and its counsel shall be given a reasonable opportunity to review and comment on the Proxy Statement and Registration Statement prior to filing with the SEC. Parent will respond to any comments of the SEC and Parent will use

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its reasonable best efforts to obtain an order of effectiveness from the SEC and to mail the Proxy Statement to its stockholders at the earliest practicable time. As promptly as practicable after the execution of this Agreement, the Company and Parent will prepare and file any other filings required under the Securities Act or any other federal, foreign or Blue Sky laws relating to the Transactions (collectively, the **Other Filings**). Each party will 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 other governmental officials for amendments or supplements to the Proxy Statement, the Registration Statement or any Other Filing or for additional information and will 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 other government officials, on the other hand, with respect to the Proxy Statement, the Registration Statement, the Merger or any Other Filing. The Proxy Statement, the Registration Statement and the Other Filings will comply in all material respects with all applicable requirements of Law and the rules and regulations promulgated thereunder. Whenever any event occurs which is required to be set forth in an amendment or supplement to the Proxy Statement, the Registration Statement or any Other Filing, the Company or Parent, as the case may be, will promptly inform the other party of such occurrence and cooperate in filing with the SEC or its staff or any other government officials, and/or mailing to stockholders of the Company and Parent, such amendment or supplement. The Proxy Statement will be sent to the stockholders of Parent as described in Section 6.1(e)(ii) for the purpose of soliciting proxies from holders of Parent Common Stock to vote at the Parent Stockholders Meeting in favor of: (i) the adoption of this Agreement and the approval of the First Merger (**Parent Stockholder Approval**); (ii) the issuance and sale of shares of Parent Common Stock to the extent that such issuance requires stockholder approval; (iii) the amendment to Parent's charter to, among other things, increase the number of authorized shares; (iv) the adoption of an equity incentive plan; and (v) such other matters as Parent deems reasonably necessary or appropriate in connection with the consummation of the Transactions.

(ii) As soon as practicable following effectiveness of the Registration Statement by the SEC, Parent shall distribute the Proxy Statement to the holders of Parent Common Stock and, pursuant thereto, shall call the Parent Stockholders Meeting in accordance with the DGCL and, subject to the other provisions of this Agreement, solicit proxies from such holders to vote in favor of the adoption of this Agreement and the approval of the First Merger and the other matters presented to the stockholders of Parent for approval or adoption at the Parent Stockholders Meeting, including, without limitation, the matters described Section 6.1(e)(i).

(iii) Parent shall comply with all applicable provisions of and rules under the Securities Act, Exchange Act and all applicable provisions of the DGCL in the preparation, filing and distribution of the Proxy Statement and Registration Statement, the solicitation of proxies thereunder, and the calling and holding of the Parent Stockholders Meeting. Without limiting the foregoing, Parent shall ensure that the Proxy Statement does not, as of the date on which it is distributed to the holders of Parent Common Stock, and as of the date of the Parent Stockholders Meeting, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading (provided that Parent shall not be responsible for the accuracy or completeness of any information relating to the Company or any other information furnished in writing by the Company explicitly for inclusion in the Proxy Statement).

(iv) Parent, acting through its board of directors, shall include in the Proxy Statement the recommendation of its board of directors (and any committee thereof) that the holders of Parent Common Stock vote in favor of the adoption of this Agreement and the approval of the First Merger.

(v) The Company agrees to provide, and will cause its directors, officers and employees to provide, all cooperation reasonably necessary in connection with obtaining the approval of the First Merger by Parent's stockholders.

(f) **HSR Act.** If required pursuant to the HSR Act, as promptly as practicable after the date of this Agreement, Parent and the Company shall each prepare and file the notification required of it thereunder in connection with the Transactions and shall promptly and in good faith respond to all information requested of it by the Federal Trade Commission and Department of Justice in connection with such notification and otherwise cooperate in good faith with each other and such Governmental Authorities. Parent and the Company shall (a) promptly inform the other of any communication to or from the Federal Trade Commission, the Department of Justice or any other Governmental Authority regarding the Transactions, (b) give the other prompt notice of the commencement of any action, suit, litigation, arbitration, proceeding or investigation by or before any Governmental Authority with respect to such transactions and (c) keep the other reasonably informed as to the status of any such action, suit, litigation, arbitration, proceeding or investigation. Filing fees with respect to the notifications required under the HSR Act shall be divided equally between the Company and Parent.

(g) **Other Actions.**

(i) As promptly as practicable after execution of this Agreement and in any event within four (4) Business Days, Parent will prepare and file a Current Report on Form 8-K pursuant to the Exchange Act to report the execution of this Agreement (the **Signing Form 8-K**), which the Company may review and comment upon prior to filing. Any language included in the Signing Form 8-K that reflects the Company's comments, as well as any text as to which the Company has not commented upon after being given a reasonable opportunity to comment, shall be deemed to have been approved by the Company and may henceforth be used by Parent in other filings made by it with the SEC and in other documents distributed by Parent in connection with the Transactions without further review or consent of the Company. Promptly after the execution of this Agreement, Parent and the Company shall also issue a mutually agreeable joint press release announcing the execution of this Agreement (the **Signing Press Release**).

(ii) At least five (5) days prior to the Closing Date, Parent shall prepare together with the Company a draft Form 8-K announcing the Closing, together with, or incorporating by reference, the financial statements prepared by the Company and its accountant, and such other information that may be required to be disclosed with respect to the Merger in any report or form to be filed with the SEC (the **Closing Form 8-K**), which shall be in a form reasonably acceptable to the Company. Prior to Closing, Parent and the Company shall prepare a mutually agreeable joint press release announcing the consummation of the Mergers hereunder (the **Closing Press Release**). Concurrently with the Closing, Parent shall issue the Closing Press Release. Concurrently with the Closing, or as soon as practicable thereafter and in any event within four (4) Business Days, Parent shall file the Closing Form 8-K with the Commission.

(h) **Required Information.** In connection with the preparation of the Signing Form 8-K, the Signing Press Release, the Registration Statement, the Proxy Statement, the Closing Form 8-K and the Closing Press Release, or any other statement, filing, notice or application made by or on behalf of Parent and/or the Company to any Governmental Authority or other third party in connection with the Transactions, and for such other reasonable purposes, the Company and Parent each shall, upon request by the other, furnish the other with all information concerning themselves, their respective directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with the Merger. Each party warrants and represents to the other party that all such information shall be true and correct in all material respects and shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(i) **No Shop; Non-Solicit.**

(i) From and after the date hereof until the earlier of the (x) termination of this Agreement in accordance with its terms or (y) consummation of this Agreement and the Transactions (**Exclusivity Period**): (A) Parent shall not, and shall cause its stockholders, officers, directors, affiliates, representatives and advisors (collectively, with Parent, the **Parent**

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Group) not to enter into any written agreement with any other person or entity (whether or not such written agreement is absolute, contingent or conditional) regarding a Parent Third Party Acquisition other than the transactions contemplated by this Agreement, (B) Parent shall not and shall cause the other members of the Parent Group not to solicit, offer, initiate, knowingly encourage, conduct or engage in any discussions, investigations or negotiations or enter into any agreement with any other person or entity (whether or not such agreement or understanding is absolute, revocable, contingent or conditional) regarding a Parent Third Party Acquisition and (C) Parent agrees that during the Exclusivity Period it shall promptly, after obtaining knowledge thereof, advise the Company of any inquiry or proposal regarding a Parent Third Party Acquisition that is received by any member of the Parent Group, including the terms of the proposal and the identity of the inquirer or offeror; and

(ii) During the Exclusivity Period: (A) the Company shall not, and shall cause its stockholders, officers, directors, affiliates, representatives and advisors (collectively, with the Company, the **Company Group**) not to enter into any written agreement with any other person or entity (whether or not such written agreement is absolute, contingent or conditional) regarding a Company Third Party Acquisition other than the transactions contemplated by this Agreement; (B) the Company shall not and shall cause the other members of the Company Group not to solicit, offer, initiate, knowingly encourage, conduct or engage in any discussions, investigations or negotiations or enter into any agreement or understanding with any other person or entity (whether or not such agreement or understanding is absolute, revocable, contingent or conditional) regarding a Company Third Party Acquisition, other than the transactions contemplated in this Agreement; and (C) the Company agrees that during the Exclusivity Period it shall promptly, after obtaining knowledge thereof, advise the Parent of any inquiry or proposal regarding a Company Third Party Acquisition that is received by any member of the Company Group, including the terms of the proposal and the identity of the inquirer or offeror.

6.2. Company s Covenants.

(a) **Access to Information.** Prior to the Closing, the Company shall (i) give Parent, its counsel, financial advisors, auditors and other authorized representatives reasonable access to the offices, properties, books and records of the Acquired Companies relating to the Acquired Companies and the Businesses, (ii) furnish to Parent, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information relating to the Acquired Companies and the Businesses as such Persons may reasonably request, and (iii) instruct the employees, counsel and financial advisors of the Company to cooperate with Parent in its investigation of the Acquired Companies and the Businesses; provided, however, that any investigation pursuant to this section shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Acquired Companies. Any information provided under this Section 6.2(a) shall be deemed confidential information for purposes of Section 6.1(c). The Company hereby appoints Parent as its authorized representative to access the offices, properties, auditors, books and records of GCI and agrees to use commercially reasonable efforts to assist Parent in obtaining information relating to GCI and the GCI Subsidiaries.

(b) **Restrictions.** Prior to the Closing, except as required by Law, as contemplated by the GCI Merger Agreement or with the prior written consent of Parent (which consent shall not be unreasonably withheld or delayed), (i) the Company shall, and shall cause each Acquired Company to (A) conduct the Businesses only in the Ordinary Course of Business, in substantially the manner in which the Businesses and operations have been previously conducted during the period covered by the Company Financial Statements and consistently with those practices, policies, customs and usages which were in effect from time to time throughout that period and (B) upon request, report periodically to Parent concerning the status of the business, operations, and finances of the Acquired Companies, and (ii) the Company shall not, and shall not permit any Acquired Company to:

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- (A) make, amend or rescind any election relating to Taxes, settle any litigation, audit or controversy relating to Taxes in excess of amounts reserved therefor in the Financial Statements, file any amended Tax Return or claim for refund, change any method of accounting or make any other change in its accounting or Tax policies or procedures, agree to an extension of any statute of limitations related to any Tax, enter into a closing agreement related to any Tax, or surrender any right to claim a Tax refund, except as required by applicable Law or GAAP;
- (B) enter into any new line of business;
- (C) fail to pay any Taxes when they become due and payable, other than Taxes being contested in good faith through appropriate proceedings and for which adequate reserves are reflected in the Company Financial Statements in accordance with GAAP;
- (D) issue any additional shares of capital stock (other than shares of Company Stock issued in connection with existing warrants or upon exercise of outstanding options by persons who are stockholders of the Company as of the date of this Agreement) or any options, warrants or other rights to purchase, or securities convertible into or exchangeable for, shares of stock in the Company;
- (E) declare, set aside or pay any dividends or other distribution in respect of any Company Stock;
- (F) split, combine or reclassify any shares of its capital stock;
- (G) amend or propose to amend its certificate of incorporation or bylaws;
- (H) adopt a plan or effect any complete or partial liquidation or adopt resolutions providing for or authorizing such liquidation or adopt a plan of or effect any dissolution, merger, consolidation, restructuring, recapitalization or reorganization;
- (I) (1) create, incur, assume, forgive or make any changes to the terms or collateral of any debt or receivables (other than trade payables and receivables in the Ordinary Course of Business consistent in type and amount with prior practice), or any employee or officer loans or advances, except incurrences that constitute a refinancing of existing obligations on terms that are no less favorable to the Acquired Company than the existing terms; (2) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, indirectly, contingently or otherwise) for the obligations of any Person except to the extent permitted by the Credit Agreement; (3) make any capital expenditures other than in accordance with the Acquired Company's budgeted capital expenditures and to the extent permitted by the Credit Agreement; (4) make any loans, advances or capital contributions to, or investments in, any other Person (other than customary travel, relocation or business advances to employees consistent with past practices); (5) acquire stock or assets of, or merge or consolidate with, any other Person; (6) incur any material liability or obligation (absolute, accrued, contingent or otherwise) other than trade payables except to the extent permitted by the Credit Agreement; (7) sell, transfer, mortgage, pledge, lease, encumber or otherwise dispose of, or agree to sell, transfer, mortgage, pledge, lease, encumber or otherwise dispose of, any assets or properties (real, personal or mixed, tangible or intangible) other than inventory held for sale or the disposition and replacement of obsolete personal property in the Ordinary Course of Business, or to secure debt permitted under subclause (1) of this clause (I) or (8) incur any indebtedness other than under existing credit facilities as set forth on Schedule 4.11 or other Ordinary Course of Business indebtedness except to the extent permitted by the Credit Agreement;

(J) (1) increase the wages, salaries, bonus, compensation or other benefits of any of its officers or employees (other than non-material increases granted to retain employees, other than officers, who have been offered employment by another Person) or enter into, establish, amend or terminate any Plan or other employment, consulting, retention, change in control, collective bargaining, bonus or incentive compensation, profit sharing, health, welfare, stock option, equity, pension, retirement, vacation, severance, termination, deferred compensation or other compensation or benefit plan, policy, agreement, trust, fund or other arrangement with, for or in respect of any officer, director or employee other than as required by applicable Law or pursuant to the terms of agreements in effect on the date of this Agreement or in the Ordinary Course of Business with employees (other than officers) of such Acquired Company, (2) hire any employees except in the Ordinary Course of Business or (3) fail to make contributions to any Plan in accordance with the terms thereof or with past practice;

(K) (1) commence or settle any litigation or other proceedings with any Governmental Authority or other Person in excess of amounts reserved for such litigation on the Most Recent Balance Sheet or excess of \$2 million, (2) make, amend or rescind any election relating to Taxes, settle any litigation, audit or controversy relating to Taxes in excess of amounts reserved therefor in the Financial Statements, file any amended Tax Return or claim for refund, change any method of accounting or make any other change in its accounting or Tax policies or procedures, agree to an extension of any statute of limitations related to any Tax, enter into a closing agreement related to any Tax, or surrender any right to claim a Tax refund, except as required by applicable Law or GAAP or (3) waive the benefits of, agree to modify in any manner, terminate, release any Person from or knowingly fail to enforce any material confidentiality or similar agreement to which an Acquired Company is a party or of which an Acquired Company is a beneficiary outside the Ordinary Course of Business;

(L) (1) enter into or amend any contract or agreement with any Affiliate of the Company or (2) unless such actions would not reasonably be expected to have a Material Adverse Effect on the Company, enter into any agreement or group of related agreements which would be considered a Material Contract, modify, amend or terminate any Material Contract, or waive, release or assign any rights or claims thereunder, or enter into any agreement that if entered into prior to the date hereof would be a Material Contract;

(M) knowingly or intentionally take any action that results or is reasonably likely to result in any of the representations and warranties of the Company hereunder being untrue in any material respect or any condition in Article VII, VIII and IX not to be satisfied;

(N) take or omit to take any action, the taking or omission of which could reasonably be expected to have a Material Adverse Effect; or

(O) agree to do, or take any action in furtherance of, any of the foregoing.

Nothing in this Section 6.2(b) shall be interpreted as prohibiting or restricting the Company in any way from complying with the terms and conditions of any Material Contracts as such exist as of the date hereof.

(c) **Maintenance of Insurance.** The Company shall use reasonable efforts to continue to carry its existing insurance upon substantially similar terms with substantially similar coverage.

(d) **Notification of Certain Matters.**

(i) The Company shall give prompt notice to Parent if any of the following occur after the date of this Agreement: (A) there has been a material failure of the Company to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder, (B) receipt of any notice or other communication in writing from any third party alleging that the consent of such third party is or may be required in connection with the Transactions, (C) receipt of any notice or other written communication from any Governmental Authority which relates to the consummation of the Transactions, (D) the occurrence of an event which could reasonably be expected to have a Material Adverse Effect, or (E) the commencement or threat, in writing, of any litigation against any Acquired Companies which relates to the consummation of the Transactions.

(ii) Parent shall give prompt notice to the Company if any of the following occur after the date of this Agreement: (A) there has been a material failure of Parent to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder, (B) receipt of any notice or other communication in writing from any third party alleging that the consent of such third party is or may be required in connection with the Transactions, (C) receipt of any notice or other written communication from any Governmental Authority which relates to the consummation of the Transactions, (D) the occurrence of an event which could reasonably be expected to have a Material Adverse Effect, or (E) the commencement or threat, in writing, of any litigation against Parent which relates to the consummation of the Transactions.

(e) **Update of Schedules.** From time to time prior to the Closing, subject to the reasonable approval of Parent, the Acquired Companies shall be entitled to update, amend or supplement the disclosure schedules attached hereto (each, a **Schedule Update**) (x) to reflect the GCI Acquisition or (y) to the extent information contained therein, which was true, complete and accurate as of the date of this Agreement, becomes untrue, incomplete or inaccurate after the date of this Agreement as a result of occurrences after the date of this Agreement but prior to the Closing (provided that such occurrences do not constitute or were not caused by a violation by an Acquired Company of Section 6.2(b)), by delivering such Schedule Update to the Buyer; provided further, that any such Schedule Update delivered to Parent shall be deemed to be amended unless Parent provides written notice to the Company within ten (10) Business Days after delivery to Parent of such Schedule Update that such Schedule Update is not reasonably satisfactory to Parent. Parent shall not be obligated to approve any change or changes to the disclosure schedules attached hereto made pursuant to subsection (x) above that materially differs from the final schedules to the GCI Merger Agreement, to the Company's material detriment, or pursuant to subsection (y) above that would have, or that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Acquired Companies following the Closing. Any such Schedule Update, to the extent practicable, shall be marked to show changes from the disclosure schedules attached hereto, as updated by any prior Schedule Updates. If the Company delivers to Parent one or more Schedule Updates, all references in this Agreement to the disclosure schedules attached hereto shall thereafter mean the disclosure schedules attached hereto as updated by each such Schedule Update to the extent such Schedule Updates have been consented to by Parent. Notwithstanding anything in this section to the contrary, upon completion of the Company Audit, the Company shall have the right to deliver a replacement version of the financial statements as of and for the fiscal year ended December 31, 2007 delivered on the date of this Agreement (the **Replacement Company Financial Statements**); unless Parent terminates this Agreement pursuant to Section 11.1(h), the disclosure schedules attached hereto, shall be deemed to be amended by the Replacement Company Financial Statements.

(f) **Sarbanes-Oxley Act Compliant.** The Acquired Companies shall use their reasonable good faith efforts to become complaint with all applicable provisions of and rules under the Securities Act, Exchange Act, and Sarbanes-Oxley Act of 2002 within the time frame and waiver periods permitted by the SEC with respect to all its

SEC filings and system of internal accounting controls.

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(g) **No Claim Against Trust Fund.** Notwithstanding anything else in this Agreement, the Company acknowledges that it has read Parent's final prospectus dated January 29, 2007 and understands that Parent has established the Trust Fund for the benefit of Parent's public stockholders and that, subject to the limited exceptions described therein, Parent may disburse monies from the Trust Fund only (a) to Parent's public stockholders in the event they elect to convert their shares into cash in accordance with Parent's certificate of incorporation and/or the liquidation of Parent or (b) to Parent after it consummates a business combination. The Company further acknowledges that, if the Transactions, or, upon termination of this Agreement, another business combination, are not consummated by January 29, 2009, Parent shall be obligated to return to its stockholders the amounts being held in the Trust Fund. Accordingly, the Company, for itself and each of its subsidiaries, affiliated entities, directors, officers, employees, stockholders, representatives, advisors and all other associates and affiliates, hereby waive all rights, title, interest or claim of any kind against Parent to collect from the Trust Fund any monies that may be owed to them by Parent for any reason whatsoever, including but not limited to a breach of this Agreement by Parent or any negotiations, agreements or understandings with Parent (whether in the past, present or future), and shall not seek recourse against the Trust Fund at any time for any reason whatsoever. This paragraph shall survive this Agreement and shall not expire and may not be altered in any way without the express written consent of Parent.

(h) **AIM Delisting.** The Company shall use reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under applicable Laws and rules and policies of the AIM to enable the delisting by the Company of the Company Common Stock.

6.3. Parent Covenants.

(a) **Access to Information.** Prior to the Closing, Parent shall (i) give the Company, its counsel, financial advisors, auditors and other authorized representatives reasonable access to the offices, properties, books and records of Parent, (ii) furnish to the Company, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information relating to Parent as such Persons may reasonably request, and (iii) instruct the employees, counsel and financial advisors of Parent to cooperate with the Company in its investigation of Parent; provided, however, that any investigation pursuant to this section shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of Parent. Any information provided under this Section 6.3(a) shall be deemed confidential information for purposes of Section 6.1(c).

(b) **Restrictions.** Prior to the Closing, except as required by Law or with the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), (i) Parent shall conduct its business and operations only in the Ordinary Course of Business, in substantially the manner in which its business and operations have been previously conducted during the period covered by the Parent Financial Statements and consistently with those practices, policies, customs and usages which were in effect from time to time throughout that period, and (ii) Parent shall not (A) make or change any election, change an annual accounting period, adopt or change any material accounting principle, method or practice, file any amended Tax Return, settle any Tax claim or assessment, enter into any closing agreement with respect to Taxes, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to Parent or take any similar action if the effect would be to increase Parent's Tax liability after the Closing Date, (B) enter into any new line of business, (C) fail to pay any Taxes when they become due and payable, other than Taxes being contested in good faith, (D) issue any additional shares of capital stock (other than shares of Parent Common Stock or Parent Preferred Stock issued in connection with existing warrants or upon exercise of outstanding options by persons who are stockholders of Parent as of the date of this Agreement) or any options, warrants or other rights to purchase, or securities convertible into or exchangeable for, shares of stock in Parent, (E) declare, set aside or pay any dividends or other distribution in respect of any shares of its capital stock, (F) split, combine or reclassify any shares of its capital

stock, (G) knowingly or intentionally take any action that results or is reasonably likely to result in any of the representations and warranties of Parent hereunder being untrue in any material respect or any condition in Article VII, VIII and IX not to be satisfied, (H) take or omit to take any action, the taking or omission of which could reasonably be expected to have a

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Material Adverse Effect, or (I) agree to do, or take any action in furtherance of, any of the foregoing. Nothing in this Section 6.3(b) shall be interpreted as prohibiting or restricting Parent in any way from complying with the terms and conditions of any Material Contracts as such exist as of the date hereof.

(c) **Registration of Shares.** Parent shall file as soon as possible after the Closing, and use its best efforts to become effective within 12 months after the Closing Date, a registration statement under the Securities Act with respect to shares of Parent Common Stock issued pursuant to this Agreement prior to the expiration of such 12-month period, including EBITDA Stock issued pursuant to Section 3.1(c)(ii) and Warrant Stock issued pursuant to Section 3.1(c)(iii), to those stockholders of the Company who are listed on Schedule 6.3(c).

(d) **Director and Officer Liability.** Parent shall cause the Surviving Corporation, and the Surviving Corporation hereby agrees, to do the following:

(i) For six (6) years after the First Merger Effective Time, the Surviving Corporation shall indemnify and hold harmless each present and former officer, director, employee and representative of the Company and Parent in respect of acts and omissions occurring prior to the First Merger Effective Time to the fullest extent permitted by the DGCL or any other Law or provided under the Company's or Parent's certificate of incorporation and bylaws, as applicable, in effect immediately prior to the First Merger Effective Time; provided that such indemnification shall be subject to any limitation imposed by such certificate of incorporation or bylaws (as in effect immediately prior to the First Merger Effective Time) or from time to time by Law.

(ii) For six (6) years after the First Merger Effective Time, the Surviving Corporation shall provide each present and former officer, director, employee and representative of the Company and Parent with tail insurance in respect of acts or omissions occurring prior to the First Merger Effective Time covering each such Person currently covered by the Company's officers' and directors' liability insurance policy on terms with respect to coverage and amount not materially less favorable than those of such policy in effect on the date hereof. Without limiting the generality of the foregoing (and notwithstanding any other provision of this Agreement), prior to the First Merger Effective Time, and with the prior consent of Parent, Company and Parent shall be entitled to obtain prepaid insurance policies providing for the coverage contemplated by this Section 6.3(d). If such prepaid policies are obtained prior to the First Merger Effective Time, Parent shall not cancel such policies or permit such policies to be cancelled.

(iii) The certificate of formation and the operating agreement of the Second Merger Surviving Entity shall include provisions for exculpation of director and officer liability and indemnification on the same basis as set forth in the Company's and Parent's certificate of incorporation and bylaws, as applicable, in effect immediately prior to the First Merger Effective Time. For six (6) years after the First Merger Effective Time, the Surviving Corporation shall maintain in effect the provisions in its certificate of incorporation and bylaws providing for indemnification of such persons with respect to the facts or circumstances occurring at or prior to the First Merger Effective Time to the fullest extent permitted from time to time under the DGCL, which provisions shall not be amended except as required by changes in Law or except to make changes permitted by Law that would enlarge the scope of such persons indemnification rights thereunder.

(iv) The provisions of this Section 6.3(d) (x) are intended to be for the benefit of, and will be enforceable by, each indemnified party, his or her heirs and his or her representatives and (y) are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have by contract or otherwise. It is the intention of the parties to constitute the Company as trustee for the indemnified parties of the rights and benefits of this Section 6.3(d) and the Company agrees to accept such trust and to hold the rights and benefits of this Section 6.3(d) in trust for and on behalf of the indemnified parties. The obligations of Parent and the Surviving Corporation

under this Section 6.3(d) shall not be terminated or

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modified in such a manner as to adversely affect the rights of any indemnified party to whom this Section 6.3(d) applies unless (x) such termination or modification is required by applicable Law or (y) the affected indemnified party shall have consented in writing to such termination or modification.

(e) Prior to the Effective Time, Parent shall (i) adopt an equity incentive plan in form and substance reasonably satisfactory to the Company, (ii) reserve 3,000,000 shares of Parent Common Stock for issuance pursuant to such equity incentive plan and (iii) contingent upon the approval of such equity incentive plan by the holders of Parent Common Stock, approve each of the option grants set forth on Schedule 6.3(e).

6.4. Proxies and Dissent Rights. Parent shall advise the Company, as reasonably requested, and on a daily basis on each of the last seven (7) Business Days prior to the Parent Stockholders meeting, as to the aggregate tally of proxies and votes received in respect of such special meeting and the number of shares of Parent Common Stock for which notices of conversion have been delivered to Parent.

6.5. Stock Symbol. As of and after the First Merger Effective Time, Parent shall (i) change the name of Parent to First Communications, Inc. and (ii) cause the symbol under which the Parent Common Stock and any warrants to purchase Parent Common Stock are traded on the NASDAQ to change to a symbol as determined by the Company that, if available, is reasonably representative of the corporate name or business of the Company.

6.6. Further Assurances. The parties shall execute such further documents, and perform such further acts, as may be necessary to effect the Merger on the terms herein contained, and to otherwise comply with the terms of this Agreement and consummate the Transactions.

VII. CONDITIONS TO EACH PARTY'S OBLIGATION TO EFFECT THE MERGER

The respective obligations of each party to this Agreement to effect the Mergers shall be subject to the satisfaction prior to the Closing Date of the following conditions:

7.1. Parent Stockholder Approval. The Parent Stockholder Approval shall have been obtained by Parent in accordance with the DGCL and Parent's certificate of incorporation. An executed copy of an amendment to Parent's certificate of incorporation shall have been filed with the Secretary of State of the State of Delaware to be effective as of the Closing. The Trust Fund containing at least \$81,000,000 shall have been disbursed to Parent.

7.2. Parent Common Stock. Holders of twenty percent (20%) or more of the shares of Parent Common Stock issued in Parent's initial public offering of securities and outstanding immediately before the Closing shall not have exercised their rights to convert their shares into a pro rata share of the Trust Fund in accordance with Parent's certificate of incorporation.

7.3. Effectiveness of Registration Statement. The SEC shall have declared the Registration Statement effective and no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued by the SEC and no proceeding for that purpose shall have been initiated or, to the knowledge of Parent or the Company, threatened by the SEC.

7.4. NASDAQ Listing Approval. The shares of Parent Common Stock to be issued in the Merger shall have been approved for listing on the NASDAQ Stock Market, subject to official notice of issuance.

7.5. No Litigation. No Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law, rule, injunction, judgment, order, decree, ruling or charge (whether temporary, preliminary or permanent) that is in effect and (a) restrains, enjoins or otherwise prohibits or challenges the validity or legality of the Transactions, (b) limits or otherwise adversely affects the right of Parent to own and control the Acquired Companies, or to operate all or any material portion of either the business or the assets of the Acquired Companies or any material portion of the business or the assets of Parent or (c) compels Parent or any of its Affiliates to dispose of all or any material portion of either the Business or the assets of any Acquired Company

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(each, a **Governmental Prohibition**), and no Person shall have instituted or overtly threatened any action, suit or proceeding that would be reasonably expected to, result in any Governmental Prohibition.

7.6. Hart-Scott-Rodino Act; Governmental Approvals. All applicable waiting periods (and any extension thereof) under the HSR Act shall have expired or otherwise been terminated and all notices, reports, registrations and other filings with, and all consents, approvals and authorizations set forth on Schedule 6.1(a)(i) or Schedule 6.1(a)(ii) shall have been made or obtained, as the case may be.

7.7. Board Composition and Parent Officers. The stockholders of Parent shall have voted to elect to Parent's board of directors the individuals named on Schedule 7.7 in the classes set forth opposite their names, effective immediately after the Closing, and Parent shall have appointed the individuals named on Schedule 7.7 to the offices set forth opposite their names, effective immediately after the Closing.

7.8. Frustration of Closing Conditions. None of the Company, Parent or the Merger Sub may rely on the failure of any condition set forth in Articles VII, VIII or IX, as the case may be, to be satisfied if such failure was caused by such party's breach of Section 6.1(d) or any other provision of this Agreement.

VIII. ADDITIONAL CONDITIONS TO OBLIGATIONS OF PARENT AND THE MERGER SUB

The obligations of Parent and Merger Sub to effect the Mergers are subject to satisfaction of the following conditions at or prior to the date indicated (any of which may be waived in whole or in part by Parent in writing):

8.1. Representations True. The Company's representations and warranties set forth in this Agreement and the exhibits and schedules attached hereto and any certificates delivered pursuant to this Agreement shall be true and correct in all material respects (except representations which, as written, are already qualified by materiality or Material Adverse Effect, in which case such representations and warranties shall be true and correct in all respects) as of the date hereof and, except to the extent such representations and warranties speak as of an earlier date, as of the First Merger Effective Time as if made at the First Merger Effective Time.

8.2. Consents Obtained. All necessary third party approvals or consents shall have been obtained from all foreign, local, state and federal departments and agencies, from all other commissions, boards, agencies and from any other Person or entity whose approval or consent is necessary to consummate the Transactions including, without limitation, the approval of the Company's board of directors and stockholders, State PUC Consents and FCC Consents.

8.3. Performance of Obligations. The Company shall have performed in all material respects all obligations, covenants and agreements undertaken by the Company in this Agreement and shall have complied in all material respects with all terms and conditions applicable to it under this Agreement to be performed and complied with on or before the Closing Date.

8.4. Dissenting Stockholders. Stockholders holding not more than ten percent (10%) of the outstanding shares of Company Common Stock shall have exercised or shall have continuing rights to exercise dissenters' rights under the DGCL with respect to the transactions contemplated by this Agreement.

8.5. Receipt of Documents by Parent. Parent shall have received:

(a) a certificate, dated the Closing Date, signed by the President and Secretary of the Company, certifying as to the fulfillment of the matters contained in Sections 8.1, 8.2 and 8.3;

(b) certified copies of resolutions duly adopted by the board of directors and stockholders of the Company approving this Agreement and the Transactions;

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(c) certificates of good standing dated within five Business Days of the Closing Date certifying the due incorporation or formation, good standing and continued corporate existence of each of the Acquired Companies issued by the jurisdiction of incorporation of such Acquired Company and by each jurisdiction where such Acquired Company is required to qualify to do business as a foreign corporation; and

(d) the Escrow Agreement attached hereto as Exhibit D, executed by the Stockholders Representative and the Escrow Agent.

8.6. No Material Adverse Effect. Since the date of this Agreement there shall not have been any occurrence, event, change, effect or development that, individually or in the aggregate, has had or is reasonably expected to have a Material Adverse Effect on the Company.

8.7. Credit Agreement Amendment. The Company shall have obtained an amendment to the JPMorgan Credit Agreement waiving the change of control provision.

8.8. GCI Merger. The Company shall have consummated the GCI Acquisition substantially on the terms and conditions set forth in the GCI Merger Agreement.

IX. CONDITIONS PRECEDENT TO OBLIGATIONS OF COMPANY

The obligation of the Company to effect the Merger is subject to satisfaction of the following conditions at or prior to the date indicated (any of which may be waived in whole or in part by the Company in writing):

9.1. Representations True. Parent and the Merger Subs representations and warranties set forth in this Agreement and the exhibits and schedules attached hereto and any certificates delivered pursuant to this Agreement shall be true and correct in all material respects (except representations which, as written, are already qualified by materiality or Material Adverse Effect, in which case such representations and warranties shall be true and correct in all respects) as of the date hereof and, except to the extent such representations and warranties speak as of an earlier date, as of the First Merger Effective Time as if made at the First Merger Effective Time.

9.2. Performance of Obligations. Parent and each Merger Sub shall have duly performed in all material respects all obligations, covenants and agreements undertaken by them in this Agreement and shall have complied in all material respects with all the terms and conditions applicable to them under this Agreement to be performed or complied with on or before the Closing Date.

9.3. Consents Obtained. All necessary third party approvals or consents, assuming the Acquired Companies compliance with Section 6.2 with respect to those third party consents that are the subject of such section, shall have been obtained from all foreign, local, state and federal departments and agencies, from all other commissions, boards, agencies and from any other Person or entity whose approval or consent is necessary to consummate the Transactions including, without limitation, the approval of the board of directors of each of Parent and the Merger Subs, State PUC Consents and FCC Consents.

9.4. Merger Consideration. Parent shall have confirmed that it is prepared to deposit the Merger Consideration with the Exchange Agent and the Escrow Agent, as applicable.

9.5. Parent Stockholder Consent. Parent shall have received approval from the stockholders of Parent in a manner consistent with Parent's final prospectus dated January 29, 2007 and delivered such approval to the Company;

provided, however, if Parent fails to obtain such stockholder approval and all of the other foregoing conditions in Sections 7.3-7.6 and 8.1-8.8 shall have been satisfied, then Parent shall pay the Company all of its excess working capital funds available outside of the Trust Fund which remain after Parent's expenses are paid or accrued for and reasonable liquidation reserves are established.

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9.6. Receipt of Documents. The Company shall have received:

- (a) a certificate, dated the Closing Date, signed by the President and Secretary of each of Parent and each Merger Sub certifying as to the fulfillment of the matters contained in Sections 9.1, 9.2, 9.3, 9.4, 9.5, 9.7 and 9.8;
- (b) certified copies of resolutions duly adopted by the board of directors of each of Parent and each Merger Sub approving this Agreement and the Transactions; and
- (c) the Escrow Agreement duly executed by the Parent and the Escrow Agent.

9.7. SEC Compliance. Immediately prior to the Closing, Parent shall be in compliance with the reporting requirements under the Exchange Act.

9.8. No Material Adverse Effect. Since the date of this Agreement there shall not have been any occurrence, event, change, effect or development that, individually or in the aggregate, has had or is reasonably expected to have a Material Adverse Effect on Parent.

X. SURVIVAL OF REPRESENTATIONS AND WARRANTIES

10.1. Nonsurvival of Representations and Warranties. None of the representations and warranties in this Agreement or in any certificate or instruments delivered pursuant to this Agreement shall survive the Closing. This Section 10.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Closing.

XI. TERMINATION

11.1. Termination. This Agreement may be terminated at any time prior to Closing, as follows:

- (a) By mutual written consent of Parent and the Company;
- (b) By either Parent or the Company, if the Transactions shall not have been consummated on or before January 29, 2009 (the **Outside Date**);
- (c) By either Parent or the Company, if a Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, injunction or other order, in each case which has become final and non-appealable, and which permanently restrains, enjoins or otherwise prohibits the Transactions;
- (d) By either Parent or the Company, if within forty-eight (48) hours of the execution and delivery of this Agreement, the Company does not obtain the affirmative written consent of a majority of the stockholders of the Company approving this Agreement and the Transactions;
- (e) By either Parent or the Company, if, at the Parent Stockholders Meeting (including any adjournments thereof), this Agreement and the Transactions shall fail to be approved and adopted by the affirmative vote of the holders of Parent Common Stock required under Parent's certificate of incorporation, or the holders of 20% or more of the number of shares of Parent Common Stock issued in Parent's initial public offering and outstanding as of the record date of the Parent Stockholders Meeting exercise their rights to convert the shares of Parent Common Stock

held by them into cash in accordance with Parent's certificate of incorporation;

(f) By Parent, if it is not in material breach of its obligations under this Agreement and if (i) at any time any of the representations and warranties of the Company herein become untrue or inaccurate such that Section 8.1 would not be satisfied (treating such time as if it were the Closing Date for purposes of this Section 11.1(f)); or (ii) there has been a breach on the part of the Company of any of its covenants or agreements contained in this Agreement such that Section 8.3 would not be satisfied (treating such time as if it were the Closing Date for purposes of this Section 11.1(f)), and, in both cases (i) and (ii), such breach has not been cured within thirty (30) days after written notice to the Company, if curable; or

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(g) By the Company, if it is not in material breach of its obligations under this Agreement, and if (i) at any time any of the representations and warranties of Parent herein become untrue or inaccurate such that Section 9.1 would not be satisfied (treating such time as if it were the Closing Date for purposes of this Section 11.1(g)); or (ii) there has been a breach on the part of Parent of any of its covenants or agreements contained in this Agreement such that Section 9.2 would not be satisfied (treating such time as if it were the Closing Date for purposes of this Section 11.1(g)), and, in both cases (i) and (ii), such breach has not been cured within thirty (30) days after written notice to Parent, if curable.

(h) By Parent within forty-eight (48) hours of the delivery by the Company to Parent of Replacement Company Financial Statements, if such Replacement Company Financial Statements contain restated items that adversely affect the Company's financial results as of and for the fiscal year ended December 31, 2007.

11.2. Effect of Termination. If this Agreement is terminated as permitted by Section 11.1, this Agreement shall have no further force and effect, except that the provisions of Sections 6.1(c), 6.2(g), 12.1, 12.2, 12.5, 12.8, 12.9, 12.10, 12.11, 12.12, 12.13 and this Section 11.2 shall survive any such termination and except for any breach by a party of its obligations hereunder prior to the time of such termination.

XII. MISCELLANEOUS

12.1. Applicable Law. This Agreement shall be construed and enforced in accordance with the internal, substantive laws of the State of Delaware.

12.2. Construction; Entire Agreement; Amendment. The captions preceding the Articles and Sections in this Agreement have been inserted for convenience only and shall not be used to modify, expand or construe any of the provisions of this Agreement. This Agreement, which includes the exhibits and schedules hereto and the other documents, agreements and instruments executed and delivered pursuant to or in connection with this Agreement, constitutes the entire Agreement between the parties hereto with respect to the subject matter contained herein, and it supersedes all prior and contemporaneous agreements, representations and understandings of the parties, express or implied, oral or written. This Agreement may not be amended or modified in any way except in a writing signed by each of the parties hereto and except as provided in Section 6.2(e).

12.3. Assignment. The rights and obligations of a party under this Agreement shall not be assignable by such party without prior, express written consent of all other parties.

12.4. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the legal representatives, heirs, successors and permitted assigns of the respective parties.

12.5. Interpretation. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires.

12.6. Waiver. Any provision of this Agreement may be waived in writing at any time by the party which is entitled to the benefit of such provision. Neither any failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or any of the documents referred to in this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of such right, power or privilege shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

12.7. 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 to this Agreement. Electronic or facsimile signatures shall be deemed to be original signatures.

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12.8. Severability. The parties agree that if any part, term, or provision of this Agreement shall be found illegal and unenforceable by any court of law, the remaining provisions shall be severable, valid, and enforceable in accordance with their terms.

12.9. Notices. Notice from a party to another party hereto relating to this Agreement shall be deemed effective if made in writing and delivered to the recipient's address or facsimile number set forth below by any of the following means: (i) hand delivery, (ii) registered or certified mail, postage prepaid, with return receipt requested, (iii) Federal Express, Airborne Express, or like overnight courier service, or (iv) facsimile showing the date of transmission thereon and followed by regular mail delivery of a copy thereof. Notice made in accordance with this Section 12.9 shall be deemed delivered on receipt if delivered by hand or transmission if sent by facsimile on the third Business Day after mailing if mailed by registered or certified mail, or the next Business Day after deposit with an overnight courier service if delivered for next day delivery.

(a) If to the Company or the Stockholders' Representative prior to the Closing, as follows:

First Communications, Inc.
3340 West Market Street
Akron, Ohio 44333
Attn: Joseph Morris

Fax: (330) 835-2330

With a copy to:

Bingham McCutchen LLP
One Federal Street
Boston, MA 02110
Attn: John J. Concannon III, Esq.

Fax: (617) 951-8736

(b) If to Parent or the Merger Sub or following the Closing, the Company, as follows:

Renaissance Acquisition Corp.
50 East Sample Road
Pompano Beach, Florida
Attn: Barry W. Florescue

Fax: (954) 784-0534

and

Renaissance Acquisition Corp.

15652 Woodvale Road
Encino, California 91436
Attn: Richard Bloom
Fax: (818) 995-7191

With a copy to:

Dechert LLP
1095 Avenue of the Americas
New York, New York 10036
Attn: Charles I. Weissman, Esq.

Fax: (212) 698-3599

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(c) If to the Stockholders Representative following the Closing, as follows:

The Gores Group LLC

10877 Wilshire Boulevard

18th Floor

Los Angeles, California 90024

Attn: Scott Honour

Fax: (310) 209-3310

Any party may, from time to time, by written notice to the other party, designate a different address, which shall be substituted for the one specified above for such party.

12.10. Consent to Jurisdiction. The parties hereto each hereby irrevocably submit to the exclusive jurisdiction of any state or federal court sitting in New Castle County, Delaware for the purposes of any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereto brought by any other party hereto. Each party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each party hereto, to the extent permitted by applicable Law, hereby waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding brought in such courts, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court. Any party may make service on any other 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 12.9 above. Nothing in this Section 12.10, however, shall affect the right of any party to serve legal process in any other manner permitted by law or at equity. Each party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or at equity.

12.11. WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER DOCUMENTS AND AGREEMENTS DELIVERED IN CONNECTION HERewith, THE TRANSACTIONS OR THE ACTIONS OF ANY PARTY HERETO IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT HEREOF OR THEREOF.

12.12. Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, the parties further agree that each party shall be entitled to an injunction or restraining order to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other right or remedy to which such party may be entitled under this Agreement, at law or in equity.

12.13. Expenses. Except as otherwise provided in this Agreement, whether or not the Closing takes place, each party shall bear its respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the Transactions, including all fees and expenses of representatives, counsel, accountants, brokers and finders.

12.14. Stockholders Representative. Subject to the penultimate sentence of this Section 12.14, the Stockholders Representative shall serve as the exclusive agent of the Former Company Stockholders and the holders of T2 Warrants and T3 Warrants for all purposes of this Agreement and the transactions contemplated hereby. Without limiting the generality of the foregoing, the Stockholders Representative shall be authorized (a) to execute all certificates, documents and agreements on behalf of and in the name of any of the Former Company Stockholders and the holders of T2 Warrants and T3 Warrants necessary to effectuate the transactions contemplated hereby, and (b) to negotiate, execute and deliver all amendments, modifications and waivers to this Agreement or any other agreement, document or instrument contemplated by this Agreement. The Stockholders Representative also shall be exclusively authorized to take all actions on behalf of the Former Company Stockholders and holders of T2 Warrants and T3 Warrants in connection with any claims made under this Agreement or in respect of the Transactions contemplated hereby, to bring, prosecute, defend or settle such claims, and to make and receive

payments in respect of such claims on behalf of the Former Company Stockholders and holders of T2 Warrants and T3 Warrants, and no Former Company Stockholder or holders of T2 Warrants and T3 Warrants shall take any such action without the Stockholders Representative's prior written approval. The Stockholders Representative is serving in the capacity as exclusive agent of the Former Company Stockholders and holders of T2 Warrants and T3 Warrants hereunder solely for purposes of administrative convenience. The Stockholders Representative shall not be liable to any Person for any act done or omitted hereunder as the Stockholders Representative while acting in good faith, and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith. The holders of shares of Company Stock outstanding immediately prior to the First Effective Time shall indemnify the Stockholders Representative and hold it harmless against any loss, liability or expense incurred without gross negligence or bad faith on the part of the Stockholders Representative and arising out of or in connection with the acceptance or administration of its duties hereunder. The person serving as Stockholders Representative may resign or be replaced from time to time by the holders of a majority in interest of the Escrowed Stock held in the Escrow Account upon not less than ten (10) days prior written notice to Parent and with Parent's written consent, which shall not be unreasonably withheld, conditioned or delayed.

[Signatures Appear on the Following Page]

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IN WITNESS WHEREOF, the parties have duly executed this Agreement and Plan of Merger on the date first above written.

PARENT:

RENAISSANCE ACQUISITION CORP

By: /s/ Barry W. Florescue
Name: Barry W. Florescue
Title: Chairman and Chief Executive Officer

MERGER SUB I:

FCI MERGER SUB I, INC.

By: /s/ Barry W. Florescue
Name: Barry W. Florescue
Title: President

MERGER SUB II:

FCI MERGER SUB II, LLC

By: RENAISSANCE ACQUISITION CORP.,
as Sole Member

By: /s/ Barry W. Florescue
Name: Barry W. Florescue
Title: Chairman and Chief Executive Officer

THE COMPANY:

FIRST COMMUNICATIONS, INC.

By: /s/ Joseph R. Morris
Name: Joseph R. Morris
Title: Chief Operating Officer

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STOCKHOLDERS REPRESENTATIVE:

THE GORES GROUP, LLC

By: /s/ Steven G. Eisner
Name: Steven G. Eisner
Title: Vice President

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AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
RENAISSANCE ACQUISITION CORP.

[now known as First Communications, Inc.]

RENAISSANCE ACQUISITION CORP., a corporation existing under the laws of the State of Delaware (the "Corporation"), by its Chief Executive Officer, hereby certifies as follows:

1. The name of the Corporation is Renaissance Acquisition Corp.
2. The Corporation's original Certificate of Incorporation was filed in the office of the Secretary of State of Delaware on April 17, 2006, the Certificate of Amendment of Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of Delaware on May 16, 2006, an additional Certificate of Amendment of Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of Delaware on July 11, 2006, and an Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of State of Delaware on January 29, 2007.
3. This Amended and Restated Certificate of Incorporation restates, integrates and amends the original Certificate of Incorporation as amended by the Certificate of Amendment of Certificate of Incorporation.
4. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the applicable provisions of Sections 242 and 245 of the Delaware General Corporation Law by the directors and stockholders of the Corporation.
5. The text of the Certificate of Incorporation of the Corporation is hereby amended and restated to read in full as follows:

FIRST. Name. The name of this corporation is FIRST COMMUNICATIONS, INC. (the "Corporation").

SECOND. Registered Office and Agent. The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, State of Delaware 19808. The name of the Corporation's registered agent at such address is Corporation Service Company.

THIRD. Purpose. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law, as amended from time to time (the "DGCL").

FOURTH. Capital Stock.

Section 4.1. Authorized Shares. The total number of shares of stock which the Corporation shall have authority to issue is 201,000,000, 200,000,000 of which shall be shares of Common Stock with a par value of \$.0001 per share and 1,000,000 of which shall be shares of Preferred Stock with a par value of \$.0001 per share.

Section 4.2. Common Stock. Except as otherwise required by law or as otherwise provided in the terms of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, the holders of the Common Stock shall exclusively possess all voting power, and each share of Common Stock shall have one vote.

Section 4.3. Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby expressly authorized to provide for the issue of all or any of the remaining shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designations, preferences, and relative, participating, optional, or other rights and such qualifications,

limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the DGCL. The Board of Directors is expressly authorized to increase or decrease the number of shares of any series of Preferred Stock subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding and not above the number of authorized shares of Preferred Stock. In case the number of shares of any series of Preferred Stock shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. In all cases, the foregoing provisions of this Section 4.3 shall be subject to any other applicable provisions contained herein.

FIFTH. Elimination of Certain Liability of Directors. No director shall be personally liable to the Corporation or its stockholders for monetary damages for breach of a fiduciary duty as a director; provided, however, that to the extent required by the provisions of Section 102(b)(7) of the DGCL or any successor statute, or any other laws of the State of Delaware, this provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, (iv) for any transaction from which the director derived an improper personal benefit, or (v) for any act or omission occurring prior to the date when this Article Fifth becomes effective. If the DGCL hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended DGCL. Any repeal or modification of this Article Fifth by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing as of the time of such repeal or modification.

SIXTH. Indemnification.

Section 6.1. Right to Indemnification. Each person who was or is a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit, proceeding or alternative dispute resolution procedure, whether (a) civil, criminal, administrative, investigative or otherwise, (b) formal or informal or (c) to the fullest extent permitted by Section 145(b) of the DGCL, as it may be amended from time to time, by or in the right of the Corporation (collectively, a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, manager, officer, partner, trustee, employee or agent of another foreign or domestic corporation or of a foreign or domestic limited liability company, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as such a director, officer, employee or agent of the Corporation or in any other capacity while serving as such other director, manager, officer, partner, trustee, employee or agent, shall be indemnified and held harmless by the Corporation against all judgments, penalties and fines incurred or paid, and against all expenses (including attorneys' fees) and settlement amounts actually and reasonably incurred or paid, in connection with any such proceeding, except in relation to matters as to which the person did not act in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. Until such time as there has been a final judgment to the contrary, a person shall be presumed to be entitled to be indemnified under this Section 6.1. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, either rebut such presumption or create a presumption that (a) the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Corporation, (b) with respect to any criminal action or proceeding, the person had reasonable cause to believe that the person's conduct was unlawful or (c) the person was not successful on the merits or otherwise in defense of the proceeding or of any claim, issue or matter therein. If the DGCL is hereafter amended to provide for

indemnification rights broader than those provided by this Section 6.1, then the persons referred to in this Section 6.1 shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL as so amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior to such amendment).

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Section 6.2. Determination of Entitlement to Indemnification. A determination as to whether a person who is a director or officer of the Corporation at the time of the determination is entitled to be indemnified and held harmless under Section 6.1 shall be made (a) by a majority vote of the directors who are not parties to such proceeding, even though less than a quorum, (b) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (d) by the stockholders. A determination as to whether a person who is not a director or officer of the Corporation at the time of the determination is entitled to be indemnified and held harmless under Section 6.1 shall be made by or as directed by the Board of Directors of the Corporation.

Section 6.3. Mandatory Advancement of Expenses. The right to indemnification conferred in this Article Sixth shall include the right to require the Corporation to pay the expenses (including attorneys' fees) actually and reasonably incurred in defending any such proceeding in advance of its final disposition; provided, however, that an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer of the Corporation (but not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall be finally determined that such indemnitee is not entitled to be indemnified for such expenses under Section 6.1 or otherwise.

Section 6.4. Non-Exclusivity of Rights. The right to indemnification and the advancement of expenses conferred in this Article Sixth shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, any provision of this Amended and Restated Certificate of Incorporation or of any bylaw, agreement, or insurance policy or arrangement, or any vote of stockholders or disinterested directors, or otherwise. The Board of Directors is expressly authorized to adopt and enter into indemnification agreements with, and obtain insurance for, directors and officers.

Section 6.5. Effect of Amendment. Neither any amendment, repeal, or modification of this Article Sixth, nor the adoption or amendment of any other provision of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation inconsistent with this Article Sixth, shall adversely affect any right or protection provided hereby with respect to any act or omission occurring prior to the date when such amendment, repeal, modification, or adoption became effective.

SEVENTH. Stockholder Action. Any action required or permitted to be taken by stockholders pursuant to this Amended and Restated Certificate of Incorporation or under applicable law may be effected only at a duly called annual or special meeting of stockholders and with a vote thereat, and may not be effected by consent in writing. Except as otherwise required by law and subject to the rights of any series of Preferred Stock, special meetings of the stockholders of the Corporation may be called by the Board of Directors pursuant to a resolution approved by a majority of the members of the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer or the President and shall be called by the President or the Secretary upon the written request of the holders of a majority of the outstanding shares of Common Stock of the Corporation.

EIGHTH. Miscellaneous. The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation and for the purpose of creating, defining, limiting and regulating powers of the Corporation and its directors and stockholders:

Section 8.1. Classification, Election and Term of Office of Directors.

(a) The Board of Directors shall consist of such number of directors as is determined from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors; provided, however, that in no event shall the number of directors be less than one nor more than fifteen.

(b) The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors. The Board of Directors shall designate the initial class of each director currently serving. At the first annual meeting of stockholders following the initial classification of the Board of Directors, the term of office of the initial Class I directors shall expire and successors to the initial Class I directors shall be elected for a three-year term. At the second annual meeting of stockholders

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following such initial classification, the term of office of the initial Class II directors shall expire and successors to the initial Class II directors shall be elected for a three-year term. At the third annual meeting of stockholders following such initial classification, the term of office of the initial Class III directors shall expire and successors to the initial Class III directors shall be elected for a three-year term. At each succeeding annual meeting of shareholders thereafter, successors to the class of directors whose term expires at that annual meeting shall be elected for a three-year term. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. A director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor shall be elected and shall qualify. Any vacancy on the Board of Directors for any reason, and any directorships resulting from any increase in the number of directors of the Board of Directors, may be filled by a majority of the Board of Directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next election of the class for which such directors shall have been chosen and until their successors shall be elected and qualified. Notwithstanding the foregoing, whenever the holders of any one or more classes or series of stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Amended and Restated Certificate of Incorporation applicable thereto, such directors so elected shall not be divided into classes pursuant to this Article Eighth, Section 8.1., and the number of such directors shall not be counted in determining the maximum number of directors permitted under the provisions of Article Eighth, Section 8.1, in each case unless expressly provided by such terms.

Section 8.2. Manner of Election of Directors. Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

Section 8.3. Severability. In the event any provision (or portion thereof) of this Amended and Restated Certificate of Incorporation shall be found to be invalid, prohibited, or unenforceable for any reason, the remaining provisions (or portions thereof) of this Amended and Restated Certificate of Incorporation shall be deemed to remain in full force and effect, and shall be construed as if such invalid, prohibited, or unenforceable provision had been stricken herefrom or otherwise rendered inapplicable, it being the intent of the Corporation and its stockholders that each such remaining provision (or portion thereof) of this Amended and Restated Certificate of Incorporation remain, to the fullest extent permitted by law, applicable and enforceable as to all stockholders, notwithstanding any such finding.

Section 8.4. Reservation of Right to Amend Certificate of Incorporation. Except as otherwise set forth in this Amended and Restated Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute or herein, and all rights conferred upon stockholders herein are granted subject to this reservation.

[Signature Page Follows]

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated

Certificate of Incorporation to be signed by Barry W. Florescue, Chairman of the Board of Directors and Chief Executive Officer, as of the day of .

By: Barry W. Florescue
Title: Chairman of the Board of
Directors
and Chief Executive Officer

Signature Page to Amended and Restated Certificate of Incorporation

RENAISSANCE ACQUISITION CORP.

2008 EQUITY INCENTIVE PLAN

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RENAISSANCE ACQUISITION CORP.

2008 Equity Incentive Plan

1. Purpose

This Plan is intended to encourage ownership of Stock by employees, consultants and directors of the Company and its Affiliates and to provide additional incentive for them to promote the success of the Company's business through the grant of Awards of or pertaining to shares of the Company's Stock. The Plan is intended to be an incentive stock option plan within the meaning of Section 422 of the Code, but not all Awards are required to be Incentive Options.

2. Definitions

As used in this Plan, the following terms shall have the following meanings:

2.1. Accelerate, Accelerated, and Acceleration, means: (a) when used with respect to an Option or Stock Appreciation Right, that as of the time of reference the Option or Stock Appreciation Right will become exercisable with respect to some or all of the shares of Stock for which it was not then otherwise exercisable by its terms; (b) when used with respect to Restricted Stock or Restricted Stock Units, that the Risk of Forfeiture otherwise applicable to the Stock or Units shall expire with respect to some or all of the shares of Restricted Stock or Units then still otherwise subject to the Risk of Forfeiture; and (c) when used with respect to Performance Units, that the applicable Performance Goals shall be deemed to have been met as to some or all of the Units.

2.2. Affiliate means any corporation, partnership, limited liability company, business trust, or other entity controlling, controlled by or under common control with the Company.

2.3. Award means any grant or sale pursuant to the Plan of Options, Stock Appreciation Rights, Performance Units, Restricted Stock, or Restricted Stock Units.

2.4. Award Agreement means an agreement between the Company and the recipient of an Award, setting forth the terms and conditions of the Award.

2.5. Board means the Company's Board of Directors.

2.6. Cause means, unless otherwise provided in an Award Agreement, (i) the continued failure to follow the instructions of the Board or written Company policies, (ii) willful misconduct or gross negligence resulting in material injury to the Company or any of its Affiliates, or (iii) conviction (including a plea of guilty or nolo contendere) of (A) a felony or (B) any crime involving fraud or dishonesty, including any such offense that relates to the Company's, or any of its Affiliates', assets or business or the theft of the Company's, or any of its Affiliates', property. However, in the case of any Participant who has entered into any employment or other agreement with the Company or an Affiliate that is in effect at the relevant time and that defines cause, Cause for that Participant shall mean cause as defined under such agreement.

2.7. Change of Control means the occurrence of any of the following after the date of the approval of the Plan by the Board:

(a) a Transaction (as defined in Section 8.4), unless securities possessing more than 50% of the total combined voting power of the survivor's or acquiror's outstanding securities (or the securities of any parent thereof) are held by a person or persons who held securities possessing more than 50% of the total combined voting power of the Company's outstanding securities immediately prior to that transaction, or

(b) any person or group of persons (within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended and in effect from time to time) directly or indirectly acquires, including but not limited to by means of a merger or consolidation, beneficial ownership (determined pursuant to Securities and Exchange Commission Rule 13d-3

promulgated under the said Exchange Act) of securities possessing more than 20% of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's stockholders that the Board does not recommend such stockholders accept, other than (i) the Company or an Affiliate, (ii) an employee benefit plan of the Company or any of its Affiliates, (iii) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any of its Affiliates, or (iv) an underwriter temporarily holding securities pursuant to an offering of such securities, or

(c) over a period of 36 consecutive months or less, there is a change in the composition of the Board such that a majority of the Board members (rounded up to the next whole number, if a fraction) ceases, by reason of one or more proxy contests for the election of Board members, to be composed of individuals who either (i) have been Board members continuously since the beginning of that period, or (ii) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in the preceding clause (i) who were still in office at the time that election or nomination was approved by the Board.

2.8. Code means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto, and any regulations issued from time to time thereunder.

2.9. Committee means the Compensation Committee of the Board, which in general is responsible for the administration of the Plan, as provided in Section 5 of this Plan. For any period during which no such committee is in existence Committee shall mean the Board and all authority and responsibility assigned to the Committee under the Plan shall be exercised, if at all, by the Board.

2.10. Company means Renaissance Acquisition Corp., a corporation organized under the laws of the State of Delaware.

2.11. Covered Employee means an employee who is a covered employee within the meaning of Section 162(m) of the Code.

2.12. Grant Date means the date as of which an Option is granted, as determined under Section 7.1(a).

2.13. Incentive Option means an Option which by its terms is to be treated as an incentive stock option within the meaning of Section 422 of the Code.

- 2.14. Market Value means the value of a share of Stock on a particular date determined by such methods or procedures as may be established by the Committee. Unless otherwise determined by the Committee, the Market Value of Stock as of any date is the closing price for the Stock as reported on the New York Stock Exchange (or on any other national securities exchange on which the Stock is then listed) for that date or, if no closing price is reported for that date, the closing price on the next preceding date for which a closing price was reported. For purposes of Awards effective as of the effective date of the Company's initial public offering, Market Value of Stock shall be the price at which the Company's Stock is offered to the public in its initial public offering.
- 2.15. Nonstatutory Option means any Option that is not an Incentive Option.
- 2.16. Option means an option to purchase shares of Stock.
- 2.17. Optionee means a Participant to whom an Option shall have been granted under the Plan.
- 2.18. Participant means any holder of an outstanding Award under the Plan.
- 2.19. Performance Criteria means the criteria that the Committee selects for purposes of establishing the Performance Goal or Performance Goals for a Participant for a Performance Period. The Performance Criteria used to establish Performance Goals are limited to: (i) cash flow (before or after dividends), (ii) earnings per share (including, without limitation, earnings before interest, taxes, depreciation and amortization), (iii) stock price, (iv) return on equity, (v) stockholder return or total stockholder return, (vi) return on capital (including, without limitation, return on total capital or return on invested capital), (vii) return on investment, (viii) return on assets or net assets, (ix) market capitalization, (x) economic value added, (xi) debt leverage (debt to capital), (xii) revenue, (xiii) sales or net sales, (xiv) backlog, (xv) income, pre-tax income or net income,

(xvi) operating income or pre-tax profit, (xvii) operating profit, net operating profit or economic profit, (xviii) gross margin, operating margin or profit margin, (xix) return on operating revenue or return on operating assets, (xx) cash from operations, (xxi) operating ratio, (xxii) operating revenue, (xxiii) market share improvement, (xxiv) general and administrative expenses and (xxv) customer service.

2.20. Performance Goals means, for a Performance Period, the written goal or goals established by the Committee for the Performance Period based upon the Performance Criteria. The Performance Goals may be expressed in terms of overall Company performance or the performance of a division, business unit, subsidiary, or an individual, either individually, alternatively or in any combination, applied to either the Company as a whole or to a business unit or Affiliate, either individually, alternatively or in any combination, and measured either quarterly, annually or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to previous years' results or to a designated comparison group, in each case as specified by the Committee. The Committee will, in the manner and within the time prescribed by Section 162(m) of the Code in the case of Qualified Performance-Based Awards, objectively define the manner of calculating the Performance Goal or Goals it selects to use for such Performance Period for such Participant. To the extent consistent with Section 162(m) of the Code (in the case of Qualified Performance-Based Awards), the Committee may appropriately adjust any evaluation of performance against a Performance Goal to exclude any of the following events that occurs during a performance period: (i) asset write-downs, (ii) litigation, claims, judgments or settlements, (iii) the effect of changes in tax law, accounting principles or other such laws or provisions affecting reported results, (iv) accruals for reorganization and restructuring programs and (v) any extraordinary, unusual, non-recurring or non-comparable items (A) as described in Accounting Principles Board Opinion No. 30, (B) as described in management's discussion and analysis of financial condition and results of operations appearing in the Company's Annual Report to stockholders for the applicable year, or (C) publicly announced by the Company in a press release or conference call relating to the Company's results of operations or financial condition for a completed quarterly or annual fiscal period.

2.21. Performance Period means the one or more periods of time, which may be of varying and overlapping durations, selected by the Committee, over which the attainment of one or more Performance Goals or other business objectives will be measured for purposes of determining a Participant's right to, and the payment of, a Qualified Performance-Based Award.

2.22. Performance Unit means a right granted to a Participant under Section 7.5, to receive cash, Stock or other Awards, the payment of which is contingent on achieving Performance Goals or other business objectives established by the Committee.

2.23. Plan means this 2008 Equity Incentive Plan of the Company, as amended from time to time, and including any attachments or addenda hereto.

- 2.24. Qualified Performance-Based Awards means Awards intended to qualify as performance-based compensation under Section 162(m) of the Code.
- 2.25. Restricted Stock means a grant or sale of shares of Stock to a Participant subject to a Risk of Forfeiture.
- 2.26. Restricted Stock Units means rights to receive shares of Stock at the close of a Restriction Period, subject to a Risk of Forfeiture.
- 2.27. Restriction Period means the period of time, established by the Committee in connection with an Award of Restricted Stock or Restricted Stock Units, during which the shares of Restricted Stock or Restricted Stock Units are subject to a Risk of Forfeiture described in the applicable Award Agreement.
- 2.28. Risk of Forfeiture means a limitation on the right of the Participant to retain Restricted Stock or Restricted Stock Units, including a right of the Company to reacquire shares of Restricted Stock at less than their then Market Value, arising because of the occurrence or non-occurrence of specified events or conditions.
- 2.29. Stock means common stock, par value \$0.0001 per share, of the Company, and such other securities as may be substituted for Stock pursuant to Section 8.

2.30. Stock Appreciation Right means a right to receive any excess in the Market Value of shares of Stock (except as otherwise provided in Section 7.2(c)) over a specified exercise price.

2.31. Stockholders Agreement means any agreement by and among the holders of at least a majority of the outstanding voting securities of the Company and setting forth, among other provisions, restrictions upon the transfer of shares of Stock or on the exercise of rights appurtenant thereto (including but not limited to voting rights).

2.32. Ten Percent Owner means a person who owns, or is deemed within the meaning of Section 422(b)(6) of the Code to own, stock possessing more than 10% of the total combined voting power of all classes of stock of the Company (or any parent or subsidiary corporations of the Company, as defined in Sections 424(e) and (f), respectively, of the Code). Whether a person is a Ten Percent Owner shall be determined with respect to an Option based on the facts existing immediately prior to the Grant Date of the Option.

3. Term of the Plan

Unless the Plan shall have been earlier terminated by the Board, Awards may be granted under this Plan at any time in the period commencing on the date of approval of the Plan by the Board and ending immediately prior to the tenth anniversary of the earlier of the adoption of the Plan by the Board and approval of the Plan by the Company's stockholders. Awards granted pursuant to the Plan within that period shall not expire solely by reason of the termination of the Plan. Awards of Incentive Options granted prior to stockholder approval of the Plan are expressly conditioned upon such approval, but in the event of the failure of the stockholders to approve the Plan shall thereafter and for all purposes be deemed to constitute Nonstatutory Options.

4. Stock Subject to the Plan

At no time shall the number of shares of Stock issued pursuant to or subject to outstanding Awards granted under the Plan (including pursuant to Incentive Options), nor the number of shares of Stock issued pursuant to Incentive Options, exceed 3,000,000 shares of Stock; subject, however, to the provisions of Section 8 of the Plan. For purposes of applying the foregoing limitation, (a) if any Option or Stock Appreciation Right expires, terminates, or is cancelled for any reason without having been exercised in full, or if any other Award is forfeited by the recipient or repurchased at less than its Market Value, the shares not purchased by the Optionee or which are forfeited by the recipient or repurchased shall again be available for Awards to be granted under the Plan and (b) if any Option is exercised by delivering previously owned shares in payment of the exercise price therefor, only the net number of shares, that is, the number of shares issued minus the number received by the Company in payment of the exercise price, shall be considered to have been issued pursuant to an Award granted under the Plan. In addition, settlement of any Award

shall not count against the foregoing limitations except to the extent settled in the form of Stock. Shares of Stock issued pursuant to the Plan may be either authorized but unissued shares or shares held by the Company in its treasury.

5. Administration

The Plan shall be administered by the Committee; provided, however, that at any time and on any one or more occasions the Board may itself exercise any of the powers and responsibilities assigned the Committee under the Plan and when so acting shall have the benefit of all of the provisions of the Plan pertaining to the Committee's exercise of its authorities hereunder. Subject to the provisions of the Plan, the Committee shall have complete authority, in its discretion, to make or to select the manner of making all determinations with respect to each Award to be granted by the Company under the Plan including the employee, consultant or director to receive the Award and the form of Award. In making such determinations, the Committee may take into account the nature of the services rendered by the respective employees, consultants, and directors, their present and potential contributions to the success of the Company and its Affiliates, and such other factors as the Committee in its discretion shall deem relevant. Subject to the provisions of the Plan, the Committee shall also have complete authority to interpret the Plan, to prescribe, amend and rescind rules and regulations relating to it, to determine the terms and provisions of the respective Award Agreements (which need not be identical), and to make all other determinations necessary or advisable for the administration of the Plan. The Committee's determinations made in good faith on matters referred to in the Plan shall be final, binding and conclusive on all persons having or claiming any interest under the Plan or an Award made pursuant hereto.

6. Authorization of Grants

6.1. Eligibility. The Committee may grant from time to time and at any time prior to the termination of the Plan one or more Awards, either alone or in combination with any other Awards, to any employee of or consultant to one or more of the Company and its Affiliates or to any non-employee member of the Board or of any board of directors (or similar governing authority) of any Affiliate. However, only employees of the Company, and of any parent or subsidiary corporations of the Company, as defined in Sections 424(e) and (f), respectively, of the Code, shall be eligible for the grant of an Incentive Option. Further, in no event shall the number of shares of Stock covered by Options or other Awards granted to any one person in any one calendar year exceed 500,000 shares of Stock (subject to the provisions of Section 8 of the Plan, but only to the extent consistent with Section 162(m) of the Code).

6.2. General Terms of Awards. Each grant of an Award shall be subject to all applicable terms and conditions of the Plan (including but not limited to any specific terms and conditions applicable to that type of Award set out in the following Section), and such other terms and conditions, not inconsistent with the terms of the Plan, as the Committee may prescribe. No prospective Participant shall have any rights with respect to an Award, unless and until such Participant shall have complied with the applicable terms and conditions of such Award (including if applicable delivering a fully executed copy of any agreement evidencing an Award to the Company).

6.3. Effect of Termination of Employment, Etc. Unless the Committee shall provide otherwise with respect to any Award, if the Participant's employment or other association with the Company and its Affiliates ends for any reason other than for Cause, including because of the Participant's employer ceasing to be an Affiliate, (a) any outstanding Option or Stock Appreciation Right of the Participant shall cease to be exercisable in any respect not later than 90 days following that event and, for the period it remains exercisable following that event, shall be exercisable only to the extent exercisable at the date of that event, and (b) any other outstanding Award of the Participant shall be forfeited or otherwise subject to return to or repurchase by the Company on the terms specified in the applicable Award Agreement. Military or sick leave or other bona fide leave shall not be deemed a termination of employment or other association, provided that it does not exceed the longer of ninety (90) days or the period during which the absent Participant's reemployment rights, if any, are guaranteed by statute or by contract. If the Participant's employment or other association with the Company and its Affiliates ends for Cause, (a) any outstanding Option or Stock Appreciation Right of the Participant shall cease to be exercisable in any respect immediately upon termination, and (b) any other outstanding Award of the Participant shall be forfeited or otherwise subject to return to or repurchase by the Company on the terms specified in the applicable Award Agreement

6.4. Non-Transferability of Awards. Except as otherwise provided in this Section 6.4, Awards shall not be transferable, and no Award or interest therein may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. All of a Participant's rights in any Award may be exercised during the life of the Participant only by the Participant or the Participant's legal representative. However, the Committee may, at or after the grant of an Award of a Nonstatutory Option, or shares of Restricted Stock, provide that such Award may be transferred by the recipient to a family member; provided, however, that any

such transfer is without payment of any consideration whatsoever and that no transfer shall be valid unless first approved by the Committee, acting in its sole discretion. For this purpose, family member means any child, stepchild, grandchild, parent, stepparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the employee's household (other than a tenant or employee), a trust in which the foregoing persons have more than fifty (50) percent of the beneficial interests, a foundation in which the foregoing persons (or the Participant) control the management of assets, and any other entity in which these persons (or the Participant) own more than fifty (50) percent of the voting interests.

7. Specific Terms of Awards

7.1. Options.

- (a) Date of Grant. The granting of an Option shall take place at the time specified in the Award Agreement. Only if expressly so provided in the applicable Award Agreement shall the Grant Date be the date on which the Award Agreement shall have been duly executed and delivered by the Company and the Optionee.

(b) Exercise Price. The price at which shares of Stock may be acquired under each Option shall be not less than 100% of the Market Value of Stock on the Grant Date, or not less than 110% of the Market Value of Stock on the Grant Date in the case of an Incentive Option granted to a Ten Percent Owner.

(c) Option Period. No Incentive Option may be exercised on or after the tenth anniversary of the Grant Date, or on or after the fifth anniversary of the Grant Date if the Optionee is a Ten Percent Owner. The Option period under each Nonstatutory Option shall not be so limited solely by reason of this Section.

(d) Exercisability. An Option may be immediately exercisable or become exercisable in such installments, cumulative or non-cumulative, as the Committee may determine. In the case of an Option not otherwise immediately exercisable in full, the Committee may Accelerate such Option in whole or in part at any time.

(e) Method of Exercise. An Option may be exercised by the Optionee giving written notice, in the manner provided in Section 16, specifying the number of shares with respect to which the Option is then being exercised. The notice shall be accompanied by payment in the form of cash or check payable to the order of the Company in an amount equal to the exercise price of the shares to be purchased or, subject in each instance to the Committee's approval, acting in its sole discretion, and to such conditions, if any, as the Committee may deem necessary to avoid adverse accounting effects to the Company,

(i) by delivery to the Company of shares of Stock having a Market Value equal to the exercise price of the shares to be purchased, or

(ii) by surrender of the Option as to all or part of the shares of Stock for which the Option is then exercisable in exchange for shares of Stock having an aggregate Market Value equal to the difference between (1) the aggregate Market Value of the surrendered portion of the Option, and (2) the aggregate exercise price under the Option for the surrendered portion of the Option, or

(iii) unless prohibited by applicable law, by delivery to the Company of the Optionee's executed promissory note in the principal amount equal to the exercise price of the shares to be purchased and otherwise in such form as the Committee shall have approved.

If the Stock is traded on an established market, payment of any exercise price may also be made through and under the terms and conditions of any formal cashless exercise program authorized by the Company entailing the sale of the

Stock subject to an Option in a brokered transaction (other than to the Company). Receipt by the Company of such notice and payment in any authorized or combination of authorized means shall constitute the exercise of the Option. Within thirty (30) days thereafter but subject to the remaining provisions of the Plan, the Company shall deliver or cause to be delivered to the Optionee or his agent a certificate or certificates for the number of shares then being purchased. Such shares shall be fully paid and nonassessable.

(f) Limit on Incentive Option Characterization. An Incentive Option shall be considered to be an Incentive Option only to the extent that the number of shares of Stock for which the Option first becomes exercisable in a calendar year do not have an aggregate Market Value (as of the date of the grant of the Option) in excess of the current limit . The current limit for any Optionee for any calendar year shall be \$100,000 minus the aggregate Market Value at the date of grant of the number of shares of Stock available for purchase for the first time in the same year under each other Incentive Option previously granted to the Optionee under the Plan, and under each other incentive stock option previously granted to the Optionee under any other incentive stock option plan of the Company and its Affiliates, after December 31, 1986. Any shares of Stock which would cause the foregoing limit to be violated shall be deemed to have been granted under a separate Nonstatutory Option, otherwise identical in its terms to those of the Incentive Option.

(g) Notification of Disposition. Each person exercising any Incentive Option granted under the Plan shall be deemed to have covenanted with the Company to report to the Company any disposition of such shares prior to the expiration of the holding periods specified by Section 422(a)(1) of the Code and, if and to the extent that the realization of income in such a disposition imposes upon the Company federal, state, local or other withholding tax requirements, or any such withholding is required to secure for the Company an otherwise available tax deduction, to remit to the Company an amount in cash sufficient to satisfy those requirements.

7.2. Stock Appreciation Rights.

(a) Tandem or Stand-Alone. Stock Appreciation Rights may be granted in tandem with an Option (at or, in the case of a Nonstatutory Option, after, the award of the Option), or alone and unrelated to an Option. Stock Appreciation Rights in tandem with an Option shall terminate to the extent that the related Option is exercised, and the related Option shall terminate to the extent that the tandem Stock Appreciation Rights are exercised.

(b) Exercise Price. Stock Appreciation Rights shall have an exercise price of not less than one hundred percent (100%) of the Market Value of the Stock on the date of award.

(c) Other Terms. Except as the Committee may deem inappropriate or inapplicable in the circumstances, Stock Appreciation Rights shall be subject to terms and conditions substantially similar to those applicable to a Nonstatutory Option.

7.3. Restricted Stock.

(a) Purchase Price. Shares of Restricted Stock shall be issued under the Plan for such consideration, in cash, other property or services, or any combination thereof, as is determined by the Committee.

(b) Issuance of Certificates. Each Participant receiving a Restricted Stock Award, subject to subsection (c) below, shall be issued a stock certificate in respect of such shares of Restricted Stock. Such certificate shall be registered in the name of such Participant, and, if applicable, shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Award substantially in the following form:

The transferability of this certificate and the shares represented by this certificate are subject to the terms and conditions of the Renaissance Acquisition Corp. 2008 Equity Incentive Plan and an Award Agreement entered into by the registered owner and Renaissance Acquisition Corp. Copies of such Plan and Agreement are on file in the offices of Renaissance Acquisition Corp.

(c) Escrow of Shares. The Committee may require that the stock certificates evidencing shares of Restricted Stock be held in custody by a designated escrow agent (which may but need not be the Company) until the restrictions

thereon shall have lapsed, and that the Participant deliver a stock power, endorsed in blank, relating to the Stock covered by such Award.

(d) Restrictions and Restriction Period. During the Restriction Period applicable to shares of Restricted Stock, such shares shall be subject to limitations on transferability and a Risk of Forfeiture arising on the basis of such conditions related to the performance of services, Company or Affiliate performance or otherwise as the Committee may determine and provide for in the applicable Award Agreement. Any such Risk of Forfeiture may be waived or terminated, or the Restriction Period shortened, at any time by the Committee on such basis as it deems appropriate.

(e) Rights Pending Lapse of Risk of Forfeiture or Forfeiture of Award. Except as otherwise provided in the Plan or the applicable Award Agreement, at all times prior to lapse of any Risk of Forfeiture applicable to, or forfeiture of, an Award of Restricted Stock, the Participant shall have all of the rights of a stockholder of the Company, including the right to vote, and the right to receive any dividends with respect to, the shares of Restricted Stock. The Committee, as determined at the time of Award, may permit or require the payment of cash dividends to be deferred and, if the Committee so determines, reinvested in additional Restricted Stock to the extent shares are available under Section 4.

(f) Lapse of Restrictions. If and when the Restriction Period expires without a prior forfeiture of the Restricted Stock, the certificates for such shares shall be delivered to the Participant promptly if not theretofore so delivered.

7.4. Restricted Stock Units.

(a) Character. Each Restricted Stock Unit shall entitle the recipient to a share of Stock at a close of such Restriction Period as the Committee may establish and subject to a Risk of Forfeiture arising on the basis of such conditions relating to the performance of services, Company or Affiliate performance or otherwise as the Committee may determine and provide for in the applicable Award Agreement. Any such Risk of Forfeiture may be waived or terminated, or the Restriction Period shortened, at any time by the Committee on such basis as it deems appropriate.

(b) Form and Timing of Payment. Payment of earned Restricted Stock Units shall be made in a single lump sum following the close of the applicable Restriction Period. At the discretion of the Committee, Participants may be entitled to receive payments equivalent to any dividends declared with respect to Stock referenced in grants of Restricted Stock Units but only following the close of the applicable Restriction Period and then only if the underlying Stock shall have been earned. Unless the Committee shall provide otherwise, any such dividend equivalents shall be paid, if at all, without interest or other earnings.

7.5. Performance Units.

(a) Character. Each Performance Unit shall entitle the recipient to the value of a specified number of shares of Stock, over the initial value for such number of shares, if any, established by the Committee at the time of grant, at the close of a specified Performance Period to the extent specified business objectives, including but not limited to Performance Goals, shall have been achieved.

(b) Earning of Performance Units. The Committee shall set Performance Goals or other business objectives in its discretion which, depending on the extent to which they are met within the applicable Performance Period, will determine the number and value of Performance Units that will be paid out to the Participant. After the applicable Performance Period has ended, the holder of Performance Units shall be entitled to receive payout on the number and value of Performance Units earned by the Participant over the Performance Period, to be determined as a function of the extent to which the corresponding Performance Goals or other business objectives have been achieved.

(c) Form and Timing of Payment. Payment of earned Performance Units shall be made in a single lump sum following the close of the applicable Performance Period. At the discretion of the Committee, Participants may be entitled to receive any dividends declared with respect to Stock which have been earned in connection with grants of Performance Units which have been earned, but not yet distributed to Participants. The Committee may permit or, if it so provides at grant require, a Participant to defer such Participant's receipt of the payment of cash or the delivery of Stock that would otherwise be due to such Participant by virtue of the satisfaction of any requirements or goals with

respect to Performance Units. If any such deferral election is required or permitted, the Committee shall establish rules and procedures for such payment deferrals.

7.6. Qualified Performance-Based Awards.

(a) Purpose. The purpose of this Section 7.6 is to provide the Committee the ability to qualify Awards as performance-based compensation under Section 162(m) of the Code. If the Committee, in its discretion, decides to grant an Award as a Qualified Performance-Based Award, the provisions of this Section 7.6 will control over any contrary provision contained in the Plan. In the course of granting any Award, the Committee may specifically designate the Award as intended to qualify as a Qualified Performance-Based Award. However, no Award shall be considered to have failed to qualify as a Qualified Performance-Based Award solely because the Award is not expressly designated as a Qualified Performance-Based Award, if the Award otherwise satisfies the provisions of this Section 7.6 and the requirements of Section 162(m) of the Code and the regulations promulgated thereunder applicable to performance-based compensation.

(b) Authority. All grants of Awards intended to qualify as Qualified Performance-Based Awards and determination of terms applicable thereto shall be made by the Committee or, if not all of the members thereof qualify as outside directors within the meaning of applicable IRS regulations under Section 162 of the Code, a subcommittee of the Committee consisting of such of the members of the Committee as do so qualify. Any action by such a subcommittee shall be considered the action of the Committee for purposes of the Plan.

(c) Applicability. This Section 7.6 will apply only to those Covered Employees, or to those persons who the Committee determines are reasonably likely to become Covered Employees in the period covered by an Award, selected by the Committee to receive Qualified Performance-Based Awards. The Committee may, in its discretion, grant Awards to Covered Employees that do not satisfy the requirements of this Section 7.6.

(d) Discretion of Committee with Respect to Qualified Performance-Based Awards. Options may be granted as Qualified Performance-Based Awards in accordance with Section 7.1, except that the exercise price of any Option intended to qualify as a Qualified Performance-Based Award shall in no event be less than the Market Value of the Stock on the date of grant. Each Award intended to qualify as a Qualified Performance-Based Award, such as Restricted Stock, Restricted Stock Units, or Performance Units, shall be subject to satisfaction of one or more Performance Goals. The Committee will have full discretion to select the length of any applicable Restriction Period or Performance Period, the kind and/or level of the applicable Performance Goal, and whether the Performance Goal is to apply to the Company, a subsidiary of the Company or any division or business unit or to the individual. Any Performance Goal or Goals applicable to Qualified Performance-Based Awards shall be objective, shall be established not later than the earlier of ninety (90) days after the beginning of any applicable Performance Period or the date on which 25% of the Performance Period shall have elapsed and shall otherwise meet the requirements of Section 162(m) of the Code, including the requirement that the outcome of the Performance Goal or Goals be substantially uncertain (as defined in the regulations under Section 162(m) of the Code) at the time established.

(e) Payment of Qualified Performance-Based Awards. A Participant will be eligible to receive payment under a Qualified Performance-Based Award which is subject to achievement of a Performance Goal or Goals only if the applicable Performance Goal or Goals period are achieved within the applicable Performance Period, as determined by the Committee. In determining the actual size of an individual Qualified Performance-Based Award, the Committee may reduce or eliminate the amount of the Qualified Performance-Based Award earned for the Performance Period, if in its sole and absolute discretion, such reduction or elimination is appropriate.

(f) Maximum Award Payable. The maximum Qualified Performance-Based Award payment to any one Participant under the Plan for a Performance Period is the number of shares of Stock set forth in Section 4 above, or if the Qualified Performance-Based Award is paid in cash, that number of shares multiplied by the Market Value of the Stock as of the date the Qualified Performance-Based Award is granted.

(g) Limitation on Adjustments for Certain Events. No adjustment of any Qualified Performance-Based Award pursuant to Section 8 shall be made except on such basis, if any, as will not cause such Award to provide other than performance-based compensation within the meaning of Section 162(m) of the Code.

7.7. Awards to Participants Outside the United States. The Committee may modify the terms of any Award under the Plan granted to a Participant who is, at the time of grant or during the term of the Award, resident or

primarily employed outside of the United States in any manner deemed by the Committee to be necessary or appropriate in order that the Award shall conform to laws, regulations, and customs of the country in which the Participant is then resident or primarily employed, or so that the value and other benefits of the Award to the Participant, as affected by foreign tax laws and other restrictions applicable as a result of the Participant's residence or employment abroad, shall be comparable to the value of such an Award to a Participant who is resident or primarily employed in the United States. The Committee may establish supplements to, or amendments, restatements, or alternative versions of the Plan for the purpose of granting and administering any such modified Award. No such modification, supplement, amendment, restatement or alternative version may increase the share limit of Section 4.

8. Adjustment Provisions

8.1. Adjustment for Corporate Actions. All of the share numbers set forth in the Plan reflect the capital structure of the Company as of October 20, 2008. If subsequent to that date the outstanding shares of Stock (or any other securities covered by the Plan by reason of the prior application of this Section) are increased, decreased, or exchanged for a different number or kind of shares or other securities, or if additional shares or new or different shares or other securities are distributed with respect to shares

of Stock, as a result of a reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split, or other similar distribution with respect to such shares of Stock, an appropriate and proportionate adjustment will be made in (i) the maximum numbers and kinds of shares provided in Section 4, (ii) the numbers and kinds of shares or other securities subject to the then outstanding Awards, (iii) the exercise price for each share or other unit of any other securities subject to then outstanding Options and Stock Appreciation Rights (without change in the aggregate purchase price as to which such Options or Rights remain exercisable), and (iv) the repurchase price of each share of Restricted Stock then subject to a Risk of Forfeiture in the form of a Company repurchase right.

8.2. Adjustment of Awards Upon the Occurrence of Certain Unusual or Nonrecurring Events. In the event of any corporate action not specifically covered by the preceding Section, including but not limited to an extraordinary cash distribution on Stock, a corporate separation or other reorganization or liquidation, the Committee may make such adjustment of outstanding Awards and their terms, if any, as it, in its sole discretion, may deem equitable and appropriate in the circumstances. The Committee may make adjustments in the terms and conditions of, and the criteria included in, Awards in recognition of unusual or nonrecurring events (including, without limitation, the events described in this Section) affecting the Company or the financial statements of the Company or of changes in applicable laws, regulations, or accounting principles, whenever the Committee determines that such adjustments are appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan.

8.3. Related Matters. Any adjustment in Awards made pursuant to Section 8.1 or 8.2 shall be determined and made, if at all, by the Committee, acting in its sole discretion, and shall include any correlative modification of terms, including of Option exercise prices, rates of vesting or exercisability, Risks of Forfeiture, applicable repurchase prices for Restricted Stock, and Performance Goals and other financial objectives which the Committee may deem necessary or appropriate so as to ensure the rights of the Participants in their respective Awards are not substantially diminished nor enlarged as a result of the adjustment and corporate action other than as expressly contemplated in this Section 8. No fraction of a share shall be purchasable or deliverable upon exercise, but in the event any adjustment hereunder of the number of shares covered by an Award shall cause such number to include a fraction of a share, such number of shares shall be adjusted to the nearest smaller whole number of shares. No adjustment of an Option exercise price per share pursuant to this Section 8 shall result in an exercise price which is less than the par value of the Stock.

8.4. Transactions.

(a) Definition of Transaction. In this Section 8.4, Transaction means (1) any merger or consolidation of the Company with or into another entity as a result of which the Stock of the Company is converted into or exchanged for the right to receive cash, securities or other property or is cancelled, (2) any sale or exchange of all of the Stock of the Company for cash, securities or other property, (3) any sale, transfer, or other disposition of all or substantially all of the Company's assets to one or more other persons in a single transaction or series of related transactions or (4) any liquidation or dissolution of the Company.

(b) Treatment of Options and Share Appreciation Rights. In a Transaction, the Committee may take any one or more of the following actions as to all or any (or any portion of) outstanding Options and Share Appreciation Rights (Rights).

(1) Provide that such Rights shall be assumed, or substantially equivalent rights shall be provided in substitution therefore, by the acquiring or succeeding entity (or an affiliate thereof).

(2) Upon written notice to the holders, provide that the holders unexercised Rights will terminate immediately prior to the consummation of such Transaction unless exercised within a specified period following the date of such notice.

(3) Provide that outstanding Rights shall become exercisable in whole or in part prior to or upon the Transaction.

(4) Provide for cash payments, net of applicable tax withholdings, to be made to holders equal to the excess, if any, of (A) the acquisition price times the number of shares of Stock subject to a Right (to the extent the exercise price does not exceed the acquisition price) over (B) the aggregate exercise price for all such shares of Stock

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subject to the Right, in exchange for the termination of such Right. For this purpose, acquisition price means the amount of cash, and market value of any other consideration, received in payment for a share of Stock surrendered in a Transaction.

(5) Provide that, in connection with a liquidation or dissolution of the Company, Rights shall convert into the right to receive liquidation proceeds net of the exercise price thereof and any applicable tax withholdings.

(6) Any combination of the foregoing.

For purposes of paragraph (1) above, a Right shall be considered assumed, or a substantially equivalent right shall be considered to have been provided in substitution therefore, if following consummation of the Transaction the Right confers the right to purchase or receive the value of, for each share of Stock subject to the Right immediately prior to the consummation of the Transaction, the consideration (whether cash, securities or other property) received as a result of the Transaction by holders of Stock for each share of Stock held immediately prior to the consummation of the Transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Stock); provided, however, that if the consideration received as a result of the Transaction is not solely common stock (or its equivalent) of the acquiring or succeeding entity (or an affiliate thereof), the Committee may provide for the consideration to be received upon the exercise of Right to consist of or be based on solely common stock (or its equivalent) of the acquiring or succeeding entity (or an affiliate thereof) equivalent in value to the per share consideration received by holders of outstanding shares of Stock as a result of the Transaction.

(c) Treatment of Restricted Stock. As to outstanding Awards other than Options or Share Appreciation Rights, upon the occurrence of a Transaction other than a liquidation or dissolution of the Company which is not part of another form of Transaction, the repurchase and other rights of the Company under each such Award shall inure to the benefit of the Company's successor and shall, unless the Committee determines otherwise, apply to the cash, securities or other property which the Stock was converted into or exchanged for pursuant to such Transaction in the same manner and to the same extent as they applied to the Award. Upon the occurrence of a Transaction involving a liquidation or dissolution of the Company which is not part of another form of Transaction, except to the extent specifically provided to the contrary in the instrument evidencing any Award or any other agreement between a Participant and the Company, all Risks of Forfeiture and Performance Goals, where otherwise applicable to any such Awards, shall automatically be deemed terminated or satisfied, as applicable.

(d) Related Matters. In taking any of the actions permitted under this Section 8.4, the Committee shall not be obligated to treat all Awards, all Awards held by a Participant, or all Awards of the same type, identically. Any determinations required to carry out the foregoing provisions of this Section 8.4, including but not limited to the market value of other consideration received by holders of Stock in a Transaction and whether substantially equivalent

Rights have been substituted, shall be made by the Committee acting in its sole discretion. The Committee shall not take an action permitted under the provisions of this Section 8.4 (i) with respect to an Award if specifically prohibited under applicable laws, or by the rules and regulations of any governing governmental agencies or national securities exchanges or (ii) with respect to a Qualified Performance-Based Award specifically designated as such by the Committee at the time of grant except to the extent allowed by Section 162(m) of the Code.

9. Change of Control

Except as otherwise provided below, upon the occurrence of a Change of Control:

- (a) any and all Options and Stock Appreciation Rights not already exercisable in full shall Accelerate with respect to 100% of the shares for which such Options or Stock Appreciation Rights are not then exercisable;

- (b) any Risk of Forfeiture applicable to Restricted Stock and Restricted Stock Units which is not based on achievement of Performance Goals shall lapse with respect to 100% of the Restricted Stock and Restricted Stock Units still subject to such Risk of Forfeiture immediately prior to the Change of Control; and

(c) all outstanding Awards of Restricted Stock and Restricted Stock Units conditioned on the achievement of Performance Goals or other business objectives and the target payout opportunities attainable under outstanding Performance Units shall be deemed to have been satisfied as of the effective date of the Change of Control as to a pro rata number of shares based on the assumed achievement of all relevant Performance Goals or objectives and the length of time within the Performance Period which has elapsed prior to the Change of Control. All such Awards of Performance Units and Restricted Stock Units shall be paid to the extent earned to Participants in accordance with their terms within thirty (30) days following the effective date of the Change of Control.

None of the foregoing shall apply, however, (i) in the case of a Qualified Performance-Based Award specifically designated as such by the Committee at the time of grant (except to the extent allowed by Section 162(m) of the Code), (ii) in the case of any Award pursuant to an Award Agreement requiring other or additional terms upon a Change of Control (or similar event), or (iii) if specifically prohibited under applicable laws, or by the rules and regulations of any governing governmental agencies or national securities exchanges.

10. Settlement of Awards

10.1. In General. Options and Restricted Stock shall be settled in accordance with their terms. All other Awards may be settled in cash, Stock, or other Awards, or a combination thereof, as determined by the Committee at or after grant and subject to any contrary Award Agreement. The Committee may not require settlement of any Award in Stock pursuant to the immediately preceding sentence to the extent issuance of such Stock would be prohibited or unreasonably delayed by reason of any other provision of the Plan.

10.2. Violation of Law. Notwithstanding any other provision of the Plan or the relevant Award Agreement, if, at any time, in the reasonable opinion of the Company, the issuance of shares of Stock covered by an Award may constitute a violation of law, then the Company may delay such issuance and the delivery of a certificate for such shares until (i) approval shall have been obtained from such governmental agencies, other than the Securities and Exchange Commission, as may be required under any applicable law, rule, or regulation and (ii) in the case where such issuance would constitute a violation of a law administered by or a regulation of the Securities and Exchange Commission, one of the following conditions shall have been satisfied:

(a) the shares are at the time of the issue of such shares effectively registered under the Securities Act of 1933;
or

(b) the Company shall have determined, on such basis as it deems appropriate (including an opinion of counsel in form and substance satisfactory to the Company) that the sale, transfer, assignment, pledge, encumbrance or other

disposition of such shares or such beneficial interest, as the case may be, does not require registration under the Securities Act of 1933, as amended or any applicable State securities laws.

The Company shall make all reasonable efforts to bring about the occurrence of said events.

10.3. Corporate Restrictions on Rights in Stock. Any Stock to be issued pursuant to Awards granted under the Plan shall be subject to all restrictions upon the transfer thereof which may be now or hereafter imposed by the charter, certificate or articles, and by-laws, of the Company. Whenever Stock is to be issued pursuant to an Award, if the Committee so directs at or after grant, the Company shall be under no obligation to issue such shares until such time, if ever, as the recipient of the Award (and any person who exercises any Option, in whole or in part), shall have become a party to and bound by the Stockholders Agreement, if any. In the event of any conflict between the provisions of this Plan and the provisions of the Stockholders Agreement, the provisions of the Stockholders Agreement shall control except as required to fulfill the intention that this Plan constitute an incentive stock option plan within the meaning of Section 422 of the Code, but insofar as possible the provisions of the Plan and such Agreement shall be construed so as to give full force and effect to all such provisions.

10.4. Investment Representations. The Company shall be under no obligation to issue any shares covered by any Award unless the shares to be issued pursuant to Awards granted under the Plan have been effectively registered under the Securities Act of 1933, as amended, or the Participant shall have made such written representations to the Company (upon which the Company believes it may reasonably rely) as the Company may deem necessary or appropriate for purposes of confirming that

the issuance of such shares will be exempt from the registration requirements of that Act and any applicable state securities laws and otherwise in compliance with all applicable laws, rules and regulations, including but not limited to that the Participant is acquiring the shares for his or her own account for the purpose of investment and not with a view to, or for sale in connection with, the distribution of any such shares.

10.5. Registration. If the Company shall deem it necessary or desirable to register under the Securities Act of 1933, as amended or other applicable statutes any shares of Stock issued or to be issued pursuant to Awards granted under the Plan, or to qualify any such shares of Stock for exemption from the Securities Act of 1933, as amended or other applicable statutes, then the Company shall take such action at its own expense. The Company may require from each recipient of an Award, or each holder of shares of Stock acquired pursuant to the Plan, such information in writing for use in any registration statement, prospectus, preliminary prospectus or offering circular as is reasonably necessary for that purpose and may require reasonable indemnity to the Company and its officers and directors from that holder against all losses, claims, damage and liabilities arising from use of the information so furnished and caused by any untrue statement of any material fact therein or caused by the omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made. In addition, the Company may require of any such person that he or she agree that, without the prior written consent of the Company or the managing underwriter in any public offering of shares of Stock, he or she will not sell, make any short sale of, loan, grant any option for the purchase of, pledge or otherwise encumber, or otherwise dispose of, any shares of Stock during the 180 day period commencing on the effective date of the registration statement relating to the underwritten public offering of securities. Without limiting the generality of the foregoing provisions of this Section 10.5, if in connection with any underwritten public offering of securities of the Company the managing underwriter of such offering requires that the Company's directors and officers enter into a lock-up agreement containing provisions that are more restrictive than the provisions set forth in the preceding sentence, then (a) each holder of shares of Stock acquired pursuant to the Plan (regardless of whether such person has complied or complies with the provisions of clause (b) below) shall be bound by, and shall be deemed to have agreed to, the same lock-up terms as those to which the Company's directors and officers are required to adhere; and (b) at the request of the Company or such managing underwriter, each such person shall execute and deliver a lock-up agreement in form and substance equivalent to that which is required to be executed by the Company's directors and officers.

10.6. Placement of Legends; Stop Orders; etc. Each share of Stock to be issued pursuant to Awards granted under the Plan may bear a reference to the investment representation made in accordance with Section 10.4 in addition to any other applicable restriction under the Plan, the terms of the Award and if applicable under the Stockholders Agreement and to the fact that no registration statement has been filed with the Securities and Exchange Commission in respect to such shares of Stock. All certificates for shares of Stock or other securities delivered under the Plan shall be subject to such stock transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations, and other requirements of any stock exchange upon which the Stock is then listed, and any applicable federal or state securities law, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

10.7. Tax Withholding. Whenever shares of Stock are issued or to be issued pursuant to Awards granted under the Plan, the Company shall have the right to require the recipient to remit to the Company an amount sufficient to satisfy federal, state, local or other withholding tax requirements if, when, and to the extent required by law (whether so required to secure for the Company an otherwise available tax deduction or otherwise) prior to the delivery of any certificate or certificates for such shares. The obligations of the Company under the Plan shall be conditional on satisfaction of all such withholding obligations and the Company shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the recipient of an Award. However, in such cases Participants may elect, subject to the approval of the Committee, acting in its sole discretion, to satisfy an applicable withholding requirement, in whole or in part, by having the Company withhold shares to satisfy their tax obligations. Participants may only elect to have Shares withheld having a Market Value on the date the tax is to be determined equal to the minimum statutory total tax which could be imposed on the transaction. All elections shall be irrevocable, made in writing, signed by the Participant, and shall be subject to any restrictions or limitations that the Committee deems appropriate.

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11. Reservation of Stock

The Company shall at all times during the term of the Plan and any outstanding Awards granted hereunder reserve or otherwise keep available such number of shares of Stock as will be sufficient to satisfy the requirements of the Plan (if then in effect) and the Awards and shall pay all fees and expenses necessarily incurred by the Company in connection therewith.

12. Limitation of Rights in Stock; No Special Service Rights

A Participant shall not be deemed for any purpose to be a stockholder of the Company with respect to any of the shares of Stock subject to an Award, unless and until a certificate shall have been issued therefor and delivered to the Participant or his agent. Any Stock to be issued pursuant to Awards granted under the Plan shall be subject to all restrictions upon the transfer thereof which may be now or hereafter imposed by the Certificate of Incorporation and the By-laws of the Company. Nothing contained in the Plan or in any Award Agreement shall confer upon any recipient of an Award any right with respect to the continuation of his or her employment or other association with the Company (or any Affiliate), or interfere in any way with the right of the Company (or any Affiliate), subject to the terms of any separate employment or consulting agreement or provision of law or corporate articles or by-laws to the contrary, at any time to terminate such employment or consulting agreement or to increase or decrease, or otherwise adjust, the other terms and conditions of the recipient's employment or other association with the Company and its Affiliates.

13. Unfunded Status of Plan

The Plan is intended to constitute an unfunded plan for incentive compensation, and the Plan is not intended to constitute a plan subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended.

With respect to any payments not yet made to a Participant by the Company, nothing contained herein shall give any such Participant any rights that are greater than those of a general creditor of the Company. In its sole discretion, the Committee may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver Stock or payments with respect to Options, Stock Appreciation Rights and other Awards hereunder, provided, however, that the existence of such trusts or other arrangements is consistent with the unfunded status of the Plan.

14. Nonexclusivity of the Plan

Neither the adoption of the Plan by the Board nor the submission of the Plan to the stockholders of the Company shall be construed as creating any limitations on the power of the Board to adopt such other incentive arrangements as it may deem desirable, including without limitation, the granting of stock options and restricted stock other than under the Plan, and such arrangements may be either applicable generally or only in specific cases.

15. Termination and Amendment of the Plan

15.1. Termination or Amendment of the Plan. The Board may at any time terminate the Plan or make such modifications of the Plan as it shall deem advisable. Unless the Board otherwise expressly provides, no amendment of the Plan shall affect the terms of any Award outstanding on the date of such amendment.

15.2. Termination or Amendment of Outstanding Awards. The Committee may amend the terms of any Award theretofore granted, prospectively or retroactively, provided that the Award as amended is consistent with the terms of the Plan. Also within the limitations of the Plan, the Committee may modify, extend or assume outstanding Awards or may accept the cancellation of outstanding Awards or of outstanding stock options or other equity-based compensation awards granted by another issuer in return for the grant of new Awards for the same or a different number of shares and on the same or different terms and conditions (including but not limited to the exercise price of any Option). Furthermore, the Committee may at any time (a) offer to buy out for a payment in cash or cash equivalents an Award previously granted or (b) authorize the recipient of an Award to elect to cash out an Award previously granted, in either case at such time and based upon such terms and conditions as the Committee shall establish.

15.3. Limitations on Amendments, Etc. No amendment or modification of the Plan by the Board, or of an outstanding Award by the Committee, shall impair the rights of the recipient of any Award outstanding on the date of such amendment or modification or such Award, as the case may be, without the Participant's consent; provided, however, that no such consent shall be required if (i) the Board or Committee, as the case may be, determines in its sole discretion and prior to the date of any Change of Control that such amendment or alteration either is required or advisable in order for the Company, the Plan or the Award to satisfy any law or regulation, including without limitation the provisions of Section 409A of the Code, or to meet the requirements of or avoid adverse financial accounting consequences under any accounting standard, or (ii) the Board or Committee, as the case may be, determines in its sole discretion and prior to the date of any Change of Control that such amendment or alteration is not reasonably likely to significantly diminish the benefits provided under the Award, or that any such diminution has been adequately compensated. Notwithstanding anything contained in the Plan to the contrary, no amendment or modification of the Plan by the Board, or of an outstanding Award by the Committee shall (i) increase the number of shares subject to the Plan or (ii) result in the repricing of any Option or Stock Appreciation Right, in either case, unless approved by the Company's stockholders.

16. Notices and Other Communications

Any notice, demand, request or other communication hereunder to any party shall be deemed to be sufficient if contained in a written instrument delivered in person or duly sent by first class registered, certified or overnight mail, postage prepaid, or telecopied with a confirmation copy by regular, certified or overnight mail, addressed or telecopied, as the case may be, (i) if to the recipient of an Award, at his or her residence address last filed with the Company and (ii) if to the Company, at its principal place of business, addressed to the attention of its Treasurer, or to such other address or telecopier number, as the case may be, as the addressee may have designated by notice to the addressor. All such notices, requests, demands and other communications shall be deemed to have been received: (i) in the case of personal delivery, on the date of such delivery; (ii) in the case of mailing, when received by the addressee; and (iii) in the case of facsimile transmission, when confirmed by facsimile machine report.

17. Governing Law

The Plan and all Award Agreements and actions taken thereunder shall be governed, interpreted and enforced in accordance with the laws of the State of Delaware, without regard to the conflict of laws principles thereof.

September 8, 2008

CONFIDENTIAL

The Board of Directors

Renaissance Acquisition Corp.

50 East Sample Road, Suite 400

Pompano Beach, Florida 33064

Re: Fairness Opinion Opinion of Renaissance Acquisition Corp. s

Acquisition of First Communications, Inc.

Gentlemen:

We understand that Renaissance Acquisition Corp. (Renaissance or the Purchaser), a Delaware corporation, proposes to acquire (the Potential Transaction) all of the outstanding equity of First Communications, Inc. and its subsidiaries (collectively, FCI or the Target). The Purchaser s proposed purchase price (inclusive of contingent consideration) for the Potential Transaction is \$368.1 million (Merger Consideration) on a debt-free basis. The Potential Transaction is contingent upon FCI s pending acquisition of Globalcom, Inc. (Globalcom). The Merger Consideration assumes that Renaissance will assume the Target s indebtedness of \$130 million (pro forma for the completion of the acquisition of Globalcom) and repay its current \$15 million preferred securities with the \$4.4 million of cash currently on the Target s balance sheet and cash from Purchaser. Renaissance will issue \$227.5 million consisting of 37.91 million shares of Renaissance common stock (Common Stock) to all of the current equity holders of the Target in exchange for their common stock and options in the Target. Of the 37.91 million shares of Common Stock, 9.95 million shares shall be deferred and placed in a mutually acceptable account with a reputable escrow agent until the Target achieves an annualized adjusted EBITDA of \$50 million in any fiscal quarter through June 30, 2011 (EBITDA Target), and 9.5 million shares shall be deferred and placed in a mutually acceptable account with a reputable escrow agent until such time as Renaissance has the right to call its publicly traded warrants pursuant to the redemption terms described in its prospectus. In addition, the Target s warrant holders will also receive 2.5 million warrants with exercise price of \$9.00 and an expiration of January 28, 2011 (collectively, Contingent Consideration). Based upon the Merger Consideration outlined above, upfront consideration consists of \$251.4 million ("Upfront Consideration"), and Contingent

Consideration consists of \$116.7 million.

Houlihan Smith & Company, Inc. (Houlihan) has been engaged by the Board of Directors (the Board) of the Purchaser to render an opinion (Opinion) as to whether, on the date of such Opinion, the Merger Consideration is fair, from a financial point of view, to the shareholders of the Renaissance. In addition, Houlihan opined on whether the fair market value of the Target is at least equal to 80% of net assets of the Renaissance at the time of the Potential Transaction.

In performing our analyses and for purposes of our Opinion set forth herein, we have, among other things:

- Reviewed a draft of the Agreement and Plan of Merger, dated September 7, 2008;

- Reviewed and analyzed Target s audited Annual Report for 2007;

- Reviewed and analyzed Target s audited historical financial statements for the fiscal years ending 2004 through 2006;

- Reviewed and analyzed financial projections (pro forma for the completion of the Globalcom acquisition) for the years ending December 31, 2008 through December 31, 2012 for the Target provided by Renaissance management;

- Reviewed Globalcom s audited financial statements for the fiscal years ending 2004 through 2007;

- Reviewed publicly available financial information and other data with respect to Renaissance, including the Annual Report on Form 10-K for the year ended December 31, 2007 and Form 10-Q for the three months ended June 30, 2008;

- Reviewed a Confidential Information Memorandum for Private Investors regarding a term loan commitment increase prepared by JP Morgan, dated June 18, 2008;
- Held discussions with Renaissance management and FCI management regarding, among other items, the telephone communications and communication services industries, generally, and the competitive local exchange carrier (CLEC) and communication tower (Tower) industries, specifically; the Purchaser's decision to form a business combination with Target;
- Reviewed the financial terms of certain recent business combinations in the telephone communications, communications services and wireless communication industries specifically, and in other industries generally;
- Reviewed certain Board materials regarding FCI, dated August 5, 2008;
- Reviewed financial and operating information with respect to certain publicly-traded companies in the telecommunication services, wireless communications, information technology and infrastructure industries which we believe to be generally comparable to the business of the Target, as well as other research related to the size and growth of markets in which the Target operates or may operate;
- Reviewed a company overview presentation for Target, dated July 2008;
- Reviewed a confidential information memorandum prepared by Jefferies & Company, Inc. regarding certain senior secured credit facilities, dated November 2007;
- Reviewed a summary of the capital structures of Target on both a pre-transaction and post-transaction basis regarding the Potential Transaction prepared by Jefferies & Company, Inc.;
- Reviewed a current FCI organizational chart; and
- Performed other financial studies, analyses and investigations, and considered such other information, as we deemed necessary or appropriate.

We have relied upon and assumed, without independent verification, the accuracy, completeness and reasonableness of the financial, legal, tax, and other information discussed with or reviewed by us and have assumed such accuracy and completeness for purposes of rendering our Opinion. We have further relied upon the assurances and representations from management of the Purchaser that they are unaware of any facts that would make the information provided to us to be incomplete or misleading for the purposes of our Opinion. We have not assumed responsibility for any independent verification of this information nor have we assumed any obligation to verify this information.

Further, our Opinion is necessarily based upon information made available to us, as well as the economic, monetary, market, financial and other conditions as they exist as of the date of this letter. We disclaim any obligation to advise the management of the Purchaser or any person of any change in any fact or matter affecting our Opinion, which may come or be brought to our attention after the date of this Opinion.

Each of the analyses conducted by Houlihan was carried out to provide a particular perspective of the purchase. Houlihan did not form a conclusion as to whether any individual analysis, when considered in isolation, supported or failed to support our Opinion as to the fairness of the Merger Consideration to the Purchaser. Houlihan does not place any specific reliance or weight on any individual analysis, but instead, concludes that its analyses taken as a whole, supports its conclusion and Opinion. Accordingly, Houlihan believes that its analyses must be considered in its entirety and that selecting portions of its analyses or the factors it considered, without considering all analyses and factors collectively, could create an incomplete view of the processes underlying the analyses performed by Houlihan in connection with the preparation of the Opinion.

Our Opinion does not constitute a recommendation to proceed with the Potential Transaction. This Opinion relates solely to the question of the fairness of the Merger Consideration to the Purchaser, from a financial point of view. We are expressing no opinion as to the income tax consequences of the Potential Transaction to the Purchaser.

Houlihan, a Financial Industry Regulatory Authority (FINRA) member, as part of its investment banking services, is regularly engaged in the valuation of businesses and securities in connection with mergers and acquisitions, private placements, bankruptcy, capital restructuring, solvency analyses, stock buybacks, and valuations for corporate and other purposes. Houlihan has no prior investment banking relationships with the buyer or the sellers. Houlihan has received a non-contingent fee from the Purchaser relating to its services in providing the Opinion. In an engagement letter dated August 26, 2008, the Purchaser has agreed to indemnify Houlihan with respect to Houlihan's services relating to the Opinion.

Therefore, it is Houlihan's opinion that, as of the date hereof, the Merger Consideration is fair from a financial point of view to the shareholders of Renaissance. Furthermore, it is our opinion that the fair market value of Target is at least equal to 80% of the net assets of Renaissance at the time of the Potential Transaction.

Very truly yours,

/s/ Houlihan Smith & Company, Inc.

Houlihan Smith & Company, Inc.

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ESCROW AGREEMENT

THIS ESCROW AGREEMENT (Agreement) is made and entered into as of _____, by and among: Renaissance Acquisition Corp., a Delaware corporation (Parent); and The Gores Group LLC, as representative (the Stockholders Representative), of the Persons identified from time to time on Schedule 1 hereto; and Continental Stock Transfer & Trust Company, a New York corporation (the Escrow Agent).

RECITALS

WHEREAS, Parent, FCI Merger Sub I, a Delaware corporation and a wholly-owned subsidiary of Parent (Merger Sub I), FCI Merger Sub II, a Delaware limited liability company and a wholly-owned subsidiary of Parent (Merger Sub II), First Communications Inc., a Delaware corporation (the Company), and the Stockholders Representative have entered into an Agreement and Plan of Merger dated as of September 13, 2008 (the Merger Agreement), pursuant to which, among other things, (i) Merger Sub I is merging with and into the Company, and the surviving company is then merging with and into Merger Sub II, with Merger Sub II surviving, and (ii) certain stock issuances are to be made to the Company Securityholders (as defined below). A copy of the Merger Agreement is attached hereto as Exhibit A;

WHEREAS, the Merger Agreement contemplates the establishment of an escrow fund to secure certain rights of the Company Securityholders to compensation as provided in the Merger Agreement; and

WHEREAS, pursuant to Section 12.14 of the Merger Agreement and Section 4.1 of the Securities Exchange Agreement, the Stockholders Representative has been irrevocably appointed by the Company Securityholders to serve as their exclusive representative in connection with all matters under this Agreement and the Merger Agreement.

AGREEMENT

The parties, intending to be legally bound, agree as follows:

Section 1. Defined Terms.

1.1 Capitalized terms used and not defined in this Agreement shall have the meanings given to them in the Merger Agreement.

1.2 As used in this Agreement, the term Company Securityholders refers to the Persons who were holders of the Company Common Stock immediately prior to the Effective Time, all the holders of T2 Warrants and certain of the holders of the T3 Warrants immediately prior to the Effective Time, or their respective Affiliates to which the rights under this Agreement have been assigned as set forth herein.

Section 2. Escrow.

2.1 Shares and Stock Powers Placed in Escrow. At the Effective Time, in accordance with the Merger Agreement, (a) Parent shall issue certificates for the Warrant Stock, the EBITDA Stock and the Additional Warrant Stock registered in the names of each of the Company Securityholders evidencing the shares of Parent Common Stock

to be held in escrow under this Agreement in the amounts set forth on Schedule 1 (collectively, such shares of Parent Common Stock, the Escrowed Shares), and shall cause such certificates to be delivered to the Escrow Agent, together with the appropriate amount of cash, in lieu of a fractional share that each Company Stockholder is entitled to receive (if applicable) pursuant to the terms of the Merger Agreement and (b) each of the Company Securityholders shall deliver to the Escrow Agent one assignment separate from certificate (a Stock Power) endorsed in blank with respect to each certificate registered in the name of such Company Securityholder.

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2.2 Escrow Fund. The Escrowed Shares being held in escrow pursuant to this Agreement, together with any cash received in respect of fractional shares and other distributions on the Escrowed Shares, shall collectively constitute an escrow fund (the Escrow Fund) securing the compensation rights of the Company Securityholders under the Merger Agreement. The Escrow Agent agrees to accept delivery of the Escrow Fund and to hold the Escrow Fund in a separate escrow account (such account, the Escrow Account), subject to the terms and conditions of this Agreement and the Merger Agreement.

2.3 Voting of Escrow Shares. Each Company Securityholder shall deliver to Parent a proxy in the form attached hereto as Exhibit B with respect to such Company Securityholder's Escrowed Shares. All voting rights of the Escrowed Shares held by the Escrow Agent shall be exercised by the Parent in accordance with such proxies. The Escrow Agent is not obligated to distribute to the Company Securityholders or to the Stockholders' Representative any proxy materials or other documents relating to the Escrowed Shares received by the Escrow Agent from Parent.

2.4 Investments. The Escrow Agent shall invest and reinvest the cash (if any) held in the Escrow Account from time to time in (a) short-term securities issued or guaranteed by the United States Government, its agencies or instrumentalities; and/or (b) repurchase agreements relating to such securities. Upon the request of either Parent or the Stockholders' Representative, the Escrow Agent shall provide a statement to the requesting party that describes any deposit, distribution or investment activity or deductions with respect to any funds held in the Escrow Account in addition to quarterly account statements from the Escrow Agent.

2.5 Interest, Etc. Parent and the Stockholders' Representative, on behalf of each of the Company Securityholders, agree that any interest accruing on or income otherwise earned (including any ordinary cash dividends paid in respect to the Escrowed Shares) on any investment of any funds in the Escrow Account shall be held by the Escrow Agent in the Escrow Account. The aggregate amount of all interest and other income earned on any investment of any funds in the Escrow Account shall be distributed by the Escrow Agent with the Escrowed Shares to which it relates.

2.6 Dividends, Etc. Parent and the Stockholders' Representative, on behalf of each of the Company Securityholders, agree that any shares of Parent Common Stock or other property (including ordinary cash dividends) distributable or issuable (whether by way of dividend, stock split or otherwise) in respect of or in exchange for any Escrowed Shares (including pursuant to or as a part of a merger, consolidation, acquisition of property or stock, reorganization or liquidation involving Parent) shall be distributed to, or issued in the name of the beneficial owners of such Escrowed Shares and held by, the Escrow Agent in the Escrow Account as part of the Escrow Fund in connection with such Escrowed Shares to which it relates. Any securities or other property received by the Escrow Agent in respect of any Escrowed Shares held in escrow as a result of any stock split or combination of shares of Parent Common Stock, payment of a stock dividend or other stock distribution in or on shares of Parent Common Stock, or change of Parent Common Stock into any other securities pursuant to or as a part of a merger, consolidation, acquisition of property or stock, reorganization or liquidation involving Parent, or otherwise, shall be held by the Escrow Agent as part of the Escrow Fund in connection with such Escrowed Shares to which it relates.

2.7 Transferability. Except as provided for herein or by operation of law, the interests of the Company Securityholders in the Escrow Fund and in the Escrowed Shares shall not be assignable or transferable.

2.8 Trust Fund. The Escrow Fund shall be held as trust funds and shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any Company Securityholder or of any party hereto. The Escrow Agent shall hold and safeguard the Escrow Fund until the Termination Date (as defined in Section 6) or earlier distribution in accordance with this Agreement.

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Section 3. Release of Escrowed Shares.

3.1 General. Within 5 Business Days after receiving either (a) joint written instructions from Parent and the Stockholder Representative (Joint Instructions) or (b) an order issued by a court of competent jurisdiction (a Court Order) relating to the release of any Escrowed Shares from the Escrow Fund, the Escrow Agent shall release or cause to be released any such Escrowed Shares and any other amounts from the Escrow Fund in the amounts, to the Persons and in the manner set forth in such Joint Instructions or Court Order.

3.2 Distributions. Whenever a distribution of a number of shares of Parent Common Stock is to be made pursuant to the terms of this Agreement, the Escrow Agent shall requisition the appropriate number of shares from Parent's stock transfer agent, delivering to the transfer agent the appropriate stock certificates accompanied by the respective Stock Powers, together with the specific instructions, as appropriate. Within 5 Business Days prior to the date the Escrow Agent is required to make a distribution of shares of Parent Common Stock or other property (including ordinary cash dividends) to the Company Securityholders pursuant to the terms of this Agreement, the Escrow Agent shall provide the Stockholders' Representative with a notice specifying that a distribution will be made and requesting that the Stockholders' Representative update the addresses set forth in the then current Schedule 1 to this Agreement. The Escrow Agent shall make the corresponding distributions to the Persons listed on such updated Schedule 1 in accordance with the terms hereof, to their respective addresses as set forth therein. Notwithstanding anything to the contrary set forth herein, the Escrow Agent shall not be obligated to make any distribution under this Agreement to the Company Securityholders unless it has received from the Stockholders' Representative an updated Schedule 1 to this Agreement as provided herein. Any distributions to Parent pursuant to the terms of this Agreement shall be made to the address set forth in Section 9.2 hereof.

3.3 Delinquent Holders. Notwithstanding the foregoing, no distribution of Parent Common Stock shall be made to any Company Securityholder (each, a Delinquent Holder) who has not complied with the terms of Section 3.4 of the Merger Agreement for receiving Merger Consideration. With respect to any amount withheld from distribution to a Delinquent Holder, such amount shall be held and invested by the Escrow Agent in accordance with Section 2.4 hereof, as if such amount were part of the Escrow Fund, until the earlier of (i) such time as the Delinquent Holder has complied with the terms of the Merger Agreement for receiving payments of Merger Consideration thereunder or (ii) the date on which the Escrow Agent receives joint written instructions to distribute all other amounts remaining in the Escrow Fund (the Final Release Date). Any amounts not distributed to a Delinquent Holder on or prior to the Final Release Date shall be distributed to Parent thereon, and the Escrow Agent shall have no further obligations with respect to any such amounts. To the extent permitted by applicable law, Parent shall not have any obligation to segregate, or pay Delinquent Holders interest on, funds held for the benefit of the Delinquent Holders pursuant to the preceding sentence, and such amounts owing shall be unsecured general obligations of the Parent.

Section 4. Fees and Expenses.

The Escrow Agent shall be entitled to receive, from time to time, fees in accordance with Schedule 2. In accordance with Schedule 2, the Escrow Agent will also be entitled to reimbursement for reasonable and documented out-of-pocket expenses incurred by the Escrow Agent in the performance of its duties hereunder and the execution and delivery of this Agreement. All such fees and expenses shall be paid by Parent.

Section 5. Limitation of Escrow Agent's Liability.

5.1 The Escrow Agent undertakes to perform such duties as are specifically set forth in this Agreement only and shall have no duty under any other agreement or document, and no implied covenants or obligations shall be read into

this Agreement against the Escrow Agent. The Escrow Agent shall incur no liability with respect to any action taken by it or for any inaction on its part in reliance upon any notice, direction, instruction, consent, statement or other document believed by it in good faith to be genuine and duly authorized, nor for any other action or inaction except for its own negligence or willful misconduct. In all questions arising under this Agreement, the Escrow Agent may rely on the advice of counsel, and for anything done, omitted or suffered in good faith by the Escrow Agent based upon such advice the Escrow Agent shall not be liable to anyone. In no event shall the Escrow Agent be liable for incidental, punitive or consequential damages.

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5.2 Parent and the Stockholders Representative, acting on behalf of the Company Securityholders hereby agree to indemnify the Escrow Agent and its officers, directors, employees and agents for, and hold it and them harmless against, any loss, liability or expense incurred without negligence or willful misconduct on the part of Escrow Agent, arising out of or in connection with the Escrow Agent's carrying out its duties hereunder. This right of indemnification shall survive the termination of this Agreement and the resignation of the Escrow Agent.

Section 6. Termination.

This Agreement shall terminate upon the release by the Escrow Agent of the final amounts held in the Escrow Fund in accordance with Section 3 (the date of such release being referred to as the Termination Date).

Section 7. Successor Escrow Agent.

In the event the Escrow Agent becomes unavailable or unwilling to continue as escrow agent under this Agreement, the Escrow Agent may resign and be discharged from its duties and obligations hereunder by giving its written resignation to the parties to this Agreement. Such resignation shall take effect not less than 45 days after it is given to all the other parties hereto. In such event, Parent may appoint a successor Escrow Agent (acceptable to the Stockholders Representative, acting reasonably). If Parent fails to appoint a successor Escrow Agent within 20 days after receiving the Escrow Agent's written resignation, the Escrow Agent shall have the right to apply to a court of competent jurisdiction for the appointment of a successor Escrow Agent. The successor Escrow Agent shall execute and deliver to the Escrow Agent an instrument accepting such appointment, and the successor Escrow Agent shall, without further acts, be vested with all the estates, property rights, powers and duties of the predecessor Escrow Agent as if originally named as Escrow Agent herein. The Escrow Agent shall act in accordance with written instructions from Parent and the Stockholders Representative as to the transfer of the Escrow Fund to a successor Escrow Agent.

Section 8. Stockholders Representative.

8.1 Unless and until Parent and the Escrow Agent shall have received written notice of the appointment of a successor Stockholders Representative in accordance with the terms of the Merger Agreement, Parent and the Escrow Agent shall be entitled to rely on, and shall be fully protected in relying on, the power and authority of the Stockholders Representative to act on behalf of the Company Securityholders.

Section 9. Miscellaneous.

9.1 Attorneys Fees. In any action at law or suit in equity to enforce or interpret this Agreement or the rights of any of the parties hereunder, the prevailing party in such action or suit shall be entitled to receive a reasonable sum for its attorneys' fees and all other reasonable costs and expenses incurred in such action or suit.

9.2 Notices. Notice from a party to another party hereto relating to this Agreement shall be deemed effective if made in writing and delivered to the recipient's address, or facsimile number set forth below by any of the following means: (i) hand delivery, (ii) registered or certified mail, postage prepaid, with return receipt requested, (iii) Federal Express, Airborne Express, or like overnight courier service, or (iv) facsimile or other wire transmission showing the date of transmission thereon and followed by regular mail delivery of a copy thereof. Notice made in accordance with this Section 9.2 shall be deemed delivered on receipt if delivered by hand or transmission if sent by facsimile or wire transmission, on the third Business Day after mailing if mailed by registered or certified mail, or the next Business Day after deposit with an overnight courier service if delivered for next day delivery. Notwithstanding the foregoing, notices addressed to the Escrow Agent shall be effective only upon receipt.

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if to Parent:

Renaissance Acquisition Corp.
50 East Sample Road
Pompano Beach, Florida
Attn: Barry W. Florescue
Fax: (954) 784-0534

with a copy, which shall not constitute notice, to:

Dechert LLP
1095 Avenue of the Americas
New York, New York 10036
Attn: Charles I. Weissman, Esq.
Fax: (212) 698-3599

if to the Stockholders Representative:

The Gores Group LLC

10877 Wilshire Boulevard
18th Floor

Los Angeles, California 90024
Attn: Scott Honour

Fax: (310) 209-3310

with a copy, which shall not constitute notice, to:

Bingham McCutchen LLP
One Federal Street
Boston, MA 02110
Attn: John J. Concannon III, Esq.
Fax: (617) 951-8736

if to the Escrow Agent:

Table of Contents

Continental Stock Transfer & Trust Company
17 Battery Place
New York, NY 10004
Attn: Compliance Department
Fax:

9.3 Headings. The bold-faced headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

9.4 Counterparts and Exchanges by Facsimile or Other Electronic Transmission. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or other means of electronic transmission shall be sufficient to bind the parties to the terms and conditions of this Agreement.

9.5 Applicable Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. The parties hereto each hereby irrevocably submit to the exclusive jurisdiction of any state or federal court sitting in New Castle County, Delaware for the purposes of any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof brought by any other party hereto. Each party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each party hereto, to the extent permitted by applicable Law, hereby waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding brought in such courts, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court. Any party may make service on any other 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 9.2 above. Nothing in this Section 9.5, however, shall affect the right of any party to serve legal process in any other manner permitted by law or at equity. Each party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or at equity.

9.6 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and each of their respective permitted successors and assigns, if any. The rights of a Company Securityholder under this Agreement may be assigned, delegated or transferred, in whole or in part, by each of the Company Securityholders to any Affiliate (as defined in Rule 12b-2 under the Exchange Act) of such Company Securityholder, or any other Person, managed fund or managed client account over which such Company Securityholder or any of its Affiliates exercises investment authority, including, without limitation, with respect to voting and dispositive rights.

9.7 Waiver. No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

9.8 Amendment. This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered on behalf of Parent, the Stockholders Representative and the Escrow Agent; provided, however, that any amendment executed and delivered by the Stockholders Representative shall be deemed to have been approved by and duly executed and delivered by all of the Company Securityholders.

9.9 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does

not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

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9.10 Parties in Interest. Except as expressly provided herein, none of the provisions of this Agreement, express or implied, is intended to provide any rights or remedies to any Person other than the parties hereto and their respective successors and assigns, if any.

9.11 Entire Agreement. This Agreement and the Merger Agreement set forth the entire understanding of the parties hereto relating to the subject matter hereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter hereof.

9.12 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER DOCUMENTS AND AGREEMENTS DELIVERED IN CONNECTION HERewith, THE TRANSACTIONS OR THE ACTIONS OF ANY PARTY HERETO IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT HEREOF OR THEREOF.

9.13 Tax Reporting Information. Parent agrees to provide the Escrow Agent with a certified tax identification number for Parent and each of the Company Securityholders by furnishing appropriate forms W-9 (or Forms W-8, in the case of non-U.S. persons) and any other forms and documents that the Escrow Agent may reasonably request (collectively, Tax Reporting Documentation) to the Escrow Agent within 30 days after the date hereof. The parties hereto understand that, if such Tax Reporting Documentation is not so furnished to the Escrow Agent, the Escrow Agent shall be required by the Code to withhold a portion of any interest or other income earned on the investment of monies held by the Escrow Agent pursuant to this Agreement, and to immediately remit such withholding to the Internal Revenue Service. For tax reporting purposes, all income earned from the investment of cash held in the Escrow Account in any tax year shall be allocated to the Company Securityholders.

9.14 Cooperation. The Stockholders Representative, on behalf of the Company Securityholders, and Parent agree to cooperate fully with each other and the Escrow Agent and to execute and deliver such further documents, certificates, agreements, stock powers and instruments and to take such other actions as may be reasonably requested by Parent, the Stockholders Representative or the Escrow Agent to evidence or reflect the transactions contemplated by this Agreement and to carry out the intent and purposes of this Agreement.

9.15 Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neutral genders; the feminine gender shall include the masculine and neutral genders; and the neutral gender shall include masculine and feminine genders.

(b) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words include and including, and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words without limitation.

(d) Except as otherwise indicated, all references in this Agreement to Sections , Schedules and Exhibits are intended to refer to Sections of this Agreement, Schedules to this Agreement and Exhibits to this Agreement.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the parties have duly caused this Agreement to be executed as of the day and year first above written.

RENAISSANCE ACQUISITION CORP.,
a Delaware corporation

By:
Name: Barry W. Florescue
Title: Chief Executive Officer

THE GORES GROUP LLC,
solely in its capacity as Stockholders
Representative

By:
Name: Steven G. Eisner
Title: Vice President

**CONTINENTAL STOCK TRANSFER &
TRUST**
COMPANY, a New York corporation

By:
Name: Mark B. Zimkind
Title: Vice President

SCHEDULE 1

COMPANY SECURITYHOLDERS

Holder	Warrant Stock		EBITDA Stock		Additional Warrant Stock	
	# of Shares	Cash for Fractional Shares	# of Shares	Cash for Fractional Shares	# of Shares	Cash for Fractional Shares
[Name]						
[Address]						

SCHEDULE 2

ESCROW AGENT S FEES AND EXPENSES

Monthly Fee for holding securities and/or cash: \$_____ per month

Additional out of pocket expenses including postage and stationary: Additional

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EXHIBIT A
MERGER AGREEMENT

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EXHIBIT B

FORM OF IRREVOCABLE PROXY

The undersigned stockholder of Renaissance Acquisition Corp., a Delaware corporation (the **Company**), hereby irrevocably (to the fullest extent permitted by law) appoints and constitutes [any executive officer of the Company], and each of them, the attorneys and proxy of the undersigned with full power of substitution and resubstitution, to the full extent of the undersigned's rights with respect to the shares of Common Stock, par value \$0.0001 per share of the Company (the **Company Common Stock**) owned by the undersigned as of the date of this proxy or acquired after the date hereof that are held in escrow by Continental Stock Transfer & Trust Company (the **Escrowed Shares**), until such time as this Proxy terminates in accordance with its terms. Upon the execution hereof, all prior proxies, if any, given by the undersigned with respect to any of the Escrowed Shares are hereby revoked, and no subsequent proxies will be given with respect to any of the Escrowed Shares.

This proxy is irrevocable and is coupled with an interest and is granted in connection with the Escrow Agreement, dated as of _____, 2009, by and among the Company, [The Gores Group LLC], in its capacity as Stockholders Representative, and the Escrow Agent. Capitalized terms used but not otherwise defined in this proxy have the meanings ascribed to such terms in the Escrow Agreement.

The proxy named above will be empowered, and may exercise this proxy, to vote the shares of the Escrowed Shares on any matter on which the holders of Company Common Stock are entitled to vote, in the same proportion for or against such matter as all other shares voting on such matter.

Any obligation of the undersigned hereunder shall be binding upon the heirs, successors and assigns of the undersigned.

The undersigned agrees to execute and deliver at any time all such further instruments (including, without limitation, additional irrevocable proxies) as may be necessary or appropriate to carry out the intent of this proxy.

If any term, provision, covenant or restriction of this proxy is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this proxy shall remain in full force and effect and shall not in any way be affected, impaired or invalidated.

This proxy shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the provisions thereof relating to conflicts of law.

This proxy shall terminate with respect to each of the Escrowed Shares upon the date such Escrowed Share is released from the Escrow Account.

Dated: _____, 200__

Holder:

By:

Name:

Title:

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. Indemnification of Directors and Officers.

Renaissance's amended and restated certificate of incorporation provides as follows:

Section 8.1. Right to Indemnification. Each person who was or is a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit, proceeding or alternative dispute resolution procedure, whether (a) civil, criminal, administrative, investigative or otherwise, (b) formal or informal or (c) to the extent permitted by Section 145(b) of the DCGL, by or in the right of the Corporation (collectively, a proceeding), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, manager, officer, partner, trustee, employee or agent of another foreign or domestic corporation or of a foreign or domestic limited liability company, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as such a director, officer, employee or agent of the Corporation or in any other capacity while serving as such other director, manager, officer, partner, trustee, employee or agent, shall be indemnified and held harmless by the Corporation against all judgments, penalties and fines incurred or paid, and against all expenses (including attorneys' fees) and settlement amounts incurred or paid, in connection with any such proceeding, except in relation to matters as to which the person did not act in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. Until such time as there has been a final judgment to the contrary, a person shall be presumed to be entitled to be indemnified under this Section 8.1. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, either rebut such presumption or create a presumption that (a) the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Corporation, (b) with respect to any criminal action or proceeding, the person had reasonable cause to believe that the person's conduct was unlawful or (c) the person was not successful on the merits or otherwise in defense of the proceeding or of any claim, issue or matter therein. If the DGCL is hereafter amended to provide for indemnification rights broader than those provided by this Section 8.1 then the persons referred to in this Section 8.1 shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL as so amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior to such amendment).

Section 145 of the Delaware General Corporation Law concerning indemnification of officers, directors, employees and agents is set forth below.

Section 145. Indemnification of officers, directors, employees and agents; insurance.

(a) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person's conduct was unlawful.

(b)A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c)To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

(d)Any indemnification under subsections (a) and (b) of this section (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of this section. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders.

(e)Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

(f)The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

(g)A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under this section.

(h)For purposes of this section, references to the corporation shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand

in the same position under this section with respect to the resulting or surviving company as such person would have with respect to such constituent corporation if its separate existence had continued.

(i)For purposes of this section, references to other enterprises shall include employee benefit plans; references to fines shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to serving at the request of the corporation shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner not opposed to the best interests of the corporation as referred to in this section.

(j)The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(k)The Court of Chancery is hereby vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this section or under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise. The Court of Chancery may summarily determine a corporation's obligation to advance expenses (including attorneys' fees).

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to Renaissance's directors, officers, and controlling persons pursuant to the foregoing provisions, or otherwise, Renaissance has been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment of expenses incurred or paid by a director, officer or controlling person in a successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, Renaissance will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to the court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

Item 21. Exhibits and Financial Statement Schedules.

The following exhibits are filed as part of this Registration Statement:

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Exhibit No.	Description
2.1	Agreement and Plan of Merger dated as of September 13, 2008 by and among Renaissance Acquisition Corp., FCI Merger Sub I, Inc., FCI Merger Sub II, LLC, First Communications, Inc. and the Gores Group, LLC. (included as Annex A to the proxy statement/prospectus).***+
3.1	Amended and Restated Certificate of Incorporation of Renaissance Acquisition Corp. (post merger) (included as Annex B to the proxy statement/prospectus).**
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4.5	Form of Warrant Agreement between Continental Stock Transfer & Trust Company and the Registrant.*
4.6	Warrant Agreement between Continental Stock Transfer & Trust Company and the Registrant dated September 13, 2008.**
5.1	Form of Opinion of Dechert LLP.
10.1	Letter Agreement among the Registrant, Ladenburg Thalmann & Co. Inc. and Barry W. Florescue.*

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10.3	Form of Letter Agreement among the Registrant, Ladenburg Thalmann & Co. Inc. and Stanley Kreitman.*
10.4	Form of Letter Agreement among the Registrant, Ladenburg Thalmann & Co. Inc. and Charles W. Miersch.*
10.5	Form of Letter Agreement among the Registrant, Ladenburg Thalmann & Co. Inc. and Morton Farber.*
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23.5	Consent of Plante & Moran, PLLC.
23.6	Consent of Dechert LLP (incorporated by reference from Exhibit 5.1).
23.7	Consent of Houlihan Smith & Company, Inc.
24	Power of Attorney (included on signature page of this Registration Statement).**
99.1	Consent of Theodore V. Boyd (Director nominee).
99.2	Consent of Joseph R. Morris (Director nominee).

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99.4	Consent of Marshall B. Belden Jr. (Director nominee).
99.5	Consent of Mark R. Stone (Director nominee).
99.6	Consent of Richard A. Bloom (Director nominee).**
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99.13	Form of Proxy Card.

* Incorporated by reference to Renaissance Acquisition Corp.'s Registration Statement on Form S-1 or amendments thereto (SEC File No. 333-134444).

** Previously filed.

+ The schedules to the foregoing Exhibit have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A list of the omitted schedules appears on page A-58 of Exhibit 2.1. The Registrant hereby agrees to furnish a copy of any omitted schedule to the Securities and Exchange Commission upon request.

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Item 22. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- i. To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
- ii. To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and
- iii. To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

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(b)(1) The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the

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applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form;

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- (2) The registrant undertakes that every prospectus:
- (i) that is filed pursuant to paragraph (1) the immediately preceding, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Act and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c)(1) The registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.
- (d) The registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.
- (e) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Pompano Beach, state of Florida, on December 5, 2008.

Renaissance Acquisition Corp.
 By: /s/ Barry W. Florescue
 Chief Executive Officer
 (Principal Executive Officer)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following person in the capacities and on the dates indicated.

Signature	Position	Date
<u>/s/ Barry W. Florescue</u> Barry W. Florescue	Chairman and Chief Executive Officer (Principal Executive Officer Principal Financial and Accounting Officer)	December 5, 2008
<u>*</u> Logan D. Delany, Jr.	Director	December 5, 2008
<u>*</u> Stanley Kreitman	Director	December 5, 2008
<u>*</u> Morton Farber	Director	December 5, 2008
<u>*</u> Charles W. Miersch	Director	December 5, 2008

*By: /s/ Barry W. Florescue
 Name: Barry W. Florescue
 Title: Attorney-in-fact

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